

[2015] WASAT 28

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : DEVELOPMENT & RESOURCES

ACT : PLANNING AND DEVELOPMENT ACT 2005 (WA)

CITATION : ROCLA PTY LTD and SHIRE OF
SERPENTINE-JARRAHDAL [2015] WASAT 28

MEMBER : MR P McNAB (SENIOR MEMBER)
MR R EASTON (SENIOR SESSIONAL MEMBER)

HEARD : 25 NOVEMBER 2014

DELIVERED : 25 NOVEMBER 2014

PUBLISHED : 17 MARCH 2015

FILE NO/S : DR 389 of 2013

BETWEEN : ROCLA PTY LTD
Applicant

AND

SHIRE OF SERPENTINE-JARRAHDAL
Respondent

Catchwords:

Town planning - Development application - Conditions - Extractive industry - Raw materials - Sand quarrying - High quality sand for building and construction - Deemed refusal by local government - Facilitative dispute resolution led to approval of development - Final determination of remaining conditions in dispute - Conditions directed to environmental matters and amenity impacts from noise - Whether sand could be screened on-site - Sand screening fundamental to operation - Expert evidence as to nature of sand and dust control measures indicated that on-site screening should be permitted -

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Tribunal accepting expert evidence - Screening permitted - Whether all day Saturday operations should be permitted - Extent, if any, of adverse impact on rural amenity and local road network - Applicant offering concessions reducing noise of vehicles moving on-site - Evidence of need for Saturday operations accepted by Tribunal - Extent to which nowadays there is a peaceful rural amenity on Saturdays - Tribunal not satisfied that local amenity would be so adversely impacted that Saturday operations should not be permitted - Tribunal endorsing 38 final conditions to be attached to original development approval

Legislation:

Environmental Protection (Noise) Regulations 1997 (WA)

Metropolitan Region Scheme, cl 32

Shire of Serpentine-Jarrahdale Town Planning Scheme No 2, cl 3.2, cl 6.4.2(h), Appendix 1

State Administrative Tribunal Act 2004 (WA), s 31(1)

Result:

Application for review allowed

Outstanding conditions determined by Tribunal

Summary of Tribunal's decision:

In 2013, Rocla Pty Ltd sought review of the Shire of Serpentine-Jarrahdale's deemed refusal of planning approval for a proposed sand excavation operation on a 32 hectare site in Oldbury, located within the boundaries of the Shire. The sand involved was a particular high quality sand used in the building and construction industry, and there was an acknowledged need for such sand to be made available to supply that industry.

After an extensive process of facilitative dispute resolution in the Tribunal, approval was eventually given by the Shire, in 2014, for the operation to go ahead. Some 34 conditions were attached to the Shire's approval. Eventually, only three conditions remained in dispute between the parties and the matter proceeded to a final hearing to resolve issues connected with these conditions.

These unresolved conditions dealt with operating hours (condition 4), the screening and on-site washing of the extracted sand (condition 6), and driveways on the site (condition 13). Shortly before the hearing, condition 13 was resolved between the parties. This left the Tribunal to determine the two remaining conditions.

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Condition 4 was the substantive issue in the review. The applicant sought to extend the approved Monday to Friday operations of the site to all day Saturday operations. Evidence was accepted by the Tribunal of the need for the site to operate on Saturdays, given the practice of concrete batching plants. The Tribunal considered whether there was, in effect, nowadays an accepted notion of a quiet and peaceful rural amenity expectation for Saturdays. The Tribunal noted that Western Australia's noise regulations only attached greater sensitivity to noise generated on Sundays and public holidays.

During the hearing, Rocla offered two further conditions: one limiting any reversing beepers used on the site to low frequency beepers; the other requiring internal roads to be designed so that haulage trucks must enter the site, access stockpiles and exit from the site without the need to use reverse gear. These concessions would further ameliorate noise emanating from the site.

The Tribunal concluded that, given its other findings, there was no evidence of any substance to establish that the alleged Saturday amenity impact would be so unacceptable that a prohibition on Saturday activities was warranted. Further, in 2014, the Shire's own professional planners had reached the same conclusion. Condition 4 was therefore amended to extend the hours of operation to Saturdays.

As to condition 6, the applicant contended that screening of the sand on the site (but not the washing of the sand) was basic to the proposed operation. Rocla agreed with the prohibition on sand washing. Indeed, washing of the sand had never been part of its proposal. The Shire's own experts conceded that there was an insufficient basis upon which the screening of the sand on the site could be prevented. This was because of the particular type of dust generated, and having regard to such matters as the quality of the sand and the processes for the management of that dust. The Shire did not oppose the Tribunal, if it saw fit to do so, amending condition 6 as the applicant had contended for. The Tribunal agreed with the experts and condition 6 was accordingly amended so that only the washing of the extracted sand was prohibited.

The Tribunal endorsed an amended and consolidated set of 38 final conditions to be attached to the Shire's planning approval.

Category: B

Representation:

Counsel:

Applicant	:	Mr M Etherington
Respondent	:	Mr D Nicholson

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Solicitors:

Applicant : Clayton Utz
Respondent : McLeods

Case(s) referred to in decision(s):

PMR Quarries Pty Ltd and City of Mandurah [2010] WASAT 87;
(2010) 72 SR (WA) 133

REASONS FOR DECISION OF THE TRIBUNAL:***Introduction***

- 1 Rocla Pty Ltd (applicant or Rocla) sought review of a deemed refusal by the Shire of Serpentine-Jarrahdale (respondent or Shire) in relation to a proposed extractive industry development. The Shire had not, within 90 days, made a decision on whether to grant an extractive industry development approval for the excavation of sand from Lot 6 Banksia Road and Lots 300 and 301 Boomerang Road, Oldbury (site). Further details of the proposed development are set out below; however, for present purposes, it is sufficient to note that these three lots combine to form one contiguous site.
- 2 As is set out in more detail below, after mediation in the Tribunal, a series of directions hearings, and after reconsideration by the respondent (under s 31(1) of the *State Administrative Tribunal Act 2004* (WA) (SAT Act)), the development application was approved by the Shire, with agreement between the parties upon the wording (or form) of the vast majority of the detailed conditions attaching to the approval.
- 3 However, three conditions remained in dispute and the matter proceeded to a final hearing on those conditions.
- 4 The remaining conditions proposed by the respondent and still in dispute were: condition 4 (dealing with operating hours); condition 6 (dealing with screening and on-site washing of the extracted sand), and condition 13 (dealing with the materials constituting – and the sealing of – the driveways on the site).
- 5 During the preparation of submissions for the final hearing, the applicant conceded condition 13 in full. Thus, the final hearing was limited to conditions 4 and 6 and, as will appear below, condition 6 was substantially resolved in the applicant's favour in the course of the hearing.
- 6 Given the narrow compass of what remained in dispute between the parties, at the conclusion of the hearing the Tribunal gave brief oral reasons for its decision allowing the review and settling the remaining issues in dispute. The Tribunal indicated that more complete reasons would be issued in due course; these are those reasons.

[2015] WASAT 28***Site and locality***

7 The site has a combined area of 32.32 hectares. The northern boundaries of the site face Boomerang Road and Banksia Road. The southern boundary adjoins the Mundijong to Kwinana railway reserve. The east and west boundaries adjoin unrelated private landholdings. The site is located approximately 40 kilometres south of Perth and is approximately 3 kilometres east of Kwinana Freeway.

8 It is proposed to excavate 15.2 hectares of the site in six stages. The south-western portion of the site is a wetland and is excluded from the excavation area.

9 Although the evidence is not particularly clear on this point, it appears that there are at least four residences within or near a nominal 300 metre buffer zone drawn in relation to each stage of the excavation, as follows:

1. Lot 36 Banksia Road with a dwelling located approximately 110 metres west of the excavation boundary within Lot 6 in the excavation site.
2. Lot 30 Boomerang Road (northern side of the road) with a dwelling located approximately 120 metres north-east of Lot 301 in the excavation site.
3. Lot 1121 Boomerang Road (northern side of the road) with a dwelling located approximately 280 metres north-east of Lot 301 in the excavation site.
4. Lot 33 Boomerang Road (northern side of the road) with a dwelling located approximately 300 metres east of Lot 301 in the excavation site.

10 The site is located within a rural zone under the *Shire of Serpentine-Jarrahdale Town Planning Scheme No 2* (TPS 2). However, the City of Kwinana governs the land in the locality to the west of the site, where the land is zoned Special Rural. (We record, at this point in the reasons, that a witness from the City of Kwinana gave evidence in the hearing).

Procedural history of the application

11 The original application to excavate sand from the site was lodged with the respondent on 15 July 2013. On 13 October 2013, 90 days had

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passed without approval, and under TPS 2, the proposal could then be considered as a deemed refusal. On 18 October 2013, the applicant lodged with the Tribunal an application for review of the deemed refusal.

12 The Tribunal referred the matter to a mediation which was held on 11 December 2013. As a result of the mediation, the applicant submitted a proposed Environmental Management Plan and the matter was then referred back to the respondent for reconsideration under s 31(1) of the SAT Act.

13 At the Shire's Council meeting on 24 March 2014, the application was approved with 34 conditions. The Council also resolved to recommend approval to the Western Australian Planning Commission (WAPC). Approval was granted by the WAPC by way of a letter dated 26 March 2014. (In short, the operation of cl 32 of the *Metropolitan Region Scheme* has effect such that a separate approval from the WAPC is needed for this type of development in this locality.)

14 The applicant objected to the requirements or wording of nine of the respondent's 34 conditions. However, as is mentioned above, after further directions hearings and reconsideration, all matters were resolved except for conditions 4, 6 and 13. Condition 13 fell away, leaving only two conditions in dispute. The original text of the two remaining conditions (conditions 4 and 6) was as follows:

4. Operating hours are restricted to 7.00am to 5.00pm Monday to Friday.
6. The applicant shall not undertake any screening or washing of excavated material on the development site.

15 The applicant sought to have the hours of operation *extended* to include 7 am to 5 pm on Saturdays. The applicant also sought to *delete* the words 'screening or' from condition 6, such that only the washing of excavated material (that is, the extracted sand) would be prohibited on the development site.

Details of the development and the planning framework

16 The proposed development includes the on-site extraction of sand, dry screening of the extracted sand and stockpiling of the extracted sand.

17 It was common ground that the proposed development is to be classified under TPS 2 as 'Industry Extractive', which is defined in Appendix 1 of TPS 2 to mean as follows:

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... an industry which involves -

- (a) the extraction of sand, gravel, clay, soil, rock, stone minerals, or similar substance from the land, and also includes the management of products from any of those materials when the manufacture is carried out on the land from which any of the materials so used is extracted or on land adjacent thereto, and the storage of such materials or products; and
- (b) the production of salt by evaporation of salt water.

18 As mentioned, the site is located within a rural zone under TPS 2. The proposed use is an 'AA' land use in this zone; an 'AA' use is a land use 'that the Council may, [in] its discretion, permit': see cl 3.2 and Table 1 – Zoning Table of TPS 2.

19 Clause 6.4.2(h) of TPS 2 requires the Shire and, on review, this Tribunal to have regard to 'the preservation of the amenity of the locality' in determining an application for planning approval.

20 The site is also located within the 'rural' policy area under the *Shire of Serpentine-Jarrahdale Rural Strategy 1994*. This document acknowledges that:

[The] protection of rural lifestyle, of agricultural production, and rural character are very significant, but not necessarily overriding, objectives in the use and development of land.

21 The *Shire of Serpentine Jarrahdale Dust and Sand Local Law 2008* (Local Law) applies to the proposed development. The Local Law contains various provisions relating to the need for a management plan, and requires adherence to other practices dealing with the management of sand drift and dust.

22 Also generally relevant to this review is the Environmental Protection Authority's *Guidance for the Assessment of Environmental Factors (in accordance with the Environmental Protection Act 1986) – Separation Distances between Industrial and Sensitive Land Uses No 3, June 2005.* The *Environmental Protection (Noise) Regulations 1997* (WA) (Noise Regulations) also have some relevance in that the assigned noise levels under those regulations for Saturday operations are the same as Monday to Friday's prescribed noise levels.

23 *State Planning Policy No 2 - Environmental and Natural Resources* (SPP 2) deals with the need for the supply to the building and construction industry of raw materials such as sand. This policy objective is further

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developed in *State Planning Policy No 2.4 - Basic Raw Materials* (SPP 2.4).

The issues

24 Therefore, the issues that arise for determination in this review are whether the Tribunal agrees with the applicant's proposed modifications to conditions 4 and 6.

25 The Tribunal will address each condition in turn commencing, for convenience of reference, with condition 6 which was, in the event, substantially resolved at the hearing.

Condition 6

26 This condition in its original form (see the text set out earlier in these reasons) prohibited both the screening and the washing of the excavated sand on the site. The original development application to the Shire included a proposal to screen the sand. Washing the sand has never been proposed by the applicant, and that prohibition was not contested by the applicant. However, the applicant argued that screening of the sand was a fundamental element of the proposed operation.

27 In the event, the respondent's own expert witnesses conceded that there was an insufficient basis upon which the screening of the sand on the site could be prevented. This was because any concerns with regard to dust were conceded to be of marginal relevance, given the nature of the particular dust generated and having regard to such matters as the quality of the sand and the processes for the management of that dust.

28 After a brief adjournment, the respondent confirmed to the Tribunal that it would no longer oppose the applicant's modification to condition 6 and that the respondent would, in effect, permit the Tribunal to make the decision on the matter in the context of its withdrawal of opposition to the proposed condition. The Tribunal acknowledges the course taken by the Shire and agrees with the experts. The condition should be amended to allow screening of the extracted sand on the site itself. The amended text of condition 6 is set out below.

29 We therefore turn to condition 4 dealing with Saturday operations. This matter is the substantive issue in the review.

Condition 4 – respondent's evidence and arguments

30 Ms Dhliwayo, an expert planner employed by the respondent, and Mr Tanner, an environmental health officer employed by the neighbouring City of Kwinana, gave evidence that more residents were at home on a Saturday than a weekday and that their expectations were to enjoy a peaceful rural environment during the weekend, including Saturdays. Thus, it was submitted on behalf of the respondent that operations on a Saturday would adversely impact upon the amenity of the local community.

31 This opinion was consistent with that of one of the Shire's elected councillors, Cr Sandra Hawkins, who was called as a witness for the respondent. Councillor Hawkins said in her witness statement:

It is a difficult task to balance the competing and often conflicting needs of extractive industries and local residents in rural areas ...

Council is nonetheless well aware of the strategic importance of extractive industry operations ... [Hence] Council resolved to approve the application ... notwithstanding a significant level of resident opposition[.]

32 Councillor Hawkins explained that the condition limiting operating hours to weekdays was seen as a reasonable balance between approval and minimising the alleged adverse impact on amenity:

In considering the operating hours to be permitted by [way of conditions attaching to the] development approval, due regard should be had to the needs of residents. The weekend is a time enjoyed by most people for relaxation and recreation. In an area such as [this] locality ... this would commonly include outdoor activities such as walking or horse riding. Those activities would potentially be affected by the traffic, noise and dust impacts ... As a former truck driver, I am particularly aware of the amenity impacts that can arise from frequent truck movements in residential areas.

33 This was consistent with the view of Mr Sturgeon, a local resident who lives on the proposed truck haulage route connected with this development. He said:

The main concern about [Rocla] carrying out the mining operations on Saturdays is that more people will be at home on Saturdays and therefore more people will be affected by the noise and dust generated by the mining operations and the trucks using our country roads.

34 Mr Wanless, another resident who also lives on the proposed truck route, expressed a similar view in his witness statement. In referring to

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the alleged noise and dust impacts of the mining operations and heavy traffic on the roads, he said:

One of the biggest concerns ... is that people are more likely to be at home on Saturdays. This is a time when families wish to relax, get together or enjoy the outdoor lifestyle that the area has to offer.

35 In addition, the respondent referred to several cases (for example, *PMR Quarries Pty Ltd and City of Mandurah* [2010] WASAT 87; (2010) 72 SR (WA) 133) where similar applications had been approved by the Tribunal, either limiting operations to weekdays or restricting Saturday operations to finish at 12 pm or 1 pm. However, as was acknowledged by the respondent, in none of these cases did the applicant contest the operating hours generally or the limitations on Saturday operations.

Condition 4 – applicant's evidence and arguments

36 The applicant provided from three witnesses evidence of the *need* for Saturday operations: Mr Lindsay Stephens (an expert quarrying consultant engaged by the applicant); Mr Timothy Trefry (a planner engaged by the applicant); and Mr Newton, the applicant's resource and development manager.

37 The evidence of these witnesses was to the effect that the sand from the proposed quarry was concrete quality sand and that this type of sand has a greater strategic importance because of its superiority and because it is a much less common resource. This type of sand supplies the building industry which operates six days a week. The experts noted that Saturday operations are generally less intense than weekdays and that construction activities taper off during the day. However, the ability to operate on a Saturday afternoon was considered necessary because concrete batching plants commence operations at 5.30 am on Mondays and such plants need to top up their supplies on Saturday afternoons.

38 There was no serious challenge to this evidence presented by Rocla, and it may therefore be generally accepted.

39 We turn to the question of amenity impacts caused by such Saturday operations.

40 As appears above, the respondent contended to the effect that Saturdays were quiet family days and that amenity issues must be determined in this context. On the other hand, the applicant argued that Saturday was largely a day of commercial activity, travel and shopping,

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and that quiet weekend days were nowadays more likely to be Sundays and public holidays. Furthermore, the applicant submitted that the Noise Regulations treated Saturdays the same as weekdays; Sundays and public holidays were identified as being periods of higher noise sensitivity.

41 In the event, to ameliorate possible adverse impacts arising from its on-site activities (and to reduce further the possibility of noise impact), Rocla conceded the addition of two further conditions: one limiting any reversing beepers used on the site to low frequency beepers; the other requiring internal roads to be designed so that haulage trucks must enter the site, access stockpiles and exit from the site without the need to use reverse gear. These concessions, sensibly offered by the applicant, are reflected in the amended conditions which are set out below.

42 In response to the Shire's concerns regarding off-site activities (that is, truck movements and associated noise and safety issues), the applicant contended that the approved truck route was selected on the basis that it passed the least number of local residences as was practicable. The route was also selected because it involved rural roads that had been approved for use by similar haulage trucks.

Discussion of the case

43 As can be seen above, during the hearing, the issue of dust and its impact on amenity largely fell away. Amenity concerns were thus restricted to noise and any issues associated with truck movements. It also became apparent during the hearing, after examination of wind direction data and noise contours, and other expert evidence (which we accept), that noise originating from within the excavation site, possibly with one exception, would not be a serious amenity concern.

44 The only possible impact on amenity may have been the sound of reversing beepers. As is discussed above, the applicant agreed to add two conditions to deal with this potential impact on amenity. One condition (condition 18) would require the use of low frequency reversing beepers on all vehicles based on-site. Also, to reduce the risk of noise from reversing beepers on trucks visiting the site, the applicant proposed a second condition (condition 19) that required the layout of the site to be designed to provide that truck movements for entry, loading and exit be in forward gear only. The Tribunal is of the view that adherence to these conditions (when taken with the expert evidence) strongly suggests that noise at and emanating from the site will have no significant adverse impact upon amenity.

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45 There was no evidence presented to support allegations of noise or safety issues arising from truck movements off-site. The agreed route is used by other trucks, and the additional movements of trucks on a Saturday would not result in any significant adverse impact on amenity.

46 The Tribunal found that there was insufficient material presented to support a prohibition of activities on Saturdays. The Tribunal acknowledges the opinions of the respondent's witnesses, given in good faith, that the impact of the development may affect a greater number of people on a Saturday than on a weekday. However, given our other findings, there was no evidence of any substance to establish that this impact would be so unacceptable, either in terms of TPS 2's considerations or having regard to notions of orderly and proper planning, such that a prohibition on Saturday activities was warranted.

47 With respect therefore, we do not accept the respondent's contentions on this point. We note further that this was, in fact, the position, reached in 2014 by the Shire's own professional planners.

Conclusion

48 For the reasons set out above, the Tribunal finds that condition 6 should be amended to permit the screening of sand, and that condition 4 should be amended to permit the extended operating hours as was contended for by the applicant. The two agreed conditions (now conditions 18 and 19) concerning reversing beepers and control of the direction of truck movements on-site should be attached to the other conditions as, in effect, complementary to condition 4.

49 It follows that the application for review was successful, and the conditions set out below (now renumbered to 38 conditions) should be imposed upon the development.

Final orders

50 The Tribunal made the following orders:

1. For the reasons given, the form of the final condition in dispute between the parties (that is to say, condition 4 dealing with operating hours) is determined in favour of the applicant.
2. The review is allowed and, in substitution for the conditions under review, planning approval is given in

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accordance with the consolidated conditions in the attached schedule.

SCHEDULE OF CONDITIONS

PLANNING

- 1) This approval is valid for a period of 10 years expiring on 6 December 2024.
- 2) Except to the extent inconsistent with any other conditions set out hereunder, all development on the site shall comply with the Environmental Management Plan and Extractive Industry Licence application as approved by the Shire of Serpentine-Jarrahdale and any subsequent amendments to them as may be agreed in writing between the Shire and the applicant from time to time.
- 3) Vegetation buffers/setbacks of:
 - i) 40 metres from the northern, southern and western lot boundaries of Lot 6 Banksia Road and from the northern and southern lot boundaries of Lots 300 and 301 Boomerang Road; and
 - ii) 20 metres from the firebreak on the eastern boundary of Lot 301 are to be established to the satisfaction of Director Engineering.
- 4) Operating hours are restricted to 7 am to 5 pm Monday to Saturday.
- 5) Any buildings/structures associated with the excavation activities such as site office, toilet facilities and sea containers used for storage are to be located so that they are screened from view from any adjacent roads or properties to the satisfaction of the Shire of Serpentine-Jarrahdale.
- 6) The applicant shall not undertake any washing of excavated material on the development site.
- 7) Outside lighting is to be kept to a safe minimum and should be angled to minimise light impacts on neighbouring properties.

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- 8) The landowner is to submit to the Shire of Serpentine-Jarrahdale, by 31 March 2015, a plan for a Community Consultation Framework. The plan shall feature but not be limited to, formation of a committee comprising the relevant landowner, community representatives from the Shire of Serpentine-Jarrahdale and City of Kwinana and government agency representatives, terms of reference for the committee and the frequency of committee meetings. Once approved the plan is to be implemented in its entirety.

COMPLIANCE

- 9) The landowner shall submit an Annual Compliance Assessment Report to the Shire of Serpentine-Jarrahdale by 31 December each year. The Annual Compliance Assessment Report shall include an internal compliance audit of the Environmental Management Plan, Community Consultation Framework and all the development and licence approval conditions and management plans, complaints and complaint responses.

ENGINEERING

- 10) At the completion of each stage of mining operations, the landowner shall ensure that all sand faces, non-operational stockpiles and bund walls are safe and stable and must provide a report from a certified Geotechnical Engineer to verify their short, medium and long term stability.
- 11) Crossovers to be constructed in accordance with the Shire of Serpentine-Jarrahdale standard industrial crossover specifications and be located and maintained to the satisfaction of the Director Engineering.
- 12) A loop road shall connect the crossover to the main vehicle access within the site to reduce risk of vehicle conflict and enable unimpeded entry and exit for trucks.
- 13) All driveways shall be constructed using road base quality material and bitumen sealed to limit dust generation and to ensure that no visible dust or material from the site extends beyond the site boundary. Such

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sealing shall extend a minimum of 60 metres from any public road into the subject site.

- 14) Prior to the commencement of development on-site, details of the upgrading of:
 - i) the intersection of Banksia and Boomerang Roads; and
 - ii) Boomerang Road between Banksia Road and the existing crossover, shall be submitted to and approved by the Director Engineering and thereafter implemented.
- 15) Prior to the commencement of development on-site, details of the upgrading of the existing crossover shall be submitted to and approved by Director Engineering and thereafter implemented.
- 16) Where damage is caused to the road pavement and/or bitumen seal adjacent to the access as a result of heavy haulage operations from the subject site, such damage shall be rectified at the applicant's expense and to the satisfaction of the Council's Director Engineering.
- 17) Haulage vehicles going to and from the subject site and delivery sites are to use Boomerang Road, Banksia Road, Lydon Road and Coyle Road only.

Approved routes:

- i) Boomerang Road between the work site and Banksia Road;
- ii) Banksia Road between Boomerang Road and Lydon Road;
- iii) Lydon Road between Banksia Road and Coyle Road;
- iv) Coyle Road between Lydon Road and King Road; and
- v) King Road between Coyle Road and Thomas Road.

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No deviation from this approved route is permitted without the prior written approval of the Director Engineering.

- 18) All vehicles and equipment (used for or in association with on-site excavation activities) fitted with reversing beepers must not be used on-site unless the reversing beepers are in the nature of a low frequency beeper.
- 19) During all stages of development, internal roads must be designed and constructed so that haulage trucks can enter the site, access relevant stockpiles, undergo loading and exit the site without the use of reverse gear.

ENVIRONMENTAL

- 20) Prior to commencement of operations, a Rehabilitation and Restoration Management Plan is to be submitted to and approved by Director Engineering and thereafter implemented.
- 21) The landowner is to maintain buffers identified in the Environmental Management Plan between the top of all quarry pits and the property boundary, and indigenous vegetation within this buffer is to be protected where possible, including where safe and practical, the diversion of fire breaks around existing indigenous vegetation. Screening vegetation is to be established within the 20 metre buffer of all property boundaries to the satisfaction of the Shire of Serpentine-Jarrahdale.
- 22) The landowner is not to commence excavation of Stage 2 until they have received written confirmation from the Shire of Serpentine-Jarrahdale that screen planting in the identified buffer areas and any batter slope stabilisation have been established to the satisfaction of the Shire.
- 23) The landowner is not to commence Stage 3 until they have received written confirmation from the Shire of Serpentine-Jarrahdale that Stage 1 has been rehabilitated and revegetated to the satisfaction of the Shire.

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- 24) The landowner must complete the rehabilitation and revegetation of each preceding stage within three years of commencing excavation of any subsequent stage.
- 25) Prior to the commencement of excavation activities, the identified ecological corridor along the boundaries of Lot 6 and Lot 36 linking the south-western wetland to Lot 53 Banksia Road is to be fenced to protect the vegetation. Such fencing is to consist of post and wire or post and rail and to be located on the external edge of the buffer area identified in the Environmental Management Plan.
- 26) Rehabilitation of the ecological corridor along the boundaries of Lot 6 and Lot 36 linking the south-western wetland to Lot 53 Banksia Road as an offset to the proposed extractive industry operations activity is to commence within one year of the commencement of mining operations and is to be completed to the satisfaction of the Director Engineering prior to the commencement of Stage 6.
- 27) Where extractive industry activities involve the use of machinery including stockpiling, the use of accessways, storage and haulages, are located within close proximity (30 metres or less) to the buffer and exclusion areas, rehabilitation areas or any other sensitive area, the landowner shall utilise post and wire fencing flagged with brightly coloured survey tape or flags, to prevent encroachment by machinery or any other materials that could damage the vegetation.

Noise:

- 28) Prior to the commencement of development, details of the proposed temporary bund for noise attenuation purposes shall be submitted to and approved by Director Planning and thereafter implemented.

Dust:

- 29) The applicant shall implement dust management measures (including but not limited to dust monitoring) in accordance with the approved Environmental

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Management Plan (including Dust Management Plan) and Extractive Industry Licence Application, so as to minimise dust emissions and ensure that visible dust is not emitted beyond the boundaries of the development site.

- 30) During periods of inactivity when excavation is not being undertaken, the applicant must ensure, prior to and during the period of inactivity as required, that the access road to all trafficable areas and other operational areas on the site are watered down or treated in a manner which prevents or minimises the generation of visible dust crossing beyond the boundaries of the site.
- 31) Dust monitoring is to be undertaken at the commencement of each stage of development. Plans of the monitoring stations including locations and periods of monitoring are to be submitted to and approved by Director Planning and thereafter implemented.
- 32) The results and assessment of the monitoring are to be submitted to the Shire of Serpentine-Jarrahdale. If required, additional management measures shall be implemented to the satisfaction of Director Planning.

Hazardous Chemicals:

- 33) A hardstand refuelling area is to be provided on-site, which is bunded and drained constructed in accordance with relevant Australian Standards. The refuelling area is to be drained to a pollutant receptor to prevent any spilled fuel entering the natural ground shall be provided on-site to the satisfaction of the Director Engineering. All refuelling shall take place within this hardstand area.
- 34) The landowner shall keep a register of the extent, location, environmental implications and remedial actions taken for any accidental contamination of soil or water resources in a logbook to be kept on-site and available for immediate inspection by the Shire of Serpentine-Jarrahdale.
- 35) The landowner shall ensure that no chemicals or potential liquid contaminants are disposed of on-site.

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The landowner shall implement measures to minimise the risk of spills or leaks of chemicals including fuel, oil or other hydrocarbons and shall immediately remove and safely dispose of any liquid resulting from spills or leaks of chemicals including fuel, oil or other hydrocarbons, whether inside or outside the low permeability compounds.

Acid Sulfate Risk:

- 36) On-site testing and monitoring of groundwater levels within the excavation area is to be undertaken during winter and spring of each year of excavation to:
- a) confirm depth to groundwater table and ensure that a minimum 2 metre clearance is maintained between excavation floor and highest known groundwater;
 - b) to verify that any potential contaminants not limited to acid sulfates are not liberated from the dunal systems as a result of mining activities; and
 - c) ensure management actions in accordance with the Department of Environment Regulation's guidelines 'Treatment and management of disturbed acid sulfate soils' and 'General Guidance on Managing Acid Sulfate Soils'.

EMERGENCY MANAGEMENT

- 37) Prior to commencement of operations, a Fire and Emergency Management Plan is to be prepared and submitted to the Director Engineering for approval. In addition to the standard requirements of the Fire and Emergency Management Plan, suitable management measures are required to enable emergency access both during and after hours and for the 5,000L of diesel fuel stored on the site. All firebreaks and gates are to conform to the requirements of Councils' firebreak notice and the Fire and Emergency Management Plan and be installed prior to commencement of operations.

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- 38) All firebreaks and gates are to conform to the requirements of Councils' firebreak notice and the Fire and Emergency Management Plan, and be installed prior to commencement of operations.

I certify that this and the preceding [50] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

MR P McNAB, SENIOR MEMBER