



SPECIAL COUNCIL MEETING MINUTES

6 October 2011

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

MINUTES OF THE SPECIAL COUNCIL MEETING HELD IN THE COUNCIL CHAMBERS, 6 PATERSON STREET, MUNDIJONG ON THURSDAY 6 OCTOBER 2011. THE PRESIDING MEMBER DECLARED THE MEETING OPEN AT 7.00PM AND WELCOMED COUNCILLORS, STAFF AND THE MEMBERS OF THE GALLERY.

1. ATTENDANCES & APOLOGIES (including Leave of Absence):

IN ATTENDANCE:

COUNCILLORS: S TwinePresiding Member
 M Harris
 B Brown
 C Buttfield
 C Randall
 T Hoyer
 A Lowry
 K Petersen
 A Ellis

OFFICERS: Ms J AbbissChief Executive Officer
 Mr R Gorbunow Director Engineering
 Mr A Hart Director Corporate Services
 Mr S WilkesExecutive Manager Planning
 Mr C Wansbrough.... Project Manager, Water Sensitive Urban Design
 Mr T Turner ... Manager Environmental Health, Rangers, Compliance
 Mr C PortlockManager Environment
 Mr Jordan Green Compliance Assessment Officer
 Ms P KursarMinute Secretary

APOLOGIES: Mr B Gleeson
 Cr M Geurds
 Mrs S van Aswegen

Members of the public – 6
 Members of the press –

2. PUBLIC QUESTION TIME:

Public question time commenced at 7.02pm

SCM007/10/11 - Denyse Needham – 3345 South West Highway, Keysbrook

The advice letter was received on Tuesday so there has not been a lot of time to think about this. I would like to know from the CEO or Director Planning if the SAT process that the application went through was a normal process and were you satisfied that it was a fair process?

The Executive Manager Planning responded that the application for review was lodged in the normal manner. SAT listed the matter for mediation and Council then requested to reconsider their decision. Council resolved to sustain its original refusal. Since then the item was listed for a final hearing. On the first day an unusual step was taken by SAT forming an opinion that the application could be approved and instructed the parties to mediate. The mediation session lasted 9 days. The context of reconsideration was in accordance with the SAT Act. Executive Manager Planning understands that stakeholders are disappointed as there was not a full hearing and stakeholders were unable to participate. The process has followed procedures of the SAT Act.

SCM007/10/11 - Linda Kirk – 686 Westcott Road, Keysbrook

The letter from the Shire was received yesterday and I was devastated. I read through the information and wondered how did it get here again? How can we be guaranteed that our water supply will not be affected? What guarantees are there that the pasture will stay as it is. Our peace and quiet will be disrupted. There is no buffer s eg trees etc.?

Executive Manager Planning appreciates the concerns of the landowner. The process of the Tribunal over the last 18 months has been a difficult one. It was the applicant who insisted that the matter be dealt with in a confidential matter. The Shire is bound by the SAT Act and the matter could not be made public. We sought permission to deal with it on the public record and make sure that full and frank information was available. In regards to noise, water and other matters, Shire officers are more than happy to sit with landowners and discuss the process and attempt an explanation.

The Manager Health, Rangers and Compliance explained that officers and councillors had many concerns with the original application. We have worked very hard to ensure that management plans are best practice to minimise these impacts. As mentioned previously the management plans can be explained to landowners.

The Shire President also advised that she had attended SAT proceedings and officers have worked hard to safeguard residents. The CEO understands the concerns of landowners. and explained that in relation to water supply, monthly monitoring will occur with additional bores being required. Trigger levels have been set and any drop in the water below these levels has to be reported and mining activities will cease. Conditions have been strengthened. The resolution has attempted to require the Department of Water to implement a legally enforceable requirement on the proponent to make good water supplies so that the community does not have the onus of proving it. There are provisions in the management plan that require the proponent to resolve any affect on pasture growth. If they don't do that and do not reach a solution, they are in breach of the DA conditions and action can be taken. Water, pasture, surface water are covered. In regards to peace and quiet, they are legally required to comply with noise regulations. With regard to buffer zone requirements for dust – a commitment was given to the DOH to relocate residents if dust levels get too high or they would not mine in those areas. Condition 7 requires that commitment to be put into the management plan. Shire officers have made the conditions strong and defencible.

Public question time ended at 7.18pm

3. PUBLIC STATEMENT TIME:

SCM007/10/11 - Graham Elliot – Chair of KNAG

I would like to thank Council and officers for getting this to an acceptable standard. There is no guarantee that what they say or do, will be done. EPA controls never get bought to fruition and I am definitely concerned. They have bypassed the mining act. I cannot get on the web and research plans as there is no public record of what has been done or what they will do.

This company has traded shares on the ASX as low as 0.9 cents per share. There is no guarantee that it will exist in 10 years time. There will be no records of where it has mined and what rehabilitation should be protected. All mining ventures have problems. If there are no records kept (as would be in a mining venture), it is therefore requested that all mined areas, remnant vegetation and rehabilitation be shown on the title.

SCM007/10/11 - Denyse Needham – 3345 South West Highway, Keysbrook

I would like to thank Graham for work done on behalf of Keysbrook residents. This Shire has been fighting mineral sands mining for 25 years. Cr Hoyer was a major player previously and the community was successful in stopping Westralian sands. It has been a long fight and SJ Shire has a no mineral sand mining policy which it has defended for years. I am not satisfied how SAT has worked with this. We haven't had our day in court and that was not what SAT was set up for. I believe the Council should stand firm, after all, you've refused the application before for good reason. You think you will put on conditions and this company will abide by them. Who is responsible to audit and ensure the environmental conditions are met? A letter should be written from the Shire to the Minister for Planning, Premier and Minister for Environment and Minister for Local Government complaining about the unfairness of the process and to the Shadow Ministers, as the Labor Government set up SAT.

A recent Auditor General's report says most mining companies do not comply with environmental conditions and no-one enforces them, so why not hold the line and if SAT goes ahead with conditions, at least your hands will not be contaminated when this company completely ignores the conditions anyway. The land that should have been protected to grow food is turned into a desert and the ground water is over extracted and any rehabilitation they may plant dies because there is no ground water. Who cares as long as the Barnett Government receives a miniscule amount of royalties to put into it's coffers – it won't benefit us.

SCM007/10/11 - Kathy Elliott – 556 Atkins Road, North Dandalup

The community consultation with the company is non-existent. The last face to face communication was 4 years ago. They need to be pinned down for meetings and make them aware. It is disappointed that they have not communicated at all.

The Chief Executive Officer wished to draw attention to the Community Consultation Framework. Within 90 days of the approval, the community engagement plan is to be put into effect. This requires meetings with the community regularly and an additional requirement was added that membership is not weighted to the company. This does put an impost on the community but it is an effective way of forcing the company and state agencies to the table on a regular basis and the performance of the company kept in the forefront. This is the best outcome under the circumstances.

4. PETITIONS & DEPUTATIONS:

Nil

5. DECLARATION OF COUNCILLORS AND OFFICERS INTEREST:

Cr Buttfield declared an interest of impartiality in item SCM007/10/11 as members of her family live in the Keysbrook area. This will not affect the way she votes on the matter.

The Chief Executive Officer declared an interest in common in item SCM007/10/11 as she is a member of the Keysbrook community.

6. MOTIONS OF WHICH NOTICE HAS BEEN GIVEN:

SCM007/10/11 RECONSIDERATION OF PREVIOUS DECISION TO REFUSE APPLICATIONS FOR INDUSTRY - EXTRACTIVE (PROPOSED KEYSBROOK MINERAL SANDS MINE) – LOT 1 ELLIOTT ROAD, LOT 52 ATKINS ROAD, LOT 63 HOPELAND ROAD AND LOTS 6, 111, 112 AND 113 WESTCOTT ROAD, KEYSBROOK (P02893/01)		
Proponent:	Planning Solutions on behalf of Matilda Zircon Pty Ltd	In Brief The State Administrative Tribunal has invited Council to reconsider its decision to refuse the development application under Section 31 of the State Administrative Tribunal Act. This report provides Council with the opportunity to consider the merits of the application and whether approval is now warranted.
Owner:	Various	
Author:	Simon Wilkes – Executive Manager Planning	
Senior Officer:	Brad Gleeson – Director Development Services	
Date of Report	30 September 2011	
Previously	OCM031/02/11, SCM034/05/10	
Disclosure of Interest	The Chief Executive Officer declares an interest in common as a resident of the locality of Keysbrook.	
Delegation	Council	

Date of Receipt:	8 February 2010
Advertised:	24 February 2010 – 26 March 2010
Submissions:	57
Lot Area:	941.7 hectares
L.A Zoning:	Rural
MRS Zoning:	Rural
Rural Strategy Policy Area:	Rural

Background

Applications for an extractive industry licence and development approval were lodged with both the Shire of Murray and the Shire of Serpentine-Jarrahdale in February 2010. Following public advertising of the proposal and subsequent technical review by officers and specialist review by consultants, the two local governments in May 2010 resolved to refuse the applications and provided reasons accordingly to the applicant.

Where an applicant is aggrieved by a determination of a decision-making authority, an application for review (an appeal) may be lodged with the State Administrative Tribunal (SAT). This was the case with respect to the Keysbrook project. In accordance with the standard practices of the SAT, the matter was then referred to 'compulsory mediation', with a view to exploring the issues and potential options to address the issues. Through the proceedings, the applicant maintained a firm position that environmental matters were not specific matters that the local governments should, nor could, consider as part of their assessment of the applications.

The principle reason for their argument was that the Minister for Environment has previously granted conditional approval to the project. The two local governments were not satisfied with this position, citing outstanding technical concerns with the project and maintained an insistence that environmental matters continue to be relevant considerations for the assessment for planning applications.

In February/March 2011, the two local governments were required by the SAT to reconsider their original decisions in the context of additional information provided through the mediation proceedings of late 2010. The two local governments remained unconvinced that key issues had been resolved and consequently reaffirmed their original decisions to refuse the applications. Following the decisions of the two local governments to reaffirm their decisions to refuse the applications, the SAT issued orders requiring the matter be brought to a 'final hearing' and scheduled the matter for a 9 day hearing.

As part of the standard preparation for any final hearing, both the 'applicant' (proponent) and the 'respondents' (the two local governments) were required to engage the services of suitably qualified experts and legal practitioners. The SAT has formed the opinion that for final hearings experts:

- Have an overriding duty to assist the SAT impartially on matters relevant to the expert's area of expertise;
- Understand that their paramount duty is to the SAT and not to the party engaging the expert; and
- Are not an 'advocate' for a party.

The SAT will usually make an order requiring the expert witnesses in each field of expertise to confer with one another by a specified date (in the absence of the parties and their representatives) and prepare a joint statement of:

- the issues arising in the proceedings which are within their expertise;
- the matters upon which they agree in relation to those issues;
- the matters upon which they disagree in relation to those issues; and
- the reasons for any disagreement.

In respect of the Keysbrook matters, experts were engaged to discuss the following areas:

- social impacts and stakeholder engagement;
- hydrological impacts;
- public health impacts;
- noise impacts; and
- vegetation impacts.

As outlined above, the experts are required to submit witness statements, both as individuals and then as a joint statement between the experts.

On Tuesday 23 August 2011, the first day of hearing was convened by the SAT. Immediately at the outset, the SAT members took the unusual step of making a statement outlining that the SAT had formed a 'provisional view' that the proposal was consistent with the regional planning framework, capable of approval and that it would be in the best interests of the parties to 'work towards a best set of operating conditions'. It was noted that the consent of the local governments is not required, under Section 54 of the SAT Act, for the SAT to schedule the matter for mediation proceedings.

Over a total of nine days, the SAT heard discussions from the various witnesses for each technical area, seeking to work through areas of general agreement and ultimately identifying a 'schedule of potential modifications' that could be made to each of the management plans for the project in order to address the concerns that had been established by the two local governments. The applicant has now submitted to the two local governments, on a without prejudice basis, a series of updated management plans and an updated community consultation framework.

The SAT on 14 September 2011 issued orders as follows:

1. *"Having regard to the views expressed by the Tribunal at the commencement of the hearing of this matter, and having further regard to the substantial progress made by the various experts as to the issues of dust, rehabilitation, noise, water and the community consultation framework, the respondent Shires are invited, pursuant to S31 of the State Administrative Tribunal Act 2004 (WA) to reconsider their decisions under review on or before 14 October 11.*
2. *The matter is to be listed for directions on 27 October 2011 at 10am.*
3. *Two further days, that is to say 16 and 17 January 2012, are reserved for the hearing of the matter (if necessary)*
4. *Should the circumstances require it, either party has liberty for an earliest directions hearing before Ms Connor."*

In accordance with the above orders, the two local governments are now invited to reconsider their original decisions on or before 14 October 2011. Accordingly, arrangements are now being made for the matters to be presented back to each local government for further consideration under 'Section 31' of the State Administrative Tribunal Act. This section of the Act provides the original decision-making authority with three (3) options:

- reaffirm an original decision;
- vary an original decision; or
- set aside an original decision and substitute the decision with a new decision.

In essence, the opportunity is there for the two local governments to consider whether continuing to refuse the proposal is the best interests of the community and the environment, in the context of the proceedings before the SAT and the potential modifications that could be made by the applicant to amend their proposal.

Recognising the level of community interest in the project, a specific request was made to the applicant to enable the Councils to reconsider the matters in an open and transparent manner. The applicant has previously denied requests for information to be able to be made publicly available. While possible from a legal perspective, the position was disappointing and limited the ability of the local governments to be as open and transparent as they would have liked.

The applicant has now provided their consent for the next round of reconsiderations by Council, including the relevant management plans and reports to Council, to be publicly available through normal means - including, for example, the publishing of material on relevant websites.

The SAT proceedings have to date required a considerable amount of financial and staff resources. Some substantial progress has been achieved and the applicant in a number of different aspects has agreed to modify their proposal. The efforts of all involved will hopefully result in a better outcome, should the proposal proceed. It is now up to the two local governments to consider whether they wish to reaffirm their original decisions or substitute their decisions with new decisions and advise all stakeholders accordingly.

It should be noted that in parallel with the SAT proceedings, the applicant has been working with a number of other regulatory authorities to gain necessary approvals that they are required to obtain in order to commence operations. Other authorities have included the Department of Environment and Conservation, the Department of Water and the Department of Health.

Sustainability Statement

Effect on Environment:

The Minister for Environment and Youth has approved the proposal under the Environmental Protection Act. The Ministerial approval contains conditions requiring a comprehensive

range of management plans and reporting on native vegetation, watercourses, wetlands rehabilitation, weed and dieback, water, acid sulphate soils, noise, air quality and dust.

Economic Viability:

The applicant has maintained that financial viability is not a planning consideration, and noted that the Ministerial Approval includes the payment of bonds by the applicant prior to commencement of works and on an annual basis to cover rehabilitation costs should the project or company experience unforeseen circumstances that may prevent completion of the project.

Economic Benefits:

It is understood that no mineral royalties will be payable on this development due to the type of titles over the subject lots (pre-1898 titles that give the landowner the mineral rights).

Social – Quality of Life:

There is a potential for the development to impact on the amenity and quality of life of the local community if not properly managed by way of dust, noise, increased heavy traffic and impact on character.

Social and Environmental Responsibility: A Community Consultation Framework has been prepared to guide the applicant's engagement with the local community as a part of proposed mining operations. Stakeholder engagement is considered to be a critical element in minimising impacts from the operation, in both a pro-active and reactive manner.

A commitment towards community engagement was established in the draft environmental ministerial statement of conditions, however this was not included in the final statement of conditions.

Statutory Environment:

The development application is required to be determined under the provisions of the Shire's Town Planning Scheme No. 2.

The SAT Act 2004 establishes the framework for appeal proceedings, with Section 31 providing the ability for the SAT to invite the original decision-making authority to reconsider its original decision. The options available to Council through this process are as follows:

- (a) affirm the decision;
- (b) vary the decision; or
- (c) set aside the decision and substitute its new decision.

In the context of the current application before Council, there is a reasonable likelihood of proceedings continuing before the SAT - in respect of conditions imposed by Council, or in respect of a decision to reaffirm its original decision or in respect of a substituted decision.

Policy/Work Procedure Implications:

The resolution of proceedings in the SAT through mediation and Section 31 reconsiderations is consistent with Council Policy No. PP11 – Proceedings before the State Administrative Tribunal. The following excerpts from the policy provide guidance for this process:

"Mediation Proceedings

- 5.9 *The Shire acknowledges the Tribunal's desire to resolve matters by mediation where possible and will generally agree to participate in the SAT mediation process, provided there is a reasonable prospect of reducing or clarifying the issues in dispute, or achieving a negotiated outcome. Discussions occurring for the purposes*

of mediation are conducted by the Tribunal on a “without prejudice” and confidential basis and the Council acknowledges that the content of this discussion cannot be discussed outside the mediation session”

and

"Section 31 Reconsiderations

- 5.11 *The Tribunal may refer a matter to Council under section 31 of the SAT Act, inviting Council to reconsider the original decision. This regularly occurs following the mediation process, or where there has been a deemed refusal. In the interests of achieving time and cost-effective outcomes for all parties involved, officers shall generally seek to resolve matters through a section 31 reconsideration process.*
- 5.12 *The responsible Shire officer, in consultation with their Director or Executive Manager, shall have the discretion to advise the SAT member during mediation proceedings as to whether or not a reconsideration under section 31 would likely to assist with the resolution of matter in a timely and cost effective manner.*
- 5.13 *Upon receipt of an invitation from the SAT to reconsider the matter, the officer shall assess the proposal and refer it to the Council. The Council may then affirm the original decision, vary the decision or set aside the decision and substitute a new decision."*

Financial Implications:

The two local governments have previously incurred costs in the order of \$64,000, associated with the specialist reviews of the original application, in March/April 2010. Steps are continuing to be taken to recover such costs from the applicant, as provided for under S49 of *Planning and Development Regulations 2009*.

Since the decisions of the two local governments in February/March 2011 to sustain their positions of refusing approval for the proposal and the subsequent listing of the matter for a full hearing by the SAT, costs in the order of \$250,000 have been incurred and have been split equally across the two local governments, ie. approximately \$125,000 each.

Should the current proceedings before the SAT continue, there would be further cost implications for the two local governments, associated with legal and specialist representation. The applicant has also flagged that in the instance that the current reconsideration process results in either a sustained refusal position or conditions that are objectionable, the applicant would seek to recover costs.

Strategic Implications:

This proposal relates to the following Focus Areas:-

Vision Category	Focus Area	Objective Number	Objective Summary	Objective
NATURAL ENVIRONMENT	Landscape	1	Safeguard	Restore and preserve the visual amenity of our landscapes.
		4		Incorporate environmental protection in land use planning.
		5	Restore	Establish and enhance waterways and bush corridors.
		6		Establish increased levels of natural vegetation in urban and rural environments.
		7	Manage	Facilitate sustainable agricultural practices.

Vision Category	Focus Area	Objective Number	Objective Summary	Objective
	Integrated Water Cycle Management	22	Planning and Design	Ensure integrated water cycle management is incorporated in land use planning and engineering design.
		24	Natural systems	Understand the behaviour of natural flood systems in land use planning and engineering design to ensure safe communities.
BUILT ENVIRONMENT	Land Use Planning	20	Landscape	Prioritise the preservation of landscape, landform and natural systems through the land development process.
		23		Protect the landscape and environmental values of natural reserves and areas from the impacts of development.
		27	General	Ensure land use planning accommodates a diverse range of lifestyle and employment opportunities and activities.
SUSTAINABLE ECONOMIC GROWTH	Industry Development	1	General	Attract and facilitate appropriate industrial, commercial and retail developments.
		4	Agriculture	Protect and develop appropriate agricultural and horticultural industries and pursuits within the Shire

Community Consultation:

The application for planning consent was advertised in accordance with Town Planning Scheme No. 2 in early 2010. The detail and outcomes of that consultation process was presented as part of the report to the Special Council Meeting in May 2010.

As mediation proceedings in the SAT are confidential in nature, no further community consultation has been undertaken. The opportunity does however exist for any third party to directly apply to the SAT and to express their interest in the proceedings, if the matter progresses to a hearing.

Further information on opportunities for future community engagement are provided later in this report.

Comment:

A number of key areas have been explored through the Shire's assessment processes and before the SAT over the last 18 months. The following provides summary information in respect of each matter

1. *Dust impacts*

Background

The potential impacts from dust on public health have been a primary concern throughout the assessment process. This was particularly evident when the community and other relevant stakeholders appealed against the Environmental Protection Authority's (EPA's) Environmental Impact Assessment (EIA) in November 2007. The Shires appeal against the

original draft Ministerial Approval and EPA Bulletin stated very strongly that dust was a significant issue.

Referral to Department of Health and Modifications

To support the Shire and communities' position on the potential dust impacts, the proponent's Air Quality and Dust Management Plan (AQDMP) was referred to the Department of Health (DoH) in December 2009 for assessment and comment. DoH's response supported the Shire's position and identified a number of inadequacies in the AQDMP, summarized in the comment below;

"The quality of the plan is poor and DOH is not confident that if implemented in its current form will protect residents from dust related health effects. The conclusion and recommendation from our assessment is given here for your convenience.

- The plan has many fatal flaws that make it unworkable. At worst it reveals a profound lack of understanding of monitoring and land use conflict principles.*
- DOH recommends a complete revision of the plan addressing each of the 24 points listed in their report."*

Through the meetings and communications between DoH and the proponent and the SAT process, the AQDMP was redrafted and significant amendments made over several months until the DoH confirmed in correspondence dated 1 June 2011 that *"discussions and important additional contextual information that added increased clarity to the plan. This has given the Department of Health (DOH) some confidence that dust monitoring, mitigation measures and complaints handling procedures proposed are appropriate."*

"In particular it was reassuring that an arrangement to temporarily relocate residents, by mutual commercial agreement, is being explored with residents prior to mining activities commencing. Furthermore that mining activities will not take place near residences unless it is unoccupied".

The DoH Correspondence to SJ Shire (January 2010) is with attachments marked [SCM007.1/10/11](#).

The DoH Correspondence to SJ Shire (June 2011) is with attachments marked [SCM007.2/10/11](#).

State Administrative Tribunal and Expert Conferral and Modifications

The persistent and professional approach of the Shire's technical officers to the development application with DoH's technical support resulted in additional dust monitoring and mitigation measures to the AQDMP that instills confidence and could be considered as best practice. This was confirmed in the final stages of the SAT process where both the Shire's expert witnesses and the proponent's expert witnesses were required to confer regarding potential issues with the AQDMP. This process usually identifies the significant differences in expert's opinions that the SAT member/s then make a determination on and set conditions for. In this case only minor issues were presented to the SAT member such as; clarification of wording and the inclusion of a definitions section in the plan.

A schedule of agreed commitments to the Air Quality and Dust Management Plan are with attachments marked [SCM007.3/10/11](#).

A copy of the updated Air Quality and Dust Management Plan are with attachments marked [SCM007.4/10/11](#).

2. Noise impacts

Background

Noise from a 24 hour mineral sands extraction operation such as that proposed has the potential to significantly impact on the health of residents and amenity of a rural environment. At the earliest stages of this proposal the community raised concerns regarding potential impacts from Noise. When the EPA's Bulletin and Draft Ministerial Statement was referred for comment to the Shire, Noise was a primary factor in the appeals and ongoing communications with the EPA.

EPA's Referral to DEC Noise Branch and Modifications

As a result of the community response and the Shire's appeals the EPA referred the noise components of their assessment and the Ministerial conditions to the DEC's Noise Branch for review. At this stage Shire officers met with the DEC's Noise Officers and the Appeals Convener from the Minister's Office to personally present the Shire's statement of issues, facts and contentions regarding noise impacts, monitoring, management and the draft Ministerial conditions.

The DEC Noise Branch then recommended to the EPA that there be significant amendments to the Ministerial conditions and the proponent's Noise Monitoring Plan (NMP). Based on the DEC's recommendations the EPA then amended the Draft Ministerial conditions and required the proponent to undertake a review of their NMP in consultation with the DEC.

The redrafted NMP became a highly technical best practice NMP including remote monitoring. There were also significant changes to the draft Ministerial conditions such as significantly reduced maximum noise levels, increased buffers and no 24 hour operations in areas where sensitive receptors were within proximity.

As with the AQDMP the NMP is best practice and highly technical and it would not be within the Shire officers' current capacity to maintain this noise monitoring and management program. Shire officers will be able to interpret annual reports and assist community members and the Stakeholders Group with interpretation and communication.

A schedule of agreed amendments to the Noise Monitoring Plan is with attachments marked [SCM007.5/10/11](#).

A copy of the updated Noise Monitoring Plan is with attachments marked [SCM007.6/10/11](#).

3. Hydrological impacts

Background

Hydrology is an important planning consideration for extractive industry proposals. The proposal has the potential to impact on the quantity and quality of groundwater (i.e. the Leederville Aquifer and Superficial Aquifer) and surface water resources within the project site.

The Local Governments commissioned a specialist hydrogeological assessment of the proposal by GHD in 2010. Key findings were:

- In general the proponent had addressed most issues associated with the hydrogeology of the project.
- The following items did not appear to be adequately addressed in the documentation:
 - Preliminary consultation with the Department of Water;

- Obtaining required 26D license (to construct) and 5C licence (to abstract) which may require a more detailed evaluation of impacts on the aquifer;
- Addressing possible alternative water sources, low quality water sources, potential for purchase of existing abstraction licences, fit for purpose assessment of production water;
- Apparent issues with the cumulative impacts on the superficial aquifer through abstraction from the Leederville Aquifer, dewatering to the Superficial Aquifer for ore extraction, and other groundwater users in the area;
- Apparent gaps in knowledge with regards to water quality of the Leederville and Superficial Aquifers in the mine area and an assessment of the cumulative quality impacts of mixing of both water resources during production and subsequent disposal in mine pits;
- Possible impacts of post closure land forms with regard to increasing evaporation from the superficial aquifer; and
- Assessment of the sensitivity of the receiving water bodies during water disposal, likely areas of release, the flow regime of the receiving water bodies, any changes in water release volumes through the life of the project or any other specific effects.

The Local Governments commissioned Geo & Hydro Environmental Management Pty Ltd to undertake further specialist hydrogeological assessment of the proposal in 2011. The review of the management plans relating to hydrogeology and water management highlighted the poor quality of the reports. The expert witnesses for hydrogeology discussed these matters as part of the conferral process. Additional information was provided so that agreement was reached on many of the issues of concern. However some key matters were taken to SAT mediation for further discussion. Key findings in addition to the 2010 GHD assessment were:

- Several issues adversely affecting the quantity of groundwater available for other users;
- Several issues with the effect on the quality of groundwater on the environment (wetlands) and vegetation;
- Further issues with the quality of the environment (and water for the environment);

Schedule of agreed commitments to the management plan

As a result of the proceedings before SAT, a schedule of agreed commitments has been prepared for the Water Management Plan. The modifications relate to:

- Inclusion of monitoring of standing water levels in Conservation Category Wetlands (CCW), subject to access being granted by CCW landowners. The applicant is to include the monitoring information in the annual compliance reporting to the CEO of the Department of Environment and Conservation that is already a requirement of Ministerial Statement 810;
- Increasing the monitoring bore-field to monitor the shallow aquifer and Leederville aquifer. Water levels are to be monitored monthly and water quality is to be monitored quarterly. The applicant is to include the monitoring information in the annual compliance report to the CEO of the Department of Environment and Conservation under Ministerial Statement 810;
- Include monitoring of existing bores on neighbouring lands for information on water levels and quality subject to the permission of those landowners; and
- Inclusion of contingency measures to be taken if the quality or quantity of groundwater of nearby users is reduced by the project.

The Schedule of Agreed Commitments relating to the Water Management Plan is with attachments marked [SCM007.7/10/11](#).

A copy of the updated Water Management Plan is with attachments marked [SCM007.8/10/11](#).

A schedule of agreed commitments has also been prepared for the Nutrient Management Plan. The applicant has agreed to the inclusion of testing for metals and organics as additional analyses from the same samples collected for nutrient testing.

A copy of the updated Nutrient Management Plan is with attachments marked [SCM007.9/10/11](#).

Role of other government agencies

The Department of Water (DoW) has advised that issues regarding groundwater decline and quality can be incorporated and considered in their legislated licensing and approvals process. Water impacts are manageable through DoW's approval of relevant management plans. The application requires licences for groundwater abstraction and dewatering under the *Rights in Water and Irrigation Act 1914*.

Advice from other government agencies

DoW advised in correspondence dated 16 December 2010 and 25 July 2011 that it was currently assessing an application to abstract 1.8GL from the Lower Leederville aquifer under Section 5C of the *Rights in Water and Irrigation Act 1914* (RIWI Act). An application to take water from the superficial aquifer for dewatering had not yet been received. The basis for the assessment of an application to abstract is under Schedule 1, Section 7.2 of the *Rights in Water and Irrigation Act 1914* (RIWI Act). Furthermore, the DoW advised the proponent will need to demonstrate that they can manage water resources consistently within both the Operating Strategy and Water Management Plan.

The correspondence from Department of Water dated 16 December 2010 is with attachments marked [SCM007.10/10/11](#).

The correspondence from Department of Water dated 25 July 2011 is with attachments marked [SCM007.11/10/11](#).

DoW undertook a review of the Nutrient Management Plan and Water Management Plan prepared as a requirement under Condition 10 and 11 of Ministerial Statement 810. DoW's correspondence dated 20 May 2011 recommended that various changes be made to the plans.

The correspondence from Department of Water to the EPA dated 20 May 2011 is with attachments marked [SCM007.12/10/11](#).

Considerable progress has been made with the applicant through State Administrative Tribunal (SAT) mediation. The Department of Water and the Local Government Officers consider the project to be manageable if the applicant is able to address all outstanding water management issues through finalisation of hydrogeological reports, the Water Management Plan and the setting of appropriate levels of monitoring and contingencies through an Operating Strategy.

The Hydrogeology Report, Water Management Plan and Nutrient Management Plan are best practice and highly technical and it would not be within the Shire officers' current capacity to maintain a water monitoring and management program. Shire officers will be able to interpret annual reports and assist community members and the Stakeholders Group with interpretation and communication. The responsibility to monitor and maintain water management conditions is with the EPA supported by Department of Water. Therefore the recommendation is that no water management conditions should be set by the Shire.

Mosquito Management Plan

A Mosquito Management Plan was submitted and has been reviewed by Shire officers and in view of the site location and mosquito risk found to be satisfactory for the proposed development.

A copy of the Mosquito Management Plan is included with attachments marked [SCM007.13/10/11](#).

4. Rehabilitation

Background

The long lasting biodiversity impact that an extractive industry proposal can have on a landscape is an incredibly important planning consideration. There is potential for the proposal to degrade the landscape's visual and biodiversity value. It is important that the Rehabilitation Management Plan is integrated with the visual, fauna and biodiversity management plans because the long term landscape and biodiversity are dependent on the success of rehabilitation and revegetation.

The original Rehabilitation Management Plan was deficient in both the completion criteria and long term revegetation management commitments. The whole point of the Visual Management Plan being required was to address not just the immediate screening needs but the long term amenity of the area and to integrate this into the Rehabilitation Management Plan.

The Schedule of Modifications relating to the Rehabilitation Management Plan is with attachments marked [SCM007.14/10/11](#).

The Rehabilitation Management Plan (January 2011) prepared for Olympia Resources Ltd by MBS Environmental is with attachments marked [SCM007.15/10/11](#).

5. Fauna

Background

A fauna management plan was prepared by consultants MBS in 2007, as part of the public environmental review. The fauna management plan was not explored in great depth through the proceedings before the SAT, however a number of opportunities for improvement were identified as follows:

- Clearing protocols;
- Procedures for dealing with injured wildlife;
- Measures to ensure effectiveness of the relocation of potential nest sites; and
- Measures to prevent or reduce the proliferation of feral animals.

The Applicant has agreed to modify the Visual Management Plan to ensure that the vegetative buffer along the southern most boundary of the site should be sufficient to minimise the views of the extraction activities from dwellings.

A copy of the updated Visual Management Plan is with attachments marked [SCM007.16/10/11](#).

The Applicant has advised that a Black Cockatoo Conservation, Offsets and Rehabilitation Plan has been prepared for black cockatoos species as part of the Federal environmental approval, and that detailed clearing protocols will be developed later.

As these issues relate to the management of proposed operations, rather than the spatial arrangement of the proposal, it is appropriate to deal with fauna management through a management plan prepared as a condition of approval.

A condition requiring preparation of a Fauna Management Plan can formalise these broader commitments and will ensure potential fauna impacts as a result of operations are managed.

6. Community engagement

It may be reasonable to state that communication and community engagement has been poorly handled by the proponent and to some extent the EPA during the Environmental Impact Assessment (EIA) process. The importance of community engagement and consultation has been raised by the Shires in the later stages of the assessment process.

Even though the statutory framework for assessing and administering community engagement is limiting, many of the principles of most forms of impact assessment and condition setting processes are underpinned by robust communication and community consultation programs. On this basis Shire officers were able to influence the SAT Member and the Proponent to allocate a more appropriate amount of time to a Community Consultation Framework including a complaints management protocol.

While a more connected community consultative management plan has now been drafted by the proponent leading into the final stages of the SAT process, the opportunity to communicate with stakeholders regarding the assessment and approval process had past. Therefore the focus for the development and review of the Community Engagement Plan (CEP) was on construction, operational and post operational components of the proposal.

Modifications to Community Consultative Framework (CCF)

The framework that has been developed recognizes these various stages of the operation and provides a range of useful mechanisms to engage with the community before and during the various stages. Perhaps more important than the consultative framework components of the CEP is the development of; an overarching complaints handling and response procedure, and the proposal for a Community Consultation Committee (the committee), and the appointment of a part time dedicated Community Liaison Officer.

Shire officers have stalwartly petitioned SAT for a robust complaints administration and response procedure. While they are outlined in the relevant management plans, Shire officers believe a more detailed overarching process would provide a clearer and more consistent approach across the range of management plans.

The importance of the role that the Community Consultative Committee will play in monitoring the proposed operation cannot be over emphasised. The terms of reference for the committee have been developed after many meetings between Shire officers, relevant experts and the proponent. The Shire's aim has been to formulate a communication framework that is easy to understand, robust and adaptive, and importantly enables the community to communicate issues to the proponent and the relevant state agencies and identifies the proponent's roles and responsibilities in responding to community issues and complaints.

However even though significant progress has been made in this area and the latest draft of the CCF provides many of the mechanisms and frameworks necessary for adequate communication and community engagement, the SAT mediation process identified some key components yet to be incorporated in the CCF. Firstly a consistent approach to the administration and response to complaints, and a set of definitions or a glossary of terms that defines most important words in the management plans such as 'amenity'.

A copy of the Without Prejudice Schedule of Agreed Commitments to the Community Consultation Framework is with attachments marked [SCM007.17/10/11](#).

A copy of the updated Community Consultation Framework is with attachments marked [SCM007.18/10/11](#).

Unless the proponent undertakes a further review of the CCF before the application is reconsidered and incorporates the components identified by SAT process it is recommended that the Shire impose a condition requiring the proponent to review the CCF to the satisfaction of the Shire and implement the approved plan within a relevant period if approval is granted.

The condition should require that;

1. The proponent is required to within 28 days of this approval, review the community engagement plan, 'Community Consultation Framework, Keysbrook Leucoxene – September 2011' and submit for assessment to the Shire.
2. The proponent is required to implement the revised 'Community Consultation Framework, Keysbrook Leucoxene – September 2011' as amended and approved.

1. Social Impacts

A formal social impact assessment has not been completed by the applicant, however such assessments do not form part of standard regulatory requirements in Western Australia. Local Planning Policy No.30 identifies social impacts as a relevant consideration in the assessment of proposals for mineral sands extraction. In response to the proceedings before the SAT, the applicant has prepared:

- An updated community consultation framework (as outlined in the previous section)
- A cost benefit analysis

An extract from the cost benefit analysis is with attachments marked [SCM007.19/10/11](#).

Although a draft version of the environmental authorisation included a commitment of \$25,000 to be provided for community programs, this commitment did not form part of the final approval issued by the Minister for Environment. The applicant, through the SAT proceedings, has advised that it did not consider it appropriate for such a commitment to be incorporated into the conditions of approval as a 'relevant planning matter'. The applicant, however, has provided a written undertaking as part of its schedule of agreed commitments that it is prepared to provide a minimum contribution of \$25,000 per local government area per annum and for the expenditure of such funds to be guided by the Community Consultation Group.

Other matters for consideration

Consistency with Rural Zoning

A relevant matter for Council to consider is the degree of consistency with the rural zone. From all relevant technical assessment, a view has been formed by the applicant and the SAT that all areas of concern that have been raised by the local governments can be managed subject to the revision of the relevant management plans. Shared expert confidence that these matters can be satisfactorily addressed, in conjunction with the SAT's preliminary view, decreases the possibility of successfully arguing concerns pertaining to the effects of the proposal on the amenity and environment of the locality.

An extract from the State Planning Policy 2.5: Agricultural and Rural Land Use Planning states the following:

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

Questions as to whether the application is consistent with the objectives of the Rural Zone and the areas of the Rural Strategy have also been addressed by the SAT as they determine the application to fit in with the State Planning Framework which essentially prevails over the Shire’s Rural Strategy. Therefore the SAT’s greater emphasis on this framework limits further opportunities for pursuing this matter into the future.

Protection of revegetation areas, post-excavation

A matter that has been raised through the assessment processes has been the long-term protection of vegetation, once land has been returned to an original owner. The Ministerial Approval requires the re-establishment of self-sustaining local provenance native vegetation for clearing under the Proposal, at a ratio of not less than 1.4:1 (1.4 hectares of revegetation per 1 hectare of vegetation cleared) and the re-establishment of functioning pasture. A performance bond requirement has been established for the excavation period, under the Ministerial Approval.

The following is an extract from the proponent’s response to the Public Environment Review, 2007

‘The proponent is confident that a rehabilitation plan developed in consultation with the landowners concerned will produce the best opportunity of preserving and increasing vegetation and flora diversity and sustainability into the future.’

Accordingly, the involvement of landowners in the finalisation of the management plans and subsequent updating on a regular basis, will be critical to the achievement of appropriate long-term outcomes, post-excavation.

With respect to the long-term protection of vegetation, Clause 7.13.3 of TPS 2 reads, as follows:

“(1) No person shall remove, destroy or damage any tree or cause or suffer to permit the removal or destruction of or damage to any tree within the District having at least one well defined stem or trunk of a height greater than 4 metres or diameter greater than 150mm measured at a height of 1.2 metres above the natural ground level, except with the prior planning consent of the Council given on an application under sub-clause 6.1.1, or unless the tree is exempted pursuant to sub-clause 7.13.4”

A difficulty may arise with revegetation areas, in that vegetation planted may not have reached a sufficient size to trigger the requirements set out in Cl 7.13.3, at the time that the control of land is returned to an original owner. It is open to Council, pursuant to sub-Clause 7.13.3(4) to issue a notice in writing to an owner, requiring the preservation of vegetation, as follows:

“(4) Notwithstanding the generality of paragraphs (1) and (3) of this sub-clause, 61 the Council may additionally, by notice in writing served upon the owner of the land, require the preservation of a particular tree or species of tree or group of trees, and thereafter the owner shall not remove, destroy or damage, or permit any person to remove, destroy or damage the tree, specifies of tree or group of trees the subject of the notice unless or until the Council rescinds or withdraws the notice.”

As mentioned above, the primary responsibility for revegetation during the period of excavation and rehabilitation rests with the proponent, including the requirement to satisfy the parameters of the performance bond. Accordingly, it is not recommended that Council issue a notice to landowners at this time, however instead reserve the right to do so in the future once the vegetation has been established.

Memorials on property titles

Through stakeholder engagement and proceedings, the potential for a notification to be placed on property titles has been raised. It is understood that a notification is desired by some stakeholders to ensure that prospective purchasers are made aware of the previous use of the land, i.e. for extraction purposes. There is perceived to be a particular concern about the adequacy of compaction of the land post-mining, and the potential for that to complicate subsequent development of and building on the land by prospective purchasers unaware of the fact the land has been mined

Planning Bulletin Number 3 provides general advice about the use of memorials on property titles in Western Australia by the WAPC as a condition of subdivision approval. The same general principles apply to a possible Notification on Title registered pursuant to section 70A of the Transfer of Land Act as a condition of planning approval.

A copy of Planning Bulletin Number 3 is with attachments marked [SCM007.20/10/11](#).

In accordance with Planning Bulletin 3, a number of different matters need to be considered, including planning justification; purpose, relevancy and necessity

Furthermore, the Commission ordinarily limits the use of memorials to situations where:

- The hazard or other factor is relatively permanent
- The hazard or other factor is of such significance (in terms of its effect on the use or enjoyment of land) as to warrant notification to a landowner
- The hazard or other factor may not be apparent on inspection of the land
- Indication of the hazard would not normally be found in other documentation relating to the land, such as a town planning scheme.

The State Administrative Tribunal has additionally indicated that the use of notifications should generally be reserved for unusual circumstances.

In respect of the above matters, the following comments are offered in respect of the current proposal before Council:

- The extraction period is for a fixed term and arguably short-term.
- The affected landowners may be temporarily relocated for the period of extraction
- The affected landowners have been required to provide their consent for the land to be used for extraction purposes and would therefore presumably be known to the landowner.
- The extraction activity would not normally be depicted on a relative town planning scheme or similar.
- The company is required, by way of Ministerial approval at minimum, to make its various management plans publicly available.
- There is the opportunity for the local governments to require the submission of a geotechnical report post-excavation, demonstrating that the land is capable of use for rural purposes.
- It is common practice for a geotechnical report to be required prior to any subdivision and/or development on land.

- Based on the information available from the applicant, areas the subject of mineral sands extraction generally 'settle' within a period of typically 2-3 years, in parallel with rehabilitation activities.

While the relevant "factor" to be notified (ie the land has been mined, and may require a geotechnical report/compaction prior to future development) will not be apparent on inspection of the land and will not be found in other documentation relating to the land, it is not considered the factor is "relatively permanent" (as reasonable settlement and compaction will take place in a short period) nor of such significance as to warrant a notification to a landowner, as any future subdivision or development is likely to be subject to a condition requiring a geotechnical report in any case.

Having had regard to the above comments, the establishment of a requirement for a notification to be placed on property titles may not be seen as reasonable by the applicant and therefore is likely to be the subject of further challenge. In this instance, it is not recommended that a condition be imposed requiring a notification on property titles.

On-going responsibilities for local governments (resource implications)

Council's Approach

As the SAT has required both Councils to reconsider the application, it is important that Council takes into account the capacity of the Shire to administer the approval conditions and be cognisant of the short and long term implications for other core functions.

While the proponent has primary responsibility for the operation of the site and is consequently required to comply with development approval conditions set by the Shire, the Shire in turn has a responsibility to assess those conditions and take such non-compliance action as is necessary. To ensure these conditions can be effectively administered they must have a statutory basis to be enforceable, and they need to be easily interpreted so that outcomes can be readily communicated. They must also be achievable and have a reasonable time frame for the conditions to be relevant and to enable due process and natural justice to be applied in any non-compliance action.

The SAT's Position

It is important to note that the SAT has expressed an opinion that the proposed development is fundamentally consistent with the regional planning framework and that development was capable of approval. The SAT has also stated that it will refer the amended principal management plans for; rehabilitation, noise, dust and water back to the EPA to be signed off. In doing so the SAT has suggested that the responsibility for the administration and management of these management plans to the EPA.

It is also noteworthy that through the development application and SAT process technical assessments by the local governments, the engagement with stakeholders, the specialist reviews by consultants and various state government agencies, and the information exchange by appointed experts in the conferral processes, considerable progress has been achieved in these management plans.

Resource Implications

In the short term the repercussion of setting conditions in relation to these principal management plans will invoke further appeals from the proponent resulting in further resource implications for the Shire. In this event it is also highly likely that the SAT will support the appellant and grant those costs incurred by the proponent to the Shire for this and perhaps other appeal proceedings.

In the longer term the resource implications will be in relation to the ongoing assessment of development and extractive industry licensing conditions. As previously stated the amount of resources required will depend to a great extent on the number and form these conditions take. Conversely the community stakeholder committee may have a very positive effect on the level of involvement and the way Shire officers respond to conditions and issues resulting from the operation of the mine.

MRS approval requirements

Council at its meeting in May 2010 considered the potential approval requirements under the provisions of the Metropolitan Region Scheme (MRS), relative to the approval requirements under TPS 2, passing the following resolution:

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

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

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

Accordingly, the matter was referred to the Western Australian Planning Commission for formal consideration. The degree of consistency with the rural zone, and therefore the requirement for separate MRS approval remained unclear at that time as was the subject of the application for review before the SAT (for the development application under TPS 2 and the Extractive Industry Licence application under the Shire’s Local Law). In order to achieve clarity for the benefit of all stakeholders, the matter was brought before the SAT as a ‘preliminary matter’. The SAT considered the matter and issued a decision, with a relevant extract provided below:

“The MRS application does not fall within the scope of the Clause 32 Resolution made by the Commission for the ‘call in’ of development applications in the Rural zone in the MRS for ‘extractive industry’ or for ‘any other use which in the opinion of the local government or the [Commission] may not be consistent with the Rural zone’. As the Commission has delegated its power to determine the MRS application to the Council under s 16 of the PD Act and as the MRS application does not fall within the scope of the Clause 32 Resolution, the Shire has delegated authority to determine the development application under the MRS.”

In accordance with the above decision, approval is still required under the MRS. Recommended conditions for approval are provided for consideration by Council, based on the approval conditions issued by the WAPC for land contained within the Shire of Murray, under the provisions of the Peel Region Scheme.

Project/Approval timeframes

Timeframe for commencement of development

As part of the suggested conditions, for Council consideration, the applicant has requested three years from the date of approval to commence development. The standard timeframe for development approvals is two years. It is understood that the applicant has requested the additional time, to provide flexibility for the project and to provide sufficient time to gain all

other required approvals prior to the commence of works. The approval granted by the Minister for Environment was for a period of 5 years from the date of the Ministerial Statement, granted on 19 October 2009.

In accordance with Cl6.9.1 of TPS 2, it is open to Council to consider a timeframe different to two years, as follows:

"6.9.1 Where the Council grants approval, that approval:

(a) shall be substantially commenced within two years, or such other period as specified in the approval, after the date of determination; and

(b) lapses if the development has not substantially commenced before the expiration of that period. "

The applicant has provided justification for the extended period of approval,

"We understand that the Shires will not consider that the various off-site road works will contribute towards substantial commencement of the project. Given that it is likely construction will need to occur appropriate seasonal conditions and prior to implementation of the project, this is further reason for an extended period for substantial commencement. A further reason for extension is that our client has been advised that the installation of an electrical facility on the site will take approximately 18 months. Therefore, due to the timeframe set in the Ministerial Statement; the number of outstanding approvals and work required; and our client's experience with lengthy delays in the process thus far (at no fault of our client), it is appropriate in this instance for the Shires to exercise their discretion to extend the timeframe for substantial commencement to three years. Our client does not take comfort in any assurance that the timeframe for substantial commencement may be extended by the Shires later, if a two year timeframe is set and the project has not been substantially commenced within that timeframe. It is presently open to the Shires to impose a reasonable timeframe and our client maintains that the most reasonable and responsible timeframe in this instance is that already outlined in Ministerial Statement No. 810."

On balance, having had regard to the relevant matters it is considered that a 3 year period for the commencement of operation is reasonable.

Period of operation

The applicant, through the suggested conditions for approval, has put forward a 10 year period any approval.

Clause 6.10 of TPS 2 reads as follows:

"Where the Council grants approval, the Council may impose conditions limiting the period of time for which the approval is granted."

There are a number of matters that Council needs to consider in determining the potential length of any approval, including the duration of any impacts stemming from a proposal, the potential for planning frameworks to change over time and what is fundamentally a reasonable period for land use to operate over.

A number of relevant extracts are provided from the original application for development approval (February 2010)

'The time taken for the extraction and mining of ore, decommissioning of infrastructure and rehabilitation of the subject site is to be in accordance with the Ministerial Approval, being 10 years.'

and

"In this instance the proposed mine life is expected to be in the order of 10 years. Given it is the proponents' intention to rehabilitate and return the land to its pre mine land use it is entirely appropriate that the approval be granted for a fixed period of time. In order to allow for mining activities, mobilisation and demobilisation, and final rehabilitation, a temporary approval for a period of 12 years is sought."

The area proposed for expansion, as part of the current applications, is a smaller area than that contained within the Ministerial Approval of October 2009. The following table outlines the different land areas identified in the Ministerial Approval. The Ministerial authorisation is for an area of 1366 ha, and approx 920,000 tonnes of hm concentrate. The estimated mine life was 8 years. The planning applications combined are for 865 ha, a reduction of some 501 ha (approximately a 37% reduction). Given those facts, a condition limiting the period during which excavation/mining activities can take place may be considered to be reasonable and appropriate. A period of 7 extraction years would appear to be appropriate, taking into account the reduced area, the need for further approvals and the Applicant's proposed start date. However as the rehabilitation obligations extend beyond the excavation period, any condition should limit only the excavation and processing activities, and not the whole approval.

Ability to extend fixed-term approval

A further matter that Council needs to consider in determining the length of any fixed-term approval, is the ability (or rather lack thereof) for Council to extend the length of the approval in the future, upon request from the applicant. As noted previously, Clause 6.10 of TPS 2 reads as follows:

"Where the Council grants approval, the Council may impose conditions limiting the period of time for which the approval is granted."

Accordingly, there is the ability for Council to limit the period of any approval. Clause 6.9.2 of TPS 2 reads as follows:

" A written request may be made to the Council for an extension of the term of planning approval at any time prior to the expiry of the approval period in sub-clause 6.9.1 (a)."

Accordingly, there is generally the ability for Council to consider requests for an extension of time.

Clause 6.9.2 provides Council with the ability to consider applications to amend an existing approval, as follows:

"The Council may on application in writing from the owner of the land in respect of which planning approval has been granted, revoke or amend the planning approval, prior to the commencement of the use or development subject of the planning approval."

As the proposed use will have already commenced, there will be no ability for Council to consider an extension to the term of the approval. Further extensions of time would need to be applied for through the lodgment of a new application for development approval, with associated assessment and determination processes.

Future extensions of time/expansions of operations

A concern that has been raised through stakeholder engagement has been the possibility of future applications for expanding the extraction area and/or timeframes. While the concerns

are understood, Council is required to consider the application currently before it including the proposed project timeframes. The possibility, other otherwise, of a future application is not considered to be a relevant matter for Council at this time. Each application needs to be determined on its merits. Similarly, any application in the future would need to be assessed and determined on its merits, against the relevant planning framework at that time.

Term of approval for Extractive Industry Licence

Under the provision of the Shire's Extractive Industry Local Law, a licence is required to be issued prior to the commencement of any excavation activities. In the applicant's suggested conditions for the licence, a 12 month approval has been sought. As this approval period is consistent with the timeframes set out in the Shire's Policy PP14 for extractive industries, the approval period is considered reasonable to officers.

Application for Extractive industries Licence

Applications for approval were lodged with both the Shire of Murray and the Shire of Serpentine-Jarrahdale in February 2010. With the application for approval to develop the proposal was an application for an extractive industries licence required under the Shire of Serpentine Jarrahdale 'Extractive Industries Local Law' (the local law).

The local law is administered under the Local Government Act 1995 for licensing the operation of extractive industries. Under the local law an extractive industry means quarrying and/or excavating for stone, gravel, sand and other minerals and a person who undertakes to carry on an extractive industry must under the local law make application to the Shire for a licence in the manner prescribed.

With the application for an extractive industry licence the applicant is required by the local law to submit the following;

	Details Submitted with the Application	Details
1	3 copies of excavation site plans	Provided
2	3 copies of works and excavation programme	Provided
3	3 copies of rehabilitation and decommissioning programme	Being amended and subject to EPA monitoring and bonding provisions
4	Datum peg evidence	Not provided – Condition of approval.
5	Licensed surveyor's certificate certifying the correctness of (a) and (d)	Not provided – Condition of approval.
6	Evidence of compliance with clause 2.2 (1) and (2)	Provided and completed.
7	Copies of all land use planning approvals	Provided as part of this development and assessment process.
8	Written consent of the owner of the excavation site	Provided.
9	Any other information that the local government has required	Provided as part of the EIA, DA and SAT process.

10	Licence application fee of \$.....	The normal application fee was paid.
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The details submitted with the application are considered based on the provisions of the local law which oversee registration and licensing details, fees and some operational components such as; excavation area and quantities. If approved the operation is registered and a license is issued. The licensee is required to make payment of a new license fee based on quantities of excavated material and/or area of excavation, or the relevant proportion of the annual licence fee as determined by the local government by June each year. In this case the applicant has made application for just over 400 hectares within the Shire and therefore the new license fee is \$12,500 and the renewal fee will be \$10,500 per annum.

As stated above, if the Shire gives approval for an extractive industry it can do so with conditions. The conditions must be administered under the provisions of the local law and relate to the relevant components of the operation. In this case the applicant has provided site plans with lot details and indicated the general area to be excavated and provided the signatures from the relevant land owners. However the exact location and extent of the excavation cannot be determined from the application and the proponent has explained that the extent of extraction is determined as part of the operation. Therefore if the Shire wishes to be provided with excavation details such as location, area, quantities of material and minerals excavated then it would have to be in the form of an operational or annual report.

Within Parts 2, 3 and 4 of the local law there are provisions requiring the licensee to submit works details as part of the application for renewal of a license. The following provisions are the most relevant for this application;

Section 4.3 (1) - A licensee who wishes to renew a licence must apply in writing to the local government at least 45 days before the date of expiry of the licence and must submit with the application for renewal -

- a) *the fee determined by the local government from time to time;*
- b) *a copy of the current licence;*
- c) *a plan showing the contours of the excavation carried out to the date of that application;*
- d) *details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 2.3(1) (b) and (c); and*
- e) *any other things referred to in clauses 2.3 and 3.1.*

Part 3 Section (5) - Without limiting subclause (2), the local government may impose conditions in respect of the following matters –

- p) *requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;*

Therefore under the provisions of the local law the Shire may set licensing conditions requiring the licensee to comply with when making application for renewal such as the licensee must;

- make application for renewal of the extractive industry license within 45 days of the expiry of the current license and with that application provide;
- the fee determined by the local government from time to time;
- a plan showing the contours of the excavation carried out to the date of that application;

- details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to the approved excavation plan.
- a surveyor's certificate to certify the quantity of material and minerals extracted and the contours of the excavation carried out to the date

Given that provision of this information is a mandatory requirement for renewals under the local law, it is not considered necessary to separately condition the licence to this effect.

Role of other government agencies

This report provides Council with the opportunity to consider the merits of applications under its Town Planning Scheme and under the Extractive Industry Local Law. It is relevant to consider the roles and regulatory responsibilities of various state government agencies.

Department of Water

The Department of Water is the State's peak body for the water resources and in particular, administers the *Rights in Water and Irrigation Act 1914*. The objectives of this act include:

- (a) to provide for the management of water resources, and in particular —
- (i) for their sustainable use and development to meet the needs of current and future users; and
 - (ii) for the protection of their ecosystems and the environment in which water resources are situated, including by the regulation of activities detrimental to them;
- (b) to promote the orderly, equitable and efficient use of water resources;
- (c) to foster consultation with members of local communities in the local administration of this Part, and to enable them to participate in that administration; and
- (d) to assist the integration of the management of water resources with the management of other natural resources.

The Department of Water has outlined its involvement with this project, in correspondence with attachments marked [SCM007.21/10/11](#).

It is open to Council, in considering the current matters, to outline expectations and/or concerns to the Department of Water for consideration as part of assessing applications for abstraction licences and on-going reporting, monitoring and licensing.

A concern that has been raised by stakeholders through this project has been the process by which water resources are allocated in Western Australia, essentially on a first-in, first-served basis. It is understood that the Minister for Water has committed to a review of current practices, in the context of other extractive industries within the state.

A copy of the Department of Water discussion paper is with attachments marked [SCM007.22/10/11](#).

It is open to the Shire, and other stakeholders, to lodge a submission in response to the Department of Water discussion paper.

Department of Environment and Conservation

Prior to the commencement of works on-site, an operating licence will be required to be obtained by the applicant from the Department of Environment and Conservation (DEC), under Part V of the Environmental Protection Act 1986. At this time, the applicant has advised the following:

- That an application for an operating licence has not yet been made to the DEC

- The Applicant cannot say when the approvals under the EP Act will be likely to be issued. In the applicant's opinion, the process has been drawn-out thus far and it could conceivably take some time for the approvals to be finalised. This is really out of the Applicant's control.
- The Applicant expects that any conditions associated with the approvals under the EP Act will be consistent with the Ministerial Statement.

The local governments are not aware of any reason why an application can not be made at this time for an operating licence. Once granted, operating licences are generally publicly available through the DEC website. As such, there are other operating licences that exist for extraction in Western Australia that Council and/or other stakeholders may wish to view for reference purposes.

Principles for condition setting

As outlined earlier, there is the ability for Council under Section 31 of the SAT Act to set aside its original decision and substitute it with a new decision, including potentially granting conditional approval.

The State Administrative Tribunal (SAT), and other appeal bodies in Australia have adopted the approach taken in *Newbury DC v Secretary of State for the Environment (1981) AC578* when considering the validity of specific conditions. That decision held that, in order to be valid, a condition must:

- be imposed for a planning purpose;
- fairly and reasonably relate to the development for which permission is given;
- be reasonable, that is, be a condition which a reasonable planning authority, properly advised, might impose.

In considering whether a particular condition is necessary, the question should be asked as to whether approval would have to be refused if that condition were not to be imposed. If it would not, then the condition would need special and precise justification. The argument that a condition will do no harm is no justification for its imposition.

It is generally accepted that a condition which duplicates controls under separate legislation would not normally be necessary and may not fulfil a planning purpose. Where other controls are available, however, a condition may be needed to address the land use impacts of the proposed development. For example, a condition would not normally be appropriate to control the level of emissions from a proposed development where these are subject to control under the Environmental Protection Act, but may be needed to address the impact of the emissions on land use (for example, separation distances) which are not controlled by the Environmental Protection Authority. A condition which conflicts with those of other controls, however, is likely to be ultra vires because it is unreasonable.

In the instance that Council is of a view to grant condition approval to the proposed development, careful consideration will need to be given to any conditions that may be imposed. For better or worse, an applicant is required to comply with conditions of an approval. The Shire, may similar, be required to take such action is necessary to ensure compliance with the conditions of any approval.

The applicant has submitted a schedule of 'unobjectionable conditions' for consideration by Council. While not binding on Council, the applicant has suggested that it would likely object to any conditions imposed, over and above, the applicant's suggested conditions. The applicant has also strongly advised that is keen to avoid any 'duplication' and/or 'inconsistency' between conditions that may be established across the regulatory environment including but not limited to the following:

- development approvals granted by the local governments

- extractive industry licence approvals granted by the local governments
- abstraction licences granted by the Department of Water
- operating licences issued by the Department of Environment and Conservation
- the approval previously granted by the Minister for Environment.

A copy of the submitted 'unobjectionable conditions' for the application for development approval is with attachments marked [SCM007.23/10/11](#).

A copy of the submitted 'unobjectionable conditions' for the application for extractive industry licence is with attachments marked [SCM007.24/10/11](#).

A copy of the Ministerial Approval conditions is with attachments marked [SCM007.25/10/11](#).

There is an inherent difficulty for each local government in setting conditions on any approval for a development approval and/or extractive industry licence at this time, as approvals have not been granted by the Department of Environment and Conservation nor the Department of Water. In addition, the existing Ministerial conditions require the preparation and approval of various management plans but do not specifically address the concerns that have been raised by the two local governments and their appointed experts. In addition, the conditions of the Ministerial approval do not specifically make reference to the potential modifications to the various management plans that have been identified through the proceedings before the SAT, that may potentially address the concerns identified by the local governments.

The specific management plans that are referenced in the Ministerial approval are as follows:

- Air Quality and Dust Management Plan
- Acid Sulphate Soils Management Plan
- Noise Monitoring Plan
- Rehabilitation Management Plan
- Dieback and Weed Management Plan
- Nutrient Management Plan
- Water Management Plan
- Performance Review Report
- Compliance Assessment Plan

Management plans that have been established but that are not specifically referenced in the Ministerial approval include:

- Fire management plan
- Traffic management plan (predominantly for land within the Shire of Murray)
- Mosquito management plan
- Visual management plan.
- Community Consultation Framework

Options for condition setting

There are a number of options available to Council, in respect of any condition approval and more specifically with respect to the various management plans, as follows:

(1) That Council:

- (i) note the applicant's commitment, on a 'without prejudice' basis to modify the various management plans

- (ii) outline its basic expectations to the applicant, in terms of progressing and ultimately implementing the updated management plans,
 - (iii) outlines its basic expectations to the DEC and DOW that the updated management plans will form the basis of any relevant approval/conditions.
 - (iv) Grant conditional approval for the proposed development and only specifically require compliance with those management plans not specifically referenced in the Ministerial approval.
- (2) That Council grant approval for the proposed development and specifically require, as conditions of approval, compliance with all of the management plans including those referenced in the Ministerial approval.
- (3) That Council grant approval for the proposed development and specifically require, as conditions of approval, compliance with all of the management plans including those referenced in the Ministerial approval but foreshadow to both the applicant and the State Administrative Tribunal that upon confirmation from either the Department of Environment and Conservation and/or the Department that compliance with the updated management plans will be required as part of any approval granted under Part V of the EP Act or under the *Rights in Water and Irrigation Act 1914*, that Council would be prepared to further reconsider the approval conditions relating to the specific management plans under a Section 31 invitation from the State Administrative Tribunal.

Option 3 is recommended at this time for the following reasons:

- it will ensure that that compliance with the updated management plans will actually be required in a regulatory environment, rather than having to take a ‘leap of faith’
- there will likely be the opportunity to further refine the conditions of any approval, in the interest of achieving maximum clarity in regulatory responsibilities and avoiding, where possible inconsistencies and/or duplication of regulatory requirements.

It is not appropriate nor possible for Council to fetter any future decision-making and as such any further reconsideration request, should it occur, would need to be considered on its merits at that time. It is also possible that this general course of action may not be supported by the either the applicant and/or the SAT. The alternative options, however, have inherent limitations and as such are not therefore supported by officers.

Procedural matters – can proceedings continue?

The SAT has made it evident through the proceedings in August/September 2011 that as part of the reconsideration process, it is the SAT’s expectation that the local governments should grant conditional approval.

In the instance that Council continues to refuse the applications, it is likely that the decision will be over-turned by the SAT and **substantial** costs may be awarded against Council. This may eventuate through a limited final hearing or similar.

In the instance that Council imposes conditions that are objectionable to the applicant, the proceedings before the SAT would likely continue. At this time, it is difficult to predict the exact nature of any proceedings, however it may be in the form of further mediation proceedings, section 31 reconsideration invitations and/or being presented to a final hearing. If the Shire is seen to be acting unreasonably, costs may be awarded against the Shire.

The SAT has made it evident through the proceedings in August/September 2011 that as part of the reconsideration process, that the SAT’s expectation was that the two local

governments should not again refuse the applications but rather focus their consideration on the terms and conditions of any approval.

Options

There are three options available to Council.

1. Uphold the previous decision and refuse the application for the same reasons; or
2. Based on new information made available, refuse the application for different reasons.
3. Based on new information made available, modify the previous decision and approve the application, with or without conditions.

Based on the position established by the State Administrative Tribunal, a condition approval in accordance with option 3 is recommended

Conclusion

In Western Australia, the primary responsibility for managing an extractive industry, and associated impacts, remains with the proponent. This premise was reinforced through the decision of the Minister for Environment in respect of the proposed mineral sands mine, in October 2009.

The proceedings before the SAT, following refusals in 2010 and 2011, have delivered some important modifications to principal management plans and secured additional information from relevant state government agencies.

Out of that process, the SAT has made its position evident, in that it expects the two local governments in reconsidering the matter to grant conditional approvals for the proposed development. The applicant has also made it very clear that it expects the local governments to avoid an inconsistency or duplication in condition setting, across the regulatory environment.

The continued refusal of the application has the potential for significant resource implications and would be difficult to effectively defend, in the context of the position taken by the SAT and the proposed modifications to the various management plans.

Through the investment of significant resources, significant short and long term gains have been achieved, including greater clarity of technical issues, future roles and responsibilities for state agencies and opportunities for community engagement. It is now open to Council to consider the information available and determine whether, in its opinion, that approval is justified.

Voting Requirements: Simple Majority

SCM007/10/11 Officer Recommended Resolution:

That Council:

- A) Council note orders issued by the State Administrative Tribunal and note that it is the expectation of the State Administrative Tribunal that the Local Governments will grant conditional approval for the proposed development.
- B) Note the applicant's agreed schedule of commitments provided on a without prejudice basis as provided in attachment *SCM007.26/10/11*.

- C) Approve the application for approval to commence development of an Industry Extractive (Mineral Sands Mine) for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook, under the provisions of Town Planning Scheme No. 2 subject to the following conditions:
- 1) Excavation (mining) and processing activities must be completed by no later than seven (7) years following the date of this approval. Rehabilitation and other associated activities do not have a limited term of approval.
 - 2) The development shall be carried out in accordance with the application for approval to commence development (Planning Solutions, February 2010) but subject to the conditions contained within this approval.
 - 3) The approval lapses if the approved development is not substantially commenced within three years from the date of this approval.
 - 4) The Visual Management Plan prepared by EPCAD being Issue 3 dated 9 September 2011 shall be implemented throughout the duration of the development.
 - 5) The Fire Management Plan prepared by Fireplan WA and dated January 2011 shall be implemented throughout the duration of the development.
 - 6) The Mosquito Management Plan prepared by Matilda Zircon Limited (undated) shall be implemented throughout the duration of the development.
 - 7) The Air Quality and Dust Management Plan prepared by MBS Environmental dated September 2011 shall be modified to reaffirm the proponent's commitment to the relocation of affected residents, or the adjustment of excavation activities accordingly, and shall be implemented throughout the duration of the development.
 - 8) The Nutrient Management Plan prepared by MBS Environmental dated September 2011 shall be implemented throughout the duration of the development.
 - 9) The Rehabilitation Management Plan prepared by MBS Environmental dated September 2011 shall be implemented throughout the duration of the development.
 - 10) The Water Management Plan prepared by MBS Environmental dated September 2011 shall be implemented throughout the duration of the development.
 - 11) The Noise Monitoring Plan prepared by Lloyd George Acoustics dated August 2011 shall be implemented throughout the duration of the development.
 - 12) The Fauna Management Plan prepared by MBS in 2007 shall be modified to include:
 - a) improved clearing protocols;
 - b) procedures for dealing with injured wildlife;
 - c) measures to ensure the effectiveness of the relocation of potential nest sites; and
 - d) measures to prevent or reduce the proliferation of feral animals.The modified Fauna Management Plan shall be submitted to the Shire for approval within 28 days. The approved Fauna Management shall be implemented throughout the duration of the development.
 - 13) The Community Consultation Framework submitted for consideration as part of the application and dated September 2011 be modified to:
 - a) clarify that the costs associated with the implementation of the framework, including the independent chair and executive officer, will be the responsibility of the proponent;
 - b) include a commitment to explore improved means of communicating with the community throughout the life of the approval; and
 - c) commence the implementation of the Community Engagement Plan within 90 days of this approval.

- The modifications to the Community Consultation Framework required by this condition are to be made by the proponent and lodged with the Shire for approval within 28 days. The approved Community Consultation Framework shall be implemented for the duration of the approval.
- 14) Complaint management procedures specified in the approved management plans shall be undertaken in accordance with the procedure set out in the approved Community Consultation Framework.
 - 15) A compliance assessment plan shall be prepared and lodged with the local government for approval prior to the commencement of the development. The requirements of the approved compliance assessment plan shall be met throughout the life of the development.
 - 16) The compliance assessment plan shall include as a minimum:
 - i) The frequency of compliance reporting;
 - ii) The approach to and timing of compliance assessments;
 - iii) The retention of compliance assessments;
 - iv) Reporting of potential non-compliances and corrective actions;
 - v) The table of contents of compliance reports; and
 - vi) Public availability of compliance reports.
 - 17) The proponent shall assess compliance with conditions of development approval in accordance with the approved compliance assessment plan.
 - 18) The proponent shall advise the local government, in writing, within two (2) business days of any areas of non-compliance with this approval being identified by the proponent.
 - 19) The proponent shall retain reports of all compliance assessments described in the approved compliance assessment plan and shall make those reports available when requested by the local government.
 - 20) The proponent shall submit a compliance assessment report by 31 March each year or such as other period has may be agreed by the local government. The compliance assessment report shall:
 - i) Be endorsed by the proponent's Managing Director or a person delegated to sign on their behalf;
 - ii) Include a statement as to whether the proponent has complied with the conditions of this approval;
 - iii) Identify all potential and actual non-compliances and describe corrective and preventative actions taken; and
 - iv) Be made publicly available in accordance with the approved compliance assessment plan
 - 21) The annual compliance assessment report shall include a report on the operation of the:
 - i) Approved Visual Management Plan;
 - ii) Approved Fire Management Plan;
 - iii) Approved Mosquito Management Plan;
 - iv) Approved Air Quality and Dust Management Plan;
 - v) Approved Nutrient Management Plan;
 - vi) Approved Rehabilitation Management Plan;
 - vii) Approved Water Management Plan;
 - viii) Approved Noise Monitoring Plan; and
 - ix) Approved Community Consultation Framework
 - x) Approved Fauna Management Plan
 - 22) An independent review of each annual compliance assessment report, in respect of the approved Water Management Plan and the approved Air Quality and Dust Management Plan shall be carried out by a suitably qualified person at the proponent's cost for at least the first year of production of the project.
 - 23) The proponent is to provide a geotechnical report certifying that any filling or back filling has been adequately compacted after each stage of extraction

- sufficient to demonstrate that the land has returned to a reasonable pre-excavation condition.
- 24) The site is to be kept in a neat and tidy condition at all times. When vehicles and equipment associated with the development are not in use they shall be located to as far as practicable minimise their view from neighbouring residents and public roads.
 - 25) An alternative effluent disposal system associated with the approved development is to be provided to the requirements of the local government, prior to the commencement of production.
- D) Approve the application for an extractive industry licence submitted by Planning Solutions on behalf of Keysbrook Leucoxene Pty Ltd for the extraction of heavy mineral sands at Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook under the provisions of Shire of Serpentine-Jarrahdale Extractive Industries Local Law, subject to the following conditions:
- 1) This approval shall be for a period of 12 months from the date of the approval.
 - 2) The undertaking of all extractive industry operations in accordance with the approved Works and Excavation Programme, unless inconsistent with the requirements of planning approval relating to the development.
 - 3) Environmentally hazardous chemicals associated with the approved development including but not limited to fuel, oil or other hydrocarbons (where the total volume of each substance stored on the premises exceeds 250 litres) shall be stored within low permeability (10⁻⁹ metres per second or less) compound designed to contain not less than 110 percent of the volume of the largest storage vessel or inter-connected system, and at least 25 percent of the total volume of vessels stored in the compound.
 - 4) The licensee shall ensure that no chemicals or potential liquid contaminants associated with the approved development are disposed of on site.
 - 5) The final site contours are to reflect the management plans approved through the planning process.
 - 6) The licensee shall provide evidence prior to commencement of works that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity.
 - 7) The licensee shall provide a certificate from a licensed surveyor certifying the correctness of:
 - (i) the plan of the excavation site submitted in relation to Clause 2.3(1)(a) of the Shire of Serpentine-Jarrahdale Extractive Industries Local Law; and
 - (ii) the datum peg and related point referred to in condition 6.
- E) Approve the application for approval to commence development of an Industry Extractive (Mineral Sands Mine) for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook, under the provisions of the Metropolitan Region Scheme subject to the following conditions:
- 1) This approval is limited to a period of 10 years from the date of this decision.
 - 2) The site is to be maintained in a neat and tidy condition to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.
 - 3) Vehicles, equipment, and stockpiling shall be located in such a manner as to minimize their visibility from neighbouring residents and public roads to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.

- 4) An alternative effluent disposal system is to be provided to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.
 - 5) A Visual Management Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
 - 6) A Fire Management Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
 - 7) A Pipeline Protection Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of Dampier Bunbury Pipeline Transmission and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
 - 8) A Mosquito Management Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
- F) Note that the proponent has agreed to provide an undertaking and letter to each local government providing that it will give a minimum of \$25,000 to each local government annually during the life of the production activities of the mine for community purposes with the expenditure of the funds being to the satisfaction of the Chief Executive Officer of each local government, on the advice of the Community Consultation Group.
- G) Foreshadow to both the applicant and the State Administrative Tribunal that upon confirmation from either the Department of Environment and Conservation and/or the Department of Water that compliance with the various updated management plans will be required as part of any approval granted under Part V of the Environmental Protection Act or under the Rights in Water and Irrigation Act 1914, that Council would be prepared to further reconsider the approval conditions relating to the specific management plans under a Section 31 invitation from the State Administrative Tribunal.

SCM007/10/11 COUNCIL DECISION/Revised Officer Recommended Resolution:

**Moved Cr Ellis, seconded Cr Hoyer pro forma
That Council:**

- A) Council note orders issued by the State Administrative Tribunal and note that it is the expectation of the State Administrative Tribunal that the Local Governments will grant conditional approval for the proposed development.**
- B) Note the applicant's agreed schedule of commitments provided on a without prejudice basis as provided in attachment *SCM007.26/10/11*.**
- C) Approve the application for approval to commence development of an Industry Extractive (Mineral Sands Mine) for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook,**

under the provisions of Town Planning Scheme No. 2 subject to the following conditions:

- 1) Excavation (mining) and processing activities must be completed by no later than seven (7) years following the date of this approval. Rehabilitation and other associated activities do not have a limited term of approval.
- 2) The development shall be carried out in accordance with the application for approval to commence development (Planning Solutions, February 2010) but subject to the conditions contained within this approval.
- 3) The approval lapses if the approved development is not substantially commenced within three years from the date of this approval.
- 4) The Visual Management Plan prepared by EPCAD being Issue 3 dated 9 September 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development
- 5) The Fire Management Plan prepared by Fireplan WA dated January 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 6) The Mosquito Management Plan prepared by Matilda Zircon Limited (undated) shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 7) The Air Quality and Dust Management Plan prepared by MBS Environmental dated September 2011 shall be modified to reaffirm the proponent's commitment to the relocation of affected residents, or the adjustment of excavation activities accordingly, incorporate definitions for the terms *harm, adversely effect, health, welfare, amenity and valid complaints* and incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 8) The Nutrient Management Plan prepared by MBS Environmental dated September 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 9) The Rehabilitation Management Plan prepared by MBS Environmental dated September 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 10) The Water Management Plan prepared by MBS Environmental dated September 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 11) The Noise Monitoring Plan prepared by Lloyd George Acoustics dated August 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 12) The Fauna Management Plan prepared by MBS in 2007 shall be modified to include:

- a) improved clearing protocols;
- b) procedures for dealing with injured wildlife;
- c) measures to ensure the effectiveness of the relocation of potential nest sites; and
- d) measures to prevent or reduce the proliferation of feral animals.
- e) the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework

The modified Fauna Management Plan shall be submitted to the Shire for approval within 28 days. The approved Fauna Management shall be implemented throughout the duration of the development.

- 13) The Community Consultation Framework submitted for consideration as part of the application and dated September 2011 be modified to:
- a) clarify that the costs associated with the implementation of the framework, including the independent chair and executive officer, will be the responsibility of the proponent;
 - b) include a commitment to explore improved means of communicating with the community throughout the life of the approval; and
 - c) commence the implementation of the Community Engagement Plan within 90 days of this approval.
 - d) include a commitment by the proponent to actively and positively promote to all stakeholders identified in the Community Consultation Framework, at least once every six (months) for the duration of the excavation period, the Community Consultation Framework and the role, function and opportunities associated with Community Consultation Group, including the involvement of relevant state government agencies;
 - e) include a commitment by the proponent to actively communicate to all residents within the locality of Keysbrook about the potential impacts of mineral sands mining and how these impacts are being managed.
 - f) include in the terms of reference for the Community Consultation a minimum of four(4) members of community representatives from each Shire;
 - g) including a specific copy of the 'Spectrum of Public Participation' from the Institute of Public Participation
 - h) the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework

The modifications to the Community Consultation Framework required by this condition are to be made by the proponent and lodged with the Shire for approval within 28 days. The approved Community Consultation Framework shall be implemented for the duration of the approval.

- 14) Complaint management procedures specified in the approved management plans shall be undertaken in accordance with the procedure set out in the approved Community Consultation Framework.
- 15) A compliance assessment plan shall be prepared and lodged with the local government for approval prior to the commencement of the development. The requirements of the approved compliance assessment plan shall be met throughout the life of the development.
- 16) The compliance assessment plan shall include as a minimum:
- i) The frequency of compliance reporting;
 - ii) The approach to and timing of compliance assessments;
 - iii) The retention of compliance assessments;
 - iv) Reporting of potential non-compliances and corrective actions;

- v) The table of contents of compliance reports; and
 - vi) Public availability of compliance reports.
- 17) The proponent shall assess compliance with conditions of development approval in accordance with the approved compliance assessment plan.
- 18) The proponent shall advise the local government, in writing, within two (2) business days of any areas of non-compliance with this approval being identified by the proponent.
- 19) The proponent shall retain reports of all compliance assessments described in the approved compliance assessment plan and shall make those reports available when requested by the local government.
- 20) The proponent shall submit a compliance assessment report by 31 March each year or such as other period has may be agreed by the local government. The compliance assessment report shall:
- i) Be endorsed by the proponent's Managing Director or a person delegated to sign on their behalf;
 - ii) Include a statement as to whether the proponent has complied with the conditions of this approval;
 - iii) Identify all potential and actual non-compliances and describe corrective and preventative actions taken; and
 - iv) Be made publicly available in accordance with the approved compliance assessment plan
- 21) The annual compliance assessment report shall include a report on the operation of the:
- i) Approved Visual Management Plan;
 - ii) Approved Fire Management Plan;
 - iii) Approved Mosquito Management Plan;
 - iv) Approved Air Quality and Dust Management Plan;
 - v) Approved Nutrient Management Plan;
 - vi) Approved Rehabilitation Management Plan;
 - vii) Approved Water Management Plan;
 - viii) Approved Noise Monitoring Plan; and
 - ix) Approved Community Consultation Framework
 - x) Approved Fauna Management Plan
- 22) An independent review of each annual compliance assessment report, in respect of the approved Water Management Plan and the approved Air Quality and Dust Management Plan shall be carried out by a suitably qualified person at the proponent's cost for at least the first (two years) of production of the project. The period of time for any on-going independent review shall be a matter that is considered by the Community Consultation Group (established in accordance with the Community Consultation Framework) at least annually.
- 23) The site is to be kept in a neat and tidy condition at all times. When vehicles and equipment associated with the development are not in use they shall be located to as far as practicable minimise their view from neighbouring residents and public roads.
- 24) An alternative effluent disposal system associated with the approved development is to be provided to the requirements of the local government, prior to the commencement of production.
- 25) The proponent is to provide a geotechnical report certifying that any filling or backfilling has been adequately compacted after each stage of extraction, demonstrating that the land is capable of being used for rural purposes.
- 26) A notification pursuant to section 70A of the Transfer of Land Act is to be registered against the certificates of title for those lots within which excavation has taken place, advising potential purchasers that mineral sands mining has been carried out on the lot and that the land may

require stabilisation in the event any building is to be constructed on it. The notifications are to be prepared at the proponent's cost, and registered within 3 months following the commencement of excavation on the lot to which the notification relates

D) Approve the application for an extractive industry licence submitted by Planning Solutions on behalf of Keysbrook Leucoxene Pty Ltd for the extraction of heavy mineral sands at Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook under the provisions of Shire of Serpentine-Jarrahdale Extractive Industries Local Law, subject to the following conditions:

- 1) This approval shall be for a period of 12 months from the date of the approval.**
- 2) The undertaking of all extractive industry operations in accordance with an approved Works and Excavation Programme, unless inconsistent with the requirements of planning approval relating to the development. The Works and Excavation Programme shall be submitted to the Shire for approval by the Director Development Services prior to the commencement of ground disturbing activities.**
- 3) Environmentally hazardous chemicals associated with the approved development including but not limited to fuel, oil or other hydrocarbons (where the total volume of each substance stored on the premises exceeds 250 litres) shall be stored within low permeability (10-9 metres per second or less) compound designed to contain not less than 110 percent of the volume of the largest storage vessel or inter-connected system, and at least 25 percent of the total volume of vessels stored in the compound.**
- 4) The licensee shall ensure that no chemicals or potential liquid contaminants associated with the approved development are disposed of on site.**
- 5) The final site contours are to reflect the management plans approved through the planning process.**
- 6) The licensee shall provide evidence prior to commencement of works that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity.**
- 7) The licensee shall provide a certificate from a licensed surveyor certifying the correctness of:
 - (i) the plan of the excavation site submitted in relation to Clause 2.3(1)(a) of the Shire of Serpentine-Jarrahdale Extractive Industries Local Law; and**
 - (ii) the datum peg and related point referred to in condition 6.****

E) Approve the application for approval to commence development of an Industry Extractive (Mineral Sands Mine) for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook, under the provisions of the Metropolitan Region Scheme subject to the following conditions:

- 1) This approval is limited to a period of 10 years from the date of this decision.**
- 2) The site is to be maintained in a neat and tidy condition to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.**
- 3) Vehicles, equipment, and stockpiling shall be located in such a manner as to minimize their visibility from neighbouring residents and public**

- roads to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.
- 4) An alternative effluent disposal system is to be provided to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.
 - 5) A Visual Management Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
 - 6) A Fire Management Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
 - 7) A Pipeline Protection Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of Dampier Bunbury Pipeline Transmission and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
 - 8) A Mosquito Management Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
- F) Note that the proponent has agreed to provide an undertaking and letter to each local government providing that it will give a minimum of \$25,000 to each local government annually during the life of the production activities of the mine for community purposes with the expenditure of the funds being to the satisfaction of the Chief Executive Officer of each local government, on the advice of the Community Consultation Group.
- G) Foreshadow to both the applicant and the State Administrative Tribunal that upon confirmation from either the Department of Environment and Conservation and/or the Department of Water that compliance with the various updated management plans will be required as part of any approval granted under Part V of the Environmental Protection Act or under the Rights in Water and Irrigation Act 1914, that Council would be prepared to further reconsider the approval conditions relating to the specific management plans under a Section 31 invitation from the State Administrative Tribunal.
- H) That council expresses its concerns to the Department of Water in respect of the short, medium and long term management of water resources. The Shire respectfully requests the consideration of legally binding contingency and remedial actions to make good any environmental water requirements, agricultural needs and human drinking water supplies in the assessment of licence applications and the setting of licence conditions, both prior to the commencement of ground disturbing activities and on an ongoing basis throughout the full period of extraction.
- I) That Council note the concerns of the Department of Water, as expressed in its correspondence dated 20 May 2011 to the Environmental Protection Authority and expect that the Department will continue to carefully consider these matters in its assessment of both the nutrient management plan, water management plan and applications for licence allocations/condition setting.

AMENDMENT TO THE MOTION

Moved Cr Randall, seconded Cr Harris

To add the words to condition 26, “advising of the remnant vegetation to be retained, areas to be rehabilitated and areas that have been mined”.

CARRIED 8/1

Cr Ellis voted against the motion.

The amended motion became the substantive motion

SCM007/10/11 COUNCIL DECISION:

Moved Cr Ellis, seconded Cr Hoyer pro forma

That Council:

- A) Council note orders issued by the State Administrative Tribunal and note that it is the expectation of the State Administrative Tribunal that the Local Governments will grant conditional approval for the proposed development.
- B) Note the applicant’s agreed schedule of commitments provided on a without prejudice basis as provided in attachment *SCM007.26/10/11*.
- C) Approve the application for approval to commence development of an Industry Extractive (Mineral Sands Mine) for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook, under the provisions of Town Planning Scheme No. 2 subject to the following conditions:
 - 1) Excavation (mining) and processing activities must be completed by no later than seven (7) years following the date of this approval. Rehabilitation and other associated activities do not have a limited term of approval.
 - 2) The development shall be carried out in accordance with the application for approval to commence development (Planning Solutions, February 2010) but subject to the conditions contained within this approval.
 - 3) The approval lapses if the approved development is not substantially commenced within three years from the date of this approval.
 - 4) The Visual Management Plan prepared by EPCAD being Issue 3 dated 9 September 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
 - 5) The Fire Management Plan prepared by Fireplan WA dated January 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
 - 6) The Mosquito Management Plan prepared by Matilda Zircon Limited (undated) shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
 - 7) The Air Quality and Dust Management Plan prepared by MBS Environmental dated September 2011 shall be modified to reaffirm the proponent’s commitment to the relocation of affected residents, or the

- adjustment of excavation activities accordingly, incorporate definitions for the terms *harm, adversely effect, health, welfare, amenity and valid complaints* and incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 8) The Nutrient Management Plan prepared by MBS Environmental dated September 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 9) The Rehabilitation Management Plan prepared by MBS Environmental dated September 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 10) The Water Management Plan prepared by MBS Environmental dated September 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 11) The Noise Monitoring Plan prepared by Lloyd George Acoustics dated August 2011 shall be modified to incorporate the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework and shall be implemented throughout the duration of the development.
- 12) The Fauna Management Plan prepared by MBS in 2007 shall be modified to include:
- a) improved clearing protocols;
 - b) procedures for dealing with injured wildlife;
 - c) measures to ensure the effectiveness of the relocation of potential nest sites; and
 - d) measures to prevent or reduce the proliferation of feral animals.
 - e) the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework
- The modified Fauna Management Plan shall be submitted to the Shire for approval within 28 days. The approved Fauna Management shall be implemented throughout the duration of the development.
- 13) The Community Consultation Framework submitted for consideration as part of the application and dated September 2011 be modified to:
- a) clarify that the costs associated with the implementation of the framework, including the independent chair and executive officer, will be the responsibility of the proponent;
 - b) include a commitment to explore improved means of communicating with the community throughout the life of the approval; and
 - c) commence the implementation of the Community Engagement Plan within 90 days of this approval.
 - d) include a commitment by the proponent to actively and positively promote to all stakeholders identified in the Community Consultation Framework, at least once every six (months) for the duration of the excavation period, the Community Consultation Framework and the role, function and opportunities associated with Community Consultation Group, including the involvement of relevant state government agencies;

- e) include a commitment by the proponent to actively communicate to all residents within the locality of Keysbrook about the potential impacts of mineral sands mining and how these impacts are being managed.
- f) include in the terms of reference for the Community Consultation a minimum of four(4) members of community representatives from each Shire;
- g) including a specific copy of the 'Spectrum of Public Participation' from the Institute of Public Participation
- h) the agreed schedule of commitments from the proponent and reference to the Community Consultation Framework

The modifications to the Community Consultation Framework required by this condition are to be made by the proponent and lodged with the Shire for approval within 28 days. The approved Community Consultation Framework shall be implemented for the duration of the approval.

- 14) Complaint management procedures specified in the approved management plans shall be undertaken in accordance with the procedure set out in the approved Community Consultation Framework.
- 15) A compliance assessment plan shall be prepared and lodged with the local government for approval prior to the commencement of the development. The requirements of the approved compliance assessment plan shall be met throughout the life of the development.
- 16) The compliance assessment plan shall include as a minimum:
 - i) The frequency of compliance reporting;
 - ii) The approach to and timing of compliance assessments;
 - iii) The retention of compliance assessments;
 - iv) Reporting of potential non-compliances and corrective actions;
 - v) The table of contents of compliance reports; and
 - vi) Public availability of compliance reports.
- 17) The proponent shall assess compliance with conditions of development approval in accordance with the approved compliance assessment plan.
- 18) The proponent shall advise the local government, in writing, within two (2) business days of any areas of non-compliance with this approval being identified by the proponent.
- 19) The proponent shall retain reports of all compliance assessments described in the approved compliance assessment plan and shall make those reports available when requested by the local government.
- 20) The proponent shall submit a compliance assessment report by 31 March each year or such as other period has may be agreed by the local government. The compliance assessment report shall:
 - i) Be endorsed by the proponent's Managing Director or a person delegated to sign on their behalf;
 - ii) Include a statement as to whether the proponent has complied with the conditions of this approval;
 - iii) Identify all potential and actual non-compliances and describe corrective and preventative actions taken; and
 - iv) Be made publicly available in accordance with the approved compliance assessment plan

- 21) The annual compliance assessment report shall include a report on the operation of the:
- i) Approved Visual Management Plan;
 - ii) Approved Fire Management Plan;
 - iii) Approved Mosquito Management Plan;
 - iv) Approved Air Quality and Dust Management Plan;
 - v) Approved Nutrient Management Plan;
 - vi) Approved Rehabilitation Management Plan;
 - vii) Approved Water Management Plan;
 - viii) Approved Noise Monitoring Plan; and
 - ix) Approved Community Consultation Framework
 - x) Approved Fauna Management Plan
- 22) An independent review of each annual compliance assessment report, in respect of the approved Water Management Plan and the approved Air Quality and Dust Management Plan shall be carried out by a suitably qualified person at the proponent's cost for at least the first (two years) of production of the project. The period of time for any on-going independent review shall be a matter that is considered by the Community Consultation Group (established in accordance with the Community Consultation Framework) at least annually.
- 23) The site is to be kept in a neat and tidy condition at all times. When vehicles and equipment associated with the development are not in use they shall be located to as far as practicable minimise their view from neighbouring residents and public roads.
- 24) An alternative effluent disposal system associated with the approved development is to be provided to the requirements of the local government, prior to the commencement of production.
- 25) The proponent is to provide a geotechnical report certifying that any filling or backfilling has been adequately compacted after each stage of extraction, demonstrating that the land is capable of being used for rural purposes.
- 26) A notification pursuant to section 70A of the Transfer of Land Act is to be registered against the certificates of title for those lots within which excavation has taken place, advising of the remnant vegetation to be retained, areas to be rehabilitated and areas that have been mined and advising potential purchasers that mineral sands mining has been carried out on the lot and that the land may require stabilisation in the event any building is to be constructed on it. The notifications are to be prepared at the proponent's cost, and registered within 3 months following the commencement of excavation on the lot to which the notification relates.
- D) Approve the application for an extractive industry licence submitted by Planning Solutions on behalf of Keysbrook Leucoxene Pty Ltd for the extraction of heavy mineral sands at Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook under the provisions of Shire of Serpentine-Jarrahdale Extractive Industries Local Law, subject to the following conditions:
- 1) This approval shall be for a period of 12 months from the date of the approval.
 - 2) The undertaking of all extractive industry operations in accordance with an approved Works and Excavation Programme, unless inconsistent

with the requirements of planning approval relating to the development. The Works and Excavation Programme shall be submitted to the Shire for approval by the Director Development Services prior to the commencement of ground disturbing activities.

- 3) Environmentally hazardous chemicals associated with the approved development including but not limited to fuel, oil or other hydrocarbons (where the total volume of each substance stored on the premises exceeds 250 litres) shall be stored within low permeability (10⁻⁹ metres per second or less) compound designed to contain not less than 110 percent of the volume of the largest storage vessel or inter-connected system, and at least 25 percent of the total volume of vessels stored in the compound.
- 4) The licensee shall ensure that no chemicals or potential liquid contaminants associated with the approved development are disposed of on site.
- 5) The final site contours are to reflect the management plans approved through the planning process.
- 6) The licensee shall provide evidence prior to commencement of works that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity.
- 7) The licensee shall provide a certificate from a licensed surveyor certifying the correctness of:
 - (i) the plan of the excavation site submitted in relation to Clause 2.3(1)(a) of the Shire of Serpentine-Jarrahdale Extractive Industries Local Law; and
 - (ii) the datum peg and related point referred to in condition 6.

E) Approve the application for approval to commence development of an Industry Extractive (Mineral Sands Mine) for Lot 1 Elliott Road, Lot 52 Atkins Road, Lot 63 Hopeland Road and Lots 6, 111, 112 and 113 Westcott Road, Keysbrook, under the provisions of the Metropolitan Region Scheme subject to the following conditions:

- 1) This approval is limited to a period of 10 years from the date of this decision.
- 2) The site is to be maintained in a neat and tidy condition to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.
- 3) Vehicles, equipment, and stockpiling shall be located in such a manner as to minimize their visibility from neighbouring residents and public roads to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.
- 4) An alternative effluent disposal system is to be provided to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission.
- 5) A Visual Management Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
- 6) A Fire Management Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.

- 7) A Pipeline Protection Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of Dampier Bunbury Pipeline Transmission and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
- 8) A Mosquito Management Plan shall be prepared by the proponent prior to the commencement of site works to the specifications of the local government and to the satisfaction of the Western Australian Planning Commission and such plan being implemented to the satisfaction of the Western Australian Planning Commission.
- F) Note that the proponent has agreed to provide an undertaking and letter to each local government providing that it will give a minimum of \$25,000 to each local government annually during the life of the production activities of the mine for community purposes with the expenditure of the funds being to the satisfaction of the Chief Executive Officer of each local government, on the advice of the Community Consultation Group.
- G) Foreshadow to both the applicant and the State Administrative Tribunal that upon confirmation from either the Department of Environment and Conservation and/or the Department of Water that compliance with the various updated management plans will be required as part of any approval granted under Part V of the Environmental Protection Act or under the Rights in Water and Irrigation Act 1914, that Council would be prepared to further reconsider the approval conditions relating to the specific management plans under a Section 31 invitation from the State Administrative Tribunal.
- H) That council expresses its concerns to the Department of Water in respect of the short, medium and long term management of water resources. The Shire respectfully requests the consideration of legally binding contingency and remedial actions to make good any environmental water requirements, agricultural needs and human drinking water supplies in the assessment of licence applications and the setting of licence conditions, both prior to the commencement of ground disturbing activities and on an ongoing basis throughout the full period of extraction.
- I) That Council note the concerns of the Department of Water, as expressed in its correspondence dated 20 May 2011 to the Environmental Protection Authority and expect that the Department will continue to carefully consider these matters in its assessment of both the nutrient management plan, water management plan and applications for licence allocations/condition setting.

CARRIED 7/2

Cr Brown voted against the motion.

SCM008/10/11		REVISED CODE OF CONDUCT FOR COUNCILLORS AND STAFF (A0031)
Author:	Lisa Fletcher – Organisational Improvement Officer	In Brief Council is requested to adopt a new values based Code of Conduct for Councillors and staff.
Senior Officer:	Joanne Abbiss – Chief Executive Officer	
Date of Report	17 August 2011	
Previously	CGAM031/09/05	
Disclosure of Interest	No officer involved in the preparation of this report is required to declare an interest in accordance with the provisions of the Local Government Act.	
Delegation	Council	

Background

The current Code of Conduct was adopted by Council in September 2005 providing Councillors and staff with guidelines for an acceptable standard of conduct.

A copy of the current Code of Conduct is with the attachments marked [SCM008.1/10/11 \(E02/1769\)](#).

The revised Code of Conduct (the Code) has been based on the Shire's newly adopted shared values with a view to outlining acceptable every day actions and behaviour.

The Code also creates an understanding about the requirement that Councillors and staff exercise judgement and accept personal responsibility for their actions and the decisions that they make. Working in the public sector means that we have a responsibility to act in the public's best interest at all times and demands a high standard of honesty, integrity, fairness and respect.

A copy of the proposed Code of Conduct is with the attachments marked [SCM008.2/10/11 \(E11/4415\)](#).

Statutory Environment: Local Government Act 1995 (Section 5.103)

Policy/Work Procedure Implications: Relevant policies and work procedures that support the Code have been identified in the Code.

Financial Implications: There are no direct financial implications to Council related to this issue other than minor printing and design costs which can be accommodated within the current budget.

Strategic Implications:

This proposal relates to the following Focus Areas:-

Vision Category	Focus Area	Objective Summary	Objective
OUR COUNCIL AT WORK	Leadership	Leadership throughout the organisation	Elected members and staff have ownership and are accountable for decisions that are made.

Vision Category	Focus Area	Objective Summary	Objective
		Leadership through organisational culture	Elected members and staff live our values and lead by example.
			Elected members and staff operate in an environment of trust, respect, openness and transparency.
			The elected members and staff have a relationship of unity and work together to achieve goals.
			We invite and celebrate diversity.
			The conduct of elected members and staff will be professional and reflect positively on the Shire at all times.
		Society, community and environmental responsibility	The Shire is focussed on building relationships of respect with stakeholders.
	Customer and Market Focus	Customer perception of value	Strive to continually improve customer satisfaction and stakeholder relationships.
	People	A Great Place to Work	Retain 'funky', fun, flexible, friendly, family feeling at the workplace.
			Accommodate a diversity of people and work habits
			Continue to build a multicultural and intergenerational workforce.

Community Consultation:

Not required.

Comment:

Attitudes and behaviour affect colleagues and the way our stakeholders and community view the Shire. We need to ensure that what we say and do is aligned with the Code of Conduct. We should also be aware at all times that our individual and collective behaviour and the way we interact with our stakeholders defines our reputation and credibility in the wider community and other industries.

This Code seeks to demonstrate the Shire's ethical leadership in the context of our new values and reinforces our commitment to these values. It also acts as a guide in our relationships with our community and our stakeholders. It is recommended that Council adopt this new values based Code of Conduct.

Voting Requirements: ABSOLUTE MAJORITY**SCM008/10/11 COUNCIL DECISION/Officer Recommended Resolution:**

Moved Cr Harris, seconded Cr Randall
That Council adopt the Code of Conduct at *Attachment SCM008.2/10/11*.
CARRIED 9/0

Council Note: To include definitions for Rule #6 and sister charities.

SCM009/10/11 CONFIDENTIAL ITEM - ACQUISITION OF SHARES IN PEEL INFRASTRUCTURE HOLDINGS PTY LTD (A0109-02)		
Proponent:	Peel Economic Development Unit Board	In Brief The Peel Economic Development Unit has established Peel Infrastructure Holdings Pty Ltd as a vehicle for investment in regional infrastructure. It is recommended that Council purchase a 20% shareholding, at a price of \$10.00, in this company.
Owner:	Not applicable	
Author:	Joanne Abbiss – Chief Executive Officer	
Senior Officer:	Joanne Abbiss – Chief Executive Officer	
Date of Report	21 September 2011	
Previously	OCM044/03/11	
Disclosure of Interest	No officer involved in the preparation of this report is required to declare an interest in accordance with the provisions of the Local Government Act	
Delegation	Council	

COUNCIL DECISION

Moved Cr Brown, seconded Cr Harris

That the doors be closed to members of the public at 8.35pm in accordance with Local Government Act S5.23 2(d).

CARRIED 9/0

SCM009/10/11 COUNCIL DECISION/Officer Recommended Resolution:

Moved Cr Harris, seconded Cr Hoyer

That Council:

1. Having had regard for section 20(1) of the Trustees Amendment Act 1997, approves the purchase of a 20% shareholding in Peel Infrastructure Holdings Pty Ltd at a price of \$10.
2. Increases its shareholding in Peel Infrastructure Holdings Pty Ltd if other Peel local governments do not participate to the following levels:
 - a. 25% if four local governments request a shareholding;
 - b. 33.3% if three local governments request a shareholding;
 - c. 50% if two local governments request a shareholding.
3. Approves the appointment of the Shire President to be the Shire's representative on the Interim Advisory Committee to select the founding directors of Peel Infrastructure Holdings Pty Ltd.
4. Approves the appointment of the Shire President to be the Shire's representative on the Shareholder Committee to recommend appointments to the Board of Peel Infrastructure Holdings Pty Ltd for the approval of the annual meeting of shareholders.
5. Requests the inclusion of two representatives of Peel local governments on any board of directors of Peel Infrastructure Holdings Pty Ltd.
6. Requests the Chief Executive Officer continue to liaise with the Peel Development Commission and other Peel local governments to finalise all

outstanding details concerning governance and corporate structures and inform Council when this is complete.

CARRIED 9/0

COUNCIL DECISION

Moved Cr Lowry, seconded Cr Ellis

That the doors be re-opened to members of the public at 8.48pm.

CARRIED 9/0

7. URGENT BUSINESS:

8. CLOSURE:

There being no further business, the meeting closed at 8.49pm.

I certify that these minutes were confirmed at the
Ordinary Council Meeting held on 24 October 2011.

.....
Presiding Member

.....
Date

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