

9.1.3 Consent to advertise - Local Planning Policy 7 - Mining and Resource Extraction. (2025)

Date of Report:	9 March 2025
Applicant or Proponent:	Shire of Toodyay
File Reference:	LPP7
Author:	P Nuttall – Executive Manager Planning and Regulatory Services
Responsible Officer:	P Nuttall – Executive Manager Planning and Regulatory Services
Previously Before Council:	OCM 22 March 2023
Author's Disclosure of Interest:	Nil
Council's Role in the matter:	Review
Attachments:	<ol style="list-style-type: none"> 1. Local Law Advice (LKA); ➡ 2. Draft Extractive Industry LPP7 (LKA); ➡ 3. Extractive Industry - Model Conditions (LKA); ➡ 4. Current LPP7 - Extractive Industries Road Maintenance Contributions ➡

PURPOSE OF THE REPORT

To seek Council Support for the Advertisement of an updated Local Planning Policy No.7 (LPP7) which is currently known as “Extractive Industries – Road Contributions” to be renamed “Mining & Resource Extraction. **Attachment 2.** The change of name realigns the policy to more closely represent the intent of the LPP7. The 2014 LPP7 **Attachment 4** no longer aligns with Council objectives in the management of mining activities in the shire and is overdue for review by council.

BACKGROUND

Local Planning Policies are required to be periodically reviewed by Council and in that review, Council can consider changes recommended by administration and consider its practices in relation to adjacent shires and changes to state policies and to amendments to relevant Acts of parliament.

In this case, State legislation has been stable, but a succession of State Administrative Tribunal decisions related to mining activity in shires, prompts a consideration to review this policy. As part of this review the Shire has undertaken professional Advice from LK Advisory (LKA) to undertake a review of other Shires Extractive Industry Local Laws (EILL) and relevant legislation in regard to these matters. Contained within this advice are recommendations for Council to consider. **Attachment 1.**

With the advised withdrawal of the Shires Extractive Industries Local Law, the Shire would be solely dependent upon the updated “Local Planning Policy No.7 – Mining & Resource

Extraction" Policy for the determination of all future applications for mining activity under the Current Shire of Toodyay Local Planning Scheme No.5.

While the review of this Local Planning Policy has previously been before Council (OCM 22/3/2023) that review also considered the retirement of the Shires Extractive Industry Local Law. Unfortunately, that review did not progress. This current review has been undertaken in close liaison with current extractive industry operators, and professional consultants and is thus presented to Council in this meeting.

COMMENTS AND DETAILS

There are several fundamental proposed changes to the way the shire can approach a development approval for mining activity, through a single approval pathway (updated LPP7). Under the current system, applicants may be issued two approvals under two different legislative frameworks. An approval can be simultaneously granted under the local planning scheme, which is an instrument granted under the Planning and Development Act, and the Local Laws which is an instrument granted under the Local Government Act. There is the risk that these two-approval process may overlap/intersect or be possibly inconsistent with each other.

It is proposed to amalgamate all related conditions under a single revised Local Planning Policy, and that it be used as the sole point of assessment and approval for the Shire. Advice from (LKA) supports this single assessment tool.

IMPLICATIONS TO CONSIDER

Necessity / Efficiency

The Current process seeks to grant approvals under different legislation, which does not create an efficiency in process and has now been deemed as unnecessary (LKA). The aim of the Shire is to simplify processes and to remove unnecessary conditions. In doing so the relinquishment of the *Extractive Industries Local Law*, and its conditions, can be incorporated into an updated Local Planning Policy 7.

- Point 6 of the LK Advisory Letter;

Our draft Local Planning Policy does not contemplate or require the Shire to retain an extractive Industries Local Law, or to continue the practice of imposing a 'road maintenance fee' paid by operators on a per- tonne basis. Instead, we recommend the Shire adopts a differential rate for extractive and other industrial/non-agricultural activities in the rural zone. This will allow Council to more defensibly, simply and effectively recover the added costs for maintaining roads impacted by extractive industry operations.

- Point 7 of the LK Advisory Letter;

We do not support imposing development approval conditions to levy annual road maintenance charges on extractive industry operators (as stipulated in the Shire's current local planning policy) as this would arguably not pass the established legal test for validity of a planning condition. Furthermore, requiring a proponent to pay for the maintenance of public roads beyond their development site also raises a contradiction with the principles espoused in State Planning Policy 3.6 Infrastructure Contributions (SPP 3.6), which states (emphasis added):

"...contributions are for the initial capital requirements only and not for ongoing maintenance or operating costs of the infrastructure..."

- Point 11 of the LK Advisory Letter;

If the Shire accepts our draft Local Planning Policy and agrees with our advice that it should no longer charge road maintenance fees through development approval conditions and should instead use the cost recovery mechanisms available under the LG Act, then there would be no value in retaining the Extractive Industries Local Law. In that case, the local law could be repealed, taking care to not compromise the ongoing management and compliance regime for extractive industries operating under existing Extractive Industries Licences.

The Proposal

The proposed modified Local Planning Policy (**Attachment 2**) would place a greater emphasis on the need to comply with approved plans, reports and detailed information provided to the Shire. If there is a deviation from the provided reports, then the shire has the power to seek rectification back to the agreed standards. It is a simpler process to follow and offers a greater number of tools for the shire to use, with the ultimate penalty of withdrawal of permission to operate or the lesser penalty of suspension of activities – pending rectification of an identified matter.

Advice Notes

Many of the current LPP7 and EILL conditions are in fact advice notes. That is that the Shire is imposing a condition of the applicant that is a requirement of another agency. For example, the shire has imposed a 'condition' through the existing policies to require the applicant to obtain a heavy vehicle movement permit from Main Roads WA. Any mining activity cannot proceed unless approach roads have a Main Roads WA permit to operate, which is not a shire responsibility to provide. In short this and other conditions rely upon the consent of other agencies. While some items are not conditions, it is not always the Shire's responsibility to remind professional mining or extraction companies of what approvals from other agencies they are required to obtain.

Road Maintenance

The key fundamental change to both the EILL and the existing LPP7 is the issue of road maintenance. Fundamentally both policies approach this requirement as the only method to cost recovery for the maintenance of specific roads, from time to time. Both policy and local law concentrates upon the collection of funds for maintenance, which may not be the best approach to revenue collection based on LK Advisory advice (point 7).

Changing the Shire approach to road "nexus – need" for maintenance is a proposal to shift to an annual fee and/or differential rates methods to recover these maintenance costs. This change and collection of monies may set aside, from these income streams, a portion of collected funds to specific reserved accounts. Or may choose to establish a shire wide "mining roads maintenance" reserve. In the longer term, this option will replace the need for voluntary agreements for road maintenance.

Until the Shire has these methods in place, the Shire will use the WALGA *Heavy Vehicle Cost Recovery Policy Guideline for Sealed Roads* model for the calculation of the Contribution and the setting of approval conditions.

This interim method, which doesn't align with the LKA advice, will be required until the Shire creates an alternate method of revenue collection.

This interim method does have support from some of the Shires mining operators, until another method is in place.

Rehabilitation of mine sites

This matter is one that the Shire may have overreached in its responsibilities. Rehabilitation is not a core responsibility of local government, except where it is the shires own mine site that is to be rehabilitated.

Current practice is to seek a bond from the applicant to 'hold over' the applicant as a financial bond to incentivise proper rehabilitation of the site. However, the financial sum requested, may not approach ~5% of any costs of rehabilitation of any mine within the shire. It also requires the agreement of the Shire, the miner and the landowner to release the funds back to the applicant. If in a worst-case scenario, the applicant (miner) is unable or is incapable of mine rehabilitation then the shire can release funds to "assist" in the rehabilitation of private land.

There is risk to the Shire in maintaining this practice that may see the shire involved in either a dispute as to whether appropriate rehabilitation has occurred, and to who's satisfaction it has been achieved. The Shire should reduce its risk in these matters and avoid becoming involved in mine site rehabilitation which is effectively a matter between the "landowner and the miner", in rehabilitating mined land on private property. The agreement of a private landowner to permit extraction of minerals on their property should remain the domain of each party (in relation to rehabilitation) and not a matter that the Shire should be directly involved.

The Shire does have a role and responsibility in the assessment of extraction (mine) closure processes and plans to ensure that a responsible mine closure plan can be achieved. With this approved document the Shire maintains its oversight and responsibility for safe and responsible practices, and considerations in the approval of new and existing extractive industries.

However, the ongoing practice of collecting bonds is recommended to cease, as the collected funds are inadequate for rehabilitation if the miner defaults and collected funds may not offer a large enough incentive/penalty for a company trying to avoid rehabilitation. If the shire were to substantially increase these bonds (to match the cost of rehabilitation), then many of the proponents in the Shire would be unlikely (financially) to pay the upfront costs of the bonds of the projects.

Differential Rates and Annual Fees – Extractive Industry.

The collection of an annual fee, either through a differential rate or by a statutory charge will be a separate matter to be brought to council as part of the budget setting process. Other Councils in Western Australia have undertaken this approach to fee collection, and it is recommended that the Shire of Toodyay use this approach. Until this happens the current fee structure will remain for road contributions and be calculated using the *WALGA Heavy Vehicle Cost Recovery Policy Guideline for Sealed Roads* model.

There are two broad categories of mining identified either through the *Mining Act*, or through the *Planning and Development Act* (Local Planning Schemes). The Mining Act relates to exploration permits, mining leases etc. and covers most of the Shire across multiple ownerships. Occasionally this results in the development of a mine, and most commonly those mines occur on Crown Land. Other mining activity (predominantly on Freehold land) are assessed through the Local Planning Scheme, but there are exceptions to this rule.

The Shire has an opportunity in the future to impose a differential rate to both UV and GRV mining activity as a replacement source of income from the fees and charges imposed through the current regulatory process. In addition, an annual licencing fee could be imposed on approvals for extractive industry. The combined (mix) of the collection of funds should equate to a cost neutral outcome when compared to the current processes and would

provide a transparent and consistent approach to all extractive industries. This approach to fee collection can substantially reduce the administrative and regulatory cost to the applicant and the Shire.

Consultative

There has been substantial consultation with some of the extractive industry operators in the formulation of this current single policy approach, and the creation of this new draft policy. Key to these discussions has been the understanding of operations in other shires where a single policy approach has been used and the efficiency benefits this brings to operators and Councils alike.

Outcomes

Throughout these discussions, a common ground has been found where the interests of the Shire and the operators have aligned in both the need to simplify processes and approval conditions. The fundamental shift in the Shires approach through this consultation is to rely on approved plans and reports. The applicant supplies a succession of reports for the Shire to grant approval, which sets out responsible practices and procedures. If, in the opinion of the Shire, a report or plan has not been followed or complied with – then this will constitute a breach. A breach would then trigger a discussion to rectify and seek remediation back to the agreed position. If compliance does not occur, then the Shire could resolve to suspend the approval or ultimately cancel the approval if the matters become irrevocable.

With the Assistance of industry operators, and LK Advisory the Shire has produced a new Local Planning Policy No.7 **Attachment 2** and a set of Model conditions that can be applied to applications that extensively seeks enough information for the responsible issue of an approval **Attachment 3**. In this regard and review, the new LPP7 and the Model conditions attached, represent a modern, transparent and efficient approach for Council and Administration to assess applications and renewals of extractive industry in the Shire of Toodyay.

Advertisement of the new LPP7

Clause 4(1)-(3) of Schedule 2, Part 2, Division 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* outlines the statutory requirement and process for the advertising of Local Planning Policies.

If the local government resolves to create or amend a local planning policy, in accordance with the Regulations, the local government must, unless the WAPC determine otherwise, advertise the proposed policy. Advertising of Local Planning Policies must be for a period of not less than twenty-one (21) days.

Prior to being presented to the Council at this meeting for consideration, the draft Local Planning Policy has undergone a substantial extractive industry collaborative exercise.

Upon completion of the required advertising, Council will be approached with all comments received to then reconsider the merits of this new policy and ultimately resolve to adopt or reject this new LPP7.

Strategic:

Shire of Toodyay *Plan for the Future 2023-2033*

3.1. Preserve our land, water, and biological systems

5.1. Provide responsible planning and development.

7.1. Collaborate with government and industry to attract investment, grow, and diversify the local economy, create secure, quality jobs, and meet their corporate social responsibilities.

Policy related:**Local Planning Policy – Advertising of Planning Proposals.**

Local Planning Policies are required to be advertised for a period of 21 days. This will involve an advertisement in the Toodyay Herald, placement of a notice on the Shire's website and Facebook page with links to the draft policy, and physical copies of the policy being available for inspection at the Shire's Administration Office and the Visitor's Centre.

Extractive Industries Local Law

If successfully adopted by Council, then Council will be requested to consider the repeal of the Extractive Industries Local Law, which will be effectively superseded by this amended Local Planning Policy.

Financial:

It is a requirement that Local Planning Policies undergo a formal advertising process which includes publication in a locally circulating newspaper. Cost to the Shire will relate to one advertisement and this has been allocated for in the Shire's adopted budget.

Legal and Statutory:

Planning and Development Act 2005 – Part 5

Planning and Development (Local Planning Schemes) Regulations 2015 - Division 2 of Schedule 2

Local Planning Policies

Division 2 of Schedule 2 ('the deemed provisions') provides the statutory basis for local planning policies and outlines the procedure for making, amending, and revoking local planning policies.

Local planning policies are guidelines used to assist the local government in making decisions under the local planning scheme. Although local planning policies are not part of the local planning scheme, they must be consistent with, and cannot vary, the intent of the scheme provisions, including the R-Codes, unless otherwise permitted by the R-Codes and/or approved by the WAPC.

A local planning policy is not part of the local planning scheme and does not bind the local government in respect of any application for development approval, however, the local government is to have due regard to the provisions of the policy and the objectives which the policy is designed to achieve before making its determination.

Risk related:

Risk is minimised through the following of correct procedures and regulations regarding the management of Local Planning Policies.

Review of a policy is essential to good governance as it demonstrates the Shire's ability to adapt to changing circumstances to ensure that its policies remain contemporary and relevant. The Shires risk is reduced to low if the correct procedures are followed. However, there could be medium risk to the Shire's reputation if procedures are not correctly followed.

Workforce related:

Reviews of this nature place additional yet necessary additional demands on workforce time and resources. However, a benefit of successful and regular reviews of policies will ensure the Shire is operating as efficiently as possible by aligning these documents with the

prevailing community expectations and state government frameworks of the day. This ultimately will reduce the burden on the workforce moving forward

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION NO. OCM052/03/25

MOVED Cr J Prater

SECONDED Cr D Wrench

That Council:

1. adopts the draft *Local Planning Policy – Mining and Resource Extraction Attachment 2* for the purpose of public advertising in accordance with the procedures set out in clause 4 of the Deemed Provisions in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. commences advertisement for a period of no less than 21 days.
3. requests the CEO to return this item to Council with all attached comments and recommendation for final review and/or amendments as required at a later date.

Voted For: Crs M McKeown, C Duri, S McCormick, D Wrench and J Prater

Voted Against: Cr R Madacsi

MOTION CARRIED 5/1