



ATTACHMENTS

Ordinary Council Meeting

Wednesday, 23 October 2024

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9 OFFICER REPORTS

9.1 DEVELOPMENT AND REGULATION

9.1.1 P2023-87 - Lot 1 Morangup Road, Morangup - Renewal of Extractive Industry Licence - Austral Bricks

Date of Report:	11 June 2024
Applicant or Proponent:	Land Insights on behalf of Austral Bricks Pty Ltd
File Reference:	P2023-87/A1331/1MORG/1EXT
Author:	H de Vos – Executive Manager Development and Regulation
Responsible Officer:	H de Vos – Executive Manager Development and Regulation
Previously Before Council:	Item 9.2.1 27 September 2016
Author’s Disclosure of Interest:	Nil
Council’s Role in the matter:	Quasi-Judicial
Attachments:	<ol style="list-style-type: none"> 1. Management Plan - Lot 1 Morangup Road - Austral Bricks Pty Ltd - August 2023; ⇒ 2. Additional Bond Calculations and Maps. ⇒

SUMMARY

Applicant: Austral Bricks Pty Ltd / Land Insights
 Owner: Bristile Holdings Ltd
 Proposal: Renewal of Extractive Industry - Clay
 Location: Lot 1 (No. 1010) Morangup Road, Morangup

PURPOSE OF THE REPORT

To consider an application for renewal of an Extractive Industry Licence of a clay quarry at Lot 1 (No. 1010) Morangup Road, Morangup, submitted by Land Insights on behalf of Austral Bricks Pty Ltd. Under the Shire’s adopted Delegations Register, applications for extractive industries may only be refused under delegated authority.

BACKGROUND

Land Insights act for Bristile Holdings Pty Ltd (Austral Bricks (WA) Pty Ltd) and lodge this application on their behalf. The application seeks to renew the Extractive Industry Licence for 21 years (as permitted by the Extractive Industry Local Law) for the “Schist Pit” located at Lot 1 Morangup Road, Morangup. The application seeks the continuation of the operation.

Status of Development Approval

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The Schist Pit at Lot 1 Morangup Road in Morangup operates in accordance with a current, valid Development Approval, which does not have an expiry date. All of the conditions of approval for the Development Approval therefore remain in force.

An Extractive Industry Licence was issued by the Shire and by order of the WA State Administrative Tribunal (SAT) on 5 August 2014 which expired on 19 November 2023.

The Shire has had written confirmation from the applicant that no operations or cartage are occurring at this time.

For the sake of clarity, this application confirms the continuation of the approved extraction will be consistent with the proposal outlined below.

Subject	Description
Operating times	<p>(a) 06:00 – 17:00 hours from Monday to Saturday between the months of October and May;</p> <p>(b) 06:00 – 17:00 hours from Monday to Friday between the months of June and September;</p> <p>(c) 06:00 – 17:00 hours from Monday to Saturday between the months of June to September with no more than 5 days annually subject to the maximum number of truck movements on those days being no greater than 40. Should any of the days fall on a Shire event day the number will be no greater than 30;</p> <p>(d) During the Saturday of the Shire's Agricultural Show the number of trucks on the day will be limited to 30 (although it is unlikely that carting will occur on this day).</p>
Volume extracted	Approximately 160,000 tonnes annually. This is consistent with the current approval and no increase in tonnage/operation is proposed as part of this application.
Site preparation	Limited site preparation is required as the site is already established for clay extraction. Access, signage, fencing, bunding and drainage management has already been established in accordance with the current approvals.
Pit area	The total "excavation operation area" is approximately 44.7 hectares. This includes the current excavation area, the next stage of extraction, water detention basins, stockpile areas and overburden bunds.
Staging	The existing pit area has not previously been given a stage number, however for this application it has been allocated as "Stage 1a" for the sake of completeness and consistency. The expansion area (previously labelled as "Stage 1") has been labelled as "Stage 1b" to indicate the next phase of excavation. Stage 1b is consistent with the area previously labelled as "Stage 1".
Depth	Depth of excavation is approximately 14-15 metres, depending on the depth of resource across the site.

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Subject	Description
Excavation	Clay is excavated from the pit area and placed onto stockpile. Earthworks take place as and when required throughout the year but generally during the dry months. The timing of excavation depends on weather conditions, market demand and operational requirements. Excavation will most likely take place over approximately 16 weeks in total per annum, usually divided into 2 or 3 “campaigns”.
Direction of excavation	The direction of excavation is generally in a southern direction.
Stockpiling	Clay is stockpiled within the pit area. This is to allow for efficient carting and transport of material from the site and utilises the existing pit area to avoid the need for clearing additional areas of vegetation.
Access	Existing site access is located at Morangup Road at the southern end of Lot 1. A crossover is already located at Morangup Road, and the sealed section is approximately 30 metres in length. The main haul road travels north through the site and provides access to the pit and clay stockpiles.
Carting	It is estimated that there will be approximately 4,250 truckloads per annum. Carting will take place as and when required throughout the year but generally during the dry months. The timing of carting depends on weather conditions, market demand and operational requirements. It is expected that carting will occur over two separate campaigns each year, lasting approximately 3-4 weeks for each campaign.
Environmental management	<p>(a) The proposed excavation operation has been subject to a rigorous environmental assessment (this is presented in Chapter 3) which has considered ways to avoid, reduce and mitigate environmental impact as required by EPA Guidance Statement No. 33.</p> <p>(b) As such, the clay extraction operation will comply with a range of management procedures as presented in the following management plans included with this report:</p> <ul style="list-style-type: none"> (i) Dust Management Plan (Land Insights, 2023); (ii) Noise Management Plan (Land Insights, 2023); (iii) Water Management Plan (Land Insights, 2023); (iv) Visual Amenity Management Plan (Land Insights, 2023); (v) Rehabilitation Management Plan (Land Insights, 2023); (vi) Refuelling Management Plan (Land Insights, 2023);

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Subject	Description
	(vii) Waste Management Plan (Land Insights, 2023); (viii) Phytophthora Dieback Hygiene Management Plan (Glevan Consulting, 2020); (ix) Bushfire Management Plan (Bushfire Prone Planning, 2021).
Refuelling	The operation will use mobile refuelling. There will be no storage of fuel on site.
Structures	A temporary lunchroom and portaloo will be located on site. It will only be used during site operations.
Decommissioning	The pit will be recontoured and rehabilitated in accordance with the Rehabilitation Management Plan.

The progress of this application has been stalled on a number of occasions since the original submission in late 2023. This has been due to:

- Christmas shutdown period;
- Further assessment and processing agreed to between applicant and the Shire; and
- Additional rehabilitation details to be supplied by applicant.

However there has been a written undertaking that there has been no cartage or operation of the pit throughout this time.

For more details, please refer to **Attachment 1 – Management Plan - Lot 1 Morangup Road - Austral Bricks Pty Ltd - August 2023**.

COMMENTS AND DETAILS

The following modifications are proposed:

1. Operating and cartage times

The applicants in their management plan seek a continuation of the existing hours of operation as follows:

- 06:00 – 17:00 hours from Monday to Saturday between the months of October and May
- 06:00 – 17:00 hours from Monday to Friday between the months of June and September
- 06:00 – 17:00 hours from Monday to Saturday between the months of June to September with no more than 5 days annually subject to the maximum number of truck movements on those days being no greater than 40. Should any of the days fall on a Shire event day the number will be no greater than 30.
- During the Saturday of the Shire's Agricultural Show the number of trucks on the day will be limited to 30 (although it is unlikely that carting will occur on this day).

It should be noted that the above arrangement was derived as part of an appeals process through the State Administrative Tribunal in 2014.

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Given these are the agreed conditions of approval on a valid Development Approval, it would not be prudent to make a set of different times for operation and cartage on the Extractive Industry Licence. Therefore, the recommendation would be to condition the licence with the above.

2. Duration of approval being sought

The Shire of Toodyay is considering granting Austral Bricks a 21-year extractive industry licence for a large-scale clay extractive industry, as opposed to a more conventional 10-year approval.

Whilst the Shire of Toodyay in recent approvals has had a consistent 10-year maximum, it is quite correct that the Shire's Extractive Industry Local Law does allow for a maximum of 21 years. Specifically, the clause states:

Where the local government approves an application for a licence, it must -

- a) determine the licence period, not exceeding 21 years from the date of issue; and*
- b) approve the issue of a licence in the form determined by the local government from time to time.*

From the applicant's perspective:

"the Local Law allows for a Licence up to 21 years and this has been provided for the site by the Council previously. The limiting factor to the previous 21 year approval was the extent of excavation. The same would also apply to this site (presumably) as a plan has been provided showing the proposed extent of excavation. If this is excavated in less than 21 years then a new Licence would need to be applied for (as was the case in 2014). In essence, regardless of the length of approval, the Licence has a few other conditions limiting operations. Conversely, having a longer timeframe also allows Austral Bricks to keep extracting within the approved area up to 21 years if market conditions slow and the rate of excavation is less than expected".

Issuing a 21-year extractive industry license over a 10-year one can have several pros and cons for both the local government and the extractive industry operator.

Pros and Cons for Local Government

Pros:

Long-term Planning Stability: A 21-year license can provide long-term stability and predictability for local government planning and infrastructure development.

Reduced Administrative Burden: Less frequent renewals mean fewer administrative processes and costs associated with reviewing and issuing new licenses.

Cons:

Flexibility Loss: A longer license duration reduces the local government's flexibility to adapt to changing circumstances, such as environmental regulations, economic shifts, or community needs.

Potential for Conflicts: Long-term licenses might lead to conflicts if new developments, environmental concerns, or public opposition arise during the license period.

Pros and Cons for Extractive Industry Operator

Pros:

Investment Security: A 21-year license provides a secure investment environment, encouraging long-term investments in technology, infrastructure, and workforce.

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Operational Stability: Long-term licenses allow for better long-term planning and operational efficiency, leading to cost savings and optimised resource extraction.

Financial Planning: Predictable and stable license terms enable better financial planning and access to funding from investors who prefer long-term stability.

Cons:

Risk of Regulatory Changes: Operators might be locked into terms that could become less favourable if regulatory environments change over the long term.

In accordance with the *Extractive Industry Local Law* Clause 3.1(2)(b)(ii), the Local Government may, in respect of an application for a licence – approve the application on such terms and conditions, if any, it sees fit. Therefore, Council can choose to impose a ten-year limit for consistency, or the longer twenty-one-year duration that the applicant is seeking.

It is the Officer's opinion that the duration should be kept at ten years as this is consistently applied.

3. Road Maintenance Contributions

Condition 1. (h)(i) of the active and valid Development Approval states:

h) The applicant shall be responsible for the cost of maintaining and repairing damage to the roads controlled by the Shire which are used by heavy haulage traffic associated with the clay extractive industry operations at 1010 (Lot 1) Morangup Road, Morangup, to the extent that such traffic contributes to the need for such maintenance and repair. Prior to the commencement of operation of the Facility, a Road Maintenance Plan based on this principle and including:

- i. A Road Maintenance Contribution of \$0.20 per tonne shall be made annually for the term of this planning approval, the conclusion of which will be marked by the completion of all extraction works;*
- ii. Payment shall be made within 30 days of the 30 June each year based on actual tonnages as supplied by the weighbridge dockets;*
- iii. Shall be lodged with the Shire for approval and the Road Maintenance Plan shall be implemented throughout the duration of the operation of the Facility.*

Given the above, any condition of approval in of the Extractive Industry Licence should be consistent with the active and valid Development Approval. However, it should be noted that the Road Maintenance Plan has been lodged already and satisfies the conditions of approval of the Development Approval.

One issue with this is that the Development Approval is in force until such time as the development ceases. The Development Approval does not have a prescribed time limit. This is considered an issue because the condition sets out a contribution of \$0.20 per tonne with no opportunity to review. Normally the Shire would see an application for renewal as an opportunity to review this figure, and in other instances a set figure would also have the CPI applied when calculated each year. This is done to ensure that the true cost of repair and maintenance is being reflected in amounts being collected to ensure there is no shortfall to be borne by ratepayers. Unfortunately, this is something that was not considered adequately at the time of the Development Approval.

However, the matter is being currently discussed between the Shire and the Applicant – who acknowledges the issue and sees the Shire's perspective and predicament.

The matter may be rectified through an agreed modification of the Development Approval. The Shire can request this; however, it must be agreed to by Austral Bricks.

