

**DEVELOPMENT ASSESSMENT REPORT**  
**Shire of Augusta Margaret River**  
**26 January to 1 February 2023**

**APPLICATIONS RECEIVED**

Date Rec'd	Reference No.	Address	Proposal
<b>PLANNING</b>			
30/01/2023	P223061	Lot 2 Fisher Road, Kudardup	Scheme Amendment No. 77 to Local Planning Scheme No. 1
30/01/2023	P223062	14 (Lot 14) Moondyne Ridge, Kudardup	Single Dwelling (Outbuilding)
30/01/2023	P223063	24 (Lot 31) Pierce Road, Margaret River	Amendment to Planning Approval P222446 (Building Envelope Variation (Single Dwelling and 2x Water Tanks))
30/01/2023	P223064	33 (Lot 24) Georgette Way, Prevelly	Holiday House Renewal
30/01/2023	P223065	1850 (Lot 4055) Warner Glen Road, Warner Glen	Dam Expansion
31/01/2023	P223068	Lot 14 & 5 Shepherdson Place, Margaret River	Public Art (Margaret River Men's Shed)
01/02/2023	P223070	7 (Lot 40) Chapel Place, Prevelly	Holiday House Renewal
01/02/2023	P223072	8 (Lot 222) Marmaduke Point Drive, Gnarabup	Ancillary Dwelling
<b>BUILDING</b>			
30/01/2023	223030	171 (Lot 7) Heron Drive, Margaret River	Shed
30/01/2023	223032	396 (Lot 2) Redgate Road, Witchcliffe	Shed with Verandah
30/01/2023	223033	20 (Lot 414) Dunnart Close, Margaret River	Shed
30/01/2023	223034	58 - 60 (Lot 17, 18, 19 and 20) Blackwood Avenue Augusta	Alterations and additions to existing retail premises - Verandah additions
31/01/2023	223035	214 - 218 (Lot 48) Railway Tce, Margaret River	Occupancy Permit for BLD221734 (Single Storey Accommodation Building)
31/01/2023	223036	166 (Lot 34) Bushby Road Karridale	Retrospective Approval for Toilet Block and Outdoor Kitchen
31/01/2023	223037	32 (Lot 725) Burke Circle, Cowaramup	Alterations and Additions - Garage conversion
30/01/2023	223038	21 (210) Auger Way, Margaret River	Shed Extension
30/01/2023	223039	Unit 10/37 (Lot 10) Village Green, Margaret River	Single Storey Dwelling, Dwelling Additions, Patio and Carport
31/01/2023	223040	222 (Lot 2) Railway Terrace, Margaret River	Occupancy Permit For BLD221747 (Alterations and Additions to Existing Accommodation Building and Kitchen- New Roof and Internal Works and New Training Room)
01/02/2023	223041	9 (Lot 80) Georgette Road, Gracetown	Demolition - part of dwelling and shed
01/02/2023	223043	47 (Lot 624) Surf Break Drive, Cowaramup	Single Dwelling, Garage and Patio
<b>Exploration Licenses for Comment</b>			
Nil			

**APPLICATIONS DETERMINED UNDER DELEGATION**

Date Rec'd	Reference No.	Address	Proposal	Outcome
<b>PLANNING</b>				
26/10/2022	P222729	25 (Lot 44) Dawson Terrace, Augusta	Holiday House (Large) Renewal	Approval
08/11/2022	P222805	11 (Lot 59) Casuarina Court, Margaret River	Home Business (Hairdressers)	Approval

22/11/2022	P222807	17 (Lot 26) Copse Way, Cowaramup	Single House (Outbuilding)	Approval
30/11/2022	P222822	65 (Lot 53) Leeuwin Road, Augusta	Holiday House Renewal	Approval
30/11/2022	P222823	2 (Lot 4) Cygnet Crescent, Augusta	Holiday House	Approval
12/12/2022	P222844	26 (Lot 117) Georgette Road, Gracetown	Holiday House (Large) Renewal	Approval
12/12/2022	P222848	Unit 11/20 (Strata Lot 11 of 229) Riedle Drive, Gnarabup	Holiday House Renewal	Approval
16/12/2022	P222867	Structure Plan 4 (Lot 112) Andrews Way, Margaret River	Structure Plan 4 (Lot 112) Andrews Way Margaret River	Cancelled
20/12/2022	P222876	9 (Lot 19) Grevillea Lane, Margaret River	Single Dwelling and Retaining	Approval
04/01/2023	P223002	81 (Lot 124) Duggan Drive, Cowaramup	Bed and Breakfast Renewal	Approval
13/01/2023	P223020	10 (Lot 221) Marmaduke Point Drive, Gnarabup	Single Dwelling (Carport Addition)	Approval
<b>SUBDIVISIONS</b>				
13/12/2022	P222864	5 Heron (Lot 2) Drive, Margaret River	Subdivision	Supported Subject to conditions
16/12/2022	P223000	80 (Lot 11) Blackwood Avenue, Augusta	Survey Strata	Not supported
<b>LOCAL LAW PERMITS</b>				
Nil				

### LEVEL 3 PLANNING APPLICATIONS FOR DETERMINATION

Date Rec'd	Reference No.	Address	Proposal	Recommendation
<b>PLANNING</b>				
07/12/2022	P222833	827 (Lot 206) Burnside Road Margaret River	Retrospective Development Outside of Building Envelope (Carport, Gazebo, Sauna, Pump Shed & Driveway / Parking Area)	Refusal
08/12/2022	P222838	Lot 68 Tanah Merah Road Bramley	Extractive Industry (Extension to Planning Approval P218026)	Approve subject to conditions

### ELECTED MEMBERS ATTENTION

Date Rec'd	Reference No.	Address	Proposal	Recommendation
<b>PLANNING</b>				
08/12/2022	P222836	95 (Lot 134) Bussell Highway, Margaret River	Commercial Development (Restaurant, Exhibition Centre and Serviced Apartment)	Approved

### DEVELOPMENT ASSESSMENT REPORTING PROCEDURE

#### Assessment of Development Applications (DAs)

For the purposes of this procedure there are three types of development applications:

##### Level 1

DA not advertised

##### Level 2

DA is advertised; and

- No submissions; or
- Submission received but meets one of the following:
  - Not related to the reason the DA was advertised.
  - The development is modified to comply or to remove the element of concern to the submitter.
  - Submission is either of support, conditional support or is 'indifferent'; or is from a non-affected person.

##### Level 3

A submission in opposition is received from an 'affected' person or special interest group in relation to the reason the DA is advertised or the development application is recommended for refusal.

**Note:** This procedure applies to development applications only. It does not apply to structure plans, scheme amendments or other types of planning proposals.



**DEVELOPMENT APPLICATION ASSESSMENT**  
**Report to Manager Planning and Development Services**  
**Proposed Retrospective Development outside of building envelope (Carport, Gazebo, Sauna, Pump Shed & Driveway / Parking Area) at 827 (Lot 206) Burnside Road, Margaret River**

**(Level 3) Refusal Recommended**

**P222833;**

**PTY/12755**

**REPORTING OFFICER : Lina O'Halloran**  
**DISCLOSURE OF INTEREST : Nil**

General Information	
Lot Area	1ha
Zone	Rural Residential RR11
Proposed Development	<p>Retrospective planning approval is sought for development that has been constructed outside of the building envelope. This application has been lodged in response to a planning compliance matter (P222737) following a complaint from a neighbour.</p> <p>The following unauthorised development was identified:</p> <ul style="list-style-type: none"> <li>• Plunge pool outside the building envelope and very close to the western property boundary, with no fencing;</li> <li>• Several small outbuildings to the south-western corner of the site comprising of an approximately 7.5m<sup>2</sup> pump shed, transportable sauna and 13m<sup>2</sup> gazebo;</li> <li>• A 96m<sup>2</sup> carport constructed to the south-east of the building envelope which is covering a large sea container;</li> <li>• A tiny house which is located within the building envelope but does not have a building permit.</li> </ul> <p>The plunge pool is exempt from planning approval and a building permit for the pool and barrier fence has since been issued.</p> <p>The tiny home is transportable and is thus considered a 'caravan'. Caravans are exempt from planning approval provided they are not within the front setback area. The tiny home is located toward the rear of the building envelope and is thus exempt from planning.</p> <p>This application seeks to obtain planning approval for the carport, gazebo, pump shed, sauna and an extensive driveway / parking area at the rear of the site, all of which are outside of the building envelope.</p> <p>The <i>Planning &amp; Development Act (2005)</i> provides a local government with authority to approve development that has already been commenced or carried out.</p> <p>The approved development on the site consists of a primary dwelling, ancillary dwelling, water tanks and an outbuilding. Holiday House use within the primary dwelling is currently approved until 2025.</p>
Permissible Use Class	The development is considered to be ancillary to residential use – 'P' permitted.
Heritage/Aboriginal Sites	None identified
Encumbrance	2 x Notifications
Date Received	07/12/2022







Photos of unauthorised development:



Photo 1: sauna with pump shed behind.



Photo 2: Gazebo



Photo 3: Carport and extensive driveway



Photo 4: parking area at rear of site

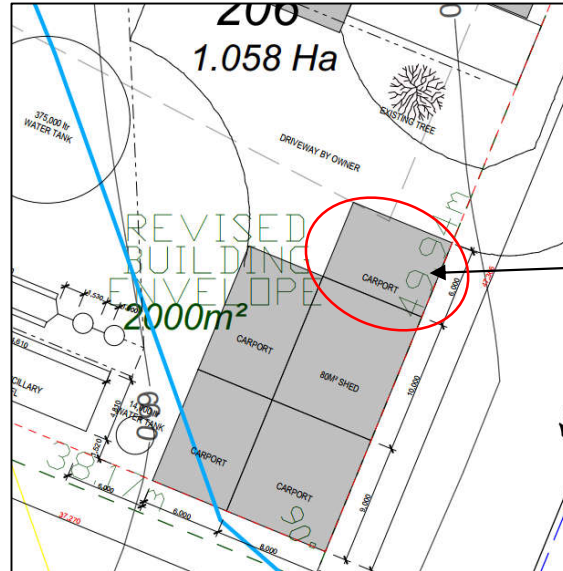
Policy Requirements		
Is the land or proposal referred to in any Council Policy?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, state the Policy/Policies	Local Planning Policy 1 – Outbuildings, Farm Buildings & Swimming Pools (LPP1)	
Officer Comment	<p>An outbuilding is defined under LPP1 as follows:  <b>'Outbuilding'</b> means an enclosed non-habitable structure that is detached from any dwelling and for the purposes of this policy includes a water tank.</p> <p><u>Carport &amp; Gazebo:</u>  The carport and gazebo are not enclosed, however are considered generally consistent with the outbuildings definition and in the absence of an appropriate alternative assessment framework, are assessed as such.  The Gazebo is setback approximately 12m from the rear boundary in lieu of the 30m setback required for the Rural Residential zone – <b>variation</b></p> <p><u>Pump shed &amp; Sauna:</u>  LPP1 does not typically apply to outbuildings less than 10m<sup>2</sup> in size, but only where they are compliant with other relevant requirements of the Scheme.</p> <p>Both the pump shed and sauna are below 10m<sup>2</sup> in area however do not meet the remaining requirements to be exempt from LPP1 on the following basis:</p> <ul style="list-style-type: none"> <li>LPP1: Outbuildings to be within the prescribed building envelope – <b>variation</b></li> <li>LPS1 Schedule 9: Side setback of 10m in the Rural Residential zone – both setback less than 10m from western boundary - <b>variation</b></li> </ul> <p><u>Overall comments:</u>  The site was approved with an 80m<sup>2</sup> outbuilding, surrounded by 234m<sup>2</sup> of carport space on 3 sides – refer to extract from building permit below. The northern 48m<sup>2</sup> portion of carport was never constructed as it would have required removal of a large peppermint tree, thus the existing outbuilding has a total of 186m<sup>2</sup> of carport space attached.  A 54m<sup>2</sup> carport is attached to the dwelling.  The unauthorised carport outside the building envelope is 96m<sup>2</sup>.  The total floor area for the pump shed, gazebo and sauna is approximately 25m<sup>2</sup>.  Combined, this results in a total carport / outbuilding area of 361m<sup>2</sup> across the site.</p> <p>The above variations and extensive carport / outbuilding floor area warrants assessment of the pump shed, carport and gazebo against the Performance Criteria of LPP1, which is detailed below:</p> <p><i>PC1.1: Outbuildings that are/can be adequately screened from view, or are otherwise an appropriate form and scale, and in an appropriate location, consistent with the visual management guidelines of the Local Planning Strategy.</i></p> <ul style="list-style-type: none"> <li>Noting the outbuildings are at the rear of the site, they are visible from neighbouring properties and Burnside Road. Landscaping has been installed along the eastern side boundary and in areas across the front boundary of the site which goes some way to screening the development.</li> <li>The extensive outbuilding floor area across the site is not considered to be of an appropriate scale for the primary intended use of the site, which is residential.</li> <li>The outbuildings are outside of the building envelope and the pump shed, sauna and gazebo are non-compliant with setbacks of the zone, hence are not considered to be in an appropriate location.</li> <li>The development <b>does not satisfy</b> PC1.1.</li> </ul> <p><i>PC1.2: Outbuildings constructed of colours and materials that complement the landscape and/or the amenity of the surrounding area.</i></p> <ul style="list-style-type: none"> <li>The outbuildings are predominantly constructed in Colorbond 'Monument' or wooden cladding, which is complementary to the surrounding landscape and existing development on the site.</li> <li>The development satisfies PC1.2</li> </ul> <p><i>PC1.3: Outbuildings that will not have an adverse impact to or detract from the streetscape or amenity of neighbouring properties.</i></p> <ul style="list-style-type: none"> <li>Confining development to within building envelopes is a key development measure of the Rural Residential zone to preserve and protect the private, rural amenity of this zone. Development outside of a building envelope is therefore considered to adversely impact the amenity of the area.</li> <li>It is noted the original compliance file for the unauthorised development on this site was the result of a complaint from a neighbour.</li> <li>The development <b>does not satisfy</b> PC1.3</li> </ul> <p><i>PC1.4: Outbuildings that, where practical, are grouped with the residence to limit potential adverse visual impacts and are proportionally scaled relative to the dwelling on site.</i></p>	

- The outbuildings are sprawled across the rear portion of the site and are not grouped with the dwelling.
- The cumulative outbuilding floor area across the site is not scaled relative to the dwelling.
- The development **does not satisfy** PC1.4

*PC1.5: Outbuildings that exceed 150m<sup>2</sup> in floor area are unlikely to be supported.*

- Noting this does not typically apply to carports, there is a total outbuilding / carport space across the site of 361m<sup>2</sup>. This greatly exceeds the maximum that is considered appropriate for a Rural Residential lot of this size.
- The development **does not satisfy** PC1.5

Overall, the development does not satisfy the Performance Criteria of LPP1.



Extract of building permit BLD/219194: Approved outbuilding on site

#### Structure Plans and Local Development Plans (LDP's)

Is the land in any Structure Plan Area or subject to a LDP?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, state the Policy/Policies	Revised Subdivision Guide Plan – Lot 482 Burnside Road & Caves Road, Margaret River, 2003	

<b>Officer Comment</b>	The Subdivision Guide Plan prescribed building envelopes for the site and surrounding lots. As the building envelope for the site has since been amended by way of a building envelope variation approval, the Subdivision Guide Plan is not relevant to the subject application.
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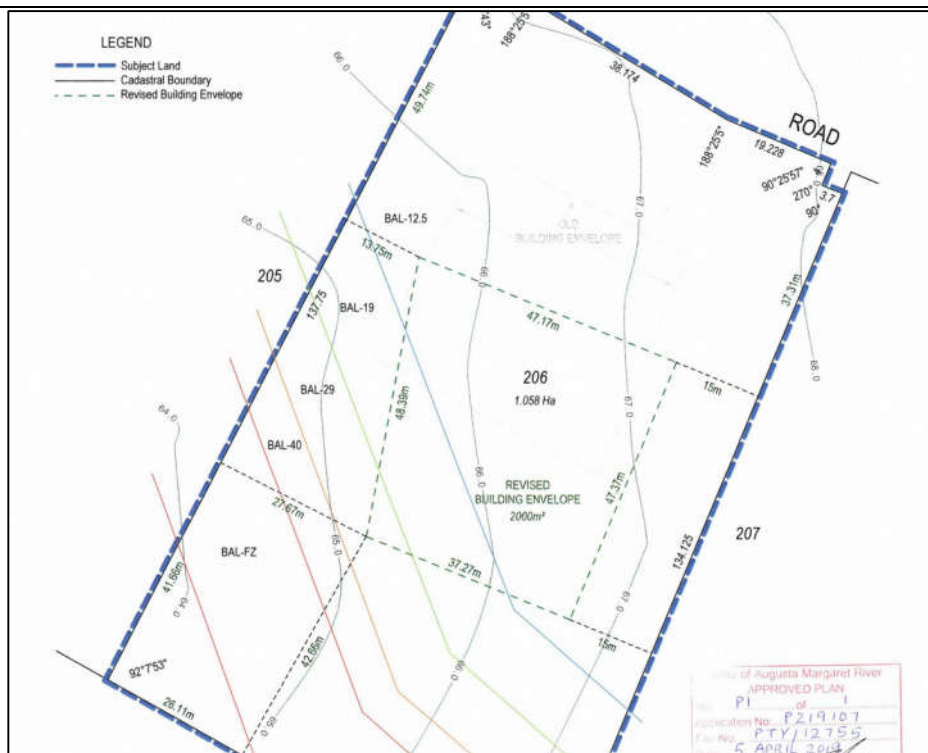
#### Planning History

##### Planning applications:

**P219107:** Building Envelope Variation, approved April 2019

Approval was granted to relocate the building envelope as prescribed by the Subdivision Guide Plan further south on the site as per the below plan:





Extract of approved plan from P219107: Existing building envelope

The planning approval included the following conditions:

2. The revised building envelope hereby approved, wholly replaces that previously applicable to the site. All development on the site shall be contained within the building envelope hereby approved.
3. Clearing of vegetation is prohibited outside the building envelope, unless in accordance with the *Bush Fires Act 1954* or required for the purpose of constructing an approved driveway, installing essential services, or removing dead or dangerous trees.

The unauthorised development is a **breach of Condition 2** of this planning approval.

**P222364:** Holiday House & subsequent renewal, most recently approved July 2022.

The dwelling is permitted to accommodate a maximum of 6 short stay guests until September 2025. At the time the holiday house renewal was assessed earlier this year, the extent of unauthorised development on the site was largely in-evident.

**P222737:** Compliance file raised following complaint from a neighbour regarding unauthorised development on the site. The compliance file will be closed following determination of the subject application.

#### Building Permits:

BLD/219194: Single Dwelling, Ancillary Dwelling, Shed & Rainwater Tank, approved May 2019

BLD/220418: Rainwater Tank, approved September 2020

BLD/222590: Swimming Pool & Barrier Fence, approved November 2022

#### Advertising/Agency Referrals

Has the application been referred to adjoining landowners/agency?

☐ Yes ☒ No ☐ N/A

The development is already existing and is not recommended to be approved due to the extent of non-compliance. Advertising would only be necessary when exercising discretion and approving the proposal.

#### Assessment of Application

Is the land referred in the Heritage Inventory?

☐ Yes ☒ No

Are there any Contributions applicable?

☐ Yes ☒ No

Are there any compliance issues in relation to existing development?

☒ Yes ☐ No

#### R Codes

Are R Codes applicable?

☐ Yes ☒ No

#### Development Standards (Schedule 9)

Are the development Standards applicable?

☒ Yes ☐ No



<p><b>Officer Comment</b></p>	<p><b>Schedule 9 Requirements:</b></p> <ul style="list-style-type: none"> <li>• Front setback: 30m required - &gt;30m – complies</li> <li>• Western side setback: 10m required – 3m setback to pump shed – <b>variation</b></li> <li>• Eastern side setback: 10m required – 15m setback to carport – complies</li> <li>• Rear setback: 30m required – 12m setback to gazebo – <b>variation</b></li> <li>• Plot ratio: 0.1 required – The definition of plot ratio does not typically include non-habitable areas, however in this instance if the total area of buildings was used to calculate the plot ratio, it would exceed 0.1 – <b>variation</b></li> </ul> <p>The above variations are not supported.</p> <p><b>Clause 4.2.4.2 Purpose and Objectives of the Rural Residential Zone:</b> The objectives of the zone include to:</p> <ul style="list-style-type: none"> <li>• recognise that the conservation of the physical, environmental and landscape characteristics of the land is paramount;</li> <li>• provide opportunities for a range of limited rural and related ancillary pursuits on rural-residential lots where those activities will be consistent with the amenity of the locality and the conservation and landscape attributes of the land;</li> </ul> <p>The sprawl of unauthorised development does not demonstrate a recognition of the physical, environmental and landscape characteristics of the land and surrounds. Furthermore, the expanse of outbuilding and carport space across the site is not consistent with the amenity of the locality. Insufficient justification has been provided for the extent of carport space or spread of development across the site.</p> <p>LPS1 defines a building envelope as follows: "building envelope" means an area of land within a lot marked on a plan approved by the responsible authority within which <i>all buildings</i> and effluent disposal facilities on the lot must be contained.</p> <p><b>Clause 4.22 Development in the Rural Residential Zone:</b></p> <ul style="list-style-type: none"> <li>• 4.22.2 (a) (i): all development on any lot shall be confined within the limits of the building envelope unless otherwise approved. <b>non-compliant</b></li> <li>• 4.22.6 (ii): Development of buildings or other structures is prohibited outside the building envelope unless approved by the local government. <b>non-compliant</b></li> <li>• 4.22.6 (iii): Except as otherwise made possible by the location of the building envelope, the minimum setbacks for any building or structure within the zone shall be as per the zone requirements (Schedule 9). Two Schedule 9 setbacks have been varied – <b>non-compliant</b></li> <li>• 4.22.6 (vii) (iv): Outbuildings shall complement the dwelling and shall be sited within the building envelope to achieve a relationship with the dwelling that will not detract from the visual and rural amenity of the site, unless for the purposes of livestock. The outbuildings do complement the dwelling in terms of design, materials and colours, however are not within the building envelope thus do not achieve the intended relationship with the dwelling – <b>non-compliant</b></li> </ul> <p><b>Clause 5.10 Building Envelopes:</b></p> <ul style="list-style-type: none"> <li>• 5.10.1: Where a building envelope is shown on any plan approved by the Local Government for the purpose of confining development to a specific portion of the land, all development shall be contained within the prescribed building envelope – <b>non-compliant</b></li> </ul> <p><b>Clause 5.14 Inappropriate or incongruous development:</b></p> <ul style="list-style-type: none"> <li>• 5.14.1: Where in the opinion of the local government, any building, structure, site work would not be in harmony with existing buildings, the landscape or locality by virtue of the bulk and mass of any building, the local government may refuse the proposal. The development is not in harmony with the existing buildings as it is outside of the building envelope and presents a significant amount of building bulk across the site.</li> </ul> <p>The unauthorised development is not consistent with the local Scheme or Policy requirements, nor is it considered to be consistent with orderly and proper planning.</p>
<p><b>Clause 67</b></p>	<p>In the opinion of the officer, would approval of the planning consent be appropriate under Clause 67 of the Deemed Provisions of the Scheme?</p>
<p><b>Officer Comment</b></p>	<p>No.</p>

	<p>Matters to be considered under Clause 67 include:</p> <ul style="list-style-type: none"> <li>• The aims and provisions of the Scheme</li> <li>• The requirements of orderly and proper planning</li> <li>• local planning policies</li> <li>• The compatibility of the development with the desired future character of its setting</li> <li>• The amenity of the locality including the character of the locality and social impacts of the development</li> </ul> <p><b>Clause 5.5 Variations to site and development standards and requirements:</b> This Clause provides that the power to approve variations to Scheme requirements may only be exercised if the local government is satisfied that:</p> <ul style="list-style-type: none"> <li>• Approval would be appropriate having regard to the criteria set out by Clause 67; and</li> <li>• The non-compliance will not have an adverse effect on the inhabitants or likely future development of the locality.</li> </ul> <p>For reasons discussed, approval of the proposal would not be appropriate under the matters to be considered at Clause 67.</p> <p>The non-compliance associated with the development is unacceptable.</p>
<b>In the opinion of the officer</b>	
i. Are utility services available and adequate for the development?	N/A
ii. Has adequate provision been made for the landscaping and protection for any trees or other vegetation on the land?	The applicant advises no vegetation modification or clearing was undertaken to construct the unauthorised works.
iii. Has adequate provision been made for access for the development or facilities by disabled persons?	N/A
iv. Is development likely to cause detriment to the existing and likely future amenity of the neighbourhood?	The site is not within a Visual Management Control Area under the <i>Local Planning Strategy 2036</i> .
v. Is the development likely to comply with AS3959 at the building permit stage?	N/A
<b>Other Comments</b>	
Any further comments in relation to the application?	
<b>Officer Comment</b>	<p>Due to the extent of variations and non-compliance with relevant planning framework that this unauthorised development presents, the application is recommended for refusal.</p> <p>Where retrospective development approval is not granted for existing development, the landowner would be issued with a Building Order to remove the structures by the Shire's Building Services Coordinator.</p>

#### OFFICER RECOMMENDATION

That the Manager of Planning and Regulatory Services **REFUSE TO GRANT** Planning Consent under Delegated Authority Instrument No. 34 pursuant to Clause 68(2) of the Deemed Provisions of Local Planning Scheme No. 1 for the proposed Retrospective Development outside of building envelope (Carport, Gazebo, Sauna, Pump Shed and Trailer / Carparking Area) at 827 (Lot 206) Burnside Road, Margaret River for the following reasons:

#### REASONS FOR REFUSAL

- The unauthorised development fails to comply with the following requirements of the Shire's *Local Planning Scheme No. 1*:
  - Clause 4.22.2 (a) and Clause 5.10.1 which require all development to be confined within the limits of the building envelope.
  - Clause 5.11 which requires development to be in compliance with the standards set out in Schedule 9.
  - Clause 4.2.4.2 (b) 'Objectives of the Rural Residential Zone' recognises the conservation of the landscape characteristics of the land. Building envelopes are designed to enable clustering of development thereby ensuring less visual impact on the landscape and the development is outside the limits of the building envelope.
  - Clause 5.5.3 (b) states that variations to Scheme standards should only be supported where the non-compliance will not have an adverse effect upon the inhabitants of the locality or the likely future development of the locality. Building envelopes are designed to mitigate such impacts.
- The unauthorised development fails to comply with the Performance Principles of *Local Planning Policy 1 – Outbuildings, Farm Buildings & Swimming Pools*.
- No special circumstances exist to justify the unauthorised development, and it poses a risk of establishing and undesirable precedent for development in the locality and the rural residential zone more broadly.
- The unauthorised development is a breach of the conditions of planning approval P219107, with specific regard to Condition 2:

- 2) The revised building envelope hereby approved, wholly replaces that previously applicable to the site. All development on the site shall be contained within the building envelope hereby approved.
5. The proposal is inconsistent with the Deemed Provisions of *Local Planning Scheme No. 1*, Matters to be Considered, at Clause 67 with specific regard to the following subclauses:
  - (a) The proposal is in conflict with the aims and provisions of the Scheme as they apply to the Rural Residential zone.
  - (b) The proposal is inconsistent with the orderly and proper planning of the Scheme area.
  - (c) The proposal has an unacceptable impact on, and lacks due regard to, the amenity and desired character of the area.
  - (d) Approval of the application will set an undesirable precedent for similar patterns of development in the Rural Residential zone.





# DEVELOPMENT APPLICATION ASSESSMENT Report to Manager Planning and Regulatory Services

Proposed Extractive Industry (Extension to Planning Approval P218026)  
Lot 68 Tanah Merah Road Bramley

Level 2

P222838; PTY/11901

REPORTING OFFICER : Don Bothwell  
DISCLOSURE OF INTEREST : Nil

General Information	
Lot Area	44 6651m <sup>2</sup>
Zone	Priority Agriculture
Proposed Development	An amendment has been requested to planning approval P215624, issued for an Extractive Industry. This most recent renewal/approval (P215624) was an amendment to the original approval for the Extractive Industry – P218026.
Permissible Use Class	Extractive Industry – 'A'. The previous most recent application for renewal – P215624 was included in the Development Assessment Report as it involved an amendment to previous decision made by Council at its Ordinary Meeting on 22 June 2016 (Item 11.2.1). Accordingly, this new renewal is following the same process.
Heritage/Aboriginal Sites	Nil.
Encumbrance	Leases pertaining to the former blue gum plantation on site – not impacted.
Date Received	08/12/2022



## Policy Requirements

Is the land or proposal referred to in any Council Policy? ☒ Yes ☐ No

<p>The Shire has seriously entertained revised draft Local Planning Policy 3 – <i>Extractive Industries</i> which replaces the existing LPP3. The draft revised LPP3 is being presented to Council for final determination at the 8 February 2023 Council Meeting. One of the main points of difference with the draft revised policy is the hours of operation permitted which has been reduced to conclude at 5:00pm on weekdays with no work permitted on Saturdays unless for the purpose of rehabilitation with no use of heavy machinery permitted.</p> <p>The new updated policy provisions of LPP3, specifically the amended hours of operation were discussed with the applicant who has agreed to amend the hours of operation on weekdays to reflect the updated policy. The applicant did not agree to ceasing work on Saturday mornings, but did agree to a slightly amended hours of operation on Saturdays from 8:00am until 1:00pm (current approval allows for commencement at 7am). On balance, considering that this is not a fresh application but a renewal to a pre-existing planning approval, the agreed hours of operation are considered to be a good outcome for the amenity of the surrounding residents with an extra hour of no extraction on Saturday mornings and an extra 2 hours in the late afternoon/evenings where there will be no extraction of raw materials.</p> <p>Accordingly, condition 6 has been recommended to be amended to reflect the updated hours of operation outlined above.</p>			
<b>Structure Plans and Local Development Plans (LDP's)</b>			
Is the land in any Structure Plan Area or subject to a LDP?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<b>Planning History</b>			
<ul style="list-style-type: none"> <li>Planning approval was issued on the 22 June 2016 for an Extractive Industry at Lot 68 Tanah Marah Road Bramley (Item 11.2.1). The approval was for a 5-year term from the 22 June 2016. The original approval (P218026) consists of 20 truck vehicle movements per day with haulage through adjoining Lot 70, south along Wurring Road and west along Osmington Road to Bussell Highway.</li> <li>The following conditions of the original approval were amended by the first renewal/amended application (P215624): <ul style="list-style-type: none"> <li><i>2. The approval is valid for a period of five (5) years starting from 22 June 2016.</i></li> <li><i>4. Prior to the commencement of the use, an access easement is to be put in place over an agreed alignment on Lot 70 Wurring Road, in favour of Lot 68 Tanah Marah Road, Bramley.</i></li> <li><i>19. Satisfactory arrangements being made with the Shire for the upgrading of Wurring Road, to a 6.0m wide gravel surface, from the entry onto Wurring Road from Lot 70, north to the intersection with Bussell Highway and to the south to the intersection with Osmington Road. The upgrade shall be completed prior to the operation of the extractive industry commencing.</i></li> </ul> </li> <li>The amendment removed ambiguity around road upgrade requirements and accommodated the request of the adjoining property owners (Lot 70) to enter into a license rather than an easement.</li> <li>A signed copy of the license agreement was provided to the Shire on the 7 February 2017.</li> <li>Additionally, the applicant requested that the 5-year term, detailed in condition 2, be updated to reflect the date of determination of the initial renewal with extension until 23 March 2023 granted.</li> <li>No changes were sought under P215624 to the operational aspects of the proposal approved under the original approval (P222838).</li> </ul>			
Has the application been referred to adjoining landowners/agency?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
Has a submission been received by Council?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
<b>Assessment of Application</b>			
Is the land referred in the Heritage Inventory?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there any Contributions applicable?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there any compliance issues in relation to existing development?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<b>R Codes</b>			
Are R Codes applicable?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<b>Development Standards (Schedule 9)</b>			
Are the development Standards applicable?		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<b>Clause 67</b>			
In the opinion of the officer, would approval of the planning consent be appropriate under Clause 67 of the Deemed Provisions of the Scheme?			
<b>Officer Comment</b>	<p>Pursuant to clause 77 of the Deemed Provisions of Local Planning Scheme No.1, the Shire may amend an aspect of an approval that would not substantially change the development approved. In this case, the change is of a technical and minor nature and would not result in a material change to the approved development. In this respect, it is considered that the amendment is minor and is therefore capable of being considered under this part of the Scheme and under Delegation (Delegation 9).</p> <p>In relation to relevant conditions 2, 4, 9, 13, 14, 20, 21, 22, 23 of the renewal/previously amended application, the applicant has provided the below information:</p> <p><i>Condition 2</i> - Additional 3 years proposed from existing expiry date of 22 March 2023.</p> <p><i>Condition 4</i> – Laneway access agreement has been executed with the landowners of Lot 70 Wurring Road, Bramely with two further six (6) month options if required.</p> <p><i>Conditions 9</i> – School bus operator contacted and agreeable to the use of Wurring and Osmington Roads during school bus hours of operation with two way contact with the operator</p>		



	<p>to be maintained. Condition has been retained but the Shire does not object to this if suitable agreements are in place.</p> <p><i>Conditions 13 &amp; 14</i> – Visual buffer exists at the southern boundary of Lot 68 Tanah Merah Road by way of Blue Gums and assorted mature trees on neighbouring land to the south. Of the view that this meets the intent of BCP's previously submitted landscape plan.</p> <p><i>Conditions 20, 21, 22 &amp; 23</i> – Please refer to Traffic Assessment undertaken by Coates Civil consulting.</p> <p>The applicant has demonstrated compliance with critical conditions of the original approval such as road widening and access agreements with the owners of Lot 70 Wurring Road. The balance of the conditions applied to the original approval have been carried over to this renewal application and will be required to be satisfied.</p>
<b>In the opinion of the officer</b>	
vi. Are utility services available and adequate for the development?	Yes.
vii. Has adequate provision been made for the landscaping and protection for any trees or other vegetation on the land?	Yes.
viii. Has adequate provision been made for access for the development or facilities by disabled persons?	N/A
ix. Is development likely to cause detriment to the existing and likely future amenity of the neighbourhood?	No.
x. Is the development likely to comply with AS3959 at the building permit stage?	N/A
<b>Other Comments</b>	
Any further comments in relation to the application?	
<b>Officer Comment</b>	Conditional Approval recommended.

#### OFFICER RECOMMENDATION

**That the Coordinator Planning Services Grant Planning Consent under Delegated Authority Instrument No. 34 pursuant to Clause 68(2) of the Deemed Provisions of Local Planning Scheme No. 1 for the proposed Extractive Industry (Extension to Planning Approval P218026) at Lot 68 Tanah Merah Road Bramley subject to compliance with the following conditions:**

#### CONDITIONS

- The development is to be carried out in compliance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent.

Plans and Specifications	P1 – P6 received at the Shire on 6 May 2016
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- This approval is valid for a period of three (3) years, starting on the date this amended approval is granted, and subject to compliance with condition 5 of this approval.
- The use of Tanah Merah Road and Wurring Road north of lot 68 for haulage is prohibited and does not form part of this approval.
- The applicant must enter into, and maintain a licence with the owner(s) of Lot 70 Wurring Road, Bramley allowing the applicant to use the land for haulage/access between the site and Wurring Road. The applicant must provide to the Shire a copy of any further lease or licence within 14 days of its execution by the parties to it. If the lease or licence allowing the applicant to use Lot 70 Wurring Road for haulage/access is terminated, or if the term of the lease or licence or any subsequent term ceases without a replacement lease or licence allowing use of Lot 70 Wurring Road, Bramley for haulage/access being entered into, then the approval for the Extractive Industry ceases and is of no further effect.
- Should the lease or licence allowing the applicant to use Lot 70 Wurring Road for haulage/access be terminated or if any subsequent term ceases without a replacement lease or licence, then the areas being extracted shall be rehabilitated to the satisfaction of the Shire unless alternative arrangements can be made within 90 days of the termination or term of lease or licence ceasing.
- The extractive industry, including site construction, shall not operate outside the hours of 7am and 5pm Monday to Friday and 8:00am until 1:00pm on Saturday. The extractive industry shall not operate on Sundays or public holidays.
- Extraction shall not occur within 500m of the dwellings located at 772 (Lot 69) and 790 (Lot 13) Wurring Road and Lot 671 Tanah Merah Road until such time that a noise impact assessment is provided to demonstrate that the use is capable of operating in compliance with the Environmental Protection (Noise) Regulations 1997.



8. Extraction shall not occur below the 106m contour until such time that a hydrogeological report is provided demonstrating that extraction below the 106m contour will not intercept the water table.
9. Trucks shall not utilise Wurring and Osmington Road during School Bus operating times.
10. The Proponent shall implement, to the satisfaction of the Shire, all measures necessary to prevent erosion or airborne transmission of soil (dust control) from the development.
11. Surface water runoff from the site shall be contained onsite and appropriate measures shall be put in place, to the satisfaction of the Shire, to avoid sediment mobilisation to any open watercourse or public drainage system. (see advice note 'b').
12. Areas of native vegetation shall be retained and must not be damaged by any works including the placement of fill, rubble, rubbish or any other material, nor is any removal, clearing or damage to occur to any vegetation. A minimum 5m buffer from tree crown drip zones shall be provided to prevent damage to roots and accidental machinery damage.
13. A visual screen/buffer shall be planted along the southern boundary of Lot 68 Tanah Marah Road, areas of the site where topsoil bunds are not being provided and within 15m of the watercourses on the property. The vegetation screen/buffer shall be established in accordance with an approved landscaping plan and planting of the buffer shall be completed within 60 days of the approval of the Landscape Plan (see advice note 'c').
14. A Landscape Plan shall be prepared to the satisfaction of the Shire by a suitably qualified and/or experienced landscape consultant for the visual buffer required under condition 13. The Landscape Plan shall be submitted to the Shire for approval prior to the commencement of works. (see advice note 'l')
15. Extraction is confined to one cell at any given time.
16. Rehabilitation shall commence immediately upon completion of extraction from a cell and prior to commencement of extraction of subsequent cells. Rehabilitation shall be completed within 90 days of cell completion or as otherwise agreed to by the Shire.
17. All excavation areas shall be rehabilitated to the satisfaction of the Shire within 12 months from the expiry date of this approval or within 12 months of depletion of the recourse. (see advice note 'h')
18. The excavation shall not intercept the water table, and works must immediately cease should this occur. (see advice note 'd')
19. There shall be no standing water occurring at the end of the extractive operation. (see advice note 'd')
20. Satisfactory arrangements being made with the Shire for the upgrading of Wurring Road, to a 6.0m wide gravel surface, from the entry onto Wurring Road from Lot 70 to the south to the intersection with Osmington Road. The upgrade shall be completed prior to the operation of the extractive industry commencing.
21. Prior to the operation of the extractive industry, engineering drawings and specifications for the upgrading of Wurring Road, are to be submitted, approved, and road construction works, undertaken in accordance with the approved plan, engineering drawings and specifications. All associated works required in the upgrade, including but not limited to construction, clearing and drainage works will be at the applicant's cost, to the satisfaction of the Shire.
22. Prior to the commencement of onsite works, the proponent shall enter into an agreement with the Shire regarding a contribution for the purposes of grading, pruning and maintenance works on Wurring and Osmington Roads.
23. Works are prohibited within the road reserve including any pruning or clearing of vegetation without prior written approval of the Shire. The Proponent shall submit and implement a Traffic Management Plan prepared by a licenced Traffic Manager in accordance with MRWA Traffic Management Code of Practice and Australian Standards AS1742.3-2002 for any works on or within the road reserve (including road).

#### ADVICE NOTES

- a) You are advised of the need to comply with the requirements of the following other legislation:
  - (i) *Health (Miscellaneous Provisions) Act 1911* and Department requirements in respect to the development and use of the premises; and
  - (ii) *The Bush Fires Act 1954* as amended, Section 33(3), Annual Bush Fires Notice applies to this property.
  - (iii) *The Aboriginal Heritage Act 1972*
- b) The proponent is also advised to refer to the principles of best practice drainage design as described in the Stormwater Management Manual for Western Australia.
- c) In respect to the visual screen/buffer, it is expected that given the proposal will be in operation for 10 years that buffers should be in the vicinity of 10m in width, dependant on the plant spacing and species used.
- d) The Department of Water (DoW) has advised as follows:
  - The extractive industry shall not intercept the water table;
  - Dewatering of the extraction area is not permitted;
  - If any interception of ground water occurs, the Shire shall be advised within 72 hours followed by agreed remedial action.

- e) The Proponent is required to ensure that ongoing operational activities associated with the approved development including processing and transportation, and any other works that cannot be considered as construction site work complies with the standard prescribed under the *Environmental Protection (Noise) Regulations 1997*.
- f) Noise monitoring required at the request of the Shire is to be undertaken by a person authorised under the *Environmental Protection Act 1986*.
- g) As a noise control measure it is advised that it is considered to install 'broadband' reversing alarms on all mobile plant (including transport vehicles) instead of 'tonal' alarms. Care must be taken to ensure that a safe work place is maintained when choosing those alarms.
- h) In regards to rehabilitation of the site the 'Guidelines for Preparing Mine Closure Plans, Department of Mines and Petroleum and Environmental Protection Authority, June 2011' provides a useful reference.
- i) Any proposed trucks entering signs on Wurring Road shall be funded by the Applicant and will require the prior approval of the Shire.
- j) The proposed crushing operations may be prescribed and as such require a Works Approval, License or Registration under Part V of the *Environmental Protection Act 1986*. The proposal may be prescribed under Category 70.
- k) The Proponent is advised that the following dust minimisation practises should be implemented for the proposed gravel extraction operations:
  - i. Stockpiles of processed material will be sprayed with water and compacted as required;
  - i. Green belts will be used to augment the adjoining road reserve in reducing wind-speed through the pit-operations and to assist with trapping any resulting dust;
  - ii. Completed sections of the pit will be rehabilitated as soon as practicable to reduce the area of open ground and help reduce wind speed;
  - iii. The top soil/root layer will not be removed until immediately prior to the commencement of gravel rock extraction;
  - iv. Covering of loads before leaving property;
  - v. Stabilisation of areas completed over summer (when vegetation stabilisation is impracticable) is to be achieved by spreading mulch;
  - vi. Induction of employees and contractors includes awareness of dust generation and management measures; and
  - vii. Complaint response procedure.
- l) The Landscape Plan shall be drawn to scale and show the location, name and mature heights of existing and proposed trees and shrubs and ground covers as recommended in the Cape to Cape Landcare Companion.