GOVERNMENT OF
WESTERN AUSTRALIA

Environmental Protection Authority

Operations Manager
Brikmakers
PO Box 1257
SOUTH GUILDFORD WA 6936

Your Ref:
Our Ref: *CMS15304*
Enquiries: *Teresa Bryant, 6145 0800*
Email: *Teresa.Bryant@epa.wa.gov.au*

Dear Sir/Madam

NOTICE UNDER SECTION 39A(3)
Environmental Protection Act 1986

PROPOSAL: **Extractive Industry Clay Lot 7 Toy Road Bindoon**
LOCATION: **Shire of Chittering**
PROPONENT: **Brikmakers**
DECISION: **Not Assessed: Public Advice Given**

The Environmental Protection Authority (EPA) understands that you wish to undertake the above proposal which has been referred to the EPA for consideration of its potential environmental impact.

This proposal raises a number of environmental issues. However, the overall environmental impact of the proposal is not so significant as to require assessment by the EPA, and the subsequent setting of formal conditions by the Minister for Environment under Part IV of the *Environmental Protection Act 1986*. Accordingly, the EPA has determined not to assess this proposal.

Nevertheless, the EPA has provided the attached advice to you as the proponent, and other relevant authorities, on the environmental aspects of the proposal.

The EPA's decision to not assess the proposal is open to appeal. There is a 14-day period, closing 10 May 2016, during which, on payment of the appeal fee, an appellant may ask the Minister to consider directing the EPA to reconsider this decision or conduct a formal assessment.

Information on the outcome of the appeals process is available through the Appeals Convenor's website, www.appealsconvenor.wa.gov.au, or by telephoning 6467 5190 after the closing date of appeals.

Yours sincerely

N. Arrowsmith

Naomi Arrowsmith
Director
Strategic Policy and Planning Division

Delegate of the Chairman of the Environmental Protection Authority
Under Notice of Delegation No. 33 published 17 December 2013

26 April 2016

Encl: Public Advice

GOVERNMENT OF WESTERN AUSTRALIA

Environmental Protection Authority

Ms Bronwyn Southee
Executive Manager Development Services
6177 Great Northern Highway
BINDOON WA 6502

Your Ref:
Our Ref: *CMS15304*
Enquiries: *Teresa Bryant, 6145 0800*
Email: *Teresa.Bryant@epa.wa.gov.au*

Dear Ms Southee

NOTICE UNDER SECTION 39A(3)
Environmental Protection Act 1986

PROPOSAL: **Extractive Industry Clay Lot 7 Toy Road Bindoon**
LOCATION: **Shire of Chittering**
PROPONENT: **Brikmakers**
DECISION: **Not Assessed: Public Advice Given**

Thank you for your letter referring the above matter to the Environmental Protection Authority (EPA).

This proposal raises a number of environmental issues. However, the overall environmental impact of the proposal is not so significant as to require assessment by the EPA, and the subsequent setting of formal conditions by the Minister for Environment under Part IV of the *Environmental Protection Act 1986* (EP Act). Accordingly, the EPA has determined not to assess this proposal.

Nevertheless, the EPA has taken into account the points raised in your letter and has provided the attached advice to you, the proponent and other relevant authorities on the environmental aspects of the proposal.

The EPA's decision to not assess the proposal is open to appeal. There is a 14-day period, closing 10 May 2016, during which, on payment of the appeal fee, an appellant may ask the Minister to consider directing the EPA to reconsider this decision or conduct a formal assessment.

Level 8, The Atrium, 168 St Georges Terrace, Perth, Western Australia 6000
Telephone 08 6145 0800 Facsimile 08 6145 0895 Email info@epa.wa.gov.au

Locked Bag 10, East Perth WA 6892

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Information on the outcome of the appeals process is available through the Appeals Convenor's website, www.appealsconvenor.wa.gov.au, or by telephoning 6467 5190 after the closing date of appeals.

As a decision-making authority that has referred or been required to refer a proposal under section 38 of the EP Act, the is constrained under section 41(2) of the EP Act from making any decision that could have the effect of causing or allowing the proposal to be implemented until after the appeal period has closed and any appeals received have been determined or an authority is served under section 45(7) of the EP Act.

Yours sincerely

N. Arrowsmith

Naomi Arrowsmith
Director
Strategic Policy and Planning Division

Delegate of the Chairman of the Environmental Protection Authority
Under Notice of Delegation No. 33 published 17 December 2013

26 April 2016

Encl: Public Advice

GOVERNMENT OF WESTERN AUSTRALIA

Environmental Protection Authority

Chief Executive Officer
Shire of Chittering
PO BOX 70
BINDOON WA 6502

Your Ref:
Our Ref: *CMS15304*
Enquiries: *Teresa Bryant, 6145 0800*
Email: *Teresa.Bryant@epa.wa.gov.au*

NOTICE UNDER SECTION 39A(3)
Environmental Protection Act 1986

PROPOSAL: **Extractive Industry Clay Lot 7 Toy Road Bindoon**
LOCATION: **Shire of Chittering**
PROPONENT: **Brikmakers**
DECISION: **Not Assessed: Public Advice Given**

The above proposal has been referred to the Environmental Protection Authority (EPA) for consideration of its potential environmental impact.

This proposal raises a number of environmental issues. However, the overall environmental impact of the proposal is not so significant as to require assessment by the EPA, and the subsequent setting of formal conditions by the Minister for Environment under Part IV of the *Environmental Protection Act 1986*. Accordingly, the EPA has determined not to assess this proposal.

Nevertheless, the EPA has provided the attached advice to the proponent and other relevant authorities on the environmental aspects of the proposal.

The EPA's decision to not assess the proposal is open to appeal. There is a 14-day period, closing 10 May 2016, during which, on payment of the appeal fee, an appellant may ask the Minister to consider directing the EPA to reconsider this decision or conduct a formal assessment.

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This advice is provided for your information.

N. Arrowsmith

Naomi Arrowsmith
Director
Strategic Policy and Planning Division

Delegate of the Chairman of the Environmental Protection Authority
Under Notice of Delegation No. 33 published 17 December 2013

26 April 2016

Encl: Public Advice

PUBLIC ADVICE UNDER SECTION 39A(7) ENVIRONMENTAL PROTECTION ACT 1986

EXTRACTIVE INDUSTRY - CLAY

Summary

Brikmakers Pty Ltd proposes to extract clay from Lot 7 Toy Rd Bindoon, within the Shire of Chittering. Approximately 15 hectares (ha) of predominately pasture land will be disturbed for the construction of two clay excavation pits, a stockpile area, two dams, and bunds. Upgrading of a causeway across the Brockman River, which traverses west to east along the southern portion of the property, together with a new crossover to Toy Road is also proposed.

Excavation is proposed to occur in two stages and whilst operations are expected to continue for 20 years, the proponent is initially seeking development approval for a 10 year period. The development envelope is shown in Attachment 1.

The proposal was advertised for public comment and the Environmental Protection Authority (EPA) notes that eight public comments were received. The submissions raised a number of issues including impacts to the Brockman River, potential for acid sulphate soils, clearing of vegetation and associated impacts to fauna, amenity and inconsistencies in the reports.

The EPA has considered the proposal in accordance with the requirements of the *Environmental Protection Act 1986* (EP Act) and the *Environmental Impact Assessment Administrative Procedures 2012.* In making its decision on whether to assess the proposal, the EPA considered the 10 aspects of the significance test as set out in clause 7 of the *Environmental Impact Assessment Administrative Procedures 2012:*

1. values, sensitivity and quality of the environment which is likely to be impacted;
2. extent (intensity, duration, magnitude and geographic footprint) of the likely impacts;
3. consequence of the likely impacts (or change);
4. resilience of the environment to cope with the impacts or change;
5. cumulative impacts with other projects;
6. level of confidence in the prediction of impacts and the success of proposed mitigation;
7. objects of the Act, polices, guidelines, procedures and standards against which a proposal can be assessed;
8. presence of strategic planning policy framework;
9. presence of other statutory decision-making processes which regulate the mitigation of the potential effects on the environment to meet the EPA's objectives and principles for EIA; and
10. public concern about the likely effects of the proposal, if implemented, on the environment.

In considering the potential direct and indirect impacts of the proposal on the Hydrological processes and Inland water environmental quality, Flora and vegetation, Terrestrial fauna and Amenity, the EPA has had particular regard to:

- advice from the Department of Water (DoW) that:
    - intersection of waterways/drainage lines and the proposed bridge over the Brockman River will be subject to a bed and banks permit;
    - a minimum 30 metre (m) setback to the fringing vegetation of the waterways and drainage lines should be applied; and
    - the WMP should be amended to the satisfaction of DoW;
- the impacts to flora and vegetation, which are not likely to pose a significant impact due to the development envelope occurring in an area that is predominately cleared and previously used for grazing;
- the sites limited habitat value and small amount of clearing required, together with proponents commitment to assess trees for nesting hollows and retain where possible, prior to clearing;
- the impacts to amenity in the form of noise, dust and visual which are not likely to pose a significant impact due to:
    - a site specific study and modelling which determined the proposal would comply with the *Environmental Protection (Noise) Regulations* 1997 (Noise Regulations) at the nearest noise sensitive receivers;
    - proponent's commitments and operational procedures to implement the assumptions in the noise study;
    - proponent's commitments to management activities as proposed in the Dust Management Plan; and
    - the proponents assessment of visual amenity and management commitment to reduce visual impacts;
- the presence of other statutory processes, including requirements for permit(s) from DoW (*Rights in Water and Irrigation Act 1914*) and DER (EP Act Part V clearing) and consideration of the Application for Planning Approval, by the Shire of Chittering.

In summary, although the proposal raises a number of environmental issues, the EPA considers that the likely environmental effects of the proposal are not so significant as to warrant formal assessment. The EPA is of the view that the potential impacts of the proposal can be adequately managed by the proponent's mitigation and management measures.

It is also noted that other statutory processes can be used to regulate and implement mitigation and management measures including the requirement to have approval to:

- clear native vegetation through a Part V Division 2 Clearing;
- requirement for bed and bank permit from the Department of Water; and
- consideration of the Planning Application by the Shire of Chittering.

1. Environmental Factors

The EPA has identified the following preliminary environmental factors relevant to this proposal:

a) Hydrological processes and Inland waters environmental quality;

b) Flora and vegetation;

c) Terrestrial fauna; and

d) Amenity and Human health.

There were no factors, including the interaction between the environmental factors, that were determined to have significant environmental impacts that would require further formal assessment under Part IV of the EP Act. The EPA considers that the mitigation of the potential effects on the environment can be regulated by other statutory decision-making processes and through the implementation of proponent commitments and best practice measures in accordance with this advice.

2. Relevant Policy and Guidance

The EPA has given consideration to the following relevant published EPA policies and guidelines, noting that other published policies and guidelines pertaining to this proposal were considered but not determined to be relevant:

a. Hydrological processes and Inland waters environmental quality

- Position Statement 4 – *Environmental Protection of Wetlands*, November 2004, Environmental Protection Authority Western Australia (PS 4).
- Guidance Statement 10 – *Level of Assessment for Proposals affecting natural areas within the System 6 region and Swan Coastal Plain portion of the System 1 region,* June 2006, Environmental Protection Authority of Western Australia (GS 10).

b. Flora and vegetation

- Position Statement 2 – *Environmental Protection of Native Vegetation in Western Australia,* December 2000, Environmental Protection Authority Western Australia (PS 2).
- Position Statement 3 - *Terrestrial Biological Surveys as an Element of Biodiversity Protection,* March 2002, Environmental Protection Authority Western Australia (PS 3).
- Guidance Statement 10 – *Level of Assessment for Proposals affecting natural areas within the System 6 region and Swan Coastal Plain portion of the System 1 region,* June 2006, Environmental Protection Authority of Western Australia (GS 10).

c. Terrestrial fauna

- Position Statement 3 - *Terrestrial Biological Surveys as an Element of Biodiversity Protection*, March 2002, Environmental Protection Authority Western Australia (PS 3).

d. Amenity and Human health

- Guidance Statement No.3 - *Separation Distances between Industrial and Sensitive Land Uses*, June 2005, Environmental Protection Authority Western Australia (GS 3).

- Environmental Assessment Guideline 13 - *Consideration of environmental impacts from noise,* September 2014, Environmental Protection Authority Western Australia (EAG 13).
- Guidance Statement 33 – *Environmental Guidance for Planning and Development*, May 2008, Environmental Protection Authority of Western Australia (GS 33).

3. Advice and Recommendations regarding Environmental Issues

a. Hydrological processes and Inland waters environmental quality

The EPA's objective for these factors are:

- *To maintain the hydrological regimes of groundwater and surface water so that existing and potential uses, including ecosystem maintenance, are protected.*
- *To maintain the quality of groundwater and surface water, sediment and biota so that the environmental values, both ecological and social, are protected.*

The project area is located approximately 175m at the closest point to the Brockman River, a Conservation Category Wetland. It is adjacent to one drainage line and will intercept two other drainage lines, that all flow to the Brockman River. The amended the proposal does not divert the drainage lines into dams and the EPA expects that the Excavation and Management Plan and Water Management Plan (WMP) will be amended accordingly.

A permit will be required for the proposed bridge crossing over the Brockman River.

The EPA expects that a standard minimum 30m setback of the dams from the fringing vegetation of the waterways be applied consistent with *State Planning Policy 2.9 Water Resources* (WAPC, 2006).

The EPA notes that according to the Excavation and Management Plan, which was part of the proposal referred, none of the at risk acid sulphate soil (ASS) conditions exist at the site or near the excavations. Brikmakers regularly samples clays and stored water as part of its normal operations for production quality control and environmental monitoring policy.

Summary

Having regard to the:-

- location of the proposal adjacent to the Brockman River CCW;
- advice from DoW regarding requirements for permit(s) for diversion of any surface water drainage lines and the crossover of the Brockman River, setbacks to drainage lines and additional requirements needed in the WMP; and
- the actions and commitments made by the proponent in the referral documentation (subject to amendments),

the EPA considers that the proposal can meet the EPA's objectives for Hydrological processes and Inland waters environmental quality and that the likely environmental

effects of the proposal are not so significant as to warrant formal assessment, provided:-

- a minimum 30m setback of the dams from the fringing vegetation of the drainage line is provided; and,
- the proposal is implemented in accordance with the Water Management Plan, subject to modification to the satisfaction of the DoW.

b. Flora and vegetation;

The EPA's objective for this factor is to maintain representation, diversity, viability and ecological function at the species, population and community level.

The proposal area is mostly cleared and according to the referral documentation, removal of only scattered *Eucalyptus rudis* and *Corymbia calophylla* will be required.

The Department of Environmental Regulation (DER) have advised that the clearing can be appropriately managed by DER through the clearing permit provisions of the EP Act.

According to the proponent's referral documentation, in addition to planting on the temporary visual and noise screening bunds, some additional plantings of native trees will be retained in tree belts with the majority of the site being returned to pasture.

Summary

Having regard to the:-

- lack of vegetation structure and small amount of clearing required; and
- proponent's commitment to undertake revegetation at closure with pasture and native vegetation,

the EPA considers that the proposal can meet the EPA's objectives for **F**lora and vegetation and that the likely environmental effects of the proposal are not so significant as to warrant formal assessment provided that the proposal is implemented in accordance with the referral documentation. It is noted that the clearing can be regulated through other statutory processes including under Part V (Clearing) of the EP Act.

c. Terrestrial fauna

The EPA's objective is to maintain representation, diversity, viability and ecological function at the species, population and assemblage level.

The EPA considers the site to have limited habitat value and notes that implementation of the proposal is expected to result in the removal of scattered paddock trees.

According to the risk assessment within the proponents Excavation and Management Plan, based on an initial observation of the trees to be removed, none were likely to contain hollows suitable for Black Cockatoos. Trees will be assessed again and if nesting hollows are found, management will aim to retain the tree and/or provide nesting boxes.

Summary

Having regard to the:-

- the small amount of clearing required; and,
- proponent's commitment to undertake a more thorough investigation for trees with hollows and retain any, where possible,

the EPA considers that the proposal can meet the EPA's objectives for Terrestrial Fauna and that the likely environmental effects of the proposal are not so significant as to warrant formal assessment provided that the proposal is implemented in accordance with the referral documentation. Further, it is noted that impacts to threatened fauna can be considered through other statutory processes including under Part V (Clearing) of the EP Act.

d. Amenity and Human Health (noise, dust and visual)

The EPA's objective for these factors are:

- *To ensure that impacts to amenity are reduced as low as reasonably practicable.*

- *To ensure that human health is not adversely affected.*

The nearest sensitive receptor is located 450m west, with 5 more located approximately 750m to the south and north, of the proposed excavation area. The EPA notes the buffer is marginally less than the minimum buffer distance indicated for clay extraction or processing in GS 3. The EPA also notes this proposal is for extraction only and does not include a processing component.

Noise

The proponent has undertaken a site specific study for noise. The EPA considers the site specific study provided the most appropriate guide to determining the separation distance that should be maintained between the proposal and sensitive land uses. The study determined that the proposal complies with the *Environmental Protection (Noise) Regulations* 1997 (Noise Regulations) at the nearest noise sensitive receivers, on the basis that:-

- noise suppression kits are fitted to the dozer;
- 6.0m high earth bunds are constructed on the west and south boundary of the loading area;
- 5.0m earth bund constructed north of the dam for Stage 1 and 7.5m for Stage 2; and
- trucks travel 25km/h while on the access road.

Dust

The proponent has prepared a Dust Management Plan which includes a risk assessment and commits to minimising dust through site design including planting screening tree belts and operational management actions.

Whilst the management measures proposed will reduce dust, sensitive receptors are located closer than the minimum, and within the range, of the generic separation distance indicated in the EPA's GS 3.

In the absence of a site specific study to support a reduced separation distance but recognising the proposal is for extraction only, the EPA considers that additional measures should be implemented to reduce the risk of nearby sensitive receptors being affected.

Visual

The EPA notes the proponent has undertaken a basic visual impact assessment and has made a number of commitments in the Excavation and Management Plan including staging of the excavation area and rehabilitation to reduce visual impacts.

Summary

Having regard to the:-

- noise assessment which confirms the proposal would comply with Noise Regulations;
- proponents management and operational commitments in the Dust Management Plan; and
- the use of bunds and vegetation and other management commitments to reduce visual impacts;

the EPA considers that the proposal can meet the EPA's objectives for Amenity and that the likely environmental effects of the proposal are not so significant as to warrant further formal assessment provided that the proposal is implemented in accordance with the referral documentation and that impacts to amenity are considered by the Shire of Chittering as part of its assessment of the Application for Planning Approval.

If approved by the Shire of Chittering, conditions requiring additional dust management actions should be included to reduce the risk of nearby sensitive receptors being affected.

Attachment 1