

State Administrative Tribunal

Planning and Development Act 2005

Matter No. DR 63 of 2022

IN THE MATTER OF

Catalano Pty Ltd

Applicant

AND

The Shire of Harvey

Respondent

Supplementary Witness Statement of Stephen Geoffrey Allerding

File Date:

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INTRODUCTION

1. I have been instructed to provide a Responsive Statement to the “Additional Witness Statement of Elizabeth Edwards forming part of materials submitted on behalf of the Respondent” (**Additional Statement of Ms Edwards**) dated 31 May 2024.
2. In doing so, my Responsive Statement also updates my original Witness Statement dated 18 July 2022 (**my Original Statement**) to reflect any change of opinions that may arise from the recent gazettal of the Shire of Harvey’s Local Planning Scheme No. 2 (**LPS2**).

ZONING OF THE SITE AND USE PERMISSIBILITY

3. The Subject Land is now zoned under the Shire of Harvey’s LPS2 with the following designations:
 - Zoning: Strategic Industry and included within a Restricted Use overlay designation of “R3” – Kemerton Industry Buffer; and,
 - Contained within Special Control Area 2 (**SCA2**) for “Basic Raw Materials”.
4. With respect to the zoning of the land, the use of “Industry – Extractive” remains as a Discretionary (“A”) use under LPS2. This is equivalent, or at least similar to, the previous designation as an SA use under TPS1.
5. An “A” use under LPS2 is described as follows:

means that the use is not permitted unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64 of the deemed provisions
6. In my opinion these designations are sufficiently similar to indicate that the permissibility of the use has not altered.
7. Consideration has then been given to the exercise of that discretion arising from the modified provisions under LPS2. These provisions have been taken from the Additional Statement of Ms Edwards and are outlined in this statement.

OTHER PROVISIONS OF THE SCHEME

8. The Additional Statement of Ms Edwards has identified a range of Clauses she submits collectively result in “significant” changes to the Scheme from TPS1 to LPS2. Those Clauses include:

- Clause 9 – Aims and Objectives of the Scheme.
- Clause 20 – Restricted Uses
 - o Schedule 2 – Restricted Uses
 - R3 – Kemerton Industry Buffer
- Clause 32 – Additional Site and Development Requirements
 - o Schedule 4 – Additional Site and Development Requirements
 - - Clause 6 – Vegetation Protection
 - - Clause 20 – Kemerton Strategic Industrial Area
- Clause 36 – Special Control Areas
 - o Schedule 6 – Special Control Areas
 - - SCA2 – Basic Raw Materials

9. I have reviewed those clauses and provide the following comments as to what effect, if any, they make to the concluding opinions expressed in my Original Statement.

LPS2: Clause 9 – Aims and Objectives of the Scheme

Aim	Comment
9.1 Facilitate the effective implementation of the Local Planning Framework, including the intentions and desired outcomes of the Local Planning Strategy; and	9.1 acknowledges the importance of referencing and implementation of the intentions and desired outcomes of the Shire’s adopted Local Planning Strategy (LPS). I refer to my Original Statement paragraphs 29-33 which outlines relevant passages of the Shire’s adopted LPS which include: <ul style="list-style-type: none"> • The overall objective of the KSIA to enable the establishment of resource processing industries and associated supporting activities in order to fulfill Kemerton’s designated role as the primary strategic industrial area for the south-west region; and, • Recognition of the area as “Strategic Minerals and Basic Raw Materials Resource Policy areas” which are areas shown on Local Planning Scheme Maps “... to protect these areas for future mining/extraction.”

Aim	Comment
	<p>I refer to paragraphs 12-17 of my Original Statement which requires planning to consider the sustainable use and development of land by taking a balanced approach to consider a range of principles, not just relating to one element (and relevantly in this matter, the environment).</p>
<p>9.2 Coordinate and integrate planning at the local level with planning at regional and state levels; and</p>	<p>The need to coordinate the Local Planning Framework with the planning framework at the State and regional levels, extends the principle identified in 9.1. I refer to the list of planning instruments included in Table 1 under paragraph 18 of my Original Statement. An assessment of these State planning instruments is undertaken at paragraphs 20-28, including under Table 2.</p> <p>These instruments, amongst other things, reinforce the importance of not only balancing the need to protect, conserve and enhance the natural environment, but also the need to protect and extract basic raw materials (particularly Significant Geological Supplies (SGS)) to help facilitate growth targets and associated infrastructure for the Greater Bunbury Region.</p> <p>The requirement for planning to take a broad role to balance competing interests of economic, social and environmental aspects is enunciated as a stated purpose at a State level under s3(1)(c) of the <i>Planning and Development Act 2005</i>, and also specifically under the provisions of the Greater Bunbury Region Scheme (GBRS), which is outlined in paragraph 22 of my Original Statement. This provides the following aims which also specifically addresses the importance of the protection of basic raw materials:</p> <p>(a) <i>Promote the sustainable development of land taking into account relevant environmental, social and economic factors;</i></p> <p>(h) <i>Protect strategic minerals and basic raw materials of State and regional importance and provide for the efficient and timely extraction of minerals and raw materials and subsequent rehabilitation of affected land.</i></p>
<p>9.3 Facilitate the effective implementation of the State Planning Framework, including the Bunbury – Geopraphe Sub-Regional Strategy; and</p>	<p>I refer to the response in 9.2 above with particular reference to Table 2 of my Original Statement which summarises the Bunbury-Geopraphe Sub-Regional Strategy (BGSRS), and in particular, the growth targets for Bunbury Geopraphe over the next 20-30 years to achieve 200,000 people. To accommodate those targets it will be necessary to access significant quantities of basic raw materials (including sand) for development and associated infrastructure such as roads.</p> <p>I also refer to the table in paragraph 20 on Page 8 of my Original Statement which highlights relevant references under Section 18.4 of the Subregional Strategy, identifying the importance of Basic Raw Materials as follows:</p> <p><i>“These [basic raw] materials are required for a number of uses with most relating to the construction industry including buildings, fill, roads and retaining wall, it is important to have access to local sources at this reduces costs and pollution associated with transportation” and further “Demand for BRM in the Perth and Peel regions is expected to remain high, while access to deposits in those regions is expected to diminish. This is likely to increase demand for BRM from the South West region”.</i></p> <p>Therefore, whilst the strategy references those environmental aspects identified by Ms Edwards, the Strategy also recognises the need to balance environmental matters with the need to supply basic raw materials, and in particular (by reference to the BGSRS), to ensure the achievement of growth targets.</p>

Aim	Comment
9.4 Ensure the protection and sustainable use of agricultural land and minimise land use conflicts; and	Not Applicable.
9.5 Facilitate the sustainable use and development of land and water resources to promote the protection of environmental assets, efficient resource use and minimise waste; and	<p>The sustainable use and development of land is a recurring theme underpinned by the purposes under the <i>Planning and Development Act 2005</i>, which requires planning to equally consider a number of broader factors as identified in paragraph 15 of my Original Statement, not just relating to one element, such as the environment.</p> <p>This includes the importance of the protection and extraction of basic raw materials (in this instance SGS) to facilitate economic and social outcomes, including to assist in the facilitation of the State’s growth targets and the need to provide associated infrastructure.</p> <p>In respect to environmental matters, these are specifically addressed in the evidence of Mr Mike Lundstrom, and the environmental work that has been undertaken as outlined in paragraphs 49 – 51 of my Original Statement.</p>
9.6 Provide for the recognition and preservation of areas, places and objects of cultural and heritage significance; and	Not Applicable.
9.7 Provide for a variety of residential densities to ensure the provision of a diversity of housing options and accommodation choices that meets the needs and aspirations of the community; and	Whilst this aim is not directly applicable, the facilitation of residential development at whatever density, is directly linked to accessing basic raw materials (including sand) to accommodate development and associated supporting infrastructure.
9.8 Facilitate a sustainable local and regional economy with a diverse range of business and employment opportunities; and	This aim reinforces the sustainability principle to consider economic, social and environmental matters. SGS resources form a critical component towards economic and infrastructure development and the achievement of broader planning requirements to accommodate growth targets which link with business and employment outcomes.
9.9 Support and protect tourism throughout the Scheme area by providing for a range of accommodation types and land uses and embracing the historical and natural attributes and landscapes of the Scheme area; and	Not Applicable.
9.10 Ensure the use and development of land does not result in significant adverse impacts on the physical and social environment and public health; and	The development does not have any adverse impacts on public health. The extraction of raw materials forms a positive element towards the delivery of social and economic outcomes. The fact that clearing is required to accommodate the extraction of resources is addressed in the Statement of Mike Lundstrom and discussed in further detail in respect to aim 9.12 (below).

Aim	Comment
9.11 Facilitate a diverse and integrated network of open space catering for both the active and passive recreation needs of the community; and	Not Applicable.
9.12 Preserve and protect native vegetation to enhance biodiversity, fauna habitat, land and water-based ecosystem function, ecological linkages and landscape and amenity values.	<p>I refer to paragraphs 42-53 of my Original Statement which provides an assessment of the proposal having regard to the clearing proposed. This is also addressed in more detail in the Statement of Mike Lundstrom.</p> <p>The need to consider environmental attributes identified under 9.12 has not significantly altered with the change between the Shire of Harvey's TPS1 and LPS2. A thorough consideration of environmental matters was undertaken under the stewardship of TPS1 which is outlined in paragraphs 48-52 of my Original Statement, including State and Federal government involvement.</p> <p>Environmental protection can take many forms, other than just retention of existing vegetation. This can include requirement for offsets to mitigate the impact of vegetation removal and requirements for rehabilitation.</p> <p>These are matters of detail that, as noted in paragraphs 45-46 of my Original Statement, have been included within the planning application noting they are separately and comprehensively being considered as part of the environmental approval process.</p>

10. It is apparent that the aims of LSP2, whilst different from TPS1, still require a balanced consideration of all land use planning considerations, including recognition of the need to integrate the State Planning framework and acknowledge the importance of the need to protect basic raw material resources.

LPS2: Clause 20 - Schedule 2 – Restricted Uses

11. The Review Site is subject to Restricted Use (R3) under LPS2 and under the provisions of R3, Industry – Extractive is a discretionary or “A” use.
12. The first objective of the Restricted Use is to:

“allow for low intensity development compatible with the activities within the Strategic Industry zone and the Kemerton Ancillary Industry zone.”

13. The proposal satisfies this objective, and in relation to the further objective to “*encourage the conservation of public recreation and flora and fauna,*” I refer to my conclusion in paragraph 57 of my Original Statement (page 24) where I state that Mr Lundstrom “*has considered: flora and fauna, threatened species; and federally protected species and has determined that these aspects are capable of being managed through environmental proposals included as part of the Application.*”
14. The inclusion of the site within a Restricted Use specifically provides for extractive industry as a permissible use, and the environmental aspects of the proposal have been properly addressed as part of the assessments undertaken by Mr Lundstrom that are outlined in paragraph 48-51 of my Statement. These are also separately being considered through the environmental approval process.

LPS2: Clause 32 - Schedule 4 – Additional Site and Development Requirements

15. As detailed in paragraphs 28 and 29 of the Additional Statement by Ms Edwards, Schedule 4 of LPS2 includes applicable additional site and development requirements. The additional site and development requirements under Schedule 4 of LPS2 referred to in the Additional Statement by Ms Edwards are:
 - a. Clauses 6, in relation to vegetation protection; and,
 - b. Clause 20, in relation to the Kemerton Strategic Industrial area.

LPS2 Schedule 4: Clause 6 – Vegetation Protection

16. As detailed in my Original Statement at paragraphs 48-51, the application included details of a clearing permit application, the referral of the application to what is now the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) (formerly DBCA), an environmental assessment including topography, vegetation, flora and fauna amongst assessment of other environmental attributes. The application also included a range of management plans as detailed in paragraph 52 of my Original Statement. The proposal also considered the potential for other management and offset measures.

17. In relation to Clause 6, as acknowledged in paragraph 32 of the Additional Statement of Ms Edwards Statement *“the area impacted by the proposed clearing is relatively minor at 1.17ha ...”*.
18. It is also important to recognise that insofar as Ms Edwards refers throughout her Additional Statement to the clearing of 1.17ha of native vegetation (which, as noted above, is acknowledged by Ms Edwards as being relatively minor), and to the clearing being *“of native vegetation that is regionally and nationally significant, is nationally protected and provides or has the potential to provide habitat for nationally protected fauna”*, the Lundstrom Environmental Flora and Vegetation Survey Report of the vegetation in question in fact identified only 0.6ha of the 1.17ha area to be cleared as being Banksia Woodland TEC, with the remainder of the area being identified as pasture, and further classified that 0.6ha as being only partly in "Good" condition and partly in "Degraded" condition.
19. I refer to my conclusion in paragraph 57 of my Original Statement (page 24) where I state that Mr Lundstrom *“has considered: flora and fauna, threatened species; and federally protected species and has determined that these aspects are capable of being managed through environmental proposals included as part of the Application.”*
20. Further as detailed in paragraph 45 of my Original Statement, the clearing of vegetation that forms part of this application, will require approval from the State Government Department of Water and Environmental Regulation (**DWER**) and the Federal Government via the DCCEEW.
21. As detailed in paragraph 57 of my Original Statement, the removal of vegetation *“will be independently considered by DWER and DCCEEW to determine their environmental suitability prior to development being able to take place.”*
22. I refer to the comments of Ms Edwards at her paragraph 32 on Page 8 (point g), in regard to the vegetation area of 47 hectares that is outside the area subject of this application. In my opinion, each application is to be assessed on merits and the presence of any other vegetation and what may or may not occur at some future point in time, or not at all, are not relevant planning considerations for the determination of this application.

23. As stated in paragraph 46 of my Original Statement, whilst the environmental work has been included and addressed for the purpose of the development application, *“it is those environmental authorities who are pre-eminent authorities dealing with the specific consideration of environmental matters.”*

Schedule 4: Clause 20 – Kemerton Strategic Industrial Area

24. In relation to Clause 20 of Schedule 4 of LPS2 and the Kemerton Strategic Industrial Area, I refer to paragraphs 26-28 of my Original Statement (page 18) which outlines provisions as it applies to the KSIA Structure Plan.
25. I also refer to paragraphs 30 – 32 of my Original Statement which interlinks the Shire’s Local Planning Strategy with the KSIA through the recognition of sites identified with SGS resources and the reference under the Strategy to *“protect these areas for future mining/extraction”* (Para 32).
26. I also note that recognition to protect areas within the KSIA areas has already been given significant attention by Government through the acquisition of land as identified in paragraph 39 of my Original Statement.
27. The modifications to the Scheme as it applies to the KSIA does not alter opinions made in my Original Statement, and the proposed use of land for extractive industry is consistent with the GBRs and KSIA as well as the Kemerton Strategic Industrial Area Structure Plan. This is also noting the environmental work that has been undertaken to support the development application identified in paragraphs 48-52 of my Original Statement.

LPS2 Clause 36 - Schedule 6 – Special Control Areas – Basic Raw Materials

28. As outlined in paragraph 39 of the Additional statement by Ms Edwards, the Review Site is subject to Special Control Area 2 in relation to Basic Raw Materials.
29. The designation of the land within SCA2 responds to Clause 3.9.1 of the Shire of Harvey Local Planning Strategy, (refer Annexure SGA13 of my Original Statement), which states *“Extractive industries comprise an important component of the Shire’s economy and are located throughout all areas of the Shire.”* The Local Planning Strategy identifies that basic raw materials are to be incorporated into the Scheme Maps and that such areas are *“applied to protect these areas for future mining/extraction.”*

30. Ms Edwards has referred to objective (b), of Special Control Area 2 under LPS2 and I am of the opinion that all three objectives are relevant in the context of this application. Notably, in the context of extractive industries, Objective (a) reads:

ensure that the strategic resources of State or regional significance are not sterilised from incompatible land uses and development; [emphasis added]

31. As outlined in the Additional Statement of Ms Edwards, the application seeks to clear 1.17 hectares of vegetation. Further Ms Edwards states that *“Lot 7 Runnymede Road contains a vegetation area of approximately 47ha. Site inspections and extrapolation from vegetation surveys indicates this 47ha area is Banksia Woodland TEC. I expect the Banksia Woodland TEC on this 47 ha to have a condition of at least very good to excellent.”*
32. I refer to the report attached at Annexure SGA2 to my Original Statement and at Section 3.5 of that report, by Michael Lundstrom, which states *“The vegetation of the Survey Area ranged from ‘Excellent’ to ‘Degraded’, with the majority of the survey site in an ‘Excellent’ condition, however the proposed extension EIL area was mapped predominantly as Completely Degraded to Good”*. Whilst this is outside my area of expertise, I consider that the condition of vegetation in the area to be cleared is more relevant than the condition of vegetation outside the area to be cleared.
33. In my opinion, given that the application involves limited clearing of 1.17ha, and will be subject to approval from DWER and DCCEE in relation to removal of native vegetation, approval of this application will ensure that the strategic resources are able to be mined in accordance with acceptable environmental standards.

CONCLUSION

34. In my opinion, there is not a significant level of difference when comparing TPS1 to the now operating LPS2. LPS2 still requires matters to be considered in accordance with a sustainable development approach, having regard to all the aims of the Scheme, and to reference and to have due regard to the State Planning framework. Whilst the application was prepared pursuant to TPS1, the application nevertheless included a significant body of work that was undertaken to address environmental matters associated with the proposed development that addresses the environmental matters identified under LPS2.

35. The aims of LPS2 include reference to preserving and protecting natural vegetation, but that does not, in my view, equate to a prohibition of clearing. Other objectives include facilitation of a sustainable local and regional economy, facilitating sustainable use and development of land and facilitating the effective implementation of the State Planning Framework, which also recognises the importance of extracting basic raw materials. I am of the view that all these matters need to be considered in context and balance.
36. The Additional Statement of Ms Edwards focuses on one element, but I consider that this needs to be weighed up in the context of all the matters in the wider context of the planning framework, as a whole, including the state and local planning framework.
37. As outlined in my Original Statement, I am of the opinion that the environmental matters are sufficiently addressed and that the use of the site for extractive industry is suitable. I note that the environmental suitability of the clearing will also be independently assessed by both DWER in determining the clearing permit, and by the federal Department of Climate Change, Energy, the Environment and Water (DCCEEW) in assessing the application under the *Environmental Protection and Biodiversity Conservation Act 1999*.
38. The protection of the environment is more than just assessing whether clearing of the vegetation is suitable or not. The protection of the environment involves balancing the equation of minimising environmental impacts, which in some instances provides for offsets in other locations, which can still achieve suitable environmental outcomes. Also, the degree of impact is a relevant consideration, noting that this application would result in clearing of 1.17ha only and that the need to source basic raw materials further removed from the location to supply can result in increased environmental impacts associated with pollution and a greater carbon footprint due to longer transportation between the source and market.
39. From a planning perspective, and from the work undertaken by Mr Lundstrom and his firm, I am of the opinion that the use of the site for extractive industry and the requisite clearing has been appropriately addressed from an environmental perspective, noting that separate approvals are also required from DWER and DCCEEW prior to clearing and the commencement of operations. From a planning perspective, the proposed development is both capable and appropriate for approval.



Stephen Geoffrey Allering

Date: 1 August 2024

State Administrative Tribunal

Planning and Development Act 2005

Matter No. DR 63 of 2022

IN THE MATTER OF

Catalano Pty Ltd	Applicant
AND	
The Shire of Harvey	Respondent

Applicant's Draft Without Prejudice Conditions

File Date:	1 August 2024
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Ref: CAT RUN GE

The following conditions are provided by the Applicant in the event that the Minister approves the application and are provided on a without prejudice basis:

1. This decision constitutes planning approval only and is valid for a period of 10 years from the date of approval.
2. If the subject development is not substantially commenced within four (4) years of the date of this approval, the approval shall lapse and be of no further effect.
3. Substantial commencement of the development shall not occur prior to a clearing permit being issued in accordance with the *Environmental Protection Act 1986*.
4. The development plans, as attached to this approval and accompanying documentation, or as amended by the following conditions, are the plans approved as part of this application.
5. Prior to the commencement of development, the Dust Management Plan shall be approved by the Shire and implemented to the satisfaction of the Shire for the life of this approval.
6. Prior to the commencement of development, the Rehabilitation Management and Monitoring Plan shall be approved by the Shire and implemented to the satisfaction of the Shire for the life of this approval. The Rehabilitation Management and Monitoring Plan shall include:
 - (a) Revegetation and rehabilitation of the extraction area the subject of this approval;
 - (b) The use of local endemic species within the rehabilitation of the proposed extraction area;
 - (c) Proposed rehabilitation back to native vegetation with no areas of pasture rehabilitation;
 - (d) Details of species types and maintenance and monitoring measures; and
 - (e) All slopes of the batters at the end of excavation, being retained at no more than 1:3 vertical to horizontal.
7. Prior to the commencement of development, the Weed Management Plan and Dieback Management Plan shall be approved by the Shire and both shall be implemented to the satisfaction of the Shire for the life of this approval.
8. The approved Environmental Management Plan shall be implemented to the satisfaction of the Shire for the life of this approval.

9. Prior to the commencement of development, a reinstatement bond of \$5,850 (1.17ha @ \$5,000 per hectare) shall be provided to the Shire in the form of a Bond or Bank Guarantee.
10. Prior to the commencement of development, the approved pit boundaries shall be surveyed by a suitably qualified surveyor, with the location of such pegs being to the satisfaction of the Shire. The pit boundary survey pegs shall remain in place for the duration of the operation to the satisfaction of the Shire.
11. Prior to the commencement of development, a suitable demarcation barrier shall be erected 20m from the outer edge of the canopies of the Banksia Woodlands Forests of the Swan Coastal Plain Ecological Community, to the satisfaction of the Shire.
12. Prior to the commencement of development, confirmation of the source and availability of water for dust suppression shall be submitted to the Shire.
13. The Approved Development shall, at all times, comply with the approved plans, approved Management Plans and the approved Environmental Management Plan, as modified by conditions of this approval.
14. An Annual Audit of Compliance shall be prepared by a suitably qualified independent expert and submitted to the Shire annually. The Annual Audit of Compliance shall include:
 - (a) Details to demonstrate compliance with the conditions of this Development Approval;
 - (b) Tonnage of sand removed from the site and the period within which the sand was removed; and
 - (c) Progress report on the approved Rehabilitation Management and Monitoring Plan including:
 - i. Details of completed, ongoing and future rehabilitation areas;
 - ii. Photos of rehabilitated areas;
 - iii. Monitoring and reporting details, if available;
 - iv. Start and completion dates, and expected start dates, if applicable; and
 - v. A map depicting the rehabilitation areas and their completion progress.
15. Operating hours are restricted to 7.00a.m. – 6.00p.m., Monday to Friday and 7.00a.m. – 12.00 noon on Saturday. No activities to occur on Sunday or Public Holidays.

16. A 0.5m separation distance to the groundwater shall be maintained for the life of the extraction activities.
17. Stormwater shall be appropriately managed to be contained onsite and not present risk of erosion.