



Albury City

Reference: 60005

Contact: Marius Shepherd

# DEVELOPMENT CONSENT

Approval Number: 10.2018.36584.1

Endorsed Date of Consent: 25 September 2020

PGH Bricks and Pavers Pty Ltd  
56-67 Cecil Road  
CECIL PARK NSW 2178

## Subject Land

PLT: 2 DP: 856969  
253 Shaw Street  
SPRINGDALE HEIGHTS

## Description of Development

Extractive Industry - Extension of existing Clay Mine - Andersons Clay Mine

## Attached to Approval:

1. Conditions
2. Plans and documentation endorsed with Consent.

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION issued under Section 4.18 of the *Environmental Planning and Assessment Act 1979* (the Act).

The development application has been determined by the granting of consent subject to the conditions referred to in this Notice and attached hereto.

This Consent shall become effective from the endorsed date of consent.

This Consent shall lapse unless development, the subject of this Consent, is commenced within five (5) years from the endorsed date of consent as sanctioned under Section 4.53 of the Act.

David Christy  
**Service Leader City Development  
Infrastructure, Planning and Environment**

## Right of Appeal

If you are dissatisfied with this decision, Section 8.10 of the *Environmental Planning and Assessment Act 1979* (the Act) gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you received this notice.

Alternatively, you may request a review of the decision under Section 8.2 of the *Environmental Planning and Assessment Act 1979*, within 6 months of the date of this notice (note: Section 8.2 is not applicable to integrated or designated development). This applies if the matter was determined by a Council officer under delegation of Council. A fee is payable. For further information please contact the Council on (02) 6023 8285.

# Conditions attached to Development Consent 10.2018.36584.1

## A. General

### (A1) Approved plans

The development must be carried out in accordance with the attached approved plans and the particulars and statements submitted with the Development Application received on 17/12/2018 as amended by the supporting documents lodged on 23/09/2019 and 7/11/2019 and subject to the following conditions.

**For the purposes of clarity and to remove any doubt, in the event of any inconsistencies or discrepancies between the information shown on or described in the above mentioned plans and documents and the detailed requirements of the following conditions of this Development Consent, the requirements of the following conditions will prevail to the extent of any inconsistency. All plans and documents which are subsequently prepared and lodged for further approvals or certification are to be consistent with, and include the requirements of, these conditions where necessary. (A001)**

### (A2) Compliance with Previous Development Consent

This consent prevails over any condition or requirement in Interim Development Order (N72 79/627) to the extent that that approval applies to the operations approved under this consent.

### (A3) Approval conditions of other authorities

The development is to be carried in accordance with the following conditions from the authorities and agencies specified.

#### 1. NSW Department of Planning, Industry & Environment: Biodiversity and Conservation Division (DPIE: BCD)

##### Aboriginal Cultural Heritage

- i. No harm can occur to any Aboriginal objects within the development area unless an Aboriginal Heritage Impact Permit (AHIP) has been issued by the Department of Planning, Industry and Environment. A revised Aboriginal Cultural Heritage Assessment Report (ACHAR) must be submitted with the AHIP application that addresses the following as a minimum:
  - (a) Detail on statutory controls and development context for the proposal. The ACHAR should state which section of the EP&A Act the proposal is being assessed under; who is the consent authority (e.g. Albury City Council); and that the project is designated development being a mine. The Parish should be listed in the Introduction section in accordance with the *'Guide to investigate, assessing and reporting on Aboriginal cultural heritage in NSW'* (OEH 2011).
  - (b) The qualifications of the project personnel need to be provided in accordance with Requirement 11 of the CoP.
  - (c) The ACHAR is to have an up to date AHIMS search conducted within 12 months currency of the revised final report.
  - (d) Explanation of the relevance of excavations to the current project area.
  - (e) Mitigation measure proposed. The proponent is to consider mitigation to manage or minimise harm to the object and to any unknown ACH objects that may be identified during works.
  - (f) A record of contact with the National Native Title Tribunal (NNTT). This is to be updated in accordance with requirements of the EARs and NPW Regulation 80C.
  - (g) Consultation with the Registered Aboriginal Parties (RAPs) at least every six months prior to the AHIP submission to the OEH.
- ii. The applicant must comply with the conditions of any AHIP that is issued by the Department of Planning, Industry and Environment.
- iii. The applicant must ensure that all persons involved in actions or works covered by an AHIP (whether employees, contractors, sub-contractors, agents and invitees) are made aware of, and comply with, the conditions of any AHIP.
- iv. No human remains in, on or under the land may be harmed. If any human remains are discovered and/or harmed in, on or under the land, the proponent or AHIP holder must:

- (a) not further harm these remains
- (b) immediately cease all work at the particular location
- (c) secure the area to avoid further harm to the remains
- (d) notify the local police and Environment Line on 131 555 as soon as practicable and provide any available details of the remains and their location
- (e) not recommence any work at the particular location unless authorised in writing by the Department of Planning, Industry and Environment.

## 2. NSW Environment Protection Authority (EPA)

### Extraction limit

Activities at the premises must not exceed 50,000 tonnes per annum extracted, being the amount equivalent to the extraction limit approved by the Development Consent granted under the Environmental Planning and Assessment Act 1979 for the premises.

### Dust Management Plan

The proponent must engage a suitably qualified and experienced person to develop a Dust Management Plan, prepared in accordance with the *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (2005)* to assess the potential impacts of particulates on nearby sensitive receptors.

The assessment must include, but is not limited to, the following.

- A detailed description of the activities occurring at the premises;
- Details about the receiving environment, including the following:
  - Meteorology and climate;
  - Topography;
  - Surrounding land use;
  - Nearby sensitive receptors; and
  - Ambient air quality.
- A consideration of 'worst case' emission scenarios and impacts at proposed emission limits. Justification for the 'worst case' must also be included.
- Account for cumulative impacts associated with existing emission scenarios as well as any currently approved developments linked to the receiving environments.
- Air dispersion modelling where there is a risk of adverse air quality impacts, or where there is sufficient uncertainty to warrant a rigorous numerical impact assessment.
- Demonstrates the premises' ability to comply with the relevant regulatory framework, specifically the *Protection of the Environment Operations (POEO) Act 1997* and the *POEO (Clean Air) Regulation 2010*.
- Detail emission control techniques/practices that will be employed at the premises; and
- Locations that are representative of the nearest sensitive receptors where dust deposition gauges will be installed and monitored by the proponent.

The dust management plan must be provided to the EPA by electronic mail to [riverina.farwest@epa.nsw.gov.au](mailto:riverina.farwest@epa.nsw.gov.au) for review and approval prior to the commencement of works associated with the expansion approval granted under development application 10.2018.36584.1.

### Noise Management Plan

The proponent must engage a suitably qualified and experienced person to develop a Noise Management Plan, prepared in accordance with the NSW Noise Policy for Industry (2017).

The noise management plan must include, but is not limited to, the following:

- The project noise trigger levels for the activities occurring and proposed to occur at the premises;
- A prediction or measurement of the noise levels produced by the proposal; having regard to the presence of annoying noise characteristics (Fact Sheet C) and meteorological effects such as temperature inversions and wind (Fact Sheet D);
- A comparison of the predicted or measured noise levels with the project noise trigger level; and an assessment of the impacts and the need for noise mitigation and management measures;
- A consideration of residual noise impacts;
- Proposed noise limits for the premises; and

- Proposed noise monitoring for the premises.

The noise management plan must be provided to the EPA by electronic mail to riverina.farwest@epa.nsw.gov.au for review and approval prior to the commencement of works associated with the expansion approval granted under Development Application 10.2018.36584.1.

#### **Vibration Management Plan**

The proponent must engage a suitable qualified and experienced person to develop a Vibration Management Plan assessment, prepared in accordance with the Environmental Noise Management Guideline - Assessing Vibration: a technical guideline (DEC, 2006), to determine potential vibration impacts from the premises and identify mitigation measures to be implemented should impacts be identified.

The vibration management plan must be provided to the EPA by electronic mail to riverina.farwest@epa.nsw.gov.au for review and approval prior to the commencement of works associated with the expansion approval granted under development application 10.2018.36584.1.

### **3. NSW Rural Fire Service (RFS)**

#### **Fire Management Plan**

A Fire Management Plan (FMP) shall be prepared for the proposed development in consultation with the local NSW RFS District Office. The FMP shall include:

- 24 hour emergency contact details including alternative telephone contact;
- Site infrastructure plan;
- Fire fighting water supply plan;
- Site access and internal road plan;
- Construction of asset protection zones and their continued maintenance;
- Location of hazards (physical, chemical and electrical) that will impact on the firefighting operations and procedures to manage identified hazards during the firefighting operations; and
- Such additional matters as required by the NSW RFS District Office.

#### **Equipment Storage**

Essential equipment should be designed and housed in such a way as to minimise the impact of bush fire on the capabilities of infrastructure which provide communication during bush fire emergencies.

#### **Asset Protection Zone**

To allow for emergency service personnel to undertake property protection activities, a minimum 10 metre Asset Protection Zone (APZ) shall be provided around all assets. This APZ shall be managed as an Inner Protection Area (IPA) as outlined within section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document Standards for asset protection zones.

#### **Water Tank**

A minimum 20,000 litres of water shall be provided within the site for firefighting purposes in accordance with Section 4.1.3 of Planning for Bush Fire Protection 2006.

#### **(A4) Sealing of Shaw Street**

The applicant is to provide a minimum 6.0m wide seal to the existing Shaw Street pavement in accordance with Council's Engineering guidelines; the seal is to commence from the end of the existing seal just east of the entrance to 75 Shaw Street and extend to the entrance to the development site.

#### **(A5) Tree Preservation Order**

The development must not remove any vegetation, including canopy trees, understorey and ground cover vegetation, unless prior approval of the AlburyCity Council has been obtained. Any existing street trees within Council's road reserve shall not be removed or damaged during construction. This requirement does not apply to vegetation indicated to be removed on the site layout plan submitted with the Development Application. *(C015 modified)*

(A6) **Closure and Rehabilitation Plan**

Within 12 months of the issue of this consent, a Closure and Rehabilitation Plan shall be submitted to, and approved by, Council. The plan shall be generally consistent with any rehabilitation plan prepared in accordance with Mining Lease 1229.

(A7) **Limitation on Life of Consent**

Extraction of material approved by this consent are limited to a period of thirty (30) years from the endorsed date or this consent. Written advice is required to be provided to Council of the commencement date of extraction and/or commencement of recycling operations on the site. In addition, a further two (2) year period after cessation of the extraction period is permitted for completion of the rehabilitation works.

Should any activities approved by this consent cease prior to the expiration date of the consent, written advice shall be provided to Council and other relevant NSW Government Agencies and authorities to determine any works required to be undertaken for rehabilitation of the site and adjacent public lands, or in regard to the removal of plant, equipment, stockpiles, improvements, amenities and the like.

(A8) **Security bond for rehabilitation works**

Documentary evidence shall be provided to Council with every updated Mine Operations Plan outlining the estimated value of the rehabilitation works to be completed and secured by an appropriate Security Bond held for the relevant Mining Lease.

**B. Prior to any work commencing on the site area**

(B1) **Operational Management Plan**

Prior to the commencement of any quarrying activities approved by this consent, an Operational Management Plan shall be prepared, submitted to and approved by Council.

The Plan shall, as a minimum, incorporate:

- the acoustic conditions contained within this consent and the NSW EPA's Licence
- air quality conditions contained within this consent and the NSW EPA's Licence;
- identify air quality monitoring locations to the north, east, south and west of the development;
- groundwater monitoring locations and frequency of monitoring;
- a Waste Management Plan which identifies all waste materials generated by activities on the site, including details of their storage and disposal;
- a Stockpile Management Plan which details the means of protecting the surrounding environment from dust; erosion and/or sediment transport or deposition arising from the stockpiles;
- a complaints management procedure;
- Measures implemented to ensure all employees, contractors and other persons associated with any activities on site are inducted and kept informed of the operational parameters applying to the site;
- Protection measures for, and extent of, protected vegetation areas; and
- Staging Plan for rehabilitation works.

The Plan shall be reviewed every two (2) years and shall be provided to Council in conjunction with the Annual Report (required by Condition (D8)) submitted for that year.

(B2) **Biodiversity**

A targeted survey for *Caladenia concolor* (Crimson Spider Orchid) shall be undertaken prior to clearing by an appropriately qualified ecologist when the species is likely to be above ground and identifiable.

(B3) **Offset Planting Deed of Agreement**

The applicant and Council shall enter into a Deed of Agreement to satisfy the replacement of the trees to be removed as a result of the development. The Deed of Agreement shall provide for a survey of the number of trees to be removed (at the applicant's cost) and replanting and maintenance of trees in lieu of replanting the trees at a ratio of 10:1 at the direction of Council, which may include the establishment of habitat poles to connect existing areas of habitat.

**(B4) Notice prior to commencement of Works**

Two days before any site works, the applicant must:

- (a) Provide notice of works to the Council
- (b) Notify the adjoining owners that work will commence
- (c) Notify *the Council* of the name, address, phone number and licence number of the contractor
- (d) Erect a sign at the front of the property stating that unauthorised entry is prohibited and showing the contractor's name or Owner details (as applicable), licence number, phone number and site address
- (e) Protect any neighbouring properties damage, obstruction or inconvenience from the carrying out of the consent
- (g) Prevent any substance from falling onto a public place.
- (h) Follow any other conditions prescribed in the *Environmental Planning and Assessment Regulation 2000*. (C426)

**(B5) Erosion and Sediment Control**

Run-off and erosion control measures must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on surrounding land. The control measures must be in accordance with AlburyCity Council's adopted Erosion and Sediment Control Guidelines for Building Sites.

Erosion and sediment control measures must address and incorporate general site management material handling practices, soil stabilisation, wind erosion, access measures and shall provide for:

- (a) The diversion of uncontaminated run-off around cleared or disturbed areas
- (b) The erection of a silt fence to prevent debris escaping into drainage systems or waterways
- (c) The prevention of tracking of sediment by vehicles onto roads
- (d) The stockpiling of topsoil, excavated material, and landscaping supplies and debris within the site, and the removal or utilisation (where appropriate) of that stockpile after completion of the works.
- (e) Maintenance of control measures until the land is effectively rehabilitated and stabilised beyond the completion of works. (C430 modified)

**(B6) Protection for retained vegetation**

Protective measures for vegetation to be retained shall be installed before commencement of work and maintained to post construction stage. (C025)

**(B7) Spill prevention and clean-up procedures**

A plan detailing the spills prevention, contingency and emergency clean-up procedures for the development is to be submitted for approval prior to works commencing. The approved procedures plan is to be implemented in the event of a spill or emergency. (C030)

**(B8) No filling without prior approval**

No fill material is to be imported to the site without the prior approval of AlburyCity Council. No recycling of material for use as fill material is to be carried out on the site without the prior approval of Council. No filling is to be placed on the site that is likely to cause surface water flooding of any adjoining property. (C406)

**C. During Works**

**(C1) Mode of work**

Work must be conducted in a manner so as not to be injurious to health and amenity by reason of noise, vibrations, smells, dust, stormwater runoff, sediment loss, placement of building materials and wastes, rubbish, footway interference, traffic generated, hours of operation and the like. (D033)

**(C2) Compliance with Dust, Noise and Vibration Management Plans**

Compliance at all times with the Dust Management Plan, Noise Management Plan and Vibration Management Plan (described in Condition A3).

- (C3) **Maintenance of soil erosion and pollution controls**  
All measures specified in Council's *Soil and Water Management Policy* to minimise the effects of soil erosion and pollution are to be installed then maintained until disturbed areas are rehabilitated and landscaped. Council may issue infringement notices incurring a monetary penalty where measures are not provided or maintained. (D522)
- (C4) **Maintaining tree protection**  
During works barriers, tree guards and other measures employed to protect existing trees on site are to be effectively maintained. (D039)
- (C5) **Stormwater drainage**  
All stormwater runoff from the proposed development is to be collected on-site and conveyed to a lawful point of adequate capacity in a manner that is consistent with the latest version of *Australian Standard 3500.3.2*, and does not impede or direct natural surface water runoff so as to cause nuisance to adjoining properties. (B528)
- (C6) **Tree removal at developer's expense**  
The cost of tree removal being at the developer's expense and work being carried out in accordance with the WorkCover publication *Code of Practice – Amenity Tree Industry*. (D037)
- (C7) **Stabilised access**  
All land required for vehicular access within the site is to be stabilised. (D057)
- (C8) **Security Fences**  
Appropriate stock proof perimeter fences shall be constructed to improve security against trespassing and to restrict invasion of livestock, in a rural post and wire style so as to minimise visual impact. The perimeter fencing shall be of a standard to exclude all stock, including sheep, goats, cattle, horses, etc. from the operational area. As a minimum standard the fence shall consist of posts with plain wires running along the top, middle and bottom of the fence (barbed wire or electric fencing will not be accepted). Post spacings shall be a maximum of 5metres apart. The erection of the fencing must be completed as part of the conditions of consent and cannot be bonded.

#### **D. Use of Site Area**

- (D1) **Environment and amenity**  
The approved development must not adversely affect the amenity and environment of the neighbourhood in any way including:
- (a) The appearance of any buildings, works or materials used.
  - (b) The parking or moving of motor vehicles.
  - (c) The transporting of materials or goods to or from the site.
  - (d) The hours of operation.
  - (e) Noise, air and water discharges from the site.
  - (f) Electrical interference.
  - (g) The storage and handling of garbage, fuels, chemicals, pesticides, gasses, waste products or other materials.
  - (h) Emissions or discharges into the surrounding environment including, from waste water, sediment, dust, vibration, odours or other harmful products. (F024)
- (D2) **Loading/unloading**  
All loading and unloading of vehicles shall take place entirely within the site and, in a manner not injurious to amenity and traffic safety. All vehicles waiting to be loaded/unloaded shall be located within the boundaries of the subject site and under no circumstances shall loading/unloading operations be permitted within the public road. (F003)
- (D3) **External lighting**  
Any external lights used on the site must be directed away from the adjoining/nearby residences to prevent light spill and glare. (F018)

- (D4) **Noise control**  
Noise levels at the boundary of the site area shall not be offensive, as identified by the Protection of the Environment Operations Act 1997, at any time so as to ensure that noise levels associated with the development do not disturb people in surrounding areas.
- (D5) **Use of loud speakers**  
No external sound amplification equipment or loudspeakers are to be used for the purpose of announcement, broadcast, the ringing of telephones or similar purpose. (F054)
- (D6) **Dams on-site**  
The dams on-site shall be properly maintained to prevent loss by soakage of any water contained therein. (F499)
- (D7) **Stormwater lines not to be altered**  
The stormwater drainage system is to not be altered or new lines directed into the system without the prior approval of AlburyCity Council. (F508)
- (D8) **Rural Amenity**  
The site area shall be managed in a sustainable manner, landscaped to enhance native habitats and maintained to control weeds, reflectivity, minimise bushfire risk, prevent unsightly conditions, prevent the transport of soil, sediment, pollutants and the like off the site and offset potential adverse effects on other land and waterways. (F799)
- (D9) **Annual Report on Activities**  
Prior to 31 July each year for the life of this consent, the proponent shall submit an Annual Report to Council which documents:
- compliance with all operational and regulatory conditions imposed upon the development consent;
  - all activities, volume of extraction, recycling tonnage (inbound and outbound), and haulage volumes of all materials removed from the site during the previous 12 months;
  - any complaints received during that year and the resolution of those complaints;
  - weighbridge receipts/reports confirming compliance with the annual limits of materials extracted from the site and recycled on the site;
  - volume and composition of all waste removed from the site, including the location of their disposal;
  - any rehabilitation works undertaken in the previous 12 months (if any); and
  - any ameliorative or revised operational measures implemented during the previous 12 months to address requirements of the EPA under their licence conditions.
- (D10) **Staged Completion of rehabilitation works**  
When any stage of the rehabilitation works outlined in the (amended and approved) Quarry Closure and Rehabilitation Plan has been completed, Council shall be notified in writing and provided with detailed documentary evidence of the works undertaken in that stage of the rehabilitation works and a site survey confirming the finished surface levels of that stage.

Council will not accept completion of the works until it has undertaken inspections to confirm completion of the works and the satisfactory establishment of groundcovers and vegetation on those areas. Council may require payment of bonds or the like for the maintenance of any vegetated areas for a period of 24 months after it has accepted that the relevant stage of the rehabilitation works has been completed.

## **E. Reasons for Conditions**

- (E1) **The above conditions have been imposed: -**
- (a) To ensure compliance with the terms of the *Environmental Planning and Assessment Act 1979*
  - (b) Having regard to Council's duties of consideration under Section 4.13 and 4.17 of the Act
  - (c) To ensure an appropriate level of provision of amenities and services occurs within the City and to occupants of sites
  - (d) To improve the amenity, safety and environmental quality of the locality
  - (e) Having regard to environmental quality, the circumstances of the case and the public interest

- (f) Having regard to the *Albury Development Control Plan 2010*
- (g) To help retain and enhance streetscape quality
- (h) Ensure compatibility with adjoining and neighbouring land uses and built form
- (i) To protect public interest, the environment and existing amenity of the locality
- (j) To minimise health risk to neighbouring residents and workers. *(H001)*

**F. Advisory and Ancillary Matters**

**(F1) Compliance**

It is the responsibility of the applicant to check, understand and seek assistance where needed so as to ensure full compliance with the conditions of this Development Consent. Please contact the AlburyCity Planning & Environment Group on 02 6023 8285 if there is any difficulty in understanding or complying with any of the above conditions. *(1010)*

**(F2) EPBC Act**

The applicant is specifically advised to check whether Federal approval is required under the EPBC Act. It is the responsibility of the applicant to ensure any necessary approvals are obtained.

\* \* \*