

Memorandum

Ordinary Council Meeting held 25/06/2014

FOR ACTION

MEMO TO: GROUP MANAGER SUSTAINABILITY
SUBJECT: PROPOSED MINOR AMENDMENT TO BROKEN HILL LOCAL
ENVIRONMENTAL PLAN 2013 TO MORE ACCURATELY DESCRIBE A
PORTION OF SPECIAL PURPOSE (SP1 MINING) ZONE L14/1120

Council has resolved;

ITEM 6 - BROKEN HILL CITY COUNCIL REPORT NO. 142/14 - DATED JUNE 10, 2014 -
PROPOSED MINOR AMENDMENT TO BROKEN HILL LOCAL ENVIRONMENTAL PLAN 2013 TO
MORE ACCURATELY DESCRIBE A PORTION OF SPECIAL PURPOSE (SP1 MINING) ZONE
L14/1120

Recommendation

That Broken Hill City Council Report No. 142/14 dated June 10, 2014, be received.

That Broken Hill City Council endorse the submission under Section 73A (1)(c) of the Environmental Planning and Assessment Act 1979 and refer such matter to the Department of Planning and Infrastructure to amend the Broken Hill LEP 2013 as follows:

That the SP1 (Mining) zone be altered to SP1 (Mining and Extractive Industries) in accordance with the attached map.

RESOLUTION

Minute No. 44691

Councillor C. Adams moved
Councillor J. Richards seconded

) That the recommendation of item 6 be adopted.
)

CARRIED



THERESE MANNS
GENERAL MANAGER

NOTES -

ORDINARY MEETING OF THE COUNCIL

June 10, 2014

BROKEN HILL CITY COUNCIL REPORT NO. 142/14

SUBJECT: PROPOSED MINOR AMENDMENT TO BROKEN HILL LOCAL ENVIRONMENTAL PLAN 2013 TO MORE ACCURATELY DESTRIIBE A PORTION OF SPECIAL PURPOSE (SP1 MINING) ZONE L14/1120

Recommendation

That Broken Hill City Council Report No. 142/14 dated June 10, 2014, be received.

That Broken Hill City Council endorse the submission under Section 73A (1)(c) of the Environmental Planning and Assessment Act 1979 and refer such matter to the Department of Planning and Infrastructure to amend the Broken Hill LEP 2013 as follows:
That the SP1 (Mining) zone be altered to SP1 (Mining and Extractive Industries) in accordance with the attached map.

Executive Summary:

This report relates to a proposed amendment to Council's Local Environmental Plan 2013, which would involve a minor rezoning to more accurately describe a portion of land currently zoned SP1 (Mining).

Report:

The following initial information is provided as background to the proposed amendment:

- The land in question is currently zoned SP 1 (mining) and is located on Holten Drive, Broken Hill.
- The primary use of the subject land is for extractive industry, being a quarry and concrete batching. The quarry extracts and processes a range of crushed rock type for aggregates, road base products, rail ballast, concrete aggregate and landscape supplies.
- The use of the site continues through enjoying existing use rights.
- The quarry business operator wishes to lodge a Development Application to seek approval for the continued use as a quarry and for proposed increase in extraction of materials.
- This has identified an anomaly in the zoning of the site, with it being zoned SP1 (Mining).
- SP1 (mining) zoning allows for environmental protection works, roads and the purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose. Any other development is prohibited.

The LEP is a standard instrument plan which sets out the following definitions:

“extractive industry” means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

“extractive material” means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the Mining Act 1992.

“mining” means mining carried out under the Mining Act 1992 or the recovery of minerals under the Offshore Minerals Act 1999, and includes:

- (a) the construction, operation and decommissioning of associated works, and
- (b) the rehabilitation of land affected by mining.

Legal advice was sought in relation to this matter. The advice indicated that the use of the land for an extractive industry was inconsistent with the zoning and that the intensification could not be considered under the “existing use provisions” under the Act.

Under the provisions of the previous Broken Hill Local Environmental Plan 1996, the zoning of the land was 1(m) Mining. This zoning allowed for a wider range of uses than the current SP1 Zoning under the provisions of the current Broken Hill Local Environmental Plan 2013. For example, the previous 1(m) zoning – permitted both “mines” and “extractive industries”.

The SP1 (Mining) Zoning was intended as a “transition” from the 1(m) zone but this zone only permits mining as defined above and not extractive industries. The resolution of this matter can be addressed by amending the purpose of the SP1 zone in the subject location to allow for “Mining and Extractive Industries”.

Strategic Direction:

Broken Hill Local Environmental Plan 2013 sets out a number of overall objectives. Among these objectives are:

- (a) to encourage sustainable economic growth and development in Broken Hill,
- (b) to encourage and provide opportunities for local employment growth, and the retention of the population, in Broken Hill,
- (c) to encourage the retention of mining and acknowledge that industry’s heritage and regional significance.

It is considered that the proposed amendment is consistent with these objectives.

Relevant Legislation:

The 2005 NSW planning reforms included the introduction of section 73A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Section 73A allows certain types of minor amendments to be made to environmental planning instruments (EPIs) without following the usual procedures for preparing a draft Plan (particularly public exhibition).

Section 73A may be used to prepare a LEP to amend or repeal another LEP to:

- (a) correct an obvious error in the principal instrument such as a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error, or
- (b) address matters in the principal instrument that are of a consequential, transitional,

machinery or other minor nature.

(c) deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.

The ability to make an amendment in accordance with section 73A is assessed by the Department of Planning on the facts of each individual case. While judgement will need to be exercised in such assessments, the consequence of an amendment being made in accordance with section 73A is that:

- there is no need for exhibition of the draft instrument (eg public exhibition has previously occurred and gazettal of the section 73A amendment will be sufficient notification), and
- the amendment will not have any material effect 'on-the-ground'.

It is considered likely that this proposed minor amendment to the LEP can be considered by the Department of Planning under Section 73 of the Environmental Planning and Assessment Act.

Financial Implications:

N/A.

Attachments

1. Aerial Photo of the Site, Existing 2013 LEP Zoning, Proposed Zoning 3 Pages

PETER OLDSEN
GROUP MANAGER SUSTAINABILITY

THERESE MANNS
GENERAL MANAGER