

<b>10.1.2 - Proposed Single House and Rural Worker's Dwelling at Lot 101, 693 Mundijong Road, Oldbury (PA20/197)</b>	
<b>Responsible Officer:</b>	Manager Statutory Planning and Compliance
<b>Senior Officer:</b>	Director Development Services
<b>Disclosure of Officers Interest:</b>	No officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

### Authority / Discretion

Quasi-Judicial	When Council determines an application/matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include local planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
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Proponent: Rural Building Company  
 Owner: Robert David & Christine Robyn Davies  
 Date of Receipt: 5 March 2020  
 Lot Area: 33.06ha  
 Town Planning Scheme No 2 Zoning: 'Rural'  
 Metropolitan Region Scheme Zoning: 'Rural'

### Report Purpose

The purpose of this report is for Council to consider a development application for the conversion of an existing dwelling to a 'Rural Workers Dwelling' and construction of a replacement 'Single House' at Lot 101, 693 Mundijong Road, Oldbury.

The subject property contains two existing dwellings. The development application involves the demolition of an existing dwelling, being replaced with a new dwelling, and the conversion of the existing second dwelling to become a 'Rural Workers Dwelling'.

The application is presented to Council as it seeks to vary the 'acceptable development' criteria provisions of the Shire's Local Planning Policy 4.14 - Rural Workers Dwelling (LPP 4.14) by way of separation distance from the Single House. Such variations require an application for development approval to be submitted and assessed against the performance based criteria of LPP 4.14.

Officers do not have delegated authority to determine development applications which vary a Local Planning Policy, in accordance with Delegated Authority 12.1.1 - Determination of Development Applications.

The proposal is considered to be consistent with the objectives of LPP4.14 and therefore the report recommends that Council approve the development application subject to conditions.

## Relevant Previous Decisions of Council.

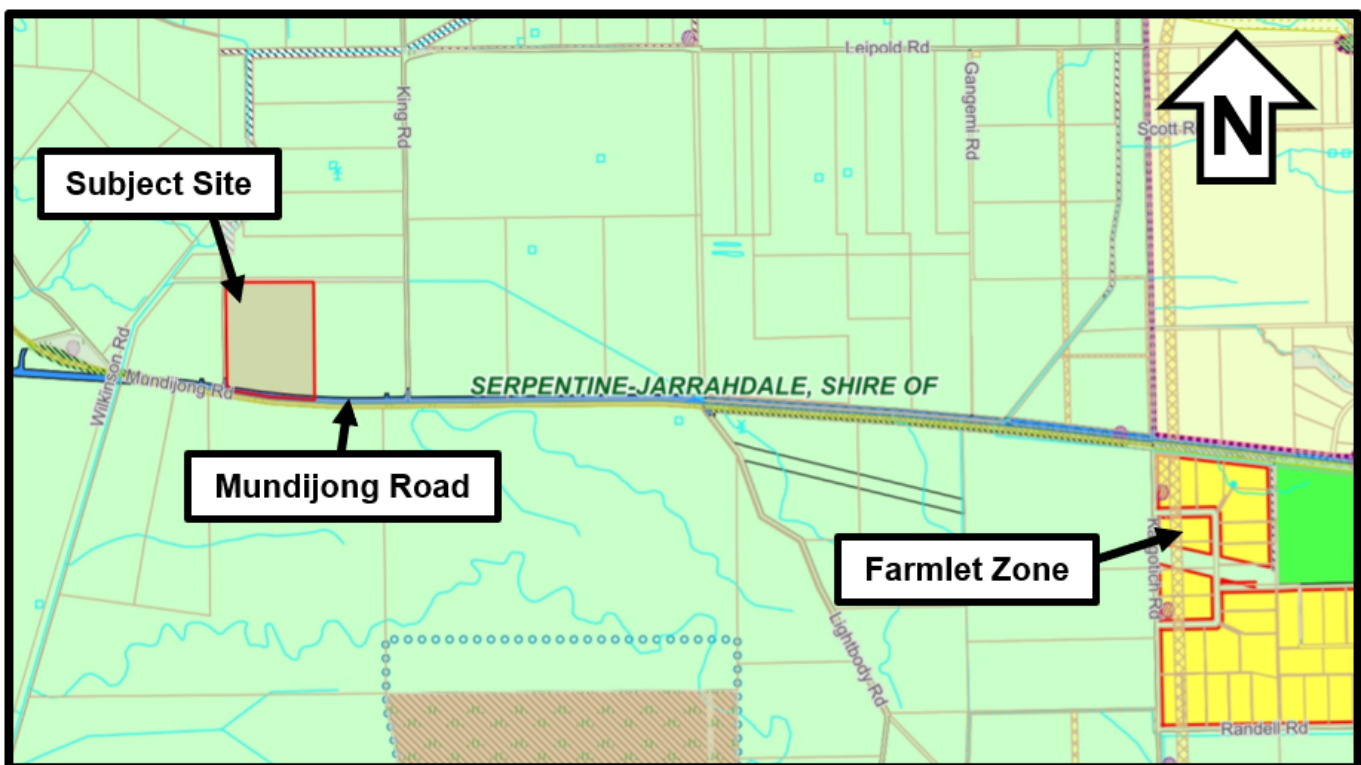
There is no previous Council decision relating to this item.

## Background

### Existing Development

The subject site is 33.06ha in area and is located on the northern side of Mundijong Road with an approximate 500m frontage to Mundijong Road. A Water Corporation drain abuts the northern boundary of the property and an unconstructed road reserve abuts the western boundary of the property. The site is generally cleared, containing a small amount of dense vegetation, located on the north-western side and eastern boundary of the property.

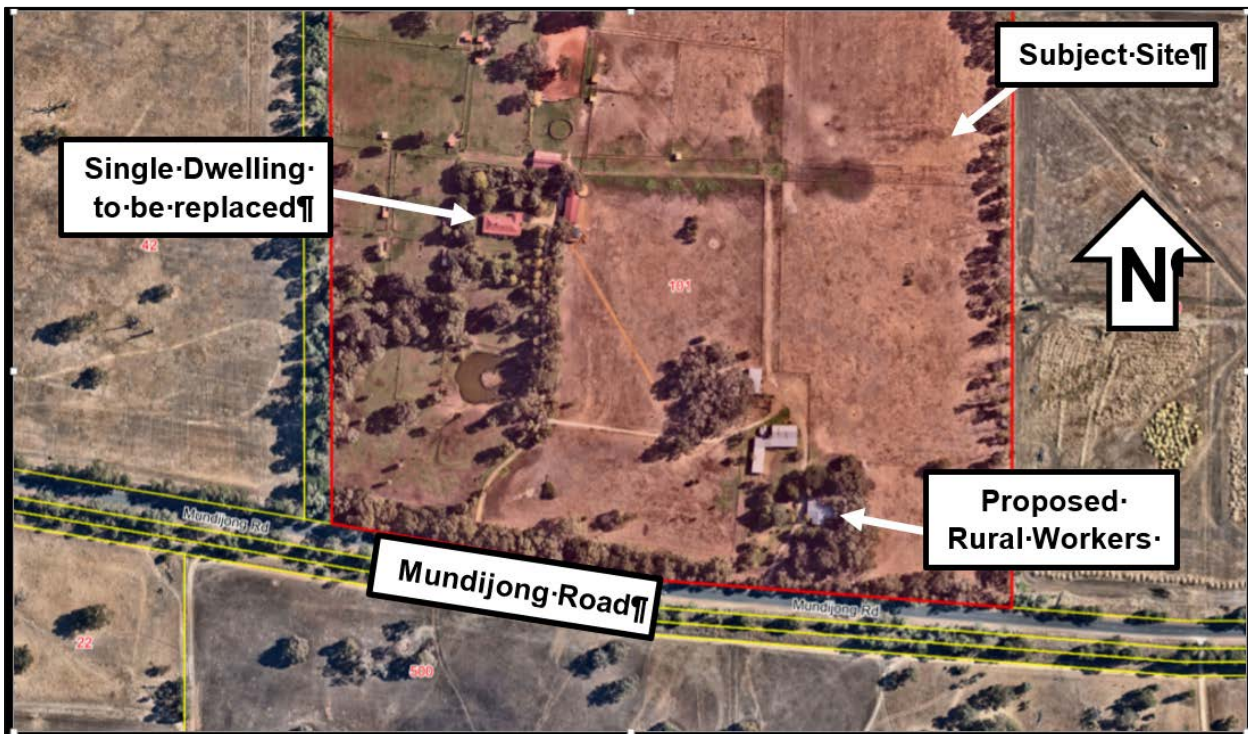
The general locality comprises of rural living properties used for a variety of rural uses that include grazing, equestrian activities, holding yards, dairy farms, market gardens, sheep yards, cattle studs and rural lifestyle lots. The locality also consists of 'Farmlet' properties as shown on Figure 1 below located to the south east of the subject site which are predominantly hobby farms used for rural pursuits.



**Figure 1 Location Map**

The subject site comprises of two dwellings and farm buildings. The dwelling which is proposed to be converted to a 'Rural Workers Dwelling' is located on the southern portion of the site as shown on Figure 2 below. The applicant provided information that the dwelling, which is 192m<sup>2</sup>, was built in 1979 to provide accommodation to poultry farm workers on the subject site prior to 2005. There is no record to show that this has approval as a 'Rural Workers Dwelling'.

The main dwelling is located on the western portion of the subject site. The replacement dwelling is proposed to be built in the same location. The applicant provided information that the main dwelling, which was built in 1997, will be replaced with a larger dwelling.



**Figure 2 Aerial Photograph**

### Proposed Development

The development application seeks approval to construct a replacement single house and conversion of an existing dwelling to a rural workers dwelling. The proposal comprises of the following:

- Demolition of the existing main residence, which was built in 1997;
- Construction of a replacement single house in the same location;
- Conversion of the second dwelling with a floor area of 192m<sup>2</sup> to a 'Rural Workers' dwelling;
- Use of the same services; and
- Use of the existing driveways for the new dwelling and Rural Workers' dwelling.

The replacement 'Single House' is compliant with the Deemed-to-Comply requirements of the R-Codes and therefore is not discussed within the report. To be able to have a 'Rural Workers Dwelling', there must be a 'Single House' located on the lot. For this reason it has been included on the application. Full details of the proposal are contained within **attachment 1**.

### **Community / Stakeholder Consultation**

The application was advertised to adjoining landowners for a period of 21 days, from 20 March 2020 - 10 April 2020, in accordance with the Shire's Local Planning Policy 1.4 - Public Consultation for Planning Matters. At the conclusion of consultation, one letter of non-objection was received.

## Statutory Environment

### Legislation

- *Planning and Development (Local Planning Schemes) Regulations 2015*
- *Metropolitan Region Scheme*
- Shire of Serpentine Jarrahdale Town Planning Scheme No. 2
- Draft Shire of Serpentine Jarrahdale Local Planning Scheme No.3
- Rural Strategy Review 2013
- Draft Local Planning Strategy

### State Government Policies

- South Metropolitan Peel Sub-Regional Framework Towards Perth and Peel 3.5 Million
- State Planning Policy 2.5 - Rural Planning
- SPP3.7 - Planning in Bushfire Prone Areas

### Local Policies

- Local Planning Policy 1.4 - Public Consultation for Planning Matters (LPP1.4)
- Local Planning Policy 4.14 - Rural workers' Dwelling (LPP 4.14)

## Planning Assessment

Schedule 2, Part 9, Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Deemed Provisions) lists matters to be considered in the determination of development applications. A full assessment was carried out against the applicable matters relevant to this proposal and can be viewed within the Technical Assessment (**attachment 2**).

For the purposes of this report, discussion is confined to the policy variation in which Council discretion is required.

### Land Use

The proposal falls within the TPS2 definition of 'Rural Workers Dwelling' which is defined as a dwelling:

- "which is on land upon which there is already a dwelling and which is occupied by persons engaged in any of the following uses on the same land: Cottage Industry; Feedlot; Fish Farming; Horticultural Pursuit; Pig Farming; Poultry Farming; Rural Industry or Rural Use; and*
- which can also accommodate family members involved in an operation of an agricultural enterprise on that land."*

The applicant has provided information that the owner of the property is a registered proprietor for primary production for tax purposes. The occupants of the proposed dwelling will be managing a rural use, which involves the commercial breeding, rearing and sale of horses. Officers are

satisfied that the proposal constitutes a 'Rural Workers Dwelling' for the purposes of TPS2 and is consistent with the definition above.

In accordance with TPS2, a 'Rural Workers Dwelling' is an 'AA' use in the 'Rural' zone, meaning the use is not permitted unless Council has exercised its discretion to permit the use. A discretionary use should only be granted approval if the Council is satisfied that the proposed development would be consistent with the orderly and proper planning of the locality and the preservation of the amenity of the locality.

### TPS2

The subject site falls within the 'Rural' zone under TPS2, the objective for which is to "accommodate the full range of rural pursuits and associated activities conducted within the Scheme area."

The planning purpose in allowing a rural workers dwelling, as an additional dwelling on a lot in the 'Rural' zone, is to encourage the continuation of rural pursuits and uses consistent with the zoning. Officers are of the opinion that the proposal is in keeping with the overall objective and uses that that can be supported in the 'Rural' zone.

Based on the information provided, the proposal is compliant with the objectives of the Rural zone. It is considered that the variation can be supported based on the two dwellings already existing and their built form would not have any adverse effect upon the locality. In addition, Officers consider that approval of the proposed development would be consistent with the orderly and proper planning of the locality and the preservation of the amenity of the locality. The separation distance is assessed against the objectives of LPP4.14 later in the report.

### Local Planning Policy 4.14 - Rural Worker's Dwelling (LPP 4.14)

LPP4.14 sets out requirements for 'Rural Workers Dwellings'. It is based on an application falling within 'Acceptable Development', 'Performance Based' or 'Unacceptable' criteria. The proposal complies with all the acceptable requirements with the exception of separation distance, as set out in the table below:

Requirement	Acceptable development	Performance based	Unacceptable	Proposal
<b>Rural use</b>	Uses requiring a Farmland Concession	Absence of a Farmland Concession	Hobby Lifestyle or domestic use	<b>Compliant</b> The subject site has an existing Farmland Concession in accordance with the Shire's records.
<b>Size of Lot</b>	>20 hectares	4ha - 20 hectares	<4 hectares	<b>Compliant</b> - subject site is 33.06ha
<b>Separation Distance</b>	Rural workers dwelling within 50metres of	<i>The separation distance any be varies between 50m and</i>	Greater than 100m separation	<b>Not compliant</b> The Rural Worker's Dwelling

Requirement	Acceptable development	Performance based	Unacceptable	Proposal
	primary dwelling	<p>100m from primary dwelling where applicant can demonstrate that potential constraints exists having regard to the following:-</p> <ul style="list-style-type: none"> <li>• Topography</li> <li>• Watercourses</li> <li>• Vegetation values</li> <li>• Flooding</li> <li>• Amenity</li> <li>• Services</li> </ul>	distance	is located approximately 194m from the primary dwelling
<b>Services</b>	Rural workers' dwelling shares the same road access power, and communication infrastructure as the primary dwelling	Rural workers' dwelling shares as majority of services with the primary dwelling.	<p>Rural workers' dwelling proposes a new separate road access way.</p> <p><i>The location of the effluent disposal impact on surrounding waterways and native vegetation due to the impact of nutrient loads.</i></p>	<b>Compliant</b> - Services are currently being shared and will continue to be shared.
<b>Design and Siting</b>	Sited to minimise impact on the surrounding landscape and environment. Sited to minimise the impact on the suitability of the land to be used for rural purposes		<p><i>Isolated or visually prominent locations. Conflicts with other land uses on either subject land or adjacent land</i></p>	<b>Compliant</b> -The Dwelling will not result in removal of any trees as it would be built in the same location of the existing dwelling. The rural workers dwelling complies with minimum boundary setbacks for the Rural zone and therefore

Requirement	Acceptable development	Performance based	Unacceptable	Proposal
				considered to minimise the impact on the surrounding area. The proposal is also considered to be sited appropriately to be used for rural purposes.

While LPP4.14 requires 'Rural Workers Dwellings' to be located between 50m and 100m of the existing dwelling, it is considered reasonable to consider the variation proposed on its merits given that the existing dwelling proposed to be changed to a 'Rural Workers Dwelling' was built in 1979. The separation distance is a typical requirement to ensure that the dwellings share all services where practical, ensuring they do not appear as grouped dwellings. In this instance, the two dwellings will continue to share all the services as it is currently. The location is also not considered to create future pressure for the subdivision of the land to occur.

The relevant objectives of LPP4.14 relating to the separation distance are as follows:

- *Ensure that rural worker's dwellings are provided, constructed and located in such a way so as to minimise their impact on the surrounding amenity and landscape;*
- *Limit the opportunity for a rural worker's dwelling to establish and facilitate subdivision;*

Officers consider that the 'Rural Workers Dwelling' will not detrimentally impact on the amenity of the locality as the built form is consistent with the rural homesteads within the locality. Furthermore, the dwelling is set back approximately 50m from Mundijong Road and 120m from the eastern boundary thereby complying with the minimum setbacks for the 'Rural' zone. As depicted in Figure 1 above, the dwelling is screened from view by mature vegetation surrounding the dwelling and along the side and street boundaries. As such, will not adversely impact on the amenity of the locality.

The separation distance restriction is intended to ensure that the additional dwelling does not lead to indirect pressure on future subdivision of the land. In that regard, Officers do not consider the second dwelling is a trigger to facilitate future subdivision as the two dwellings have been on site for the past 27 years. The dwelling subject to the Rural Workers Dwelling, has historically been used to provide accommodation to farm workers. Officers are satisfied that the intent of the additional dwelling will be used to provide accommodation to farm workers. Furthermore, the minimum lot size requirement for a lot in the 'Rural' zone is 40ha therefore the site does not have subdivision potential in any case.

As discussed above, the subject site is used for breeding of horses, which requires workforce resources particularly during the mare foaling season. It is noted this requires supervision by full time workers. Particularly for newborn foals which require supervision and veterinary treatment as part of routine husbandry.

It is considered that the proposal is compliant with the objectives of LPP4.14. Officers are satisfied that there is a valid rural use occurring onsite and it has been demonstrated that there is a need for workers to reside at the premises to effectively manage the operations.

The proposal is consistent with the purpose and intent of the 'Rural' zone and has been carefully considered on its individual merits. Accordingly, approval of the proposed development is recommended.

### Options and Implications

With regard to the determination of the application for planning approval under Town Planning Scheme No. 2, Council has the following options:

#### Option 1

That Council APPROVES the application subject to appropriate conditions.

#### Option 2

That Council REFUSES the application providing appropriate reasons.

Option 1 is recommended.

### Conclusion

The application seeks approval for the construction of a replacement Single Dwelling and conversion of the second dwelling to a 'Rural Workers Dwelling'. For the reasons outlined and discussed within the report and information provided justifying the policy variation, the proposal is considered consistent with the objectives of LPP4.14 and purpose and intent of the 'Rural' zone and is therefore capable of approval.

### Attachments (available under separate cover)

- **10.1.2 - attachment 1** – BAL and Development Plans for the Replacement Dwelling (E20/4476)
- **10.1.2 - attachment 2** - Technical Assessment (E20/4477)

### Alignment with our Strategic Community Plan

<b>Outcome 3.1</b>	A commercially diverse and prosperous economy
<b>Strategy 3.1.1</b>	Actively support new and existing local business within the district.
<b>Outcome 4.2</b>	A strategically focused Council
<b>Strategy 4.2.1</b>	Build and promote strategic relationships in the Shire's interest.

### Financial Implications

Nil.

### Risk Implications

Risk has been assessed on the basis of the Officer's Recommendation.

Risk	Risk Likelihood (based on history and with existing)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)



	<b>controls)</b>				
That Council refuse the development and the decision is appealed to the SAT.	Possible (3)	Minor (2)	Moderate (5-9)	Financial Impact - 1 Insignificant - Less than \$50,000	Accept Officer Recommendation

**Risk Matrix**

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
<b>Almost Certain</b>	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
<b>Likely</b>	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
<b>Possible</b>	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
<b>Unlikely</b>	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
<b>Rare</b>	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

A risk rating of **6** has been determined for this item.

**Voting Requirements:** Simple Majority

**OCM106/05/20**

**COUNCIL RESOLUTION / Officer Recommendation**

**Moved Cr Strange, seconded Cr Denholm**

**That Council APPROVES the development application for the Construction of a Replacement Dwelling and Conversion of the existing Dwelling to a Rural Workers Dwelling' as contained within attachment 1 at Lot 101, 693 Mundijong Road, Oldbury subject to the following conditions:**

- 1. The development is to be carried out in compliance with the plans and documentation listed below and endorsed with the Shire of Serpentine Jarrahdale stamp, except where amended by other conditions of this consent:**

<b>Plans and Specifications</b>	<b>P1-P4 received at the Shire Offices on the 5 March 2020</b>
	<b>Bushfire Management Plan prepared Bushfire Planning &amp; Design and dated 6 September 2019</b>

- 2. The occupancy of the dwelling is restricted to the rural worker/s working at the approved 'Rural Use' on the subject site and their immediate family.**
- 3. A Notification under s70A of the *Transfer of Land Act 1893* must be registered over the Certificate of Title on the subject land of the proposed development prior to issuing of a Building Permit. The s70A shall notify owners and prospective purchasers of the land that restrictions apply for the use of the Rural Worker's Dwelling as stipulated in condition 2.**
- 4. All stormwater shall be directed so stormwater is disposed of within the property. Direct disposal of stormwater onto the road, neighbouring properties, watercourses and drainage lines is not permitted.**

**CARRIED UNANIMOUSLY 9/0**