

Our Ref: 22256- 20201014 – Shire of Serpentine-Jarrahdale – QA: DM

19 October 2020

Chief Executive Officer
Shire of Serpentine-Jarrahdale
6 Paterson Street
MUNDIJONG WA 6123

Via email: info@sishire.wa.gov.au

ATTENTION: PLANNING SERVICES

Dear Sir/Madam

SUPPLEMENTARY SUBMISSION – DEVELOPMENT APPLICATION AT LOT 101 (NO. 693 AND 725) MUNDIJONG ROAD, OLDBURY

Harley Dykstra, on behalf of the landowner of Lot 101 Mundijong Road, Oldbury ('the subject land') is pleased to present this supplementary submission to the Shire of Serpentine-Jarrahdale to further inform the assessment of the Development Application lodged on 30 June 2020. The purpose of this submission is to clarify and re-iterate that the long term use of the land for 'rural pursuits' will continue into the future and be the predominant use of the land. The use of both dwellings will support, but be incidental to the undertaking of these established rural pursuits.

BACKGROUND

As mentioned in the development application report, the subject land is currently used for rural activities (horse breeding) and contains two dwellings along with various other rural outbuildings. The first dwelling at 725 Mundijong Road was built in 1979 while the second dwelling at 693 Mundijong Road was constructed in 1997. The landowner plans to demolish and rebuild the second dwelling in which he and his wife plan to live. The dwelling at 725 Mundijong Road, will continue to be rented out (currently by a Rural Worker) however the landowner does not wish to limit its use only to Rural Workers. Therefore, the application for development approval lodged on 30 June 2020 was done so on the basis of the existing non-conforming use right of the 1997 dwelling.

As noted in correspondence with the Shire's planning department, although no record of the approval from 1997 exists, a second dwelling on the site was capable of approval under the provisions of the Town Planning Scheme as at 1997 meaning that it now enjoys non-conforming use rights. The second dwelling could and would have been approved back in 1997 as a 'Grouped Dwelling' which was an 'AA' use within the Rural zone prior to the gazettal of Scheme Amendment No. 127 (SA 127) in 2004. SA 127 resulted in Clause 5.4.3 and 5.4.4 being removed from TPS 2, Clause 5.10.3 being added, and the Zoning Table amended to the effect that a Grouped Dwelling became a 'not permitted' use in the Rural zone. Prior to SA 127, Clause 5.4.3 of the Town Planning Scheme stated the following:

"In the Rural Zone only one dwelling unit permitted per lot for lots up to four hectares in area and only two dwelling units per lot for lot having an area greater than four hectares and less than 50 hectares..."

Given the subject land is approximately 33ha in area, the above clause would have allowed for a second residence on the subject land to be approved, without the limitation of it being for use by Rural Workers (SA 127 introduced this limitation in Clause 5.10.3).

Clear evidence of Grouped Dwellings being an 'AA' use within the Rural zone is contained within the 27 October 2003 Ordinary Council Meeting Minutes on Page 65 (see **Appendix A**). The minutes state the following:

"Under Council's scheme, a Grouped Dwelling is an 'AA' use within Rural zone, which means that Council may at its discretion permit the use."

It is noted Clause 4.4.1 of TPS 2 states that a non-conforming use right discontinues if the use of a building has been discontinued for a period of six months or more. Our client, has been the landowner of Lot 101 since July 2005 and has confirmed that neither dwelling has been unoccupied for a period of six months or more during this time. Accordingly, the non-conforming use right has not been extinguished.

In light of the above information and the fact that the second dwelling was approved in 1997, the second dwelling clearly enjoys an ongoing non-conforming use right.

LONG TERM RURAL PURSUITS

As mentioned in the background section of this submission, the historic and continued use of the subject land is for 'rural pursuits' being the breeding, raising and training of horses. Approval of the demolition and re-construction of the second dwelling on the subject land will not compromise the continued use of the land for these rural pursuits. The landowner's sole purpose of demolishing their current home and constructing a replacement, is to facilitate the continuation of the current rural activities. These rural activities involve a specialised horse breeding program of 30 horses which is managed by the landowner (a veterinarian – BSc, MANZCVS (Equine Medicine), Cert Equine Stud Medicine, MRCVS) and occupants of 693 Mundijong Road. The breeding program includes artificial insemination (sourced from North American Quarter Horses) of mare and the transfer of those embryo's to embryo recipient mares. The landowner was the first person in Western Australia to conduct an embryo transfer and is also the longest established practitioner in this area of highly specialised breeding. If the landowner were to leave the property due to unsuitable housing arrangements, the horse breeding program established in 2005 would need to be significantly down sized. Therefore, the construction of a new dwelling at 693 Mundijong Road, will facilitate the continued use of the subject land for these highly specialised rural activities.

While the occupants of both dwellings are currently engaged in rural pursuits on the subject land, it is not necessary that the occupants of both dwellings are engaged in these rural pursuits at all times. This is also the case under the current planning framework which provides for the construction of a second dwelling if it is involved in rural pursuits. As such, the planning framework provides for one dwelling to not be directly involved in Rural activities despite being located on Rural zoned land. While there should be no condition limiting the use of either of the dwellings for occupation by rural workers, it should be noted that one or the other dwelling will be involved in the rural pursuit conducted on the subject land at any given time. Under this scenario, both dwellings would continue to be involved in rural pursuits, therefore enabling the non-confirming use right to continue.

It should also be noted the proposed development on the subject land does not represent any material intensification of the residential component on the subject land. This is the case given that the existing dwelling at 693 Mundijong Road will be replaced with a 'like for like' building sited in the same location and of similar scale to the existing dwelling. The new dwelling will be 585.4m² which is generally consistent with the area of the existing dwelling of approximately 419m². Overall, the new dwelling will not be visually or obtrusive or out of character with the existing rural character of the locality as stated in the officer's report to the 18 May 2020 Council meeting as follows:

"the two dwellings already existing and their built form would not have any adverse effect upon the locality."

Therefore, the primary use of the subject land will continue to be for rural pursuits while residential dwellings are incidental to use of the land for rural pursuits.

CONCLUSION

As demonstrated by this supplementary submission, the dwelling at 693 Mundijong Road clearly enjoys non-conforming use rights. Further, approval of the replacement dwelling will provide for the current breeding program to continue in its current form. Overall, cancellation of the previous approval and approval of the replacement dwelling, will enable the current primary use of the land for rural pursuits to continue. This is the purpose and intent of the development application. Given the information provided in this submission, we consider the proposal is consistent the objective of the Rural zone under TPS 2 being the accommodation of the full range of rural pursuits and associated activities conducted in the Scheme Area.

We will be in contact with the Shire shortly to discuss this submission, however, please don't hesitate to contact the undersigned at this office should you have any queries at this stage.

Yours faithfully



Benjamin Houweling
Town Planner
HARLEY DYKSTRA PTY LTD

E-mail: benh@harleydykstra.com.au

APPENDIX A | 27 OCTOBER 2003 MINUTES EXTRACT

P030/10/03 PROPOSED GROUPED DWELLING (SECOND RESIDENCE) - LOT 2 PARSONS ROAD, MARDELLA (P03792/01)		
Proponent	N Simmons	In Brief That Council refuse an application dated 14 July 2003 for a Grouped Dwelling (second residence) on Lot 2 Parsons Road, Mardella for reasons outlined in the report.
Officer	Michael Davis – Planning Officer	
Signatures - Author:		
Senior Officer:		
Date of Report	24 September 2003	
Previously		
Disclosure of Interest		
Delegation	Council	

Owner: G & N Simmons
Owner's Address: 33 Parsons Road
Mardella WA 6125

Applicant: N Simmons
Applicant's Address: 33 Parsons Road
Mardella WA 6125

Date of Receipt: 17 July 2003
Advertised: Not applicable
Submissions: Not applicable
Lot Area: 5.9924 ha.
L.A Zoning: Rural
MRS Zoning: Rural
Byford Structure Plan: Not applicable
Rural Strategy Policy Area: Rural Policy Area
Rural Strategy Overlay: Not applicable
Municipal Inventory: Not applicable
Townscape/
Heritage Precinct: Not applicable
Bush Forever: Nil
Date of Inspection: 11 September 2003

Background

There is no background information to this application.

Comments

Proposal

The proposed second dwelling is proposed to be located approximately 142 metres from the existing dwelling. The reason for locating the second dwelling this distance from the existing dwelling, is that the chosen site is the driest area on the property. It is also located in close proximity to the front boundary (20 metres) and is located close to the power source to the property. The landowner would also prefer to maintain privacy between the two dwellings.

The purpose of the second dwelling is to house the landowner's elderly parents on the property.

The applicant has provided the following comments with respect to the application:

"I have no interest in subdividing my block and this application is purely to provide housing for my mother who suffers from ill health and needs constant medical checks and frequent hospital visits..."

The new property will run from our electricity meter, have it's own rain water tank and septic system, gardens would be watered from our existing bore...

With their park home on the market we envision owner builder kit home for them in the same building materials as the existing home, if the park home does not sell we envision moving the home onto the property. The park home is built in the same materials as the existing residence”.

The applicant was advised of the general requirement to locate a second dwelling in close proximity to the existing residence, however the applicant is not willing to change the proposed location at this point, as the applicant believes that the location is the best location on-site for the second dwelling.

A copy of the development plan is with the attachments marked P030.1/10/03.

Scheme Requirements

The subject land is zoned 'Rural' under Council's Town Planning Scheme No.2. Council's Town Planning Scheme No.2 contains a Grouped Dwelling use class, however a definition for this use class is not contained within Council's scheme. The R-Codes provides the following definition of a Grouped Dwelling, which may be used as a guide for assessment in this case:

“A dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special conditions of landscape or topography dictate, otherwise and includes a dwelling on a survey strata with common property”.

Under Council's scheme, a Grouped Dwelling is an 'AA' use within Rural zone, which means that Council may at it's discretion permit the use.

Council's scheme contains the following clause with respect to multiple dwellings in the 'Rural' zone:

“5.4.3 In the Rural Zone only one dwelling unit is permitted per lot for lots up to four hectares in area and only two dwelling units per lot for lots having an area greater than four hectares and less than 50 hectares...”.

The subject property is approximately 5.99 ha in area. The above clause would allow for a second residence on the subject land, however the above clause is proposed to be removed in a recent amendment (Amendment No. 127) to Council's Town Planning Scheme No.2.

Amendment No. 127

Council at it's Ordinary Council Meeting held on 23 June 2003 resolved to adopt for final adoption Amendment No. 127 to Council's Town Planning Scheme No.2. The amendment is currently with the Minister for Planning and Infrastructure for final adoption.

Amendment No. 127 to Council's Town Planning Scheme No.2 proposes to add the following clause to Council's Town Planning Scheme:

“5.10.3 Multiple dwellings within the Rural Zone

(i) In the Rural Zone only one dwelling unit is permitted per lot for lots up to four hectares in area.

- (ii) *For lots having an area greater than four hectares in the Rural Zone, an application for more than one dwelling on a lot in the “Rural Zone” will not be supported unless the additional dwelling(s) provides -*
- (a) *accommodation for workers employed for agricultural and intensive agricultural activities on that holding in accordance with Council’s definition for “Rural Workers Dwelling”; and*
 - (b) *the dwellings should generally be clustered in one location, to avoid future subdivision pressure and minimise constraints on adjoining uses; and*
 - (c) *all services to the dwellings from the lot boundary (including access roads) are shared where practicable”.*

The proposed second residence is located approximately 142 metres from the existing residence. The proposed residence will utilize the same driveway which currently services the existing residence and will also be connected to existing power to the property.

Given that the lot is just under 6 hectares in area, it is considered that the proposed second residence being located approximately 142 metres from the existing dwelling is a significant distance in relation to the overall lot size and the presence of a second dwelling may create future subdivision pressure.

The intended use of the proposed second dwelling on the lot is to house family members on the lot rather than to provide accommodation for rural workers. It is considered that the proposed second dwelling is in conflict with the intent of proposed Amendment No. 127 to Council’s Town Planning Scheme No.2.

It is recommended that the application for a second residence be refused as it does not comply with the requirements of the above proposed clause.

Statement of Planning Policy No.11 – Agricultural and Rural Land Use Planning (SPP No.11)

Statement of Planning Policy No.11 states the following:

- (i) *Provisions in the town planning scheme to allow more than one dwelling on a lot in the “General Agriculture” zone will not be supported unless the additional dwelling(s) provides:*
- (a) *accommodation for workers employed for agricultural and intensive agricultural activities on that holding;*
 - (b) *the dwellings should generally be clustered in one location, to avoid future subdivision pressure and minimize constraints on adjoining uses; and*
 - (c) *all services to the dwellings from the lot boundary (including access roads) are*

shared where practicable”.

Local governments must have due regard for the above when assessing development applications for second residences within rural zoned areas. Amendment No. 127 to Council’s Scheme has been initiated to incorporate the above provisions. It is considered that the application is in conflict with the above provisions, given that the proposed second residence is not for the purposes of a rural workers dwelling.

Environment

It is considered that there will be no direct environmental implications as a result of this application.

Emergency Management

It is considered that there will not be any emergency management issues associated with the application for a second residence.

Sustainability Statement

Does the proposal/issue enhance the environment (built and natural) or minimise environmental damage through best practice in its field?

It is considered that the proposed second dwelling will not have a significant impact on the environment. The proposed residence will not involve the clearing of any vegetation on-site. The application does not propose any specific measures to enhance the environment or minimise environmental damage through best practice in its field.

Does the proposal/issue minimise resource use, eg. Energy, land, water, soil, compared to traditional development approaches?

Not applicable.

Does the proposal/issue use locally available or produced resources?

It is uncertain whether the proposal will use locally available or produced resources.

Will the proposal/issue be economically viable in a way that incorporates its external costs?

It is considered that the proposal will be economically viable in a way that incorporates its external costs.

Is the proposal/issue designed to be socially and environmentally responsible through building up the community and enabling full participation in its implementation?

It is considered that the second residence, if approved, may create pressure for subdivision of a rural lot, which is not considered socially responsible. However, this is only speculative.

Does the proposal/issue disadvantage any social groups?

It is considered that the proposal will not disadvantage any social groups. However, the proposed second residence would provide accommodation for the landowner's elderly parents.

Does the proposal/issue create long term employment or economic benefit to current and future residents of the shire?

Not applicable.

Statutory Environment: Town Planning and Development Act 1928, Town Planning Scheme No.2

Policy Implications: Not applicable

Financial Implications: It is considered that there will not be any financial implications to Council as a result of this application.

Strategic Implications: **1 People and Community**
Objective 1: Good quality of life for all residents
Strategies:
3 Retain seniors and youth within the community.

Community Consultation: Not applicable

Voting Requirements: Normal

Officer Recommended Resolution

Council refuses an application dated 14 July 2003 for a Grouped Dwelling (second residence) at Lot 2 Parsons Road, Mardella for the following reasons:

1. The proposed second residence does not satisfy the requirement of Council's draft Amendment No. 127 to Council's Town Planning Scheme No.2 in that it does not achieve the following:
 - (a) accommodation for workers employed for agricultural and intensive agricultural activities on that holding;
 - (b) the proposed second residence should generally be located in close proximity to the existing residence, to avoid future subdivision pressure and minimize constraints on adjoining uses; and
 - (c) all services to the dwellings from the lot boundary (including access roads) are shared where practicable.
2. The proposed second residence does not satisfy the requirements of the document – 'Statement of Planning Policy No.11 – Agricultural and Rural Land Use Planning' produced by the Western Australian Planning Commission in that it does not achieve the following:
 - (a) accommodation for workers employed for agricultural and intensive agricultural activities on that holding;
 - (b) the proposed second residence should generally be located in close proximity to the existing residence, to avoid future subdivision pressure and minimize constraints on adjoining uses; and
 - (c) all services to the dwellings from the lot boundary (including access roads) are shared where practicable.
3. The proposed second residence will set a precedent for second residences within the locality and will create subdivision pressure for future subdivision of the lot and in the locality.
4. The applicant is advised that Council would consider an application that complies with Councils policy for ancillary accommodation.

Committee Recommended Resolution

The item P030/10/03 be deferred until the October Ordinary Council Meeting to allow time for a site for a Grouped Dwelling (second residence) at Lot 2 Parsons Road, Mardella to be located closer to the existing residence.

Committee Note: The Officers Recommended Resolution was changed to allow the item to be deferred to the Ordinary Council Meeting and allow time for a suitable site to be identified for the second residence.

SUPPLEMENTARY REPORT

P030/10/03 PROPOSED GROUPED DWELLING (SECOND RESIDENCE) - LOT 2 PARSONS ROAD, MARDELLA (P03792/01)

The Planning Development and Environment Committee, in appreciation of the applicant's desire to care for a sick relative, deferred their decision in order to see whether the applicant

would be willing to locate the second dwelling within 30 meters of the existing house. As a result of the Committee resolution, Mr Kevin Sproat of MasterPlan Town Planning Consultants conferred with their client, G&N Simmons, who instructed Mr Sproat to advise Council that they did not wish to negotiate with respect to the location of the dwelling. As such it is recommended that Council resolve to adopt the original officer recommended resolution as follows:

CRP030 COUNCIL DECISION/Officer Recommended Resolution

Moved Cr Star seconded Cr Hoyer

Council refuses an application dated 14 July 2003 for a Grouped Dwelling (second residence) at Lot 2 Parsons Road, Mardella for the following reasons:

- 1. The proposed second residence does not satisfy the requirement of Council's draft Amendment No. 127 to Council's Town Planning Scheme No.2 in that it does not achieve the following:**
 - (a) accommodation for workers employed for agricultural and intensive agricultural activities on that holding;**
 - (b) the proposed second residence should generally be located in close proximity to the existing residence, to avoid future subdivision pressure and minimize constraints on adjoining uses; and**
 - (c) all services to the dwellings from the lot boundary (including access roads) are shared where practicable.**
- 2. The proposed second residence does not satisfy the requirements of the document – 'Statement of Planning Policy No.11 – Agricultural and Rural Land Use Planning' produced by the Western Australian Planning Commission in that it does not achieve the following:**
 - (a) accommodation for workers employed for agricultural and intensive agricultural activities on that holding;**
 - (b) the proposed second residence should generally be located in close proximity to the existing residence, to avoid future subdivision pressure and minimize constraints on adjoining uses; and**
 - (c) all services to the dwellings from the lot boundary (including access roads) are shared where practicable.**
- 3. The proposed second residence will set a precedent for second residences within the locality and will create subdivision pressure for future subdivision of the lot and in the locality.**
- 4. The applicant is advised that Council would consider an application that complies with Councils policy for ancillary accommodation.**

CARRIED 9/0