

<b>Technical Report</b>			
<b>Application No:</b>	<b>PA20/526</b>		
<b>Lodgement Date:</b>	<b>25/6/2020</b>	<b>DAU Date:</b>	
<b>Address:</b>	<b>693 Mundijong, Oldbury</b>		
<b>Proposal:</b>	<b>Cancellation of Approval</b>		
<b>Land Use:</b>		<b>Permissibility:</b>	
<b>Owner:</b>			
<b>Applicant:</b>	<b>Harley Dykstra</b>		
<b>Zoning:</b>	<b>Rural</b>	<b>Density Code:</b>	<b>N/A</b>
<b>Delegation Type:</b>		<b>Officer:</b>	<b>ASHWIN NAIR</b>

### **Introduction:**

The application submitted seeks to amend the development approval resolved by Council at its 18 May 2020 Ordinary Council Meeting. That development approval was for the replacement of an existing dwelling, and the conversion of a second dwelling to be used for the purposes of a 'Rural Workers Dwelling.'

The application seeks to essentially amend the development approval, to remove the limitation associated with the 'Rural Workers Dwelling' on the basis that the land has historically comprised two dwellings on it, without any limitation to the second being for a rural worker. Two dwellings on one lot is defined as a 'grouped dwelling', which are a prohibited use in the Rural zone. The application seeks to utilise a non-conforming use (NCU) right arrangement to protect the grouped dwelling arrangement that has otherwise applied to the land.

As the long standing arrangement on the land has been a grouped dwelling arrangement, there is the ability to amend the development approval in order to remove the limitation of the 'Rural Workers Dwelling' and enable grouped dwelling use. The application is presented to Council as Council approved the application on 18 May 2020, which is now sought to be modified.

## Background

The first dwelling on the property was constructed between 1965 -1974 where it was used as the primary residence prior to the second dwelling being constructed in 1997. The first dwelling was thereafter primarily used for the purposes of accommodating workers associated with the existing rural use occurring onsite. The second dwelling since constructed has been used as the primary landowner residence of the property. These two dwellings have essentially functioned as grouped dwellings given the absence of any limitation to rural worker dwelling use.

The applicant seeks to amend the development approval issued by Council resolution at the May 2020 meeting. The applicant sets out that the land has enjoyed NCU rights as two grouped dwellings, as there were no restrictions on a second dwelling within TPS2 at the time the dwellings were established. The controls pertaining to Rural Workers Dwellings were introduced to TPS2 via Amendment 127, in 2002.

An aerial image below shows the location of the dwellings:



Aerial Image: Two Dwellings

In terms of the provisions within TPS 2 in 1997, a second dwelling fell within the definition of 'Grouped Dwelling' which was an 'AA' land use within the 'Rural' zone. This meant, "*that Council may, at its discretion, permit the use*". The TPS 2 at the time in relation to a second dwelling within the Rural zone stated:

*"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 lots having an area greater than four hectares and less than 50 hectares".*

Given that the subject site is approximately 33 hectares in area, the site fell within the threshold for a second residence to be considered. On this basis, two grouped dwellings was a lawful use for the land.

Subsequently, Clause 5.10.3 was introduced in 2002 as part of Amendment 127 of TPS 2, which was seven years after the second dwelling was constructed. This replaced the above clause to limit the occupation of a second dwelling in the 'Rural' zone as follows:

- a) *The Council may permit the construction of an additional dwelling on a lot within the rural zone that;-*
  - i. *The lot has a land area of not less than 4 hectares;*
  - ii. *The total number of dwelling on the lot will not exceed two;*
  - iii. *The additional dwelling is to be used for the purposes of a rural worker's dwelling as defined in Appendix 1 of the Scheme; and*
  - iv. *The additional is located within close proximity of the existing dwelling on the lot as determined by the Council and shares all services where practical.*

As however the two dwellings had been developed prior to this, the land enjoyed a NCU right protection under TPS 2. This provides the Shire with the planning framework to deal with the two dwellings as a grouped dwelling, without the associated limitation of one dwelling being for a Rural Worker only.

### **Recent Council Approval**

Council at its 18 May 2020 OCM approved an application for development approval for the property (**attachment 4**) which sought to revert the 1965-1971 dwelling to a 'Rural Workers Dwelling' and to replace the dwelling constructed in 1997. This was limited by way of conditions 2 and 3 as follows:

- "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 Workers Dwelling as stipulated in conditions 2."*

The applicant has made a request under Clause 77(1)(b) of the Deemed Provisions of the Scheme, which provides that an owner may make application to "amend or delete any condition to which [an] approval is subject." In this case, the request is to delete conditions 2 and 3.

### **Community/Stakeholder Consultation**

In accordance with the clause 64 (1) (a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the application was referred to adjoining landowners for a period of three (3) weeks between 15 October 2020 - 6 November 2020. At the end of the consultation period one submission was received, providing a non-objection.

## **Statutory Environment**

### Legislation

- *Planning and Development Act 2005;*
- *Planning and Development (Local Planning Schemes) Regulations 2015.*

### State Government Policies

- Metropolitan Region Scheme;
- Residential Design Codes WA;
- State Planning Policy 2.5 - Rural Planning.

### Local Planning Framework

- Shire of Serpentine Jarrahdale Town Planning Scheme No.02;
- Rural Strategy Review 2013 ;
- Draft Local Planning Scheme No.03;
- Draft Local Planning Strategy.

### Proposed Development

The full application and the supplementary information can be reviewed within **attachment 5 & 6.**

### Planning Assessment

In determining the land use of the proposal, it is considered the proposal enjoys a NCU for 'Grouped Dwelling', which is defined, as follows:

*"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 or below another, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property".*

These types of development are often considered compatible with the rural landscape, as they are often smaller in scale and do not detract from the often unique landscape features of a rural area. They are subservient in scale to appear as if not to fragment large landholdings, retaining the appearance of a large lot which is a character of the rural locality.

The proposed development needs to be considered in context of the existing NCU rights, which provides the planning framework for the two grouped dwelling use class permissibility.

## **Options and Implications**

### Option 1

That Council AMENDS the approved development as two grouped dwellings and DELETES conditions 2 and 3 of the planning approval dated 18 May 2020 in accordance with Clause 77(1)(b) of the Deemed Provisions of Shire of Serpentine Jarrahdale Town Planning Scheme No. 2.

### Option 2

That Council REFUSES to amend the approved development as two grouped dwellings and REFUSES to delete conditions 2 and 3 of the planning approval dated 18 May 2020.

Option 1 is recommended.

## **Conclusion**

The site currently enjoys NCU rights under TPS 2. The proposed replacement of an existing dwelling onsite is not considered to impact upon the character of the area or overall integrity of the planning framework. Importantly the development associated with the NCU rights will be used in association with the existing rural pursuit occurring onsite as the one of the dwellings will be available to accommodate rural workers and the main residence will be used to accommodate the landowners who are also involved in the rural pursuit occurring onsite. Officers consider that the planning approval can be modified to reflect the NCU that has existed on the land.