

ITEM 9.5.1
APPENDIX A

LOCATION PLAN





SUBMISSION

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APPENDIX C

BOWLING INVESTMENTS PTY LTD

**68 Leake Street
Peppermint Grove WA 6011**

Telephone: 9384 1115

5 December 2012

Chief Executive Officer
York Shire Council
PO Box 22
YORK WA 6302

Your ref: 0113745/AS1.A60609
Attention: Ms K Robinson

Dear Sir

Lot 12130 Ashworth Road - Objection to application for planning consent

I acknowledge your letter of 22 November 2012 inviting submissions about the application by Field Deployment Solutions Pty Ltd in relation to proposed change of use and development of Lot 12130 Ashworth Road, St Ronans, Western Australia. My company is the registered proprietor of neighbouring land.

The application was made by Field Deployment Solutions under Part VII of the *Shire of York Town Planning Scheme No 2* as required by clause 4.1. Clause 4.1 provides that:

'... all development on land zoned and reserved under the Scheme requires the prior approval of the local government. A person must not commence or carry out any development without first having applied for and obtained the planning consent of the local government under Part 7 ...'

Lot 12130 is in the General Agriculture Zone.

The 'P' uses in that zone are 'industry - rural', 'intensive agriculture', 'rural pursuit' and 'single house'.

So far as the proposed use is concerned (as opposed to the construction of buildings) it does not fit within the description of any of the 'P' uses.

The applicant proposes that the use of the land should be described as follows:

- (a) a 'depot operation ... primarily to support the company's operations servicing its agricultural, mining and disaster relief clients with equipment, transportable buildings and specialised off-road and farm vehicles';
- (b) '... transport goods are [to be] held at the depot for consolidation of loads going out and breakdown of loads coming in, most items ... [being] moved in and out within a few weeks of arrival, but the bulk of the goods ... [being] rolled over within a few days'.

'Development' is defined in schedule 1 to have the same meaning as given to it in the Act (the *Planning and Development Act*).

'Development' is defined in the Act to include the development or 'use' of any land. This application is primarily concerned with a change of its present use ('intensive agriculture' or 'rural pursuit') to uses which are not 'P' uses. The proposed development in the form of buildings, are buildings associated with this change of use. The objections raised below are directed primarily to the change of 'use' which constitutes development requiring approval.

First ground of objection - The proposed use is an 'X' use

The use proposed is a use as 'industry - general'. That is an 'X' use in the 'general agriculture' zone and therefore a prohibited use.

'Industry' is defined to mean the 'carrying out of any process in the course of trade or business for gain, for and incidental to ... (b) packing ... and includes, when carried out on land upon which the process is carried out and in connection with that process, the storage of goods, any work of administration ... and the use of land for the amenity of persons engaged in the process'.

'Industry - general' is defined to mean 'an industry other than a cottage, extractive, hazardous, light, noxious, rural or service industry'.

The application is formulated in a manner suggesting that the proposed use will be 'transport depot', but this formulation has been achieved by simply using the words in the definition of 'transport depot'.

In deciding what use is being proposed, it is important to consider the applicant's business operations. This is because Field Deployment Solutions' letter of 6 November 2012, says that the 'depot operation' is 'primarily to support the company's operations ...'. The question which then follows is, what are the 'company's operations'?

The website of Field Deployment Solutions (www.fielddeploy.com.au) states that it is:

'A specialised field deployment and logistics support company servicing the mining & exploration, disaster relief, heritage surveys, specialist expeditions, scientific & academic research, military, aid programs, film crews and sporting events. It provides remote, mobile & semi-permanent camps and support services using highly capable, military grade air, land and sea deployment assets and operators.

It sells and distributes a range of ex-military vehicles and equipment from the USA, NATO and the UK. This includes ex-military trucks & tracked vehicles, camp equipment, winches, APCs, tanks earthmoving equipment, military bridges etc. It also specialises in the sale, hire and service of ex-military Hagglund BV206, all terrain tracked vehicles.

Field Deployment is the only exclusive global distributor for rapid unit all terrain buildings. These are military grade, highly mobile, scalable, compact, cyclonic, lightweight, air portable accommodation & service buildings'.

Pictures on the website show the type of equipment sold. There is nothing in the above quote which shows that the company is in any way associated with servicing farming or agriculture.

The likelihood therefore is that this land will be used to conduct industry associated with the mining industry. The applicant does not explain precisely what goods are to be held at the 'depot' or why goods coming from another location should be held for 'consolidation of loads going out and breakdown of loads coming in' but the website reveals that the use will almost certainly be equipment associated with the 'deployment' of 'earthmoving equipment', 'camp equipment', 'mobile & semi-permanent camps' and 'all terrain tracked vehicles'.

The 'consolidation of loads' equates to 'packing' and that is 'industry'. See the definition referred to above.

In my submission, the proposed use of this land should properly be characterised as 'industry - general' and therefore an 'X' use (which is a use prohibited in the 'general agriculture' zone).

The council therefore has no power to grant planning consent.

Second ground of objection - Refusal by reference to clause 7.5 factors

In the alternative, if the first ground of objection is not upheld and the use is categorised as use of the land as a 'transport depot', then it is an 'SA' use.

The council should exercise its discretion by refusing the application because of the following:

In considering the application for planning consent, the Shire is to have due regard to the factors listed in clause 7.5.

A number of those factors when considered by the Shire, should lead to the refusal of the application. The factors to be considered are as follows:

- (a) any approved statement of planning policy of the Commission concerning the preservation of rural use (see clause 7.5(c));
- (b) any relevant policy or strategy of the Commission and any relevant policy adopted by the government of the State to preserve rural use in the agricultural area (clause 7.5(d));
- (c) the compatibility of the proposed use with its setting (clause 7.5(i));
- (d) the preservation of the amenity of the locality (clause 7.5(n)). See also clause 4.11.1;
- (e) the proposed means of access to and egress from the site (clause 7.5(p));
- (f) the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety (clause 7.5(q)).

As to (a) and (b) above, see the 'State Planning Policy 2.5' Agricultural and rural Land Use Planning' published by the WAPC. It states that agricultural land resources are to be protected by discouraging land uses unrelated to agriculture from locating on agricultural land. This objective is reflected in TPS 2 because the first objective specified for the 'general agriculture' zone in TPS 2 is stated in clause 4.15.1(a) which is 'to ensure the continuation of broad hectare agriculture as the principal land use in the district encouraging where appropriate the retention and expansion of agricultural activity'. The use proposed here is unrelated to agriculture.

Non-rural uses are only to be permitted where it can be shown that the use will be 'of benefit to the district and not detrimental to the natural resources or the environment': see clause 15.1(b). The use of this property of a transport depot associated with the mining industry does not preserve the rural use and is therefore not of benefit to the district.

As to (c) above, the proposed use is incompatible with its setting, given that most of the traffic on the road is tourist traffic. The movement of large vehicles and trucks along this road is not compatible with the tourist use.

As to (d) above, amenity of the area must be preserved. The location of this land is on a road attractive to tourists. Tourists travel to the York Olive Oil Company and also travel on in an easterly direction to Mokine Road where there are expansive landscape views of York and the wheat belt beyond it. Clause 4.15.2 TPS 2 expressly contemplates the refusal of an application for planning consent if, in the opinion of the Shire, the development if approved, will have a detrimental effect on the rural character and amenity of the area. The road is attractive for its verges which contain wildflowers in the spring. The Ashworth Road Action Group fought hard in the past to preserve the attractive verges.

The Ashworth Road Land Management Group in the past employed Commonwealth grant funds to revegetate the valley which has enhanced the beauty of the area and the properties abutting Ashworth Road. A movement of heavy equipment along this road to this land on a relatively narrow tarmac would be contrary to the amenity of the area.

As to (e) above, the proposed means of access to, and egress from the site, is not satisfactory. The access is close to a sharp bend in Ashworth Road.

Finally, as to (f) above, in relation to the traffic likely to be generated by the proposal, there can be no guarantee that the truck movements will be limited. The applicant contends that there would be 'less than five vehicles in total', but this is qualified by the words 'this may change'. The applicant says that it is not 'expected to become a high frequency large volume depot', and that it is 'expected that around 20 trucks per week would be the average volume' but policing the volume of the company's operations would be beyond the capacity of the Shire.

In the exercise of its discretion, after taking into account the above factors, planning consent should be refused by the council.

Third ground of objection - Conditions

If, contrary to the first and second grounds of objection, the council grants planning consent as an 'SA' use, then stringent conditions should be attached.

If unconditional approval were granted the intensity of use might increase without any additional approval being sought by the operator. Unconditional approval may make it difficult or even impossible to prosecute for an increase in that use. See for example the case of *Franconi v Shire of Perth* (1964) 11 LGRA 380 where the court in that case considered whether the result of an increase in the intensity of a nonconforming use was an infringement of the relevant bylaws. Wolff CJ said (at 384) that 'a mere increase in degree of ... use is not an infringement ...'. Admittedly that was a case about a nonconforming use and questions of amenity were not then taken into

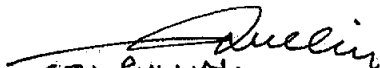
account, but it does show that there is a problem with a use of land which is approved but uncontrolled as to the extent of use.

Clause 7.10(c) permits the Shire to grant consent for a 'specified ... aspect' of the proposed use and clause 7.6(a) authorises the Shire to impose conditions. If approval is to be granted, then it is critical that it should be on condition that:

- (a) no more than five trucks with a tare weight of more than 5 tonnes, should be permitted on Lot 12130 at any one time; and that
- (b) there should be a limit of a total of 20 truck movements in or out of the property in any one week.

As to the containers referred to in clause 1.6 of the application, there should be a condition limiting the number of containers on site to 18, which is the number depicted on the plan accompanying the development application.

Yours faithfully


C.J.L. PULLIN.
Bowling Investments Pty Ltd