



WESTERN AUSTRALIA



STATE
ADMINISTRATIVE
TRIBUNAL

A1372
CEO

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Matter No: DR 323 of 2016
Contact Officer: Kirsty
Your Ref:

Shire Of Cranbrook
Po Box 21
Cranbrook WA 6321

Dear Sir/Madam,

Re: Rural Aspirations Pty Ltd v Shire Of Cranbrook

Please find enclosed a copy of the orders made by the State Administrative Tribunal.

If you have any queries or questions, please contact the State Administrative Tribunal:

Email sat@justice.wa.gov.au

Phone 08 9219 3111 or 1300 306 017

In Person 565 Hay St Perth WA 6000
SAT reception desk is on level 6.

Website www.sat.justice.wa.gov.au

for **Executive Officer**
22 February 2017

| | |
|----------------------------|---|
| Jurisdiction: | <i>Planning and Development Act 2005</i> |
| Application: | Review of a decision under a local planning scheme as to the classification of a use or the permissibility of a nonlisted use |
| Parties: | Rural Aspirations Pty Ltd (Applicant) Shire Of Cranbrook (Respondent) |
| Matter Number: | DR 323/2016 |
| Application Lodged: | 20 October 2016 |
| Date of Decision: | 20 February 2017 (decision on documents) |
| Decision of: | Member Rosetta Petrucci |
| Outcome: | Final Order |

The Tribunal orders as follows:

1. The application for review is allowed in part.
2. The decision of the respondent made on 21 September 2016 that the 'use' classification for the community postal agency is an 'office' and the sale of convenience goods is a 'shop' under the Shire of Cranbrook Local Planning Scheme No 4 is affirmed.
3. The decision of the respondent made on 21 September 2016 to refuse retrospective development approval for the sale of convenience goods from the site is affirmed.
4. The decision of the respondent made on 21 September 2016 to refuse retrospective development approval for the community postal agency from the site is set aside and a decision is substituted that retrospective development approval is granted.



JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : PLANNING AND DEVELOPMENT ACT 2005 (WA)

CITATION : RURAL ASPIRATIONS PTY LTD and SHIRE OF CRANBROOK [2017] WASAT 32

MEMBER : MS R PETRUCCI (MEMBER)

HEARD : DETERMINED ON THE DOCUMENTS

DELIVERED : 17 FEBRUARY 2017

FILE NO/S : DR 323 of 2016

BETWEEN : RURAL ASPIRATIONS PTY LTD
Applicant

AND

SHIRE OF CRANBROOK
Respondent

Catchwords:

Town Planning - Retrospective application for development - Industrial Zone - Whether sale of convenience goods is a 'convenience store' or 'shop' under local planning scheme - Whether community postal agency is an 'office' or 'civic use' under local planning scheme - Words and phrases: 'convenience store', 'shop', 'office', 'newsagency', 'civic use'

Legislation:

Environmental Protection Act 1986 (WA)
Interpretation Act 1984 (WA), s 17
Planning and Development (Local Planning Scheme) Regulations 2015 (WA), Sch 2, cl 1, cl 67
Planning and Development Act 2005 (WA), s 241, s 252(2)

Shire of Cranbrook Local Planning Scheme No 4, cl 1.5, cl 1.6, cl 4.2, cl 4.4.2,
Sch 1

State Administrative Tribunal Act 2004 (WA), s 60(2)

Result:

Application for review allowed in part

Summary of Tribunal's decision:

This matter involved an application for review of the refusal of a retrospective development proposal to utilise the existing floor space of Bill's of Tenterden which is located in an 'Industrial' zone in the Shire of Cranbrook to sell convenience goods by retail to the public and to act as a community postal agency.

The Tribunal decided that the sale of convenience goods is a use that falls within the definition of 'shop' which is not a permitted use under the 'Industrial' zone per the Zoning Table in the *Shire of Cranbrook Local Planning Scheme No 4*.

Further, the Tribunal decided that a community postal agency does not fall within the definition of 'convenience store' but rather falls within the definition of 'shop' which, as noted above, is not a permitted use under the 'Industrial' zone per the Zoning Table in the Local Planning Scheme.

However, taking into consideration the Town Centre and Industrial zone objectives, the aims and purposes of the Local Planning Scheme as well as cl 67 of Sch 2 of the *Planning and Development (Local Planning Scheme) Regulations 2015* (WA) and, in particular, cl 67(v) which requires consideration of the potential loss of any community service, the Tribunal concluded that as the respondent had already determined that the applicant's undertaking of the receipt and storage of freight parcels and items (goods receiving facility) was appropriate under the zone objectives, and that the nearest Post Office is 8.5 kilometres away in Cranbrook, it follows that retrospective planning approval should be given for the applicants to continue the community postal agency (offering basic postage assessment, stamp sales and over the counter mail acceptance and delivery) for Tenterden.

Finally, the Tribunal concluded that it is however not appropriate to give planning approval for the shop (to sell convenience goods). This is because such a service is already provided by the general store located in the Town Centre zone and allowing such a shop in the Industrial zone may constrain future industrial development around and near the site.

Category: B

Representation:

Counsel:

Applicant : Mr A Bell (Acting as Agent)
Respondent : Ms E Bushby (Acting as Agent)

Solicitors:

Applicant : N/A
Respondent : N/A

Case(s) referred to in decision(s):

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 Mr David and Mrs Debra Packard farm a broad-acre property in Frankland River in the Shire of Cranbrook plus a smaller property in the Tenterden locality where they live. Through their company, Rural Aspirations Pty Ltd (applicant), Mr and Mrs Packard run Bill's of Tenterden (the business), from an industrial lot at Lot 5 (No 24) Nunijup Road, Tenterden, being more particularly described as Diagram 90067 on Certificate of Title 2061 Volume 29 (site). The main building group on the site is located about 300 metres west of Albany Highway down Nunijup Road, Tenterden.

2 The business was acquired in 2002. According to the applicant, when it purchased the business it comprised the sale of new and second-hand machinery, undertook mechanical repairs, wrecked various machinery for parts, had a showroom for various machinery and agricultural products/wares and also served as a freight depot (agent) for various couriers. The applicant also noted that on occasion chocolates and other snacks were sold, while tea and coffee was traditionally offered to clients as many waited extended periods for machinery to be fixed or parts retrieved/delivered.

3 Since about June 2014, the applicant has run a community postal agency plus the sale of newspapers, milk, drinks, coffee, packaged pies and ice-creams from the site. The community postal agency was taken on, according to Mrs Packard, when the service station incorporating a licenced post office (LPO) closed suddenly.

4 According to Mrs Packard, it takes approximately one hour in total each work day to sort the Australia Post mail, parcels and attend to customers (for example, selling stamps and packaging). Mrs Packard noted the majority of customers of the community postal agency are customers of the business; only two customers do not purchase from the business on a regular or occasional basis.

5 On 11 November 2015, the applicant lodged an application with the Shire of Cranbrook (Shire or respondent) seeking retrospective planning approval of all of the activities of the business which are carried on from the site.

6 On 18 December 2015, the Shire wrote to the applicant to advise among other things, 'there is no discretion to approve the post office or sale of convenience items as these are consistent with the "shop" definition under the provisions of the Shire of Cranbrook Local Planning Scheme No 4'.

7 According, to the applicant, they did not receive the Shire's letter of 18 December 2015. However, they acknowledge receiving the Shire's letter of 22 July 2016 which required the applicant to provide a written commitment to cease all unauthorised office activities (community postal agency) and shop activities (including the retail sale of goods/convenience items) within a three to six month period, and to provide advice to the Shire on their intentions within 28 days.

8 On 26 July 2016, the applicant wrote to the Shire to advise of its intention to lodge a new planning application. This was done on 1 August 2016 where the applicant sought retrospective planning approval of the 'convenience store' and 'civic use'. In the application, Mr Bell noted the applicant intended to 'utilise the existing floor space to sell convenience goods plus act as an agent for the Australian Government's Australia Post business'. The applicant later stated it sought to utilise an area of 210m² within the existing building for the convenience store and that the goods proposed to be sold would cover most of those under the spectrum of the convenience store definition.

9 Relying on a report prepared by Ms Bushby dated 9 September 2016, the Shire, on 22 September 2016, refused the application on the basis:

The uses are construed respectively as a 'shop' [convenience store] and an 'office' [community postal agency] which are not permitted in the Industrial zone.

10 On 20 October 2016, the applicant lodged its application with the Tribunal seeking a review of the Shire's decision.

11 At a directions hearing on 11 October 2016, the Tribunal ordered that the issue for determination was limited to deciding whether the uses as determined by the respondent being a 'shop' and an 'office' respectively are the correct classifications under the *Shire of Cranbrook Local Planning Scheme No 4* (LPS 4) for the intended uses.

12 Finally, it was ordered that the matter be determined entirely on the documents, pursuant to s 60(2) of the *State Administrative Tribunal Act 2004* (WA).

Issue for determination

13 The sole issue to be determined in this matter is whether the uses as determined by the respondent being a 'shop' and an 'office' respectively are the correct classifications under LPS 4 for the intended uses.

Evidence

14 Mr Bell, Director of Able Planning & Project Management, as a town planner and subdivision project manager provided a witness statement for the applicant dated 22 December 2016. In addition, he submitted a copy of the application for retrospective planning approval for the proposed 'convenience store' and 'civic use' dated 4 August 2016.

15 Mr and Mrs Packard provided written submissions dated 22 December 2016 and Mrs Packard provided a witness statement dated 22 December 2016.

16 Ms Bushby, a senior planning consultant with Gray & Lewis, provided a witness statement for the respondent dated 30 November 2016. A copy of her report dated 9 September 2016 was also provided.

Legislation and Policy

17 The legislation and policy relevant to this issue are contained in the following:

- a) *Planning and Development Act 2015* (WA) (PD Act)
- b) *Planning and Development (Local Planning Schemes) Regulations 2015* (WA) (Regulations);
- c) LPS 4; and
- d) Guidance for the Assessment of Environmental Factors (in accordance with the *Environmental Protection Act 1986*) *Separation Distances between Industrial and Sensitive Land Uses No 3 June 2005* (WA) (Environmental Guidance).

18 Section 252(2) of the PD Act enables a person to seek a review by the Tribunal of a decision made under a local planning scheme to refuse an application for development. Further, s 241 requires the Tribunal, in determining the application for review, to have due regard to relevant planning considerations including any State planning policy which may affect the subject matter of the application.

19 Matters to be taken into account by the local government in considering an application for development approval are set out in cl 67 of Sch 2 of the Regulations. These are discussed later in these reasons for decision.

20 Terms used in Sch 2 of the Regulations are defined in cl 1 of Sch 2. The term 'amenity' which is used in cl 67 is defined as:

... all those factors which combine to form the character of an area and include the present and likely future amenity[.]

21 LPS 4 was gazetted on 6 July 2004. It covers the entire local government district of the Shire.

22 The aim of LPS 4 is stated to be to assist the effective implementation of regional plans and policies including the State Planning Strategy and to protect areas of agricultural significance for sustainable production: cl 1.6.

23 The purposes of LPS 4 as set out in cl 1.5 are to:

- (a) set out the local government's planning aims and intentions for the Scheme Area;
- (b) set aside land as reserves for public purposes;
- (c) zone land within the Scheme Area for the purposes defined in the Scheme;
- (d) control and guide land use and development;
- (e) set out procedures for the assessment and determination of planning applications;
- (f) make provision for the administration and enforcement of the Scheme; and
- (g) address other matters contained in Schedule 7 to the Planning and Development Act.

24 The Scheme Area is classified into zones. It is not in dispute that the site is zoned 'Industrial'. According to cl 4.2 of LPS 4 the objectives of the 'Industrial' zone are:

- to provide for the needs of industry to support the community.
- to provide appropriate buffers between industry and adjacent land uses, to avoid land use conflicts.

- to avoid non-industry related uses establishing in the industrial areas that may constrain industrial activities.

25 The Zoning Table indicates, subject to the provisions of LPS 4, the uses permitted in the various zones. The permitted uses ('P') for the 'Industrial' zone are: fuel depot, industry-light, industry-rural, motor vehicle, boat, or caravan sales, motor vehicle repairs and transport depot. Uses that are not permitted unless the local government has exercised its discretion by granting planning approval ('D') are: aquaculture, caretaker's dwelling, industry-general, industry-service, service station and veterinary centre. All other listed uses are not permitted including: home business, restaurant, shop and office.

Facts

- 26 The Tribunal finds:
- a) The site is located within the area subject to LPS 4 and is zoned 'Industrial'.
 - b) The business, operates from the site. The applicant purchased the business and land in 2002.
 - c) The business comprises machinery and tool sales, plus a general machinery and vehicle workshop. It is also a transport depot for freight transfer by various cartage and courier companies.
 - d) The respondent advised the applicant on 11 November 2015 in regards to activities carried on the site that:
 - i) the workshop and mechanical repairs are a permitted use in the Industrial zone and do not require planning approval;
 - ii) the receipt and storage of freight parcels and items (goods receipt facility) is consistent with the objectives of the 'Industrial' zone and is therefore permitted; and
 - iii) the 'showroom' is consistent with the objectives of the 'Industrial' zone and is therefore permitted.

- e) From about June 2014 the business also includes the sale of newspapers, milk, drinks, coffee, packaged pies and ice-creams and an Australia Post community postal agent which included post boxes and mail services for the locality's residences and businesses.

Consideration

Sale of convenience goods - 'convenience store' or 'shop'?

27 The term 'convenience store' is relevantly defined in Sch 1 to LPS 4 as:

'convenience store' means premises -

- (a) used for the retail sale of convenience goods commonly sold in supermarkets, delicatessens or newsagents, or the retail sale of petrol and those convenience goods;
- (b) operated during hours which include, but may extend beyond, normal trading hours;
- (c) which provide associated parking; and
- (d) the floor area of which does not exceed 300 square metres net lettable area[.]

28 However, the term 'convenience store' is not listed in the Zoning Table in Sch 1 to LPS 4.

29 Further, the term 'convenience goods' is not defined in LPS 4 or in the PD Act. This means, pursuant to s 17 of the *Interpretation Act 1984* (WA), the term takes its ordinary meaning. The term 'convenience goods' is defined as:

Widely distributed and relatively inexpensive goods which are purchased frequently and with minimum of effort, such as gasoline (petrol), newspapers, and most grocery items.

Business Dictionary Online (2017)

30 A 'shop' is relevantly defined in Sch 1 to LPS 4 as:

... premises used to sell goods by retail, hire goods, or provide services of a personal nature (including a hairdresser or beauty therapist) but does not include a showroom or fast food outlet[.]

31 According to the original application for retrospective planning approval dated 11 November 2015 the 'Existing Building/Land Use' is noted to include 'retail, groceries, drinks and eats'. In the subsequent application for planning approval dated 1 August 2016 the 'Description of proposed development and/or use' is recorded as 'convenience store'. Further, the application stated the existing floor space would be used to sell convenience goods. This was later clarified by Mr Bell that the applicants planned for the convenience store to occupy about 210m² of the existing building.

Applicant's submissions

32 Mr Bell submitted that the sale of convenience goods on parts of the floor area, set amongst the other multi-faceted operations of the business of the 'front of house' premises best fell under the 'convenience store' use class. This, according to Mr Bell, was because:

- a) The zone objectives make it necessary to provide for the needs of industry to support the community, including the vast number of on-farm businesses/industries in and surrounding Tenterden.
- b) He has seen the sale of convenience goods in conjunction with other business operations before, including being located within the reception building of caravan parks and resorts and within parts of cafés. He also noted he has seen convenience stores as standalone businesses in industrial and residential estates.
- c) Other surrounding local governments such as Kojonup, Gnowangerup and Manjimup sensibly acknowledge this in their local planning schemes and identify 'convenience store' as a permissible use in their industrial and/or light industrial zones.

33 In his statement of 22 December 2016, Mr Bell noted customers predominantly attend the business premises to:

- A. purchase machinery, petroleum products, lubricants, tools, farm appliances [and] workwear ... from the showroom area;
- B. have their machinery / vehicles serviced in the workshop; and
- C. have freight collected and left for pick-up at the business counter.

34 Further, Mr Bell submitted that the sale of convenience goods at the
business is an ancillary use that has grown out of and developed from the
primary use and that the sole intention has been enhancing the
predominant uses and the experience for customers. Mr Bell suggested
the sale of convenience goods alone could not take place on a standalone
basis.

35 Mr Bell also submitted that in respect of the other objectives of the
'Industrial' zone, the sale of convenience goods on such a small, secondary
scale will not constrain industrial activities now and in the future.

36 In his view, Mr Bell said the sale of convenience goods from the site
would not fall into the category of 'sensitive land use' under the
Environmental Guidance because it is commonplace to have new lunch
bars, convenience stores and corner shops in existing industrial zones as
these are not expected by the patrons of these facilities to require high
levels of amenity.

37 Further, according to Mr Bell, unlike general retail shopping areas, a
high standard of amenity and buffers to industrial uses are not necessary
for places selling convenience goods, as the purpose for which people
travel to the premises are, for the most part, a greater purpose other than
the goods they offer and for these greater purposes, a high level of
amenity is not anticipated nor demanded.

38 Mr Bell asserted that it is improper to classify the sale of
convenience goods as a 'shop' because:

- a) The respondent had previously classified the 'front of house' sales area as a 'showroom' which it determined to 'be a permitted use in the industrial zone'. Mr Bell suggested because the respondent classified it predominantly as a 'showroom' the use class of 'shop' is specifically excluded by virtue of its own definition.
- b) The premises could never be viably occupied by any other business within the greater spectrum of 'shop' retailing or servicing that fundamentally requires direct exposure and 'wallets past windows'. Rather, according to Mr Bell this was 'opportunistic convenience retailing only'.

- c) The premises are unsuitable for the provision of services of a personal nature including hairdresser and beauty therapist listed in the definition of 'shop'.

Respondent's submissions

39 In response, Ms Bushby stated that she accepted that all the elements of the 'convenience store' definition would be satisfied as:

- a) The development application proposed the retail sale of convenience goods commonly sold in supermarkets, delicatessens and newsagents.
- b) The business operated during and slightly beyond normal trading hours.
- c) Areas external to the building are used for parking by patrons of the business.
- d) The floor area within which the sale of convenience goods is 210m² of the main building.

40 However, Ms Bushby submitted that the retail sale of convenience goods cannot be considered under cl 4.4.2 of LPS 4 as a 'use not listed' in the Zoning Table which relevantly provides:

If a person proposes to carry out on land any use that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type, class or genus of activity of any other use the local government may:

- (a) determine that the use is consistent with the objectives of the particular zone and is therefore permitted;
- (b) determine that the proposed use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of clause 9.4 in considering an application for planning approval; or
- (c) determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.

41 Working through cl 4.2.2, Ms Bushby accepted that each element of the definition of 'convenience store' is satisfied, and that this use is not stated in the Zoning Table. However, Ms Bushby stated that the proposed use, that is the retail sale of convenience goods, is a 'shop' which is listed in the Zoning Table. Ms Bushby noted the term 'retail' used in the

definition of 'shop' and in 'convenience store' is defined in Sch 1 of LPS 4 as:

... the sale or hire of goods or services to the public.

42 Finally, Ms Bushby noted the sale of convenience goods involves the sale of goods to the public. In arriving at this conclusion, Ms Bushby noted the definition of 'convenience store' refers to the retail sale of convenience goods commonly sold in supermarkets, delicatessens or newsagents. In her view, a convenience store is a type of 'shop'.

43 The Tribunal concludes that even though the business enjoys the support and appreciation of the local community, this is not a relevant consideration in characterising the use (as a convenience store or as a shop).

44 Both the applicant and the respondent agree that the sale of convenience goods by the applicant falls within the definition of 'convenience store' per Sch 1 of LPS 4. However, 'convenience store' is not listed as a use in the Zoning Table of LPS 4.

45 In the Tribunal's view, cl 4.4.2 of LPS 4 can only apply to determine that the use is consistent with the objectives of the particular zone and is therefore a permitted use if the use 'convenience store' is not specifically mentioned in the Zoning Table (which it is not) and the use cannot reasonably be determined as falling within the type, class or genus of activity of any other use. In this case the relevant use identified by both parties is that of 'shop'.

46 The applicant's argument that the 'shop' use class is inapplicable because the buildings on the site are unsuitable for the hiring of goods, or the provisions of services of a personal nature including a hairdresser and beauty therapist, is misconceived. This is because the definition of 'shop' in LPS 4 clearly refers to three separate forms of use (apart from showroom or fast food outlet) which can operate as a shop in their own right, being:

- a) sale of goods by retail;
- b) hire of goods; or
- c) provide services of a personal nature (including a hairdresser or beauty therapist).

47 The Tribunal concludes that the sale of convenience goods is a use that falls within the definition of 'shop' and that it is not a permitted use under the 'Industrial' zone per the Zoning Table in LPS 4.

Community postal agency - 'office' or 'civic use'?

48 The community postal agency is located within a portion of the existing building on the site. Photographs provided by the respondent show an Australia Post box external to the building and a counter within the building. Behind the counter appears to be an area used for administration tasks including mail sorting.

Applicant's submissions

49 Mr Bell submitted that the community postal agency must be considered an Australia Post business owned by the Australian government acting on behalf of the Crown. He stated that Australia Post is a critically important instrumentality of the Crown for the primary purpose of communication and goods transfer.

50 Mr Bell stated that if the community postal agency cannot be considered incidental or ancillary to the convenience store newsagency type goods or functions, then it should be classed a 'civic use' and treated as a use not listed in the Zoning Table. 'Civic use' is defined in Sch 1 to LPS4 as:

... premises used by a government department, an instrumentality of the Crown, or the local government, for administrative, recreational or other purposes[.]

51 Finally, Mr Bell submitted that adjoining local governments, such as Kojonup and Manjimup sensibly identify 'civic use' as a permissible use in their industrial/light industrial zones, such that these activities may support its various business areas and communities.

52 In his written statement dated 22 December 2016, Mr Bell noted the respondent had previously determined that the receipt and storage of freight parcels and items (goods receiving facility) is appropriate under the zone objectives. Because of this, Mr Bell submitted that the receipt and storage of freight parcels would also cover the forwarding of such items as the community postal agency offers the minimum service of basic postage assessment, stamp sales and mail acceptance and delivery (but does not offer services such as bill payment and banking).

53 Mr Bell noted that the community postal agency is intertwined with
the other administrative/clerical and predominant functions of the
business.

54 Mr Bell stated community postage agencies are found in areas such
as remote cattle stations, Aboriginal settlements, mining camps and even
without appropriate zoning they are a necessity for communication and
supply.

Respondent's submissions

55 Ms Bushby submitted that the services provided by the community
postal agency are of an administrative and clerical nature and therefore an
'office' which is defined in Sch 1 of LPS 4 as:

... used for administration, clerical, technical, professional or other like
business activities[.]

56 An 'office' is not a permitted use under the Zoning Table and
therefore the respondent refused the proposal for the community postal
agency.

57 Ms Bushby did not agree that the community postal agency is a 'civic
use' as it is not being operated by Australia Post rather, it is operated by
the applicant (which is not a government department, an instrumentality
of the Crown or the local government) under a contract with Australia
Post.

58 Further, Ms Bushby did not agree that the community postal agency
is part of a 'convenience store' because the definition of this term in LPS 4
refers to the retail sale of goods commonly sold by newsagents. As the
term 'newsagency' is not defined in LPS 4, the ordinary meaning is to be
used. Ms Bushby referred to the Macquarie Dictionary Online for the
definition of newsagency. It defined the term 'newsagency' as:

a shop which sells principally newspapers, magazines, stationery and
books.

59 Ms Bushby concluded that a community postal agency is not part of
a 'convenience store' as it does not involve the sale of convenience goods.

60 Even though the applicant noted that many rural newsagencies offer
postal services, and submitted that a community postal agency is simply
one aspect of a newsagency and therefore falls within a 'convenience
store', the Tribunal agrees with the respondent that because the ordinary
meaning of newsagency (as set out above) does not include the sale of

stamps and the provision of postal services, it cannot be concluded that a community postal agency falls under 'convenience store' in LPS 4. Rather, the Tribunal concludes that the community postal agency use is that of 'office'.

Other considerations

61 Under cl 67(v) to cl 67(x) of Sch 2 of the Regulations, the local government is to have due regard to the following in considering an application for planning approval:

...

- (v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses;
- (w) the history of the site where the development is to be located;
- (x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals[.]

62 Mr Bell argued that the sale of convenience goods will have no negative impact on the community or community service. He also noted that competition is an irrelevant consideration but, nonetheless, he noted fuel is available about 10 kilometres away from the site (or about six minutes driving time) and if the service station at Lot 350 Brooking Street, Tenterden (Lot 350) closes, the community will still be able to source fuel from the other service station.

63 More importantly, according to Mr Bell, the retention of the community postal agency to support the community's people and businesses is evidenced by the number of people who signed the petition to retain the sale of convenience goods and the community postal agency.

64 Ms Bushby, in response, noted there is an existing general store trading as 'Tenterden Top Up' located in the 'Town Centre' zone which is located at Lot 350 on the corner of Albany Highway and Brooking Street, Tenterden. Ms Busbhy noted that Brooking Street is directly opposite of Nunijup Road on the eastern side of Albany Highway. Further, Ms Bushby noted the general store sells a wide range of goods, beverages, plants, gifts, pre-cooked food and includes a fuel bowser.

65 Ms Bushby stated she was concerned of a potential loss of the fuel outlet operating from Lot 350. This was on the basis that she understood

it was the last petrol station available along Albany Highway (travelling towards Albany) until Mount Baker or Cranbrook.

66 Ms Bushby submitted that if the Tribunal concludes the proposal is one that can be approved, the issue of potential loss of the fuel outlet on Lot 350 needs to be taken into consideration as it provides a community benefit. In conclusion, Ms Bushby noted that if approval is given for a 'convenience store' this will result in overall reduction in the level of facilities and amenities enjoyed by the local community through the sale of fuel from the Tenterden general store.

Conclusion

67 The Tribunal agrees with the respondent regarding the sale of convenience goods. There is already a general store located in the 'Town Centre' zone which sells a wide range of goods in addition to the fuel bowser. However, allowing the applicant to operate a convenience store from the site bears no relationship to the 'Industrial' zone needs and further, it is contrary to at least one of the objectives of the 'Town Centre' zone which is to ensure the established town centres remain the principal places for retail, commercial, civic and administrative functions.

68 In regards to the community postal service, the use of which was characterised by the Tribunal earlier in these reasons as 'office', is often attached to the general store in rural and remote areas. In this case, it is not. According to Mrs Packard, the service station on Albany Highway that was also a licensed Post Office closed its door with little notice, so they took on the community postal agency as a community service.

69 The Tribunal does not accept that the community postal agency or the shop is an 'incidental use that is complimentary to the larger parts of this multifaceted business', as suggested by Mr Bell. This is because the other parts of the business (for example, workshop) operate independently of the community postal agency and shop and vice versa.

70 Bearing in mind the 'Town Centre' and 'Industrial' zone objectives, the aims and purposes of LPS 4 as well as cl 67 of Sch 2 of the Regulations and, in particular, cl 67(v) which requires consideration of the potential loss of any community service, the Tribunal considers that as the respondent has already determined that the applicant's undertaking of the receipt and storage of freight parcels and items (goods receiving facility) is appropriate under the zone objectives, and that the nearest post office is 8.5 kilometres away in Cranbrook, it follows that retrospective planning approval should be given for the applicants to continue the community

postal agency (offering basic postage assessment, stamp sales and over the counter mail acceptance and delivery) for Tenterden.

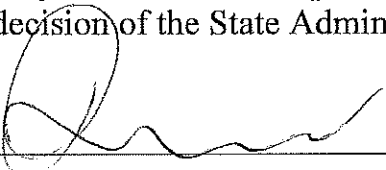
- 71 It is, however, not appropriate to give planning approval for the shop. This is because such a service is already provided by the general store located in the 'Town Centre' zone and allowing such a shop in the 'Industrial' zone may constrain future industrial development around and near the site.

Orders

The Tribunal orders as follows:

1. The application for review is allowed in part.
2. The decision of the respondent made on 21 September 2016 that the 'use' classification for the community postal agency is an 'office' and the sale of convenience goods is a 'shop' under the *Shire of Cranbrook Local Planning Scheme No 4* is affirmed.
3. The decision of the respondent made on 21 September 2016 to refuse retrospective development approval for the sale of convenience goods from the site is affirmed.
4. The decision of the respondent made on 21 September 2016 to refuse retrospective development approval for the community postal agency from the site is set aside and a decision is substituted that retrospective development approval is granted.

I certify that this and the preceding [71] paragraphs comprise the reasons for decision of the State Administrative Tribunal.



MS R PETRUCCI, MEMBER