

2.2: DEVELOPMENT APPLICATION - HOME BUSINESS (COUNSELLING SERVICE) - LOT 42 GREENSHIELDS STREET, MIRA MAR VERSION TWO

Land Description	: Lot 42 (#53) Greenshields Street, Mira Mar
Proponent	: R Fitzpatrick
Owner	: D Ferguson
Business Entity Name	: N/A
Attachment(s)	: Letter of application : Neighbours' comments (x3)
Responsible Officer(s)	: E/Director Planning and Development Services (G Bride)

Maps and Diagrams:



IN BRIEF

- An application has been received for a Home Business (Counselling Service) at Lot 42 Greenshields Street, Mira Mar.
- The proponent has previously obtained approval to conduct the same home business at another residential address within Albany and seeks to undertake the business at this new address.
- Neighbouring landowners were consulted and concerns have been expressed particularly in relation to traffic, safety and security issues.
- It is recommended that approval be issued subject to conditions.

ITEM 2.2: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council ISSUE a Notice of Planning Scheme Consent for a Home Business (Counselling Service) at Lot 42 Greenshields Street, Mira Mar subject to the following conditions:

- A. Approval is granted exclusively to the proponent and is not transferable to a third party or to an alternate site.**
- B. The Home Business (Counselling Services) being restricted to the following operating hours:**
 - **8.00am - 7.00pm Monday to Friday; and**
 - **9.00am - 12.00pm Saturday.**
- C. The Home Business (Counselling Services) being restricted to a maximum of 3 clients per day with no more than one patrons vehicle being on the site at any one time.**
- D. The Home Business (Counselling Services) being conducted within the area identified on the approved plans in red (as detailed in the planning application lodged with Council).**
- E. The Home Business (Counselling Services) not employing persons not residing within the residence.**

ADVICE NOTE:

The proponent is further advised that an application for signage is required to be lodged in accordance with Council's Signs Policy and Local Law.

ITEM 2.2: RESOLUTION (Responsible Officer Recommendation)

**MOVED: COUNCILLOR HAMMOND
SECONDED: COUNCILLOR MATLA**

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED 12-0

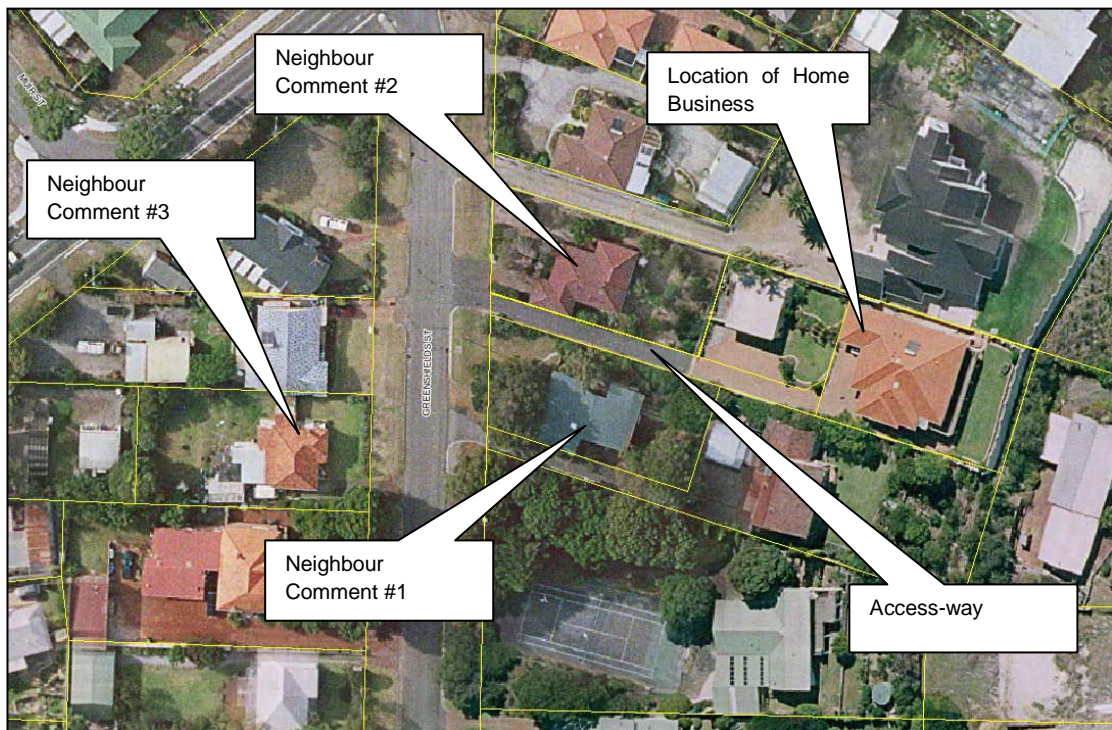
BACKGROUND

1. An application for a Home Business (Counselling Service) has been received by the City for Lot 42 (#53) Greenshields Street, Mira Mar.
2. The subject land is zoned "Residential R20" within Town Planning Scheme No. 1A.
3. The same proponent had previously operated the same home business at 34 Frederick Street, Albany (also zoned Residential) and seeks Council's approval to operate the business at her new residential address.
4. The proposed use required advertising in accordance with Clause 7.5 of the Scheme and at the close of the advertising period a total of three submissions had been received.
5. As substantial complaints have been received from neighbouring properties in relation to increased traffic and security during the advertising period the proposal is referred to Council in accordance with its '*Planning Processes Guidelines*'.

6. One of the neighbours who objected to the proposal has since read the Officer's Report and has advised that they no longer object to the proposal. A copy of the letter is attached.

DISCUSSION

7. The proponent has advised the following in relation to the proposed home business:
- The clients are referred to her via a General Practitioner.
 - The counselling service is to be conducted in a 20m² room of the dwelling in which the she lives. The room is well distanced and cannot be seen from neighbouring properties.
 - The types of clients are not those seeking longer term counselling.
 - The service includes children struggling to cope from being bullied at school, or persons with mental health issues.
 - The counselling service expects approx 3 clients/day and 10 clients/week.
 - The counselling service intends to operate during the days and hours of Monday to Friday (9am-7pm) and Saturday (9am-12noon).
 - There is sufficient area onsite to accommodate access and car parking.
8. Neighbouring properties have commented that the proposed counselling service and traffic generated by the service will unduly impact on their amenity (noise, safety and privacy) and land values. The below aerial photograph identifies the subject land, the driveway accessing the residence and the proximity of the neighbours who lodged submissions.



9. The access way services the subject land only; the neighbouring properties do not utilise this driveway for access purposes nor do they have specific access rights via an easement or

reciprocal rights of access agreement. These adjacent properties have direct access to Greenshields Street via existing crossovers.

10. The specific areas of concerns expressed in the submissions relate to increased traffic movements, safety and security and general amenity. With regards to these issues staff advise the following:

Traffic Movements

11. The proponent is seeking Council's support for a maximum of three appointments per day and ten appointments per week, which is consistent with patronage experienced when operating the home business from Frederick Street.
12. The standard residential dwelling produces around 8 vehicle movements per day, however where there are large families or families with more than two licensed drivers it is not uncommon for such residences to produce more than 15 vehicle movements per day. The proposal will generate around 6 vehicle movements per day and the occupant of the dwelling will be working from home.
13. Although the access driveway is long and narrow the subject land is the only property which has access rights over this driveway, and as it is not shared with any adjoining landowner the potential for vehicle conflict is significantly reduced. By limiting the number of appointments and requiring the staggering of such appointments (ie. no 'back to back' appointments to avoid the queuing of patrons) no noticeable increases in traffic movements are likely to eventuate. There is also ample manoeuvring area to ensure vehicles exit the property in forward gear.
14. In respect of the neighbour on the northern side of the access way whose dwelling is positioned within a metre of the access way and their property boundary is not enclosed along this frontage with a fence, the position of the house and the lack of fencing would mean an increase in traffic movements would be more noticeable to the occupant of that dwelling. However as discussed above the additional traffic movements are considered to be negligible and the land owner has the right to erect a fence to increase safety and security along their property boundary line.
15. There is sufficient parking on the subject land and the vacant lot to the west, which is also tenanted by the proponent.

Safety and Security

16. A common concern raised in the submissions was whether those people using the service would be criminals or sex offenders. The proponent has advised that her counselling service is not designed to counsel persons that have undertaken criminal activity as such consultations require more frequent, lengthy counselling services not provided by the proponent. The proponent's clients are referred via a general practitioner and generally involve persons finding it difficult to communicate or socialise, such as a child that has been bullied at school.

17. Another concern raised was that the “coming and going” of patrons could affect privacy and security. As mentioned above given the open nature of the property on the northern side of the access way (Neighbour #2 on aerial photograph above) the concerns of privacy and security are heightened. In this case the patrons using the service will be counselled within the residence of Lot 42 Greenshields Street, Mira Mar and will be under the care and control of the proponent at all times upon entering the property. The staggering of appointments will further ensure queuing of patrons does not occur and that all patrons are received by the proponent on attendance.

Town Planning Scheme considerations

18. The Town Planning Scheme 1A defines a Home Business as:

“A business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which -

- a) does not employ more than 2 people not members of the occupier's household;*
- b) will not cause injury to or adversely affect the amenity of the neighbourhood;*
- c) does not occupy an area greater than 50 square metres;*
- d) does not involve the retail sale, display or hire of goods of any nature;*
- e) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and*
- f) does not involve the use of an essential service of greater capacity than normally required in the zone.*

19. In relation to the above:

- a) The proposal does not involve the employment of any person not occupying the household;
- b) The issue of amenity is discussed in Paragraphs 19 to 22 below;
- c) The proposal occupies an area below 20m²;
- d) The proposal does not involve the retail sale, display or hire of goods of any nature;
- e) As per Paragraphs 10 to 14 above, in the opinion of staff the proposal would not entail traffic difficulties as a result of inadequacy of parking or increase in traffic volumes in the neighbourhood;
- f) The proposal does not involve the use of an essential service of greater capacity than is normally required in the residential zone.

Amenity

20. Town Planning Scheme No. 1A (TPS1A) defines amenity as:

“the quality of the environment as determined by the character of an area, its appearance and land use, which contributes to its pleasantness and harmony and to its better enjoyment.”

21. The definition of a Home Business includes a requirement that the home business will not cause injury to or adversely affect the amenity of the neighbourhood.
22. Three submissions have been received expressing concerns about the impact this proposal will have on their amenity, one of those was not an adjoining landowner. Given the frequency of the appointments, the limited increase in vehicle movements and the fact that the business does not involve any modifications to the building and would not generate any noise, dust or odour concerns, staff believe the amenity enjoyed by neighbouring owners is unlikely to be adversely affected.
23. The proposed business has previously been operated from an existing residence in Frederick Street, and Council records have indicated that no complaints have been received in relation to that operation.

GOVERNMENT CONSULTATION

24. Government consultation is not required and is not necessary for the assessment of this land use application.

PUBLIC CONSULTATION / ENGAGEMENT

25. Pursuant to Clause 7.5 of the Town Planning Scheme 1A, advertising was carried out via letters being sent to neighbouring properties, a notice in the local newspaper and a sign displayed on site for a period of 21 days. At the close of the notification period, 3 submissions were received. The comments made are summarised in the discussion section of this report and included as attachments.

STATUTORY IMPLICATIONS

26. A 'Home Business' is an 'SA' use within Town Planning Scheme 1A within the Residential Zone (ie. a use that is not permitted unless planning consent to it is granted by the Council after notice has been given in accordance with Clause 7.5).

STRATEGIC IMPLICATIONS

27. This item directly relates to the following elements from the Albany Insight – Beyond 2020 Corporate Plan:
 - **Lifestyle & Environment;**
1.2. Young adults are well catered for.
 - **Governance;**
4.3. Deliver excellent community services that meet the needs and interests of our diverse communities.

POLICY IMPLICATIONS

28. There are no policies that provide further guidance to the use 'Home Business'.

RISK IDENTIFICATION & MITIGATION

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Whether the proposal adversely impacts on neighbouring properties.	Unlikely	Moderate	Medium	Application of conditions to control impacts.

FINANCIAL IMPLICATIONS

29. The appropriate planning fee has been paid by the proponent and staff have processed the proposal within existing budget lines.

LEGAL IMPLICATIONS

30. Should Council refuse the development the proponent has the ability to appeal Council's decision at the State Administrative Tribunal, although such an appeal would be a Class 1 appeal which does not involve legal representation, and therefore such costs would be mainly staff time.

ALTERNATE OPTIONS

31. Council has the ability at its discretion to approve or refuse the use. The two areas requiring Council's particular consideration are whether the proposal would lead to unacceptable traffic difficulties and whether the use is likely to adversely affect the amenity of the area.
32. Should Council wish to refuse the proposal it would need to formulate reasons as to why the development should not be supported.
33. A decision to refuse the proposal may set a precedent for future decision making on these type of applications within residential areas.
34. Council has the option under Clause 7.9(c) of Town Planning Scheme No. 1A to limit the time for which planning scheme consent remains valid (ie. 12 months), should it wish to review the operation before considering the renewal of planning scheme consent.

SUMMARY CONCLUSION

35. The application for a Home Business (Counselling Service) is to occur within a single room of the dwelling, away from view and at a distance from, neighbouring dwellings, attending to three clients per day.

36. Due to the nature of the Home Business which does not produce noise, dust, odour or excessive traffic movements it is recommended that the proposal be supported.

Consulted References	Town Planning Scheme 1A
File Number (Name of Ward)	A144246 (Breaksea Ward)