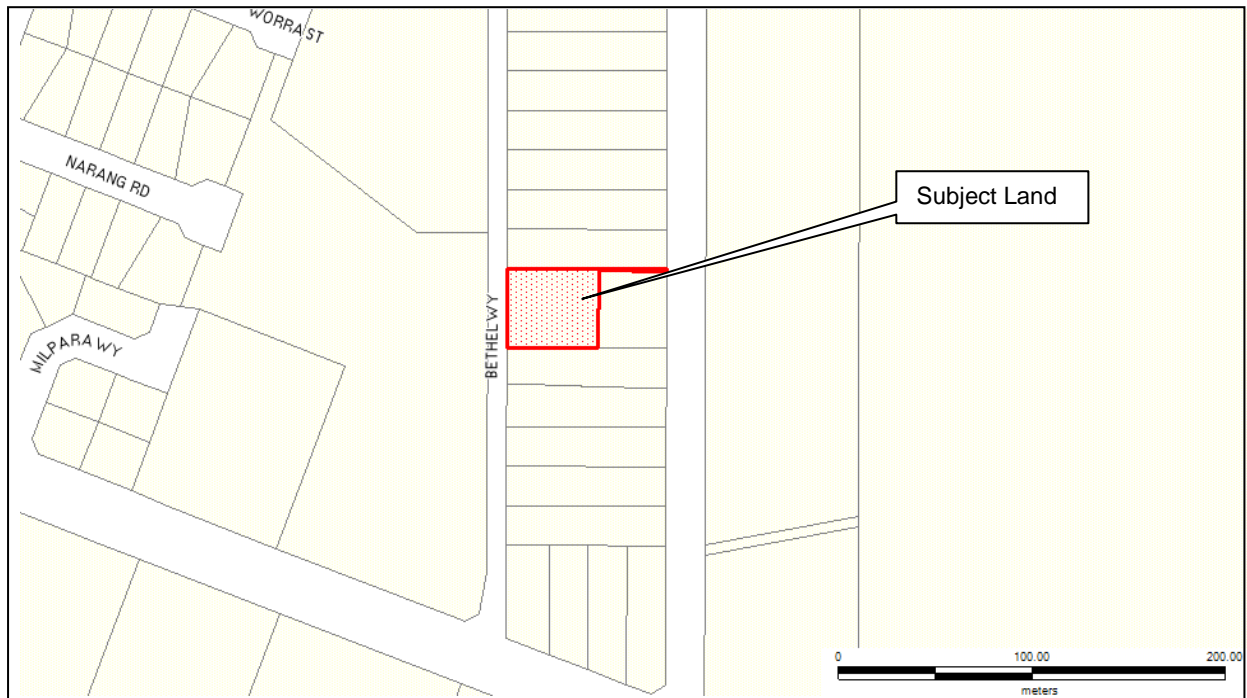


2.4: DEVELOPMENT APPLICATION – HOME BUSINESS – 15 BETHEL WAY, YAKAMIA

Land Description	: Lot 200 (#15) Bethel Way, Yakamia
Proponent	: R Ryan
Owner	: R Ryan
Business Entity Name	: Creative Landscapes Great Southern
Attachments	: Planning Application Plan & Supporting Information.
Appendices	: Neighbour consultation responses.
Councillor Workstation	: Nil
Responsible Officer(s)	: Acting Executive Director Planning & Development Services (Simon Lenton)

Maps and Diagrams:



IN BRIEF

- A retrospective application to operate a landscaping operation as a home business from a single residential house.
- Council is required to determine whether the scale and intensity of the business is appropriate within the locality.

RECOMMENDATION

10.05PM Councillor Calleja left the Chamber after declaring an interest in this item.

**ITEM 2.4: RESOLUTION
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR BOWLES
SECONDED: COUNCILLOR ATTWELL**

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for a ‘Home Business – Landscaping’ at 15 Bethel Way, Yakamia subject to the following conditions:

- A. This application is for a retrospective approval. For retrospective applications, the fee shall be “*by way of a penalty to be twice the amount of the maximum fee payable*”, (ie, the original application cost, plus two times that amount by way of penalty) in accordance with the City’s Schedule of Fees and Charges 2011-12. Payment of this fee will be required prior to issue of the decision.**
- B. No deliveries of landscaping supplies for commercial application are to be made to the property.**
- C. No landscaping supplies for commercial application are to be stored on the property.**
- D. No retail sale, display of hire of landscaping supplies or any other goods being undertaken from the property.**
- E. Approval is granted exclusively to the proponent and is not transferable to a third party or to an alternative site.**
- F. The home business being conducted within the area identified on the approved plans in red (as detailed in the planning application lodged with Council).**
- G. The operation of the home business is to comply with the definition of ‘Home Business’ at all times.**

“Home Business - means 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;”**

CARRIED 8-3

Record of Vote

Against the Motion: Councillors Gregson, Sutton and Bostock

BACKGROUND

1. The subject site is a regular shaped lot located on the eastern side of Bethel Way in Yakamia. It is 1950m² in area and is zoned 'Future Urban' under Town Planning Scheme No. 1A and retained under the draft Local Planning Scheme No. 1 as Future Urban.
2. Land within the Future Urban zone is recognised as being suitable for urban development and uses in the future.
3. Under draft Local Planning Scheme No 1, the objectives for the future urban zone are as follows:

4.2.3 Future Urban Zone

- (a) *Maintain viable uses for existing lots until the land is required to be developed for the desirable ultimate long term use;*
 - (b) *Preserve individual land parcels with their maximum area, so that the land will not be prematurely fragmented and future development options compromised;*
 - (c) *Maintain and enhance the physical characteristics, environmental qualities and scenic qualities in the locality; and*
 - (d) *Permit limited development which is in keeping with the existing character of the locality and compatible with the likely future use of the land for urban or other purposes as determined by the Local Government following the preparation of a Structure Plan; and*
 - (e) *Provide for structure planning of land within the zone to guide and coordinate land use and infrastructure provision where multiple ownerships or larger parcels of land requiring the staging of development is involved so that:*
 - (i) *Future urban land is not fragmented or developed in such a way as to make urban development more costly or difficult;*
 - (ii) *Development does not create an unreasonable or uneconomic demand for agencies to provide or extend public infrastructure or services;*
 - (iii) *There is equitable sharing of the costs of infrastructure between owners and to ensure that cost contributions are only required towards such infrastructure as is reasonably required as a result of the subdivision and development of land; and*
 - (iv) *Servicing agencies and Local Government can coordinate the timely provision of infrastructure to support the subdivision and development.*
4. The subject site already contains an approved single dwelling and outbuilding. The use of an existing dwelling for a small scale commercial enterprise can be considered if such enterprise can meet the definition and requirements of a 'Home Business' as contained within Council's Town Planning Scheme No. 1A.
 5. A Home Business proposal is required to be advertised to surrounding landowners with any submissions received to be considered prior to a decision being made.

6. This application for planning approval is retrospective as the business has been operating for some time without consent. Staff became aware of the operation after receiving an anonymous complaint.
7. In accordance with Council's adopted *Planning Applications Guidelines* the proposal has been referred to Council as objections have been received as a result of the required advertising. Council is required to consider the strength of the arguments raised in those submissions and determine whether the scale and intensity of the use is appropriate within the locality.

DISCUSSION

8. The application seeks retrospective approval for what is described by the proponent as a 'landscaping design home office'.
9. A supporting statement has been provided with the application addressing how the proponent believes the use meets the Home Business definition:
 - No clients visit the property.
 - There is no signage advertising the business onsite.
 - No landscaping products connected with the business are stored onsite. All such materials are delivered directly to job sites.
 - All tools etc are kept in a trade trailer towed by the work vehicle.
 - Two employees are family members (Son and Nephew). A further two employees are not family. Contractors are engaged as required (seasonal) and meet on the specific work sites.
 - Work vehicles exiting the property do so via Sydney Street avoiding Bethel Way, which is quite narrow and congested at times due to the Bethel School.
 - The area used for parking the vehicles does not exceed 50m².
10. The application was advertised from 5 May 2011 to 31 May 2011 with letters written to 7 surrounding landowners and a sign being placed onsite. A total of seven (7) responses were received, three (3) of which were supportive. The other four (4) responses raised objections or concerns and these are fully detailed in the consultation section of this report.
11. Following the concerns raised by surrounding landowners regarding deliveries to the site and the numbers of employees; the proponent was invited to explain and further clarify these points. The proponent advised:
 - The business has two (2) employees that are not household members, who drive to the property where work is discussed before they head out to site in two vehicles with trailers.
 - In March and April they were busy with Federal Government BER projects and employed contract labourers to meet the short deadlines of these projects. The contract labourers are not employees of the business.
 - Occasionally deliveries of plants are made to the property, but alternative arrangements can be made if required.
12. The proponent was asked for further clarification of the employees as the Home Business definition is explicit that there can only be two (2) employees not members of the household (living at the property). The proponent confirmed that she has two (2) permanent employees that are not family members and she also employs her son and nephew. Her nephew stays with her and is considered to be a member of her household.

13. To further assess the concerns and objections raised, staff undertook several inspections to the site. On a couple of occasions it was noted that five (5) people drove to the site in four (4) different cars/vehicles before 8am. These people were then observed commencing work onsite and loading plants onto a work truck before the truck was driven offsite.
14. Whilst the business may have commenced as a small 'family run' enterprise its expansion has recently led to complaints from adjacent residents. The proponent has identified that their future plan is to purchase an industrial property within two years and relocate the business at this time.
15. The proponent has advised that during periods of high demand, contract labour is employed (this was the case recently as a result of winning a substantial contract). This is in addition to the 2 employees that reside off site. The proponent has advised that when contract labour is used in the future these employees can be directed to meet on the site where the landscaping work is being undertaken.
16. It should be noted that the majority of the issues that have been identified during the consultation process are issues that do not come directly from the operation of the business, as due to the nature of the business all of the activity associated with the operation of the business occurs offsite. Identified issues such as the added noise from people socialising on the site after hours or the coming and going of the owners work vehicle from the property during the day are issues that could arise from the general residential use of the property.
17. In relation to the perceived added dust problem coming from landscaping supplies being stored onsite, it can be conditioned that no landscaping supplies that are used in the operation of the home business are to be stored at the subject lot.
18. As the proponent has advised that it is the intention that the business be relocated to an industrial lot within a two year timeframe, and taking into account that this planning process will have taken six months to complete, it is recommended that Planning Consent only be issued for a period of 18 months (1.5 years).

GOVERNMENT CONSULTATION

19. Nil.

PUBLIC CONSULTATION / ENGAGEMENT

20. Public consultation was undertaken in accordance with Council's Town Planning Scheme No. 1A, with a sign placed onsite, an advertisement in the Public Notices section of a local newspaper and letters sent to seven surrounding landowners.
21. A total of seven written submissions were received. Three of the responses were supportive of the application and the other four objected or raised concerns. The objections and concerns raised the following points/issues:
 - The business has been operating for over two years and we were not consulted until now.
 - This was a quiet residential area, but this has changed with the number of vehicles and people connected to this business.
 - Trucks and workers come and go between 7am and 4:30pm.
 - There are 4-5 men arriving onsite for work each morning.
 - Delivery trucks drop plants off on a regular basis.
 - The additional people and traffic generates lots more noise during the day and sometimes they socialise after work into the night.

- Since the business started there has been a noticeable increase in the amount of dirt and dust, this is caused by the trucks and trailers using the rear access road (Sydney Street).
 - A business of this size and nature is not a home business and is not suited to a residential area.
 - This is not an industrial block and the use seems to extend to the land behind being used as a truck or storage depot, which is an eyesore.
 - It creates a lot of noise, particularly early in the morning.
 - No major objections but have concerns should the business expand further. The street can have significant traffic at different times of the day due to the Aged Care Facility, Church and School.
 - There is considerable activity on this site that will only increase in time.
 - The truck that delivers plants each week has trouble accessing the site and has to reverse into the Bethel Village driveway and blocks the road.
 - If the use is permitted it will intensify from its current levels with more storage of materials like mulch and animal fertilizer creating further dust and smells.
22. The letters of support emphasise the work done by the company, with the following comments:
- I have seen the work Creative Landscapes has done at my granddaughter's school and commend their work in the community.
 - When visiting a relative in Bethel Village I have not experienced any problems regarding this business.
 - They seem community minded.
 - The applicant volunteered her time and expertise planting out the school gardens with the children
 - They have done several projects at Yakamia Primary School.
 - I support the business regarding the designing of projects from home.
 - I have not had reason to feel this business interferes with my travel in Bethel Way.
 - I have seen the applicant working in her home office designing landscape gardens and she would never interfere with her neighbours as clients do not go to her house.

STATUTORY IMPLICATIONS

23. A 'Home Business' is a 'SA' use within Town Planning Scheme 1A within the Future Urban 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).
24. Clause 7.8A of the Scheme details the matters to be considered by Council and states:
- 7.8A The Council in considering an application for planning consent is to have due regard to such of the following matters as are in the opinion of the Council relevant to the use or development the subject of the application:*
- (b) the requirements of orderly and proper planning...;*
 - (i) the compatibility of a use or development with its setting;*
 - (n) the preservation of the amenity of the locality;*

- (q) *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;*
- (y) *any relevant submission received on the application;*
- (z) *any other planning consideration the Council considers relevant.*

STRATEGIC IMPLICATIONS

25. There are no strategic implications related to this item.

POLICY IMPLICATIONS

26. There are no policy implications related to this item.

RISK IDENTIFICATION & MITIGATION

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>The proponent may lodge an application for review to the State Administrative Tribunal of the City's decision to refuse the proposal.</i>	<i>Unknown</i>	<i>Insignificant</i>	<i>Low</i>	<i>The decision is based on sound planning grounds.</i>

FINANCIAL IMPLICATIONS

27. The standard fee has been paid by the proponent for a non-retrospective application. For retrospective applications, the fee shall be “*by way of a penalty to be twice the amount of the maximum fee payable*”, (ie, the original application cost, plus two times that amount by way of penalty) in accordance with the City’s Schedule of Fees and Charges 2011-12. Payment of this fee will be required prior to issue of the decision.

LEGAL IMPLICATIONS

28. Should Council follow the alternate recommendation and refuse the proposal, the proponent has the ability to seek review of Council’s decision at the State Administrative Tribunal. 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

29. Council could determine that the use is unacceptable under the home business definition. A motion to that effect could be:

Part 1 of Alternate Recommendation

THAT Council resolves to ISSUE a Notice of Planning Scheme refusal for a ‘Home Business – Landscaping’ at 15 Bethel Way, Yakamia, for the following reason:

The proposed use and associated activity is incompatible with the residential setting of the area, giving rise to increased vehicular movements and activity with a detrimental impact on the residential amenity of the neighbourhood.

Part 2 of Alternate Recommendation

THAT Council NOTES that the Chief Executive Officer, who is delegated by Council to issue planning enforcement notices, will issue such a Notice under the Planning and Development Act 2005 to the proponent to cease the existing unlawful use, identifying a period of not less than 90 days for the proponent to cease such operations to allow a sufficient period of time to transition the business to an appropriately zoned area.

SUMMARY CONCLUSION

30. This retrospective application is for a landscaping business. Whilst the use of a home office to prepare landscape plans is exempt from planning approval, and may have limited or no effect on adjacent residential properties, the subject area is being used for the storage of landscaping tools and vehicles which constitutes the operation of a 'home business'
31. Based on the submissions received from adjacent residents, activity observed by staff onsite and the information provided by the proponent, staff are of the opinion that:
- Although the business does at times employ more than two people not members of the occupier's household, they are contractors who do not conduct the operational component of the business at the subject lot;
 - Aspects of the business that have perceived detrimental impacts on the amenity of the neighbourhood could arise from the general residential use of the property; and
 - It is considered that conditions can be applied that will alleviate the issues related to increased noise, added traffic and dust generated from the subject lot;
32. It is City staff opinion that the use does comply with the intent of the definition of 'home business' and that appropriate conditions can minimise the negative amenity impacts created by the operation of the business.

Consulted References	Town Planning Scheme 1A
File Number (Name of Ward)	A143424 (Yakamia Ward)
Previous Reference	Nil

10.12PM Councillor Calleja returned to the Chamber