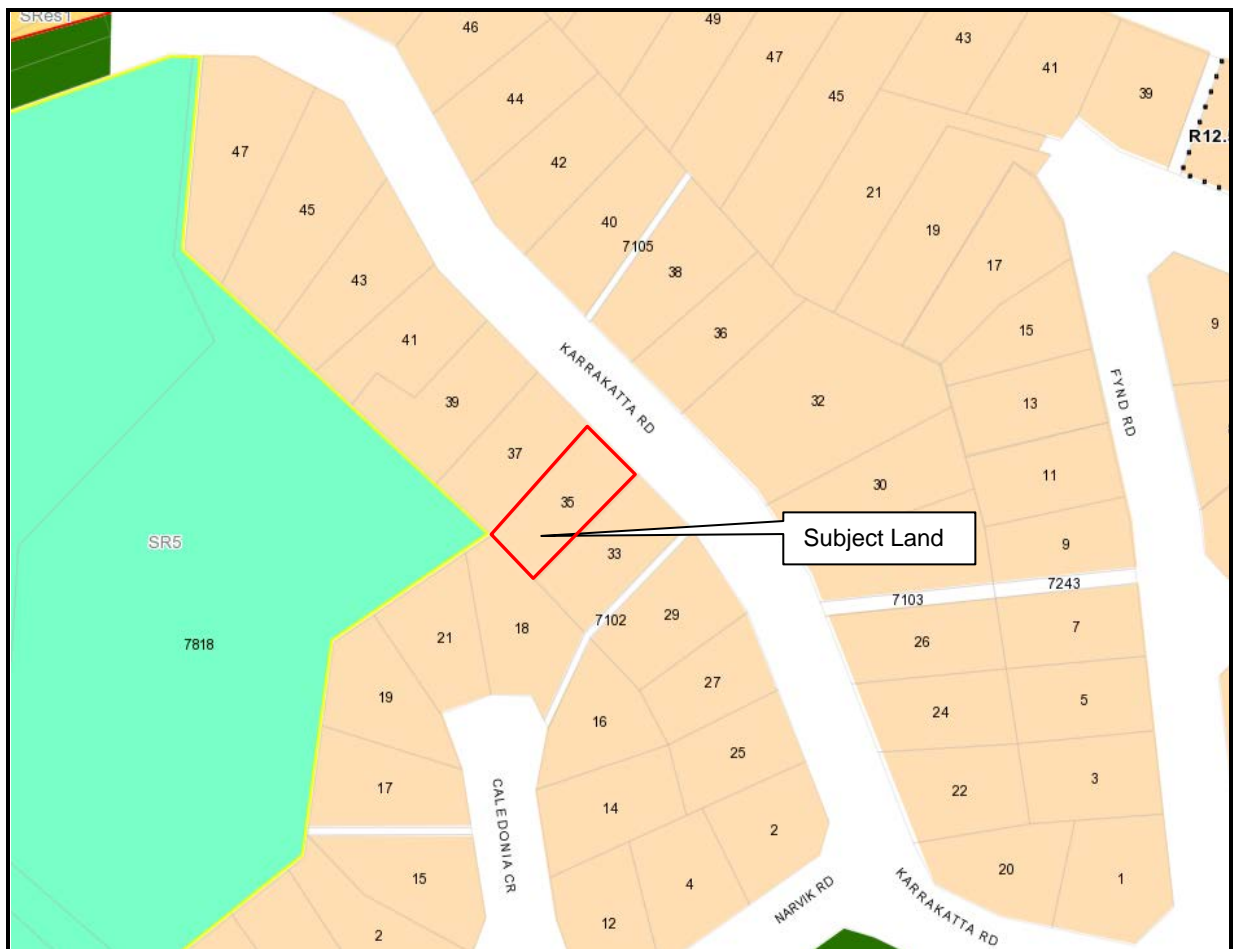


**2.4: DEVELOPMENT APPLICATION – TOURIST ACCOMMODATION 35
KARRAKATTA ROAD, GOODE BEACH**

Land Description	: 35 Karrakatta Road, Goode Beach
Proponent	: Gordon Bragg
Owner	: Gail Bragg
Attachments	: Planning Application Plan & Supporting Information.
Appendices	: Neighbour consultation responses.
Responsible Officer(s)	: Executive Director Planning & Development Services (Dale Putland)

Maps and Diagrams:



IN BRIEF

- A retrospective application for a change of use from Residential to Tourist Accommodation –Holiday Home has been received.
- Council is required to determine whether to approve the proposed use taking into account the appropriateness of the proposed use within the locality and the potential to create land use conflict and the potential to affect the amenity of the neighbourhood.

RECOMMENDATION

ITEM 2.4: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR BOWLES
SECONDED: COUNCILLOR ATTWELL

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for a 'Tourist Accommodation' at 35 Karrakatta Road, Goode Beach subject to the following conditions:

Conditions to be complied with prior to the commencement of the use

1. Prior to the commencement of the land use hereby approved, the building shall be insulated to prevent the emission of sound above the level normally expected in a residential area, so as to avoid nuisance, and to ensure compliance with the Environmental Protection (Noise) Regulations 1997, and maintained in perpetuity to the satisfaction of the City of Albany.
2. The management plan shall be updated to include the following to the satisfaction of the City of Albany;
 - i. Contact details of a nominated local caretaker
 - ii. A clear statement that only the parking bays provided shall be used and parking on the street is not permitted.
 - iii. A Statement requiring all visitors to at all times respect the privacy of the adjoining residential properties and that the Caretaker should be contacted for any onsite assistance.

Conditions of an ongoing nature:

3. The Tourist accommodation hereby approved shall only be used for short stay accommodation, with any single tenant permitted to stay for no more than three months in any calendar year.
4. The operator or manager of the premises hereby approved for holiday accommodation are to provide and maintain a register of all people who utilise the holiday accommodation during the year to the satisfaction of the City of Albany. A receipt book must be kept.
5. No signs are to be erected on the lot without Council's approval, in accordance with the City Of Albany's Sign Bylaws.

6. A minimum of 2 parking spaces shall be provided to the satisfaction of the City of Albany and maintained in good repair thereafter no parking on the street is permitted.
7. The holiday/tourist accommodation hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust to any extent greater than what is to be expected within a residential zone.
8. The maximum number of persons residing in the holiday/tourist accommodation shall be restricted to 6 at any one time, exclusive of the owner/operator.
9. The operation of the holiday/tourist accommodation shall be in accordance with an approved management plan which shall be reviewed and updated at the time of any change of ownership or management.

ADVICE TO THE APPLICANT:

It is recommended that an Acoustic Consultant be engaged in the sound proofing design aspect before any work is carried out.

Any breach of approval conditions or the management plan can be dealt with in accordance with the enforcement provisions of local planning schemes and/or may result cancellation of a registration.

All development is required to comply with the Building Regulations and the Building Code of Australia; particular regard should be paid to those matters outlined on the attached 'Preliminary Building Assessment';

Development is required to comply with all relevant Health regulations, particular regard should be paid to those matters outlined on the attached 'Environmental and Health Conditions';

Please be advised that this approval is for a formal change of use from permanent residential to short stay holiday/tourist accommodation. If you would like to revert back to the permanent residential use after use as short stay holiday/tourist accommodation has commenced, Planning Scheme Consent will be required from the City of Albany.

ITEM 2.4: AMENDMENT BY COUNCILLOR HAMMOND

**MOVED: COUNCILLOR HAMMOND
SECONDED: COUNCILLOR BOWLES**

THAT the Responsible Officer Recommendation be AMENDED to include the following:

- 9. The operation of the holiday/tourist accommodation shall be in accordance with an approved management plan and letting conditions, which shall be reviewed and updated at the time of any change of ownership or management.**

CARRIED 6-3

Record of Vote

Against the Motion: Councillors Bostock, Gregson and Sutton

ITEM 2.4: AMENDED RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

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

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for a 'Tourist Accommodation' at 35 Karrakatta Road, Goode Beach subject to the following conditions:

Conditions to be complied with prior to the commencement of the use

- 10. Prior to the commencement of the land use hereby approved, the building shall be insulated to prevent the emission of sound above the level normally expected in a residential area, so as to avoid nuisance, and to ensure compliance with the Environmental Protection (Noise) Regulations 1997, and maintained in perpetuity to the satisfaction of the City of Albany.**
- 11. The management plan shall be updated to include the following to the satisfaction of the City of Albany;**
 - iv. Contact details of a nominated local caretaker**
 - v. A clear statement that only the parking bays provided shall be used and parking on the street is not permitted.**
 - vi. A Statement requiring all visitors to at all times respect the privacy of the adjoining residential properties and that the Caretaker should be contacted for any onsite assistance.**

Conditions of an ongoing nature:

- 12. The Tourist accommodation hereby approved shall only be used for short stay accommodation, with any single tenant permitted to stay for no more than three months in any calendar year.**
- 13. The operator or manager of the premises hereby approved for holiday accommodation are to provide and maintain a register of all people who utilise the holiday accommodation during the year to the satisfaction of the City of Albany. A receipt book must be kept.**

14. No signs are to be erected on the lot without Council's approval, in accordance with the City Of Albany's Sign Bylaws.
15. A minimum of 2 parking spaces shall be provided to the satisfaction of the City of Albany and maintained in good repair thereafter no parking on the street is permitted.
16. The holiday/tourist accommodation hereby approved shall not prejudicially affect the amenity of the neighbourhood by, but not limited to, the emission of noise, vibration, smell, smoke or dust to any extent greater than what is to be expected within a residential zone.
17. The maximum number of persons residing in the holiday/tourist accommodation shall be restricted to 6 at any one time, exclusive of the owner/operator.
18. The operation of the holiday/tourist accommodation shall be in accordance with an approved management plan **and letting conditions**, which shall be reviewed and updated at the time of any change of ownership or management.

ADVICE TO THE APPLICANT:

It is recommended that an Acoustic Consultant be engaged in the sound proofing design aspect before any work is carried out.

Any breach of approval conditions or the management plan can be dealt with in accordance with the enforcement provisions of local planning schemes and/or may result cancellation of a registration.

All development is required to comply with the Building Regulations and the Building Code of Australia; particular regard should be paid to those matters outlined on the attached 'Preliminary Building Assessment';

Development is required to comply with all relevant Health regulations, particular regard should be paid to those matters outlined on the attached 'Environmental and Health Conditions';

Please be advised that this approval is for a formal change of use from permanent residential to short stay holiday/tourist accommodation. If you would like to revert back to the permanent residential use after use as short stay holiday/tourist accommodation has commenced, Planning Scheme Consent will be required from the City of Albany.

CARRIED 6-3

Record of Vote

Against the Motion: Councillors Bostock, Gregson and Sutton

BACKGROUND

1. An application for Planning Scheme Consent (retrospective approval) for Tourist accommodation use has been received for 35 Karrakatta Road, Goode Beach.
2. Amended floor plan was received on 25 May 2012 changing a bedroom to a study and reducing the number of bedrooms to 3.
3. The subject site is located on Karrakatta Road, Goode Beach It is approximately 754m² in area and is zoned 'Residential" under Town Planning Scheme No. 3 and retained under the draft Local Planning Scheme No. 1 as "Residential".
4. The interpretation of the tourist accommodation use is included in Town Planning Scheme 3 as;

"Tourist accommodation - means accommodation specifically catering for tourists and includes bed and breakfast accommodation, chalets, farmstay, guesthouses, caravan parks etc, but does not include hotels, or motels. "

5. The use of Tourist accommodation is however not listed in the use class table of Table 1- Zones of Town Planning Scheme 3.
6. The use of an existing dwelling for tourist accommodation– Holiday Home can therefore be considered as a "use not listed" -Tourist accommodation in accordance with clause 3.2 b the Town planning scheme 3.

"3.2 ...b) may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of Clause 5.1.4 in considering an application for planning approval; or..."
7. The City of Albany has adopted a Town planning scheme policy for Holiday Homes in accordance with the WAPC' s Holiday home guidelines. The objective of this policy is *"to encourage good quality, well managed holiday accommodation for use by short-term visitors generally in locations that will enhance the tourism experience while minimising potential impacts on adjoining residents."*
8. The policy includes the following definition; "Holiday Home (standard)" means a single house (excluding ancillary accommodation), which may also be used for short stay accommodation for no more than six people (but does not include a bed and breakfast, guesthouse, chalet and short stay accommodation unit).
9. The subject site contains an approved single dwelling that was approved in the year 2000.
10. This dwelling has been used for tourist accommodation – Holiday Home without the approval of the City.
11. The City received a number of complaints about the Holiday home use from land owners in the vicinity of the property.
12. As part of a subsequent planning scheme enforcement / compliance process staff requested that formal planning application be submitted for consideration.

13. This application was lodged and staff has been informed by the owner that the use have ceased and will only recommence if approved.
14. 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 and whether the proposed conditions will be adequate to address the concerns raised.

DISCUSSION

15. The application seeks retrospective approval for a "Tourist Accommodation "- Holiday Home use of the existing dwelling.
16. The City's Holiday Home Policy contains preferred areas for Holiday Homes and the Goode Beach area is included as one of the preferred areas.
17. This policy also lists a number of matters that should be considered in assessing and determining applications of this nature.
18. In assessing a holiday accommodation application the following factors (fully detailed in the Policy section of this report) should be considered;
 - a) effective on-going management;
 - b) appropriate location and compatibility with adjoining/nearby uses; and
 - c) access and car parking.
19. A holiday/tourist accommodation management plan has been provided with the application this plan includes most of the information required.
20. A specific local caretaker is not nominated and the plan does not include a local Caretaker's contact details. The presence of a local caretaker is however mentioned in the plan.
21. The management plan includes information on the following matters as required ;
 - o Details of how nuisance issues such as noise will be addressed by the manager;
 - o How bookings will be taken, and where people will enquire about the property
 - o Generally how the property will be managed (i.e. "in house rules"); and
 - o A fire and emergency response plan.
22. The application was advertised from 15 May 2012 to 4 June 2012 with letters written to 12 surrounding landowners and a sign being placed onsite. A total of nine (9) responses were received, one (1) of which was supportive. The other eight (8) responses raised objections or concerns and are summarised as follows (For detail information please refer to the responses that are attached to this report)
 - o Lack of Noise insulation from the Dwelling
 - o Noise created by the Use e.g. Music, loud voices.
 - o Refuse bins use and rubbish disposal
 - o Privacy

- Lack of a local Caretaker
 - Motor vehicles and boats being parked in the road and associated impacts on pedestrians and other road users.
 - Increased traffic
 - Overlooking
 - Accommodating 10 people
23. It is clear from the responses received that a conflict between the holiday home and the residential dwellings already exists.
24. It is however possible for most of the concerns raised to be solved by the improved management of the property and caretaker and having a local property manager/caretaker available.
25. However the concerns of the surrounding landowners regarding the overlooking/privacy and noise emanating from the house are not something that can be resolved by improved management of the use.
26. The noise matter although exacerbated to an inappropriate level when used by holiday makers is a matter that relate directly to the standard of construction of the dwelling rather than to the tourist accommodation use.
27. In accordance with the WAPC holiday home guidelines section “ 2.5 Where the existing standard of a dwelling is considered to be inappropriate, consent to the use of the facility as a holiday home may not be granted until the dwelling is upgraded to a satisfactory standard.”
28. This matter could be resolved by requiring the installation of noise attenuating insulation to the satisfaction of the City as a condition of a Planning approval.
29. Concerns about overlooking and privacy can extent also be addressed through requiring the installation of screening e.g. opaque film being installed on windows.

GOVERNMENT CONSULTATION

30. Nil.

PUBLIC CONSULTATION / ENGAGEMENT

31. Public consultation was undertaken in accordance with Council’s Town Planning Scheme No. 3, with a sign placed onsite, an advertisement in the Public Notices section of a local newspaper and letters sent to twelve of the surrounding landowners.
32. A total of nine written submissions were received. One of the responses was supportive of the application and the other eight objected or raised concerns. The objections and concerns can be summarised as (For detail information please refer to the responses that are attached to this report);
- Lack of Noise insulation from the Dwelling ;
 - Noise created by the Use e.g. Music, loud voices;
 - Refuse bins use and rubbish disposal;
 - Privacy ;
 - Lack of a local Caretaker;

- Motor vehicles and boats being parked in the road and associated impacts on pedestrians and other road users;
 - Increased traffic;
 - Overlooking;
 - Accommodating 10 people.
33. The letter of support supports tourist accommodation in the Goode Beach area and recognises the commercial benefit that tourist to Albany.

STATUTORY IMPLICATIONS

34. The Proposed use is classed as Tourist accommodation.
35. The interpretation of the tourist accommodation use is included in Town Planning Scheme 3 as;

“Tourist accommodation - means accommodation specifically catering for tourists and includes bed and breakfast accommodation, chalets, farmstay, guesthouses, caravan parks etc, but does not include hotels, or motels. “

36. The use of Tourist accommodation is not listed in the use class table of Table 1-Zones of Town Planning Scheme 3.
37. The use of an existing dwelling for tourist accommodation should therefore be considered as a “use not listed” -Tourist accommodation in accordance with clause 3.2 b the Town planning scheme 3.

“3.2 ...b) may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of Clause 5.1.4 in considering an application for planning approval; or...”

38. 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;*
- (c) any approved Statement of Planning Policy of the Commission;...*
- (e) any relevant policy or strategy of the Commission or any relevant planning policy adopted by the Government of the State;...*
- (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

This item relates directly to the following elements of the City of Albany Strategic Plan (2011-2021):

Key Focus Area

Sustainability and Development

Community Priority

Tourism development

Proposed Strategies

- *Improve and expand tourism infrastructure and attractions*
- *Encourage diversity in tourism product, including food and wine, indigenous tourism, heritage tourism, through partnerships with key tourism stakeholders*

POLICY IMPLICATIONS

39. The WAPC published Holiday Home Guidelines in September 2009. The guidelines have been developed in response to the growing number of holiday homes - particularly in popular tourism destinations over the past decade. The guidelines propose possible changes to local planning schemes and the preparation of policies tailored to address specific issues encountered by local governments in their region. Other key proposals include holiday homes being formalised as a land-use class in local planning schemes, local governments developing local planning policies on holiday homes And the identification of preferred areas for holiday homes.

40. The most pertinent sections from the guideline includes the following;

“... 2.4 Amenity

A key concern with respect to the occupation of dwellings as holiday homes is to ensure that any such uses will not adversely impact on residential amenity currently enjoyed by residents in surrounding properties. Any activities that result in a loss of enjoyment by neighbouring properties, for instance, unacceptable levels of noise, will be considered a breach of this approval.

2.5 Building standard

Dwellings should comply with the Building Code of Australia and local government policies and standards. Where the existing standard of a dwelling is considered to be inappropriate, consent to the use of the facility as a holiday home may not be granted until the dwelling is upgraded to a satisfactory standard. If, after inspection, the dwelling is considered to be unsafe or inadequate for holiday house use, the application will be refused....

3.3 Approval period

Initial approval should be granted for a limited period of one year, and renewed on a three year to five year period subject to compliance as determined by the local government to ensure that there is minimal impact on the amenity of neighbouring properties. This is designed to provide a degree of certainty to operators, while providing a degree of control to the local government. Existing holiday homes where it can be demonstrated that there is a history of minimal or no conflicts

should be considered for the identified longer approvals subject to the requirements of the relevant local government...

4.2 Non compliance and cancellation

Any breach of approval conditions or the management plan can be dealt with in accordance with the enforcement provisions of local planning schemes and/or cancellation of a registration. A new application may be considered after a 12 month period.

A breach of a planning approval may be brought to the attention of local government as a result of an inspection or report by local government staff, a police report or by a member of the public..."

41. The City of Albany has adopted a Town planning scheme policy for Holiday Homes in accordance with the WAPC' s Holiday home guidelines.
42. The objective of this policy is *"to encourage good quality, well managed holiday accommodation for use by short-term visitors generally in locations that will enhance the tourism experience while minimising potential impacts on adjoining residents."*
43. The policy includes the following definition; "Holiday Home (standard)" means a single house (excluding ancillary accommodation), which may also be used for short stay accommodation for no more than six people (but does not include a bed and breakfast, guesthouse, chalet and short stay accommodation unit).
44. This policy also lists a number of matters that should be considered in assessing and determining applications of this nature.
45. In assessing a holiday accommodation application the following factors should be considered;

"2.3 Protecting the Residential Character of Neighbourhoods"

In order to protect and retain the predominant residential nature and character of neighbourhoods, Council shall consider the cumulative impact thereof on a location's residential character, functioning and amenity as a criterion in the assessment of planning applications. Holiday homes should not become the predominant use within neighbourhoods.

F2.4 Ongoing Management

- 1) *It is considered that the responsibility for appropriate on-going management rests with the proponent to ensure that visitors are responsible and do not create inappropriate impacts (including noise) to adjoining/nearby properties.*
- 2) *Suitable on-going management is, of course, more difficult if owners live a considerable distance from the application site. Accordingly, as part of the planning application, the local government will require the proponent to outline how the site will be managed, especially if the owners do not live nearby.*
- 3) *A management statement will need to be submitted to address matters including:*
 - a) *the amenity of adjoining/nearby land uses;*
 - b) *managing noise impacts of visitors;*
 - c) *the submission of a code of conduct for guests which shall, amongst others, list what is considered acceptable and unacceptable behaviour;*
 - d) *outlining how the premises will be managed on a day-to-day basis (including how keys are easily available for late entry, providing onsite assistance and confirming arrangements for cleaning/waste management);*
 - e) *relevant site specific matters including fire management/emergency response plans for visitors and managing risks for visitors; and*

- f) *the handling of complaints (it is expected that the tenant be contacted by phone immediately and the proponent visit the property as soon as possible).*
- 4) *Should it be demonstrated that the establishment is not being appropriately managed and matters are not quickly rectified, the local government may not issue planning approval renewal for the on-going operation of the use.*

F2.5 Access & Car Parking

- 1) *All car parking is to be contained on-site and no verge area should be used for car parking.*
 - 2) *At a minimum, it will be necessary to provide 2 on-site car parking bays for up to 6 guests. Tandem parking will only be permitted for a maximum of one vehicle behind another vehicle.*
 - 3) *It is common for holiday makers to have a boat, trailer, caravan etc. and there should be additional space allocated for such.*
 - 4) *All vehicle access (including crossovers) and car parking areas are to be sealed and drained to the approval of the local government.”*
46. This policy also lists the following typical conditions that can be imposed as part of conditions of approval;
- 1) *“ The maximum number of persons to be accommodated is restricted to 6 exclusive of the owner/operator.*
 - 2) *The consent is issued only to the specific owner of the particular parcel of land and is not transferable to any other person or to any other land parcel. Should there be a change of the owner on the land in respect of which the planning approval was issued the approval shall no longer be valid.*
 - 3) *The maximum stay for any tenant is restricted to 3 months within any 12 month period.*
 - 4) *Operators must provide and maintain a register of all people who utilise the holiday accommodation during the year to Council’s satisfaction. A receipt book must be kept”.*

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>Likely</i>	<i>Minor</i>	<i>Medium</i>	<i>The decision is based on sound planning grounds.</i>
<i>The affected parties may lodge an application for review to the State Administrative Tribunal of the City’s decision to Approve the proposal.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Refusal or Approval with Appropriate conditions to address concerns raised.</i>

FINANCIAL IMPLICATIONS

47. 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

48. 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.
49. Affected parties may lodge an application for review to the State Administrative Tribunal of the City’s decision to Approve the proposal 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

50. Council could determine that the use is unacceptable
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 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 30 days for the proponent to cease the use. to allow a sufficient period of time to transition the business to an appropriately zoned area.

SUMMARY CONCLUSION

51. Based on the submissions received from adjacent residents staff are of the opinion that:
- Most of the concerns raised can be addressed by improving the management of the property and having a dedicated local caretaker available.
 - The Noise concerns and impacts on the amenity of the neighbourhood could arise from the general residential use of the property as well , this matter can however be resolved by requiring the installation of noise attenuating insulation to the satisfaction of the City as a condition of a Planning approval.
 - Concerns about overlooking and privacy can also be addressed through appropriate screening like opaque film being fitted on windows. Additional house rules to raise awareness and deal with this matter.

52. The retrospective application for Tourist accommodation can be approved and appropriate conditions can minimise the negative amenity impacts that already exist and may be created by Tourist accommodation use.
53. Use does comply with the intent of the definition of 'home business' and that

Consulted References	Town Planning Scheme 3
File Number (Name of Ward)	A14122 (VANCOUVER WARD)
Previous Reference	Nil