

Anthony Vuleta
Chief Executive Officer
Locked Bag 437
Victoria Park WA 6979

Your ref:
Our ref: ALH/JAH 46903

cc Amie Groom
AGroom@vicpark.wa.gov.au

By post and email

18 June 2021

Dear Mr Vuleta,

Development Application for 'Home Business' – 45 The Circus, Burswood

1. We act for Karen Bowen, the registered proprietor of 45 The Circus, Burswood (**Property**). Our client resides at the Property.
2. Our client submitted a development application on 22 February 2021 for a 'home business' at the Property (**Development Application**). The home business will be a dermal therapy clinic, which includes skin peels and laser skin treatments.
3. Our client has been a dermal therapist for over 36 years and currently runs a successful dermal therapy business in Applecross. Our client is in the process of downsizing and intends to close her Applecross business in order to operate a smaller, by appointment only business from the Property. This small-scale dermal therapy clinic intended to be a part of her transition to retirement.
4. The purpose of this letter is to respond to the concerns raised by objectors during the public consultation period and to identify the Development Application's consistency with the planning intent for the Burswood locality.

Planning framework for Burswood locality

5. The Property is zoned as 'Special Use' under the *Town of Victoria Park Town Planning Scheme No. 1 (TPS 1)*. The zoning table in TPS 1 requires reference to the provisions of the applicable Precinct Plan.
6. The Property is located within the Burswood Precinct Plan (**Precinct Plan**). The Development Application complies with the Statement of Intent for the Precinct Plan, namely that:

The Burswood Precinct should be redeveloped primarily as an area of mixed office and residential uses east of the railway and **for residential uses with integrated mixed-use development west of the railway**. (emphasis added)

7. The Property is located west of the railway and is proposing to integrate a low-impact home business use with the existing residential use. The Development Application is precisely for what is intended in the Precinct Plan.

8. The Town's *Local Planning Policy No. 2 – Home Occupation (LPP 2)* provides further guidance on what home-based businesses are permitted. We note that there is also currently a revised draft of LPP 2 which has not yet been adopted (**Draft LPP 2**). The Development Application meets the objectives of LPP 2 and Draft LPP 2 and comes within the definition of 'home business'. This is for the following reasons:
- (a) our client will only employ two people who do not reside at the Property;
 - (b) the proposed use is very low impact and will not adversely affect the amenity of the neighbourhood, as it does not involve the emission of noise, odour, vibration or the like;
 - (c) the home business only occupies approximately 17sqm of the Property;
 - (d) dermal products will only be sold over the internet;
 - (e) all parking requirements can be met by the space available on the Property (as discussed in more detail below) and does not involve any vehicles of more than 4.5 tonnes in weight; and
 - (f) it does not use an essential service over and above the usual requirements of the Property.
9. Further, 'home occupation' is in the Special Use zone within the Burswood Precinct and is an 'AA' use meaning that the use is not permitted unless the Council has granted planning approval.
10. Under clause 28 of TPS 1, the Town's Council can approve the Development application where:
- (a) the advertising procedure referred to in deemed clause 64 has been followed [which in this case it has];
 - (b) it is satisfied, by an absolute majority, that the proposed development is consistent with the matters listed in deemed clause 67.

Deemed provisions – clause 67

11. The Development Application is consistent with the matters in clause 67 in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulation 2015 (Deemed Provisions)*. In particular, the Development Application:
- (a) complies with applicable local planning policies, such as *Local Planning Policy No. 38 – Signs (LPP 38)*: clause 67(g);
 - (b) is compatible with its setting, in particular by providing the type of mixed use, yet low impact development which is stated to be desired in the Precinct Plan and does not affect the height, bulk, scale or appearance of the existing Property: clause 67(m);
 - (c) is providing for disability access and egress to the Property to be inclusive of all types of clientele: clause 67(s);
 - (d) will not have an unreasonable impact on traffic in the locality due to being an appointment only business which can only treat one client at a time: clause 67(t); and

- (e) can appropriately respond to submissions received on the Development Application, as shown below: clause 67(y).
- 12. There is no inconsistency between the Development Application and the matters raised in clause 67 of the Deemed Provisions which would make the proposed home business incapable of approval by the Town's council.

Response to objectors' concerns

Appropriateness of 'home business' in the locality

- 13. A number of the objections received during the public consultation period raised concerns about the inconsistency between the Development Application and the 'residential' or 'domestic' zoning of the Property.
- 14. As outlined above, the Property and the Burswood locality more broadly is not zoned 'residential' under TPS 1, but rather 'Special Use' which contains specific provisions promoting mixed use development to integrate with existing residential uses.
- 15. This is demonstrated by existing mixed uses in the area including several cafés and restaurants, a beauty salon, gym, a homeopath, an event planning business and an advertising agency and settlement agent.
- 16. By approving a low impact home business which operates by appointment only, Town is supporting the vibrancy and mixed-use nature of the Burswood locality, without adversely affecting the amenity of the neighbourhood.

Parking

- 17. The Town received objections relating to a perceived parking shortage in the locality. These objections are unsubstantiated.
- 18. The Property will accommodate up to four cars at any given time. This includes two cars within an enclosed double garage and two cars parked immediately in front of the double garage.
- 19. Our client is also executing a lease for an additional car parking space at 96 Bow River Crescent, which can be provided to the Town.
- 20. Our client has indicated that her dermal therapy business will require a maximum of 5 parking bays at any given time. These bays can be provided without the need to rely on street parking as follows:
 - (a) 1 bay for our client (within the double garage);
 - (b) 1 bay for a receptionist;
 - (c) 1 bay for client receiving treatment; and
 - (d) on occasion, 1 bay for a client waiting to receive treatment.

21. In accordance with LPP 2, these parking bays to be used by clients will always be available and unobstructed during client appointment times and are not restricted by secured gates or doors.
22. Given that our client's business is by appointment only, there will be no 'walk-in' clients. Further, the appointment only nature of the business allows our client to schedule appointments in a way which ensures that there is never more than one client waiting to receive treatment.
23. There is only one treatment room, as indicated on the plans submitted with the Development Application and there is no evidence to suggest that 'the business will have more than the stated clients'¹.
24. Our client will be employing her sister who will be using public transport to reach the property. This is because the train station is only 750m away from the Property. There is no expectation on behalf of her sister that a car bay will be provided for her. Our client can convey the same to any future replacement which she may employ. It is noted that the proximity of public transport means that the parking referred to in paragraph 20 above is likely to be under used.
25. The Development Application will therefore not 'require a greater number of parking spaces than normally required for a single dwelling' as all parking needs can be accommodated on the Property, or on rare occasions, through the additional leased bay at 96 Bow River Crescent. It will also not 'generate any vehicular traffic to the Property that is substantially greater than that which is normal to the residential neighbourhood.
26. By carrying out the home occupation business our client is not increasing traffic volume in the locality beyond what would be reasonably expected in an area that promotes mixed use developments.

Structural changes to Property

27. The structural changes are being proposed following our client's consultation with the Town about making the Property accessible to all visitors. This requires the installation of a ramp access to the front of the Property from the street.
28. Our client is proposing to carry out this structural change in consultation with the Town to ensure that it does not impact on the streetscape.
29. She also intends to build a garden bed and replant the garden facing the The Circus in order to positively add to the streetscape and the community vibrance of the locality.
30. Our client intends to work together with the Town to ensure that the structural changes are compliant with LPP 2 and that they do not impact on the residential character and appearance of the dwelling.

Operating hours

31. Our client will operate the home business well within normal trading hours, namely:

¹ Reason 5 of objection number 6.

- (a) 10am – 5pm on Tuesday to Friday; and
 - (b) 10am -12pm on Saturday.
32. In accordance with LPP 2, our client will not receive deliveries of any products outside of normal business hours.

Signage and advertising

33. Our client will comply with the Town's LPP 38 for home business signs. She will only be erecting one sign at the property, which will be displayed on the fenceline of the Property. The sign will not exceed 0.2m² in area and will not be illuminated.

Noise

34. An objector has raised concerns about 'potential noise from machinery operating within the premises'. The activities which our client proposes to carry out, such as skin needling, IPL hair removal and light therapy do not involve the use of machinery which create noise that could be heard outside of the Property. Equipment used in dermal therapy does not emit noise above normal conversational noise levels.

Sale of products from Property

35. Our client is not offering a 'walk in' purchases of dermal therapy products. Rather the sale of products will be online based through our client's website.² This is consistent with what is permitted for 'home occupation' uses under LPP 2.

Conclusion

36. The Town's Council should exercise its discretion to approve the Development Application because:
- (a) the requirement for public advertisement has been complied with;
 - (b) concerns raised by objectors are either unfounded or have been addressed by the Development Application or this letter; and
 - (c) the Development Application is consistent with the matters listed in clause 67 of the Deemed Provisions.

If you have any questions or wish to discuss the above, please let us know.

Yours sincerely,



Glen McLeod
Principal
Glen McLeod Legal

² <https://karenbowen.com.au/collections/all>