

Technical Report			
Application No:	PA20/915		
Lodgement Date:	29/09/2020	DAU Date:	
Address:	Lot 83, 8 Knoop Drive, Byford		
Proposal:	Home business – Food Truck Business		
Land Use:	Home Business	Permissibility:	AA
Owner:	Adriana Spagnolo and Craig Smith		
Applicant:	Adriana Spagnolo		
Zoning:	Residential	Density Code:	R20
Delegation Type:	12.1.1	Officer:	Ryan Fleming
Site Inspection:	No		
Advertising:	Yes: 02/10/2020 – 23/10/2020		
Outstanding Internal Referrals:	No		
External Referrals:	No		
Within a Bushfire Prone Area:	Yes		

Introduction:

The purpose of this report is for Council to consider a development application for the parking of a food truck ('Commercial Vehicle Parking') at Lot 83 (No. 8) Knoop Drive, Byford. The proposed development is capable of approval under the current Town Planning Scheme No. 2 (TPS2), but is a prohibited land use under Proposed Local Planning Scheme No. 3 (LPS3). LPS3 represents a seriously entertain planning proposal, having been subject to initiation by Council, public advertising, and adoption by Council following advertising. It is now with the WAPC and Hon Minister awaiting final approval.

The item is presented to Council due to this scenario and also that two objections were received during the public advertising period. Officers do not have delegated authority to determine development applications where objections cannot be satisfied by way of amendments or conditions, in accordance with Delegated Authority 12.1.1 – Determination of Development Application.

The proposal is considered inconsistent with the intended planning framework, and levels of residential amenity expected for the locality. The application is therefore recommended for refusal.

Background:

Existing Development:

The subject site is 734.99m² and located within a typical residential area of Byford, to the south-east of the town centre. The site is developed with a single dwelling and an outbuilding as depicted on the image below. The locality consists of similar typical residential development.



Figure 1a: Aerial image of the site



Figure 1b: Wider aerial image of the site

Proposed Development:

The application seeks approval for 'Commercial Vehicle Parking' to be undertaken at the site. Full details of the proposal are contained within **attachment 1**. The proposal involves the parking of a food truck on the south side of the garage as marked in figure 1 above.

The vehicle is a custom model Isuzu Kitchen Truck with a tare tonne weight of 3.94 tonnes. The applicant has advised that they anticipate using the food truck between three to six times a week to attend different events or premises external to the site. The truck would typically leave the site at approximately 7:00am in the morning and return to the property at 11:00am during the weekdays. At weekends the truck would return to the site at approximately 9:00pm. The food truck would only be parked on site and all sales would be undertaken offsite.



Figure 2: The proposed food truck

Officers note that the truck is currently being parked at the site, however, the land use of 'Commercial Vehicle Parking' is currently exempt until the end of the State of Emergency due to COVID-19 under an amendment made in Clause 78H of the *Planning and Development (Local Planning Schemes) Regulations 2020*.

Refined Proposal:

The application was originally intended to only apply for the parking of the commercial vehicle under the 'Commercial Vehicle Parking' land use. After further assessment, Officers

considered that while there may be issue with considering a 'Commercial Vehicle Parking' proposal due to the land use conflicts with LPS3, the proposal was actually more consistent with the definition of a 'Home Business' as the business does involve the use of the dwelling as an office.

Community / Stakeholder Consultation:

Advertising was carried out for a period of 21 days in late 2020 whereby 2 submissions were received objecting to the proposal. The key concerns of the submissions are listed below. The submissions and applicant's response are contained within **attachment 2**.

- Noise impacts;
- Visual impact;
- The commercial vehicle is not consistent with the residential area.

The concerns of the submitters are discussed under the relevant headings of the report.

Statutory Environment:

- *Planning and Development Act 2005*
- *Planning and Development (Local Planning Schemes) 2015*
- Shire of Serpentine Jarrahdale Town Planning Scheme No.2
- Draft Shire of Serpentine Jarrahdale Local Planning Scheme No.3

Planning Assessment:

Clause 67 of the Deemed Provisions lists matters to be considered in the determination of development applications.

Land Use:

The proposal relates to the parking of one Commercial Vehicle, intended to be parked while on the site. The proposal fits most appropriately within the 'Commercial Vehicle Parking' land use classification under TPS2 which is defined below:

"Commercial Vehicle Parking – means

- (a) The parking of one or more commercial vehicles on any land within the Scheme Area. A vehicle shall be parked for the purpose of this definition if it is present on the subject land for more than two hours and is not in that time being used to load or unload anything, or in connection with building or development work carried on with all necessary Council approvals."*

For the proposal to be able to fit within the above land use, consideration is required to be given to the definition of a 'Commercial Vehicle', which is defined under TPS2 as:

"Commercial Vehicle – means a vehicle whether licensed or not which is used or designed for use for business, trade or commercial purposes or in conjunction with a business, trade or profession, and without limiting the generality of the foregoing includes any van, truck, trailer, tractor and any attachment to any of them, and any bus or any other passenger vehicle, or any earth moving machine whether self-propelled or not, but the term shall not include a vehicle designed for use as a passenger car or a trailer or other thing most commonly used as an attachment to a passenger car, or a van, utility or a light truck which is rated by the manufacturer as being suitable to carry loads of not more than three (3) tonnes."

The subject food truck is an Isuzu Kitchen Truck with a tare tonne weight of 3.94 tonnes. Officers consider that the proposal satisfies this definition of a 'Commercial Vehicle' as it is a light truck which is used for a commercial purpose.

Officers have also considered the land use of 'Home Business' as defined under TPS2, but this limits a vehicle of being no more than 3.5 tonne tare weight. In this regard, the vehicle is 3.94 tonnes and there is no business, service or trade occurring from the premises. There is general administration work occurring from within the dwelling in association with the operation of the food truck, however this work would be exempt from requiring development approval under the definition of a 'Home Office'. Furthermore, the business itself occurs offsite, when the food truck operates at events or different locations. The proposal does not fall within the 'Home Business' definition.

The 'Commercial Vehicle Parking' land use is a discretionary land use within the 'Residential' zone according to TPS2. This means Council could permit the use under the current framework by exercising its discretion, subject to advertising.

Shire of Serpentine Jarrahdale Town Planning Scheme No.2 (TPS2)

Clause 5.5.5 of TPS2 provides parameters for the parking of 'Commercial Vehicles' within a 'Residential' zone. Provision (a) of this clause states:

"provision is made for the vehicle to be housed in a garage, or parked behind the building line;"

In this instance, the food truck is currently parked alongside the garage of the dwelling, with a portion being forward of the building line.

Provision b) requires that the vehicle should not be greater than 2.5m in width, 4.3m in height, 12.5m in length and 42.5 tonnes in maximum loading mass. The proposed food truck has a width of 2.3m, a height of 3m, a length of 5.25m and a maximum loading mass between 7.99 tonnes to 8.7 tonnes. The proposed truck satisfies these dimensions.

Provision c) of Clause 5.5.5 states the following:

"In the Council's opinion the parking of the vehicle will not prejudicially affect the amenity of the neighbourhood due to emission of light, noise, vibration, smell, fumes, smoke or dust."

The proposed vehicle is a light truck, custom made for the purpose of a food truck. While Officers have not received reports applicable to the amenity factors of this provision, Officers consider that the truck itself is not of a size that would likely result in excessive light, vibrations, smells, fumes or smoke. However, in relation to noise, officers note that the operations extend to 9pm on weekends, and the proximity of the vehicle to adjoining properties could present a noise amenity impact as part of returning at these times of night.

Finally, provision d) of this clause seeks to ensure that that the vehicle is predominantly used by a person who is an occupier of the dwelling. The subject food truck is operated by one occupier of the subject site.

The proposal could therefore only partially satisfy Clause 5.5.5 of TPS2.

Shire of Serpentine Jarrahdale Draft Local Planning Scheme No.3 (LPS3)

The definition of a 'Commercial Vehicle' under LPS3 is:

"Commercial Vehicle – means a vehicle, whether licenced or not, that has a gross vehicle mass of greater than 4.5 tonnes including –

(a) A utility, van, truck, tractor, bus or earth moving equipment; and

(b) A vehicle that is, or is designed to be an attachment to a vehicle referred to in paragraph (a)."

As the truck is a custom vehicle which has had the food truck tray added, the vehicle mass has not been provided by the applicant. It has however a base tare tonne weight (unladen weight) of 3.94 tonnes. It is noted that it has added to this the food truck tray, associated equipment inside the tray, the weight of the person and the food supplies. Also given the vehicle is being applied for by the applicant as a Commercial Vehicle, it is assumed to meet the definition under LPS3.

'Commercial Vehicle Parking' is defined under LPS3 as:

“Commercial Vehicle Parking – means premises used for the parking of a single commercial vehicle, used offsite for commercial purposes but does not include –

- (a) Any part of a public road use for parking or for a taxi rank; or*
- (b) Parking of commercial vehicles incidental to the predominant use of the land.”*

Within the 'Residential' zone under LPS3, 'Commercial Vehicle Parking' is a prohibited land use. As the proposed land use would be prohibited and incapable of approval in the relevant zone under LPS3, Officers consider the application should be refused. It is considered a sound and relevant planning consideration to not have 'Commercial Vehicle Parking' in residential areas of the Shire, given the nature of such vehicles likely to be inconsistent with expectations and reasonable considerations of amenity for such areas.

If Council did resolve to approve the application, the development would become a non-conforming use once LPS3 has been approved by WAPC. In this regard LPS3 states:

“(1) Unless specifically provided, this Scheme does not prevent -

- (a) the continued use of any land, or any structure or building on land, for the purpose for which it was being lawfully used immediately before the commencement of this Scheme; or*
- (b) the carrying out of development on land if*
 - (i) before the commencement of this Scheme, the development was lawfully approved; and*
 - (ii) the approval has not expired or been cancelled. (2)*

(2) Subclause (1) does not apply if -

- (a) the non-conforming use of the land is discontinued; and*
- (b) a period of 6 months, or a longer period approved by the local government, has elapsed since the discontinuance of the nonconforming use.”*

Character and Amenity

Both submitters raised concerns in relation to the potential impacts the proposal would have on the character and visual amenity of the streetscape. The streetscape has a typical residential character with single storey dwellings and open front gardens. Vehicles along the streetscape are typically passenger vehicles however there are vehicles such as boats, caravans and trailers parked within the streetscape. There are no records of approvals for 'Commercial Vehicle Parking' within Knoop Drive. As previously mentioned, this use is currently exempt under the Minister's Exemption Notice.



Figure 3: The proposed truck viewed from across the road.

Currently the food truck is parked to the south side of the garage as shown below, which results in it being visible within the streetscape. When approaching from the northern end of Knoop Drive, vegetative screening within the property of the applicant fully screens the vehicle from oncoming traffic and residents (seen in figure 4 below).



Figure 4: Truck not visible on the right due to screening from a North approach. Caravan and another commercial vehicle visible within the streetscape.

When approaching the site from the southern end of Knoop Drive, Officers note that the truck is visible within the streetscape (as seen in figure 5 below). The truck is parked parallel to the garage of the neighbouring property. Officers consider that this location ensures the truck does not impact a habitable room or an active outdoor area of the neighbouring property, such as the alfresco area for example.



Figure 5: Southern approach to the site, the vehicle is visible on the left though not prominent and the left side properties are lower in the streetscape.

Officers advised the applicant that by relocating the internal fence alongside the garage in accordance with the yellow line as outlined below in figure 6, could go further to reduce the visual impact on the streetscape. The applicant has indicated that they would prefer not to proceed with this option.

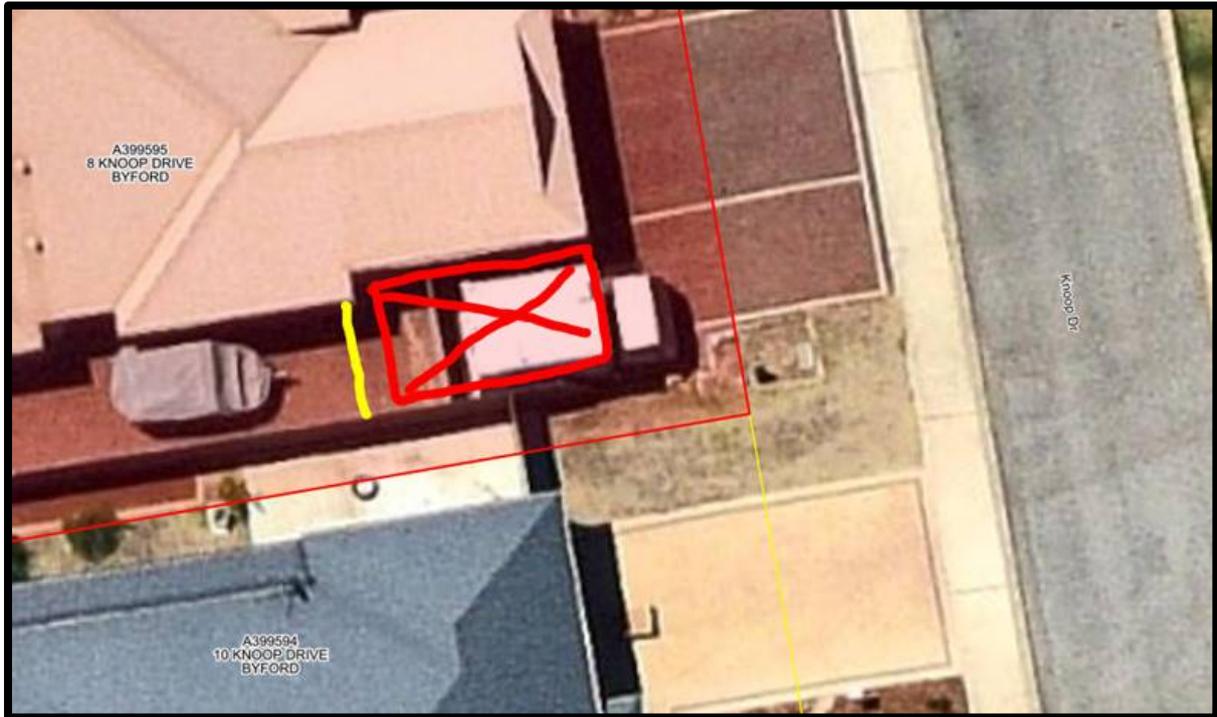


Figure 6: Amended fence line to allow the truck to be parked behind the building line

The application is applied for as a Commercial Vehicle, and as such, is not considered to be consistent with the intended character and amenity of the 'Residential' area under LPS3. It is also not associated with a Home Business, and has not been applied for as a Home Business.

Noise Management

Concern was raised in the submissions in relation to noise generated from the manoeuvring of the food truck on site, particularly the reversing warning sounds and the hours in which the food truck would be moved. No information has been provided in relation to noise levels of the proposed commercial vehicle, and in any case vehicle noise is not regulated under the Environmental Protection (Noise) Regulations.

The planning system must therefore regulate amenity impacts like noise, and given that the applicant advises that the truck would return to site at approximately 11:00am during weekdays and 9:00pm during weekends, there could be the risk of noise impacts at night.

Options and Implications:

Option 1

That Council REFUSES the development application as the land use is prohibited under LPS3.

Option 2

That Council APPROVES the application subject to the following conditions:

1. The commercial vehicle subject to this approval shall not enter or leave the site outside the hours of 7am to 7pm Monday to Friday, or 9am to 9pm on the weekend.
2. When the vehicle returns to the subject land beyond the hours of 5pm on a weekend day, it must park in a forward gear on the property in order to limit noise impacts associated with reversing to park on the subject land.

Option 1 is recommended.

Conclusion:

The proposed development is currently capable of approval under TPS2; however, would become a prohibited land use under LPS3. Approval of the proposed development would not be in accordance with the principles of orderly and proper planning given the advanced status of LPS3 and Officers recommend the proposed development be refused.

Deemed Provisions – Cl 67 Matters to be considered by local Government

a) The aims and provisions of this Scheme and any other local planning scheme operating within the area	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The proposal is consistent with the aims and provisions of the TPS2.			
b) The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting or approving	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: LPS3 considered.			
c) any approved State planning policy	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: There are no State Planning Policies that apply to this proposal.			
d) any environmental protection policy approved under the <i>Environmental Protection Act 1986</i> section 31(d) – None Applicable to this area from what I can determine	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: There are no Environmental Protection Policies that apply to this site.			
e) any policy of the Commission	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: There are no Commission policies that apply to this site or proposal.			
f) any policy of the State	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: There are no State policies that apply to this site or proposal.			
g) any local planning policy for the Scheme area	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: There are no Local Planning Policies that apply to this site or proposal.			
h) any structure plan, activity centre plan or local development plan that relates to the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The site lies within a 'Residential' zoned area in TPS2, the proposal is considered consistent with this designation.			
i) any report of the review of the local planning scheme that has been published under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment:			
j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: The site is not reserved under TPS2.			
k) the built heritage conservation of any place that is of cultural significance	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: The site nor any development on the site is identified as heritage.			

l) the effect of the proposal on the cultural heritage significance of the area in which the development is located	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The proposal is unlikely to have any effect on the cultural heritage significance of the area.			
m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: The proposed development does not seek any alterations to the existing approved building.			
n) the amenity of the locality including the following – I. Environmental impacts of the development II. The character of the locality III. Social impacts of the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The proposed development is not considered to impact the environment or character of the locality and is not considered likely to have any social impacts.			
o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The development does not impact any water resource and is considered unlikely to impact the natural environment.			
p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: the proposal does not involve the removal of any vegetation.			
q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bushfire, soil erosion, land degradation or any other risk	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The proposal is considered to be suitable and unlikely to cause or be effected by risk to flood, tidal inundation, subsidence, landslip, bushfire, soil erosion, land degradation or any other risk.			
r) the suitability of the land for the development taking into account the possible risk to human health or safety	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The proposal is unlikely to cause any risk to human health.			
s) the adequacy of – I. The proposed means of access to and egress from the site; and II. Arrangements for the loading, unloading, manoeuvring and parking of vehicles	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The property has capacity for up to 2 cars to be parked on the driveway and crossover, which is considered to be adequate.			
t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity off the road system in the locality and the probable effect on traffic flow and safety	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>

Comment: The proposal will not result in additional traffic beyond what could be expected of a residential property.			
u) the availability and adequacy for the development of the following – I. Public transport services II. Public utility services III. Storage, management and collection of waste IV. Access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities) V. Access by older people and people with disability	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: Not relevant to this proposal.			
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	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The proposed development would not compete with any community development.			
w) the history of the site where the development is to be located	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The history of the site has been discussed in the report.			
x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: The proposal is considered unlikely to impact on the community or any individuals.			
y) any submissions received on the application	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The application was advertised for a period of 21 days during which time 2 objections were received.			
Za) the comments or submissions received from any authority consulted under clause 66	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: The proposal is not considered to effect any external agencies and was not advertised to any government authorities.			
Zb) any other planning consideration the local government considers appropriate	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment: No other considerations			