

DEVELOPMENT NO.:	21038509
APPLICANT:	Shannon Smith
ADDRESS:	75-77 JETTY RD BRIGHTON SA 5048
NATURE OF DEVELOPMENT:	Change of use from dwelling and shop to shop, internal alterations to the rear existing buildings and the addition of an exhaust flue
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • Housing Diversity Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Affordable Housing • Heritage Adjacency • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (Metres) • Minimum Frontage • Minimum Site Area • Maximum Building Height (Levels)
LODGEMENT DATE:	2 Dec 2021
RELEVANT AUTHORITY:	Assessment panel
PLANNING & DESIGN CODE VERSION:	2021.16
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	N/A
RECOMMENDING OFFICER:	Alexander Stamatopoulos Development Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

CONTENTS:

ATTACHMENT 1: Sonus acoustic report and clarification of business operations

ATTACHMENT 2: Original report and attachments

BACKGROUND:

On the 23 February 2022 the Council assessment deferred development application 21038509 Change of use from dwelling and shop to shop, internal alterations to the rear existing buildings and the addition of an exhaust flue.

The Council Assessment Panel Resolved that:

Development Application Number 21038509, by Shannon Smith for a change of land use from a dwelling and shop to a shop is deferred pending the provision of further information to help better inform the Council Assessment Panel's decision with respect to the abatement of noise. Specifically, that the applicant provide:

- 1. Analysis into the anticipated noise impact of the café's expansion closer to the residential properties to the rear, and whether any noise attenuating measures should be incorporated.*
- 2. Clarification of proposed business operations.*

The applicant has provided a report produced by Sonus Acoustic Engineers which details an environment noise assessment of the rear area and its potential impacts which is attached to this report. Also attached is a covering letter from the applicant that details the business operations of the rear outdoor area (see attachment 1.8).

ASSESSMENT**Clarification of Proposed Business Activities**

The applicant seeks to introduce a new brand "Smithy's" into the Copenhagen Ice Creamery which will be operated by the same owners as Copenhagen. The business will operate as a "shop" as it will offer primarily takeaway savoury food with the option of in house seating for 30 guests at the rear. The applicant confirmed that during peak summer season there will be an additional 6 staff on the site. During the low season a maximum of 4 additional staff will be on site. A summary of the business operations as detailed by the applicant in attachment 1.8 is shown below:

The proposed business operations will be for a new venue called Smithy's, run by the same owners as Royal Copenhagen. This new venue will utilise the newly built kitchen, which will be shared by Royal Copenhagen, to bring some Baja California culinary delights to or beach side suburb. The menu will be focused on being take away, which has become so much more important post Covid, with the capacity for 30 patrons (when restrictions allow), to eat within the outside courtyard area of the venue.

Patrons will be able to enter the venue through the roller door entrance onto Elm Lane before returning to the beach or park with their food. For those patrons eating at the venue, Smithy's will have a Restaurant liquor licence so they can have a choice of several locally sourced alcoholic beverages from South Australia. The music at the venue will consist of light background restaurant music to compliment the relaxed beachside vibe of the venue. As per the sound report provided the operation hours will consist of between 8 am – 10pm.

While a new brand is being introduced to the site the land use remains as existing and therefore does not trigger a change in land use. The assessment of the rear area conducted when the initial application was lodged still remains applicable however the applicant has provided an acoustic report which is discussed below.

Interface Between Land Uses Assessment Provisions

DO 1

PO 4.1

The relevant interface between land use policy referenced for the outdoor dining area is PO and DPF 4.1. See below:

Activities Generating Noise or Vibration	
<p>PO 4.1</p> <p>Development that emits noise (other than music) does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers).</p>	<p>DTS/DPF 4.1</p> <p>Noise that affects sensitive receivers achieves the relevant Environment Protection (Noise) Policy criteria.</p>

The Sonus report was satisfied that the outdoor area would not be of nuisance to the adjoining sensitive receivers located on the southern side of Elm Lane. This was subject to a 50mm thick acoustic insulation with a minimum density of 32 kg/m³ be installed to the underside of the roof for the extent marked as purple below on the floor plan.

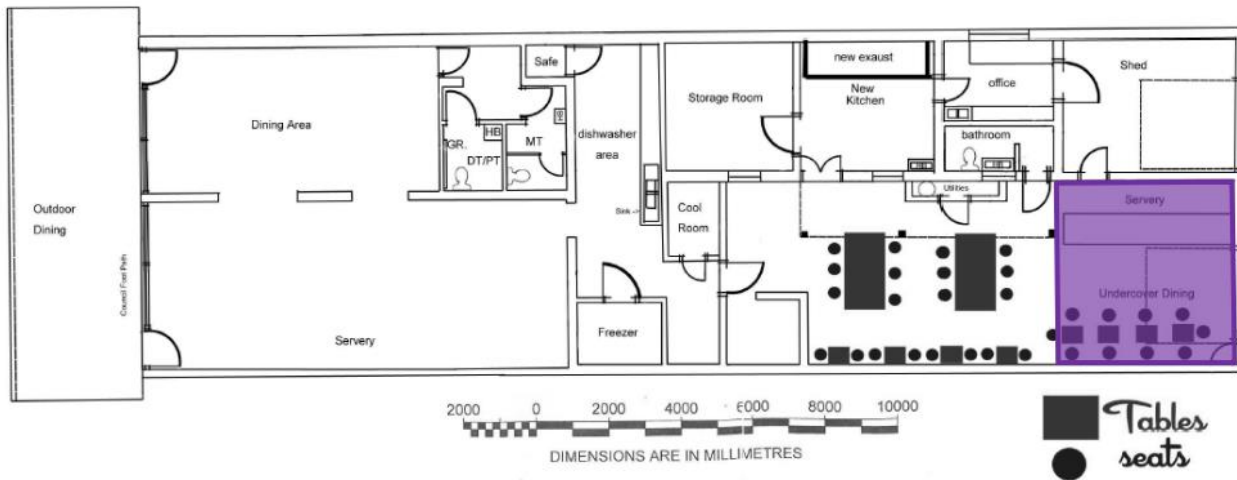


Figure 1: Treatment Summary

A condition has been placed on consent regarding the acoustic measures that must be implemented prior to the operation of the rear outdoor dining area. With the inclusion of the insulation the Environment Protection (Noise) Criteria is considered to be satisfied. Therefore, the Council forms the opinion that DO 1 and PO 4.1 of the Interface Between Land Uses Assessment Criteria is satisfied.

CONCLUSION

The application is considered appropriate for the subject site and will not adversely impact the amenity of the locality. The expansion of the existing shop is not considered to detrimentally impact the amenity of the locality when assessed in context to the existing commercial Jetty Road precinct. The application is not considered to create issues of interface with the inclusion of the acoustic treatments recommended by the Sonus report.

RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

1. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
2. Development Application Number 21038509, by Shannon Smith is granted Planning Consent subject to the following conditions

CONDITIONS

Planning Consent

1. The development granted approval shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).
2. That the rear outdoor dining area shall be used between the hours of 7am and 9pm Monday to Sunday.
3. That no live amplified music will be emitted from the rear outdoor area and any stereo background music shall not be played after 7pm.
4. That the rear entrance and exit adjacent to Elm Lane shall not be used after 7pm.
5. That the recommended acoustic measures detailed in the Sonus report dated April 2022 be implemented onto the site prior to the operation of the outdoor area.

ADVISORY NOTES

General Notes

1. No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.
2. Appeal rights – General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.
3. This consent or approval will lapse at the expiration of 2 years from its operative date, subject to the below or subject to an extension having been granted by the relevant authority.
4. Where an approved development has been substantially commenced within 2 years from the operative date of approval, the approval will then lapse 3 years from the operative date of the approval (unless the development has been substantially or fully completed within those 3 years, in which case the approval will not lapse).
5. A decision of the Commission in respect of a development classified as restricted development in respect of which representations have been made under section 110 of the Act does not operate—
 - a. until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or
 - b. if an appeal is commenced—
 - i. until the appeal is dismissed, struck out or withdrawn; or

- ii. until the questions raised by the appeal have been finally determined (other than any question as to costs).

OFFICER MAKING RECOMMENDATION

Name: Alexander Stamatopoulos
Title: Development Planner
Date: 07/04/2022