

DEVELOPMENT NO.:	21038509
APPLICANT:	SHANNON SMITH
ADDRESS:	75-77 JETTY ROAD, BRIGHTON
ZONING INFORMATION:	Housing Diversity Neighbourhood Zone
RELEVANT AUTHORITY:	Assessment Panel at City of Holdfast Bay
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
EXISTING USE:	Dwelling
REFERRAL:	Traffic & Transport Lead – City of Holdfast Bay
RECOMMENDING OFFICER:	Anthony Marroncelli Development Officer - Planning

CONTENTS:

ATTACHMENT 1: Traffic Referral Advice

ATTACHMENT 2: Previous Panel Reports

Background

At its meeting held on 27 April 2022, the Council Assessment Panel (the Panel) resolved as follows with respect to Development Application Number 21038509 for a change of land use from a dwelling and shop to a shop at 75-77 Jetty Road, Brighton (Report No 120/22):

“Development Application Number 21038509, by Shannon Smith for a change of land use from a dwelling and shop to a shop is delegated to the Assessment Manager for further assessment, including information regarding pedestrian and traffic advice in relation to pedestrian access from Elm Lane.”

Procedural

In executing the Panel’s resolution, advice was received from Council’s Traffic and Transport Lead, which was quite unequivocal, to the point where it is so compelling that it becomes fundamental to reinforcing the Panel’s intended outcome. It is therefore prudent for the Panel to reassume its role as decision maker for this proposal, particularly as the technical advice brings other provisions into play for consideration.

Report

The development application has been somewhat fluid, where additional information has been sought by the Panel following ongoing revelations as to the actual business model, and through further clarity regarding the true operations of the premises. Confirmation at the previous Panel meeting that customer access to the new use would not occur exclusively via the existing shopfront on Jetty Road, caused the Panel to rightly seek an assessment of the implications for pedestrians using Elm Lane, notwithstanding that there is no structural impediment to gaining access from Jetty Road to the new use at the rear. The assumption may have been that the impacts could be managed, and that therefore the Assessment Manager could simply issue a decision with conditions accordingly.

However, the following advice was received from council's Traffic and Transport Lead, which is cause for reflection regarding the Panel's intended approach (also provided as Attachment 1):

"The narrow width of Elm Lane currently creates conflict between competing uses, such as deliveries to businesses, waste collection and residential access. Pedestrian Access to the new venue would have to be via Jetty Road Twining Lane, or traversing the length of Elm Lane from Elm Street (130m). Development along Elm Lane in recent years has included new residential premises in close proximity to areas being used operationally by business operators, creating conflict in terms of noise and amenity complaints.

This development will substantially increase pedestrian activity on Elm Lane and likely Twining Lane also. These road environments do not have pedestrian facilities and are poorly lit. There is potential for pedestrians to wait or queue in the lane which is within the road carriageway, and after dark there is no lighting creating an unsafe situation. Activating this area has the potential to also increase noise as people wait for takeaway food. Commercial vehicles accessing Elm Lane must use Twining Lane to access Jetty Road, and use the entire road width to do so (See attached). They are unable to make the turn towards Bindarra Rd. The junction of these Laneways is not designed to a geometric standard, and there are extremely restricted sightlines to possible conflict points. This development creates additional demand, however it does not provide any parking supply, or payment-in-lieu through a levy. It also removes potential off-street parking from the property, increasing demand for on-street parking in the area.

As the proposed venue is licenced, there is also a risk of patrons leaving or attending the venue at night in the dark whilst intoxicated and then having to walk on the lane in conflict with traffic. The applicant should ensure all waste bins can be kept on site except when being collected. This site near the intersection is not safe for vehicles to stop for deliveries or waste collection and the applicant may need to consider alternate locations.

The addition of a pedestrian traffic generator to an area not suited to pedestrians is not recommended. Due to the serious concerns regarding potential for conflict between traffic and vulnerable road users, this change of business activities is not supported.

Should this be approved, we would expect upgrades to the lane will be required including lighting and traffic management to provide a safe environment for all users."

Rhys Skipper, Traffic & Transport Lead - 10 May 2022

Whilst the change of land use *per se* may be deemed appropriate, and indeed whilst access from an existing public road (albeit in the form of a lane) may be considered reasonable, the circumstances of the Lane relative to the use and its surroundings is now rendered problematic in light of the traffic advice. So, whilst the Panel is entitled to consider the balance of provisions in making its decision, the balance of the assessment has shifted in light of the technical advice provided by council's expert, to the point where other provisions come into play, which the Panel may now consider renders the proposal inappropriate. The other point worth noting, is that there are no other commercial premises with primary public access gained from Elm Lane, so this proposal would introduce the first such arrangement.

Recommendation

There are no conditions of approval that can be imposed that resolve or mitigate the concerns articulated in the traffic advice received. The Panel has the option of approving the application in the knowledge of these traffic concerns (adopting the original recommendation to do so), or it may prefer to move to refuse the application based on the following rationale:

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. That Development Application Number 21038509 for a change of land use from a dwelling and shop to a shop at 75-77 Jetty Road, Brighton is refused consent on the basis that is contrary to the following Planning and Design Code provisions:

Housing Diversity Neighbourhood Zone

PO 1.3

Non-residential development located and designed to improve community accessibility to services, primarily in the form of:

- (a) small-scale commercial uses such as offices, shops and consulting rooms

Reason: The development is not small scale in that it requires the activation of a separate customer access from a narrow lane.

PO 1.5

Non-residential development sited and designed to complement the residential character and amenity of the neighbourhood

Interface Between Land Uses

PO 1.2

Development adjacent to a site containing a sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers is designed to minimise adverse impacts.

Reason: Whilst secondary access to the commercial premises fronting Jetty Road is anticipated as part of interface activity, the activation of a primary access at the interface does not complement the residential character and amenity of the neighbourhood.

General Development Policies

Transport, Access and Parking

PO 1.2

Development is designed to discourage commercial and industrial vehicle movements through residential streets and adjacent other sensitive receivers.

Reason: The introduction of a retail outlet fronting Elm Lane will heighten commercial activity and movements through residential streets and adjacent residential areas.

PO 3.1

Safe and convenient access minimises impact or interruption on the operation of public roads.

Reason: The activation of retail premises fronting Elm Lane will cause greater interaction between pedestrian and vehicle movement and interruption to the operation of this public road.

PO 3.3

Access points are sited and designed to accommodate the type and volume of traffic likely to be generated by the development or land use.

Reason: A new customer access point from Elm Lane increases pedestrian movement through the land, which is not designed to accommodate pedestrian traffic safely, being a service lane.

PO 3.4

Access points are sited and designed to minimise any adverse impacts on neighbouring properties.

Reason: Pedestrians congregating in Elm Lane, as the primary access for commercial premises, is not ideal at the interface with residential properties. The impacts are likely to involve conflict with vehicle movements pertaining to residential properties, with no refuge for pedestrians when sharing the lane with vehicles.

PO 4.1

Development is sited and designed to provide safe, dignified and convenient access for people with a disability.

Reason: There is no provision for disabled access to the site, as there is no footpath or appropriately proportioned personal access door leading to the new commercial premises.

PO 6.4

Pedestrian linkages between parking areas and the development are provided and are safe and convenient.

Reason: There is no footpath linkage for pedestrians to access the new business premises, with Elm Lane not designed for safe pedestrian use.

PO 10.1

Development is located and designed to ensure drivers can safely turn into and out of public road junctions.

Reason: Sweep lines suggest that the junctions of the Laneways are not designed to a geometric standard, and there are extremely restricted sightlines to possible conflict points.