

| | |
|--|---|
| DEVELOPMENT NO.: | 21038509 |
| APPLICANT: | Shannon Smith |
| ADDRESS: | 75-77 JETTY ROAD 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 fan |
| 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: | Council Assessment Panel |
| PLANNING & DESIGN CODE VERSION: | 2021.16 |
| CATEGORY OF DEVELOPMENT: | Code Assessed - Performance Assessed |
| NOTIFICATION: | Yes |
| RECOMMENDING OFFICER: | Alexander Stamatopoulos Development Planner |
| REFERRALS STATUTORY: | Nil |
| REFERRALS NON-STATUTORY: | Nil |

CONTENTS:**APPENDIX 1: Relevant P&D Code Policies****ATTACHMENT 1: Plans****ATTACHMENT 2: Representations****ATTACHMENT 3: Response to Representations**

DETAILED DESCRIPTION OF PROPOSAL:

The application seeks the change of use from dwelling and shop to shop, internal alterations to the rear existing buildings and the addition of an exhaust fan. The building is occupied by Copenhagen Ice Cream which currently contains internal seating at the front of the store along with alfresco seating areas adjacent to Jetty Road.

The rear of the shop contains a residential dwelling which is to be replaced with the expansion of the ice creamery. The extension of the shop will include outdoor and indoor dining, storage shed, office, amenities, kitchen and storage areas for goods associated with the business.

The application does not alter the existing business trading hours and an additional 30 seats are proposed at the rear of the property. The primary trade of the business will remain as takeaway products. The rear of the property will be used to enter and exit the site via the roller door where the undercover dining is proposed.

SUBJECT LAND & LOCALITY:**Site Description:**

Location reference: 75-77 JETTY RD BRIGHTON SA 5048

Title ref.: CT 6126/687 **Plan Parcel:** D2061 AL7 **Council:** CITY OF HOLDFAST BAY

The subject land is a single storey commercial premises tenanted by a Copenhagen Ice Creamery. The shop is one of the long-standing businesses along the Jetty Road commercial strip that has been in operation for over ten years. To the rear of a shop is a dwelling containing long-standing use rights. The site is located in a heritage adjacency overlay as the building to eastern side is a Local Heritage Place.

An aerial of the site is shown below



A streetscape photo of the property is shown below



The locality comprises the retail and commercial precinct between Elm Street and the Esplanade, including the Esplanade Hotel, the historic Pier building and Local Heritage Listed buildings comprising a range of shops, cafes and restaurants, many with outdoor eating areas. Residential dwellings are located behind and on the upper floors of some of the buildings and also on the opposite side of Jetty Road. Buildings are single or two storeys in height and within the commercial strip are constructed to Jetty Road with verandahs/balconies over the footpath.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:** Change of use: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
The shop does not satisfy Housing Diversity Neighbourhood Zone DTS/DPF 1.2

- **LIST OF REPRESENTATIONS**

- Stuart Whiting of 16 Bindarra Road Brighton
- Harry Stamopoulos of 4/83 Jetty Road Brighton

- **SUMMARY OF REPRESENTATIONS**

- Concerns of increased amounts of rubbish along Elm Lane
- Historical issue of delivery vehicles parking along Elm Lane blocking traffic
- Recommendations that yellow lines be implemented to parts of Elm Lane by the Council
- The site will result in a loss of parking spaces.

The applicant responded to the representations shown in attachment 3

PLANNING ASSESSMENT

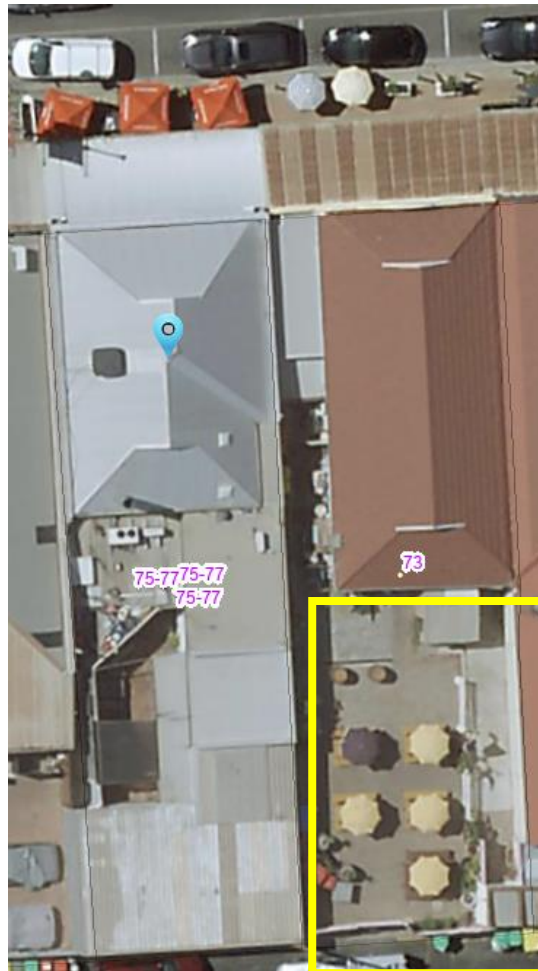
The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Appendix One.

Housing Diversity Neighbourhood Zone Assessment Provisions

| Performance Outcome | Deemed-to-Satisfy Criteria / Designated Performance Feature |
|--|---|
| Land Use and Intensity | |
| PO 1.1 Diverse range of medium density housing and accommodation complemented by a range of compatible non-residential uses supporting an active, convenient, and walkable neighbourhood. | DTS/DPF 1.1 Development comprises one or more of the following: <ul style="list-style-type: none"> (a) Ancillary accommodation (b) Consulting room (c) Community facility (d) Dwelling (e) Educational establishment (f) Office (g) Place of Worship (h) Pre-school (i) Recreation area (j) Residential flat building (k) Retirement facility (l) Shop (m) Supported accommodation. |

| | |
|--|--|
| <p>PO 1.3</p> <p>Non-residential development located and designed to improve community accessibility to services, primarily in the form of:</p> <ul style="list-style-type: none"> (a) small-scale commercial uses such as offices, shops and consulting rooms (b) community services such as educational establishments, community centres, places of worship, pre-schools and other health and welfare services (c) services and facilities ancillary to the function or operation of supported accommodation or retirement facilities (d) open space and recreation facilities. | <p>DTS/DPF 1.3</p> <p>None are applicable.</p> |
|--|--|

A shop is an anticipated land use in the Housing Diversity Zone. The application does alter the existing land use. The shop's expansion into the rear component of the land is consistent with the restaurant located to the east, The Seller Door, at 73 Jetty Road Brighton which contains rear outdoor dining. See aerial below which highlights the neighbouring outdoor dining in yellow.



The replacement of the dwelling with the expanded ice creamery is an appropriate land use for the locality given the historical context of the established commercial land uses. It is considered that PO 1.1 and 1.3 are satisfied.

Heritage Adjacency Overlay Assessment Provisions

| Performance Outcome | Deemed-to-Satisfy Criteria / Designated Performance Feature |
|--|---|
| Built Form | |
| PO 1.1 Development adjacent to a State or Local Heritage Place does not dominate, encroach on or unduly impact on the setting of the Place. | DTS/DPF 1.1 None are applicable. |

The proposal does not contain building works that will impact the façade of the adjoining heritage place to the east. The works are located to the rear of the property away from the façade of the heritage place mitigating any potential impacts. Therefore PO 1.1 is satisfied.

Interface Between Land Uses Assessment Provisions

| Desired Outcome | |
|-----------------|--|
| DO 1 | Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses. |

| Hours of Operation | | | | | | | | | |
|--|--|----------------------|---------------------------|------------------------|--|---------------|--|--|---|
| PO 2.1 Non-residential development does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers) or an adjacent zone primarily for sensitive receivers through its <u>hours of operation</u> having regard to: (a) the nature of the development (b) measures to mitigate <u>off-site</u> impacts (c) the extent to which the development is desired in the zone (d) measures that might be taken in an adjacent zone primarily for sensitive receivers that mitigate adverse impacts without unreasonably compromising the intended use of that land. | DTS/DPF 2.1 Development operating within the following hours: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="background-color: #2c3e50; color: white;">Class of Development</th> <th style="background-color: #2c3e50; color: white;"><u>Hours of operation</u></th> </tr> </thead> <tbody> <tr> <td><u>Consulting room</u></td> <td>7am to 9pm, Monday to Friday 8am to 5pm, Saturday</td> </tr> <tr> <td><u>Office</u></td> <td>7am to 9pm, Monday to Friday 8am to 5pm, Saturday</td> </tr> <tr> <td><u>Shop</u>, other than any one or combination of the following: (a) <u>restaurant</u> (b) cellar door in the Productive Rural Landscape Zone, Rural Zone or Rural <u>Horticulture</u> Zone</td> <td>7am to 9pm, Monday to Friday 8am to 5pm, Saturday and Sunday</td> </tr> </tbody> </table> | Class of Development | <u>Hours of operation</u> | <u>Consulting room</u> | 7am to 9pm, Monday to Friday 8am to 5pm, Saturday | <u>Office</u> | 7am to 9pm, Monday to Friday 8am to 5pm, Saturday | <u>Shop</u> , other than any one or combination of the following: (a) <u>restaurant</u> (b) cellar door in the Productive Rural Landscape Zone, Rural Zone or Rural <u>Horticulture</u> Zone | 7am to 9pm, Monday to Friday 8am to 5pm, Saturday and Sunday |
| Class of Development | <u>Hours of operation</u> | | | | | | | | |
| <u>Consulting room</u> | 7am to 9pm, Monday to Friday 8am to 5pm, Saturday | | | | | | | | |
| <u>Office</u> | 7am to 9pm, Monday to Friday 8am to 5pm, Saturday | | | | | | | | |
| <u>Shop</u> , other than any one or combination of the following: (a) <u>restaurant</u> (b) cellar door in the Productive Rural Landscape Zone, Rural Zone or Rural <u>Horticulture</u> Zone | 7am to 9pm, Monday to Friday 8am to 5pm, Saturday and Sunday | | | | | | | | |

There are residential dwellings located to the south of the site. These dwellings contain primary frontages to Bindarra Road and secondary frontages to Elm Lane. The expansion of the land use into the rear of the site is not considered to impact the amenity of these residences detrimentally.

The land use is considered to be of low impact that will not result in unreasonable interference through any of the following:

- the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants;
- noise;
- light spill;
- hours of operation; and
- traffic impacts.

The land use is of low intensity and will operate within its current trading hours of 7am till 9pm. The rear area will be used for dining which is not considered to be an activity that will result in unreasonable impacts of noise emissions. The exhaust fan is located central to the site away from the dwellings and the kitchen is only a small component of the business that will see limited use.

The rear outdoor area will not be subject to any live amplified music however will contain background music played through an internal speaker system. A condition has been placed on consent stating that no live music shall occur from the rear area and no background music shall be played after 7pm. The applicant was advised that a condition allowing the rear outdoor area to operate no later than 9pm would be placed on any consent issued to which there were no objections.

The premises is licensed where alcohol can be consumed in the front outdoor dining area adjacent to Jetty Road. There is a liquor license application in the process, which seeks to transfer the consumption of alcohol to the rear area. The license will be formalised after this application is determined.

As a result of the rear of the site being activated the applicant seeks to allow entry and access from Elm Lane. During the later hours of night this could potentially cause a nuisance to the adjacent residential land uses. In order to reduce impacts, a condition has been placed on consent ensuring that the rear access shall not be used after the hours of 7pm.

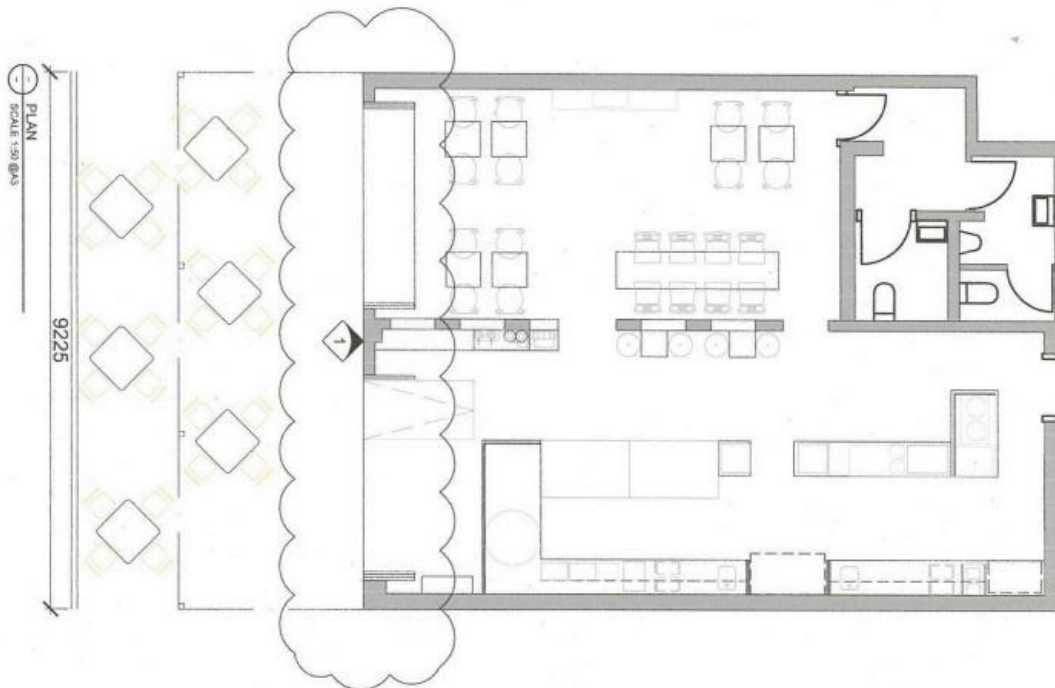
The residential amenity of the locality is already impacted by the existing commercial land uses. The site's expansion is a minor portion of what is an already thriving local commercial precinct. With the conditions recommended, any potential impacts of interface that may arise will be mitigated.

Desired Outcome 1 and Performance Outcome 2.1 of Interface Between Land Uses is considered to be satisfied.

Transport, Access and Parking Assessment Provisions

| Vehicle Parking Rates | |
|--|---|
| <p>PO 5.1</p> <p>Sufficient on-site vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-site rate such as:</p> <ul style="list-style-type: none"> (a) availability of on-street car parking (b) shared use of other parking areas (c) in relation to a mixed-use development, where the hours of operation of commercial activities complement the residential use of the site, the provision of vehicle parking may be shared (d) the adaptive reuse of a State or Local Heritage Place. | <p>DTS/DPF 5.1</p> <p>Development provides a number of car parking spaces on-site at a rate no less than the amount calculated using one of the following, whichever is relevant:</p> <ul style="list-style-type: none"> (a) Transport, Access and Parking Table 1 – General Off-Street Car Parking Requirements (b) Transport, Access and Parking Table 2 – Off-Street Vehicle Parking Requirements in Designated Areas (c) if located in an area where a lawfully established carparking fund operates, the number of spaces calculated under (a) or (b) less the number of spaces offset by contribution to the fund. |
| <p>Shop (in the form of a restaurant or involving a commercial kitchen)</p> | <p>Premises with a dine-in service only (which may include a take-away component with no drive-through) – 0.4 spaces per seat.</p> <p>Premises with take-away service but with no seats – 12 spaces per 100m² of total floor area plus a drive-through queue capacity of ten vehicles measured from the pick-up point.</p> <p>Premises with a dine-in and drive-through take-away service – 0.3 spaces per seat plus a drive through queue capacity of 10 vehicles measured from the pick-up point.</p> |

Table 1 – General Off-Street Car Parking Requirements anticipates a demand of 0.4 spaces per seat. The existing floor layout of the shop is shown overleaf and including the outdoor dining, a total of 48 seats are established in the existing shop.

Existing Shop Layout

The rear outdoor area will host an additional 30 seats bringing the total seats to 78. The proposal increases the parking demand by an additional 12 spaces which increases the total to a requirement for 30 parking spaces. The site has provision for one parking space which contains access from Elm Lane. It is noted that there was an existing parking shortfall of 20 spaces when calculating the demand of dwelling at the rear and the existing seating arrangement of the shop. Although this is the case the context of the locality justifies the parking shortfall.

The locality has characteristics similar to a local activity centre and would therefore warrant consideration of car parking based on a holistic approach typically applied to a designated area. There is a significant level of on-street parking within the locality which at most times of the year would provide sufficient spare capacity to accommodate the theoretical increase in car parking demand associated with the proposed external seating area.

There are significant levels of on-street car parking spaces available for use by the small increase in patronage associated with the shop. During peak summer periods, it is likely that the external seating area will be used by patrons who are currently in the area, including local residents. Consequently the actual increase in car parking demand should be minimal. Further, there would be periods during the year, such as times of inclement weather, when these seats are unlikely to be used.

The increase of 30 seats to the shop is not considered to warrant a sufficient increase in traffic to the locality, and therefore PO 5.1 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 attract an unreasonable amount of traffic to the locality and any issues of interface are dismissed given the low intensity of the land use.

RECOMMENDATION

Planning consent

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 reasons/conditions/reserved matters:

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.

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: 04/02/2022