

DEVELOPMENT NO.:	21038509
APPLICANT:	Shannon Smith
ADDRESS:	75-77 JETTY ROAD, BRIGHTON SA 5048
SUBJECT:	Appeal Report – Case Number ERD-22-000084 in the matter of Shannon Smith vs City of Holdfast Bay
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

Background

At its meeting held on 25 May 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:

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.*

Since the refusal was issued an appeal was lodged to the ERD Court. The decision was appealed as the applicant has arranged an alternate form of access to the site from Jetty Road Brighton. Amended plans are provided to the Council which show internal alterations to the existing shop which will allow access to the rear outdoor area from the front of the shop.

Report

The reasons for refusal were centred on the rear pedestrian door and roller door adjoining Elm Lane as the primary access into the rear shop. The applicant has eliminated the need for the rear to be used as access by conducting internal alterations to the existing shop. The access door located in the dining area will now lead into the rear outdoor dining space shown on the amended plans. The reference to the rear roller door and the pedestrian door adjacent to Elm Lane has been eliminated from the plan.

Below: An internal photo of the access door that will lead to the rear outdoor dining area



A letter of support has been provided by Town Planning Advisors on behalf of the applicant. The letter clarifies that all access into the site for both patrons and deliveries will occur from the Jetty Road shop front and not the rear lane. If the Panel are supportive of the revised arrangement; however, require additional clarity, the applicant is open to a condition being imposed on consent confirming that no pedestrian access is to be gained via Elm Lane.

The amended scheme showing entry from the Jetty Road shop frontage addresses the reasons for refusal. Access from Elm Lane will be no longer, eliminating the safety concerns and also potential interface issues to the adjacent dwellings to the south. In its amended form, entry will be as existing resulting in negligible change to the functionality of the site.

Recommendation

Planning consent

It is recommended that the Council Assessment Panel advise the Environment, Resources and Development Court in the matter of Case Number ERD-22-000084 that the Council supports Application ID 21038509 as amended subject to the conditions below:

CONDITIONS

Planning Consent

1. The development granted approval shall be undertaken and completed in accordance with the amended plans dated 29/06/2022 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 recommended acoustic measures detailed in the Sonus report dated April 2022 be implemented onto the site prior to the operation of the outdoor area.
5. The number of patrons located in the rear outdoor dining area shall not exceed 30 at any given time.
6. The rear access shall only be used in case of emergency.

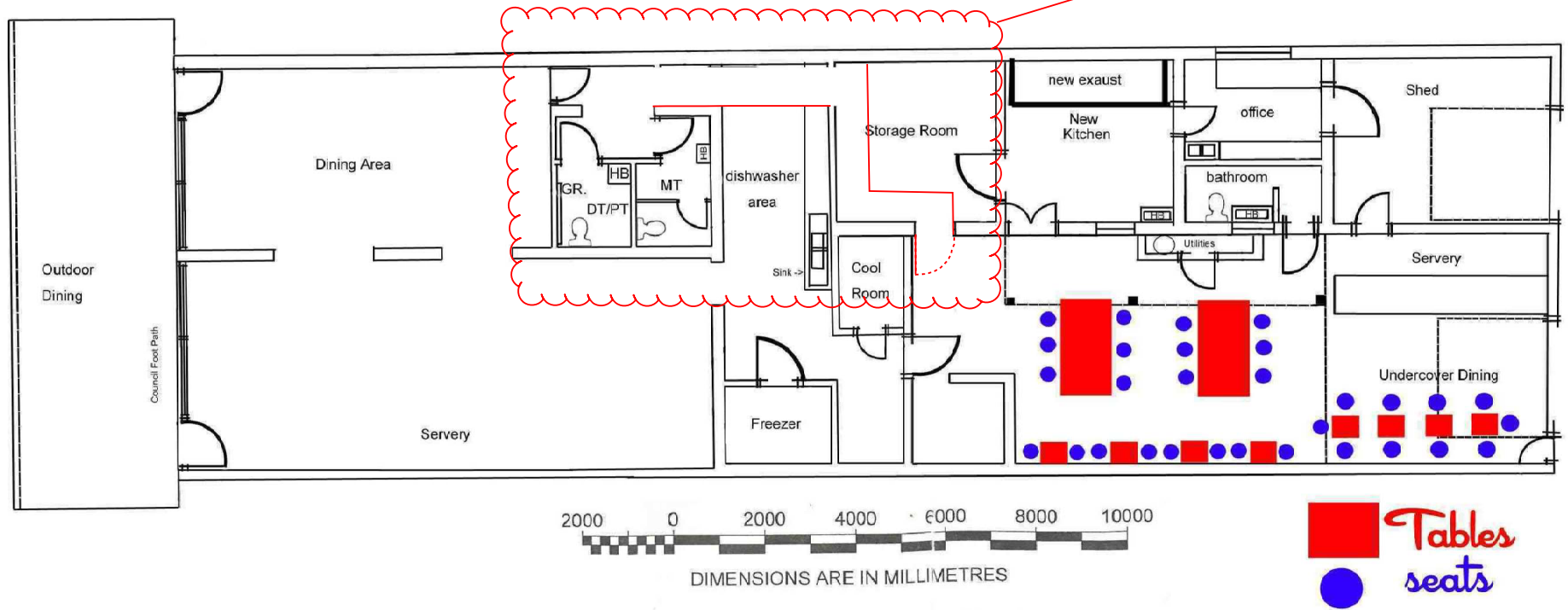
OFFICER MAKING RECOMMENDATION

Name: Alexander Stamatopoulos
Title: Development Planner
Date: 29/06/2022

ROYAL COPENHAGEN 75-77 JETTY RD BRIGHTON

CITY OF HOLDFAST BAY
AMENDED PLAN
29/06/2022

Proposed hallway
providing a link to the
outdoor dining area.



Attachment 1.1



PO BOX 9061 HENLEY BEACH SOUTH SA 5022
Mobile: 0478 509 777
Email: bill@townplanningadvisors.com.au
Website: www.townplanningadvisors.com.au

29/06/2022

Mr Alex Stamatopoulos
Development Officer Planning
City of Holdfast Bay

75-77 Jetty Road, Brighton

Change of use from dwelling and shop to shop, internal alterations to the rear existing buildings and the addition of an exhaust flue.

Dear Alex,

Introduction

Town Planning Advisors acts for Shannon Smith (the Applicant) and we provide the following covering letter along with amended plans to propose a settlement of this appeal. It is requested this compromise offer be considered at the next available Council Assessment Panel meeting to help resolve the matter in a timely fashion.

Amended plans

We submit an amended floor plan for the development which is to be considered by the relevant authority. In short, the amended plans demonstrate internal building works which establish a clear pathway between the front of the building, to the rear dining areas.

Discussion

The development was refused on the basis that the development 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*
- 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*

Attachment 1.2

d. open space and recreation facilities.

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.

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.

PO 3.1

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

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.

PO 3.4

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

PO 4.1

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

PO 6.4

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

PO 10.1

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

Planning Opinion

While it is acknowledged the development has been refused on a number of grounds, we understand the key item of concern is in relation to pedestrian access to the rear dining area. As such, we provide the following brief discussion and opinion of the key items.

After considerations of the Panel's concerns, the applicant intends to carry out internal buildings works in order to remove all pedestrian access via Elm Lane. As shown in the compromise offer, internal modifications to the building result in a pedestrian path from the front of the building only (Jetty Road). We confirm customer access to the building is to occur exclusively via the existing shopfront on Jetty Road, thereby removing the previously held interface concerns.

Attachment 1.3

We are aware the development would also necessitate an assessment against the National Construction Code (NCC), paying regard to disability access. Any area impacted by building modifications, together with the change of land use will need to be carried out in accordance with the NCC. The natural processing of the application will address any disability access matters and to this end, we consider there to be “no further work” from a planning assessment.

The revised arrangement directs all pedestrian traffic towards the shopfront facing Jetty Road and therefore, we consider the development one which remains in-line with that sought by the Zone, Interface and Access provisions of the Planning and Design Code.

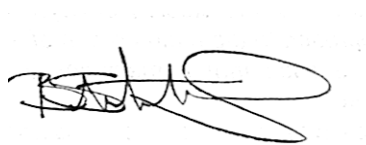
Further to the above, we confirm the operation of the facility shall not involve access from Elm Lane by staff, nor by any delivery services. All access to the site is to be made via the front of the site only.

If the Panel are supportive of the revised arrangement; however, requires additional clarity, the applicant is amenable to a condition being attached to the consent to confirm this operation of the shop and that no pedestrian access is to be gained via Elm Lane.

Closing

We are of the opinion the development maintains an appropriate level of merit to warrant the grant of Planning Consent. It is requested the Applicant be provided the opportunity to address the Panel and discuss the improvements made as a result of the compromise offer and to respond to any questions raised by Members.

Yours faithfully,



Bill Stefanopoulos, MPIA
BA Planning, Grad Dip Environmental Planning



From: Rhys Skipper

Sent: Tuesday, 10 May 2022 4:22 PM

To: Michael de Heus <mdeheus@holdfast.sa.gov.au>; Roberto Bria <rbria@holdfast.sa.gov.au>; Pamela Jackson <pjackson@holdfast.sa.gov.au>; Anthony Marroncelli <amarroncelli@holdfast.sa.gov.au>; Michael Gates <mgates@holdfast.sa.gov.au>

Subject: RE: Elm Lane / Copenhagen traffic

Dear all

Please see below our initial traffic feedback for Development Application 21038509:

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

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Brighton Civic Centre

24 Jetty Road, Brighton SA 5048

1 INTRODUCTION

An environmental noise assessment has been made of the proposed expansion of the Royal Copenhagen at 75/77 Jetty Rd, Brighton.

The proposal seeks to provide an additional dining area, accessed via Elm Lane through a roller door, and a new kitchen facility. The assessment considers noise from the patrons using the new dining area and the noise from the new exhaust fan serving the new kitchen facility. The proposed layout of the site can be seen on the floor plan included in Appendix A of this report.

The potential impact of noise from patrons and the new exhaust fan is considered for the closest noise sensitive receivers located across Elm Lane to the south and across Twining Lane to the west. It is noted that the dwelling currently being constructed on the opposite side of Elm Lane has been taken into account in the assessment. The locations of the sensitive receivers relative to the subject site are shown in the following figure.



The assessment has been based on:

- The understanding that the site is operated only during day time hours (7am to 10pm);
- A site visit and noise measurement of the new exhaust fan conducted on 28/03/2022;
- The understanding that the number of patrons in the proposed area will be no more than 30.

2 CRITERIA

2.1 PLANNING AND DESIGN CODE

The subject site is located within City of Holdfast Bay and subject to the provisions of the *Planning and Design Code (the Code)* under the *Planning, Development and Infrastructure Act 2016 (the PDI Act)*.

In accordance with the Code, the subject site is located within the Housing Diversity Neighbourhood Zone. The nearby noise sensitive locations are located within Waterfront Neighbourhood Zone and General Neighbourhood Zone. The Code has been reviewed and the provisions considered relevant to the noise assessment are included in Appendix B.

Performance Outcome 4.1 (PO4.1) relates to noise from development *not unreasonably impact[ing] the amenity of sensitive receivers (or lawfully approved sensitive receivers)*. The Deemed to Satisfy provision for PO4.1 specifically references achieving the criteria of the *Environment Protection (Noise) Policy 2007 (the Policy)*.

The Policy is based on the World Health Organisation Guidelines to prevent annoyance, sleep disturbance and unreasonable interference on the amenity of an area. Therefore, compliance with the Policy is considered to satisfy all provisions of the Planning and Design Code relating to environmental noise.

2.2 Environment Protection (Noise) Policy 2007

The Policy provides goal noise levels to be achieved at noise sensitive locations based on the principally promoted land use of the zones in which the noise source (the development) and the noise receivers (the residences) are located.

In this instance, based on the hours of operation, the zone and the nature of the project, being an addition to an existing facility, an average (L_{eq}) noise level of 47 dB(A) is to be achieved at the nearby existing and approved residences.

When measuring or predicting noise levels for comparison with the Policy, adjustments may be made to the goal noise levels for each “annoying” characteristic of tone, impulse, low frequency, and modulation of the noise source. The characteristic must be dominant in the existing acoustic environment and therefore the application of a penalty varies depending on the assessment location, time of day, the noise source being assessed, and the predicted noise level. The application of a penalty is discussed further in the Assessment section below.

3 ASSESSMENT

The noise from patron activity in the proposed dining area has been predicted based on a sound power level of 67 dB(A) for each patron and 77 dB(A) for the new exhaust fan. The assessment has been based on 30 patrons within the proposed dining area and continuous operation of the new exhaust fan. The assessment has been made with an assumption that the rear roller door may remain open during the operational hours.

Based on the prediction, it is recommended that 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** in figure 1. CSR Martini ‘Absorb HD 50’ and Autex ‘Greenstuf AAB 35-50’ are examples of products that achieve the requirement.

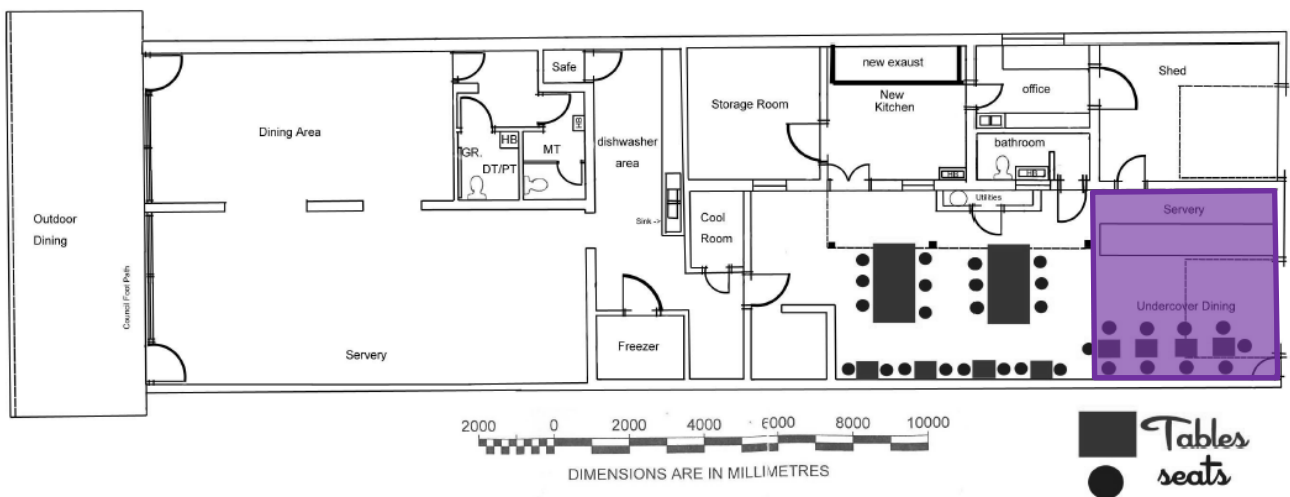
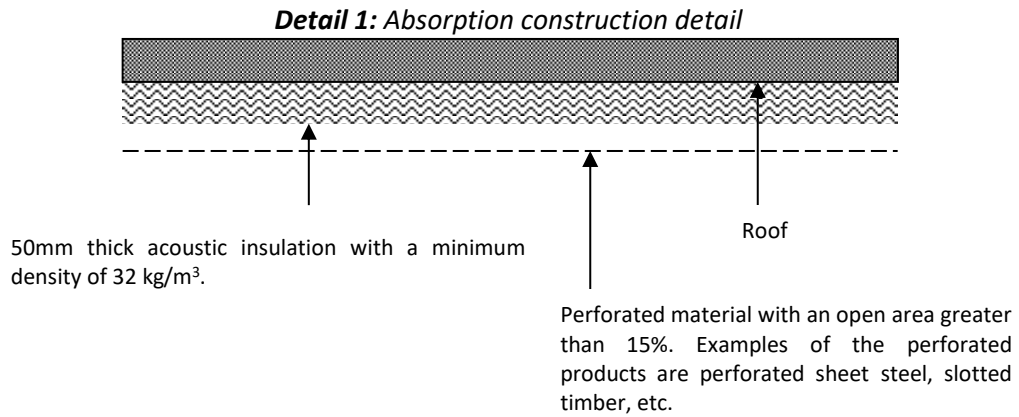


Figure 1: Treatment Summary

The insulation may be protected with a perforated material as shown in Detail 1 below:



It is debatable whether a penalty would be applicable at any sensitive receivers as a result of noise from the patrons within the proposed dining area and the new exhaust fan, given the existing exposure to noise from patrons along Jetty Rd and mechanical plant equipment serving the adjacent businesses. Notwithstanding, a 5 dB(A) has been added to all predicted noise levels.

The predicted average (L_{eq}) noise level at any nearby noise sensitive receiver, with the inclusion of the penalty, is no more than 47 dB(A).

Therefore, it can be considered that the noise from the development will not cause unreasonable noise impact on the existing adjacent sensitive receivers, thereby achieving the relevant provisions of the Planning and Design Code.

4 CONCLUSION

An environmental noise assessment has been made of the proposed expansion of the Royal Copenhagen at 75/77 Jetty Rd, Brighton.

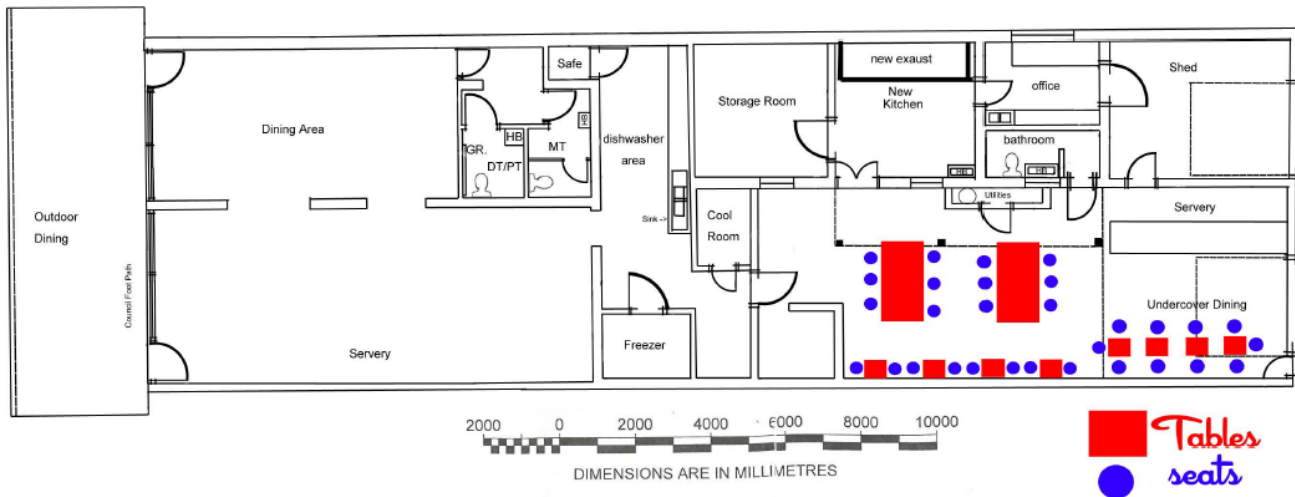
The assessment considers noise at sensitive locations in the vicinity from patrons using the proposed dining area and the noise from the new exhaust fan.

Relevant assessment criteria have been established based on the *Planning and Design Code* (the Code) and *Environment Protection (Noise) Policy 2007*.

Based on the prediction, it is recommended that absorption material be installed to the underside of the roof to meet the assessment criteria.

It is therefore considered that the facility has been designed to *minimise adverse impacts and not unreasonably affect the amenity of sensitive receivers*, thereby achieving the relevant provisions of the Planning and Design Code related to environmental noise.

APPENDIX A: FLOOR PLAN



APPENDIX B: South Australian Planning and Design Code Provisions

Part 4 – General Development Policies

Interface between Land Uses

DESIRED OUTCOME

DO 1: Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature									
General Land Use Compatibility										
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.	DTS/DPF 1.2 None are applicable									
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 hours of operation having regard to: <ul style="list-style-type: none"> a) the nature of the development b) measures to mitigate off-site 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" data-bbox="810 1151 1417 1825"> <thead> <tr> <th data-bbox="810 1151 1114 1189">Class of Development</th> <th data-bbox="1115 1151 1417 1189">Hours of operation</th> </tr> </thead> <tbody> <tr> <td data-bbox="810 1191 1114 1301">Consulting room</td> <td data-bbox="1115 1191 1417 1301">7am to 9pm, Monday to Friday 8am to 5pm, Saturday</td> </tr> <tr> <td data-bbox="810 1303 1114 1413">Office</td> <td data-bbox="1115 1303 1417 1413">7am to 9pm, Monday to Friday 8am to 5pm, Saturday</td> </tr> <tr> <td data-bbox="810 1415 1114 1825"> Shop, other than any one or combination of the following: <ul style="list-style-type: none"> (a) restaurant (b) cellar door in the Productive Rural Landscape Zone, Rural Zone or Rural Horticulture Zone </td> <td data-bbox="1115 1415 1417 1825">7am to 9pm, Monday to Friday 8am to 5pm, Saturday and Sunday</td> </tr> </tbody> </table>		Class of Development	Hours of operation	Consulting room	7am to 9pm, Monday to Friday 8am to 5pm, Saturday	Office	7am to 9pm, Monday to Friday 8am to 5pm, Saturday	Shop, other than any one or combination of the following: <ul style="list-style-type: none"> (a) restaurant (b) cellar door in the Productive Rural Landscape Zone, Rural Zone or Rural Horticulture Zone 	7am to 9pm, Monday to Friday 8am to 5pm, Saturday and Sunday
Class of Development	Hours of operation									
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Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
Activities Generating Noise or Vibration	
PO 4.1 Development that emits noise (other than music) does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers).	DTS/DPF 4.1 Noise that affects sensitive receivers achieves the relevant Environment Protection (Noise) Policy criteria.
PO 4.2 Areas for the on-site manoeuvring of service and delivery vehicles, plant and equipment, outdoor work spaces (and the like) are designed and sited to not unreasonably impact the amenity of adjacent sensitive receivers (or lawfully approved sensitive receivers) and zones primarily intended to accommodate sensitive receivers due to noise and vibration by adopting techniques including: <ul style="list-style-type: none"> a) locating openings of buildings and associated services away from the interface with the adjacent sensitive receivers and zones primarily intended to accommodate sensitive receivers b) when sited outdoors, locating such areas as far as practicable from adjacent sensitive receivers and zones primarily intended to accommodate sensitive receivers c) housing plant and equipment within an enclosed structure or acoustic enclosure d) providing a suitable acoustic barrier between the plant and / or equipment and the adjacent sensitive receiver boundary or zone. 	DTS/DPF 4.2 None are applicable

Attachment 3.8



RE: "clarification of proposed business operations".

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 our 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.

Kind regards

Shannon Smith

Managing Director

Royal Copenhagen Brighton

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

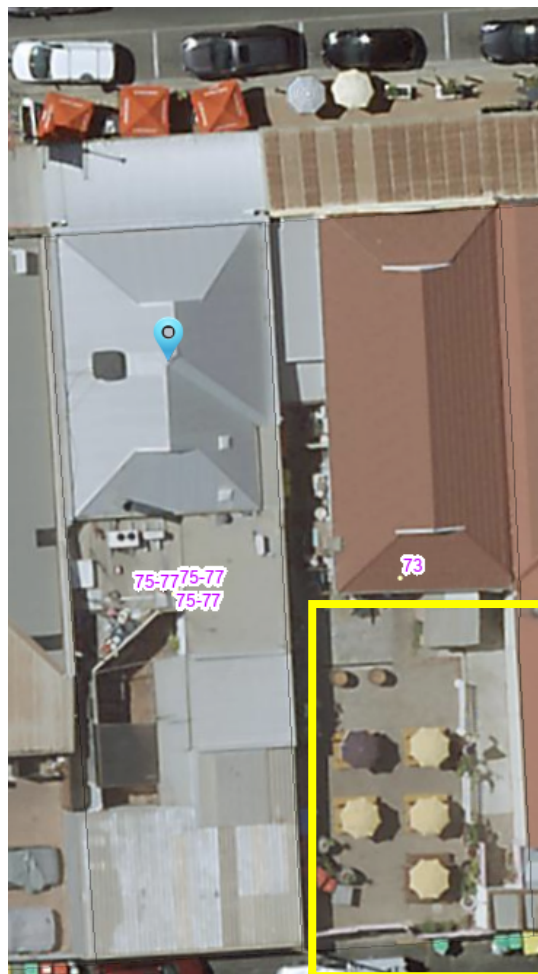
The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Appendix One.

Housing Diversity Neighbourhood Zone Assessment Provisions

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
<p>PO 1.1</p> <p>Diverse range of medium density housing and accommodation complemented by a range of compatible non-residential uses supporting an active, convenient, and walkable neighbourhood.</p>	<p>Land Use and Intensity</p> <p>DTS/DPF 1.1</p> <p>Development comprises one or more of the following:</p> <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>
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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: <ul style="list-style-type: none"> (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%; margin-top: 10px;"> <thead> <tr> <th style="background-color: #2c3e50; color: white;">Class of Development</th> <th style="background-color: #2c3e50; color: white;">Hours of operation</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: <ul style="list-style-type: none"> (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	Hours of operation	<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: <ul style="list-style-type: none"> (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
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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.

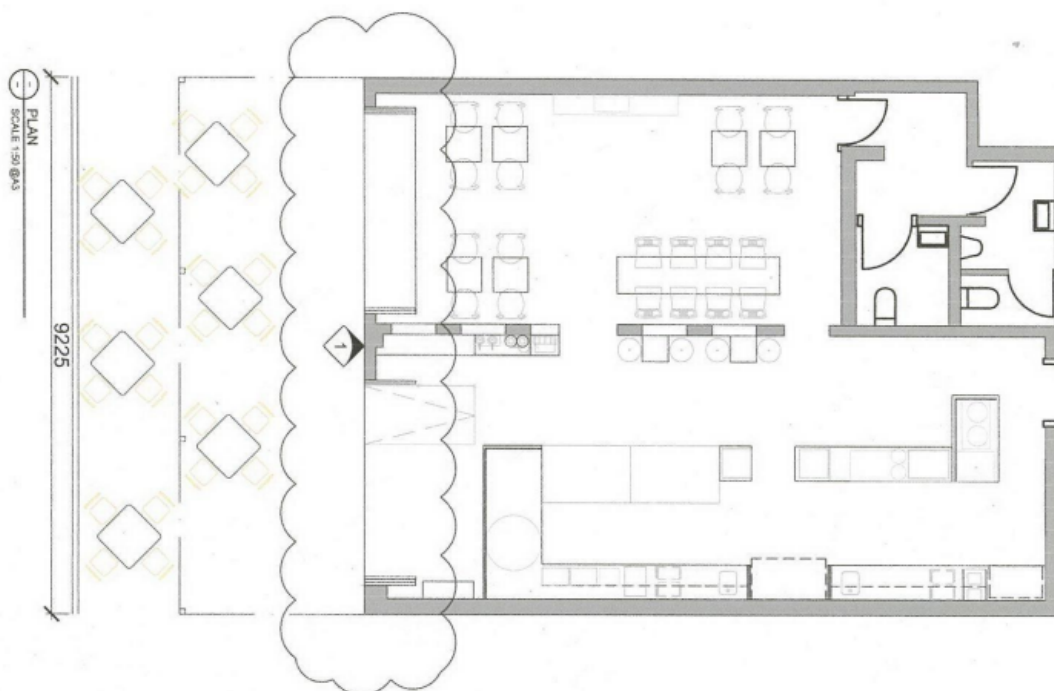
The residential amenity of the locality is already impacted by the existing commercial land uses. The site's expansion is a minor portion of what is an already thriving local commercial precinct. With the conditions recommended, any potential impacts of interface that may arise will be mitigated.

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

Site Plan Attachment 3.20

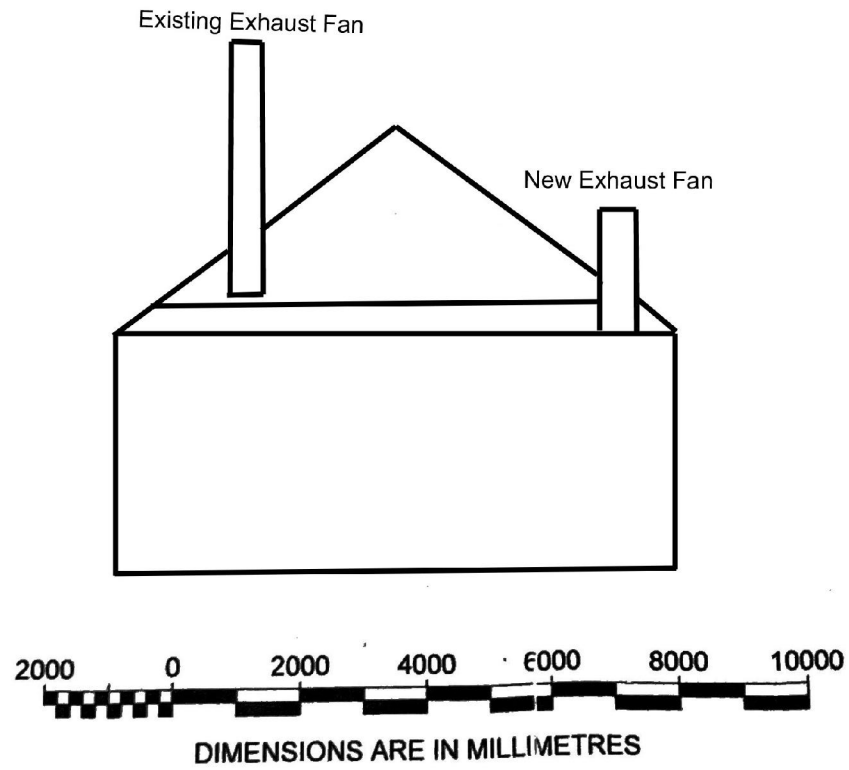


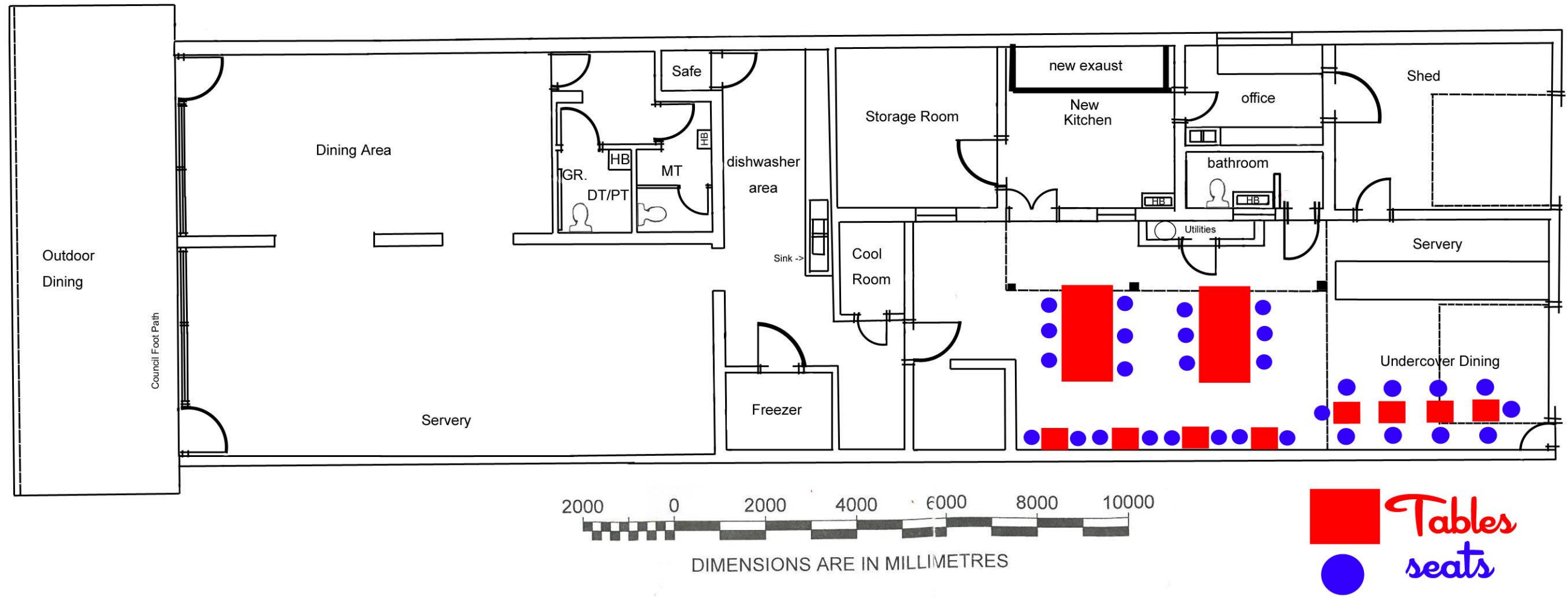
-  Property Boundry
-  Grease Trap



0 2.5 5 10 Meters

Attachment 3.21





Details of Representations **Attachment 3.23**

Application Summary

Application ID	21038509
Proposal	Change of use from shop and dwelling to shop, internal alterations to the rear existing buildings and the addition of an exhaust flue.
Location	75-77 JETTY RD BRIGHTON SA 5048

Representations

Representor 1 - Stuart Whiting

Name	Stuart Whiting
Address	16 Bindarra Road BRIGHTON SA, 5048 Australia
Phone Number	0467805308
Email Address	stuwhting71@hotmail.com
Submission Date	17/12/2021 10:49 AM
Submission Source	Online
Late Submission	No
Would you like to talk to your representation at the decision-making hearing for this development?	Yes
My position is	I support the development with some concerns
Reasons	<p>Our rear access garage backs onto the property in question. Over the past 5 years there have been numerous occasions where we are unable to use this garage because of vehicles and rubbish being left in Elm Lane and therefore illegally preventing access to our garage. One concern is whether the proposal includes sufficient area such that rubbish isn't left out on the streets for excessive amounts of time prior to collection. If causes obstructions and attracts rodents/other vermin. We also have significant problems with delivery vehicles. Delivery vehicles frequently block our access in garages and are very rude when asked to move. We request that the council implement specific designated areas on jetty road for unloading only (i.e. remove the short term parking and provide drop off/unloading only. That yellow lines be put on both sides of Elm Lane to prevent parking blocking those with access on the Southern side of Elm Lane</p>

Attached Documents

Representations

Attachment 3.24

Representor 2 - Harry Stamopoulos

Name	Harry Stamopoulos
Address	4/83 jetty rd BRIGHTON SA, 5048 Australia
Phone Number	0419101481
Email Address	harrystamos@outlook.com
Submission Date	23/12/2021 02:34 PM
Submission Source	Online
Late Submission	No
Would you like to talk to your representation at the decision-making hearing for this development?	No
My position is	I oppose the development
Reasons	I do not support the proposed development due the removal of existing onsite double stack carport / car parking. As everyone is aware our locality is extremely deficient in car parking and loading areas. We have constant problems with adjacent shops delivery trucks parked our property and on twinning lane and have noticed cars parked for long periods behind at the rear of shops on Elms lane making at time difficult to drive through the lane. I assume the vehicles belong to business owners or staff and therefore request that the development panel refuse the development as is proposed. Regards, Harry Stamopoulos

Attached Documents

Attachment 3.25

Response to Representations

The proposed development will allow for the storage of all waste bins within the new layout in the previously residential portion of the property. Previously, due to the residence sharing this property, there was limited storage options available for waste bins. By using the residential portion of the property, as the development proposes, larger new waste bins can be used and wheeled in and out of the property for collection each day when necessary. A large motivation for converting the residential portion of the property was to allow for the storage of larger waste bins to clear up Elm Lane. The commercial portion of the property has always been under an extensive pest monitoring program, which has now been extended to the residential portion of the property in preparation for the proposed development.

The proposed development would not increase the magnitude of deliveries occurring in Elm Lane, as it is an extension of the current operations at the property. The proposed development would mean no vehicles (including delivery) would be parked in front of the carport on Elm Lane, as this will detract from the proposed developments objectives. We support the use of yellow lines on both sides of Elm Lane, as no-one from the business will be parking in this area. We have already started to inform several delivery companies that we want deliveries to come through the front of the shop on Jetty Road as the proposed development won't accommodate them coming from the lane. However, we agree that a designated delivery parking area down the beach side of Elm Lane would help the residences and the business operating in this area. We do our part to let delivery companies know of the only legal loading area that is up the other end of Elm Lane.

The proposed development is to change the residential portion of the property into a commercial area. The residential portion of this property consisted of on a living space and one car park within the carport, which was only ever used by the resident and not staff or the public. Visitors to the residential portion of the property would often park their cars in front of the carport on Elm Lane, increasing the congestion. By removing the residence, it will remove any unnecessary congestion that cannot be controlled by the business also operating on the property. The proposed development will not be converting the car parking spot from the residence into anything. It will be free for a car to park there, along with being used for storage (bins etc). A vehicle can still be parked in this space see current picture below.

