

**9.3 NOS. 452 - 460 (LOT: 1; D/P: 613) WILLIAM STREET, PERTH - CHANGE OF USE FROM SHOP TO TAVERN**

**TRIM Ref:** D17/104022  
**Author:** Steve Laming, Urban Planner  
**Authoriser:** Paola Di Perna, Manager Approval Services  
**Ward:** South  
**Precinct:** 13 – Beaufort  
**Attachments:**

1. Attachment 1 - Consultation and Location Map
2. Attachment 2 - Development Plans
3. Attachment 3 - Summary of Submissions
4. Attachment 4 - Applicant's Response to Submissions
5. Attachment 5 - Management Plan
6. Attachment 6 - Car Parking Assessment
7. Attachment 7 - Determination Advice Notes

**RECOMMENDATION:**

That Council in accordance with the provisions of the City of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application for a change of use from Shop to Tavern at Nos. 452-460 (Lot: 1; D/P: 613) William Street, Perth, in accordance with the plans provided as Attachment 2 subject to the following conditions, with the associated determination advice notes in Attachment 7:

**1. Use of Premises**

The use shall be limited to:

- 1.1. A maximum of 22 customers shall be permitted within the indoor area at any given time;
- 1.2. A maximum of 28 customers shall be permitted within the outdoor alfresco area at any given time; and
- 1.3. The area shown as 'WINE STORE & BAR' on the approved ground floor plan shall only be used for the purpose of the proposed Tavern. The area shown as 'STORAGE AREA' on the approved first floor plan shall only be used for storage of goods associated with the Tavern on the ground floor;

**2. Active Frontage**

The development shall maintain an active and interactive relationship and uninterrupted views between the use of the development and William Street during the hours of the development's operation to the satisfaction of the City. Darkened, obscured, mirror or tinted glass or the like is prohibited. Curtains, blinds and other internal or external treatments that obscure the view of the 'WINE STORE & BAR', as shown on the approved ground floor plan, from William Street are not permitted to be used during the hours of the development's operation;

**3. External Fixtures**

All external fixtures and building plant, including air conditioning units, piping, ducting and water tanks, shall be located so as to minimise any visual and noise impact on surrounding landowners, and be screened from view from the street, and surrounding properties to the satisfaction of the City;

**4. Hours of Operation**

The hours of operation shall be limited to the hours of:

- Tuesday to Saturday and Sundays prior to public holidays: 7:00am to midnight;
- Ordinary Sundays and Public Holidays: 7:00am to 10:00pm; and
- Monday: CLOSED;

**5. Acoustic Report**

5.1. An Acoustic Report, in accordance with the City's Policy No. 7.5.21 - Sound Attenuation and State Planning Policy 5.4 - Road and Rail Transport Noise and Freight Considerations in Land Use Planning, shall be lodged with and approved by the City prior to the commencement of the development; **and**

5.2. All of the recommended measures included in the approved Acoustic Report shall be implemented as part of the development, to the satisfaction of the City prior to the use or occupation of the development and maintained thereafter to the satisfaction of the City at the expense of the owners/occupiers;

**6. Management Plan**

6.1. An updated Management Plan in accordance with the City's Policy No. 7.5.7 – Licenced Premises shall be submitted to, and approved by the City prior to the development commencing. The updated Management Plan shall address the following matters and shall be in accordance with all conditions of this approval:

- Any recommendations detailed in the Acoustic Report (as per Condition 5 above);
- Floor plans of the premises;
- The maximum number of patrons;
- Hours of operation;
- Noise Management Plan;
- Patron and anti-social behaviour;
- Entertainment and Music; and
- Time and frequency of waste collection and deliveries at the premises;

6.2. Use of the premises shall be carried out in accordance with the approved Management Plan or any Plan approved by the City thereafter and all requirements of the Management Plan shall be implemented to the satisfaction of the City; **and**

6.3. The Management Plan shall be reviewed every 12 months, with any changes identified during this review or by the City, being incorporated into an updated Management Plan approved by the City as part of the review;

**7. Cash-in-Lieu**

A cash-in-lieu contribution shall be paid to the City for the shortfall of ~~4.14~~ **3.72** car bays, based on the cost of \$5,400 per bay as set out in the City's 2017/2018 Schedule of Fees and Charges being a contribution of ~~\$22,356~~ **\$20,088** prior to the commencement of development or by entering into a written agreement to the City to pay the cash-in-lieu over an agreed period up to five years; and

**8. Heritage**

8.1. The existing front double doors shall be retained in place; and

8.2. The original fabric to the bay windows shall be retained where it is extant.

**PURPOSE OF REPORT:**

To consider an application for development approval for a change of use from Shop to Tavern at Nos. 452 – 460 William Street, Perth.

**BACKGROUND:**

<b>Landowner:</b>	A Yozzi & F A Yozzi
<b>Applicant:</b>	S J Winfield
<b>Date of Application:</b>	16 June 2017
<b>Zoning:</b>	MRS: Urban, Other Regional Road Reservation TPS1: Zone: Commercial TPS2: Zone: District Centre
<b>Built Form Area:</b>	Town Centre
<b>Existing Land Use:</b>	Shop – “P”
<b>Proposed Use Class:</b>	Tavern – “SA”
<b>Lot Area:</b>	531m <sup>2</sup>
<b>Right of Way (ROW):</b>	Not Applicable
<b>Heritage List:</b>	Management Category A, State Registered Place

The subject site is located on the corner of William Street and Brisbane Street and is within the William Street Town Centre. The site is zoned ‘Commercial’ and is currently occupied by five strata tenancies being Nos. 452, 454, 456, 458 and 460 William Street. The location of the subject site is included as **Attachment 1**.

The locality consists of a mix of residential and commercial properties, with the predominate uses in the vicinity being commercial. The adjoining properties to the south, west, east and north-west of the subject site are zoned ‘Commercial’ and are currently occupied by a mix of eating houses, shops, hair dressers, offices and recreational facilities. The properties on the north-western side of Brisbane Street are zoned Residential with a residential density code of R80. The property on the corner of Brisbane and Wade Streets is currently occupied by a hair and beauty salon, and the other properties along Brisbane Street are single houses. The nearest residential property on Brisbane Street is located approximately 35 metres from the subject site.

The existing buildings on the subject site are on the City’s Heritage List as Management Category A (Conservation Essential). The building was constructed in 1915 with shops on the ground floor and residences above for the shop tenants and their families. The two-storey corner building is a landmark structure in a prominent location and includes a cantilevered awning to the ground floor shops, with a high parapet brick and ornate stucco façade to the upper levels. The parapet steps down along William Street and features circular and hanging festoons in the alternate triangular and curved pediments and ball finials. There are no building works proposed to the external fabric of the building as part of the proposal. It is understood that the subject tenancy has been used as a shop since it was constructed in 1915 and the City’s records do not indicate that any other use has occupied or been approved for this tenancy.

The applicant is seeking approval to change the use of the strata tenancy at No. 458 William Street from a Shop to a Tavern. The proposal has been assessed as a Tavern as it is considered to fall within this use under the City’s Town Planning Scheme No. 1 as the primary use is for the consumption of beverages with majority of the floor area being identified for patron use and seating. The use also aligns with the Department of Local Government, Sport and Cultural Industries (DLGSCI) Tavern liquor licence and the applicant intends to seek this license type which permits the retail sale and on-site consumption of alcoholic beverages.

The applicant proposes for the Tavern to operate as a small retail wine store and bar that is focused on natural and minimal intervention wine and showcases Western Australian produce. The applicant expects the retail component will equate for 70 per cent of the sales with the dine-in/bar component equating for 30 per cent of sales.

The dine-in/bar component will offer meals and will incorporate an indoor area of 20 square metres and use 24 square metres of the area within the footpath reserve directly in front of the subject premises for alfresco seating. The indoor area will include a communal table and bar area. The proposal also includes an awning and under awning sign on the William Street elevation, which will display the name of the Tavern, ‘Wines of While’. The proposed development plans are included as **Attachment 2**.

The proposed maximum number of persons on-site at any one time is 50 customers and 4 staff. The proposed maximum number of customers in the indoor area at any time is 22 customers and the maximum number of customers in the alfresco area at any time is 28 customers.

The proposed hours of operation are as follows:

- Tuesday to Saturday: 7:00am – midnight;
- Sunday: 7:00am - 10:00pm; and
- Monday: CLOSED.

The applicant in their submission states that they seek approval to operate from 7:00am in order to provide a breakfast service should there be a consumer demand for the service, however the intended hours of operation are as follows:

- Tuesday to Saturday: 11:00am – midnight;
- Sunday: 11:00am - 10:00pm; and
- Monday: CLOSED.

#### DETAILS:

The table below summarises the planning assessment of the proposal against the provisions of the City of Vincent Town Planning Scheme No. 1 (TPS1) and the City's policies. In each instance where the proposal requires the discretion of Council, the relevant planning element is discussed in the Detailed Assessment section following from this table.

Planning Element	Use Permissibility/ Deemed-to-Comply	Requires the Discretion of Council
Land Use		✓
Parking and Access		✓
Signs and Advertising	✓	

#### Detailed Assessment

The deemed-to-comply assessment of the element that requires the discretion of Council is as follows:

Land Use	
Deemed-to-Comply Standard	Proposal
<b>Town Planning Scheme No. 1</b> 'P' permitted land use	'SA' land use
Parking and Access	
Deemed-to-Comply Standard	Proposal
<b>Local Planning Policy No. 7.7.1</b> <b>Parking and Access</b> 5 (4.14) 3.72 car parking bays spaces	No parking proposed

The above elements of the proposal do not meet the specified deemed-to-comply standards and are discussed in the Comments section below.

#### CONSULTATION/ADVERTISING:

Consultation was undertaken for a period of 21 days in accordance with the *Planning and Development (Local Planning Scheme) Regulations 2015*, from 3 July 2017 to 23 July 2017. The method of consultation being a sign on site, a notice in the local newspaper 'The Voice', and letters being mailed to all owners and occupiers as shown on **Attachment 1**, in accordance with the City's Policy No. 4.1.5 – Community Consultation.

A total of 18 submissions were received in relation to the proposal comprising of six objections, eleven in support and one with general concerns. The main concerns raised in the submissions are summarised as follows:

- The proposal does not include the provision of any on-site car parking, which will result in staff and patrons having to utilise on-street parking on William Street and surrounding streets at the detriment of residents and other businesses; and
- The proposed hours of operation are excessive.

The main issues raised in the submissions are discussed in the Comment section below. A summary of the submissions received and Administration's response to each is contained in **Attachment 3**. The applicant has provided a response to the submissions in **Attachment 4**.

#### State Heritage Office

As the existing buildings on the subject land are on the City's Heritage List as a management Category A and is a State Registered Place, the application was referred to the State Heritage Office (SHO) for comment. The SHO supports the proposal subject to conditions and Administration recommends the conditions are imposed.

#### **Design Advisory Committee (DAC):**

Referred to DAC: No

#### **LEGAL/POLICY:**

- *Planning and Development Act 2005*;
- *Planning and Development (Local Planning Schemes) Regulations 2015*;
- City of Vincent Town Planning Scheme No. 1;
- Policy No. 4.1.5 – Community Consultation;
- Policy No. 7.5.2 – Signs and Advertising;
- Policy No. 7.5.7 – Licenced Premises;
- Policy No. 7.5.21 – Sound Attenuation;
- Policy No. 7.6.1 – Development Guidelines for Heritage and Adjacent Properties; and
- Policy No. 7.7.1 – Parking and Access.

The applicant will have the right to have Council's decision reviewed by the State Administrative Tribunal (SAT) in accordance with Part 14 of the *Planning and Development Act 2005*.

#### **Delegation to Determine Applications:**

This matter is being referred to Council for determination as the application proposes a Tavern which is a Category 1 use in the City's Delegated Authority Register 2016/17 and requires a decision of Council.

#### **RISK MANAGEMENT IMPLICATIONS:**

It is Administration's view that there are minimal risks to Council and the City's business function when Council exercises its discretionary power to determine a planning application.

#### **STRATEGIC IMPLICATIONS:**

The City's Strategic Plan 2013-2023 states:

##### "Natural and Built Environment

1.1 *Improve and maintain the natural and built environment and infrastructure."*

#### **SUSTAINABILITY IMPLICATIONS:**

Nil.

**FINANCIAL/BUDGET IMPLICATIONS:**

Nil.

**COMMENTS:**Land Use

The subject premises is located in a 'Commercial' zone within the William Street Town Centre, which consists of a mix of eating houses, shops, offices, small bars, recreational facilities, a place of public worship and multiple dwellings. A Tavern is a "SA" use in the Commercial zone in the City's Town Planning Scheme No. 1 (TPS 1) Zone Table. The City's TPS 1 does not provide any objectives for a Commercial zone.

The City's TPS 1 provides the following definition of Tavern:

*"Means any building wherein the primary use is the consumption of beverages and may include an eating house or facilities for entertainment and to which a license may have been granted under the provisions of the Liquor Licensing Act 1988".*

Although the proposal has been assessed as a Tavern to align with the DLGSCI's Tavern liquor licence, which permits the retail sale and on-site consumption of alcoholic beverages, the use is small scale and will not function like a large tavern with high patron numbers and loud entertainment. The use will have the appearance and atmosphere of a small wine store and bar.

The subject site and adjoining Commercial zoned land on William Street is proposed to be rezoned to District Centre under draft Town Planning Scheme No. 2 (TPS 2), to align with the Western Australian Planning Commission's Activity Centre hierarchy. The adjoining north-western land that is currently zoned Residential with a residential density code of R80 on the opposite side of Brisbane Street is proposed to be rezoned to Residential Commercial with a residential density code of R80 under draft TPS 2.

A 'Tavern' is proposed to be included as an "A" use in the District Centre zone in the City's draft TPS 2, which means that the use is not permitted unless the City has exercised its discretion by granting planning approval after giving special notice.

Given that there are a number of licenced venues currently operating within the William Street Town Centre and the surrounding locality, it is considered that the proposed Tavern use is consistent with the existing Commercial zone and compatible with the intent of the District Centre zone and the Residential/Commercial zone under TPS 2.

Hours of Operation

The applicant seeks approval to operate between the hours of 7:00am to midnight Tuesday to Saturday and 7:00am to 10:00pm on Sunday in order to provide a breakfast service if consumer demand permits, however the intended trading hours are 11:00am to midnight Tuesday to Saturday and 11:00am to 10:00pm on Sunday.

There are currently two other late night licenced Taverns in proximity to the subject site:

- The 399 Bar located approximately 130 metres south of the subject site on William Street currently operates from 4:00pm to midnight Monday to Saturday and 4:00pm to 10:00pm on Sunday; and
- The Fuse Bar, which is located within The Hotel Northbridge approximately 250 metres west of the subject site, currently operates from 12:00pm – 11:00pm Monday to Thursday and Sunday, and 12:00pm to midnight Friday and Saturday.

There are a number of eating houses in proximity to the subject site that operate until as late as 10:00pm during the week and until 10:30pm on weekends.

During the community consultation period one submitter questioned the need for the premises to be open until midnight in the middle of the week given the site's proximity to residential dwellings. The City's Policy No. 7.5.7 – Licenced Premises provides standards for indoor and outdoor areas based on the zoning of the land.

There is land zoned Residential R80 located directly adjacent to the subject site, on the opposite side of Brisbane Street with a number of residential dwellings fronting Brisbane Street. In addition, there is a Residential Commercial zone situated approximately 25 metres from the eastern boundary of the subject site, on the same side of Brisbane Street where there are single and strata dwellings.

In their response to these concerns, the applicant has stated that noise management strategies will be applied to mitigate noise impacts on neighbouring residential properties, including no music being played in the alfresco area.

Given that there are already two licenced venues in proximity to the subject site operating until as late as midnight, the applicant's proposed trading hours are reasonable and appropriate given the subject site's location in a 'Commercial' zone within the William Street Town Centre. However, the applicant has not provided an acoustic report with their submission, which would identify actions or measures that could be included in an ongoing noise management plan for the subject property to mitigate any noise impacts on neighbouring residential properties. This is also a requirement of Clause 3.9 in the City's Licensed Premises Policy and as a result a condition is recommended requiring the submission and approval of an acoustic report to demonstrate that the operations of the use and attenuation measures will mitigate noise consistent with the Noise Regulations.

### Parking

~~The current use of shop has a car parking shortfall of 1.18 bays. The car parking required for the proposed development is 3.72 bays. A full break down of the parking calculation is included as Attachment 6. In accordance with the City's Policy No. 7.1.1 – Parking and Access, the proposal requires a total of 4.14 bays, rounded up to five, car parking spaces to be provided on-site, taking into account adjustment factors and existing car parking bay shortfalls for the tenancy as provided in the Policy and the full. The parking assessment included as Attachment 6, identifies that an existing 1.3 car parking bay shortfall for the existing shop, calculated in accordance with Clause 1.4 of the Policy, can be applied.~~ There is no existing car parking facilities located on the subject site for any of the strata tenancies and there is no ability to provide parking due to the location and size of the existing buildings.

In their submission the applicant has acknowledged the lack of on-site parking, and seeks Council's discretion to apply a 50 percent reduction to the cash-in-lieu requirement for the car parking shortfall on the basis that the development is small scale, is within walking distance to the target clientele and has a limited budget. The applicant has also requested that if a cash-in-lieu payment is required, that the payment be made over a five year payment plan. The applicant has not provided a car parking survey to demonstrate that there is sufficient capacity in the on-street and public car parking in the locality to cater for the likely demand for parking generated from this development.

During the community consultation period a number of submitters expressed concern at the lack of on-site car parking, and commented that street parking in the locality is already at a premium.

The City has received complaints in relation to the following parking issues in the locality:

- On-street parking is always full on Wade Street, which is a cul-de-sac located approximately 30 metres north of the subject site on the opposite side of Brisbane Street, due to non-resident vehicles parking in the street for extended periods; and
- On-street parking in the locality is heavily congested on Fridays between 12:00pm and 2:00pm due to people attending the Mosque at No. 427 William Street, Perth, which is located approximately 30 metres south of the subject site on the opposite side of William Street.

The City's Parking and Access Policy states that Council may, at its discretion, waive the car parking requirements for change of use applications to provide additional on-site car parking, including waiving cash-in-lieu requirements in the following instance:

- “a) where the application does not involve the reduction of existing on-site car parking bays as part of the application;*
- b) where the application does not involve any building works that contribute to additional floor area that would be subject to parking requirements; and*
- c) where a current planning approval required payment of cash-in-lieu but that approval has not been acted upon in any way including payment of cash-in-lieu in part or in full.”*



The City's Parking and Access Policy also states that the above provisions do not apply to any change of use applications for a Tavern.

Administration has considered the applicant's request and justification for a reduced cash-in-lieu payment and provides the following evaluation:

- The proposed development will not provide any on site bays and is likely to generate additional demand for parking in the locality. Given that there is a general need for more parking in the William Street Town Centre, the proposed use will increase parking demand in the area, and the development does not provide any on-site parking, it is reasonable that the City require a cash-in-lieu payment to contribute towards the provision and/or upgrading of existing and future car parking facilities in the locality.
- Although the proposed development is relatively small scale and is likely to have some clientele within walking distance, it is still considered that it would generate additional demand for parking in the immediate area. Although the applicant has acknowledged that the development has a limited budget, reducing the cash-in-lieu amount required to be paid would set an undesirable precedent and is not supported by the City in this instance and in accordance with the City's Parking and Access Policy. It is recommended that Council require the applicant to provide a cash-in-lieu payment for the required ~~six~~ 3.72 parking bays.
- The City acknowledges that the requirement for the payment of cash-in-lieu can impact new businesses and supports the request to pay the cash-in-lieu over a five year payment plan. This is reflected in the relevant recommended condition and advice note.

#### Management Plan

As part of the application, the applicant provided a Management Plan with their submission which details how the Tavern's House Policy and Code of Conduct will be implemented to control responsible service of alcohol, which is required as part of a liquor licence application the DLGSCI. The applicant's House Policy, Code of Conduct, and Management Plan is included as Attachment 5.

The City's Policy No. 7.5.7 – Licenced Premises requires all applications for licenced Taverns to be supported by a Management Plan that includes the following:

- *“Floor plans of the premises;*
- *Noise control and management;*
- *The maximum number of patrons;*
- *Hours of operation;*
- *Patron and anti-social behaviour;*
- *Traffic;*
- *Car Parking;*
- *Rubbish collection and disposal and litter associated with the development; and*
- *Any other appropriate matters, as required by the City's Chief Executive Officer.”*

It is recommended that a condition is imposed requiring an updated Management Plan be submitted to, and approved by the City prior to the submission of a Building Permit application, which addresses the following matters in accordance with all recommended conditions of this approval:

- Floor plans of the premises;
- The maximum number of patrons;
- Acoustic Report and Noise Management Plan;
- Hours of operation;
- Patron and anti-social behaviour;
- Deliveries; and
- Waste management.

Administration recommends that the proposal be approved subject to conditions.