

9.1 NO. 5 (LOT: 516; PLAN: 2177) BERRYMAN STREET, MOUNT HAWTHORN - CHANGE OF USE FROM SINGLE HOUSE TO SINGLE HOUSE AND RESTAURANT/CAFE

TRIM Ref: D24/4849

Ward: North

Attachments:

1. Consultation and Location Map
2. Development Application Plans
3. Applicant's Justification
4. Applicant's Operation Management Plan
5. Acoustic Letter of Advice
6. 1975 Council Determination
7. 1997 Council Determination
8. Summary of Submission - Applicant Response
9. Summary of Submissions - Administration Response
10. Determination Advice Notes

RECOMMENDATION:

That Council, in accordance with the provisions of the City of Vincent Local Planning Scheme No. 2 and the Metropolitan Region Scheme, APPROVES the application for the Change of Use from Single House to Single House and Restaurant/Cafe at No. 5 (Lot: 516; D/P: 2177) Berryman Street, Mount Hawthorn, in accordance with plans provided in Attachment 2, subject to the following conditions, with the associated determination advice notes in Attachment 10:

1. Development Approval

This approval relates to a Change of Use from Single House to Single House and Restaurant/Cafe as shown on the plans dated 12 February 2024. It does not relate to any other development on the site;

2. Use of Premises

2.1 The development shall be used in accordance with the definition of 'Single House' and 'Restaurant/Cafe' as set out in the City's Local Planning Scheme No. 2;

2.2 The Restaurant/Cafe use shall be contained to the 34 square metre room, annotated on the approved plans as 'Proposed Cafe', and Car Bays 2 and 4 shown on the approved plans, to the satisfaction of the City. Remaining areas of the building and outdoor areas shall be used as a Single House, unless further development approval is received by the City;

2.3 The total number of staff members attending the Restaurant/Cafe at any one time, who do not also reside at the Single House, shall be limited to two (2) persons, to the satisfaction of the City;

2.4 The total number of customers/patrons attending the Restaurant/Cafe at any one time shall be limited to 14 persons, inclusive of dine-in and take-away customers, to the satisfaction of the City; and

2.5 The Restaurant/Cafe shall be limited to the following operating hours, to the satisfaction of the City:

- Monday to Saturday: 7:00am to 4:00pm; and
- Sunday and Public Holidays: 9:00am to 4:00pm: unless demonstrated through an Acoustic Report that the premises could operate from 7:00am to 4:00pm on Sundays or Public Holidays, in strict accordance with the *Environmental Protection (Noise) Regulations 1997*, and subject to the implementation of any recommended noise mitigation measures detailed in an Acoustic Report, to the satisfaction of the City;

3. Operation Management

- 3.1 The Restaurant/Cafe shall at all times operate in compliance with the Operation Management Plan stamp dated 12 February 2024, to the satisfaction of the City;**
- 3.2 At all times, customers shall not queue, wait for take-away orders, or dine, on the adjacent footpaths and/or verge areas, to the satisfaction of the City;**
- 3.3 Prior to commencement of the use, an amended Operation Management Plan shall be submitted to and approved by the City, which provides measures regarding how take-away waiting areas would be accommodated within internal areas of the building, to the satisfaction of the City. This should include designated waiting areas as well as signage advising customers that queuing, waiting and dining must occur internal to the building only, in accordance with Condition 3.2, to the satisfaction of the City; and**
- 3.4 All deliveries, servicing, food/drink preparation, set-up, pack-down, cleaning, and any other activities associated with the Restaurant/Cafe shall occur within the approved hours of operation, as detailed within Condition 2.5 of this approval, to the satisfaction of the City;**

4. Acoustic Report

- 4.1 An Acoustic Report, in accordance with the City's Policy No. 7.5.21 – Sound Attenuation and to the satisfaction of the City, shall be lodged with and approved by the City prior to the operation of the Restaurant/Cafe. The Acoustic Report must address all activities, equipment, and operations at the premises, including but not limited to:**
- Vehicle noise (in accordance with the carpark design required by Condition 6);**
 - Customer noise;**
 - Noise from mechanical plants;**
 - Proposed operating hours, inclusive of public holiday trading; and**
 - Noise from glass waste disposal or compacting.**

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; and

- 4.2 Certification from an acoustic consultant shall be provided to the City that the recommended measures identified in the approved Acoustic Report have been undertaken to the City's satisfaction, prior to the use of the approved development;**

5. Building Design

The Proposed Restaurant/Cafe shall comply at all times with the following:

- 5.1 Doors and windows fronting Berryman Street shall maintain an active and interactive relationship with the street, to the satisfaction of the City;**
- 5.2 Glazing and/or tinting shall have a minimum of 70 percent visible light transmission to provide unobscured visibility between the street and the interior of the tenancy, to the satisfaction of the City; and**
- 5.3 Internal security and privacy treatments shall be located and installed internally behind the glazing line or recessed, and shall be transparent and visually permeable to allow views inside the building and enable internal light sources to be seen from the street, to the satisfaction of the City;**

6. Parking and Access

- 6.1 One (1) off-street parking bay shall be provided for use of the Single House, in the location shown on the approved plans, to the satisfaction of the City;**

- 6.2 The design of the Restaurant/Café carpark shall be modified and thereafter constructed in accordance with the following specifications, prior to first use of the approved development and to the satisfaction of the City:**
- 6.2.1 The removal of Carbays 1 and 3;**
 - 6.2.2 The retention of Carbays 2 and 4, to be allocated for staff of the Restaurant/Cafe, to the satisfaction of the City. The parking bays shall not be used for storage purposes or the like;**
 - 6.2.3 A 1.5 metre setback provided between the Restaurant/Cafe carpark and the southern lot boundary;**
 - 6.2.4 A 1.5 metre setback between the long term bicycle bay and the southern lot boundary;**
 - 6.2.5 A 0.5 metre setback between the proposed crossover and the existing western power pole located in the verge; and**
 - 6.2.6 A 0.5 metre minimum setback between the proposed driveway and the existing on-site tree located adjacent to the Restaurant/Café car bays;**
- 6.3 Car parking and access areas associated with Single House and Restaurant/Cafe shall be sealed, drained, paved and respectively marked as 'residential only' and 'staff only' and in accordance with the approved plans and are to comply with the requirements of Australian Standard 2890.1, to the satisfaction of the City;**
- 6.4 A minimum of one onsite bicycle facility shall be provided and designed in accordance with the approved plans and shall comply with AS2890.3, to the satisfaction of the City; and**
- 6.5 A minimum of one bicycle bay shall be provided within the Berryman Street verge, adjacent to the Restaurant/Cafe premises and in a location approved by the City. The bicycle bays shall be designed in accordance with Australian Standard 2890.3 prior to the use of the approved development, to the satisfaction of the City (see Advice Notes);**

7. Landscaping

- 7.1 Prior to occupation of the Restaurant/Cafe, a detailed landscape and reticulation plan for the development site, to the satisfaction of the City, shall be lodged with and approved by the City. The plan shall be drawn to a scale of 1:100, and show the following:**
- 7.1.1 The location and type of existing and proposed trees and plants;**
 - 7.1.2 Areas to be irrigated or reticulated;**
 - 7.1.3 The provision trees that achieve a minimum of 60 percent (31.8 square metres) canopy coverage at maturity to the Restaurant/Café carpark. The tree species are to be consistent with the City's Tree Selection Tool so as to maximise the provision of canopy coverage, to the satisfaction of the City;**
 - 7.1.4 The provision of an additional landscaping area along the southern side of the carpark. The landscaping area shall have a minimum width of 1.5 metres; shall include shade providing tree/s to the staff car parking bays; and shall include a selection of fast growing shrubs or similar foliage bushes, to the satisfaction of the City; and**
 - 7.1.5 The retention and protection of the existing on-site tree located adjacent to the Restaurant/Café carpark and all verge trees, to the satisfaction of the City;**

7.2 All landscaping works shall be undertaken in accordance with the landscape plan approved in accordance with Condition 7.1, prior to the occupancy or use of the Restaurant/Cafe and maintained thereafter to the satisfaction of the City;

8. Sight Lines

Prior to use of the approved development, existing walls and fences shall be truncated or reduced to no higher than 0.75 metres, within 1.5 metres of where walls and fences adjoin the Restaurant/Cafe driveway, to the satisfaction of the City;

9. Waste Management

Prior to the operation of the approved development, a Waste Management Plan must be submitted to and approved by the City. The Waste Management Plan shall address the following:

- The location of bin storage areas shall be in accordance with location detailed within the approved Operation Management Plan;
- Screening of the Restaurant/Cafe bin store area from the street; from the outdoor living area of the Single House; and from adjoining properties, to the satisfaction of the City;
- The provision of a private collection service for the Restaurant/Cafe;
- The location of bin collection areas, being provided to the verge area of Berryman Street adjacent to the Restaurant/Cafe premises;
- The number, volume and type of bins, and the type of waste to be placed in the bins;
- Details on the future ongoing management of the bins and the bin storage areas, including cleaning, rotation and moving bins to and from the bin collection areas; and
- Frequency of bin collections to the satisfaction and specification of the City.

Once approved, the Waste Management Plan must be implemented at all times to the satisfaction of the City; and

10. Stormwater

All stormwater produced on the subject land shall be retained on site or connected to the City's drainage system at the expense of the applicant/landowner, to the satisfaction of the City.

EXECUTIVE SUMMARY:

The purpose of this report is to consider an application for development approval for a change of use from 'Single House' to 'Single House and Restaurant/Cafe' at No. 5 Berryman Street, Mount Hawthorn (the subject site).

The subject site is located on the corner of Berryman Street and Federation Street and adjacent to Menzies Park, a 'Public Open Space' Reserve under the City of Vincent Local Planning Scheme No. 2 (LPS2). The subject site currently has a single house with an Interwar Art Deco style shop tenancy, both of which have Berryman Street as the primary street frontage.

The application proposes the conversion of part of an existing single house, historically approved for use as a shop, into a Restaurant/Cafe. The previous shop tenancy, which is the subject of this application, has been used as part of the single house since the shop ceased operating in 1962. Approval for an Art Gallery for a portion of the building on the subject site was granted by Council in 1997, but the City does not have record of this approval being enacted.

The proposed change of use is limited to an existing 34 square metre room of the existing Single House. The only external works proposed are for the construction of a vehicle crossover, four car parking bays and two bicycle parking bays. These car parking bays are intended for use by external staff and customers. Administration has recommended a condition that would remove Car Bays 1 and 3 from being provided, to retain an existing onsite tree. This is because the existing tree on-site is healthy and mature with ongoing viability and its retention should be prioritised. This would result in a shortfall of two on-site parking bays for customer use. The shortfall is supported on the basis that sufficient and available on-street parking is located

directly adjacent to the subject site on Berryman Street. The Restaurant/ Café would serve a local catchment and customers would reside in the local area, reducing parking demands.

The proposed Restaurant/Cafe would operate between 7:00am to 4:00pm everyday with a maximum capacity of 16 people, including a maximum of two external staff members and up to 14 customers. The operations of the site include the sale of food and drinks. Most of the food is proposed to be pre-made offsite, with light food preparation to occur onsite. There is no coffee window to serve customers externally.

The area of discretion being sought under the planning framework relates to the proposed land use, and the acceptability of landscaping, vehicle access, the public domain interface and the management of noise. The Restaurant/Cafe land use is capable of approval in the Residential zone under LPS2.

Surrounding residential properties that front towards Menzies Park experience a lower level of amenity compared to a typical residential area due to their proximity to noise and traffic generating activity from the park. Most of the activity from the proposed Restaurant/Cafe is directed towards Berryman Street and would occur during the proposed daytime operating hours. The intensity of the Restaurant/Cafe would be controlled by the restrictions on the number of customer seats, the size of the tenancy and number of staff members. This would ensure that the Restaurant/Cafe operates at a low scale and would be compatible with the residential area.

The applicant has provided an Operation Management Plan which includes measures to restrict orders being placed within the premises and to restrict on queuing and waiting outside the building. The applicant's Operation Management Plan demonstrates that internal activity associated with the Restaurant/Cafe could be appropriately managed, ensuring that the onsite use would not unduly impact the amenity of the area.

The applicant has provided an acoustic letter which provides an analysis prepared by an acoustic consultant of the potential noise impacts from the Restaurant/Cafe. The acoustic letter confirms that the noise generated by the Restaurant/Cafe would likely comply with the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations) and would be low risk in terms of a noise impact. The acoustic letter is a professional opinion prepared by an acoustic consultant and has not been verified by noise modelling or other noise measuring. To provide assurance that the noise generated from the Restaurant/Cafe would not unduly impact the amenity of the area, a condition has been recommended for an acoustic report being prepared in accordance with the City's Policy No. 7.5.21 – Sound Attenuation Policy (Sound Attenuation Policy) to be provided and any recommendations implemented, prior to the operation of the Restaurant/Cafe.

The proposed Restaurant/Cafe would generate additional vehicle movements to and from the site compared to the existing single house use. Due to the scale of the development, the operation measures and the accessibility of the site, the likely traffic generated could be managed to ensure it would not have a negative impact on the amenity of the surrounding area.

The proposal in its current form would provide 17 percent canopy coverage to the open-air carpark due to the retention of an existing onsite tree. A condition has been recommended for additional onsite landscaping to be provided to achieve a minimum of 60 percent canopy coverage to the Restaurant/Café carparking bays, as well as other planting to the southern boundary to increase a sense of open space between properties.

The location of the proposed vehicle access point and carpark is restricted due to the adaptive reuse of the existing building, the retention of existing verge and onsite trees and existing verge infrastructure. The officer recommendation includes conditions to ensure vehicles safely enter and exit the proposed carpark.

The proposed development is acceptable as considered against the planning framework and is recommended for approval subject to conditions.

PROPOSAL:

This application proposes a change of use of the subject site from Single House to Single House and Restaurant/Cafe. A location plan is included as **Attachment 1**.

The application proposes the adaptive reuse of an existing 34 square metre room of the existing Single House for the Restaurant/Cafe land use, which has direct access to Berryman Street. The existing dwelling would retain direct access to Berryman Street via a separate entry.

The applicant has indicated that the Restaurant/Cafe would not be operated by the occupiers of the Single House. The Restaurant/Cafe is proposed to be leased out to a third-party tenant.

Details of the proposed development works include:

- Construction of four parking bays in a tandem arrangement for the Restaurant/Cafe, including:
 - Two staff parking bays adjacent to the southern lot boundary.
 - Two customer parking bays adjacent to the Berryman Street boundary.
- The existing single house resident only parking bay remains in its current location, within the centre of the site and accessed from Berryman Street.
- Construction of one long-term bicycle parking enclosure for the Restaurant/Cafe. This bay is adjacent to the staff car parking bays.
- One short-term bicycle rack within the Berryman Street verge for the Restaurant/Cafe visitors.
- A bin storage area for the Restaurant/Cafe adjacent to the existing residential parking bay.
- No external modifications are proposed to the existing building and no signage is proposed.
- Internal fit-out of the Café/Restaurant premises, including:
 - A small kitchen area of approximately four square metres that includes a food preparation area, hand wash basin, microwave, oven, small stove, and coffee machine.
 - Counter area that includes a serving space and display units that contain pre-made food for customers to purchase.
 - An internal dining area to accommodate 14 patrons.
 - Installation of self-closing doors.

The development plans are included as **Attachment 2**.

Details of the proposed Restaurant/Cafe land use operation includes:

- Operating hours from 7:00am to 4:00pm, Monday to Sunday.
- All cleaning and servicing undertaken by staff members to be undertaken within the above operating hours.
- A maximum capacity of 16 people, including a maximum of two external staff members and internal seating provided to accommodate up to 14 patrons.
- Staff who reside in the single house would be permitted to work in the Restaurant/Café.
- The sale of drinks and food to dine-in and take-away customers.
- Most of the food is proposed to be pre-made offsite, with light food preparation to occur onsite. Food is proposed to be stored within display cabinets and fridges.
- A maximum of two deliveries per week, to occur within hours of operation. Deliveries would be accommodated by light vehicles such as vans who would park along Berryman Street directly in front of the Restaurant/Cafe tenancy, providing a suitable distance from the nearby intersection.
- Waste collection provided through a private contractor within hours of operation.
- Low-level music proposed to be played within the dining space only.
- Advice provided to patrons by way of sign posting to not congregate outside the cafe prior to/after their meal.

The applicant's supporting documentation including written justification, an Operation Management Plan and an acoustic letter, are included as **Attachments 3 to 5** respectively.

There is intention by the applicant for alfresco dining to be accommodated on the Berryman Street verge area. This does not form part of this application and would require an outdoor eating permit in accordance with the City's *Trading in Public Places Local Law 2008*.

The existing single house would remain and would continue to be used for residential purposes. The proposal would not result in any discretion being exercised against the Residential Design Codes for the existing single house. This means further assessment is required against the Residential Design Codes. The single house built form, car parking and outdoor living spaces would remain and function as existing.

Changes to Plans through Conditions of Approval

Recommended conditions of approval, which have been supported by the applicant, would result in a change to the car parking arrangements for the Restaurant/Café, located to the western side of the site. These changes are to ensure the car park design appropriately responds to the City's Built Form Policy standards.

- The carpark design would be amended to remove Car Bays 1 and 3 entirely, to retain an existing on-site tree located between Car Bay 3 and the street.
- Allocation of Car Bays 2 and 4 for staff use.
- A 1.5 metre setback provided between the Restaurant/Cafe carpark and the southern lot boundary.
- 60 percent of the Restaurant/Café carpark to be provided as canopy cover at maturity.

BACKGROUND:

Landowner:	G P Seal
Applicant:	Urbanista Town Planning
Client:	G P Seal
Date of Application:	17 August 2023
Zoning:	MRS: Urban LPS2: Zone: Residential R Code: R30
Built Form Area:	Residential
Existing Land Use:	Single House
Proposed Use Class:	Single House and Restaurant/Cafe
Lot Area:	491 square metres
Right of Way (ROW):	N/A
Heritage List:	N/A

Site Context and Zoning

The subject site is bound by Berryman Street to the north, Federation Street to the east, and residential properties to the south and west.

The subject site and surrounding lots to the south, east and west are zoned Residential with a density code of R30 under LPS2 and are within the Residential Built Form Area under the City's Local Planning Policy No. 7.7.1 – Built Form (Built Form Policy).

To the north of the subject site is Menzies Park, which is a Local Reserve for 'Public Open Space' under LPS2.

History of the Site and Surrounding Area

The subject site contains a single house with an Interwar Art Deco shopfront, both of which orient to Berryman Street.

The subject site was developed in 1939 with a single house and shop. Since 1962 it has functioned as a single house and has not operated as a Shop or other commercial premises.

The site was rezoned from its commercial zoning to a residential zoning in 1976 at the request of the landowner. Since 1976, three separate planning schemes have been adopted which applied to the subject site. Each of these planning schemes maintained a residential zoning for the subject site.

Council approved an Art Gallery on the subject site in 1997, but there are no records of this approval being enacted. At the time of Council's approval, the Mount Hawthorn Scout Hall was located to the west of the subject site, adjacent to the car parking area for the Art Gallery.

The Mount Hawthorn Scout Hall has since been demolished and the site has been redeveloped into three single houses.

The southern adjoining property at No. 91 Federation Street was recently redeveloped, from the existing original single-storey single house to a larger two-storey single house.

The history of the subject site and adjacent sites are summarised below.

Date & Description of Relevant Changes	Comment
<p>26 January 1939</p> <p><i>Development of the Subject Site</i></p>	<p>On 26 January 1939, an application was submitted to the City of Perth for the construction of a single house and shop on the subject site.</p> <p>This application included a 90 square metre residential component and a 34 square metre shop component.</p> <p>The City does not have record on when the approval was issued but the application plans reflect what was constructed.</p> <p>The City does not have details on how the shop operated.</p>
<p>28 June 1958</p> <p><i>Development of the Adjoining Property</i></p>	<p>The adjoining western property at No. 76 Berryman Street, Mount Hawthorn (now known as Nos. 19, 21 and 23 Berryman Street, Mount Hawthorn) was constructed and used as the Mount Hawthorn Scout Hall. The building was oriented to Berryman Street.</p>
<p>10 October 1961</p> <p><i>Change to Planning Framework</i></p>	<p>On 10 October 1961, the City of Perth adopted the Zoning By-law No. 64.</p> <p>This identified the subject site and adjoining western property as being zoned Zone 6 – Shop.</p>
<p>17 October 1975</p> <p><i>Zoning Change to the Subject Site</i></p>	<p>On 17 October 1975, the landowner of the subject site at the time, applied to the City of Perth requesting to rezone the subject site from its commercial classification (Zone 6 – Shop) to a residential zoning (Zone 1 – Single Tenement Dwellings).</p> <p>The applicant advised Council, by letter, that the shop part of the premises had been used for residential purposes, specifically a lounge room for the single house, since 1962.</p> <p>At its meeting on 17 November 1975, the City of Perth Council recommended the City’s officers undertake the necessary steps to formalise the rezoning. This required the City’s officers to seek support from the Town Planning Board prior to adopting the new zoning into the City of Perth Zoning By-Law No. 64.</p> <p>At its meeting on 15 March 1976 and after receiving support from the Town Planning Board, the City of Perth Council approved the rezoning of subject site from Zone 6 (Shop) to Zone 1 (Single Tenement Dwellings) and formally adopted the new zoning into the City of Perth Zoning By-Law No. 64.</p> <p>The minutes of the 17 November 1975 Ordinary Council Meeting are included in Attachment 6.</p> <p>Based on a City of Perth planning zoning map dated 2 December 1975, included in Attachment 6, the subject site and adjoining Mount Hawthorn Scout Hall site were zoned for Commercial land uses including offices, shops, showrooms and warehouses. This was subsequently changed following the rezoning of the subject site.</p>
<p>20 December 1985</p> <p><i>Change to Planning Framework</i></p>	<p>On 20 December 1985, the City of Perth adopted the City of Perth City Planning Scheme. This replaced the Zoning By-law No. 64 and identified the subject site as being zoned Residential.</p> <p>At this time, the adjoining western property was also rezoned to Residential.</p>
<p>9 August 1994</p> <p><i>Change to Planning Framework</i></p>	<p>On 9 August 1994, the Town of Vincent adopted Town Planning Scheme No. 1. This replaced the City of Perth City Planning Scheme and retained the Residential zoning for the subject site and all adjoining properties.</p>

<p>10 November 1997</p> <p><i>Development Approval on the Subject Site</i></p>	<p>At its meeting on 10 November 1997, Council granted approval for a Change of Use (of a section of a dwelling) from Residential to Art Gallery, subject to:</p> <ul style="list-style-type: none"> Operating hours of 10:30am – 4:30pm Tuesday – Friday and 10:00am – 1:00pm Saturday. <p>The section of the building approved as the art gallery was contained to the 34 square metre original shopfront.</p> <p>The location of approved car parking for the Art Gallery land use was located to the western boundary of the subject site, adjacent to the western Scout Hall used for commercial purposes.</p> <p>The location of approved parking bays for the Art Gallery were also adjacent to the southern adjoining property rear garden that contained outbuildings built up to the shared boundary.</p> <p>The minutes of the 10 November 1997 Ordinary Council Meeting, including a copy of the approved plans and conditions of approval are included in Attachment 7.</p> <p>The City does not have any record of the Art Gallery approval being enacted.</p>
<p>9 November 2005</p> <p><i>Development of the Adjoining Western Property</i></p>	<p>The adjoining Mount Hawthorn Scout Hall was approved for demolition and was subsequently subdivided and redeveloped into three single houses in proceeding years, all of which orient to Berryman Street.</p>
<p>16 May 2018</p> <p><i>Change to Planning Framework</i></p>	<p>On 16 May 2018, the City of Vincent Local Planning Scheme No. 2 was gazetted.</p> <p>This replaced Town Planning Scheme No. 1 and retained the Residential zoning for the subject site and adjoining properties.</p>
<p>5 December 2019</p> <p><i>Development of the Adjoining Western Property</i></p>	<p>On 5 December 2019, the City approved a development application to demolition and redevelop the southern adjoining property at No. 91 Federation Street.</p> <p>This included the demolition of the existing single house and all other structures onsite and the construction of a new two-storey single house.</p> <p>Construction of the single house was completed in November 2020.</p>
<p>23 June 2023</p> <p><i>Development of the Adjoining Eastern Property</i></p>	<p>On 23 June 2023, the City approved a development application for the construction of a new two-storey single house on the eastern adjoining property at No. 90 Federation Street.</p> <p>A building permit was issued on 24 July 2023 and construction has since commenced.</p>

Surrounding and Future Context

Surrounding Context

The surrounding context is characterised by residential development with a distinct low-density residential character. Surrounding properties along Berryman Street, Federation Street and East Street are residential in nature, the majority of which are one to two storey single house developments.

The subject site is located approximately 500 metres to the west of the Mount Hawthorn District Centre, located along Scarborough Beach Road, which is the closest commercial development to the subject site. The subject site is also located approximately 650 metres to the south-east of the Glendalough Station District Centre and Commercial zone.

Menzies Park is located directly to the north of the subject site, discussed in greater detail below.

Immediately Adjacent Properties

The context of the immediately adjacent properties is summarised as follows:

- No. 19 Berryman Street – A two storey single house located to the east of the subject site which was constructed in 2006 and includes:
 - A meals area with a west facing major opening on the ground floor that is located 3.5 metres southwest of the proposed staff car parking bays.
 - A street-facing garage and entry hallway on the ground floor that is located 1.3 metres west of the proposed staff car parking bays.
 - A street-facing open balcony and living area on the upper floor that is located 4.0 metres east of the proposed customer car parking bays.
- No. 91 Federation Street – A two storey single house immediately located to the south of the subject lot constructed in 2020, which includes:
 - Living and dining areas with north facing major openings on the ground floor that are located 7.6 metres southeast of the proposed staff car parking bays.
 - Two bedrooms with north facing highlight windows on the upper floor. The windows are located 7.6 metres and 9.8 metres southeast of the proposed staff car parking bays.
 - The outdoor living area of the single house that is located 0.7 metres to the south of the proposed staff car parking bays. The outdoor living area includes an open grassed area, swimming pool and open alfresco which is located 5.5 metres from the staff car parking bays.
- No. 90 Federation Street – A two storey single house located to the east of the subject lot currently under construction and separated from the subject site by Federation Street, which includes:
 - A theatre room with west facing major openings on the ground floor that are located 28.7 metres southeast of the proposed Restaurant/Cafe tenancy.
 - A sitting room and bedroom with west facing highlight windows on the upper floor. The windows are located 28.7 metres and 30.7 metres southeast of the proposed Restaurant/Cafe tenancy.
 - The outdoor living area of the single house is located 31.5 metres to the east of the proposed Restaurant/Cafe tenancy. The outdoor living area is not constructed but is intended to include an open grassed area and open alfresco.

Future Context

The properties surrounding the subject site would be expected to remain residential in nature. This is because existing properties have been developed consistent with the expectations of LPS2 and the Built Form Policy and includes residential development.

Menzies Park

Menzies Park is located directly to the north of the subject site, bordered by East Street to the west, Berryman Street to the south, Egina Street to the east and Purslowe Street to the north.

The park is equipped with a sport ground, sport pavilion, playground, exercise equipment and landscaping. The pavilion has a maximum capacity of 60 people, and the sport ground has a capacity of 1,000 people.

Park facilities, including the playground and pavilion are concentrated to the north of the park, including constructed car parking facilities that are located on Purslowe Street, accommodating 26 unrestricted bays.

The Berryman Street side of the Menzies Park contains the open grassed area, a line of trees along the southern boundary of the park, as well park benches and exercise equipment. Parking on the Berryman Street verge is permitted by the City and is unrestricted. Parking in this location has not been constructed as a hard stand car park and instead informal parking occurs on the grass and sand verge.

Booking data from 1 December 2022 to 31 December 2023 shows that there were 557 bookings to use the park and pavilion. The park is available to hire everyday between 7:00am to 10:00pm, the pavilion is available 7:00am to midnight on Fridays and Saturday and available until 10:00pm the rest of the week. Booking times are spread throughout the week but Saturdays and Sundays are the most popular days for bookings.

The largest most recent booking at the Park was for Mount Hawthorn Primary School athletics carnival on 23 August 2023. The Park was booked from 7:00am to 3:15pm on a Wednesday and was for 800 people. This booking occurs once per year.

Outside of formal bookings of the Park, it is also used for passive recreation.

Menzies Park would have some impact on the amenity of the surrounding residential locality due to levels of ambient noise associated with sport activity, ad-hoc car parking on verge spaces and other activities. The impact of Menzies Park would be expected within the surrounding context and would have a different amenity impact to the proposed Restaurant/Cafe.

Accessibility

Berryman Street is identified as an Access Road within the City’s road hierarchy which has a capacity of 3,000 vehicles per day. Berryman Street between East Street and Federation Street has no parking restrictions on the road or verge. There are no marked bays on Berryman Street.

The surrounding area is highly walkable as surrounding streets contain pedestrian footpaths.

The subject site is located within a 150 metre walkable catchment of a high frequency bus service along Egina Street.

The Mount Hawthorn District Centre, located along Scarborough Beach Road includes bicycle pavement marking to indicate to drivers that the traffic lane is to be shared with cyclists. Scarborough Beach Road also includes dedicated cycle lanes between Kalgoorlie Street and Eucla Street, approximately 600 metres from the subject site.

DETAILS:

Summary Assessment

The table below summarises the planning assessment of the proposal against the provisions of LPS2, the Built Form Policy and the Sound Attenuation Policy. 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/ Acceptable Outcomes (or equivalent)	As Existing	Requires the Discretion of Council
Land Use			✓
Building Height		✓	
Street Setback		✓	
Side and Rear Setbacks		✓	
Orientation		✓	
Tree Canopy and Deep Soil Areas			✓
Public Domain Interface			✓
Pedestrian Access and Entries	✓		
Vehicle Access			✓
Car and Bicycle Parking			✓
Managing the Impact of Noise			✓
Façade Design	✓		
Roof Design	✓		
Adaptive Reuse	✓		
Environmentally Sustainable Design			✓
Water Management & Conservation		✓	
Waste Management	✓		
Utilities		✓	
Sound Attenuation Policy			✓

Detailed Assessment:

The land use permissibility and deemed-to-comply/acceptable outcome (or equivalent) assessment of the element that requires the discretion of Council is as follows:

Land Use	
Use Class Permissibility	Proposal
LPS2 – Zoning Table 'P' use	<i>Residential Zone:</i> Restaurant/Cafe – 'A' Use
Landscaping	
Acceptable Outcome	Proposal
Built Form Policy Volume 3 Clause 5.3 A5.3.4 – At least 30 percent of the site area is provided as canopy coverage at maturity. A5.3.5 – Non-residential open air carparks shall have a minimum of 60 percent canopy coverage at maturity. A5.3.7 – The perimeter of all non-residential open air carparking areas to be landscaped by a 1.5 metre wide planting strip.	6.6 percent (32.5 square metres) canopy coverage at maturity to site area. 18.9 percent (5 square metres) canopy coverage at maturity to Restaurant/Café open-air carpark (Bays 2 and 4 as per recommended conditions of approval). Planting strips provided to Restaurant/Café carpark: • Western side: 0.5 metres
Public Domain Interface	
Acceptable Outcome	Proposal
Built Form Policy Volume 3 Clause 1.7 A1.7.1 – Non-residential carparking is not located within the primary street. A1.7.7 – Bins are not located within the primary street setback.	Restaurant/Café carparking proposed within the primary street setback. Commercial bins located within the Berryman Street primary street setback.
Vehicle Access	
Acceptable Outcome	Proposal
Built Form Policy Volume 3 Clause 1.9 A1.9.2 – Access to non-residential car parking spaces to be provided via the secondary street. A1.9.4 – Non-residential vehicles to enter and exit the site in forward gear. A1.9.9 – A maximum of one crossover permitted.	Access to Restaurant/Café car parking spaces provided via the primary street. Vehicles cannot exit in forward gear. One existing and one new crossover proposed.
Managing the Impact of Noise	
Acceptable Outcome / Policy Requirement	Proposal
Built Form Policy Volume 3 Clause 1.11 A1.11.1 – Ground floor tenancies within new commercial buildings shall provide an acoustic report which demonstrates that they are capable of attenuating noise. A1.11.2 – Potential noise sources, including driveways, are not located adjacent to the external wall of dwellings on adjoining properties.	No acoustic report provided. The applicant has provided an acoustic letter to demonstrate that the proposed Restaurant/Cafe would not cause adverse noise impacts. The application includes a driveway (parking bays) near an external wall of dwellings on adjoining properties.

Sound Attenuation Policy	No acoustic report provided.
3.2 – An Acoustic Report is required to be submitted where a non-residential development is proposed in a Residential zone.	
Environmentally Sustainable Design	
Acceptable Outcome	Proposal
Built Form Policy Volume 3, Clause 1.17	
A1.17.2 – Development achieves one of the permitted environmental performance standards detailed, or their equivalent. These include Green Building Council of Australia’s Green Star Rating System or a Life Cycle Assessment in Accordance with EN15978.	No information has been provided detailing how the development achieves the environmental performance standards.
Car Parking	
Acceptable Outcome	Proposal
Non-Residential Parking Policy	
Four on-site car parking bays required for the Restaurant/Café.	Two onsite carparking bays provided for the Restaurant/Café.

The above elements of the proposal do not meet the specified land use standards, acceptable outcomes and policy requirements are discussed in the Comments section.

Local Planning Scheme No. 2

In considering the appropriateness of the use, Council is to have due regard to the objectives of the relevant zone.

The objectives of the Residential zone are as follows:

- *To provide for a range of housing and a choice of residential densities to meet the needs of the community;*
- *To facilitate and encourage high quality design, built form and streetscapes throughout residential areas;*
- *To provide for a range of non-residential uses, which are compatible with and complementary to residential development;*
- *To promote and encourage design that incorporates sustainability principles, including but not limited to solar passive design, energy efficiency, water conservation, waste management and recycling;*
- *To enhance the amenity and character of the residential neighbourhood by encouraging the retention of existing housing stock and ensuring new development is compatible within these established areas;*
- *To manage residential development in a way that recognises the needs of innovative design and contemporary lifestyles; and*
- *To ensure the provision of a wide range of different types of residential accommodation, including affordable, social and special needs, to meet the diverse needs of the community.*

The residential zone objectives are one matter that Council is to give due regard to in the consideration of this application under the Planning Regulations. This along with other relevant matters are set out below.

Planning and Development (Local Planning Schemes) Regulations 2015

Council are required to have due regard to a range of matters to the extent that they are relevant in considering a development application. These matters are set out under Clause 67 of the Deemed Provisions of the Planning Regulations.

Administration’s response to each matter requiring consideration are listed in the table below. Detailed comments on matters relevant to the acceptability of the proposed development are provided within in the Comments section.

Clause 67 – Matters to be Considered	
Matter	Administration Comment
a) The aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area.	<p>LPS2 contains broader aims applicable to the entire Scheme area, separate to more specific objectives of the Residential zone. The relevant aims applicable to this proposal include:</p> <ul style="list-style-type: none"> • <i>Encourage the provision of a wide range of choices in housing, business and employment</i> – The proposed Restaurant/Cafe would contribute towards supporting small business and employment generation within the City. The proposed development would also retain the existing single house on the property. Further consideration of the associated amenity impacts in relation to the residential context is discussed in the Comments section. • <i>Ensure that the use and development of land is managed in an effective manner, which recognises the individual character and needs of the five community precincts within the Scheme Area</i> – Consideration of the appropriateness of Restaurant/Cafe land use, including its management measures, in relation to the residential context is discussed in the Comments section. • <i>Promote the development of a sense of local community</i> - The proposed Restaurant/Cafe would contribute towards to the amenity of the local area. This is because the subject site is located adjacent to a park that provides a place of recreation and activity for community members. Further consideration the associated amenity impacts in relation to the residential context is discussed in the Comments section. • <i>Ensure safe and convenient movement of people</i> – Consideration of the traffic impacts associated with the proposed land use are provided in the Comments section.
b) The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting or approving.	<p>Orderly and proper planning requires the consideration of whether an application is consistent with the objectives of LPS2 and relevant planning policies.</p> <p>The suitability of the proposed development as assessed against the relevant LPS2 objectives, the City's local planning framework, and the impact of the proposal on the local amenity is discussed in the Comments section.</p> <p>There are no draft planning instruments relevant to this application.</p>
(fa) A local planning strategy for this Scheme endorsed by the Commission.	<p>The City's Local Planning Strategy was endorsed by the WAPC on 8 November 2016. The City's Local Planning Strategy identifies the subject site and surrounding properties as falling within a Medium Density Residential area.</p> <p>The subject site is zoned Residential R30 under LPS2 and an assessment of the impact on residential amenity is discussed further in the Comments section.</p>
(g) Any local planning policy for the Scheme area.	<p>The City's Built Form Policy, Sound Attenuation Policy and Non-Residential Development Parking Policy apply to the subject proposal and are discussed further in the Comments section.</p>

<p>(m) The compatibility of the development with its setting including –</p> <ul style="list-style-type: none"> (i) The compatibility of the development with the desired future character of its setting. (ii) The relationship of the development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development. 	<p>The proposed development would be compatible with its setting. The Restaurant/Cafe would not have an adverse impact on the adjoining properties due the specific site context and location of premises, as well as the scale and operation measures proposed.</p> <p>The carparking has been located and designed to reduce adverse amenity impacts to adjoining properties. Additional landscaping recommended to be provided through a condition of development approval, which would further reduce amenity impacts to adjoining properties and ensuring the proposal is compatible with its setting.</p> <p>This is considered further in the Comments section.</p>
<p>(n) The amenity of the locality including the following –</p> <ul style="list-style-type: none"> (i) environmental impacts of the development; (ii) the character of the locality; (iii) social impacts of the development. 	<p>The applicant has provided an Operation Management Plan and an acoustic letter, included as Attachments 4 and 5 respectively demonstrating that the proposed development is capable of operating without impacting on the amenity of adjoining properties and the surrounding area.</p> <p>This is considered further in the Comments section.</p>
<p>(p) Whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;</p>	<p>The proposal would not remove any verge or onsite mature trees and would contribute to the streetscape and the internal amenity of the visitors to the development.</p> <p>A condition of approval is recommended to increase on-site landscaping, including canopy cover. The acceptability of the onsite landscaping is discussed further in the Comments section.</p>
<p>(s) the adequacy of –</p> <ul style="list-style-type: none"> (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles 	<p>Administration recommends that the number of onsite bays for the Restaurant/Cafe be reduced to two, to retain an existing onsite tree. The acceptability of the parking and vehicle access arrangement is discussed further in the Comments section.</p> <p>The proposal to include a Restaurant/Cafe at the subject site would result in an increase in traffic within the local road network due to additional vehicles attending the site as well as service vehicles for deliveries and waste.</p>
<p>(t) The amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety</p>	<p>The acceptability of the increased traffic generated by the development is discussed further in the Comments section.</p>
<p>(w) the history of the site where the development is to be located.</p>	<p>The history of the site is detailed in the Existing Development & Site History section of this report above.</p> <p>While the subject site has historically been used for non-residential purposes, the last commercial operation at the subject site ceased in 1962.</p> <p>A commercial land (Art Gallery) use was approved in 1997 but did not proceed to operate. The context of the surrounding area has changed since this approval, including the redevelopment of the western adjoining property. The adjoining non-residential land use was removed in 2005 when the Scout Hall was demolished and redeveloped into the single house that currently exists.</p> <p>The proposal would be introducing a new non-residential use into an area that is primarily residential, and which is expected to remain into the future. The acceptability of this use in considering its compatibility with its setting and impact on amenity is detailed in the Comments section.</p>

(y) Any submissions received on the application.	<p>119 submissions were received in response to the three community consultation periods. This included 101 submissions in support, 17 in objection and one neither supporting nor objecting but raising concerns.</p> <p>The key matters raised in the submissions that are relevant planning considerations in the assessment of the proposal are addressed in this report, and a summary of all submissions received is included as Attachment 9 with responses by the Administration.</p> <p>The comments raised in the submissions have been considered as part of the assessment of this application.</p> <p>The total number of submissions received for/against the proposal alone is not a valid reason for the application to be approved/refused.</p>
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CONSULTATION/ADVERTISING:

Community consultation occurred on three separate occasions due to changes being made to the proposal over the course of the application. This is because the nature of the changes resulted in new or different amenity impacts to the surrounding properties. In accordance with the City's Community and Stakeholder Engagement Policy, these changes required further community consultation.

At the conclusion of the three consultation periods, a total of 119 submissions were received including 101 submissions in support, 17 in objection and one neither supporting nor objecting but raising concerns.

A summary of each consultation period and the changes is provided below.

First Community Consultation

Community consultation was undertaken in accordance with the Planning Regulations for a period of 14 days, from 18 October 2023 to 1 November 2023. The method of consultation included a notice on the City's website, a sign onsite facing Berryman Street and three letters being sent to the adjoining and adjacent landowners and occupiers, as shown in **Attachment 1** in accordance with the City's Community and Stakeholder Engagement Policy.

At the conclusion of the first consultation period, a total of 31 submissions were received including 22 submissions in support, eight in objection and one neither supporting nor objecting but raising concerns.

The key comments received in support are summarised as follows:

- The proposal is of an appropriate scale for the locality.
- The location of the proposal opposite Menzies Park is appropriate as the park is an active space used for sport and other events.
- The proposal would encourage the maintenance and retention of an existing character property.
- The proposal will enhance the sense of community in the area.
- The proposal will add to the vibrancy of the area.
- The lack of parking provided is not an issue as there is adequate street parking in the area and most patrons of the business will be locals within walking distance.
- The current levels of traffic and street parking is not a problem.

The key concerns raised are summarised as follows:

- The proposal does not meet the objectives of the Residential zone in Local Planning Scheme No. 2 as it is not complementary to surrounding residential development.
- The proposal provided insufficient parking bays and would have an impact on the residential amenity of the street as cars would rely on on-street parking within residential streets.
- Parking on Menzies Park verge is already an issue, which would become worse if the Cafe is approved.
- Concerns relating to noise generated by staff coming and leaving the site, deliveries, equipment used within the premises and noise generated by patrons, which would impact the amenity of the area due to the cafe operating for 12 hours per day.
- Concerns relating to waste management and consider this would impact the amenity of the area.
- The proposal would change the amenity of Berryman Street and Federation Street due to the lack of customer parking.

Amended Proposal Following First Community Consultation

Following community consultation, the applicant provided additional information on 8 December 2023 in response to the comments raised during community consultation and following a request for further information from the City. The amendments included the following changes to the proposal:

- Provision of two onsite car parking bays for staff located along the eastern boundary of the subject site.
- Provision of one onsite long term bike parking space adjacent to the staff car parking bays.
- Provision of one short term bike parking within the Berryman Street verge.
- Implementing measures to manage noise, including:
 - Closing the main entry doors during operating hours.
 - Installing signage to advise patrons to reduce noise.
 - Staff to manage patron numbers onsite.

Second Community Consultation

The amended plans and additional operational information were readvertised for seven days from 9 January 2024 to 15 of January 2024. The method of readvertising included an email notification to the previous submitters, and a notice on the City's website in accordance with the City's Community and Stakeholder Engagement Policy as significant changes were made to the proposal.

At the conclusion of the second consultation period, a total of 16 submissions were received including seven submissions in support and nine objections. Of these, three submitters affirmed their support and five of the submitters affirmed their objection.

The submissions received reiterated previous comments in support and the concerns raised with the proposal during the initial consultation.

No new comments were raised in support.

New concerns raised during the readvertising period that were not previously raised are summarised as follows:

- Parking is not provided for customers, which would result in customers parking on the Menzies Park verge, which is already an issue during football season.
- The car bays allocated for staff parking being close to outdoor living areas and indoor living spaces of adjoining single houses, causing an amenity impact to the immediate neighbours.
- The limit of patrons permitted within the premises will result in queuing outside of the venue and result in further noise and disruption to neighbours.
- Not enough detail has been provided regarding the noise management procedure.

Amended Proposal Following Second Community Consultation

Following the second community consultation period, the applicant submitted further additional information on 7 February 2024 in response to the comments raised during community consultation and following a request for further information from the City. The amendments included the following changes to the proposal:

- Provision of two onsite car parking bays for customers, in addition to the two onsite staff car parking bays.
- Increasing the proposed number of people from seven to 16.
- Providing an Operation Management Plan to clarify and provide further information in relation to:
 - The intended function of the Restaurant/Cafe including information on how food and drinks will be served on the premises.
 - Operating hours.
 - Staff numbers.
 - Noise mitigation measures.
 - Parking management measures.
 - Waste management.
 - Onsite deliveries.

Third Community Consultation

The plans and Operation Management Plan were readvertised for seven days from 9 February 2024 to 15 February 2024. The method of readvertising included an email notification to the previous submitters, and a notice on the City's website in accordance with the City's Community and Stakeholder Engagement Policy as significant changes were made to the proposal.

At the conclusion of the third readvertising period, a total of 88 submissions were received including 82 submissions in support and 6 objections. Of these, seven submitters affirmed their support and five of the submitters affirmed their objection.

These submissions reiterated previous comments in support and the concerns raised with the proposal during the initial consultation.

No new comments were raised in support.

New concerns raised during the readvertising period that were not previously raised are summarised as follows:

- The increased number of people on site will cause further issues with amenity, parking, noise and waste.
- The site is too small to accommodate the intended number of people.
- The customer parking will cause amenity and noise impacts to the adjoining residents.
- There is no quantification information provided to confirm that noise generated by the activity would be acceptable in an amenity sense.
- Enforcement of the Operation Management Plan will be difficult.

Amended Proposal Following Third Community Consultation

During the third consultation period, the applicant submitted a revised Operation Management Plan on 12 February 2024 following a request for further information from the City. The additional information provided is summarised below.

- Changes to the operating hours from 7:00am – 7:00pm to 7:00am – 4:00pm.
- The inclusion of a waste storage area on the plans within the Operation Management Plan.
- Further clarification on where onsite deliveries would occur within the Operation Management Plan.

The final Operation Management Plan is included in **Attachment 4**.

On 13 March 2024, the applicant submitted an acoustic letter to address concerns raised from the City and submitters regarding noise impacts from the proposed Restaurant/Cafe. This is included in **Attachment 5**.

The acoustic letter and the changes to the Operation Management Plan were not re-advertised to the community as they did not result in a significantly different proposal to that which was previously advertised. Previous submitters have been made aware of the additional information provided.

A summary of submissions received during the three consultation periods, along with the Administration's response to the submissions received is provided in **Attachment 8**. A summary with applicant's response to the submissions received during the three consultation periods is provided in **Attachment 9**.

Design Review Panel (DRP):

Referred to DRP: No

The proposal was not referred to the City's DRP as the proposal includes no external works, except for the proposed car parking bays and bicycle bays. The DRP provides comments on the design and site planning of a proposal. The application does not propose to change the design or site planning.

LEGAL/POLICY:

- *Planning and Development Act 2005*;
- *Planning and Development (Local Planning Schemes) Regulations 2015*;
- *Environmental Protection (Noise) Regulations 1997*;
- City of Vincent Local Planning Scheme No. 2;
- Community and Stakeholder Engagement Policy;
- Policy No. 1.1.1 – Built Form;
- Policy No. 7.5.21 – Sound Attenuation; and
- Policy No. 7.7.1 – Non-Residential Development Parking Requirements.

Planning and Development Act 2005

In accordance with Schedule 2, Clause 76(2) of the Planning Regulations and Part 14 of the *Planning and Development Act 2005*, the applicant would have the right to apply to the State Administrative Tribunal for a review of Council's determination.

Delegation to Determine Applications:

This application is being referred to Council for determination in accordance with the City's Register of Delegations, Authorisations and Appointments. This is because the application received more than five objections during the community consultation period.

RISK MANAGEMENT IMPLICATIONS:

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:

This is in keeping with the City's Strategic Community Plan 2022-2032:

Innovative and Accountable

Our decision-making process is consistent and transparent, and decisions are aligned to our strategic direction.

SUSTAINABILITY IMPLICATIONS:

This application does not contribute to any environmental sustainability outcomes. There is limited ability for the development to influence the environmental impact of the entire building on the site through this application as it relates to a change of use of an existing building with no external works component.

PUBLIC HEALTH IMPLICATIONS:

This report has no implication on the priority health outcomes of the City's *Public Health Plan 2020-2025*.

FINANCIAL/BUDGET IMPLICATIONS:

There are no finance or budget implications from this report.

COMMENTS:**Summary Assessment**

In assessing the application against the planning framework, it is recommended for approval. The following key comments are of relevance:

- The proposed Restaurant/Cafe would be compatible with and complementary to the existing residential development based on a combination of factors. These factors including the site context, the physical building configuration, parking location and management, operation measures proposed by the applicant, the scale and intensity of the use, the impact of noise and the additional traffic generation.
- The Restaurant/Cafe would be compatible in this location as it separated from surrounding residential properties and directly interfaces with Menzies Park, which facilitates additional activity. Most of the activity generated from the Restaurant/Cafe would be contained internally to the building and directed towards Berryman Street and Menzies Park, away from surrounding residential properties. The impact of the Restaurant/Cafe could be appropriately managed, so it does not unduly impact the amenity of nearby residents.
- The applicant has proposed a maximum of two staff and 14 customers to be on site at any time, which would be inclusive of both dine-in and take-away customers. This would ensure that the intensity of the Restaurant/Cafe is controlled and is compatible in the residential zone.
- Sufficient management measures have been proposed through the applicant's Operation Management Plan and through recommended conditions of development approval, to ensure the use could be managed to provide an appropriate level of amenity to surrounding properties. Additional measures recommended through conditions of approval to reduce offsite amenity impacts include the requirement for all queueing, waiting for take-away orders, and dining to occur internal to the building only, as well as for all servicing and delivery associated with the use to be undertaken during the approved operating hours. This means that no alfresco dining would be permitted, reducing noise and amenity impacts to surrounding properties.
- Administration has recommended that the number of carparking bays be reduced from four to two, to retain an existing onsite tree. This change would result in a shortfall of two on-site bays. As the Restaurant/ Café would serve a relatively local catchment and some of the customers would reside in the local area, this would reduce the onsite parking demand for customers. Car parking has also been located and designed in a manner to reduce adverse amenity impacts to surrounding properties. Limited movements associated with the staff parking bays would lessen the impacts of noise and activity to adjoining properties. The location of customer parking bays directly adjacent to the street frontage and away from sensitive areas of adjoining properties would reduce noise and amenity impacts.
- The applicant has provided an acoustic letter which confirms that the noise generated by the Restaurant/Cafe would likely comply with the Noise Regulations and would be low-risk in terms of a noise impact. This demonstrates that the proposed Restaurant/Cafe would be capable of operating without resulting in an adverse impact to the surrounding area. The officer recommendation includes a condition requiring the applicant to provide an Acoustic Report that demonstrates compliance with the Noise Regulations.
- Due to the scale of the development, the operation measures and the accessibility of the site, the traffic could be adequately managed to not have a negative impact on the amenity of the surrounding area.
- No new onsite landscaping has been proposed. A condition has been recommended for additional onsite landscaping to be provided to increase canopy coverage and to provide sense of open space between the subject site and adjoining properties, which the applicant has consented to.
- The vehicle access point has been located to avoid the removal of any trees and is of a scale and location that is consistent with parking arrangements that exist in the surrounding area. The officer recommendation includes conditions to ensure vehicles could safely enter and exit the proposed carpark through sufficient sightlines being provided.

Land Use Acceptability

A Restaurant/Cafe is an 'A' use within the Residential zone. This means that the use is not permitted unless Council exercises discretion by approving a development application for the use following consultation with the community.

In considering the appropriateness of the use, due regard must be given to the objectives of the Residential zone under LPS2 and relevant matters of Clause 67(2) of the Planning Regulations.

Administration has assessed the acceptability of the land use against relevant considerations set out in the planning framework, detailed below.

Applicant Justification and Operation Management Plan

The applicant's justification for the proposed land use is included in **Attachment 3** and is summarised as follows:

- The proposal aligns with all objectives of the Residential zone as:
 - The cafe is of a small scale, fronts onto public open space and its siting within the site ensures that there would be minimal risk of disturbance to adjacent residential properties.
 - The existing dwelling on site would continue to function as a unique housing option (including the attached café).
 - The existing built form is to be retained, ensuring the existing character and amenity of the streetscape is preserved. Minor restorative works are likely to be undertaken prior to operation of the cafe, which would further enhance streetscape amenity without impacting on character.
 - The cafe recognises the changes in contemporary lifestyles and people's preferences which have evolved since when the building was originally constructed.
 - The residential dwelling and small cafe combination provides a unique offering substantially different from any other dwelling in the locality.
- The site already has an existing approved shop. This is not the introduction of a commercial element into a residential area, but rather the establishment of a more appropriate business which would provide a service that would be more in line with modern day expectations.
- The entrance and window locations ensure that impacts from people accessing the premises would be outside of the line of sight from adjacent residential properties and unlikely to create any undue privacy or acoustic impacts.
- Sufficient parking has been provided on site for customers and there is additional parking available within the Menzies Park reserve and within the surrounding streets. The Menzies Park verge is already used for parking within the area.
- The impacts from the Restaurant/Cafe would be negligible as many customers would be local residents or users of Menzies Park, which would not generate a disturbance in the area or create a demand for parking in excess of what has been provided.
- Surrounding residential properties would already be impacted by offsite noise from Menzies Park which would emit noise throughout the day and includes no noise mitigating features.
- Noise impacts from the proposed parking bays to adjoining properties would be limited due the existing dividing fences and the distance from the parking area to existing habitable spaces.
- It is expected that the cafe would be occupied by one staff member for majority of its opening hours and a second staff member during busier periods.

An Operations Management Plan, as included in **Attachment 4**, has been prepared to ensure that the proposed use could be managed onsite. The following measures to control onsite patron behaviour and manage noise impacts:

- All orders are to be placed within the premises. There is no coffee window to serve patrons externally.
- All freshly prepared food to be provided on non-disposable tableware to ensure that customers remain onsite whilst consuming their food.
- For orders that do not involve freshly made food and for coffee orders, customers would be given the option of having a dine-in or take-away service, though patrons would be requested to remain inside prior to and after placing their order.
- Advising patrons to not congregate outside of the Restaurant/Cafe prior to and after their meal through signs.
- All site servicing (deliveries and waste collection) occurring during hours of operation.
- Amplified music being played internally within the building only at a low-level.
- No amplified music or speakers placed external to the premises.
- Installation of self-closing entry doors.

Administration Comments*Compatibility with Surrounding Residential Development & Amenity Impact - Clauses 67(2)(m) and (n)*

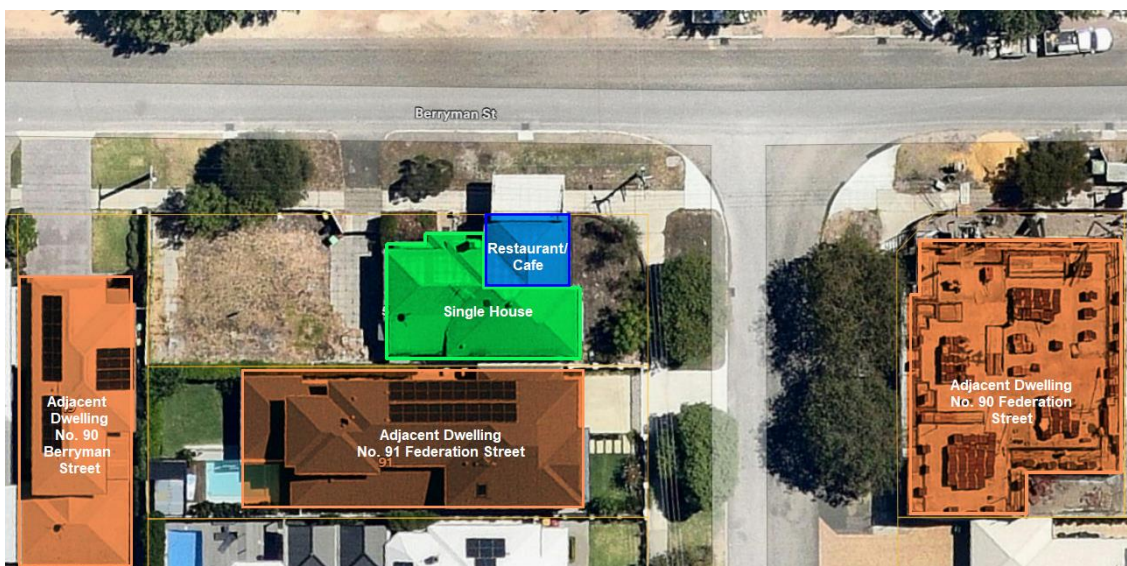
An objective of the Residential zone is for development that provides for a range of non-residential uses which are compatible with and complementary to residential development. Clauses 67(2)(m) and (n) of the Deemed Provisions also relate to the compatibility of the development with its setting and the amenity of the locality, including character and social impacts of the development.

The Planning Regulations defines amenity as '*...all those factors which combine to form the character of an area and include the present and likely future amenity*'.

The proposed Restaurant/Cafe would be compatible with and complementary to the existing residential development. This is having regard to a combination of factors including the site context, the physical building configuration, parking, the operation measures imposed by the applicant, the scale and intensity of the use, the impact of noise and the additional traffic generation. Based on the combination of these factors, the Restaurant/Cafe would not cause an undue impact on the amenity of the surrounding area properties.

- Physical Building Configuration: The building associated with the Restaurant/Cafe is located to the corner of Berryman Street and Federation Street, as shown in **Figure 1** below. This location and physical design of the Restaurant/Cafe results in the majority of the activity generated from the use being directed towards Berryman Street and Menzies Park, reducing direct activity to adjoining residential properties. A summary of the relationship between the Restaurant/Cafe premises and the adjoining residential properties is provided below.
 - The existing shopfront design of the Restaurant/Cafe premises is proposed to be retained and is visually distinguishable as a commercial premises. This existing built form maintains compatibility with the existing residential context and does not seek to introduce additional commercial built form into the residential area.
 - All windows and doors are oriented towards Berryman Street, away from nearby residential properties, except for two small openable highlight windows on the eastern elevation of the tenancy. There are no windows or doors located to the western elevations of the building.
 - To the south, the Single House component of the subject site provides a separation between the Restaurant/Cafe and No. 91 Federation Street.
 - To the west, a 28-metre setback is provided between the Restaurant/Cafe Premises and No. 19 Berryman Street, with the Single House component of the subject site, the rear garden area and onsite car parking providing a separation between.
 - To the east, a 27-metre setback is provided between the Restaurant/Cafe Premises and No. 90 Federation Street, with street trees, verge areas and the Federation Street carriageway providing a separation between.
 - To the north, the Restaurant/Cafe Premises would be orientated towards Menzies Park and would not impact any residential properties.

In summary, three adjoining residential properties would be impacted by the proposal as there is no residential development on the northern side of Berryman Street. The physical location of the Restaurant/Cafe premises provides an appropriate separation to adjoining residential properties, particularly their respective outdoor areas and habitable spaces, which would reduce noise and associated amenity impacts from the Restaurant/Cafe.



**Figure 1 – Annotated configuration of Restaurant/Cafe in relation to adjoining properties
(Source: Nearmap)**

- **Acceptable Onsite Parking Arrangements:** Administration has recommended that the car park be amended to remove Car Bays 1 and 3, and to retain Car Bays 2 and 4, which would provide two onsite staff car parking bays located to the west of the site. The amenity impacts to the western and southern adjoining properties are summarised below.
 - **No Amenity Impact from Staff Parking:** Staff parking bays would be provided adjacent to the western lot boundary. Movements associated with these staff bays would be limited to approximately six per day based on the applicant's proposed operations. The applicant has advised that one staff member would remain parked in the same bay for the entire 7:00am – 4:00pm shift, with a second staff member attending for a morning shift and afternoon shift. The limited movements associated with these parking bays would lessen the impacts of noise and activity. This would ensure that the parking bays do not to unduly impact the amenity of the adjoining properties.

A condition of development approval is recommended for the staff parking bays to be setback 1.5 metres from the southern lot boundary, with landscaping to be provided within this area, including shade providing trees and fast-growing bushes. This additional setback and landscaping would increase the separation between the bays and southern property, while creating a sense of open space using landscaping. The west, the staff bays would be adjacent to the western properties front entrance and a side setback area with no windows or habitable spaces, ensuring no amenity impact.

- **No Amenity Impact to Adjoining Balcony:** The street facing balcony of the adjoining property is the only habitable space to the western adjoining property that is visible from and may receive amenity impacts from the location of the Restaurant/Cafe car parking. This is because while the balcony includes 1.6-metre-high solid brick screens to the eastern and western sides, it is open to Berryman Street with 1.0-metre-high permeable balustrading, as shown in Figure 2 below. As the balcony is open to its northern side, facing Berryman Street, it remains visible on an oblique angle and may experience some noise impact from the customer parking bays.

The balcony location and design in its current form would already experience a reduced level of amenity. This is because it fronts toward Berryman Street, is visible from the public domain and would be impacted by noise generated from traffic and recreational activities associated with Menzies Park. As the balcony currently experiences reduced amenity due to its visibility and proximity to the street and Menzies Park, the parking bays would not further unduly impact the amenity of this habitable space. The 1.6-metre-high solid screen to the eastern edge of the balcony would further assist in reducing visual, noise and amenity impacts from the parking bays by providing a physical separation to users of the balcony.

In summary, the location of parking in respect to sensitive areas of adjoining residential properties reduces the adverse amenity impacts to outdoor and habitable spaces. The consideration of the noise impacts from vehicles are discussed in the noise section below.



Figure 2 – View from Berryman Street of subject site & 19 Berryman Street with annotation of areas impacted by proposed onsite parking (Source: Google Streetview)

- Operating Hours:** The Restaurant/Cafe seeks to operate during the day only, between 7:00am and 4:00pm daily. This would ensure that the development is not generating any offsite impacts at night-time or outside of day trading business hours, which could have the potential to impact surrounding residential properties. As discussed in the Noise section of this report below, operating hours on Sunday between 7:00am and 9:00am and on public holidays would be subject to findings of the required Acoustic Report, and this potential implication has been reflected in the recommended condition of approval.
- Scale and Intensity:** The intensity of the Restaurant/Cafe would be controlled by the permitted number of staff and customers and the small size of the tenancy area. The restrictions on people, in combination with the building design and location, would limit the impact of noise and activity generated in and around the site as it would ensure that the Restaurant/Cafe operates at a low scale. The scale would ensure that the use is compatible with the existing residential area. A condition of approval would be recommended to limit the number of people on site to 16 and the premises to be contained to the 34 square metre room only.
- Alfresco Dining:** Alfresco dining is not specifically subject to this development application and would instead be subject to an Outdoor Eating Area Permit, to be obtained in accordance with the City's Trading in Public Places Local Law 2008. If this development application were approved, it would be possible for the proponent to receive an Outdoor Eating Area Permit for the alfresco area shown within the Berryman Street verge, if all relevant requirements were met. Alfresco dining within the verge area adjacent to subject site would not be complementary to, or compatible with the surrounding residential development. This is because it would facilitate open-air dining that could provide adverse noise and amenity impacts, not otherwise generated by the proposal, to surrounding properties and particularly to No. 90 Federation Street, Mount Hawthorn. A condition of approval is recommended that would restrict any alfresco dining within verge areas adjacent to the subject site. This would negate the ability for the proponent to use the verge area for alfresco dining, regardless of whether an Outdoor Eating Permit is obtained.
- Operation Management:** In addition to the specific site context and building design as discussed above, the applicant's operational management measures would reduce potential offsite amenity impacts generated from customers attending the site for both dine-in and take-away orders. Measures include the requirement for all orders to be placed inside the building, with no provision of a coffee/take-away window; day-time operating hours only; and measures to encourage dine-in customers. The small scale of the tenancy, including a maximum of two staff members and 14 customers proposed to be onsite at any given time, would also assist in limiting high numbers of takeaway customers to be served.

Administration recommends the following conditions of development approval requiring ongoing management Restaurant/Cafe, to ensure the use remains compatible with the residential area and to reduce amenity impacts to surrounding properties:

- Implementation of the Operation Management Plan at all times.
- As proposed by the applicant, restricting the total number of staff and customers onsite at any given time to a maximum, two (2) and 14 persons respectively.
- The requirement for no customer queuing, waiting for orders or dining to occur within the adjacent footpath or verge area.
- The requirement for an updated Operation Management Plan to be submitted that provides measures how take-away orders would be managed. This includes signage to inform customers they must queue and wait internally, as well as associated internal space for this to occur.
- The requirement for all servicing and delivery associated with the use to be undertaken during the approved operating hours.

It is acknowledged that the issue of noise and offsite amenity impacts are largely dependent on individual behaviour that may lead to potential impacts on the surrounding residents. While the Operation Management Plan and other measures recommended through conditions of approval would reduce these impacts and provide the ability for enforcement, it is accepted that some impact may occur.

- Deliveries: The applicant's Operation Management Plan stipulates that a delivery vehicle would attend the site up to two times per week. The delivery vehicle would park in a space along Berryman Street to reduce vehicle noise impacts on the adjoining properties as much as possible. This would be similar to postal deliveries occurring within the residential area and would not cause an undue impact to the adjoining properties. A condition is recommended to limit deliveries to occur within the approved operating hours, in accordance with the Operation Management Plan.
- Waste: A bin store is located along the northern boundary of the site adjacent to the residential parking bay, which would be separated from the residential waste. The bin store would not be visible from the street or adjoining properties due to existing 1.8-metre-high dividing fences. The location of the bin store provides separation from adjoining properties, ensuring amenity impacts associated with noise and odour could be appropriately controlled.

Due to the small scale of the use, the site is not expected to generate large amounts of waste. A condition is recommended requiring a waste management plan be submitted to the City prior to commencement of the development, to ensure that the proposal adequately manages their waste. The applicant has been made aware that the City no longer offers commercial waste collection.

Noise - Clause 67(2)(g)

Clause 67(2)(g) of the Planning Regulations requires due regard to be given to the Built Form Policy and the Sound Attenuation Policy.

The applicant submitted an acoustic letter prepared by a qualified acoustic consultant in support of the proposal which is included as **Attachment 5**.

The acoustic letter does not include noise modelling in accordance with requirements of the City's Sound Attenuation Policy but provides a professional analysis of the potential noise impacts from the Restaurant/Café, against the Noise Regulations.

The acoustic letter advises that the noise generated by the Restaurant/Cafe would likely comply with the Noise Regulations and would be low-risk in terms of a noise impact. The City's Environmental Health Team have reviewed and support the information provided in the acoustic letter.

The acoustic letter identifies that noise sources associated from the Restaurant/Cafe would relate to vehicle noise, customer noise and noise from mechanical plants. The acoustic letter provides the following comments and recommendations:

- The noise from the four onsite parking bays associated with the Restaurant/Cafe would likely comply with the Noise Regulations as vehicle movements would be minimal and would be consistent local through traffic. The letter comments that up to two staff arriving in the morning would be considered typical activity in a medium-density residential area.
- Due to the low number of patrons and given only low-level background music is proposed within the Restaurant/Cafe, the entertainment noise emissions to surrounding areas would be minimal and would likely comply with the Noise Regulations.
- The premises would utilise existing residential grade mechanical plants, which is predicted to not have a significant noise impact.
- The acoustic letter recommends that the following noise mitigation measures are implemented:
 - Staff should be trained to be considerate of sensitive areas nearby, to minimise noise impacts.
 - The southern and eastern boundary fencing should be maintained to provide a solid sound screening to the adjoining residential properties.
 - All deliveries and collections should be scheduled during day times only to minimise a noise impact to surroundings.
 - Glass waste disposal or compacting, should only occur during the day period in an enclosed area. Noise from glass waste disposal or compacting has been conditioned to be considered as part of the acoustic report.

While the acoustic letter advises that the noise generated by the Restaurant/Cafe would likely comply with the Noise Regulations, it advises that the potential risk for noise impact would be on Sunday's between 7:00am and 9:00am, as these proposed operating hours fall within the night-time period under the Noise Regulations. For the reasons outlined above, the risk of non-compliance with the Noise Regulations is considered low but this cannot be ascertained without an acoustic report that includes noise modelling.

The acoustic letter provides the City with a degree of certainty from an acoustic professional that the Restaurant/Cafe as proposed is likely to comply with Noise Regulations, but this professional opinion has not been verified by noise modelling or other noise measuring.

An acoustic report prepared in accordance with the City's Sound Attenuation Policy would provide assurance to both the City and neighbouring properties that the approved operation and noise management measures would be effective in mitigating the impact of noise to not adversely impact the amenity and comfort of surrounding properties. On this basis, the following conditions of development approval are recommended:

- The submission of an acoustic report prior to the occupation of the Restaurant/Cafe. This is to be prepared in accordance with the City's Sound Attenuation Policy and is to include noise modelling to confirm that noise levels generated from the premises during the proposed operating hours would comply with the relevant assigned noise levels under the Noise Regulations.
- The operation of the Restaurant/Cafe in accordance with the approved acoustic report, including any noise management measures.

An advice note has also been recommended regarding the requirement to have ongoing compliance with the Noise Regulations. The operation is required to always comply with all aspects of the Noise Regulations, irrespective of what conditions are imposed on the development approval.

Should the City receive a justified complaint regarding unreasonable noise from the venue, the City's Authorised Officers would investigate and take necessary action according to the Regulations.

Traffic Generation - Clause 67(2)(t)

Clauses 67(2)(t) of the Deemed Provisions relates to the consideration of the amount of traffic likely to be generated by the development.

Traffic within the existing locality primarily consists of vehicles travelling to and from dwellings. Given the proximity of this site to Menzies Park there is also additional vehicle traffic generated from users of the park.

In considering the amount of traffic likely to be generated by the development, the following Administration comments are provided:

- **Existing Traffic Generation:** Under the Main Roads WA Road hierarchy, Berryman Street is identified as an Access Road, which has a traffic capacity of 3,000 vehicles per day. The City's traffic data from 2021 indicates an average daily traffic volume of 812 vehicles per day VPD along Berryman Street. This demonstrates that Berryman Street is currently operating within capacity.
- **Customer Traffic Generation:** Under the WAPC Transport Guidelines, the applicant is not required to provide a Traffic Impact Statement. This is because the Restaurant/Cafe would be expected to generate less than 10 vehicle trips in the peak period, which would have a low impact on the existing traffic network.
To calculate the traffic generation from the proposed Restaurant/Cafe the City's Engineering team used the NSW RTA Guide to Traffic Engineering Developments (NSW RTA Guide). This is because the NSW RTA Guide is recognised source for trip generation rates under the WAPC Transport Guidelines. Using the RTA Guide, the estimated trip generation for the Restaurant/Cafe would be up to 20 vehicles per day and up to two vehicles in the peak period. The City's Engineering team have advised that Berryman Street could adequately to accommodate the projected development traffic volumes as it currently operates well below its intended capacity. The traffic numbers from customers attending the site could be reduced further due to the accessibility of the subject site. This is because:
 - The site is located within a highly walkable area which would accommodate local residents, as surrounding streets contain pedestrian footpaths. The site is also within approximately 150 metres from a high frequency bus route stop on Egina Street. This provides alternative modes of transport options for customers, reducing traffic demand.
 - Bicycle parking has been provided for both staff and customers to provide access to other car transport options for customers, reducing traffic demand. The subject site is also near Scarborough Beach Road which includes some dedicated cycle lanes, improving accessibility to the site.
- **Staff Traffic Generation:** Due to the number and infrequency of staff car movements during the day, the proposal would not cause a noticeable increase in staff traffic movements that would adversely impact the surrounding area. This is because the proposal would accommodate up to two staff on site at any one time, which would likely generate up four VPD when staff come to and leave the site. This may be reduced as there is the potential for staff to access the site via alternative modes of transport.
- **Waste and Deliveries:** Traffic generated from waste pick-up and delivery vehicles attending the site would not have an adverse impact on the surrounding locality. Due to the infrequent use of these services, it would not cause a noticeable increase in traffic movements.

While the proposal would result in additional traffic in the area, due to the scale of the development and the accessibility of the site, the traffic could be adequately accommodated within the existing network.

Accommodation, Sustainability and Design - LPS2 Residential Zone Objectives

The objectives of the Residential zone are to provide for a wide range of residential accommodation, to encourage the incorporation of sustainable design principles and to encourage high quality streetscapes.

The development would satisfy the objectives of the Residential Zone for the following reasons:

- **Range of Accommodation** – The proposal would retain the existing residential accommodation, which would assist in meeting the needs of the community.
- **High Quality Design** – The existing façade would be maintained which would preserve the existing built form within the streetscape.
- **Sustainability Principles** – The proposal would adaptively reuse the existing building which would have broader sustainability benefits.

Submissions Received - Clause 67(2)(y)

A total of 119 submissions were received in response to community consultation. This included 101 submissions in support, 17 in objection and one neither supporting nor objecting but raising concerns. A summary of the submissions received is included as **Attachment 9**, where Administration has provided a response to the concerns raised.

The submissions have been considered as part of Administration's assessment of this application, including the comments set out above on the potential amenity impact of the use.

The number of submissions received is not a measure of the acceptability or unacceptability of a proposal. Rather, the nature of the comments in submissions is relevant as a matter to be given due regard in the determination of the application.

Car Parking

Under the City's Non-Residential Parking Policy, the development would require a total of four onsite car parking bays to be provided. The proposal provides two staff car parking bays and two customer car parking bays for the Restaurant/Café, adjacent to the western boundary of the site.

There is an existing onsite tree located 3.9 metres from the western lot boundary and 0.15 metres from the street boundary, as shown in the below **Figure 3**. The eastern side of the driveway that provides access to Car Bays 1 and 3 would conflict with the existing on-site tree. The existing on-site tree would need to be removed to accommodate the parking arrangement as proposed.

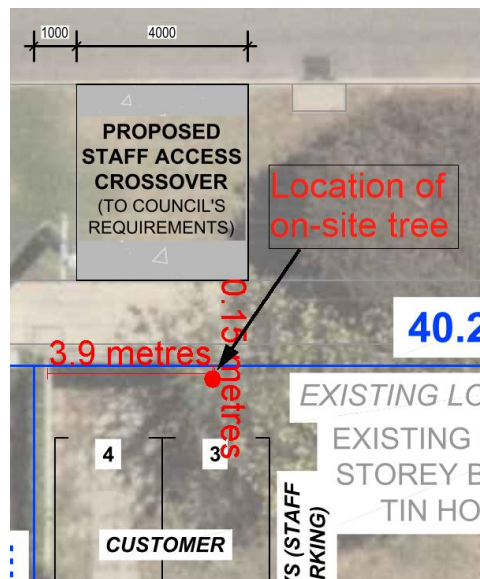


Figure 3 – Location of existing on-site tree in relation to the proposed driveway and car bays

The removal of the tree would not satisfy the [element objectives](#) of the Built Form Policy relating to landscaping associated with the Restaurant/Café carpark. This is because the proposed parking arrangement would prioritise the removal of trees to provide parking and would result in the removal a healthy and mature tree with ongoing viability. The removal of the tree would reduce the onsite canopy coverage and would reduce the sites contribution to the City's green canopy.

To ensure that the existing onsite tree is maintained, Administration recommends the car park is modified to remove Car Bays 1 and 3 and to retain Car Bays 2 and 4, which would be allocated for staff use only.

This would result in a total of two parking bays being provided for the Restaurant/Café, in lieu of four bays required in accordance with the City's Non-Residential Parking Policy.

Community Consultation

A shortfall of two on-site parking bays was initially proposed by the applicant as part of a previous version of the proposal. The shortfall was advertised during the first community consultation period.

Submissions received in support regarding the parking shortfall included comments that the lack of parking provided was not considered to be not an issue as there is adequate street parking in the area and most patrons of the business would be locals within walking distance.

Submissions in objection raised concerns that insufficient parking bays and would have an impact on the residential amenity of the street as cars would rely on on-street parking within residential streets. Comments also advised that parking on Menzies Park verge is already an issue, which would become worse if the Cafe is approved. The proposal would change the amenity of Berryman Street and Federation Street due to the lack of customer parking.

Administration Comments

In considering the impact of this modification, the following Administration comments are provided:

- **Car Parking Demand:** The two bays on-site would be used by staff members. As the proposal would permit a maximum of two external staff members, who do not also reside at the Single House, there would be sufficient parking provided for staff members on-site.
- **Nature of Use:** The nature of the local Café use is such that it is expected that the proposal would serve a relatively local catchment and customers would choose to walk or cycle. This would reduce the onsite parking demand for customers.
- **Menzies Park:** The site is located directly opposite Menzies Park which would attract a number of multipurpose trips for people visiting the park for sporting events or passive recreation. This would also reduce the onsite parking demand for customers.
- **On-Street Parking Availability:** The City’s Rangers undertook a survey of public car parking availability along Berryman Street between East Street and Egina Street across four days on Sunday 4 February 2024, Monday 5 February 2024, Wednesday 7 February 2024 and Saturday 10 February 2024. The City’s Rangers have advised that Berryman Street has a capacity for 23 vehicles. A summary of the findings is provided below:

Location	Capacity	9:00am	12:00pm	4:00pm	
Sunday 4 February 2024					
Berryman Street	Total Spaces Occupied	1	1	1	
	Bays available	23 bays/96%	23 bays/96%	23 bays/96%	
	Monday 5 February 2024				
	Total Spaces Occupied	1	1	1	
	Bays available	23 bays/96%	23 bays/96%	23 bays/96%	
	Wednesday 7 February 2024				
	Total Spaces Occupied	2	3	0	
	Bays available	22 bays/92%	21 bays/88%	24 bays/100%	
	Saturday 10 February 2024				
	Total Spaces Occupied	2	3	2	
Bays available	22 bays/92%	21 bays/88%	22 bays/92%		

- The parking counts conducted demonstrate that on-average across the week, there is an average availability of 22.5 bays (94%) at 9:00am, an average availability of 22 bays (92%) at 12:00pm and an average availability of 23 bays (96%) at 4:00pm. This demonstrates that there is sufficient capacity in the street to accommodate on-street parking for customers attending the proposed Restaurant/ Café.
- **Car Parking Availability:** The length of the existing Berryman Street verge area, directly adjacent to the subject site, could accommodate four on-street parking bays for customer use, without obstructing vehicle sightlines for users of Berryman Street and Federation Street. These bays are unrestricted and could accommodate on-street parking for customers, without this extending to the verge areas of adjacent residential properties.
- **Alternative Modes of Transport:** To support active modes of transport, the application includes one short-term bicycle bay within the Berryman Street verge. This would provide a secure location for customers to park their bicycle if electing to ride to the site.

The Parking Policy outlines that cash-in-lieu of car parking may be required as a mechanism to enable otherwise desirable developments to proceed, where it can be demonstrated that it is not possible to provide sufficient parking on-site.

Sufficient parking is provided for reasons listed above and Administration is recommending to waive the need to pay cash-in-lieu noting:

- **Location:** The parking provided would meet the demands of its uses as the site is in a highly walkable area and would attract those in a relatively local catchment. The site is also in close proximity a high frequency bus route and local cycle paths along Scarborough Beach Road.
- **Alternative Transport:** To support active modes of transport, the application includes short-term one bicycle bay within the Berryman Street verge.
- **Availability of Car Parking:** Parking would be available for staff onsite who would be onsite for longer periods. Customers would also could park on the verge in front of the subject site, if electing to drive to the site.

Built Form Policy

Landscaping

The proposed development would satisfy the [element objectives](#) of the Built Form Policy relating to landscaping associated with the Restaurant/Café carpark for the following reasons:

- **Applicant Agreement to Increase Landscaping:** The proposed plans seek to retain the landscape outcome that exists on site, but the Applicant has agreed to conditions of development approval to improve the landscape outcome in accordance with Built Form Policy Requirements. This would include:
 - A condition of development approval to retain the existing on-site tree adjacent to Carbay 3, which has been assessed as a healthy and mature tree with ongoing viability.
 - The provision of a 1.5 metre planting strip to the southern lot boundary, which would move the car parking bays and the long-term bicycle rack, 1.5 metres closer to Berryman Street. The condition would include a requirement for this planting strip to provide trees for canopy cover as well as fast growing bushes to provide an increased landscape buffer to the southern adjoining property. The City's Engineering team have confirmed that vehicles would be able to manoeuvre to and from the carpark safely following this modification.
 - Additional tree planting to be provided surrounding the Restaurant/Cafe carpark and to achieve 60 percent (17.4 square metres) of canopy coverage to the carpark. A condition of approval has been included to retain the existing tree adjacent to the carpark, which provides 18.9 percent (5 square metres) of canopy to the carpark.

The above landscaping increase would meet Built Form Policy objectives by prioritising the retention of trees, maximising canopy cover, as well as reduce impacts of the carpark to the existing outdoor living area of No. 91 Federation Street and the existing single house component of the subject site. The additional landscaping adjacent to the carparking area would assist to soften the impact of the carpark by providing sense of open space between the subject site and adjoining outdoor living areas.

- **Acceptability of Reduced Planting Strip to the West:** The reduced planting strip of 0.5 metres to the west of Restaurant/Café parking bays would be acceptable as it would facilitate the retention of the existing on-site tree adjacent to Carbay 3, which would otherwise require removal if a larger setback were accommodated. The 0.5 metre planting strip would provide an acceptable landscape buffer to adjacent areas the western property, which include no major openings or active habitable spaces on the western property at No. 19 Berryman Street, as shown in **Figure 2** above. No additional landscaping would be required to reduce the impact of the carpark as it would not be visible from habitable rooms.
- **Maximising Canopy Cover:** The proposal retains the existing tree adjacent to Carpark 3, which would provide 18.9 percent (5 square metres) of canopy coverage to the Restaurant/Cafe carpark. As mentioned above, a condition of development approval would require a minimum of 60 percent canopy cover to be provided to the Restaurant/Café carpark. The inclusion of these trees would contribute to the City's green canopy, would increase shade for staff and customers and would create a sense of open space between the carpark, street and surrounding properties. The additional canopy cover to this location would the total site canopy cover to 9.1 percent (44.8 square metres) and would enhance the overall landscape outcome to the entire site. While 30 percent of the total site area has not been provided as canopy cover, the increase in canopy provides an enhanced outcome, having regard to the proposal being for a change of use application only.

Vehicle Access and Public Domain Interface

The proposed development would satisfy the [element objectives](#) of the Built Form Policy relating to vehicle access and public domain interface relevant to the Restaurant/Café, for the following reasons:

- **Favourable Vehicle Access & Carpark Location:** The location of the proposed Restaurant/Café car parking is preferable. This is because the proposed location would retain existing on-site and verge trees; would protect existing verge infrastructure; is separated from the Single House parking; and would provide safe vehicle access. As shown in **Figure 4**, there is verge infrastructure and on-site trees that would restrict vehicle access to be provided from other locations around the site, including the secondary street.



Figure 4 – Location of existing verge infrastructure and trees (Source: Nearmap)

- **Appropriate Visual Outcome:** The vehicle access point and carpark have been designed and located to reduce visual impact on the streetscape. The location would retain all existing on-site and verge trees, that assist in screening the bays when viewed from the east. Existing fence to the western boundary and Berryman Street boundary would further screen bays from the street, and western property. Administration has recommended conditions of approval, as mentioned in the Landscaping section of this report, that would provide additional landscaping opportunities to the perimeter of the carpark and to increase canopy cover over the Restaurant/Café carpark. The width of the vehicle access point has also been reduced to the permitted minimum of 4.0 metres, to maximise existing verge landscaping. The location of parking bays within the street setback area is consistent with the design and location of other residential parking locations within the immediate surrounding context and the overall landscape outcome would soften its appearance when viewed from the street.
- **Sufficient Vehicle Sightlines & Pedestrian Safety:** To ensure safe sightlines are provided for reversing vehicles, the existing fencing would need to be modified to be no higher than 0.75 metres within 1.5 metres of the Restaurant/Cafe driveway. A condition of approval is included to ensure that these modifications are made prior to the operation of the Restaurant/ Cafe. This would ensure that vehicles are able reverse safely out of the site and have a clear view to pedestrians using the footpath. The City's Engineering team have confirmed that vehicles would be able to manoeuvre to and from the carpark safely following this modification. The applicant has provided consent to this condition and consent from the western property landowner would not be required given the impacted fence is not a "dividing fence" in accordance with the City's Fencing Local Law given it is within the front setback area.
- **Separation from Verge Infrastructure:** The City's Engineering team have confirmed the crossover is appropriately separated from the existing verge tree and side entry pit to the east. A condition of approval is included for the crossover to be setback 0.5 metres from the existing western power pole.
- **Bin Store Screened from Street:** The bin store would not be visible from the street or adjoining properties due to existing solid 1.8-metre-high dividing fence. While located in the street setback area, the location is preferable given it is separated from the Single House and adjoining properties, while being screened from the street. A condition of approval is recommended requiring the ongoing screening of the bin store from the street and adjoining properties.

Environmentally Sustainable Design (ESD)

Clause 1.17 of the Built Form Policy relating to ESD sets out acceptable outcomes to be achieved for commercial development.

There are limitations to influence whole of life environmental impact of the entire development on the site through this application. This is because the proposal includes adaptive re-use of the existing building which limits the whole of life environmental impact of the development.

The existing built form and site planning measures would satisfy the [element objectives](#) of the Built Form Policy in respect to environmentally sustainable design:

- Retention of the existing building and structures onsite to minimise building waste, including the existing awning. The awning is north facing and would reduce solar gain in summer.
- Retention of the north facing windows to allow passive solar heating during winter.
- Retention of openable windows on the eastern elevation to allow airflow into the tenancy.
- The incorporation of self-closing doors to lower energy consumption for climate control equipment.

**CITY OF VINCENT
LOCAL PLANNING SCHEME NO. 2
SCHEME MAP 1 - LEEDERVILLE**

LEGEND

METROPOLITAN REGION SCHEME RESERVES

Note: The Western Australian Planning Commission (in care of the Department of Planning) should be consulted for full information on the actual land requirements for all Metropolitan Region Scheme Reserves.

- PARKS AND RECREATION**
- R Restricted Public Access
- PRIMARY REGIONAL ROADS RESERVATION**
- OTHER REGIONAL ROADS RESERVATION**
- RAILWAYS**
- PUBLIC PURPOSES**
Particular use denoted as follows:
- H Hospital
- HS High School
- TS Technical School
- CP Car Park
- U University
- CG Commonwealth Government
- SU Special Use
- WSD Water Authority of Western Australia
- P Prison

CITY OF VINCENT LOCAL SCHEME RESERVES

- PUBLIC OPEN SPACE**
- R Restricted
- PUBLIC PURPOSES**
Particular use denoted as follows:
- PS Primary School
- CP Car Park
- CU Civic Uses
- HS High School
- I Institute for the Deaf
- W Water Supply, Sewerage and Drainage
- TS Technical School

CITY OF VINCENT SCHEME ZONES

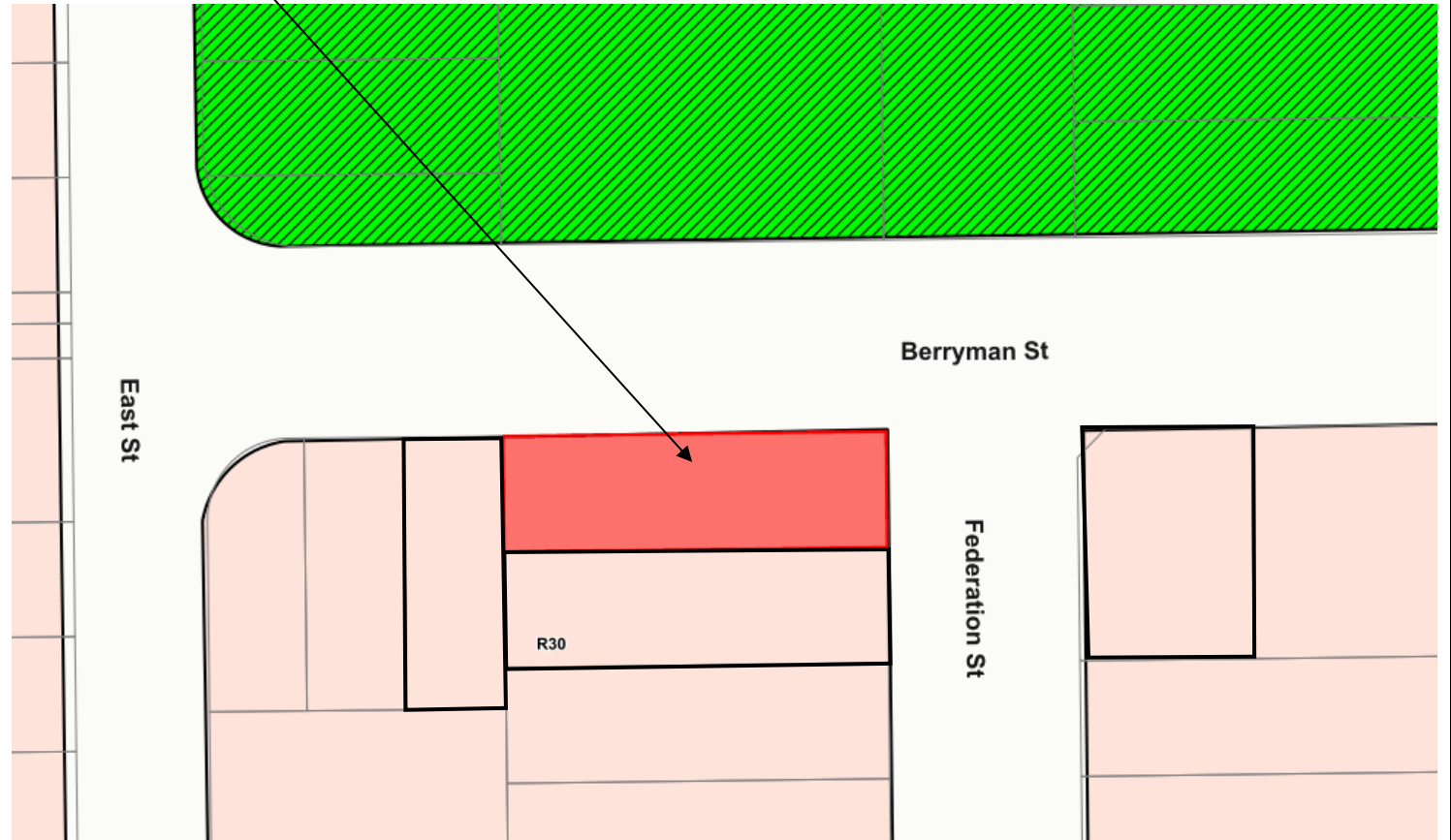
- RESIDENTIAL**
- MIXED USE**
- COMMERCIAL**
- LOCAL CENTRE**
- DISTRICT CENTRE**
- REGIONAL CENTRE**
- SPECIAL USE**
Particular use denoted as follows:
- CP Car Park
- CU Community Use
- FC Function Centre
- HC Hall and Non Residential Club
- H Hotel
- PW Place of Worship
- S Service Station

ADDITIONAL USE

ADDITIONAL INFORMATION & RESIDENTIAL PLANNING CODES

- CODE AREA BOUNDARY**
- SCHEME AREA BOUNDARY**
- DENSITY CODE**

SUBJECT SITE



CITY OF VINCENT

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Location Map

No.5 Berryman Street, Mount Hawthorn

Extent of Consultation





CITY OF VINCENT

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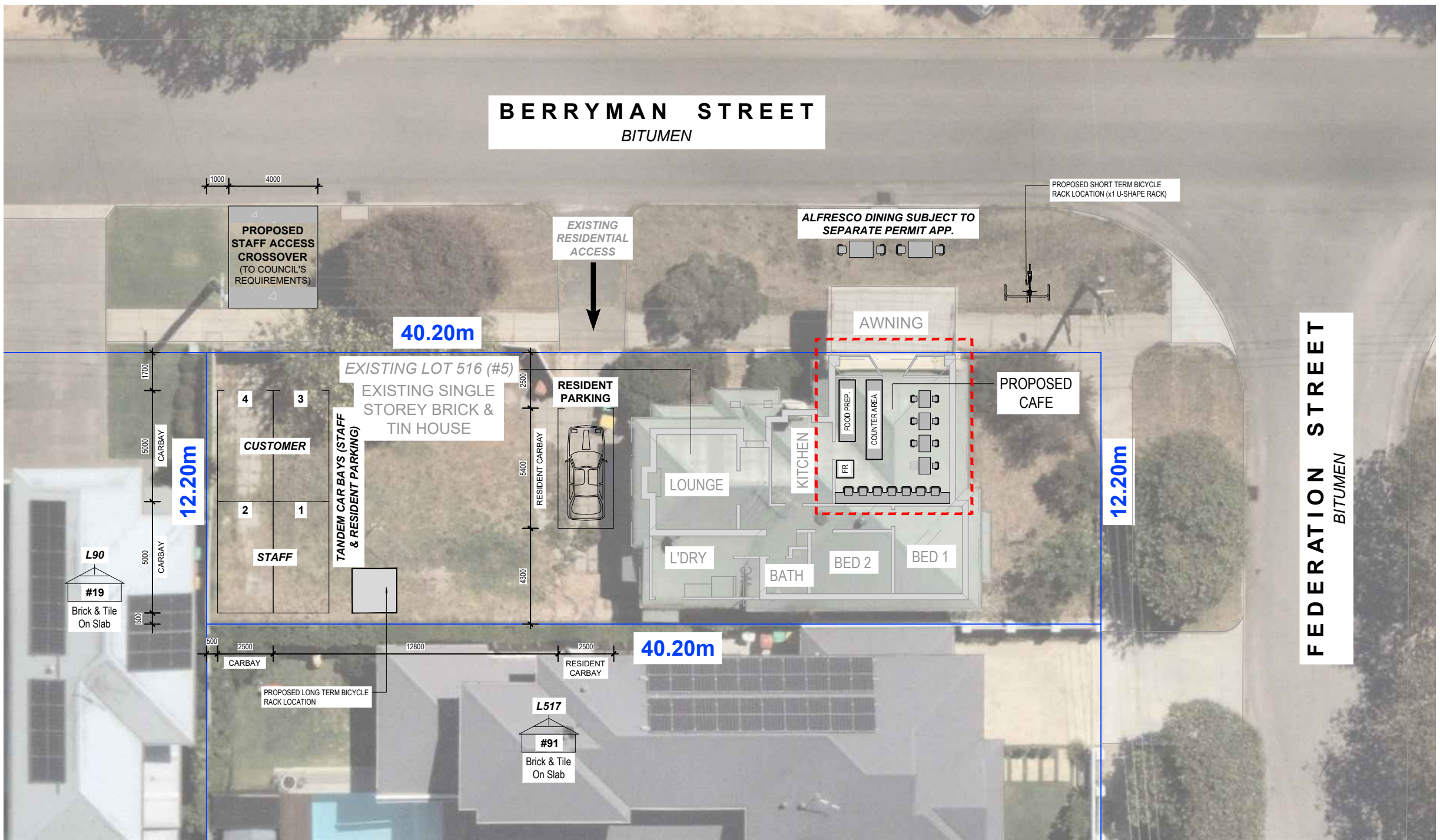
No. 5 Berryman Street, Mount Hawthorn



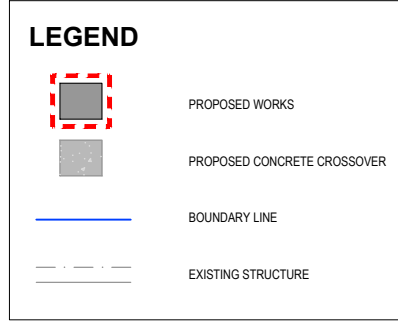
CITY OF VINCENT
RECEIVED
12 February 2024

BERRYMAN STREET
BITUMEN

FEDERATION STREET
BITUMEN



- STANDARD NOTES**
1. ALL DIMENSIONS & LEVELS TO BE VERIFIED ON SITE PRIOR TO COMMENCING CONSTRUCTION.
 2. FIGURED DIMENSIONS SHALL TAKE PREFERENCE TO SCALE.
 3. CONTRACTOR TO SITE CHECK ALL SHOP DRAWINGS AGAINST EXISTING STRUCTURES BEFORE COMMENCEMENT OF FABRICATION. ANY DISCREPANCIES TO BE REPORTED TO INHOUSE BUILDING DESIGN AS REFERRED TO IN NOTE 5.
 4. ALL WORK TO CONFORM WITH THE BUILDING CODE OF AUSTRALIA (INC. W.A. APPENDIX), RELEVANT S.A.A. CODES & STANDARDS & LOCAL AUTHORITY REGULATIONS.
 5. BUILDER/CONTRACTOR TO CONSULT INHOUSE BUILDING DESIGN WITH REGARD TO ANY DISCREPANCIES OR PROBLEMS OF INTERPRETATION IN THE FOLLOWING DRAWING.
 6. REFER TO ENGINEERS DRAWINGS FOR STRUCTURAL DETAILS AND LAYOUT



IMPORTANT NOTE

TO THE BEST OF OUR KNOWLEDGE THESE PLANS ARE DRAWN TO COMPLY WITH OWNER'S AND/ OR BUILDER'S SPECIFICATIONS AND ANY AMENDMENTS MADE ON THEM AFTER PRINTS ARE MADE WILL BE DONE AT THE OWNER'S AND / OR BUILDER'S EXPENSE AND RESPONSIBILITY. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND ENCLOSED DRAWING. **ON POINT DRAFTING & DESIGN** IS NOT LIABLE FOR ERRORS ONCE CONSTRUCTION HAS BEGUN. WHILE EVERY EFFORT HAS BEEN MADE IN THE PREPARATION OF THIS PLAN TO AVOID MISTAKES, THE MAKER CAN NOT GUARANTEE AGAINST HUMAN ERROR. THE CONTRACTOR OF THE JOB MUST CHECK ALL DIMENSIONS AND OTHER DETAILS PRIOR TO CONSTRUCTION AND BE SOLELY RESPONSIBLE THEREAFTER.

DIAL BEFORE YOU DIG
INFORMATION TO BE CONFIRMED
BEFORE COMMENCING
CONSTRUCTION.

SITE PLAN
1:200

B	UPDATED PLANNING APPLICATION	DM	05.02.24
A	PLANNING APPLICATION	DM	06.12.23
REV	REVISION DETAILS	BY	DATE

CLIENT DETAILS
P & S SEAL

PROJECT DETAILS
**5 (L516) BERRYMAN STREET
MOUNT HAWTHORN**

DRAWING TITLE
01 SITE PLAN

DRAWN DM		SHEET 1 OF 1
DATE DRAWN 06.12.23		DRAWING SCALE 1:200
PROJECT NUMBER OPDD345	DRAWING NUMBER 01	SHEET SIZE A3
		REVISION B



ON POINT Drafting & Design
Email: dragan@onpoint-drafting.com.au
Tel. 0438 761 306

16 August 2023

Planning Services
City of Vincent
244 Vincent Street
LEEDERVILLE WA 6007

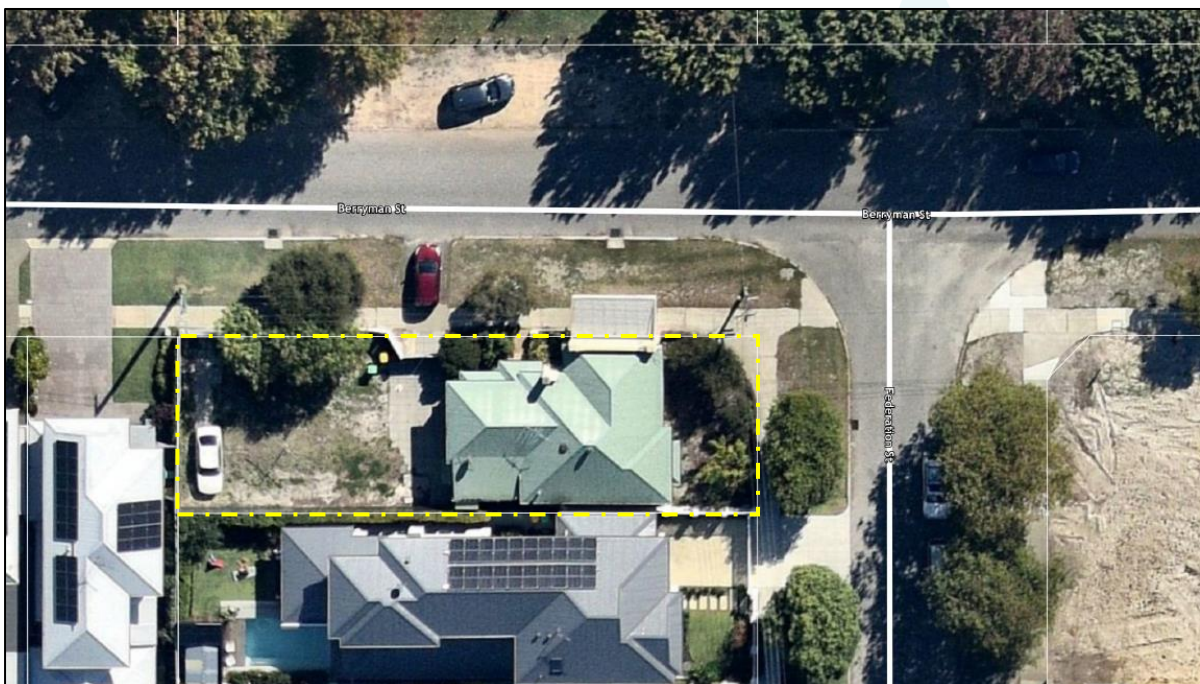
Dear Sir/Madam,

NO. 5 (LOT 516) BERRYMAN STREET, MOUNT HAWTHORN PROPOSED CHANGE OF USE TO CAFE

Urbanista Town Planning have been engaged to prepare and submit a development application for change of use to a cafe. Included in this submission are the following documents:

- Application for Development Approval Form and MRS Form 1
- Certificate of title
- Development plans

The existing development on site is a shop and dwelling which were approved in 1939, and since construction has had minimal modifications. With a view of revitalising the site this proposal is to change the use of the existing shop into a café, which is considered a more appropriate and viable land use for the site context which has evolved over the past 80 years.



Aerial image of the subject site (April 2023)

PROPOSAL

This proposal is for a change of use from the existing shop adjoining Berryman Street into a café land use. The internal floor space of the existing shop is 6.55m x 5.18m (33.93m²), considered suitable to accommodate a small-scale café which would primarily serve local residents and users of Menzies Park opposite the site.

Some minor works are likely to be involved associated with the change of use, however specific details have not been established at this stage. Works are expected to primarily be internal and would therefore exempt from development approval (Deemed Provisions cl. 61 (1) Table item 5). Accordingly, this proposal is only for the purposes of the change of use and excludes any works component.

The café is proposed to operate during the day and when Menzies Park is being utilised for sports or other activities in the evening. Due to the small nature of the business, hours of operation will vary day to day depending on demand and activity at Menzies Park. Operation is not generally anticipated to occur outside of 7.00am to 7.00pm on any given day, however if there are activities at Menzies Park during the evening the café may remain open beyond 7.00pm should there be demand. No more than two staff will be on site at any one time to operate the business.

The café will offer a range of hot and cold beverages (coffee, tea, juice, etc.) and food options which will include both ready made packaged goods and food prepared on site (sandwiches, toasties, baked goods, etc.). Food and drinks will be available for consumption on site or as take-away to enable consumption in conjunction with activities opposite the site at Menzies Park.

PLANNING FRAMEWORK

The site is located within a Residential Zone (R30) under the City of Vincent Local Planning Scheme No. 2 (LPS 2). Opposite the site is a Public Open Space Reserve (Menzies Park), whilst all other nearby sites are part of the Residential Zone. The land use of Restaurant / Café is an 'A' use within the Residential Zone, which can be contemplated subject to advertising.



LPS 2 map extract

The City has a wide range of local planning policies, however the only policy considered to hold relevance in consideration of this proposal is the City's Local Planning Policy 7.7.1 – Non-residential Parking (LPP 7.7.1).

ASSESSMENT

Land use permissibility

When considering appropriateness of a particular land use, in addition to considering site specific factors and context, the objectives of the zone need to be considered. The Residential Zone objectives are provided below alongside commentary on whether the proposal aligns with each objective.

- *To provide for a range of housing and a choice of residential densities to meet the needs of the community.*

The existing dwelling on site will continue to function as a unique housing option (including the attached café).

- *To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.*

Retention and reuse of the original 1939 building preserves the existing character of the streetscape and revitalises a unique site which is a minor landmark in the locality.

- *To provide for a range of non-residential uses, which are compatible with and complementary to residential development.*

A café is considered to be an ideal land use for a site which fronts onto a public open space. The small scale of the business and its sitting within the site ensures that there will be minimal risk of disturbance to adjacent residential properties.

- *To promote and encourage design that incorporates sustainability principles, including but not limited to solar passive design, energy efficiency, water conservation, waste management and recycling.*

Reuse of the existing building (as opposed to demolition and redevelopment) is a sustainable development approach which also minimises disturbance to adjacent sites.

- *To enhance the amenity and character of the residential neighbourhood by encouraging the retention of existing housing stock and ensuring new development is compatible within these established areas.*

The existing built form is to be retained, ensuring the existing character and amenity of the streetscape is preserved. Minor restorative works are likely to be undertaken prior to operation of the café, which will further enhance streetscape amenity without impacting on character.

- *To manage residential development in a way that recognises the needs of innovative design and contemporary lifestyles.*

The change of use from shop to café recognises the changes in contemporary lifestyles and people's preferences which have evolved since when the building was constructed in 1939. Small corner shops are becoming increasingly unviable in competition with the large supermarkets of today, whilst small cafes with unique character and offerings are popular.

- *To ensure the provision of a wide range of different types of residential accommodation, including affordable, social and special needs, to meet the diverse needs of the community.*

The residential dwellings / small café combination provides a unique offering substantially different from any other dwelling in the locality. This increases the range / type of residential accommodation available to meet the diverse needs of the community.

The proposal aligns with all objectives of the residential zone, meeting both the residential and commercial objectives.

It is anticipated that residents living adjacent to the site may have concerns in respect of a café operation impacting on their existing amenity. The location and orientation of the café is ideal to minimise potential impacts from the café to adjacent properties. The café includes windows and the entrance door oriented towards Menzies Park and two small highlight windows on the eastern wall.



Google Streetview (April 2021)

The entrance and window locations ensure that impacts from people accessing the premises will be outside of the line of sight from adjacent residential properties and therefore highly unlikely to create any undue privacy or acoustic impacts. Considerable separation is achieved from all nearby properties with the design of the attached dwelling wrapping around the café and providing a buffer to the south and west adjacent properties, and Federation Street providing a buffer to the east.

A development application was recently approved for a two-storey dwelling at 90 Federation Street (opposite the site); however we do not have a copy of the site plan. It has been assumed that the dwelling will be oriented towards Menzies Park, away from the subject site.

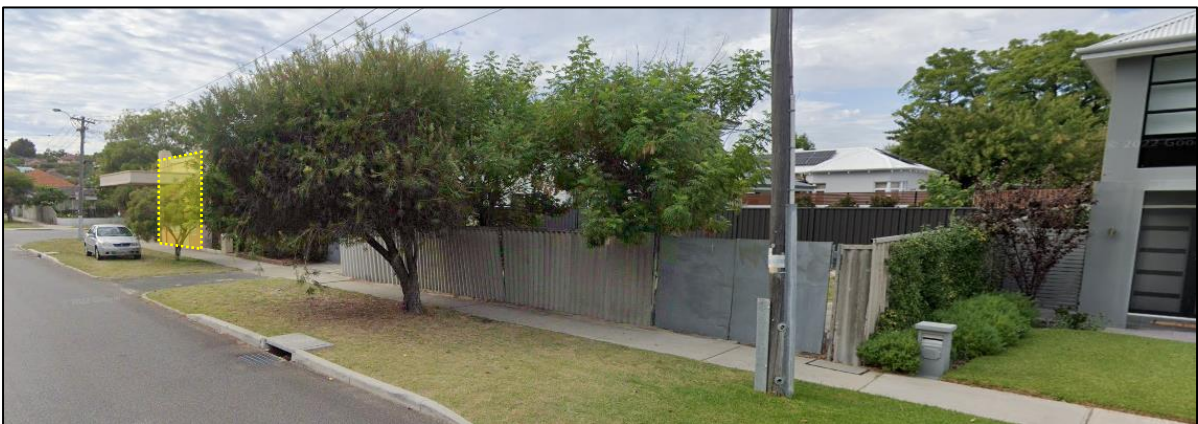


Line of sight (blue) / Potential for impacts (red)

The façade of the café is effectively the only part of the operation which will present any activity or potential impacts, and as this is both oriented away from and achieving considerable physical separation from all nearby residential lots, the risk of impact is minimal. The service provided to the local community is considered to greatly outweigh any potential impacts.



View of café facade from the east



View of café facade from the west

The café will be small scale and primarily service the local community and with additional passing trade from users of Menzies Park, complementing the existing public facilities. Menzies Park is a large reserve regularly used for team sports and also features a playground and pavilion which is available for hire between 7.00am and 10.00pm weekdays, and 7.00am to 12.00am weekends.

To enable flexibility for the small business, it is requested that if the City intends to impose opening hour constraints, that evening activities at Menzies Park are considered and accounted for. Impacts from operation of the café fronting onto the reserve is likely to be negligible in comparison to impacts from activity on the open reserve which fronts directly onto residential dwellings during these times.

Car parking

The existing approval did not include any formal car parking bays, and therefore the parking requirements of the existing dwelling and shop are part of an existing approved shortfall. As a result, all that needs to be calculated is the difference in parking requirement between the existing shop and the proposed café.

Table 1 of LPP 7.7.1 indicates minimum and maximum parking requirements based on the built form area which the site is located in under the City's Built Form Local Planning Policy 7.1.1, residential in this instance.

Land Use	Car Parking Minimum					Car parking Maximum	Bicycle Parking Minimum		Unit of Measure (Spaces per)
	Built Form Area	Town Centre	Transit Corridor	Activity Corridor	Mixed Use		Residential	Short Term	
Restaurant / café	0.15	0.25	0.22	0.2	0.25	0.25	0.019	0.042	Person
Shop	3.5	5	4.5	4	5	5	1.6	0.9	100sqm NLA

LPP 7.7.1 Table 1 extract

Within the residential built form area a shop requires 5 car bays per 100m² NLA. As the existing shop is 33.93m² the parking requirement would be 1.7 car bays. The parking requirement for café relates to persons. As the internal layout of the café is not established the number of seats being offered is currently unknown. Notwithstanding, the existing shortfall of 1.7 car bays would equate to 6.8 persons.

Given the limited area of the café, it is considered unlikely that more than seven customers could reasonably be accommodated within the premises at any one time once it has been fitted out. We would be comfortable with a condition of approval that the premises shall not accommodate more than seven customers at any one time.

The nature of the operation, which is likely to see the majority of its customers being local residents or users of Menzies Park is unlikely to generate any additional parking demand in the area. Local residents will be within walking distance of the café, whilst users of Menzies Park are already accommodated by substantial parking availability around the reserve and on street.

CONCLUSION

The proposal will revitalise a historic site which has provided a unique contribution to the streetscape character for the past 80 years. The café land use is ideally situated to offer maximum benefit to users of the adjacent reserve, whilst also avoiding land use conflict with nearby residential dwellings.

The site already has an existing approved shop, and therefore this is not the introduction of a commercial element into a residential area, but rather the establishment of a more appropriate business which will provide a service that will be more in line with modern day expectations.

Should you have any question in relation to the details provided in this submission, please contact Steven DePiazzi on [REDACTED]

Yours sincerely,



Steven DePiazzi | **Senior Urban Planner**
Urbanista Town Planning
[REDACTED]

From: Daniella Mrdja [REDACTED]
Sent: Tuesday, 19 December 2023 7:51 AM
To: Eleanor Barr
Cc: Michael Stocco
Subject: RE: Request For Information - 5 Berryman Street, Mount Hawthorn

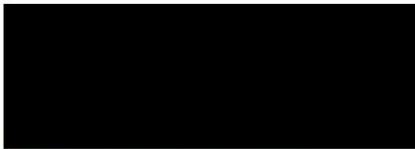
EXTERNAL email.

Hi Eleanor,

Please see our responses in red below.

Thank you.
Daniella

DANIELLA MRDJA
Director



urbanista
TOWN PLANNING

This e-mail contains privileged and confidential information. The information in this e-mail is intended only for the use of the addressee and those authorised to view this e-mail and its contents by the addressee or this firm. If you are not an authorised recipient, please send this firm a return e-mail and delete the e-mail and its contents. Copying any of this e-mail or dissemination of any information in this e-mail without authorisation is an illegal use of confidential information.

From: Eleanor Barr [REDACTED]
Sent: Thursday, December 14, 2023 4:58 PM
To: Michael Stocco [REDACTED]
Cc: Steven DePiazzi [REDACTED]
Subject: RE: Request For Information - 5 Berryman Street, Mount Hawthorn

Hi Michael,

Thank you for sending through that additional information.

I am in the process of finalising the first draft of the report, I have a few additional queries that need to be addressed before I can progress the report.

1. Please provide further detail on the functionality of the café parking bays.
 - a. Are the bays intended to be exclusively for staff? **Yes**
 - b. Given the tandem arrangement, how will the bays be used and managed? i.e would the bay to the south of the site be used by staff working the longest shift **Yes this is correct. Due to the limited availability of parking and space in the City of Vincent, it is not uncommon that staff parking is in a tandem arrangement. Further due to small nature of the café it is expected that the café will mostly be occupied by one staff member and second for smaller shifts during busier periods.**

This information is required to inform whether the position of the non-residential parking bays immediately adjacent to the outdoor living area of 91 Federation Street is acceptable, and to understand the potential amenity impacts within the residential zone.

2. Staff shift patterns

- a. Please confirm the expected shift patterns of staff. (i.e expected working hours and amount of shift changes)

As explained above, it is expected that the café will be occupied by 1 staff member for majority of its opening hours and a second staff member during busier periods. Therefore it is anticipated that staff vehicle movements would not exceed 6 movements per day.

Similar to the above point, this information would assist in informing if the non-residential parking bays in the residential zone will impact the existing amenity based on the frequency of vehicle movements.

3. Hours of operation

- a. To ensure the café is compatible with the surrounding residential area could you advise the proposed staff movements to the site? The City is concerned that whilst the proposed opening hours are from 7am and 7pm, there may be additional noise generated from staff arriving earlier to set up the café and leaving later to finish closing the café. Noise generated from the proposed use outside of the hours of 7am and 7pm would likely not be acceptable within the residential zone. The operating hours may need to be re-considered depending on staff movements.

The entire floor space of the café is less than 30sqm. Once an area is used for a counter, preparation area and fridges, there is only a very small space left for 2-3 tables. Given this, it is reasonable to assume that the set-up and pack-down of the café would not take more than 10-15 minutes and would not result in excessive noise levels.

4. Updates to site plan

- a. Please adjust the proposed crossover to include a 0.5m setback to the power pole and that adequate sightlines are provided.

Can this please be included as a condition of approval as the designer is now leave?

These details will assist in determining the suitability of the proposal within the residential area. Please provide your responses to the above as soon as you can. Please note that I am working on my draft of the Council report and am aiming for it to be completed by COB 22 December as we work towards the February Council Meeting.

Please be advised that the City's engineering team is reviewing the acceptability of the proposed bike bays within the verge. I'll advise you if any changes to the bike racks are required.

Kind regards,

Eleanor Barr Urban Planner

My pronouns are She, Her, Hers

City of Vincent     | [Subscribe to our newsletter](#)

Hi Nick

Without knowing for sure, I would be fairly confident that 'parking within residential streets' as referenced in the policy was referring to parking on the road pavement on a street with dwellings either side; essentially cars parking directly adjacent to or opposite private residential dwellings. Parking at Menzies Park is distinctly different from this situation and far less impactful, all parking would be within the verge (off the street pavement) and in a location which is not directly adjacent or opposite any residential dwellings.

The development also does not rely on entirely on this parking, staff parking, which is the only parking demand we can be certain will be generated, is fully accommodated on site. As I have previously mentioned, it is considered unlikely that there would be any notable additional visitor parking demand generated by the café when most visitors are anticipated to be either local residents (who would walk and not require parking), or existing users of Menzies Park who would be parking at Menzies Park irrespective of the café. Yes, we cannot be certain of this (no business existing or proposed can be certain about its future customers), however I think there needs to be a certain level of reasonableness when determining whether any potential future impact is both so probable and unacceptably significant as to warrant refusal of a development.

The position that in this context, a couple of visitor bays could create such an unacceptable disturbance to warrant refusal, to me is such an exceedingly precautious approach that it falls beyond the realm of reasonableness. Considering the proposal on its merits and looking at the site-specific circumstances, I think the vast majority would arrive at the conclusion that the likelihood of an undue impact is very unlikely. Some points worth noting in this respect:

- The existing streetscape provides context for the levels of ambient noise levels which are to be expected and deemed acceptable for residents in the area. This includes:
 - Users of Menzies Park, which is a large active recreation reserve, regularly utilised for sporting events. The park directly fronts surrounding residential dwellings, includes no noise mitigating features, and actively promotes activities which would include day long events with ongoing noise emissions for the entire duration. There would be direct line of sight between users of the park and dwellings surrounding the park.
 - Parking around Menzies Park, vehicle door closes, engine starts, packing and unpacking equipment and children. The Berryman Street verge of Menzies park is clearly designed to accommodate parking (consider the verge width, setback distance of vehicle barriers from the kerb, lack of any aboveground infrastructure or trees planted in this wide area, lack of any parking restrictions) and is regularly lawfully utilised for parking. There can be little doubt that visitors and residents of the surrounding dwellings in addition to the users of Menzies Park would utilise this space on an as required basis. There are no noise mitigating features of this space which would reduce noise impacts to the dwellings opposite, Berryman Street verge of Menzies Park alone would be capable of accommodating roughly 60 parked vehicles.
 - Dwellings are unable to include any notable noise mitigating measures (other than closing windows) against these impacts as they are required to present to Menzies Park with habitable spaces and major openings.
- In contrast, the two visitor bays, which are also located within the Berryman Streetscape (not behind the façade of the adjacent dwelling), are screened behind a dividing fence which eliminates direct line of sight and mitigates noise emissions. It's also worth noting that the verge of Menzies Park is half the distance from the café entrance compared with the visitor parking bays being provided, so as a matter of convenience it's likely that the visitor bays will see limited use.
- The adjacent dwelling does not appear to include any sensitive areas on western side which could be affected by the visitor bays. Its entire western elevation (to the extent which it adjoins the subject site) is a large featureless wall with no windows at ground level and two highlight windows on the upper level (which appear to represent bathroom/toilet windows).



We remain of the opinion that both parking and noise concerns are without merit, and there will be no undue impacts from this 34m² change of use from Shop to Café. We will leave the visitor parking as currently proposed to eliminate parking as a potential reason for refusal, however do not consider that it is necessary or appropriate to engage an acoustic consultant to undertake a review of the noise emissions associated with the use of these bays. If you could proceed with the item to Council for determination.

Regards

**Upper floor no major openings
(unclear if highlight windows are
even operable)**

**Balcony screen wall,
prevents direct noise
impact**

**Non openable window,
presumed void beyond
(non-habitable)**

**Ground floor no windows
adjacent subject site**

**Entry corridor
(non-habitable)**



12 February 2024

Nick Bertone
nick.bertone@vincent.wa.gov.au
Development Services
City of Vincent

Dear Nick,

NO. 5 (LOT 516) BERRYMAN STREET, MOUNT HAWTHORN

OPERATION MANAGEMENT PLAN – PROPOSED CAFÉ

Urbanista Town Planning has prepared an Operation Management Plan (OMP) in response to the City of Vincent's request for further information letter 25 January and 12 February 2024. The OMP addresses the following key matters:

1. Nature of the Café
2. Operating Hours
3. Staff
4. Consumption of Food
5. Noise Impacts
6. Parking Arrangements
7. Waste Management
8. Café Plan



Nature of the Café

The proposed café will replace a small existing shop on site which has been part of the local streetscape since 1940. The premises is small scale, with only 34m² floor area and attached to an existing dwelling. The business will serve local residents and users of Menzies Park which the premises fronts onto. The café will contribute to the character and amenity of the locality, creating a quiet, informal place for interaction between local residents and guests. The premises will also revitalise the existing commercial function of the site and restoring the historic and iconic part of the local streetscape.

The Café will sell both premade food in addition to limited food prepared on site. Premade food will be delivered to the premise on an as required basis. Pre-made food will be stored in fridges and display units available for customers to purchase. There will also be undershelf storage/fridges for overflow food stock.

Food preparation occurring on site will involve only basic kitchen facilities. The Café's food preparation area satisfies the requirements of a low-risk food premise and will be subject to inspection by the City's Environmental Health team once approved. Consumables are intended to be primarily eaten within the Café and associated alfresco areas. Prepared food will be *a la carte* style and customers will be encouraged to consume on premise.

A plan of the anticipated café layout has been prepared which includes a dining area, a food preparation area, a hand wash basin, microwave, oven, small stove, and a coffee machine. The plan illustrates a dining area suitable to accommodate 14 patrons, and alfresco dining is also shown, however this is indicative only. Any future alfresco dining would need to comply with the City's requirements and obtain any necessary approvals prior to operation.

Operating Hours

Similar to many other small-scale café's within the City, the hours of operation will be limited and flexible. It is currently estimated that the demand will be greatest between 7.00am and 4.00pm daily. Accordingly these are the hours sought and for approval.

These hours will represent the maximum hours of operation, however based on the actual demand following operation of the café, it is likely that the open hours will be less, aligning with the demand. Should greater hours be sought due to greater than expected demand, or to align with events at Menzies Park opposite the site, this would require further approval from the City.

Staff

There will be no more than two staff operating the café at any one time. Staff are required to park in the designated staff car bays and may not to undertake any work outside of the premises (cleaning, servicing, etc.) prior to 7.00am.

Consumption of Food

It is intended that customers will utilise the seating provided within the café and consume their food on site. Orders for food prepared on site will require a table number and will be served to customers on non-disposable tableware to ensure that customers remain on site whilst consuming their food.

As pre-packaged food orders arrive in disposable packaging, it is not possible to control where this food is consumed as it is in a form which can easily be taken off site. All customers will be encouraged to consume food within the café, and this will be reinforced by the absence of any take-away window or method of ordering and collecting food without entering the premises.

Coffee ordered with food prepared on site will be provided in a non-disposable cup to ensure consumption on site. For coffee orders that do not include food prepared on site, customers will be given the option of having their coffee served as part of the dine in service or in a disposable cup.

Noise Impacts

Operation of the café will not involve any equipment which would generate noise levels beyond standard residential appliances. Only low-level background music would be played within the café, there would be no amplified music or speakers placed outside of the premises.

As customers to the café will primarily utilise the dine in service, noise impacts are contained within the premises. There is no reason for customers to gather outside of the premises given that ordering and collecting food all occurs within the premises.

As the café will not be open outside of daytime hours, there will be no impacts at the more hours outlined in the *Environmental Protection Act 1986 and the Environmental Protection (Noise) Regulations 1997*. As there will be typically only one staff member (maximum of two), their arriving on site prior to 7.00am to open the café will be indifferent to that of a single resident arriving at their home at this time. There will be no engine startups associated with staff vehicle(s) during this early period.

Additional measures to be implemented to ensure that noise impacts are minimised to the maximum extent reasonably possible include:

- Installing self-closing entry doors to mitigate noise emissions from inside the café.
- Advising patrons to not congregate outside of the café prior to/after their meal, including installation of a sign outside the premises stating this if necessary.
- Ensuring all site servicing (deliveries / waste collection etc.) occurs during hours of operation.

Café Plan (Attachment 1)

The café site plan includes the following arrangements:

- Tables and chairs that can accommodate up to 14 patrons.
- Commercial refrigerator x1.
- Food Preparation area with scope for storage underneath benchtops.
- Counter/pay station.
- Indicative potential future alfresco dining location.

18 March 2024

SLR Ref No.: 675.072517.00001-L01-V2.0-20240318.docx

Attention: Daniella Mrdja
Urbanista Town Planning
231 Bulwer Street
Perth WA 6000

CITY OF VINCENT
RECEIVED
19 March 2024

SLR Project No.: 675.072517.00001

**RE: 5 Berryman Street Cafe
Acoustic Letter of Advice**

1.0 Introduction

We have been instructed to comment on potential noise impacts from the Café proposed at 5 Berryman Street, Mount Hawthorn. The noise associated with the café operation include car movements, mechanical plant and entertainment noise.

The following sections present our commentary as requested.

2.0 Site Location

The project site is located in medium-density residential area in City of Vincent. The proposed Café will be located within an existing residential premise at 5 Berryman Street, Mount Hawthorn. Proposed operation hours are 7am – 4pm 7 days a week. There is an existing 1.8 metre high solid fence along the site boundary.

Figure 1 presents location of the proposed café in context of surrounding.

Figure 1 Site locality.

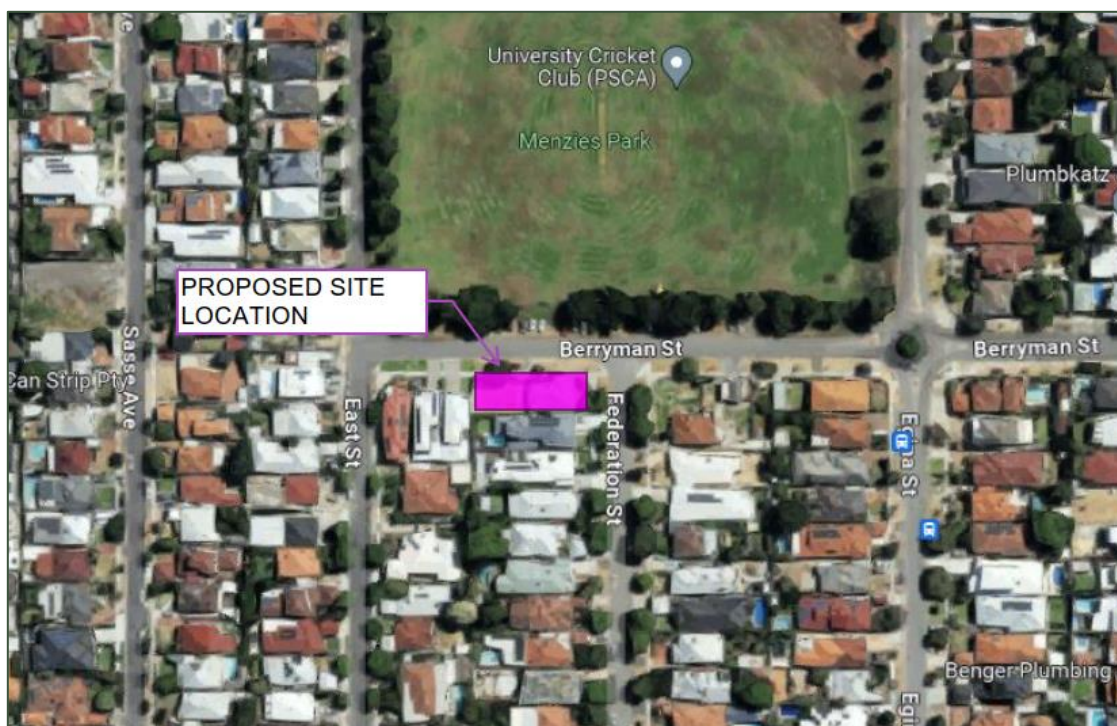
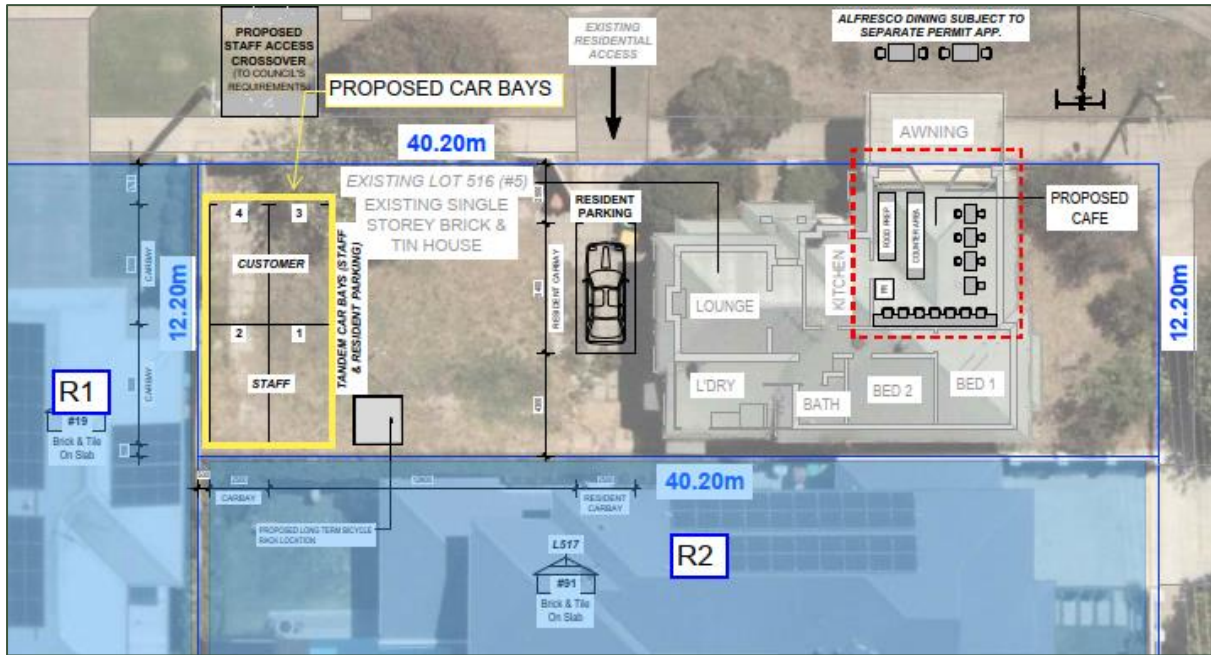


Figure 2 presents the proposed site arrangement.

Figure 2 Site arrangement and sensitive receivers.



3.0 Criteria

Project noise emissions are addressed by state noise policy in the form of the *Western Australia Environmental Protection (Noise) Regulations 1997* (EPNR). To achieve compliance with this policy, noise levels at nearby residential areas are not to exceed defined limits referred to as Assigned Noise Levels. These limits are determined from consideration of prevailing background noise levels and ‘influencing factors’ that considers the level of commercial and industrial zoning in the locality.

The influencing factor considers zoning and road traffic around the nearest sensitive receiver of interest, within a 100 m and 450 m radius. A summary of the applicable noise limits is provided in **Table A**. The specific assigned levels for each receiver are included in the **Section 4** of this report.

Table A Assigned noise levels summary.

Part of premises receiving noise	Time of day	Assigned level, dB		
		L _{A10}	L _{A1}	L _{Amax}
Noise Sensitive premises at locations within 15 metres of a building directly associated with a noise sensitive use	0700 to 1900 hours Monday to Saturday (<i>‘Day’</i>)	45 + IF	55 + IF	65 + IF
	0900 to 1900 hours Sunday and public holidays (<i>‘Sundays’</i>)	40 + IF	50 + IF	65 + IF
	1900 to 2200 hours all days (<i>‘Evening’</i>)	40 + IF	50 + IF	55 + IF
	2200 hours on any day to 0700 Monday to Saturday and 0900 hours Sunday and public holidays (<i>‘Night’</i>)	35 + IF	45 + IF	55 + IF



Part of premises receiving noise	Time of day	Assigned level, dB		
		LA10	LA1	LAmx
Noise Sensitive premises at locations further than 15 metres from a building directly associated with a noise sensitive use.	All hours	60	75	80
Commercial premises	All hours	60	75	80
Industrial and utility premises	All hours	65	80	90

If noise emitted from any premises when received at any other premises cannot reasonably be free of intrusive characteristics of tonality, modulation and impulsiveness, then a series of adjustments must be added to the emitted levels (measured or calculated) and the adjusted level must comply with the assigned level.

The adjustments are detailed in **Table B** and are further defined in Regulation 9(1) of the Environmental Protection (Noise) Regulations 1997.

Table B Table of adjustments

Noise characteristic	Definition	Adjustment if present (Note ¹)
Tones	Where the difference between the A weighted sound pressure level in any one third octave band and the arithmetic average of the A weighted sound pressure levels in the two adjacent one third octave bands is greater than 3 dB in terms of LAeq,T where the time period T is greater than 10% of the representative assessment period, or greater than 8 dB at any time when the sound pressure levels are determined as LASlow levels.	+5 dB
Modulation	A variation in the emission of noise that – Is more than 3 dB LAFast or is more than 3 dB LAFast in any one third octave band; Is present for at least 10% of the representative assessment period; and, Is regular, cyclic and audible.	+5 dB
Impulsiveness	Present where the difference between the LApeak and LAmx is more than 15 dB when determined for single representative event.	+10 dB

Note 1 where noise emission is not music, these adjustments are cumulative to a maximum of 15 dB.

4.0 Noise Sensitive Receivers

There are two existing residences identified as noise sensitive receivers within the project area, located along the western and southern site boundary as indicated on **Figure 2**.

Influencing factors have been determined based on the proportion of industrial and residential zoned land within 100m and 450m of the receptor, and the proximity of major and secondary roads within those distances, in accordance with the Schedule 3 of the regulations.

Main Roads Traffic Map traffic counts for nearby roads are:

- Mitchell Fwy 68,555 vehicles per day (2018/2019) Major Road



No commercial or industrial activity has been identified with the project area.

Therefore, both noise receptors (R1 and R2) that are within 450 metres of a major road are considered to have an influencing factor (IF) of 2.

A summary of design assigned noise levels is provided in the following table.

Table C Assigned noise levels for all receptors

Locality	Time of day	Assigned Level L _{A10} , dB(A)	Assigned Level L _{A1} , dB(A)	Assigned Level L _{Amax} , dB(A)
R1-R2 Residential dwellings	0700 to 1900 hours Monday to Saturday (<i>'Day'</i>)	47	57	67
	0900 to 1900 hours Sunday and public holidays (<i>'Sundays'</i>)	42	52	67
	1900 to 2200 hours all days (<i>'Evening'</i>)	42	52	57
	2200 to 0700 Monday to Saturday and 2200 to 0900 hours Sunday and public holidays (<i>'Night'</i>)	37	47	57

5.0 Noise Sources

5.1 Car Noise

There are four (4) car bays proposed to be associated with the café operation: two bays for staff and two for customers, highlighted in yellow on **Figure 2**. It is anticipated that most customers will use a street parking or visit café by foot or bike.

5.2 Mechanical Plant

The premise uses existing residential grade mechanical plant. There is no new mechanical plant proposed to be associated with the café operation. Therefore, no significant noise impact is predicted.

5.3 Crowd and Music Noise

The café is proposed to provide a dining area suitable to accommodate up to 14 patrons.

Low-level background music is proposed to be played within the café, with no amplified music proposed outside of the premises.

Due to the low number of patrons and given only low-level background music is proposed within the café, it is predicted that the crowd and music noise emissions to surroundings would be minimal.



6.0 Assessment Commentary

6.1 Typical Environment in the Project Area

1. Typical vehicular activity in the area is expected from the residential activity and the players and visitors of the University Cricket Club sport oval located at Berryman Street, directly opposite the proposed café.
2. It is anticipated that majority of the car noise associated with the café operation will be occurring during operational hours, 7am to 4pm. Most cars will be parked on the street, with most customers visiting the café by foot or bike.
3. One or two staff members will be arriving before operation times. This should not occur earlier than 6.30am.
4. Generally, the low level of vehicular activity around the site would be comparable to typical activity in a medium-density residential area near a park without such development.

6.2 Noise Impact

1. The potential risk for noise impact is identified for the café operation on Sunday from 7am, as this period falls into the night-time under the *Environmental Protection (Noise) Regulations 1997*.
2. It is anticipated that due to location of the proposed café within residential neighbourhood and opposite a large park with existing parking areas, most of the customers, including Sunday morning customers, would be locals visiting café by foot.
3. One or two staff arriving in the morning would be considered typical activity in medium-density residential area.
4. Accordingly,
 - the noise impact from the four car bays associated with the café to surroundings is considered minimal and by inspection is in line with local through traffic, therefore the on-site customer parking would likely comply with the noise regulations.
 - there is no significant noise impact predicted to be associated with the mechanical plant, i.e. via selection and suitable location it would enable compliance with the noise regulations.
 - due to the low number of patrons and only low-level background music proposed within the café, it is predicted that the entertainment noise impact to surroundings is considered minimal and would likely comply with the noise regulations.

6.3 Management Measures

1. In order to minimise the potential for noise impact, staff should be trained to be considerate of sensitive areas nearby.
2. Existing fence at the site boundary should be maintained in order to provide a solid screening from the site to noise sensitive receivers.
3. All deliveries and collections should be scheduled during day times only to minimise a noise impact to surroundings.



4. Events which are particular loud, such as glass waste disposal or compacting, should only occur during the day period in an enclosed area.
5. Any additional mechanical plant associated with the café that may be proposed should be assessed by suitably qualified acoustic consultant to ensure compliance with the *Environmental Protection (Noise) Regulations 1997*.

7.0 Closure

We undertook the review and desktop analysis of the potential noise impact from the proposed café at 5 Berryman Street to surroundings, and it is stated that the car noise, mechanical noise, entertainment and patrons noise associated with the café operation would likely comply with the *Environmental Protection (Noise) Regulations 1997* and would be low risk in terms of a noise impact.

I trust this is satisfactory. Should you have any further queries, I can be contacted using the details provided.

Regards,

SLR Consulting Australia



Natalia Bigaj

Associate Consultant – Acoustics & Vibration
nbigaj@slrconsulting.com



Council Meeting 15.3.1976

Moved by Cr. Parnham, seconded by Cr. Cheek:
ZONING BY-LAW NO. 64 - AMENDMENT - LOT 516 (NO. 5) BERRYMAN
STREET, SOUTH-WESTERN CORNER OF FEDERATION STREET: (B/Berryman
A7/64, & CP5.17) Re decision of the Council at its meeting
 held on 17th November, 1975, to initiate the necessary procedures
 to rezone the abovementioned lots from Zone 6 (Shops) to Zone 1
 (Single Tenement Dwellings) and report of Town Clerk that the
 Town Planning Board has advised that it has no objection to the
 proposed rezoning, THAT the following amendment
 to Zoning By-law No. 64 be adopted, signed by the Lord Mayor
 and Town Clerk, sealed with the Common Seal of the Council
 and submitted for the consideration of the Hon. Minister for
 Local Government:-

THE LOCAL GOVERNMENT ACT 1960/75

THE MUNICIPALITY OF THE CITY OF PERTH

BY-LAW NO. 64 - TOWN PLANNING CLASSIFICATION OR
ZONING BY-LAW FOR LAND AND/OR BUILDINGS IN THE
NORTH PERTH/MOUNT HAWTHORN/WEMBLEY/LEEDERVILLE
AREA BEING PART OF THE CITY OF PERTH MUNICIPAL
DISTRICT-AMENDMENT

IN PURSUANCE of the powers conferred upon it by the
 abovementioned Act and of all other powers enabling it the
 Council of the abovementioned Municipality HEREBY RECORDS
 having resolved on the 15th day of March, 1976 to make
 and submit for confirmation by the Governor the following
 amendment to By-law No. 64:-

THAT all that piece of land being -

Portion of Swan Location 782 and being Lot 516
 on Plan 2177 and being the whole of the land
 comprised in Certificate of Title Volume 1072
 Folio 87

be and is hereby excised from Zone 6 classification and
 reclassified and included in Zone 1 classification
 and that the North Perth/Mount Hawthorn/Wembley/
 Leederville zoning Plan No. 64, be and is hereby amended
 accordingly

Carried.

TOWN PLANNING MEETING

3 - NOV 1975

Lot 516 (No. 5) Berryman Street south west Corner
Federation Street: (A7/64 and CP5.17 & B/Berryman)
Re application by Mr. J.C. Affourtit requesting rezoning of
the above mentioned land from Zone 6 (Shops) to Single
Residential and report of City Planner that under Zoning By-law
No. 64 the land is classified Zone 6 (Shops) whilst under the
adopted City Planning Scheme it is proposed that the lot be
classified Zone R3 (Low Medium Density Residential); that
the applicant has advised that the shop part of the premises
has been used for residential purposes since 1962 and he
requests that it now be rezoned accordingly; that as the
requested rezoning is considered consistent with the general
development in the area and the adopted City Scheme there are
no objections to the proposal RECOMMENDED THAT the
Council initiate the necessary procedures to rezone Lot 516
(No. 5) Berryman Street from Zone 6 (Shops) to Zone 1 (Single
Tenement Dwellings.)

file
1
CITY PLANNING DEPT.

AGENDA ITEM NO:

PLANNING DEPARTMENT

CP. 5.17 CH:ML

31 October 1975

WARD: NORTH PERTH

THE TOWN CLERK

COMMITTEE: Town Planning

SUBJECT: Request for rezoning from Zone No.6 (Shops)
to Zone No.1 (Single Tenement Dwellings etc.)

LOCATION: Lot 516 (No.5) Berryman Street - south west corner
of Federation Street

APPLICANT/
LANDOWNER: J.C. Affourtit

ZONING: (i) M.R.S. - Urban Zone
(ii) By-law No.64 - Zone No.6 (Shops)
(iii) Adopted City Scheme - Proposed Zone R3
(low-medium density residential)

COMMENT: The owner of the subject land has requested that it be rezoned from its present commercial classification (Zone 6 - Shops) to a residential zoning (Zone 1 - Single Tenement Dwellings). The applicant has advised the Council, by letter, that the shop part of the premises has been used for residential purposes since 1962.

As the requested rezoning is considered consistent with the general development in the area and the proposed zoning in the adopted City Scheme there are no objections to the proposal.

RECOMMENDATION:

That the Council initiate the necessary procedures to rezone the land.


E. SABIN

CITY PLANNER

Committee

CITY OF P...
RECEIVED
20 OCT 1975
TOWN CLERKS DEPT
FILE *B/Berryman*

5 Berryman St.,
MT. HAWTHORN.
17 TH October 1975.

To: - The Town Clerk: ATTENTION MR. BOND.

Dear Sir,

Re - Request for change in zoning of No. 5 Lot 516 Berryman St.,
MR. J. C. AFFOURTIT.

I would like to make application to have the zoning on the above property changed from commercial to residential zoning.

The present improvements comprise a brick and tile house and a small shop; which has been converted to a lounge. The original shop area has been used as a lounge for the residential accommodation since 1962.

I trust that you will oblige with this request.

Yours faithfully,
J. C. AFFOURTIT.

J. C. Affourtit

PCV	ACK.	LN.
<u>G.A.</u>	C.P.H.	CIT.
FOR YOUR		
REPORT - ACTION - FILE		
JOINT REPORT WITH		
INFORMATION ONLY		
AND MUST RETURN TO T.C.		

CITY PLANNING DEPT.

TO *M. Dugan*

DATE REC'D 21 OCT 1975

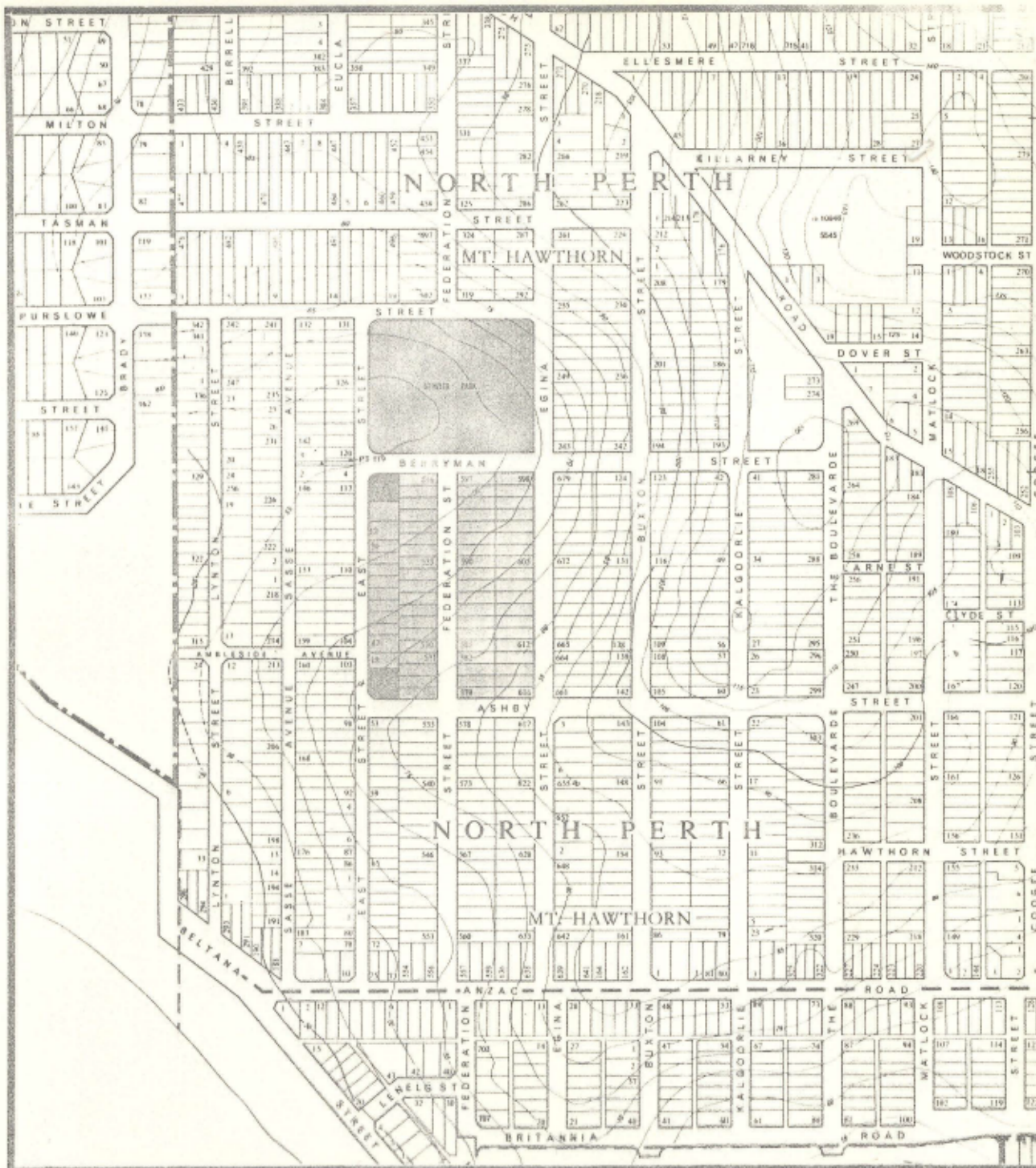
COMPLETION DATE

FILE REFERENCE *5017*

CROSS REFERENCE

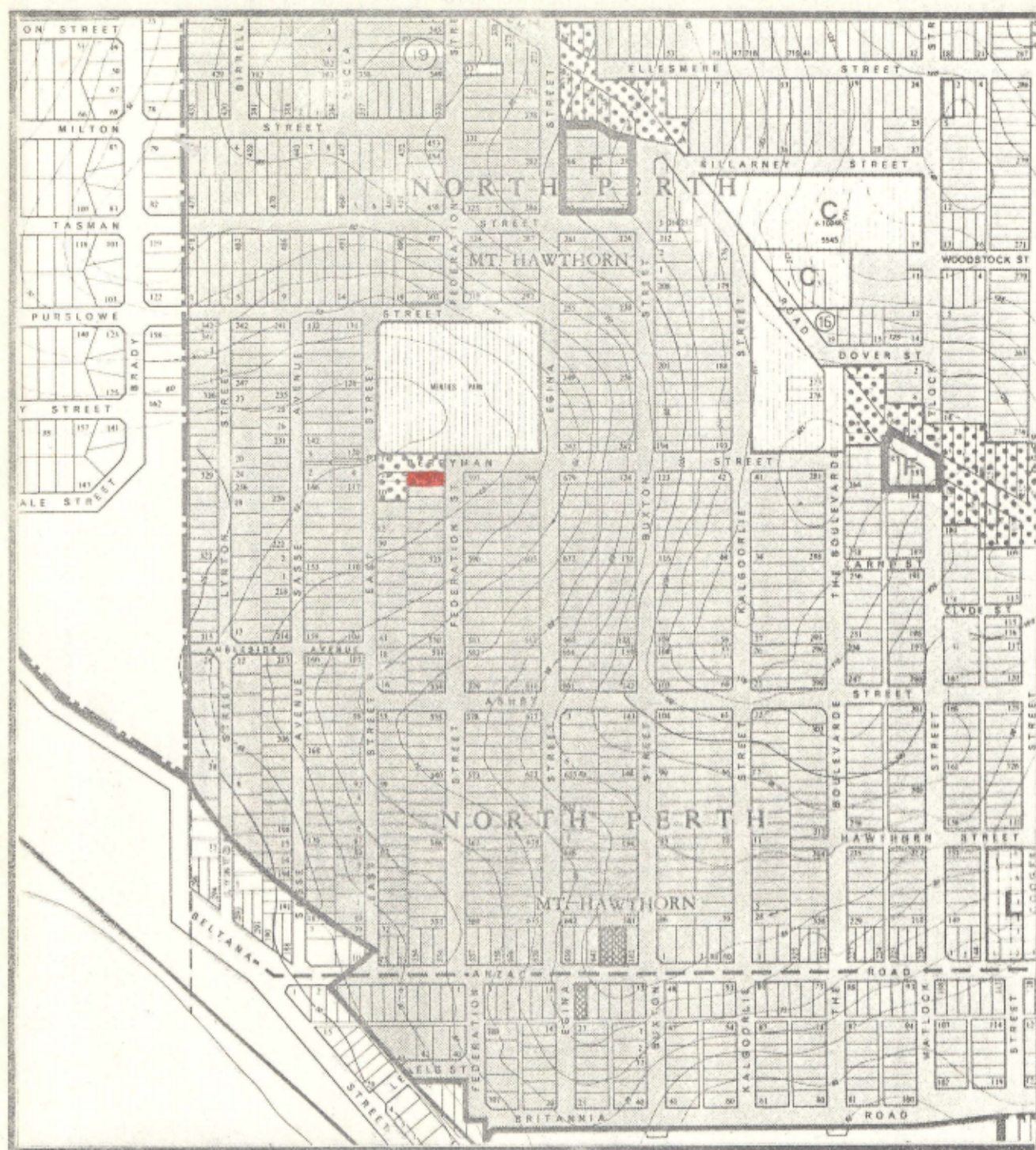
COPIES TO:-

G.B.B. ()	G.P.O. ()
G.E. ()	G.T. ()
M.O.H. ()	G.V. ()
D.P.G. ()	()



EXISTING LAND USE NOTATION

SINGLE RESIDENTIAL OR DUPLEX	
FLATS & TOWN HOUSES	
ASSEMBLY HALL	
PUBLIC OPEN SPACE	



EXISTING ZONING BY-LAW NOTATION

ZONE Nº		ZONE Nº	
1	SINGLE TENEMENT DWELLINGS	9	INDUSTRY
2	RESIDENTIAL FLATS	16	SPECIAL PURPOSES
4	OFFICE BUILDINGS		PARKING
6	SHOPS		LAND SET ASIDE FOR CIVIC PURPOSES
7	OFFICES, SHOPS, SHOWROOMS & WAREHOUSES		LAND SET ASIDE FOR RECREATIONAL PURPOSES
8	LIGHT INDUSTRY		LAND SET ASIDE FOR CROWN PURPOSES

PROPOSED REZONING ZONE Nº1 (Single Tenement Dwellings)



CITY OF PERTH · ZONING BY-LAW AMENDMENT
MT. HAWTHORN, BERRYMAN STREET, LOT 516 (Nº 5)

CITY PLANNING DEPARTMENT

DRAWN BY: N.N DRAWING Nº

FILE Nº 5-17 DATE: 2-12-75

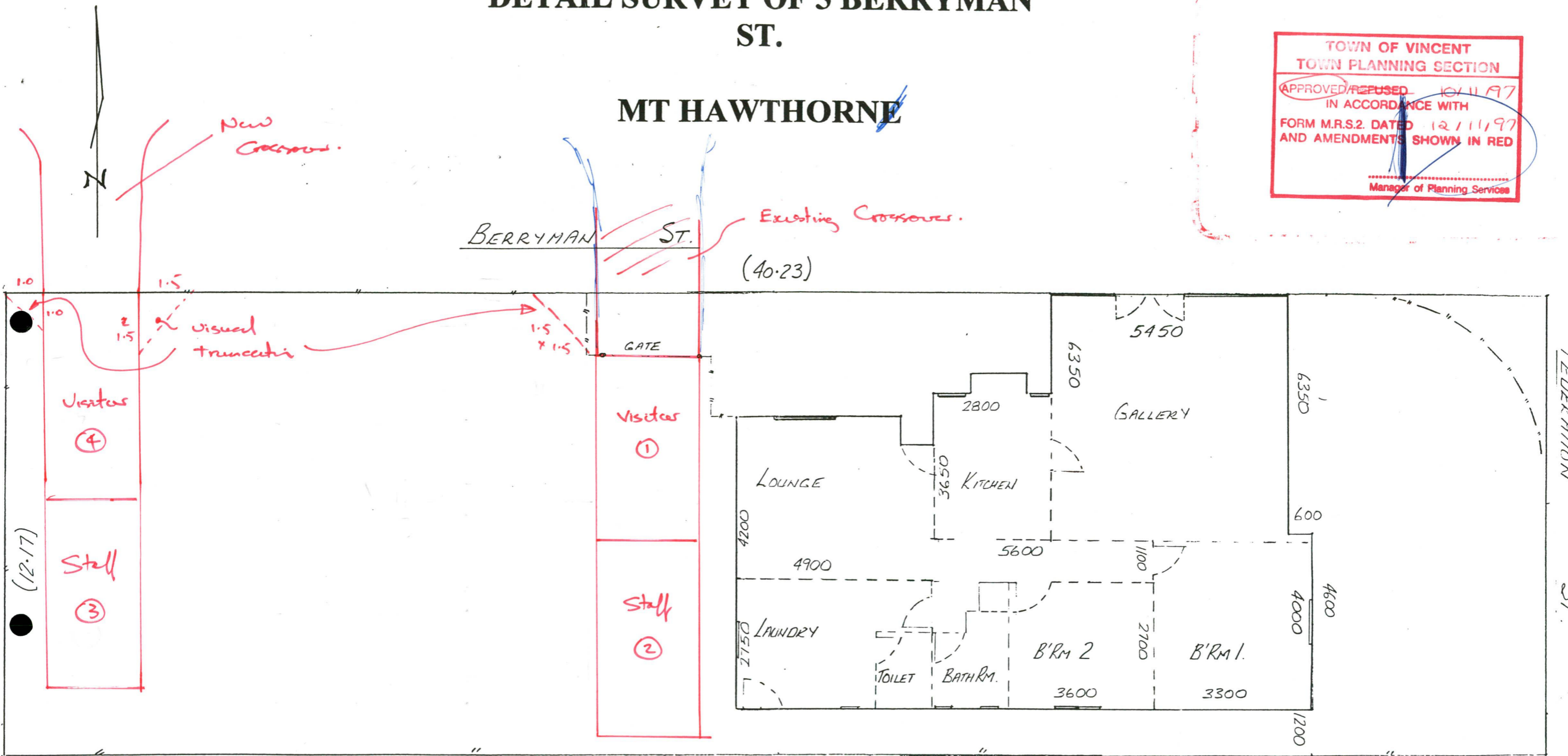
SCALE: 8 CHAINS TO 1 INCH

P.C.C. MAP, SHEET Nº 2

DETAIL SURVEY OF 5 BERRYMAN ST.

MT HAWTHORNE

TOWN OF VINCENT
TOWN PLANNING SECTION
APPROVED/REFUSED 10/11/97
IN ACCORDANCE WITH
FORM M.R.S.2. DATED 12/11/97
AND AMENDMENTS SHOWN IN RED
Manager of Planning Services



OWNERS: R.J & J.E JAMES

PREPARED BY: R.J. JAMES (Licensed Surveyor)

SCALE : 1:100

DETAILS OF LOT:

5 BERRYMAN ST. MT HAWTHORNE

Being Lot 516 on Plan 2177 C/T VOL. 1763 FOL. 935

11.1.14 LOT 516 (NO. 5) BERRYMAN STREET CORNER FEDERATION STREET, MOUNT HAWTHORN - PROPOSED CHANGE OF USE (OF A SECTION OF A DWELLING) FROM RESIDENTIAL TO GALLERY (MOUNT HAWTHORN WARD) PRO0176 (97/33/0148) (DRAFT SCHEME: MOUNT HAWTHORN PRECINCT, P1)

RECOMMENDATION:

That;

in accordance with the provisions of the Town of Vincent Town Planning Scheme and the Metropolitan Region Scheme, the Council APPROVES BY AN ABSOLUTE MAJORITY the application submitted by J R Doran for a Gallery on Lot 516 (No. 5) Berryman Street, Mount Hawthorn and as shown on the plans received on 2 September 1997, subject to:

- (i) compliance with Environmental Health and Engineering conditions;*
 - (ii) trading hours shall be restricted to 10.30am to 4.30pm Tuesday to Friday and 10.00am to 1.00pm Saturday;*
 - (iii) in accordance with the Town of Vincent Cash-in-Lieu Contribution for Car Parking - Draft Policy, the shortfall of 0.217 car bays shall be waived; and*
 - (iv) all signage shall be subject to a separate sign licence application;*
- to the satisfaction of the Chief Executive Officer.*

COMPLIANCE:

The application complies with the requirements of the Town of Vincent Town Planning Scheme with the exception of car parking however, a gallery is an unlisted use in the Scheme.

BACKGROUND:

LANDOWNER:	R J James
APPLICANT:	J R Doran
ZONING:	Metropolitan Region Scheme - Urban Town of Vincent Town Planning Scheme - Residential R30
DRAFT SCHEME:	Residential R30

SITE HISTORY:

The subject land is located on the corner of Berryman and Federation Streets. The surrounding land uses in the immediate vicinity is single residential to the south and east, a scout hall to the west and Menzies Park to the north. The site was rezoned in 1975 from Zone 6 (Shops) to Zone 1 (Single Tenement Dwellings). The shop has not been used for commercial purposes since 1962.

ADVERTISING:

The proposed gallery is denoted as an unlisted use in the Town of Vincent Town Planning Scheme. Hence, the applicant was required to carry out the "SA" (special advertising) procedure pursuant to clause 37 under Part V of the Town of Vincent Town Planning Scheme prior to the application being determined by the Council. No objections have been received to date.

DETAILS:

An application has been received for planning approval for the change of use of a section of a dwelling to an art gallery on the subject property. The existing house has a local shop-style frontage with a room of 34.6 square metres in size which is to be used as the gallery. The applicant has advised that the trading hours will be between 10.30am to 4.30pm Tuesday to Friday and 10.00am to 1.00pm Saturday. The gallery will be used for the display and sales of local artwork and photography.

The proposal requires 4.3 car parking bays. The site is capable of accommodating at least 4 bays.

COMMENTS:

The car parking requirements are as follows:

USE	METHOD OF CALCULATION	NUMBER OF CAR BAYS REQUIRED
Shop (34.6 square metres)	1 car bay per 15 square metres of gross floor area	2.31 car bays
Residence	As per Residential Planning Codes (1991)	2 car bays
TOTAL NO. CAR BAYS REQUIRED		4.31 car bays
TOTAL NO. CAR BAYS PROVIDED		4 car bays
PROPOSED SHORTFALL		0.31 car bays

In light of the Council reviewing the current Cash-In-Lieu Contribution for Car Parking Policy No. 13, it is considered appropriate for this application to be examined pursuant to the Draft Policy. Accordingly, the following calculation is provided:

(a) clause (a)(ii), shortfall of:	0.31 car bays
(b) pursuant to clause (a)(iii), reduced for:- - within 800 metres of a bus stop; an existing Council public parking facility (Coogee Street Car Park): - streetscape and/or amenity (streetscape character); by 30%:	0.217 car bays
(c) cash-in-lieu per bay 1997/1998	\$3,000 per bay by 0.217 car bays
(d) Total Contribution	\$651

The discount percentile has been derived taking into consideration the nature of the application and its location, the existing Policy's discount factors and decisions of the Council in its application of the current Policy.

It is considered appropriate that the total contribution amount as calculated above may be considered to be waived.

Approximately 72 square metres of landscaping is provided along the Federation Street frontage, an additional 21 square metres is provided along Berryman Street. This is a total of 93 square metres of landscaped area.

The existing dwelling does lend itself to small-scale shop development rather than being used as part of the residence, with the house front being originally designed for commercial purposes. In this regard, an art gallery would be a complementary and relatively low scale use for the area.

It is recommended that the application be supported.

Moved by Cr Greig, Seconded by Cr Hyde

That the recommendation be adopted.

CARRIED BY AN ABSOLUTE MAJORITY

Summary of Submissions:

The tables below summarise the comments received during the first advertising period of the proposal from the 18 October – 1 November 2023, together with the Administration's response to each comment.

Comments Received in Support:	Applicant Comment:
<u>Scale and Location of Proposal</u> <ul style="list-style-type: none">• The proposal is of an appropriate scale for the locality.• There are no cafes in the immediate vicinity of the proposal.• The café will complement Menzies Park.• The location of the proposal is appropriate as the park is an active space used for sport and other events. The café will be popular with people who use Menzies Park.	Duly noted.
<u>Retention of a Heritage Property</u> <ul style="list-style-type: none">• Proposal would encourage the maintenance & retention of an existing character property.• The proposal will continue a commercial type use which was existing in the past.	Duly noted.
<u>Amenity of the Area</u> <ul style="list-style-type: none">• The proposal will enhance the sense of community in the area.• The proposal will add to the vibrancy of the area.• The locality has lots of young families, which will utilise this proposed café.	Duly noted.
<u>Availability of Parking</u> <ul style="list-style-type: none">• The lack of parking provided is not an issue as there is adequate street parking in the area and most patrons of the business will be locals within walking distance.• There is adequate car and bike parking at Menzies Park.• The current levels of traffic and street parking is not a problem.	Duly noted.
<u>Accessibility of the Site</u> <ul style="list-style-type: none">• The proposal will encourage active modes of transport.• People will walk to the café, which will reduce the use of cars in the area.• The proposal is within walking distance of a bus stop on Egina Street	Duly noted.

Summary of Submissions:

Comments Received in Support:	Applicant Comment:
<p>and bus stops on Scarborough Beach Road, which reduce the need for driving.</p>	
Comments Received in Objection:	Applicant Comment:
<p><u>Land Use</u></p> <ul style="list-style-type: none"> The proposal does not meet the objectives of the Residential zone in Local Planning Scheme No.2 as it is not 'complementary' to residential development. The site is currently rundown and upkept. Instead, it should be redeveloped for residential purposes. 	<ul style="list-style-type: none"> The proposal will cater and be used by the community to achieve the intent of the residential zone. The land use proposed existed previously in the early 1900's as a shop, deli, or corner store. The newly proposed café aligns with the original intent of the premise.
<p><u>Parking</u></p> <ul style="list-style-type: none"> The proposal does not meet the requirements of the City's Policy No. 7.7.1 'Non-Residential Parking Requirements'. This will have a noticeable impact on the residential amenity of the street as cars traveling would rely on on-street parking within residential streets. Parking generated by a proposal should be provided on site. Parking on the Menzies Park verge is already an issue during Saturdays in football season when people gather for sport. This issue will only worsen if the café is approved. While local residents might walk to the café, this does not mean that is would 'support a shift towards active and sustainable transport modes'. Residents who want to walk will already walk to the local café strip. Residents who do not want to make the journey sustainably will park on adjoining verges. The demand for sustainability will remain the same, while the amenity of the neighbourhood would suffer significantly. 	<ul style="list-style-type: none"> Parking is now compliant and is further detailed in the RFI response. Please refer to the Resident and Staff Parking Plan.
<p><u>Operations and Noise</u></p> <ul style="list-style-type: none"> There will be noise impacts of staff and deliveries arriving before and after permitted operating hours. It is unclear how this will be managed 	<ul style="list-style-type: none"> The general hours of operation are set at 7:00AM to 7:00 PM. Patrons are allowed to park anywhere that is permitted. Potential parking impacts will need to be

Summary of Submissions:

Comments Received in Objection:	Applicant Comment:
<p>which are primarily along Scarborough Beach Road and Anzac Road. These existing café strips are a more suitable location for a café. As such, there would be no demand for an additional café in the area.</p>	<p>received in support is evidence of this demand. There is a local Facebook community group that has mentioned the café numerous times and it appears that the community is in support of the proposal.</p>
<p><u>Alfresco Dining</u></p> <p>If alfresco dining is approved, there would be impacts to privacy and security to adjoining properties.</p>	<p>Alfresco dining is not proposed as part of this application.</p>
<p><u>Liquor Licensing</u></p> <ul style="list-style-type: none"> • As the definition of 'Restaurant/Café' references the Liquor Control Act, there are concerns that alcohol would be served at the site. • The café would undermine the amenity of the immediate neighbourhood, and in turn, will negatively impact the value of homes 	<p>The sale of alcohol is not included in this application and is subject to approval under different legislation.</p>

Comments Received Expressing Concern:	Applicant Comment
<p><u>Parking</u></p> <p>Bike bays should be provided to mitigate potential parking issues caused by lack of car parking and to encourage active modes of transport.</p>	<p>Parking is now compliant and is further detailed in the RFI response. Please refer to the Resident and Staff Parking Plan.</p>
<p><u>Operations</u></p> <p>Concerns regarding the operations of the use including when deliveries would go to the site, how much noise spill the proposal would generate and if alfresco seating is proposed.</p>	<p>These operation details have been addressed in the RFI Response.</p>

Note: Submissions are considered and assessed by issue rather than by individual submitter.

Summary of Submissions:

The tables below summarise the comments received during the second advertising period of the proposal from the 9 – 15 January 2024, together with the Officer's response to each comment.

Comments Received in Support:	Applicant Comment:
Proposal is aligned with original purpose.	Duly Noted.
The proposal encourages maintenance of a disused character site.	Duly Noted.
Patrons of the café will likely walk, car parking is not required	Duly Noted.
The proposal will service users of Menzies Park.	Duly Noted.

Comments Received in Objection:	Applicant Comment:
<p><u>Land Use</u></p> <ul style="list-style-type: none"> The revised proposal would still not be complementary to the residential area. As the development is not within the Mount Hawthorn 'Town Centre', commercial development should be restricted to 'Town Centres' and not within the Residential Zone. 	<ul style="list-style-type: none"> Addressed above
<p><u>Parking</u></p> <ul style="list-style-type: none"> The proposed parking does not meet the minimum detailed in the Non-Residential Parking Policy. The revised proposal includes no parking for patrons, this will result in patrons parking on nearby streets and on the Menzies Park verge, which is already an issue during football season. Concerns with how would the City enforce vehicle movements. The staff car bays allocated for staff parking are very close the dining area, outdoor area and living area of 19 Berryman Street and the outdoor living area of 91 Federation Street. This will be an amenity impact to the immediate neighbours. 	<ul style="list-style-type: none"> Parking is now compliant and is further detailed in the RFI response. Please refer to the Resident and Staff Parking Plan.

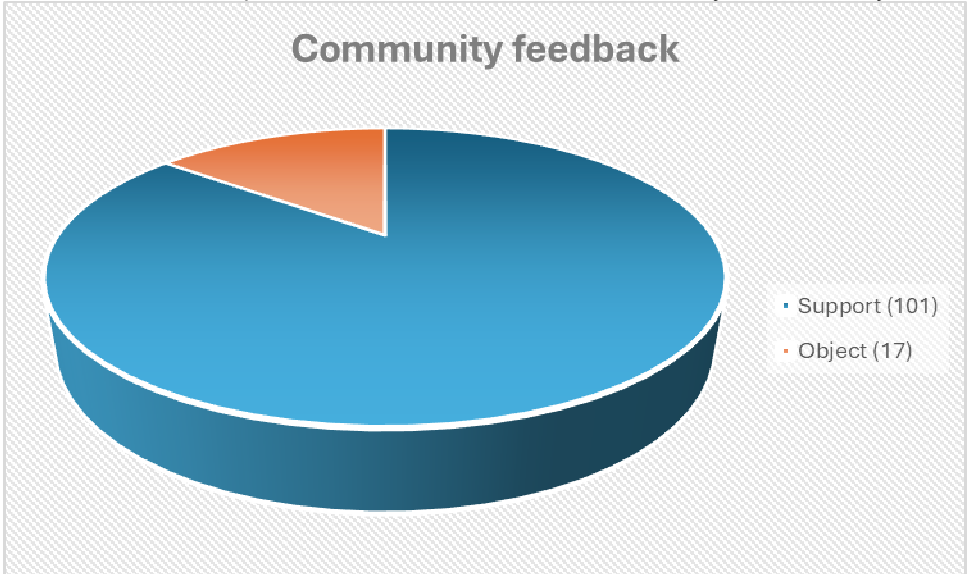
Summary of Submissions:

Comments Received in Objection:	Applicant Comment:
<ul style="list-style-type: none"> The location of the proposed additional crossover is not adequate, it will impact the drainage of Berryman Street and does not provide adequate sightlines and truncations. The fencing along Berryman Street is degraded, can the City enforce that the fencing is replaced? 	
<p><u>Operations and Noise</u></p> <ul style="list-style-type: none"> Concerns with the noise management measures and that the proposed use will generate music, equipment noise and other noise that would disrupt neighbours Concerns with how the noise will be controlled. The limit of patrons permitted within the café will result in queuing outside of the venue and result in further disruption to neighbours. This will be similar to the Chu Bakery and North Street Store in Cottesloe. Concerns have been raised around how this will be controlled. The proposed operating hours are excessive and not appropriate in a residential location. Submitters were concerned with deliveries being made prior to 7am and with vehicles parking in the driveway. 	<ul style="list-style-type: none"> This is addressed in the RFI Response.
<p><u>Local Demand</u></p> <p>There is no local demand for a café in this area, there are existing café strips on Scarborough Beach Road and Anzac Road.</p>	<ul style="list-style-type: none"> Addressed above
<p><u>Waste Management</u></p>	

Summary of Submissions:

Comments Received in Objection:	Applicant Comment:
Details of a Waste Management Plan have not been included in the revised proposal.	Occupants of the café will be notified of the City of Vincent’s waste guidelines for commercial waste
<p><u>Liquor Licensing</u></p> <p>The approval of this DA will result in potential further applications for this café, such as increases to patron numbers, alfresco dining, and the serving alcohol.</p>	The sale of alcohol is not included in this application and is subject to approval under different legislation.

The tables below summarise the comments received during the third advertising period of the proposal from the 9 – 15 February 2024, together with the Officer’s response to each comment.

Comments Received in Support:	Applicant’s Comment:
The proposal would be a great addition to the local community and would support users of Menzies Park.	<p>We appreciate the community’s overwhelming support for this proposal to reinvigorate the site and make a unique contribution to character and amenity of the locality.</p>  <p>The pie chart is titled "Community feedback" and shows two categories: "Support (101)" represented by a large blue slice and "Object (17)" represented by a smaller orange slice. The chart is a 3D pie chart with a white border and a light blue shadow.</p>
The proposal would increase the vibrancy of the existing area.	
The proposal would revitalise the old rundown existing building.	
Similar café’s work well in other areas and do not impact amenity.	

Comments Received in Objection:	Applicant’s Comment:
<p><u>Land Use</u></p> <ul style="list-style-type: none"> The use is not complimentary to the residential area. Issues remain with parking, noise and waste. 	A small-scale café located within a historic corner shop which achieves considerable separation from the side/rear lot boundaries and fronts onto a large active reserve is

Summary of Submissions:

Comments Received in Objection:	Applicant's Comment:
<ul style="list-style-type: none"> The original shop component was approved in 1939. The context of the area has substantially changed since then. The original approval is not relevant to this proposal as the context has changed. 	<p>entirely complimentary to its context.</p> <p>The original approval is of relevance to this proposal as the built form of the site has not had any substantial modifications since its original approval. The changes in commercial viability and attitudes since 1939 has led to the decision to apply for a change of use from shop to café. Café is a more suitable and viable land use in the current context, the overwhelming level of local community support confirms this.</p>
<p><u>Local Demand</u></p>	
<ul style="list-style-type: none"> The City of Vincent has many great cafe strips and areas. It is our strong preference that cafes/restaurants remain in the cafe strip areas and that residential areas remain residential. This will ensure that the sense of community remains strong. 	<p>The café does not make the locality any less residential there is still a dwelling on site. The café will enhance local amenity and sense of community by reinvigorating a local landmark and providing a small-scale venue for local residents and users of Menzies Park to interact over food and/or coffee.</p>
<p><u>Parking</u></p>	
<ul style="list-style-type: none"> The proposal will result in customers parking on the verge. The parking areas present a safety issue due to existing vehicle sightline obstructions. The parking bays are too small. 	<p>The parking on site is in full compliance with the requirements for the café. The café will primarily serve local residents and existing visitors to Menzies Park, so there is not expected to be any notable change to existing levels of verge parking resulting from the café. It is noted that there is no restriction on verge parking, to the contrary, the verge of Menzies Park appears designed to accommodate informal parking.</p> <p>Vehicle access points will comply with sight line requirements of the R-Codes. (existing fencing will be modified as required)</p> <p>The parking bays will be constructed in accordance with the minimum dimensions required under AS2890.1.</p>
<p><u>Operations and Noise</u></p>	
<ul style="list-style-type: none"> It is unclear how many patrons are expected to be accommodated. The applicant's information is inaccurate. The increase in the number of people on site will cause greater amenity issues compared to the last proposal. Concerns that patron numbers are unable to be enforced. The site is too small to accommodate the proposed number of people. There is no quantification of this statement, and indeed, in a purely residential area, it is questionable as to whether the noise generated by the activity surrounding this proposed land use would be considered acceptable in an amenity sense. 	<p>As outlined in the Operational Management Plan prepared for the site, the premises is proposed to accommodate a maximum of 14 patrons.</p> <p>An increase in patronage will reduce noise impacts as it enables more patrons to be accommodated within the premises where noise can be contained. Inadequate seating would increase the likelihood of patrons seeking to eat their food off site where noise impacts would not be contained (within Menzies Park for example).</p> <p>Patron numbers are enforced through the seating provided. If the café is full new patrons will be turned away or required to return when seating is available, no different from any other café or restaurant.</p> <p>It is unclear how the submitter arrived at this unsubstantiated conclusion. The café's maximum capacity will be formally assessed by the City's Environmental Health Services.</p> <p>The proposal meets every objective of the Residential Zone, of particular relevance to this point is the following objective: <i>'To provide for a range of non-residential uses, which are compatible with and complementary to residential development'</i></p> <p>A small-scale café located within a historic corner shop which achieves considerable</p>

Summary of Submissions:

Comments Received in Objection:	Applicant's Comment:
<ul style="list-style-type: none"> • The effect of approving this development with conditions of this nature would be to require constant enforcement and policing by the City in circumstances where a complaint is received. • Planning approvals are attached to the land. If approved, any café could move in that operates differently. • The café will be unable to operate in a hygienic manner. • No toilet facilities have been provided for staff or patrons. This would not comply with the Building Code of Australia. 	<p>separation from the side/rear lot boundaries and fronts onto a large active reserve would be a model example of a non-residential land use which is compatible and complementary within a Residential Zone.</p> <p>Almost all development approvals include conditions, which if not adhered to may warrant compliance action in circumstances where an objection is received. There is no reason to believe that the future operator of this café will disregard their obligations as required through conditions of development approval. It should also be noted that the landowners reside in the dwelling attached to the café. If any impacts were to arise, they will be the most immediately and severely affected residents in the locality. They are also in the best position to be able to take action to resolve issues without necessitating involvement from the City.</p> <p>All future operators will be required to operate in accordance with the conditions of development approval, which would include adherence to the operational management plan.</p> <p>It is unclear how the submitter arrived at this unsubstantiated conclusion. The café will be inspected by the City's Environmental Health Services to ensure all necessary hygiene standards and practices are being met.</p> <p>The café will be required to comply with requirements of the Building Code of Australia prior to operation.</p>
<p><u>Alfresco Dining</u></p>	
<ul style="list-style-type: none"> • Alfresco dining would further exacerbate noise. • More detail is required on the alfresco dining to assess the impact. 	<p>This is a matter to be considered in the event that the future café operators apply for an Outdoor Eating Area Permit. There is no reason to believe that enjoying a meal within the verge would result in any undue impacts, or even be distinguishable from the existing noise impacts arising from activities at Menzies Park, which coincidentally could also include enjoying a meal (e.g. a picnic).</p> <p>Alfresco dining is dealt with through an Outdoor Eating Area Permit under the City's Local Laws, this is a development application for change of use from Shop to Café.</p>
<p><u>Liquor Licensing</u></p>	
<ul style="list-style-type: none"> • The café could serve liquor. 	<p>The café does not have a liquor licence and therefore cannot serve liquor.</p>

Summary of Submissions:

The tables below summarise the comments received during the first advertising period of the proposal from the 18 October – 1 November 2023, together with the Administration's response to each comment.

Comments Received in Support:	Officer Comment:
<u>Scale and Location of Proposal</u> <ul style="list-style-type: none">• The proposal is of an appropriate scale for the locality.• There are no cafes in the immediate vicinity of the proposal.• The café will complement Menzies Park.• The location of the proposal is appropriate as the park is an active space used for sport and other events. The café will be popular with people who use Menzies Park.	The comments in support are noted.
<u>Retention of a Heritage Property</u> <ul style="list-style-type: none">• Proposal would encourage the maintenance & retention of an existing character property.• The proposal will continue a commercial type use which was existing in the past.	The comments in support are noted.
<u>Amenity of the Area</u> <ul style="list-style-type: none">• The proposal will enhance the sense of community in the area.• The proposal will add to the vibrancy of the area.• The locality has lots of young families, which will utilise this proposed café.	The comments in support are noted.
<u>Availability of Parking</u> <ul style="list-style-type: none">• The lack of parking provided is not an issue as there is adequate street parking in the area and most patrons of the business will be locals within walking distance.• There is adequate car and bike parking at Menzies Park.• The current levels of traffic and street parking is not a problem.	The comments in support are noted.
<u>Accessibility of the Site</u> <ul style="list-style-type: none">• The proposal will encourage active modes of transport.• People will walk to the café, which will reduce the use of cars in the area.• The proposal is within walking distance of a bus stop on Egina Street and bus stops on Scarborough Beach Road, which reduce the need for driving.	The comments in support are noted.

Summary of Submissions:

Comments Received in Objection:	Officer Comment:
<p><u>Land Use</u></p> <ul style="list-style-type: none"> • The proposal does not meet the objectives of the Residential zone in Local Planning Scheme No. 2 as it is not 'complementary' to residential development. • The proposal would ultimately change the existing amenity of Berryman Street and Federation Street. • The site is currently rundown and upkept. Instead, it should be redeveloped for residential purposes. 	<ul style="list-style-type: none"> • The intensity of the Restaurant/ Cafe would be controlled by the number of seats provided for customers and the size of the tenancy area. The small scale would ensure that the use is complementary and compatible with the existing residential area. • The proposed Restaurant/ Cafe tenancy is well sited and includes all windows and doors oriented towards Berryman Street, away from nearby residential properties. The separation distance between the subject site and the nearby residential would assist in reducing the impacts from the proposal. • The Restaurant/ Cafe is proposed to operate during the day only and would not generate any offsite impacts at night-time or outside of day trading business hours which would have the potential to impact surrounding residential properties. • The operation management plan submitted by the applicant demonstrates that the proposed use is capable of operating in manner that would protect the amenity of the area, including the adjoining properties. A condition of approval is included in the officer recommendation for the development to operate in accordance with the operation management plan. • A Restaurant/ Café can be considered on the subject as it is an 'A' use within the Residential zone. This means that the use is not permitted unless Council exercises discretion by approving a development application for the use following consultation with the community.
<p><u>Parking</u></p> <ul style="list-style-type: none"> • The proposal does not meet the requirements of the City's Policy No. 7.7.1 'Non-Residential Parking Requirements'. This will have a noticeable impact on the residential amenity of the street as cars traveling would rely on on-street parking within residential streets. Parking generated by a proposal should be provided on site. • Parking on the Menzies Park verge is already an issue during Saturdays in football season when people gather for sport. This issue will only worsen if the café is approved. • While local residents might walk to the café, this does not mean that it would 'support a shift towards active and sustainable transport modes'. Residents who want to walk will already walk to the local café strip. Residents who do not want to make the journey sustainably will travel in vehicles. The demand for sustainability will remain the same, while the amenity of the neighbourhood would suffer significantly. 	<ul style="list-style-type: none"> • The application has been amended to provide four on-site car parking bays in accordance with the City's Local Planning Policy: Non-Residential Parking, which would meet the needs of the proposed development. • While the proposal would result in some additional traffic in the area, due to the scale of the development, the operation measures and the accessibility of the site, the traffic can be adequately managed to not have a negative impact on the amenity of the surrounding area.

Summary of Submissions:

Comments Received in Objection:	Officer Comment:
<p><u>Operations and Noise</u></p> <ul style="list-style-type: none"> • There will be noise impacts of staff and deliveries arriving before and after permitted operating hours. It is unclear how this will be managed as to not impact adjoining land owners. • • It is unclear how noise from patrons will be managed. (i.e. patrons congregating outside the premises, internal generation noise, etc). • It is unclear how noises associated with a café be managed (i.e. coffee machines, blenders, music, etc). • There are no changes that could be made to the development that would resolve the noise issues with respect to parking. 	<ul style="list-style-type: none"> • Noise generated from staff parking bays would be acceptable as the bays would be used less frequently by staff coming to and leaving the site. The nature of the use is such that staff would remain on site for long period of the day to run the Restaurant/ Café. <p>A condition of approval is included in the officer recommendation to limit the total number of persons attending the Restaurant/Cafe to 16. A condition is also recommended for the premises to operate in accordance with the operation management plan, including:</p> <ul style="list-style-type: none"> ○ The implementation of the proposed noise mitigation measures. ○ All activity associated Restaurant/Café including queuing and dining to be contained within the site. ○ Ensuring all site servicing (deliveries and waste collection etc.) occurs during hours of operation. <ul style="list-style-type: none"> • The applicant has indicated that 16 people would be permitted on-site at any one time. An operation management plan has been submitted with the application which includes measures to manage on-site noise as follows: <ul style="list-style-type: none"> ○ No amplified music being played. ○ Installing self-closing entry doors. ○ Advising patrons to not congregate outside of the Restaurant/ Café prior to and after their meal. • The applicant has also provided an acoustic letter which confirms that the noise generated by the Restaurant/ Café would likely comply with the <i>Environmental Protection (Noise) Regulations 1997</i> (Noise Regulations) and would be low-risk in terms of a noise impact. This includes noise in relation to vehicles. A condition of approval is included in the officer recommendation for the submission of an Acoustic Report prior to operation of the Restaurant/ Café to ensure compliance with the Noise Regulations and to implement any noise mitigation measures. • As set out above, Administration is not satisfied that noise issues with respect to parking have been addressed. This is because insufficient information has been provided demonstrate that there would not be an undue impact on the amenity of the surrounding area.

Summary of Submissions:

Comments Received in Objection:	Officer Comment:
<p><u>Waste</u></p> <ul style="list-style-type: none"> It is unclear how waste would be managed, how much waste would be generated and what the potential odour impacts may be. These factors would combine to further undermine the amenity of the area immediately surrounding the café. Noting that the City no longer offers a commercial waste collection service. 	<ul style="list-style-type: none"> A waste storage location has been provided within the applicant's operation management plan. This shows that the storage area is concealed from the street and is located away from adjoining single houses. A condition of approval is included in the officer recommendation for a Waste Management Plan to be imposed to ensure that the proposal adequately manages their waste. The applicant has been made aware that the City's waste collection service would not be available for this use.
<p><u>Local Demand</u></p> <p>The proposal is not in close proximity to other cafes in the neighbourhood, which are primarily along Scarborough Beach Road and Anzac Road. These existing café strips are a more suitable location for a café. As such, there would be no demand for an additional café in the area.</p>	<p>The planning framework does not require consideration of the demand for a use. This is not a relevant consideration in judging the planning merits of a proposal.</p>
<p><u>Alfresco Dining</u></p> <p>If alfresco dining is approved, there would be impacts to privacy and security to adjoining properties.</p>	<p>Alfresco dining would not form part of this application and is subject to an outdoor eating permit in accordance with the <i>Trading in Public Places Local Law 2008</i>. The impacts to the adjoining properties would be considered should an application be made.</p>
<p><u>Liquor Licensing</u></p> <ul style="list-style-type: none"> As the definition of 'Restaurant/Café' references the Liquor Control Act, there are concerns that alcohol would be served at the site. The café would undermine the amenity of the immediate neighbourhood, and in turn, will negatively impact the value of homes. 	<ul style="list-style-type: none"> Approval to serve alcohol at a venue is subject to a separate approval process through the Department of Racing, Gaming and Liquor. The planning framework does not require consideration of the impact of development on property prices. This is therefore not a relevant consideration in judging the planning merits of a proposal.
Comments Received Expressing Concern:	Applicant Comment
<p><u>Parking</u></p> <p>Bike bays should be provided to mitigate potential parking issues caused by lack of car parking and to encourage active modes of transport.</p>	<p>The application plans have been amended to provide bicycle parking bays on-site and within the Berryman Street verge in accordance with the requirements of the City's Local Planning Policy: Non-Residential Parking.</p>
<p><u>Operations</u></p> <p>Concerns regarding the operations of the use including when deliveries would go to the site, how much noise spill the proposal would generate and if alfresco seating is proposed.</p>	<p>As set out above, concerns relating to deliveries and noise have been addressed in the applicant's operation management plan.</p>

Note: Submissions are considered and assessed by issue rather than by individual submitter.

Summary of Submissions:

The tables below summarise the comments received during the second advertising period of the proposal from the 9 – 15 January 2024, together with the Officer's response to each comment.

Comments Received in Support:	Officer Comment:
Proposal is aligned with original purpose.	Noted.
The proposal encourages maintenance of a disused character site.	Noted.
Patrons of the café will likely walk, car parking is not required	Noted.
The proposal will service users of Menzies Park.	Noted.

Comments Received in Objection:	Officer Comment:
<p><u>Land Use</u></p> <ul style="list-style-type: none"> The revised proposal would still not be complementary to the residential area. As the development is not within the Mount Hawthorn 'Town Centre', commercial development should be restricted to 'Town Centres' and not within the Residential Zone. 	<ul style="list-style-type: none"> Refer to previous comment in initial advertising period. Administration is satisfied that the proposed Restaurant/ Cafe would be complementary and compatible with the surrounding locality which consists predominantly of residential development. Refer to previous comment in initial advertising period. A Restaurant/ Café can be considered on the subject site.
<p><u>Parking</u></p> <ul style="list-style-type: none"> The proposed parking does not meet the minimum detailed in the Non-Residential Parking Policy. The revised proposal includes no parking for patrons, this will result in patrons parking on nearby streets and on the Menzies Park verge, which is already an issue during football season. Concerns with how the City would enforce vehicle movements. The staff car bays allocated for staff parking are very close the dining area, outdoor area and living area of 19 Berryman Street and the outdoor living area of 91 Federation Street. This will be an amenity impact to the immediate neighbours. The location of the proposed additional crossover is not adequate, it will impact the drainage of Berryman Street and does not provide adequate sightlines and truncations. The fencing along Berryman Street is degraded, can the City enforce that the fencing is replaced? 	<ul style="list-style-type: none"> The application has been amended to provide four on-site car parking bays in accordance with the City's Local Planning Policy: Non-Residential Parking. The City would be unable to enforce the frequency of vehicle movements. Regarding the staff car parking bays, the noise generated from the bays would be acceptable as the bays would be used less frequently by staff coming to and leaving the site. The nature of the use is such that staff would remain on site for long period of the day to run the Restaurant/Café. Should the application be approved, the proposal would be required to comply with the relevant stormwater requirements and provide sufficient sightlines to ensure safe vehicle movement. Replacement of the Berryman Street fence is not proposed as part of this application and is not required under the planning framework for this proposal.

Summary of Submissions:

Comments Received in Objection:	Officer Comment:
<p><u>Operations and Noise</u></p> <ul style="list-style-type: none"> Concerns with the noise management measures and that the proposed use will generate music, equipment noise and other noise that would disrupt neighbours Concerns with how the noise will be controlled. <ul style="list-style-type: none"> The limit of patrons permitted within the café will result in queuing outside of the venue and result in further disruption to neighbours. This will be similar to the Chu Bakery and North Street Store in Cottesloe. Concerns have been raised around how this will be controlled. The proposed operating hours are excessive and not appropriate in a residential location. Submitters were concerned with deliveries being made prior to 7am and with vehicles parking in the driveway. 	<ul style="list-style-type: none"> Refer to previous comment in initial advertising period regarding noise. An operation management plan has been submitted with the application which includes measures to manage on-site noise. The applicant has also provided an acoustic letter which confirms that the noise generated by the Restaurant/ Café would likely comply with Noise Regulations. A condition of approval is included in the officer recommendation for the premises the operation management plan, to implement the proposed noise mitigation measures and to provide an Acoustic Report to ensure compliance with the Noise Regulations. Refer to previous comment in initial advertising period. An operation management plan has been submitted with the application to address these concerns. Following community consultation, the operating hours proposed were reduced to 7:00am and 4:00pm, Monday to Sunday. These operating hours have been considered when reviewing the potential amenity impacts to the surrounding area. The applicant's operation management plan stipulates that the delivery vehicle would park in a safe location along Berryman Street. A condition of approval is included in the officer recommendation to limit deliveries to occur within the approved operating hours.
<p><u>Local Demand</u></p> <p>There is no local demand for a café in this area, there are existing café strips on Scarborough Beach Road and Anzac Road.</p>	<p>Refer to previous comment in initial advertising period. This is not a relevant consideration in judging the planning merits of a proposal.</p>
<p><u>Waste Management</u></p> <p>Details of a Waste Management Plan have not been included in the revised proposal.</p>	<p>Refer to previous comment in initial advertising period. A condition of approval is included in the officer recommendation for a Waste Management Plan be imposed to ensure that the proposal adequately manages their waste.</p>
<p><u>Liquor Licensing</u></p> <p>The approval of this DA will result in potential further applications for this café, such as increases to patron numbers, alfresco dining, and the serving alcohol.</p>	<p>Each application is assessed on its individual merit. The approval of this application does not guarantee that future applications at the site would be approved.</p>

Summary of Submissions:

The tables below summarise the comments received during the third advertising period of the proposal from the 9 – 15 February 2024, together with the Officer's response to each comment.

Comments Received in Support:	Officer Comment:
The proposal would be a great addition to the local community and would support users of Menzies Park.	Noted.
The proposal would increase the vibrancy of the existing area.	Noted.
The proposal would revitalise the old rundown existing building.	Noted.
Similar café's work well in other areas and do not impact amenity.	Noted.

Comments Received in Objection:	Officer Comment:
<p><u>Land Use</u></p> <ul style="list-style-type: none"> The use is not complimentary to the residential area. Issues remain with parking, noise and waste. The original shop component was approved in 1939. The context of the area has substantially changed since then. The original approval is not relevant to this proposal as the context has changed. 	<ul style="list-style-type: none"> Refer to previous comment in initial advertising period. Administration is satisfied that the proposed Restaurant/ Cafe would be complementary and compatible with the surrounding locality which consists predominantly of residential development. This comment is noted. The site has not operated with a non-residential component since 1962.
<p><u>Local Demand</u></p> <ul style="list-style-type: none"> The City of Vincent has many great cafe strips and areas. It is our strong preference that cafes/restaurants remain in the cafe strip areas and that residential areas remain residential. This will ensure that the sense of community remains strong. 	<ul style="list-style-type: none"> Refer to previous comment in initial advertising period. The demand for the land use is not a consideration under the planning framework. The location of the proposed development is considered against the relevant planning framework
<p><u>Parking</u></p> <ul style="list-style-type: none"> The proposal will result in customers parking on the verge. The parking areas present a safety issue due to existing vehicle sightline obstructions. The parking bays are too small. 	<ul style="list-style-type: none"> Refer to previous comment in initial advertising period. The application has been amended to provide four on-site car parking bays in accordance with the City's Local Planning Policy: Non-Residential Parking, which would meet the needs of the proposed development. Refer to previous comment in second advertising period. The proposal would be required to provide sufficient sightlines to ensure safe vehicle movement. Should the application be approved, the parking bays would be required to be constructed in accordance with Australian Standard AS2890.1.

Summary of Submissions:

Comments Received in Objection:	Officer Comment:
<p><u>Operations and Noise</u></p> <ul style="list-style-type: none"> • It is unclear how many patrons are expected to be accommodated. The applicant's information is inaccurate. • The increase in the number of people on site will cause greater amenity issues compared to the last proposal. • Concerns that patron numbers are unable to be enforced. • The site is too small to accommodate the proposed number of people. • There is no quantification of this statement, and indeed, in a purely residential area, it is questionable as to whether the noise generated by the activity surrounding this proposed land use would be considered acceptable in an amenity sense. • The effect of approving this development with conditions of this nature would be to require constant enforcement and policing by the City in circumstances where a complaint is received. • Planning approvals are attached to the land. If approved, any café could move in that operates differently. • The café will be unable to operate in a hygienic manner. • No toilet facilities have been provided for staff or patrons. This would not comply with the Building Code of Australia. 	<ul style="list-style-type: none"> • The applicant has advised that the site would accommodate up to 16 people, including staff. • Refer to previous comment in initial advertising period. Administration is satisfied that the proposed Restaurant/ Cafe would be complementary and compatible with the surrounding locality which consists predominantly of residential development. • Refer to previous comment in initial advertising period. A condition of approval is included in the officer recommendation to limit the total number of persons attending the Restaurant/Cafe to 16. • The applicants plans demonstrate seating for up to 14 patrons. This demonstrates that there is sufficient space to accommodate the proposed number of people. • Refer to previous comment in initial advertising period. The applicant has also provided an acoustic letter which confirms that the noise generated by the Restaurant/ Café would likely comply with the <i>Environmental Protection (Noise) Regulations 1997</i> (Noise Regulations) and would be low-risk in terms of a noise impact. A condition of approval is included in the officer recommendation for the premises the operation management plan, to implement the proposed noise mitigation measures and to provide an Acoustic Report to ensure compliance with the Noise Regulations. • Any complaints received by the City would be investigated and action would be undertaken in accordance with the City's Development Compliance Enforcement Policy. • A condition of approval is included in the officer recommendation for the premises the operation management plan. This would ensure that the Restaurant/ Café would operate in the same manner should the owners change. • If approved, the premises would be required to operate in accordance with the Environmental Health Regulations. Non-compliance with these regulations would result in enforcement action by the City. • This requirement would be reviewed by Administration as part of obtaining the relevant Building and Health approvals.

Summary of Submissions:

Comments Received in Objection:	Officer Comment:
<u>Alfresco Dining</u> <ul style="list-style-type: none">• Alfresco dining would further exacerbate noise.• More detail is required on the alfresco dining to assess the impact.	Refer to previous comment in initial advertising period. The impacts to alfresco dining would be considered should an application be made.
<u>Liquor Licensing</u> <p>The café could serve liquor.</p>	Approval to serve alcohol at a venue is subject to a separate approval process through the Department of Racing, Gaming and Liquor.

Determination Advice Notes:

1. This is a development approval issued under the City of Vincent Local Planning Scheme No. 2 and the Metropolitan Region Scheme only. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the applicant/owner to obtain any other necessary approvals and to commence and carry out development in accordance with all other laws.
2. If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of determination, the approval will lapse and be of no further effect.
3. Where an approval has so lapsed, no development must be carried out without the further approval of the local government having first been sought and obtained.
4. If the applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within 28 days of the determination.
5. This approval is not an authority to ignore any constraint to development on the land, which may exist through statute, regulation, contract or on title, such as an easement or restrictive covenant. It is the responsibility of the applicant and not the City to investigate any such constraints before commencing development. This approval will not necessarily have regard to any such constraint to development, regardless of whether or not it has been drawn to the City's attention.
6. The development will be classified as a 'Public Building' and must comply with the Health (Public Buildings) Regulations 1992. An application is to be made to the City's Health Services for the assessment of the public building and maximum accommodation numbers prior to occupation of the premises. Please contact Health Services on (08) 9273 6000 upon receipt of this approval to discuss the requirements further with an Environmental Health Officer.
7. The food business must comply with the Food Act 2008, Food Regulations 2009 and the Australia New Zealand Food Standards Code. The applicant must register with the City's Health Services prior to operation of the food business. Please contact Health Services on 9273 6000 to discuss the requirements further with an Environmental Health Officer.
8. Any noise created at the premises must ensure compliance with the provisions within the *Environmental Protection (Noise) Regulations 1997*.
9. All new crossovers to lots are subject to a separate application to be approved by the City. All new crossovers shall be constructed in accordance with the City's Standard Crossover Specifications, which specify that the portion of the existing footpath traversing the proposed crossover (subject to the Footpath being in good condition as determined by the Infrastructure and Environment Services Directorate), must be retained. The proposed crossover levels shall match into the existing footpath levels. Should the footpath not to be in satisfactory condition, it must be replaced with in-situ concrete panels in accordance with the City's specification for reinstatement of concrete paths.
10. The applicant/landowner is advised that planning and/or building approval may be required for development works that are recommended by the Acoustic Report, to ensure compliance with the provisions within the *Environmental Protection (Noise) Regulations 1997*.

The applicant/landowner is advised to liaise with the City regarding any required development works to confirm approval requirements and to ensure the outcome is consistent with the City's Policy No. 7.1.1 – Built Form.

11. The short-term bicycle bays in the Berryman Street verge shall be provided in accordance with a CBR5B bicycle rack specification from the City's supplier, unless otherwise approved by the City.

Determination Advice Notes:

12. **Obtaining an Outdoor Eating Permit, does not negate the need for the landowner/applicant to comply with conditions of approval relating to activities on the footpath and/or verge adjacent to the subject site.**
13. **The applicant/landowner is advised that one on-site accessible toilet facility would be required in accordance with National Construction Codes (NCC) requirements. As an accessible toilet as not been accommodated for on the approved plans, the applicant would need to seek a Performance Solution in accordance with NCC requirements at the time of Occupancy Permit.**

The applicant is advised that if an appropriate Performance Solution cannot be achieved, an amended development application may be required to accommodate an on-site accessible toilet.

Please contact the City's Building Services team on 9273 6000 for further information.