

CITY OF UNLEY
COUNCIL ASSESSMENT PANEL

Dear Member

I write to advise of the Special Council Assessment Panel Meeting to be held on Tuesday 5 February 2019 at 6:00pm in the Unley Council Chambers, 181 Unley Road Unley.

Paul Weymouth
ASSESSMENT MANAGER

Dated 29/1/2019

ACKNOWLEDGEMENT

We would like to acknowledge this land that we meet on today is the traditional lands for the Kaurna people and that we respect their spiritual relationship with their country. We also acknowledge the Kaurna people as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kaurna people today.

MEMBERS:

Mr Brenton Burman (Presiding Member),
Ms Nicole Dent
Mr Roger Freeman
Mrs Ann Nelson
Mrs Jennie Boisvert

APOLOGIES:

CONFLICT OF INTEREST:

CONFIRMATION OF MINUTES:

MOVED:

SECONDED:

That the Minutes of the City of Unley, Council Assessment Panel meeting held on Tuesday 22 January 2019, as printed and circulated, be taken as read and signed as a correct record.

CITY OF UNLEY
COUNCIL ASSESSMENT PANEL

5 February 2019

A G E N D A

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Any Other Business
Matters for Council's consideration

ITEM 1**DEVELOPMENT APPLICATION – 090/530/2018/C3 – 84-92 DUTHY STREET, MALVERN 5061 (UNLEY PARK)**

DEVELOPMENT APPLICATION NUMBER:	090/530/2018/C3
ADDRESS:	84-92 Duthy Street, Malvern, 5061 (CT 5202/438)
DATE OF MEETING:	5 th February 2019
AUTHOR:	Mr Matthew King (Consultant Planner)
DEVELOPMENT PROPOSAL:	Change in land use from existing shop and associated wood fired oven to restaurant with associated wood oven at 84-92 (tenancy C & D) Duthy Street, Unley
HERITAGE VALUE:	<p>Local Heritage - Shops: External form, materials and detailing of the 1922 shops. Any later additions or alterations are excluding from the listing.</p> <p>The subject land is also a “Contributory Item” as per Fig Un(RHC)/6 B within the Development Plan.</p>
DEVELOPMENT PLAN:	Unley (City) Development Plan consolidated 19 December 2017
ZONE:	Residential Historic (Conservation) Zone Policy Area 6 – Spacious Unley and Malvern Trimmer Estate
APPLICANT:	D & J Packer
APPLICATION TYPE:	Merit
PUBLIC NOTIFICATION:	Category 3
REPRESENTATIONS RECEIVED:	Yes (487 support, 8 oppose and 12 invalid)
CAP'S CONSIDERATION IS REQUIRED DUE TO:	Unresolved representations Category 3 application where a representor wishes to be heard
RECOMMENDATION:	Approval Grant Development Plan Consent
KEY PLANNING ISSUES:	Interface with residential properties. Car Parking and Traffic.

1. PLANNING BACKGROUND

Table Un/4 – Local Heritage Places and the ‘SA Heritage Places Database’ indicates the subject land has historically been used as shops. The description of the subject heritage place is as follows:

“Shops: External form, materials and detailing of the 1922 shops...”
underlining added.

On this basis, it is clear that a variety of shops have been situated on the subject land for a longstanding period of time, since 1922.

On 12 October 2009 and via Development Application Number 090/253/2009/C3, the City of Unley granted Development Plan Consent for:

- *Installation of wood fired oven including flue and chimney in conjunction with premises to be used primarily for the sale by retail or display of goods, foodstuffs, merchandise or materials but not in conjunction with premises to be used primarily for the consumption of meals on the premises.*

A copy of this consent forms Attachment B.

2. DESCRIPTION OF PROPOSAL

The proposal involves a change in the use of the subject tenancies from a shop to a restaurant. The proposal does not include any external alterations or additional buildings. Proposed hours of operation are as follows:

- Monday: 6am to 6pm
- Tuesday: 6am to 6pm
- Wednesday: 6am to 10pm
- Thursday: 6am to 10pm
- Friday: 6am to 10pm
- Saturday: 6am to 10pm
- Sunday: 6am to 8pm

3. SITE DESCRIPTION

The subject land includes tenancies 'C' and 'D', along with common land, within 84-92 (allotment 84) Duthy Street, Malvern (CT 5202/438) in which there are 5 tenancies.

Pedestrian access to each tenancy is obtained from Duthy Street in which the primary façade of the subject building is orientated. The common land fronts Sheffield Street in which vehicle access is obtained.

The subject building is characterised by its projecting verandah and gable roof elements that delineate each historic tenancy.

The Development Plan prescribes the subject land as a Local Heritage Place and a Contributory Item with respect to the Residential Historic (Conservation) Zone.

There are no regulated trees on the subject land.

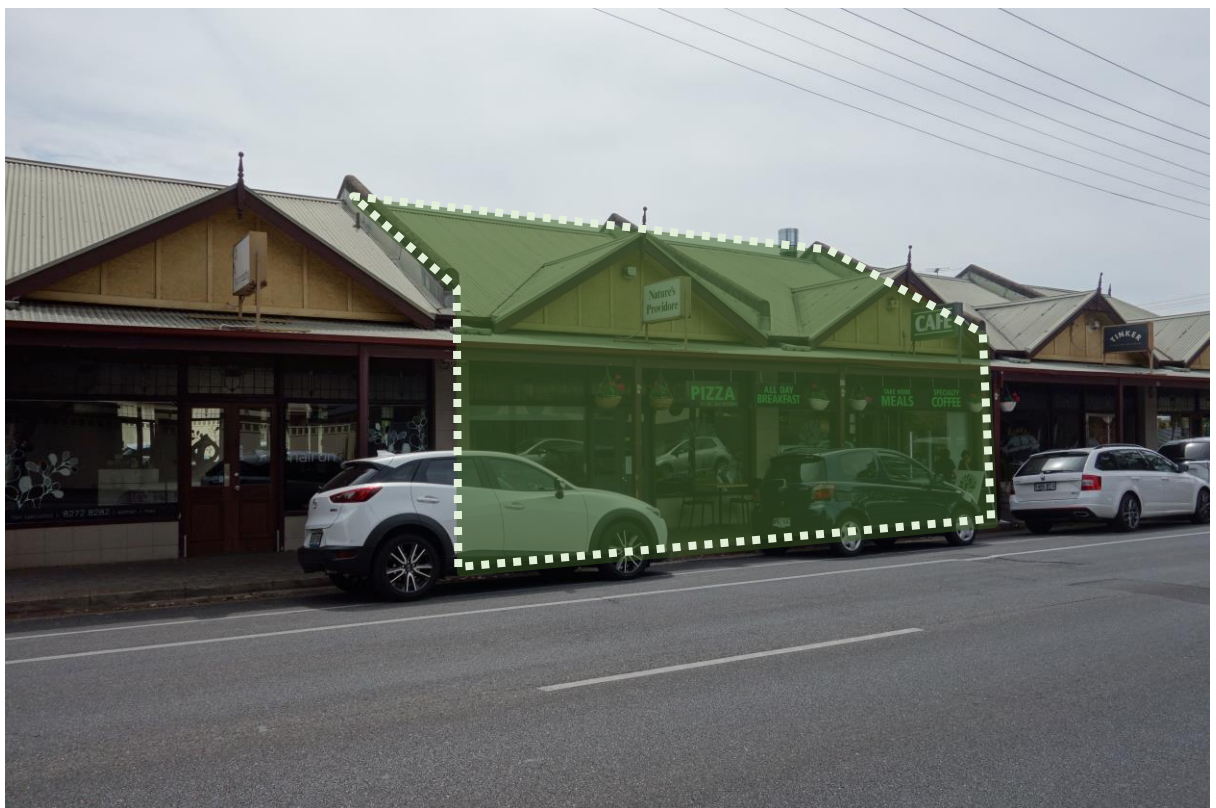


Photo of subject land with the Nature's Providore tenancy highlighted in green

LOCALITY PLAN



4. LOCALITY DESCRIPTION

The locality comprises land situated within the Residential Historic (Conservation) Zone and the Residential Streetscape (Landscape) Zone.

Land Use

The predominant land use within the locality is residential however some commercial uses front Duthy Street including a bakery, café, hairdresser, beauty therapist and medical business.

Dwelling Type / Style and Number of Storeys

Buildings throughout the locality are predominantly single storey with a distinctive architectural form of Victorian and Turn-of-the-Century villas and double fronted cottages. Some contemporary two-storey dwellings exist however these are, by comparison, rare.

Streets are generally wide and tree-lined to provide a spacious streetscape character.

5. STATUTORY REFERRALS

No statutory referrals required.

6. NON-STATUTORY (INTERNAL) REFERRALS

The proposal was referred internally to Council's Transport and Traffic Technical Officer and Environmental Health Officer whose comments are summarised in **Section 8** of this report.

PUBLIC NOTIFICATION

Category 3 notification was undertaken in accordance with Table Un/8 of the Unley Development Plan. During the ten (10) business day notification period 495 representations were received (487 support, 8 oppose). An additional 11 invalid representations were received after the public notification period.

A summary of the matters raised by each of the opposing representations are explained below along with the applicant's response.

ISSUES RAISED	APPLICANTS RESPONSE
Wood fired oven operated outside of conditions imposed upon Development Application Number 090/253/2009/C3. Smoke and air quality	The operation of the wood fired oven would remain in strict accordance with the existing authorisation. The operation of the wood powered part of the oven's operation will be limited from 6am to 5:30pm.
Noise	The majority of noise will occur as patrons arrive and depart. The level of noise associated with such activity is not unreasonable in the context of the locality, nor would it be readily identifiable during the day. The only appreciable noise impact will arise from deliveries. Deliveries take, on average, five – ten minutes to complete. This noise intrusion is considered acceptable and insignificant when viewed in the context of the locality which includes a major collector road and other commercial premises that also receive deliveries.

ISSUES RAISED	APPLICANTS RESPONSE
	Any impact with delivery vehicles has been addressed through an improvement to the location and management of deliveries. Delivery times are restricted to 8am – 4pm (Monday to Saturday), a time when there is a level of general daytime noise in any event.
Traffic and parking	<p>There are no spaces provided on the subject land and council has acknowledged that there is sufficient on street parking for the current use.</p> <p>The shortfall of three spaces is not considered significant.</p> <p>Not all vehicle movements can be attributed to Nature's Providore.</p>
Use of the rear courtyard area	<p>There is no intention for the service of food and beverages to extend to the rear courtyard.</p> <p>Limited to toilet access and informal play area for children. These activities do not constitute development in their own right.</p>
Increase in capacity	<p>The whole premises can accommodate seating for up to 50 persons at any one time.</p> <p>The proposal does not seek any additional capacity, nor a change in business as usual and current operation.</p>
Storage and collection of waste	The contract has been changed to the same company used by the neighbouring bakery to enable dual collection. This reduces waste collection visits by 50%
Dangerous driving from all vehicles*, including delivery vehicles.	<p>Delivery vehicles will utilise the rear common driveway as well as parking spaces on Duthy Street when available.</p> <p>The Applicant has undertaken to clear and resurface the rear driveway to ensure all delivery vehicles can</p>

ISSUES RAISED	APPLICANTS RESPONSE
	use the driveway area without impinging on the public road. Gates also remain open to facilities use of the driveway.
Increase to trading hours	<p>Current operating hours are not limited. The proposal seeks to provide increased certainty around operating hours, providing limitations that do not currently exist.</p> <p>Proposed hours of operation are as follows:</p> <ul style="list-style-type: none"> • Monday: 6am to 6pm • Tuesday: 6am to 6pm • Wednesday: 6am to 10pm • Thursday: 6am to 10pm • Friday: 6am to 10pm • Saturday: 6am to 10pm • Sunday: 6am to 8pm
The use of the site has crept from shop to café/restaurant.	The proposal maintains status quo, and simply seeks authorisation for the use as it currently operates, and has done so for in excess of 10 years.
Liquor License	Administrations Note: the matter of the procurement of a liquor license is a separate process the applicant is required to deal with under the <i>Liquor Licensing Act 1997</i> .

(* denotes non-valid planning considerations)

7. ASSESSMENT

Zone Desired Character and Principles of Development Control

Residential Historic (Conservation) Zone
<p>Objective 1: Conservation and enhancement of the heritage values and desired character described in the respective policy areas, exhibited in the pattern of settlement and streetscapes of largely intact original built fabric.</p> <p>Objective 2: A residential zone for dwellings primarily in street-fronting format, together with the use of existing buildings and sites used for non-residential purposes for small-scale local businesses and community facilities supporting an appealing, pleasant and convenient living environment.</p>

Objective 3: Retention, conservation and enhancement of contributory items, and the complementary replacement or redevelopment of non-contributory buildings.

Desired Character

Heritage Value

The Residential Historic (Conservation) Zone and its 7 policy areas have particular significance to the history of Unley's settlement. These areas tell a story about life in the late 19th and early 20th Century, and of the features and circumstances of the original European communities in Unley. It is for this reason, as well as the appealing and coherent streetscapes of largely intact original building stock, that these areas merit particular attention and protection.

The important defining heritage values and statements of desired character are expressed for each of the zones seven distinctive policy areas. These values stem from the original road layout and settlement patterns. There is a strong consistency and an identifiable pattern in the way buildings, of varying proportions, are sited and massed relative to the site sizes and widths of street frontages. There is also an identifiable rhythm of spaces between buildings and their street setbacks. Dwellings are of a traditional street-fronting format and adopt a strong street "address" with open front gardens and fencing, and with outbuildings and garaging being a recessive or minor streetscape element. There is also a consistency in the built fabric itself with characteristic use of building forms, detailing, materials and colours.

Contributory Items

A building making a positive contribution to the heritage value and desired character of the respective policy areas is termed a "contributory item". All contributory items are highly valued and ought not be demolished as this would significantly erode the integrity of the zone. Sensitively designed alterations and additions to a contributory item are appropriate, as are changes removing or making more positive contribution of discordant building features detracting from its contributory value. The adaptation of a contributory item for alternative residential accommodation where this provides for the retention, and ongoing refurbishment, of such items is also appropriate.

Non-contributory Buildings

A building which detracts from the heritage value and desired character of the zone is termed a "non-contributory building". The demolition and replacement of a non-contributory building with carefully designed infill is supported subject to meeting stringent design parameters to ensure compatible building forms and complementary, rather than inferior reproduction, buildings or building elements.

Assessment
<p>In accordance with its formal heritage listing, the subject land and building presently makes a positive contribution to the heritage value and desired character of the Policy Area. The proposal retains this building and its positive contribution is therefore reinforced by the proposal.</p> <p>The proposal does not include external alterations to the building as such it will continue to make a positive contribution to the area as desired by Objective 1 and 3.</p> <p>Objective 2 supports the on-going use of existing buildings for small-scale local businesses that support a convenient living environment. The proposal achieves this and will retain its small-scale operation with a low level of impact upon the locality anticipated, as discussed further throughout this report.</p>

Relevant Zone Principles of Development Control	Assessment
<p>PDC# 1 <i>Development should conserve and enhance the desired character as expressed for each of the seven policy areas.</i></p>	<p>As discussed above, the proposal will conserve the Desired Character as expressed within the Policy Area.</p> <p>The proposal satisfies PDC 1.</p>
<p>PDC# 3 <i>Development should retain and enhance a contributory item by:</i> a) <i>refurbishing, restoring and improving the original fabric and maintaining its streetscape contribution; and</i> b) <i>avoiding works detrimentally impacting on the built form and its characteristic elements...; and</i> c) <i>removing discordant building elements, detailing, materials and finishes, outbuildings and site works; and</i> d) <i>altering or adding to the item and carrying out works to its site only in a manner which maintains or enhances its contribution to the desired character, and responds positively to the characteristic elements and streetscape context of its locality</i></p>	<p>In accordance with PDC 3, the proposal will:</p> <ul style="list-style-type: none"> • Maintain the streetscape contribution of the existing building. • Avoid works that would detrimentally impact on the built form of the “Contributory Item”. • Maintain the contribution of the building to the Desired Character of the Zone and Policy Area. The proposal will continue to contribute to the streetscape context and the locality. <p>The proposal satisfies PDC 3.</p>
<p>PDC# 4 <i>Alterations and additions to a contributory item should be located primarily to the rear of the building and not be visible from the street or any public road unless involving the</i></p>	<p>In accordance with PDC 4, there are no changes to the appearance of the building. The proposal will retain the buildings original fabric, form and key features.</p>

<p><i>dismantling and replacement of discordant building elements so as to reinstate or better complement the building's original fabric, form and key features.</i></p>	<p>The proposal satisfies PDC 4.</p>
<p>PDC# 5 <i>A contributory item adapted, expanded or redeveloped for alternative residential accommodation and/or care, or alternatively for a community or non-residential use should be:</i> a) <i>confined to an existing non-residential building or its site;</i> b) <i>of a form and nature readily able to accommodate such a use; and</i> c) <i>of a small scale and low impact, or serves a local community function, and in any event, have a minimal impact on abutting or nearby residential occupiers.</i></p>	<p>The subject "Contributory Item" will be adapted for the expansion of a non-residential use. In accordance with PDC 5, the proposed works will:</p> <ul style="list-style-type: none"> • Be confined to the existing non-residential building site. • Be of a form and nature that is readily able to accommodate the proposed use. • Serve the local community. • Be small scale and low impact on nearby residential occupiers, as discussed in more detail below. <p>The proposal satisfies PDC 5.</p>
<p>PDC# 9 <i>Development should present a single storey built scale to the streetscape. Any second storey building elements should be integrated sympathetically into the dwelling design</i></p>	<p>The proposal will continue to present a single storey form in accordance with PDC 9.</p> <p>The proposal satisfies PDC 9.</p>
<p>PDC# 10 <i>Buildings should be of a high quality contemporary design and not replicate historic styles. Buildings should nonetheless suitably reference the contextual conditions of the locality and contribute positively to the desired character</i></p>	<p>In accordance with PDC 10, the proposal will:</p> <ul style="list-style-type: none"> • Continue to have a high-quality appearance characteristic of the locality. • Continue to be of a scale and form that positively contributes to the Desired Character. • Retain the existing streetscape setting. <p>The proposal satisfies PDC 10.</p>

Policy Area Desired Character

Policy Area 6 – Spacious Unley and Malvern Trimmer Estate
Desired Character
<p><i>Heritage Value</i> <i>An important appreciation of the heritage value is formed by the comprehensive subdivision by Trimmer (and Grainger) during 1881-1884 of the area originally known as ‘New Parkside’, ‘Malvern’ and ‘Malvern Extension’. This subdivision demonstrates the extensive growth of Unley as a suburban area in the late 19th Century.</i></p> <p><i>Desired Character</i> <i>The spacious streetscape character is founded on wide, tree-lined streets, grid street layout (with axial views focused on the central oval feature in ‘New Parkside’) and generous front gardens. Intrinsic to the area is an extensive, intact collection of contributory items including distinctive Victorian and Turn-of-the-Century villas (asymmetrical and symmetrical), double-fronted cottages and limited complementary, Inter-war era, styles. More affluent, original owners developed some larger, amalgamated allotments in the southern areas establishing grander residences and gardens.</i></p> <p><i>Development will:</i></p> <ul style="list-style-type: none"><i>(a) conserve contributory items, in particular symmetrical and asymmetrical villas of Victorian and Turn-of-the-Century era and double-fronted cottages; and</i><i>(b) be of a street-fronting dwelling format, primarily detached dwellings; and</i><i>(c) maintain or enhance the predominant streetscapes and regular road and allotment patterns with:</i><ul style="list-style-type: none"><i>(i) dwelling sites typically of 15 metres in street frontages and with site areas of 750 square metres; and</i><i>(ii) front setbacks of some 7 metres; and</i><i>(iii) side setbacks of between 1 metre and 3 metres so as to maintain a total spacing between neighboring dwelling walls, of some 4 metres; and</i><i>(d) maintain and respect important features of architectural styles of contributory items having typically:</i><ul style="list-style-type: none"><i>(i) building wall heights in the order of 3.6 metres; and</i><i>(ii) total roof heights in the order of 5.6 metres or 6.5 metres; and</i><i>(iii) roof pitches in the order of 27 degrees and 35 degrees.</i>

Assessment
<p>The Policy Area is primarily written with the intent to conserve contributory items and preserve the spacious streetscape character of the area. In accordance with the Policy Area, the proposal will:</p> <ul style="list-style-type: none"> • Preserve the existing building appearance and streetscape character. This is because the proposal does not include any external alterations. • Conserve the Local Heritage Place and the character of surrounding contributory items. • As there's no land division, retain the existing allotment pattern.

Relevant Council Wide Objectives and Principles of Development Control

An assessment has been undertaken against the following Council Wide Provisions:

City-wide Objectives and Principles of Development Control		
Centres and Shops	<i>Objectives</i>	1
	<i>PDCs</i>	6, 10, 11, 12, 15, 17, 18, 19, 23 and 24
Commercial and Industrial Development	<i>Objectives</i>	1
	<i>PDCs</i>	-
Form of Development	<i>Objectives</i>	1 and 7
	<i>PDCs</i>	1, 2, 7, 8, 9, 12 and 13
Heritage	<i>Objectives</i>	1, 2, 3, 4 and 5
	<i>PDCs</i>	1, 2, 3, 4, 8, 10 and 11
Interface Between Land Uses	<i>Objectives</i>	1, 2 and 3
	<i>PDCs</i>	1, 2, 3, 5, 6, 7, 8, 9, 10, 11 and 12
Public Notification	<i>PDCs</i>	1
Transportation (Movement of People and Goods)	<i>Objectives</i>	1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13
	<i>PDCs</i>	1, 3, 12, 13, 19, 20, 25, 26, 27 and 29
Waste	<i>Objectives</i>	1
	<i>PDCs</i>	1, 2, 3, 5, 6 and 10

The pertinent planning considerations are discussed below.

8. DISCUSSION

Land Use

General Section, Form of Development, Principle 7 states:

“The expansion or redevelopment of a building to be used for non-residential purposes in a residential zone may be appropriate where the proposed non-residential use is confined to a site used, in whole or in part, for non-residential purposes, and:

- (a) the proposed use is non-intensive and primarily serves, or has long established direct associations with, the local community and improves the range and quality of community facilities or other services to that local community; or*
- (b) is located adjacent to a non-residential use, or a non-residential zone boundary, so as to provide a buffer for nearby residential occupiers to the activities arising from that non-residential use; or*
- (c) improves existing unsatisfactory site conditions”.*

Table Un/4 – Local Heritage Places and the ‘SA Heritage Places Database’ indicates the subject land has historically been used as shops. The description of the subject heritage place is as follows:

“Shops: External form, materials and detailing of the 1922 shops...” underlining added.

It is evident that a variety of shops have been situated at 84-92 Duthy Street for a longstanding period of time, since 1922 with direct associations with the local community. The proposal satisfies the first part of Principle 7 as above. However, in considering the merits of the proposal, the increased scale and intensity of the use must be considered.

From at least December 2007 up until sometime between March 2013 and November 2015, tenancies ‘C’ and ‘D’ were occupied by a business called “Doof – Doof, we know FOOD backwards!”. Since at least November 2015, both tenancies have been occupied by Nature’s Providore.

It became apparent to Council that the occupation of the tenancy as a restaurant was unauthorised.

The authorised and proposed use both fall within the definition of “shop” as per the Development Regulations 2008 however the proposal is considered to constitute a change of land use because it has a different “genus” of use (i.e. it is going from one type of shop to another).

The Policy Area does not address specifically non-residential land uses however Objective 2 of the Zone states:

“A residential zone for dwellings primarily in street-fronting format, together with the use of existing buildings and sites used for non-residential purposes for small-scale local businesses and community facilities supporting an appealing, pleasant and convenient living environment”. underlining added.

The land is considered to have historic and ongoing use rights as a “shop”. The key consideration is therefore the intensity of the shop and its impact upon the character and amenity of the locality, which is addressed below.

Interface between Land Uses

General Section, Form of Development, Principle 8 states:

“The expansion or redevelopment of a non-residential use should be minor in scale and nature and:

- (a) preserve, or enhance, the established residential character and streetscape;*
- (b) preserve, or enhance, the residential amenity of the locality in terms of the intensity and scale of non-residential activities including hours of operation, traffic generation, noise nuisance from plant and equipment and general business activity, overlooking and overshadowing, and any odours, overspray or other atmosphere discharges; and*
- (c) not significantly increase the traffic activity or car parking demand associated with the continuing non-residential use, and any minor increase be met by additional car parking provided on-site, or otherwise available within the street at the times likely to be demanded without prejudicing required resident parking, or the amenity and enjoyment of nearby residential occupiers”.*

Principle 8 guides that expansion or redevelopment of non-residential uses in residential type zones be *“minor in scale and nature”*. Whether a proposal is “minor” in a particular locality depends largely on its operation and context.

In accordance with Principle 8(a) the proposal will preserve the established residential character and streetscape. The scale of the proposal is not considered to overwhelm the established residential character in the locality.

In determining whether the proposed scale will preserve residential amenity in the locality it is important to have regard to the “interface” provisions of the Development Plan in particular General Section, Interface between Land Uses, Objective 1, and Principle 1 which states:

“Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following:

- (a) the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants*
- (b) noise*
- (c) vibration*
- (d) electrical interference*
- (e) light spill*
- (f) glare*
- (g) hours of operation*
- (h) traffic impacts”.*

In satisfaction PDC 1:

The proposal does not include additional flues (further than that approved via Development Application Number 090/253/2003/C3).

The design of the existing flue appears high quality, tall and of a commercial grade, as such there are no anticipated (further) unreasonable odour impacts.

The applicant has devised a bespoke cooking/oven system to ensure that no appreciable smoke issues arise for neighbours. The wood oven typically operates by lighting the oven during the day and then burning wood up until 5:30pm. From then, a gas operated system is implemented for cooking. This means the process of burning wood ceases at 5:30pm with embers pushed to the back of the oven to allow space for pizza to be cooked by the thermostat controlled gas system. As the process of cooking is not reliant upon extensive heating/burning of wood there is not a significant amount of smoke permeating off-site.



Photo 1: Oven in operation showing embers of wood oven, and gas flame to the left

The Council's Environmental Health Department have inspected the oven on a number of occasions. A summary of their advice is provided as follows:

- *Authorised officers inspected the premises twice on 20 July 2018 at 1:30pm and 4:55pm and again on 27 July 2018 at 1:20pm and 4:40pm. During the lunch time inspections, the wood fire oven was being operated with flames visible inside the oven. At those times there was only a faint visibility of smoke emitting from the flue and no odour detected and therefore authorised officers were of the opinion it did not constitute nuisance.*

- *The afternoon inspections found the wood oven no longer had wood burning or flames within the unit. There was no smoke being emitted from the flue and no odour detected and therefore no nuisance.*

In addition to the Environmental Health inspections, the premises has been inspected by Development staff on a number of occasions during 2018. On all occasions officers were of the opinion that the operation of the wood oven did not constitute a nuisance.

On the above basis the use of the wood fired oven is considered acceptable if operated in accordance with all of the conditions imposed upon Development Application Number 090/253/2009/C3.

A copy of the Decision Notification Form for Development Application Number 090/253/2009/C3 as well as the accompanying Tokin Consulting report prepared by Johan Meline dated 2 September 2009 forms **Attachment B**.

The proposed use will not cause vibration, electrical interference, overlooking or privacy impacts. A condition upon any consent is recommended to ensure no glare or light spill beyond the subject land.

The proposal will operate during the following hours:

- Monday and Tuesday – 6:00am to 6:00pm.
- Wednesday to Saturday – 6:00am to 10:00pm.
- Sunday – 6:00am to 8:00pm.

The wood fired oven will continue to operate in accordance with condition 3 imposed upon Development Application Number 090/253/2003/C3. Condition 3 states:

“The wood oven shall only operate (including lighting the oven and its use)

- *Mon-Sun – 6am to 5:30pm”.*

As noted above the use after 5:30pm will be limited to the gas system which ensures there are no serious smoke impacts for neighbours.

The proposed operating hours are considered appropriate given that all cooking activities and the enjoyment of meals will be contained within the building (except for existing outdoor dining activities on Duthy Street). The rear courtyard is not proposed to be used for the service of food or drink and the use of the courtyard is limited to:

- Access to customer toilets - access and use of the existing toilet for customers is not considered to impose unreasonable amenity impacts by way of noise. A condition may be considered by the Council Assessment Panel regarding the implementation of a soft close door hinge to minimise potential noise impacts

- Informal play area for children - the use of the rear courtyard as an informal play area for young children is considered acceptable. It is unlikely this space would be conceivably used by children at night time in any case.

Traffic impacts are discussed separately below.

Traffic

The proposal will have a patron capacity up to 50 customers at any one time within the building.

As with shop style buildings typical of this era (i.e. pre-dating the motor vehicle), off-street parking is not available.

Table Un/5 guides car parking rates for a “shop” and “restaurant” as follows:

- Shop – 7 spaces per 100 square metres of floor area. Given an approximate floor area of 195 square metres a shop should in theory provide 14 car parking spaces.
- Restaurant – 1 space per 3 seats. The proposal should provide up to 17 spaces based upon 50 seats.

As such, the proposed change in use will in theory generate a car parking requirement for an *additional* 3 car parking spaces.

On-street parking is available on both Duthy Street and Sheffield Street. Council’s traffic engineer has explained the following in relation to on-street parking demand:

- Parking within 50 metres of the proposal is highly occupied and often at capacity. This would not significantly change as a result of the proposal given the demand from existing uses.
- Parking within 50 to 100 metres from the business is moderately occupied. The additional car parking demand required by the proposal would most likely be accommodated in this area thus limiting available on-street car parking in this range.
- It is unlikely that the increase in opening hours would have a significant impact on parking. This is because a portion of the current on-street parking demand is associated with other businesses and potentially a small number of motorists catching public transport. In addition, the extended opening hours do not generally coincide with other tenancies.
- The proposal will diminish on-street car parking availability for residents distanced between 50 and 100 metres from the proposal, but would result in minimal change for other residents and businesses.

With respect to these comments, dwellings within the locality, particularly along Sheffield Street generally have provision for at least 2 on-site car parking spaces. Generally, the demand for on-street parking in relation to properties along Sheffield Street is therefore for visitors which are likely to be on an infrequent or ad-hoc basis.

Council's traffic engineer has explained the following in relation to deliveries:

- The number of deliveries to the business are likely greater for a restaurant than a shop as they rely on fresh produce.
- There is a 15-minute parking space on Duthy Street which would be appropriate for deliveries however is frequently occupied.
- Parking data reveals that all parking within 50 metres of the proposal is frequently at capacity, particularly for large vehicles that require 2 adjacent unoccupied spaces.
- A delivery driver may therefore be required to park 50 to 100 metres from the café at times, potentially leading to illegal parking. This is also likely to be the case for other businesses.
- The common area accessed from Sheffield Street could accommodate a delivery vehicle with minor modifications.

The applicant has confirmed the following with respect to deliveries:

- All delivery vehicles are able to access the rear driveway/lane or Duthy Street for deliveries without impact on Sheffield Street or blocking the adjoining driveway.
- All deliveries occur between 8am and 4pm on the following days and the following frequency.

The applicant has advised as follows:

Generally, frequency of deliveries is as follows:

Milk/Dairy: *twice per week on a Tuesday and Friday. Having been subjected to verbal abuse from Sheffield Street residents, the milk delivery now uses a small van that parks further down Duthy Street and walks to the premises, to avoid Sheffield Street altogether.*

Bidfoods: *twice per week and also park on Duthy Street and walk to the premises.*

Bread: *no delivery – sources from bakery next door*

Fruit & Veg: *approx. three times per week using a smaller van via the rear lane*

Eggs: *as required via the rear lane*

ALSCO (linen): *once per week on a Tuesday via the rear lane. It should be noted that this delivery is combined with the bakery deliver, thereby reducing the total number of visits to the site by 50%*

Waste collection: *the contract has also been changed to the same company used by the bakery to enable dual collection. It should be noted that this has resulted in an increase in waste disposal costs, but has been done to minimise disturbance to the neighbours. Again, a shared collection with the adjoining bakery reduces waste collection visits to the site by 50%*

- All delivery personnel have been advised to use the rear of the property or available parking on Duthy Street for deliveries.
- Rear gates will remain open to ensure that all deliveries associated with the proposal can occur within the common driveway.

Councils Traffic Department have reviewed the above response and advise that reasonable measures have been taken to limit the impact on the street/neighbours, considering the constraints of the site.

In this circumstance, the impact upon on-street car parking from the shortfall of 3 spaces is not considered unacceptable particularly when balanced against the convenience provided by the tenancies (proposed and existing) to local residents, which is a positive aspect of the proposal.

Heritage

Council Wide, Heritage Objective 2 states:

Objective 2: The conservation of State and Local Heritage Places, and their setting.

Table Un/4 – Local Heritage Places and the ‘SA Heritage Places Database’ indicates the subject land is a local heritage place. The description of the subject heritage place is as follows:

“Shops: External form, materials and detailing of the 1922 shops...” underlining added.

The proposal does not include alterations to the external form, materials or details of the building or its locality. As such, the proposal will conserve the heritage place and its setting. The proposal satisfies Objective 2.

9. CONCLUSION

In summary, the application is not considered to be seriously at variance with the Development Plan and is considered to satisfy the provisions of the Development Plan for the following reasons:

- The proposal will replace a longstanding shop use within a building which is purpose designed and suitable for a different form of shop (i.e. restaurant) that is largely operating at a minor scale beyond its approved condition.
- The proposal will conserve the local heritage place/contributory item along with its setting and will add a service to the local community that is popular and enjoyed evident by the supporting representations.
- A restaurant of the kind proposed is a low scale operation that does not detrimentally affect the amenity of the locality because:
 - Consumption of meals/cooking activities will be contained within the building. The wood fired oven will be used up until 5:30pm from which point a low impact gas cooking system is implemented in the oven which ensures smoke impacts are appropriately managed/removed.
 - The use is limited to occurring inside the building save for the outdoor dining area on Duthy Street and hours of operation are reasonable noting they do not exceed 10pm for 4 nights a week and are 6pm and 8pm for the remainder of the week. As such noise impacts are minimised.
- The proposal only increases the existing parking shortfall by in theory 3 spaces. The parking shortfall arising from the proposal is not problematic as confirmed by Council's expert traffic engineers. It will retain a safe vehicular and pedestrian environment on nearby roads and footpaths.

The application is therefore recommended for Development Plan CONSENT.

10. RECOMMENDATION

MOVED:

SECONDED:

That Development Application 090/530/2018/C3 at 84-92 Duthy Street, Malvern 5061 for 'Change in land use from existing shop and associated wood fired oven to restaurant at 84-92 (tenancy C & D) Duthy Street, Unley' is not seriously at variance with the provisions of the City of Unley Development Plan and should be GRANTED Planning Consent subject to the following conditions:

DEVELOPMENT PLAN CONSENT DETAILS OF DECISION:

1. The Development herein approved shall be undertaken in accordance with all plans, drawings, specifications and other documents submitted to Council and forming part of the relevant Development Application except where varied by conditions set out below (if any) and the development shall be undertaken to the satisfaction of Council.
2. The use hereby authorised shall not operate outside the following hours.
 - Monday: 6am to 6pm
 - Tuesday: 6am to 6pm
 - Wednesday: 6am to 10pm
 - Thursday: 6am to 10pm
 - Friday: 6am to 10pm
 - Saturday: 6am to 10pm
 - Sunday: 6am to 8pm
3. The existing oven shall only operate as follows:
 - a) wood-fired operation may occur between 6.00am to 5.30pm, Monday to Sunday. For the sake of clarity, the term "operation" includes lighting the oven and extinguishing any lit wood but does not include any incidental embers, smoke emissions, haze or the like which may occur afterwards;
 - b) gas-fired operation may occur in accordance with the operating hours of the development specified in Condition 2 above.

Note: Other conditions relating to Development Application Number 090/253/2009/C3 continue to apply.

4. All deliveries shall occur between the hours of 8am and 4pm on any day between Monday and Saturday.
5. All deliveries associated with the authorised development shall occur on-site within the rear common driveway or utilising available on-street car parking on Duthy Street. No delivery vehicle shall block or obstruct other vehicle movements within the locality, including the driveways of other properties.

6. All lighting and any reflective surfaces shall be direct and/or shaded to ensure no light spill or glare upon another property.

NOTES PERTAINING TO DEVELOPMENT PLAN CONSENT:

- The applicant should ensure that the proposed development conforms to the Food Act 2001, Food Regulations 2002 and the Australian Food Safety Standard.
- This authorisation does not include consent for additional advertisements. A separate consent will be required for further advertisements that constitute “development”.
- The applicant should ensure that the proposed development conforms to the Local Litter and Nuisance Control Act.

List of Attachments		Supplied By:
A	Application Documents	Applicant
B	Decision Notification 090/253/2009/C3	Administration
C	Internal Referral Response - Traffic	Administration
D	Response to Representations	Applicant
E	Representations	Administration