

TO: **COUNCIL ASSESSMENT PANEL**
 DATE: **9 DECEMBER 2020**
 SUBJECT: **COUNCIL ASSESSMENT REPORT**
 AUTHOR: **CRAIG WATSON**
 ATTACHMENTS: **1. LOCALITY PLAN**
2. SUBMITTED PLANS AND INFORMATION
3. REPRESENTATIONS
4. APPLICANT'S RESPONSE TO REPRESENTATIONS

HEARING OF REPRESENTORS **DR ANGUS McCURDIE**
GREG SHERIDAN
JANINE BOYD-MEANAY

HEARING OF APPLICANT **PHILIP TASKER**

DA NO.	:	110/00694/20
APPLICANT	:	PHILIP TASKER
LOCATION	:	595 ANZAC HIGHWAY, GLENELG NORTH
DEVELOPMENT PLAN	:	CONSOLIDATED 2 JUNE 2016
ZONE AND POLICY AREA	:	MIXED USE
NATURE OF DEVELOPMENT:		MERIT
PROPOSAL	:	CHANGE IN USE OF LAND FROM INDOOR PLAY CENTRE TO ADULT SHOP
EXISTING USE	:	INDOOR PLAY CENTRE
REFERRALS	:	NIL
CATEGORY	:	TWO
REPRESENTATIONS	:	SEVEN VALID REPRESENTATIONS AND TWO INVALID REPRESENTATIONS
RECOMMENDATION	:	DEVELOPMENT PLAN CONSENT WITH CONDITIONS

1. Site and Locality

The subject site is on the northern side of Anzac Highway between Tapleys Hill Road and Old Tapleys Hill Road. The site presently contains a building with mezzanine floor constructed to the rear and side boundaries with carpark in front. Its last use was for an indoor play centre.

The locality comprises primarily commercial uses facing Anzac Highway with some residential cottages to the east and residential flat buildings presently under construction on the adjoining northern property.

Refer to Attachment 1

2. Proposed Development

The development proposes to use the building as an adult shop. The applicant advises:

- That products for sale will include lingerie, shoes and general adult products;
- Nothing will be seen from the exterior of the shop;
- The existing meeting room will be opened up and become part of the general retail area and there will be 1 office, 2 store rooms, staff kitchen and service counter. The layout is still to be decided. The mezzanine floor will only be used for storage;
- Hours of operation will be 9am to 11pm Monday to Thursday, 9am to 12pm Friday and Saturday and 11am to 9pm on Sunday;
- Staffing numbers will comprise two per shift;
- A moderately low volume customers are expected perhaps a maximum of 4-5 customers at any one time; and
- Existing signs will be replaced with no increase in size or number.

Refer to Attachment 2

3. Public Consultation

Given that the shop exceeds 150m² the application was subject to a category 2 public notification pursuant to Procedural Matters within the Mixed Use Zone. Seven valid representations and two invalid representations were received. The invalid representations were from owners/occupiers of properties outside of the defined notification area and are attached for information only.

The valid representations are summarised as follows:

- Adult shop not listed as envisaged use in the zone;
- Operation hours are not normal retail hours trading till 11pm is likely to cause offence and discourage visitors;
- Use of existing light box will make it highly visible;
- Staff will not feel safe when closing at night;
- Not in keeping with surrounding services;
- Clientele including children, aged and different cultural backgrounds will not feel safe;
- Not complimentary with business and residential properties to the rear and will bring unwanted sexualised element to the area;
- Will degrade the area and discourage business from moving into the area;
- Inappropriate location given construction of Aldi store nearby and increased visitation by families;
- Perception of clientele that will visit the adult shop is one not conducive to children in proximity and may result in loss of customers to nearby business; and
- This area is the entrance to Glenelg and wrong location for adult shop.

Refer to Attachment 3

The applicant in response advises:

- The site has been vacant since November 2019 and few opportunities have presented for re-leasing;
- It is first and foremost a shop;

- Untrue that deviantes will attend, this is unsupported by evidence, customers are average people who do not incite fear or give rise to personal safety;
- The combination of the Council welcome sign and the Wigley Worm sign can only be viewed as shown in a representation at that precise point given their distance apart;
- The Mixed Use Zone includes small scale shops and given the siting of the existing building there will be no impact on the northern residential area;
- Representations make no mention of the Development Plan;
- The representations make unfounded comments which do not properly reflect how an adult shop operates;
- Signage will only identify the premises and will not be provocative or sexual; and
- Adequate parking is available and busiest hours are likely to be late afternoon/early evening when a reduced number of families and children will be around.

Refer to Attachment 4

HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – NON RESIDENTIAL DEVELOPMENT – COUNCIL WIDE – PRINCIPLES OF DEVELOPMENT CONTROL

Crime Prevention	
1. Development should be designed to maximise surveillance of public spaces through the incorporation of clear lines of sight, appropriate lighting and the use of visible permeable barriers wherever practicable.	Complies.
Interface between Land Uses	
1. 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.	Complies.
2. Development should be sited and designed to minimise negative impact on existing and potential future land uses considered appropriate in the locality.	Complies
5. Sensitive uses likely to conflict with the continuation of lawfully existing developments and land uses considered appropriate for the zone should not be developed or should be designed to minimise negative impacts.	Complies. While the use may be considered sensitive for moral reasons the development Plan is more concerned with physical impacts e.g. noise, traffic generation etc.
7. Development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant <i>Environment Protection (Noise) Policy</i> criteria when assessed at the nearest existing noise sensitive premises.	No noise produced.
Orderly and Sustainable Development	
1. Development should not prejudice the development of a zone for its intended purpose.	Complies.
2. The economic base of the region should be expanded in a sustainable manner.	Complies.
7. Vacant or underutilised land should be developed in an efficient and co-ordinated manner to not prejudice the orderly development of adjacent land.	Complies.

Orderly and Sustainable Development	
9. Development should be undertaken in accordance with the following Structure Plan Map and Concept Plan Maps: (a) <i>Structure Plan Map HoB/1 - Holdfast Bay</i> (b) <i>Structure Plan Map HoB/2 - Brighton and Hove District Centre</i> (c) <i>Concept Plan Map HoB/1 - Jetty Road and Moseley Square</i> (d) <i>Concept Plan Map HoB/2 - Car Parking Areas</i> (e) <i>Concept Plan Map HoB/3 - Foreshore and Patawalonga</i> (f) <i>Concept Plan Map HoB/4 - Buckle Street</i> (g) <i>Concept Plan Map HoB/5 - Extent - Glenelg Foreshore and Patawalonga Zone.</i>	Complies.
Transport and Access	
8. Development should provide safe and convenient access for all anticipated modes of transport.	Complies.
12. Development should be designed to discourage commercial and industrial vehicle movements through residential streets and adjacent other sensitive land uses.	Complies.
20. Development should encourage and facilitate cycling as a mode of transport by incorporating end-of-journey facilities including: (a) showers, changing facilities and secure lockers (b) signage indicating the location of bicycle facilities (c) secure bicycle parking facilities.	Complies. Sufficient space available to accommodate bicycle parking although no showers are provided.
26. On-site parking and manoeuvring areas servicing development abutting arterial roads should be designed to enable all vehicles to enter and exit the site in a forward direction.	Complies.
34. Development with access from arterial roads or roads as shown on <i>Overlay Maps - Transport</i> should be sited to avoid the need for vehicles to reverse on to or from the road.	Complies.
37. Development should be sited and designed to provide convenient access for people with a disability.	Complies.
39. Parking for people with a disability should be located conveniently to major entrances and ramps and adequately signposted or identified as being for people with a disability only.	Complies.
45. Parking areas should be sealed or paved in order to minimise dust and mud nuisance.	Complies.
47. Vehicle parking areas should be line-marked to delineate parking bays, movement aisles and direction of traffic flow.	Complies.

HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – MIXED USE ZONE– OBJECTIVES AND PRINCIPLES OF DEVELOPMENT CONTROL

Objectives	
1. A functional and diverse zone accommodating a mix of commercial, medium density residential land use in association with non-residential land use, office, facilities for tourists and small-scale shop land uses.	Complies.
4. Development that maintains and reinforces the historic character of the area and reflects the role of the Anzac Highway as a principal gateway to the Glenelg foreshore area.	No physical impact.
5. Consolidation, co-ordination and integration of development on adjoining allotments and for land on the northern side of Anzac Highway.	Maintains status quo.
6. Development that minimises any adverse impacts upon the amenity of the locality within the zone.	Complies. The Development Plan does not place any weight on moral issues.
7. Development that contributes to the desired character of the zone.	Complies.

Desired Character	
<p>The zone encourages a mix of land uses including medium density housing, offices, consulting rooms and facilities for tourists. Development will include a mix of these uses on single sites which will complement the role and function of the nearby District Centre Zone, and are compatible in scale and form with neighbouring residential areas.</p> <p>Residential development will promote medium densities predominantly in the form of residential flat buildings with ground floors occupied by non-residential land uses. In this regard, development that achieves amalgamation of allotments or shared access to parking arrangements is particularly desirable.</p> <p>A cohesive character will be created through complementary building scales, setbacks, colours and materials. Likewise, conflict between residential and non-residential development will be limited by acoustic treatment, and siting and separation of built forms where possible.</p> <p>Development will provide an attractive presentation to the road frontage and public realm through the incorporation of landscaping and by locating storage (including goods storage), waste, loading and service areas to the rear of sites where less visible to public view or screened through quality landscaping.</p>	<p>As per Principle 1 shops are considered appropriate albeit with smaller floor area.</p> <p>Not applicable.</p> <p>No change to existing building.</p> <p>No Change to existing.</p>
Principles of Development Control	
<p>1. The following forms of development are envisaged in the zone:</p> <ul style="list-style-type: none"> • bulky goods outlet on the northern side of Anzac Highway • consulting room • dwelling above non-residential land use • office • residential flat building above non-residential land use • service trade premises • shop or group of shops, where the gross leasable area is less than 150 square metres • warehouse 	<p>Generally complies. The floor area is larger than that recommended however given the specialist nature of the proposal it is not expected to be a high traffic generator or prejudice the development of the zone for its intended purpose.</p>
<p>2. Development listed as non-complying is generally inappropriate.</p>	<p>The development is not 'non-complying'.</p>
<p>3. Development should not be undertaken unless it is consistent with the desired character for the zone.</p>	<p>Considered to comply.</p>
<p>4. Development located on the northern side of Anzac Highway between Old Tapleys Hill Road and Pasquin Street should be developed in a manner as shown on <i>Concept Plan Map HoB/4 - Buckle Street</i>.</p>	<p>Complies.</p>
<p>5. The bulk and scale of development should be compatible with adjoining land uses.</p>	<p>No change to existing bulk and scale.</p>
<p>10. Development should provide the opportunity for shared use of service access and car parking and integration of car parking areas with adjoining development.</p>	<p>Does not comply however this is an existing arrangement and there is sufficient on-site parking to service the expected demand.</p>
<p>11. Development should be of a low traffic generating nature.</p>	<p>Complies.</p>
<p>12. Advertisements and advertising hoardings should not include any of the following:</p> <ul style="list-style-type: none"> (a) flashing or animated signs (b) bunting, streamers, flags, or wind vanes (c) roof-mounted advertisements projected above the roofline (d) parapet-mounted advertisements projecting above the top of the parapet. 	<p>Complies. Replacement of existing signs, which does not require further development approval.</p>
<p>13. Vehicle parking should be provided in accordance with the rates set out in <i>Table HoB/1-Off Street Vehicle Parking Requirements</i> or <i>Table HoB/1A-Off Street Vehicle Parking Requirements for Designated Areas</i> (whichever applies).</p>	<p>Complies. Site is within a Designated Area and requires minimum of 14 spaces. 18 spaces provided.</p>

5. Summary of Assessment

Land Use

The development proposes a change in use from an indoor play centre to a shop. Mixed Use Zone Objective 1 anticipates a mix of commercial, medium density residential land use in association with non-residential land use, office, facilities for tourists and small-scale shop land uses. Principle 1 envisages amongst others shops with a maximum gross leasable area in the order of 150m² (other than bulky goods outlets north of Anzac Highway).

The proposal is not for a bulky goods outlet and the floor area at approximately 450m² is significantly greater than 150m². Nevertheless its scale is substantially less than the Aldi development approved at 601 Anzac Highway. Further given the specialist nature of the shop it would not compete with or impact the function of the Jetty Road District Centre Zone. The development is not expected to be a high traffic generator and will not seriously impact the attainment of the objectives for the subject zone.

Nature of Shop

In seeking a legal opinion regarding any legal restrictions regarding the location of adult shops Council's lawyers advise the following:

"The legislation that governs adult shops is the [Classification \(Publications, Films and Computer Games\) Act 1995](#). Pursuant to [s 47](#) and [s 48](#) of that Act, certain publications can only be sold, displayed or delivered in a restricted publications area. Section 81 provides that:

(1) A restricted publications area must be so constructed that no part of the interior of the area is visible to any person outside the area.

(2) Each entrance to a restricted publications area -

(a) must be fitted with a gate or door capable of excluding persons from the area; and

(b) must be closed by means of that gate or door when the area is not open to the public.

(3) A restricted publications area must be managed by an adult who must be in attendance in or near the area at all times when the area is open to the public.

(4) The manager of a restricted publications area must cause a notice containing the following words, in legible letters or numerals not less than 15 millimetres in height and of a colour that contrasts with the background colour of the notice, to be displayed in a prominent place on or near each entrance to the area, so that it is clearly visible from outside the area:

RESTRICTED PUBLICATIONS AREA - PERSONS UNDER 18 MAY NOT ENTER. THE PUBLIC ARE WARNED THAT SOME PUBLICATIONS DISPLAYED HEREIN MAY CAUSE OFFENCE."

However, there is no legislation in SA that governs the location of adult shops per se. It is worth noting that the City of Adelaide lists in its development plan "adult products and services premises" as non-complying development in certain Zones. That development plan also contains a definition for such premises:

***"adult products and services premises:** the use of land or premises for a tattooist, or for the sale, exchange, hire, exhibition, loan, delivery or display, or to otherwise render accessible or available to the public, sexually explicit material including: (a) publications classified as restricted or prohibited under the Classification (Publications, Films and Computer Games) Act 1995; and/or (b) material compounds, objects or devices (other than contraception and medical treatments) designed to be used in connection with sexual behaviour or activities; and/or (c) films, video films or tapes, any other form of optical or electronic records from which a visual image may be produced or any other pictorial matter, the sale, delivery, exhibition, advertisement or display of which is restricted or prohibited under the Classification (Publications, Films & Computer Games) Act, 1995. It does not include premises used for prostitution."*

There is no equivalent term used or defined in the City of Holdfast Bay development plan.

Accordingly, we do not consider that there are any restrictions or specific requirements governing the location of adult stores. The application could not, therefore, be considered to be hypothetical."

The representations are primarily concerned with the type of shop i.e. for the sale of adult products and alleged associated criminal and immoral activities. The Development Plan however does not distinguish between shop types other than to determine between say a specialty shop and restaurant, which may have different parking and noise impacts. The Development Plan places little or no weight on moral issues. It is more concerned with physical impacts such as traffic/parking impacts, noise, visual, shading etc.

The residential development on the adjoining northern site will be shielded from the proposed activities by the building itself which is constructed to the northern boundary. Other residential properties to the east are separated by another commercial property. In any respect the development is not expected to produce any appreciable noise impacts. Hours of operation for shops are regulated by State legislation. Council can only limit the hours by agreement with the applicant. The applicant advises that *"signage will not be provocative or sexual. Rather it will simply be a sign that identifies the premises"*. The applicant further advises that the existing road facing sign will remain the same size and configuration and a building sign will be of a similar size and location as the existing with LED back lighting. If signage is just replacing existing signage in the same location and size with no change from non-illuminated to illuminated development approval is not required. If approved a note requesting signage details can be added to the decision notice.

Parking

Within Table HoB/1A in the Development Plan the Mixed Use Zone is listed as a Designated Area. Relevant parking rates are a minimum of 3 spaces per 100m² and a maximum of 6 spaces per 100m². The applicant advises that there will be 2 staff members per shift and 4 to 5 customers at any one time with peak hours likely to be late afternoon/early evening. Given the specialist nature of the proposal the parking demand is likely to be at the minimum rate, requiring 14 spaces. A total of 18 parking spaces are provided on-site.

Conclusion

Within the Holdfast Bay Development Plan there are no specific requirements or restrictions for adult products. Similarly there are no provisions relating to moral issues. The proposed use as a shop will not have any significant physical impacts on adjoining properties either by traffic generation, parking, noise or additional built form impacts. Although arguably the existing floor area is not small scale the development, particularly given its specialist nature will not compromise attainment of the Objectives for the wider Zone.

The development is not seriously at variance with the Development Plan and has sufficient merit for consent.

6. RECOMMENDATION

1. **The proposed development is NOT seriously at variance with the policies in the Development Plan.**
2. **Following a detailed assessment of the proposal against the provisions of the Holdfast Bay (City) Development Plan, the Council Assessment Panel resolves to grant Development Plan Consent, to Development Application 110/00694/20 , subject to the following conditions:**

PLANNING CONDITIONS

- 1 **That the design and siting of all buildings and structures and site works shall be as shown on the plans submitted to and approved by Council unless varied by any subsequent conditions imposed herein.**
- 2 **That the use of the building be in accordance with submitted supporting information including emails from p tasker dated 14/09/2020, 29/09/2020 and response to representations unless varied by subsequent conditions.**
- 3 **That the shop not be used for a restaurant or café without the further consent of Council.**

NOTE:

Any additional signage to that existing or signage that will increase the size or location of existing signs or to illuminate existing non-illuminated signs may require further development approval. It is recommended that signage details be submitted to Council for further consideration.