

**PD012: DEVELOPMENT APPLICATION: CHANGE OF USE - TAVERN  
AT 18 ADELAIDE CRESCENT, MIDDLETON BEACH.**

|                                |   |
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| <b>Land Description</b>        | : Part of 18 (Lot 201) Adelaide Crescent, Middleton Beach   |
| <b>Proponent</b>               | : Trish Flowers   |
| <b>Owner</b>                   | : Mr R G & Mrs J P Flowers.   |
| <b>Business Entity Name</b>    | : Albany RATS Bar   |
| <b>Attachments</b>             | : Application details – site/floor plan and covering letter;<br>Approved layout pursuant to original tavern approval<br>P2105183 dated 17/11/2010.<br>Site location plan at 1:5,000;<br>Letters of objection and support. |
| <b>Councillor Workstation</b>  | : None.   |
| <b>Responsible Officer(s):</b> | : Executive Director Planning & Development Services<br>(D Putland).  |

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| <b>Responsible Officer's Signature:</b> |  |
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**STRATEGIC IMPLICATIONS**

1. The item relates directly to the following element of the *Community Strategic Plan "Albany 2023"*:

**Key Theme:** 3. A Connected Built Environment

**Strategic Objective:** 3.3 To develop vibrant neighbourhoods which retain our local character and heritage.

2. The item relates to the following Planning Objective of the Albany Local Planning Strategy (ALPS):

**Section 5.4.1 Destination Sites**

To retain existing and facilitate new tourism developments which are sympathetic to community and environmental considerations.

**In Brief:**

- The proponent is seeking to extend the floor space of the RATS Bar Tavern by utilising two (2) of their adjoining small shop units.
- They are also seeking to increase the permitted hours of operation to close later at night at 11pm instead of the current 9:30pm.
- The application has been advertised to surrounding landowners within a 250m radius of the site, as well as in a local newspaper and with a sign onsite. A total of 181 consultation letters sent out.
- A total of 6 responses were received. Of these; two (2) were objections; two (2) were supportive; one (1) was a qualified letter of support and the other was no comment.
- Under the *Planning Processes Policy* City staff does not have delegation to determine proposals for Taverns. RATS Bar was previously approved by Council and this proposal seeks an extension of the floor area as well as an alteration of the hours of operation. It is therefore appropriate that this proposal is referred to Council for consideration and determination.

**RECOMMENDATION**

**PD012: COMMITTEE RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for Tavern at 18 Adelaide Crescent, Middleton Beach subject to the following conditions:**

- 1) Prior to occupancy of the use, unless varied by a condition of approval or a minor amendment to the satisfaction of the City of Albany, all development shall occur and be maintained in accordance with the stamped approved plans**
- 2) The tavern is limited to the private property (being the building and verandah facing Adelaide Crescent). It does not include the alfresco areas on public land.**
- 3) The maximum number of patrons permitted onsite at any one time shall not exceed eighty (80) people.**
- 4) Prior to occupancy of the extended floor space, a cash in lieu contribution for four (4) car parking bays (in accordance with Council Policy) shall be paid to the City of Albany.**
- 5) The premises shall not be open to the public other than between the hours of 10:00am to 11:00pm Monday to Saturday and 10:00am to 10:00pm Sundays and Public Holidays, unless otherwise agreed in writing by or on behalf of the Council.**
- 6) Prior to occupancy of the extended floor space, an appropriately fire-rated permanent partition shall be installed between the tavern and remaining shop units.**
- 7) Line marking works for the five (5) car parking bays on Adelaide Crescent and the “No Standing” line on the plans approved pursuant to Condition A1 of Planning Scheme Consent P2105183 must be completed prior to occupancy of use of the extended floor space.**
- 8) All work is to be in accordance with the City of Albany’s Subdivision and Development Guidelines.**
- 9) The proposed development is to comply with any details and/or amendments marked in red as shown on the approved plan.**
- 10) No signs are to be erected on the lot without the approval of the City of Albany, in accordance with the City of Albany’s Sign Bylaws.**
- 11) Prior to the occupancy of the additional floor space, male and female toilets to be provided in accordance with the Health and Building regulations.**

PD012: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR GREGSON

SECONDED: COUNCILLOR HAMMOND

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for Tavern at 18 Adelaide Crescent, Middleton Beach subject to the following conditions:

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CARRIED8-0

**PD012: RESPONSIBLE OFFICER RECOMMENDATION**

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for Tavern at 18 Adelaide Crescent, Middleton Beach subject to the following conditions:

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## **BACKGROUND**

3. Part of the building at 18 Adelaide Crescent has previously been considered by Council for use as a Tavern. The proposal was considered and approved by Council as Item 1.1 at its Ordinary Council Meeting on 16 November, 2010.
4. A subsequent request was received to alter the hours of operation by one hour. This minor amendment was approved under delegated authority in September 2012
5. Several changes were made in relation to the internal arrangement during the fit out of the approved tavern. Accordingly, there is a retrospective element to the approval now sought as part of this current application.

## **DISCUSSION**

6. The proposed additional floor space for the established RATS Bar tavern is currently approved for use as two small shop units fronting Marine Terrace.
7. The proponent has requested permission to incorporate these spaces into the tavern floor space. Their intention is to remove the internal partition wall to make the additional space one room. Due to differences in the internal floor levels the area would remain a separate room from the open plan bar area. They have indicated an opening in the southern wall of the room may be made to allow some visual connection with the open plan bar area. However, construction of this opening is not a planning consideration.
8. In terms of the retrospective elements, the tavern now has its own kitchen that is arranged around the relocated toilets. The relocation of the toilets was noted during the approval of the shop units and was not considered a detrimental change that altered the determining factors behind the original tavern approval.
9. The Tavern use has already been considered and approved previously having been through a public consultation period. As this proposal seeks an extension of the area for the approved use as well as increased hours of operation; this request has also been advertised in accordance with the Scheme requirements. A summary of the responses is detailed further in this report.
10. The original proposal was assessed and approved on the basis of an approximate public area of 53m<sup>2</sup>. Calculating for car parking provision and venue capacity were based on this area. Given the existing development on the site, only one car parking space could be accommodated onsite. The remaining parking requirement was developed at the proponent's expense in the adjoining road reserve on the south side of Adelaide Crescent. These works have been undertaken with line marking of the bays expected to be completed at the appropriate time of year (as the weather improves) to obtain the best and most durable finish. It is anticipated that this will be completed in the very near future.
11. The requested additional floor space raises the public area by approximately 26m<sup>2</sup>. The Scheme requires parking provision for a Tavern at a rate of 1 parking bay per 6m<sup>2</sup>. This additional floor space therefore gives rise to a parking requirement for 5 cars.
12. When the shop use was considered an allowance of two parking bays was attributed to the entire shop floor space. As half of the approved shop floor space is now proposed to be added to the tavern floor area, it is appropriate that one of the two car parking spaces be credited to the tavern use and one space remain with the shop area.

13. Accordingly, with the one car parking space being credited, this proposed change of use gives rise to an increased car parking requirement of 4 bays. As the site cannot accommodate further onsite bays and the proponents have already developed the adjoining road reserve to cover the shortfall of parking on their original approval, it is unlikely any new car parking bays can be provided. As the site falls within the Middleton Beach Tourist Precinct, cash-in-lieu payments for parking can be required in accordance with the calculations set out in Council's *Albany Town Centre Policy*.
14. The Albany Town Centre Policy sets out the cash-in-lieu of parking calculation as:
  - *'... calculated on the basis of 26m<sup>2</sup> per parking bay and includes 25% of the estimated cost of the land, plus the equivalent total cost of asphalt paving on a suitable base course, drainage, line marking, landscaping, and, where applicable, lighting...'*

It is appropriate that if approval of the proposal is considered, it should include a condition for the cash-in-lieu payment for the equivalent of 4 car parking bays.
15. The landuse development table for Town Planning Scheme 1A also requires a tavern to have a minimum 10 % of the site to be landscaped. As the proposal is for a change of use of an existing building and does not involve extension of that building within the site, it is not appropriate to require additional landscaping on an existing developed site. Accordingly this landscaping element is not considered to be a relaxation of a Scheme requirement and was not advertised.
16. The total area, including the increased area, will be approximately 80m<sup>2</sup> of public area within the private property. If the increased area is permitted, the use should be limited to a maximum number of patrons not exceeding 80 people. This can be the subject of a suitable condition on any approval.
17. Although the submitted plans show the intention is for the licensed area to include the alfresco areas, this element relates more to the future liquor licence application that is not currently under consideration. The planning application for the extended tavern use is concerned with the use of the private property within the property boundary, not the public thoroughfare and extended alfresco area. The use of the road reserve / public thoroughfare as alfresco areas is subject to separate application and licensing by the City's Environmental Health Department.
18. The proponent has also requested a variation of the hours of operation. The current tavern use is restricted to between 10am and 9:30pm 7 days a week. The request is to allow a closing time of 11pm to give flexibility and to accommodate future functions.
19. In the zoning table of Town Planning Scheme 1A, a Tavern is a SA use in the Tourist Residential zone. SA uses require a 21 day public consultation period. The detail of the consultation undertaken is explained further in the relevant section of this report.
20. There were two (2) letters of objection received in response to the public consultation. These objections raised the following concerns and issues:
  - The Middleton Beach area is already adequately serviced by licensed premises.
  - This proposal is contrary to the plans/vision for the area.
  - Undermines competitor's plans for investment and development, so will be detrimental to the area.

- The operator's do not adhere to their restrictions and it took a long time for them to comply with aspects they should have done before opening, such as parking.
  - The extra space is to hold functions, but there are other function venues in the vicinity that people can already use. This is detrimental to existing local businesses.
  - The liquor licence change of bottle shop from Bay Merchants to allow RATS takeaway sales is not in the public interest.
  - They are already opening beyond 9:30pm, so are not adhering to their current hours.
  - The extension is not necessary, as they have not reached their current capacity limit.
  - The previous application stated they would not have amplified music, but they have.
  - Will they next want to expand into Bay Merchants if they cannot sell it?
21. A qualified letter of support was also received stating their support was on the basis that the current trading hours are maintained. This should be viewed as an objection to the increase in hours of operation.
22. A number of the issues raised in objection relate to competing business interests. Such issues are not a planning consideration.
23. Other matters raised suggest that the current operation has not been adhering to the current conditions of approval. While it is correct that the parking was not addressed prior to the use commencing; the design was approved and the City is aware that there were difficulties with the external contractor completing the works. The construction was completed some months ago with the line marking still to be undertaken. City staff understand the completion of the line marking is imminent.
24. There have also been complaints related to the hours of operation, particularly with regard to opening earlier on Sunday mornings. Such reported instances have been followed up with staff undertaking monitoring, but no breaches have been witnessed by City staff.
25. The proponents have also requested an extension of the hours of operation so that the Tavern can close at 11pm.
26. The Department of Racing, Gaming and Liquor administers the Liquor Control Act 1988 and under this legislation there are permitted trading hours. Taverns can be permitted to open from 6:00am to midnight Monday through the Saturday inclusive and 10:00am to 10:00pm on Sundays. There are minor variations on certain Public Holidays.
27. Whilst some concern has been raised regarding any change to the hours of operation, this is a Tourist Residential zone with a high level of tourist accommodation in the vicinity. Establishments that provide a service to visiting tourists and local residents alike should have the flexibility to meet the needs and expectations of customers within the parameters of the applicable legislation.
28. The subject premises is well positioned in that there are no immediately adjoining accommodation properties and the other buildings onsite provide a buffer to minimise the potential for disturbance.
29. Accordingly, City staff are of the opinion that the request to extend the closing time to 11pm (10pm on Sundays) is acceptable.

30. Comments were also received regarding the Bay Merchants Liquor Store (bottle shop) licence. When Council considered the original application for tavern, the takeaway sales of packaged liquor was not raised and not the subject of a condition. Under the planning decision, packaged takeaway sales can be permitted. However, due to the proponents holding the liquor store licence at the adjoining premises (Bay Merchants), the Department of Racing, Gaming and Liquor imposed a Restricted Tavern condition prohibiting takeaway sales from RATS Bar.
31. The takeaway element of the liquor licence is not a matter for Council to consider under this application. The extension of floor space by 26m<sup>2</sup> is for on-site consumption only, not for display or sales of packaged liquor for takeaway. The takeaway sales element is a matter for the Department of Racing, Gaming and Liquor.
32. In addition, the proponent has since advised that they no longer want to incorporate the Bay Merchants liquor store licence into the tavern licence.
33. The proposal has been referred to other City Departments for comment. No objections were raised and the suggested conditions have been incorporated into the recommendation. Copies of the comments, including references to other applicable legislative requirements will be enclosed with any decision issued.
34. Overall, it is the opinion of City staff that the proposed use will not be detrimental to the amenity of the area and can be considered acceptable subject to general and specific conditions.

#### **GOVERNMENT & PUBLIC CONSULTATION**

35. Consultation with State Government Departments was not required or undertaken.
36. Under the Town Planning Scheme No.1A requirements a 21 day public consultation was undertaken.
37. This public consultation commenced on Thursday 11 July, 2013, with an advertisement appearing in the public notice section of the Albany Advertiser. The City also wrote letters to 181 surrounding landowners and placed a site notice facing Marine Terrace in a window of one of the affected shops. The public consultation period was open until close of business on Thursday 1 August, 2013.
38. A total of six (6) written responses were received from this public consultation. Copies of these responses are attached to this report.
39. One response received stated the landowner had no comment on the application.
40. Two (2) letters were received stating strong support for the proposal and in particular raised the following points:
  - The condition of the whole precinct is depressing and any development must be promoted.
  - RATS and Bay Merchants are central to the vibrancy of Middleton Beach.
  - These businesses are a major tourist drawcard.
  - This is a welcome local amenity.



41. A further letter of support was received, but this was qualified support dependant on maintaining the current trading hours and conditions. Also the bottle store remaining with Bay Merchants. This should be viewed as an objection to the requested extension of hours of operation
42. Two explicit letters of objection were received in response to the consultation. In summary, the issues and concerns raised in the objections are:
- The Middleton Beach area is already adequately serviced by licensed premises.
  - This proposal is contrary to the plans/vision for the area.
  - Undermines competitor's plans for investment and development, so will be detrimental to the area.
  - The operator's do not adhere to their restrictions and it took a long time for them to comply with aspects they should have done before opening, such as parking.
  - The extra space is to hold functions, but there are other function venues in the vicinity that people can already use. This is detrimental to existing local businesses.
  - The liquor licence change of bottle shop from Bay Merchants to allow RATS takeaway sales is not in the public interest.
  - They are already opening beyond 9:30pm, so are not adhering to their current hours.
  - The extension is not necessary, as they have not reached their current capacity limit.
  - The previous application stated they would not have amplified music, but they have.
  - Will they next want to expand into Bay Merchants if they cannot sell it?
43. The matters raised in the objections are discussed and addressed in the preceding discussion section above in this report.

### STATUTORY IMPLICATIONS

44. Section 73 (1) of the *Planning and Development Act 2005* states that 'A local planning scheme is to – (b) specify the local government to be responsible for enforcing the observance of the scheme, and for the execution of any works which, under the scheme or this Act, are to be executed by a local government.'
45. Clause 1.5 of the City of Albany Town Planning Scheme 1A specifies the Responsible Authority as 'The Authority responsible for enforcing the observance of the Scheme is the Council of the Town of Albany (hereinafter called "the Council"). A note on the cover page of the Scheme states 'On 1/7/98 Shire of Albany and Town of Albany was amalgamated to form "City of Albany"'. Therefore, the City of Albany is responsible for the administration and observance of Town Planning Scheme 1A.
46. Clause 7.8A of the City of Albany Town Planning Scheme 1A specifies the Matters to be Considered by Council and states:
- The Council in considering an application for planning consent is to have due regard to such of the following matters as are in the opinion of the Council relevant to the use or development the subject of the application:*
- (a) the aims and provisions of the Scheme and any other relevant town planning schemes operating within the Scheme Area;*

*(b) the requirements of orderly and proper planning including any relevant proposed new town planning scheme or amendment, or region scheme or amendment, which has been granted consent for public submissions to be sought;*

*(f) Any Town Planning Scheme Policy adopted by the Council under clause 7.21, and any other plan or guideline adopted by the Council under the Scheme;*

*(i) the compatibility of a use or development with its setting;*

*(j) any social issues that have an effect on the amenity of the locality;*

*(n) the preservation of the amenity of the locality;*

*(p) whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles;*

*(q) The amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*

*(y) any relevant submission received on the application;*

*(zb) any other planning consideration the Council considers relevant.*

47. These relevant matters have been considered and addressed by staff in arriving at the recommendation.

#### **POLICY IMPLICATIONS**

48. This matter has no direct planning policy implications.

#### **RISK IDENTIFICATION & MITIGATION**

49. The risk identification and categorisation relies on the City's [Enterprise Risk Management Framework](#).

| <b>Risk</b>   | <b>Likelihood</b> | <b>Consequence</b> | <b>Risk Analysis</b> | <b>Mitigation</b>   |
|---|-------------------|--------------------|----------------------|---|
| <i>Approving the proposed use could give rise to unacceptable detrimental impacts, such as noise, on the residential amenity of the area.</i> | <i>Possible</i>   | <i>Moderate</i>    | <i>Medium</i>        | <i>The use must still comply with the requirements of the Environmental Protection (Noise) Regulations. Should it prove necessary monitoring for compliance with conditions can be undertaken. This is a Tourist Residential zoning where there is allowance for tourism related activities such as the proposed use.</i> |
| <i>Approving the proposed use could give rise to additional parking pressures in the vicinity.</i>  | <i>Unlikely</i>   | <i>Minor</i>       | <i>Low</i>           | <i>This extended use falls 4 car parking bays short. There are underused public car parks a short distance away, which can be upgraded with the cash-in-lieu contribution required by condition.</i>  |

## FINANCIAL IMPLICATIONS

50. All costs associated with the development will be borne by the proponent.
51. The cash-in-lieu contribution for the shortfall of four car parking bays to be provided by the proponent will need to be spent on parking provision or upgrades in the vicinity of the use.

## LEGAL IMPLICATIONS

52. The Council is at liberty to use its discretion to approve the proposal with or without conditions. This application is being assessed on its individual merits and will not set a general precedent for future development of this or any other site.
53. The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

## ENVIRONMENTAL CONSIDERATIONS

54. The proposed development seeks to re-use an existing building on the developed lot. As such, there are no significant Environmental Considerations.

## ALTERNATE OPTIONS

55. Council may determine that the proposed change of use (extension of use) is unacceptable and may resolve to refuse the application. A detailed reason for refusal would need to be provided as part of such a determination.
56. Council also has alternate options regarding the hours of operation condition.

### Option 1:

Maintain the existing hours of operation which reads:

*'The premises shall not be open to the public other than between the hours of 10am to 9:30pm 7 days a week, unless otherwise agreed in writing by or on behalf of the Council.'*

### Option 2:

Allow for the maximum hours of operation currently permitted under the Liquor Act 1988. These hours of operation are:

*Monday to Saturday 6:00am to Midnight; Sunday 10:00am to 10:00pm; New Year's Eve (Monday to Saturday) 6:00am to 2:00am New Year's Day; New Year's Eve (Sunday) 10:00am to 2:00am New Year's Day; Good Friday and Christmas Day Noon to 10:00pm (ancillary to a meal only); ANZAC Day Noon to Midnight.*

A suitable condition would read:

*'The premises shall only be open to the public during the hours permitted under the Liquor Control Act 1988 (as amended) or any other Act superseding or replacing it.'*

57. The proponent would be able to seek a review of Council's decision, including any conditions attached to an approval and the City of Albany may be required to defend the reasons for refusal or the conditions at a State Administrative Tribunal hearing.

## SUMMARY CONCLUSION

58. The application seeks to use two small shop units facing Marine Terrace for extended floor space for Albany RATS Bar. This equates to an additional 26m<sup>2</sup> of public area raising the patron capacity to 80 people and requiring the provision of a further 4 car parking bays.
59. The application also seeks an alteration to the hours of operation for the existing premises to operate until 11pm (10pm on Sundays).
60. The proposal has been advertised as required, with six responses received. One response was no comment, two responses were strongly supportive, two responses were objecting and a further one response was a qualified support for the overall use, but with objection to any change in hours of operation.
61. Much of the content of the objections relate to competing business interests and are not planning considerations. City staff have assessed the proposal against the planning requirements and considered the objections raised in coming to a recommendation.
62. City staff are of the opinion the proposal can be supported and recommend approval subject to the suggested conditions.

|                                   |   |   |
|-----------------------------------|---|---|
| <b>Consulted References</b>       | : | City of Albany Town Planning Scheme 1A. |
| <b>File Number (Name of Ward)</b> | : | A133891 (Frederickstown Ward)           |
| <b>Previous Reference</b>         | : | OCM 16/11/2010 Item 1.1                 |