

REPORTS AND RECOMMENDATIONS

FOR THE

DEVELOPMENT ADVISORY UNIT

MEETING

HELD ON

TUESDAY, 20 AUGUST 2024

1. This Meeting makes Recommendations to the Manager Statutory Planning & Building.
2. Should any Elected Member wish to discuss the content of any item included as part of the attached agenda, please contact Kate Bainbridge, Manager Statutory Planning & Building. Contact should be established as soon as possible after the publication of the agenda to the City of Melville website. Contact details are as follows: Tel 9364 0626 or via the Elected Members Portal.
3. Should an Elected Member propose that an item on this agenda be referred to Council for determination, a request to that effect must be made to the Chief Executive Officer (CEO). This request shall be made in accordance with the requirements set out by Clause 3.5.4 of Local Planning Policy LPP 1.1 'Planning Process and Decision Making'.
4. Should any applicant or adjoining property owner object to any proposal included as part of this DAU agenda, then an opportunity exists to request that the application be determined by Council. All such requests should be referred to an Elected Member of Council for the Ward within which the development application is located. An Elected Member may request that the application be determined by Council. Any call up request from an Elected Member shall be made in accordance with the requirements set out by Clause 3.5.4 of Local Planning Policy LPP 1.1 'Planning Process and Decision Making'.
5. In the absence of any referral request, a decision on any application included as part of this DAU agenda can take place under delegated authority to the Manager Statutory Planning, after midday on the second Monday after the Friday publication of the minutes to the City's website. In the event that the DAU minutes are not published to the City's website until the Monday after the DAU meeting, a decision on the application can still take place the following Monday.

DISTRIBUTED: 23 AUGUST 2024



**REPORTS AND RECOMMENDATIONS FROM THE DEVELOPMENT ADVISORY UNIT
MEETING HELD IN, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD,
BOORAGOON, COMMENCING AT 9:00 AM ON TUESDAY, 20 AUGUST 2024**

PRESENT

K Bainbridge
T Cappellucci
L Crake
J Caracciolo
T Geddes
G Davey

Manager Statutory Planning & Building
Principal Statutory Planner
Building Services Coordinator
Senior Statutory Planner
Senior Statutory Planner
Statutory Planner

DISCLOSURES OF INTEREST

**DISCLOSURE OF FINANCIAL INTERESTS
LOCAL GOVERNMENT ACT 1995**

Members' interests in matters to be discussed at meetings to be disclosed

S.5.65 (1) A member who has an interest in any matter to be discussed at a Council or Committee meeting that will be attended by the member must disclose the nature of the interest -

- (a) in a written notice given to the Chief Executive Officer before the meeting; or
- (b) at the meeting immediately before the matter is discussed.

Penalty: \$10,000 or imprisonment for 2 years.

Meeting to be informed of disclosures

S.5.66 If a member has disclosed an interest in a written notice given to the Chief Executive Officer before a meeting then before the meeting -

- (a) the Chief Executive Officer is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) the person who is to preside at the meeting is to bring the notice to the attention of the persons who attend the meeting.

Disclosing members not to participate in meetings

S.5.67 A member who makes a disclosure under Section 5.65 must not -

- (a) preside at the part of the meeting relating to the matter; or
- (b) participate in, or be present during, any discussion or decision making procedure relating to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under Section 5.68 or 5.69.

Penalty: \$10,000 or imprisonment for 2 years.

Please refer to your Handbook for definitions of interests and other detail.

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U24/0638 – CHANGE OF USE TO SMALL BAR AT LOT 8 (NO. 221) PRESTON POINT ROAD, BICTON (REC) (ATTACHMENT)

Ward : Bicton - Attadale – Alfred Cove
 Category : Operational
 Application Number : DA-2024-221
 Property : Lot 8 (No.221) Preston Point Road, Bicton
 Proposal : Change of Use to Small Bar
 Applicant : Terra Mare Bicton Pty Ltd
 Owner : James Ilias & Jim Klifunis
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : No Previous Item.
 Responsible Officer : Kate Bainbridge
 Manager Statutory Planning and Building

AUTHORITY / DISCRETION

DEFINITION

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes & policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input checked="" type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council to note.</i>

U24/0638 - CHANGE OF USE TO SMALL BAR AT LOT 8 (NO. 221) PRESTON POINT ROAD, BICTON (REC) (ATTACHMENT)

KEY ISSUES / SUMMARY

- Development approval is sought for a change of use from Restaurant to Small Bar at No.221 Preston Point Road, Bicton. The subject premises on-site is shaded in green in Figure 1 below.
- The details of the proposed development have been assessed against Local Planning Scheme No. 6 (LPS6) and relevant Local Planning Policies.
- The proposed land use requires discretionary assessment regarding the appropriateness of the proposed land use ('D' class use).
- The application was advertised in accordance with the provisions of the Planning and Development (Local Planning Scheme) Regulations 2015 (as amended) and LPP1.1.
- Nine submissions were received (seven objections and two support) during the advertising period with concerns in relation to the lack of car parking to the subject site, noise impacts from the proposed use, and the impacts of the operation of a liquor serving business upon local properties.
- The proposed development was presented to the Development Advisory Unit (DAU) meeting held on 20 August 2024.
- The City recommends that approval be granted subject to conditions including the provision of an acoustic report to ensure that noise does not exceed the requirements under the *Environmental Health (Noise) Regulations 1997*.



Figure 1 – Aerial Photography

U24/0638- CHANGE OF USE TO SMALL BAR AT LOT 8 (NO. 221) PRESTON POINT ROAD, BICTON (REC) (ATTACHMENT)**BACKGROUND****Scheme Provisions**

MRS Zoning	: Urban
LPS Zoning	: Centre C4
R-Code	: R40
Use Type	: Small Bar
Use Class	: 'D'

Site Details

Lot Area	: 1278m ²
Retention of Existing Vegetation	: N/A
Street Tree(s)	: N/A
Street Furniture (drainage pits etc)	: Yes
Site Details	: Refer to Figure 1 above

DETAIL

The subject premises on-site is currently approved to operate as a Restaurant and the applicant is now seeking a change of use approval to operate as a Small Bar which will allow customers to purchase an alcoholic beverage at the bar. Currently, customers can only purchase an alcoholic beverage with a meal or must be seated at a table and served by wait staff. Operationally, the Small Bar will employ the same number of staff, operate within the same hours and no increase in the patron numbers. This means there is no increase in car parking required.

The proposal has been assessed against the provisions of LPS6, and relevant Local Planning and Council Policies. The proposed change of use complies with all the relevant development requirements except for the proposed 'D' class use, for which a performance assessment is required.

STAKEHOLDER ENGAGEMENT**I. COMMUNITY**

Advertising Required:	Yes
Neighbour's Comment Supplied:	Yes
Reason:	Required Pursuant to LPP 1.1 Planning Process and Decision-Making Clause 3.3 (c).
Support/Object:	Nine Submissions received. Two supports and seven objections.

U24/0638 - CHANGE OF USE TO SMALL BAR AT LOT 8 (NO. 221) PRESTON POINT ROAD, BICTON (REC) (ATTACHMENT)

A summary of the content of the submissions received and a response is provided in the table below.

Issues Raised by Submitters	Summary of Submissions	Support/Objection	Officer's Comment	Action (Condition/ Uphold/ Not Uphold)
Amenity	The lack of a small bar has been a small blight on what is the best suburb in Perth. Small bars don't attract unsociable behaviours given generally they aren't an attraction for long sittings and the alcohol is generally targeted to over 30s who aren't generally a source of anti-social behaviour.	Support	Noted.	No action
Car parking	Concerns in relation to parking from the business resulting in car parking issues in the immediate locality such as, parking in front of driveways and patrons parking on private property.	Objection	The land use has the same parking requirement under Local Planning Policy 1.6 'Car Parking and Access' and there is no increase to floor area, patron capacity or staffing. This means that there is no increase in the required number of car parking bays.	Not Uphold

U24/0638 - CHANGE OF USE TO SMALL BAR AT LOT 8 (NO. 221) PRESTON POINT ROAD, BICTON (REC) (ATTACHMENT)

Issues Raised by Submitters	Summary of Submissions	Support/Objection	Officer's Comment	Action (Condition/ Uphold/ Not Uphold)
Noise Cont.	Concerns about noise from the premises, patrons sitting outside seating area on the verge and patrons leaving the premises.	Objection	<p>There is no change in terms of seating, operation hours or other operational matters which would increase noise.</p> <p>Furthermore, the premises will be obliged to comply with the relevant noise control legislation.</p> <p>However to address concerns, an acoustic report is proposed to be required.</p>	Condition to require acoustic report.
Anti-Social Behaviour	Concerns about vomiting, rowdiness, unacceptable language and violence.	Objection	<p>The appropriateness of the proposed land use is discussed further in the officer comment section below. It should be noted that a Restaurant is permitted to serve liquor – it just needs to be with a meal or to seated patrons. The change of land use is intended to permit the change of liquor licence to permit service of liquor without a meal, however majority of patrons are still likely to dine at the premises.</p>	No Uphold

U24/0638 - CHANGE OF USE TO SMALL BAR AT LOT 8 (NO. 221) PRESTON POINT ROAD, BICTON (REC) (ATTACHMENT)

Issues Raised by Submitters	Summary of Submissions	Support/Objection	Officer's Comment	Action (Condition/Uphold/Not Uphold)
Traffic Cont.	Concerns that there will be additional traffic at the intersection of Preston Point Road and Bristol Avenue.	Objection	The applicant has stated in its application that there is no proposal to increase patron capacity and as outlined above, no additional car parking bays are required as a result of the proposed change of use.	Not Uphold

II. OTHER AGENCIES / CONSULTANTS

Not Applicable.

STATUTORY AND LEGAL IMPLICATIONS

Should the City of Melville refuse the application for development approval, the Applicant will have the right to have the decision reviewed by the State Administrative Tribunal in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS

There are no direct financial implications for the City relating to this proposal.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

There are no strategic, risk or environmental management implications with this application.

POLICY IMPLICATIONS

There are no policy implications in relation to this proposal.

U24/0638 - CHANGE OF USE TO SMALL BAR AT LOT 8 (NO. 221) PRESTON POINT ROAD, BICTON (REC) (ATTACHMENT)**COMMENT**Land Use

The proposed change of land use, from Restaurant to Small Bar, is considered appropriate for the following reasons:

- With respect to the potential impacts of noise from the premises affecting the amenity of adjoining properties, the following is noted:
 - o A search of the City's records has not identified noise complaints relating to the subject tenancy to date. A condition requiring the preparation of an acoustic report be submitted to and approved by the City should noise levels exceed the *Environmental Health (Noise) Regulations 1997* has been recommended with implementation of any recommendations to ensure that the use will protect the acoustic amenity of the locality.
 - o The site will remain subject to the requirements of the *Environmental Health (Noise) Regulations 1997*, and as such should the site operate contrary to these requirements including noise emission limits, the City's Environmental Health Officers are able to commence compliance action.
- The target patron demographic remains the same as the existing restaurant, being local families and residents, as such significant adverse impacts to the character of the locality are not anticipated. The lack of parking means that persons will find it difficult to drive from further away and find appropriate parking – meaning that it will mostly service nearby residents and existing visitors to the centre.
- The subject site is located within an a centre zone, as such uses of this nature are anticipated and existing on-site and are considered to be consistent with the zone objectives.
- There are no proposed changes to opening hours and patron numbers and therefore it is considered that the change of use will not result in nuisances that will have a detrimental impact to the amenity of area or to the health, welfare and safety of residents.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

This application is proposed to be approved under delegation through the Development Advisory Unit (DAU) process.

However, should Elected Members have an alternative view, the DAU 'call-up' procedures provide opportunity to call this matter up for formal Council consideration.

U24/0638 - CHANGE OF USE TO SMALL BAR AT LOT 8 (NO. 221) PRESTON POINT ROAD, BICTON (REC) (ATTACHMENT)**CONCLUSION**

This application has been assessed against the relevant planning framework and deemed to be an appropriate use with noise concerns raised able to be addressed through a condition of development approval. The proposal is therefore proposed to be approved under delegation through the Development Advisory Unit (DAU) process.

Should Elected Members have an alternative view, the DAU 'call-up' procedures provide opportunity to call this matter up for formal Council consideration.

OFFICER RECOMMENDATION**APPROVAL**

- 1. The development the subject of this approval must be contained wholly within the area of exclusive use of the lot and comply with the approved plans at all times unless otherwise approved in writing by the City.**
- 2. In the event of noise emanating from the development exceeding the *Environmental Protection (Noise) Regulations 1997*, an acoustic report shall be prepared demonstrating how noise impacts will be reduced or a written statement demonstrating how the development will incorporate measures to reduce noise on the surrounding residential properties shall be prepared, to the satisfaction of the City.**

Advice Notes

- 1. The applicant/owner is advised that the premises must comply with the *Environmental Protection (Noise) Regulations 1997*.**
- 2. This planning decision is confined to the authority of the Planning and Development Act 2005 and the City of Melville Local Planning Scheme No. 6. This decision does not remove the obligation of the applicant and/or property owner to ensure that all other required approvals are first obtained, applicable State and Federal legislation is complied with, and any restrictions, easements or encumbrances are adhered to.**
- 3. A separate application for Development Approval may be required for any future signage.**
- 4. The applicant/owner is recommended to provide accessible facilities where possible/practical including access ways, entries and toilet facilities.**