



NOTICE OF MEETING

Dear Councillors

I respectfully advise that the ORDINARY COUNCIL MEETING will be held in Talbot Brook Hall, Talbot Hall Road, Talbot on Tuesday, 23 April 2024, commencing at 5:00pm.

MEETING LATE AGENDA ATTACHED

Chris Linnell

CHRIS LINNELL
CHIEF EXECUTIVE OFFICER
Date: 22 April 2024

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MISSION STATEMENT
"Building on our history to create our future"

Order Of Business

12	Business of an Urgent Nature Introduced by Decision of the Meeting.....	3
	SY001-04/24 Development Application - Additional Use (Small Bar) - Lot 52 (152) Avon Terrace, York	3

12 BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF THE MEETING

SY001-04/24 DEVELOPMENT APPLICATION - ADDITIONAL USE (SMALL BAR) - LOT 52 (152) AVON TERRACE, YORK

File Number:	4.0470
Author:	Sharla Simunov, Planner
Authoriser:	Lindon Mellor, Executive Manager Infrastructure & Development Services
Previously before Council:	Not Applicable
Disclosure of Interest:	Nil
Appendices:	<ol style="list-style-type: none">1. Location Plan ↓2. Development Application ↓3. Approved Development Plans & Notice ↓4. Neighbour Submissions ↓

NATURE OF COUNCIL'S ROLE IN THE MATTER

Quasi-judicial

PURPOSE OF REPORT

For Council to determine a development application received for an Additional Use (Small Bar) at Lot 52 (152) Avon Terrace, York.

BACKGROUND

The Shire has received an Application for Development Approval for an Additional Use (Small Bar) at Lot 52 (152) Avon Terrace, York (referred to herein as the property).

The property is 3,148m² in area, is zoned Regional Town Centre under the Shire's Local Planning Scheme No. 3 (Scheme) and is affected by the Avon River Flood Fringe and Plain. The property is also located within the Central York Heritage Area and is known as 'Dinsdale's Bootmaker (fmr)' within the Shire's Local Heritage Survey.

The property is currently approved as a Residence (Class 2) and Shop, operating as Botanicalia Café and Gallery 152, with an alfresco dining area at the front and parking at the rear that is accessed from both Avon Terrace (through a right of carriageway easement) and Lowe Street.

A location plan is presented in Appendix 1.

The purpose of the proposal is to establish a bar in the gardens at the rear of the existing café and art gallery. The premises would have an additional use of Small Bar and be known as 'The Rookery'.

Details of the proposal include:

- Operating Hours:
 - Friday 3:00pm to 12 midnight
 - Saturday 11:00am to 12 midnight
 - Sunday 11:00am to 12 midnight
 - Public Holidays 11:00am to 12 midnight

- A maximum of one hundred (100) patrons at any one time.
- Five (5) employees.
- Liquor will be sold for consumption on the premises only.
- No structural works are proposed to the buildings.
- Operate a bar within the café area with seating inside the gallery on an occasional basis.
- Live acoustic entertainment.

A copy of the development application is presented in Appendix 2.

On 8 July 2016 the Shire approved a development application to 'Reconstruct Original Façade and Verandah on Heritage Property and Change of Use to 'Shop'' under delegated authority at the property. The proposal was publicly advertised and referred to adjoining landowners, with no submissions received. Details of this application included:

- Reconstruct the original façade and verandah on Avon Terrace.
- Change of use from backpackers to 'shop' and associated works on a heritage building.
- Change of use of an outbuilding to 'shop' which is also located within the flood fringe/plain.
- Assessment of car parking for change of use.

A copy of the approved development plans and delegated approval notice are presented in Appendix 3.

The application is presented to Council for determination due to two (2) objections to the proposal being received and a request for a variation to the car parking requirements.

COMMENTS AND DETAILS

The proposal was assessed against the relevant provisions of the Shire of York Local Planning Scheme No. 3 (Scheme) and the deemed provisions for local planning schemes contained in the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations).

The property is zoned 'Regional Town Centre' by the Scheme.

The proposed use consisting of a bar is considered consistent with the land use term in Part 6 of 'Small Bar' defined as:

'a premises the subject of a small bar licence granted under the Liquor Control Act 1988'

Small Bar is a 'D' use within the Regional Town Centre Zone, meaning that the use is not permitted unless the local government has exercised its discretion by granting development approval.

The Scheme Aims include:

- Protect and enhance the amenity and health of the York community.
- Facilitate innovative, creative and diverse business and employment opportunities.
- Retain the special historic significance of the York townsite.

The objectives of the Regional Town Centre zone are:

- Provide a range of services and uses to cater for both the local and regional community, including but not limited to specialty shopping, restaurants, cafes and entertainment.
- Ensure that there is provision to transition between the uses in the regional centre and the surrounding low density residential areas to ensure that the impacts from the operation of the regional centre are minimised.
- Provide a broad range of employment opportunities to encourage diversity and self-sufficiency within the Centre.

- Encourage high quality, pedestrian friendly, street orientated development that responds to and enhances the key elements of the Regional Centre, to develop areas for public interaction and support the provision of public transport.
- Ensure the provision of residential opportunities within the Regional Centre including high density housing that supports the role of the regional centre and meets the needs to the community.
- To encourage the growth of tourism and cultural businesses and experiences in York.
- To preserve the unique qualities of the York town centre as a heritage place and achieve high quality development that complements heritage character.

The proposed development is generally consistent with the relevant provisions of the Scheme and Regulations. However, Council’s special consideration is required in relation to the provision of onsite car parking relevant to the requirements of Schedule 7 (Car Parking) in the Scheme, and whether or not the potential impacts of noise passing from the premises to adjoining properties can be sufficiently ameliorated.

Each of these issues is outlined and discussed below.

Provision of Onsite Car Parking

Clause 1 (a) in Schedule 7 of the Scheme establishes that a person shall not develop or use any land, change the use of land or erect, use or adapt any building unless car parking spaces as specified in the Car Parking Standards Table [i.e. Schedule 7 below and also in clause 1(a)] are provided.

The previous development approval issued on 8 July 2016 for a Shop use, required a car parking plan be provided and approved for a minimum of nineteen (19) car parking spaces on site (inclusive of one (1) accessible bay). The parking area(s), driveway(s) and point(s) of ingress and egress [including crossovers(s)] were required to be designed, constructed, drained, and marked in accordance with Australian/New Zealand Standard 2890.1:2004: Parking facilities – Off street parking and AS/NZS 2890.6:2008: Parking facilities – Off street parking for people with disabilities.

A car parking plan was approved on the 20 July 2016 which provided twenty (20) car parking bays including one (1) accessible car parking bay with access from both Avon Terrace, through a right of carriageway easement and Lowe Street.

Schedule 7 – Car Parking

TABLE 1.

LAND USE	REGIONAL CENTRE ZONE CAR PARKING STANDARD	NET LETTABLE AREA (NLA)	NUMBER OF BAYS REQ.
Hotel, motel, tavern, small bar , serviced apartment, nightclub, brewery	<ul style="list-style-type: none"> • 1 bay per unit of accommodation where applicable • plus 1 bay per 10m² NLA of public bar space (areas occupied by customers, excluding servery areas) • plus 1 bay per 10m² of outdoor public bar space • plus 6 bays per 100m² NLA lounge/dining area. 	<ul style="list-style-type: none"> • Indoor Bar = 45m² • Outdoor Bar and public bar space = 310m² Total: 355m ²	35.5 bays
Convenience store, fast food outlet / lunch bar, liquor store – small, market, restaurant / café, shop	<ul style="list-style-type: none"> • 1 bay per 25m² NLA 	<ul style="list-style-type: none"> • Café = 66m² 	2.64 bays
TOTAL ON-SITE PARKING BAYS REQUIRED			38 BAYS

The Applicant advises that there is additional space at the rear of the Rookery, however not enough space to provide the additional eighteen (18) on-site parking spaces required by Schedule 7 of the Scheme.

The adjoining vacant land at Lot 53 (17) Lowe Street, York has been proposed for overflow parking in the event that the parking at the rear of the property is fully utilised. This land is also owned by the applicants and is 2,496m² in area, capable of accommodating the remaining 18 bays required to meet the requirements of Schedule 7. It is significant to however note Lot 53 does not form part of the application and therefore any approval that may ultimately be granted by Council cannot require additional parking to be provided on this property to address the car parking shortfall.

In terms of orderly, proper and sustainable planning of the area, Officers consider that the proposed number of on-site car parking bays (i.e. twenty (20) bays), coupled with the availability of numerous on-street parking bays on both sides of Avon Terrace may accommodate the peak demand for car parking at the venue and not give rise to any significant issues.

Given the significance of this issue, and in order to test the Officers' conclusion, it is recommended that Council consider granting a temporary approval for the proposed use for an initial period of twenty-four (24) months only. In so doing the applicants will be required to prepare and lodge a new development application requesting the Shire's permanent approval for the proposed use, at which point any issues that may have arisen with respect to parking, as well as any other matter of concern, can be considered and addressed, including the option of developing additional parking on the adjoining Lot 53 (17) Lowe Street if deemed necessary.

Noise

One of the submissions received during the neighbour consultation period suggests that the York Country Women's Association Branch (York CWA Branch) situated at 154 Avon Terrace would be adversely impacted due to noise generated by the proposed Small Bar use and acoustic music.

While noise and disturbance resulting from the proposed use of the building is a valid planning consideration, it is not expected that noise associated with the use and acoustic music at the property would reach levels that could be considered offensive or a nuisance if the applicants comply with the requirements of the *Environmental Protection (Noise) Regulations 1997* as required. Any valid noise complaints received by the Shire will be investigated as required and appropriate steps taken to prevent and reduce any offensive noise to within acceptable limits.

Conclusion

The proposed use is one that can be considered in the Regional Town Centre zone and is capable of being lawfully approved by Council subject to conditions.

It is considered the proposed use is unlikely to cause any noise or parking issues in the immediate locality despite the concerns raised in the submissions received during the neighbour consultation process. The busiest times at the venue will occur after standard business hours when demand for on-street parking by the general public will be lower and the adjoining CWA premises is not typically used. A precautionary approach to the additional parking demand generated by the proposed use is however recommended by limiting the term of development approval to an initial twenty-four (24) month period following which any potential issues that may have arisen can be considered and addressed as part of a new development application to formalise the use on a permanent basis.

In light of the above it is recommended Council exercise discretion and approve the application subject to a range of conditions and advice notes.

OPTIONS

Council has the following options:

Option 1: Council could choose to approve the application with conditions.

Option 2: Council could choose to refuse the application and list the reasons for refusal.

Option 3: Council could choose to approve the application and list modified conditions.

Option 1 is the recommended option.

IMPLICATIONS TO CONSIDER

Consultative

The development was referred to all surrounding neighbours for a period of fourteen (14) days ending on 10 November 2023.

Two (2) submissions were received objecting to the proposal. The full submissions are presented in Appendix 4.

A response to the submissions is reflected in the Schedule of Submissions presented below:

TABLE 2.

SUMMARY POINTS OF SUBMISSIONS	COMMENTS
<p>Point 1 - Right of Carriageway Easement Maintenance</p> <ul style="list-style-type: none"> • Easement benefit to Lot 52. • Easement is currently maintained by CWA of WA. • Imperative that carriageway is flat, well-lit and has no trip hazards. • Potential costs to maintain carriage way should be responsibility of applicant. 	<p>A right of carriageway easement benefit was granted to the property on 29 May 1980.</p> <p>A right of carriageway is a positive easement that legally allows access to a portion of land owned by another person.</p> <p>As per condition 5 of Planning Consent P1032, the parking area(s), driveway(s) and point(s) of ingress and egress [including crossover(s)] shall be designed, constructed, drained and marked at the cost of the applicant.</p> <p>Compliance with the terms of the previous approval granted by Council is the responsibility of the landowner (i.e. the approval runs with the land in perpetuity unless varied or revoked by a subsequent approval).</p> <p>Any ongoing maintenance or construction works required within the easement area is a matter for the landowners who are benefited and burdened by the easement, not the Shire as it has no legal interest or obligations with respect to the easement.</p>
<p>Point 2 – Liability in event of injury on Easement</p> <ul style="list-style-type: none"> • Concerns that the CWA of WA will be liable if a patron were to injure themselves on the easement as CWA of WA have the easement burden. 	<p>Noted however this is a matter for the landowners who are benefited and burdened by the easement to consider and address to protect their interests both collectively and individually. It is expected their own public liability insurance would address this concern and ensure an adequate level of protection.</p>
<p>Point 3 – Potential Damage to CWA property</p> <ul style="list-style-type: none"> • Side and back of CWA of WA building potentially at greater risk of damage from intoxicated patrons. In 	<p>Noted.</p> <ul style="list-style-type: none"> • There is currently a low chain mesh fence separating the

<p>order to protect back yard, CWA would need to construct a side fence which is currently a memorial garden. This would be a cost to CWA of WA.</p> <ul style="list-style-type: none"> • Potential for damage to building and foundations during construction of any necessary underground infrastructure. • Concern patrons will jump small fence into York CWA Branch and trespass, litter and damage memorial gardens. 	<p>easement from the rear of the York CWA Branch. Any decision to upgrade or replace the existing fence to provide a greater level of security, including any associated costs, is a matter between the two adjoining landowners to address, not the Shire.</p> <ul style="list-style-type: none"> • No construction works proposed. Any underground infrastructure already installed. Should any additional works be required the person/s undertaking the works will need to consider and address any potential impacts in consultation with the adjoining landowner/s. • Any concerns regarding potential trespass and associated impacts is a matter for the WA Police Department, not the Shire.
<p>Point 4 – Use of Right of Carriageway Easement</p> <ul style="list-style-type: none"> • Concern use of the easement as an entry/exit to the proposed Small Bar will impact the activities of the York CWA Branch. • Laneway (easement) is regularly used by members to facilitate activities such as stalls and art and craft activities. • York CWA Branch Members may be at risk of being exposed to people under the influence of alcohol. • If vehicles are using this easement, it affects York CWA Branch members ability to utilise the space for outdoor activities. 	<p>Noted.</p> <p>The car parking plan was approved on the 20 July 2016 as a condition of Planning Consent P1032 issued on 8 July 2016. No objections were received at the time from neighbouring properties. The Plan provided twenty (20) car parking bays including one (1) accessible car parking bay with access from both Avon Terrace (via the right of carriageway easement) and Lowe Street.</p> <p>The easement provides legal rights of access to both landowners which allows for access by pedestrians and vehicles. The Shire has no powers with respect to the easement area and its ongoing use for access purposes. As such, any issues that may arise with respect to its use are a matter for the relevant landowners to consider and address themselves.</p>
<p>Point 5 – Noise Levels</p> <ul style="list-style-type: none"> • Concerns that the noise from the patrons of the Small Bar and acoustic music will disrupt the York CWA Branch’s quiet place of calm and reflection. 	<p>Noted however the proposed Small Bar use must comply with the <i>Environmental Protection (Noise) Regulations 1997</i> at all times.</p>

<p>Point 6 – Smoking Area</p> <ul style="list-style-type: none"> Plans do not show a dedicated smoking area, concerns the easement will be used for this with cigarette butts being littered throughout the easement. 	<p>Noted however the <i>Tobacco Products Control Act 2006</i> stipulates that it is illegal to smoke in outdoor eating areas, unless in a designated smoking area in a liquor licensed premises. Unless a designated area is identified, smoking will not be permitted.</p>
<p>Point 7 – Toilet Facilities</p> <ul style="list-style-type: none"> Proposal states up to one hundred (100) patrons, no additional toilets have been proposed. Concern during busy times, the easement will be used by patrons to relieve themselves. 	<p>Noted however the Shire’s Environmental Health Officer has undertaken an inspection of the premises and issued a Section 39 Certificate which confirms that the premises meets all the relevant requirements under the <i>Health Act 1911</i>. Adequate toilet facilities are available for the use.</p>
<p>Point 8 – Parking Facilities</p> <ul style="list-style-type: none"> Plans indicate twenty (20) parking bays, concerns parking is not adequate. York CWA Branch members experience challenges finding suitable parking due to use of street parking by café customers 	<p>Noted.</p> <p>Shire records indicate that no complaints have been received in relation to parking during the current Shop use.</p> <p>Whilst assessment of the application has confirmed there will be an on-site parking shortfall of eighteen (18) bays, the reporting Officers have formed the view the shortfall could be approved by Council given the significant amount of public parking available along Avon Terrace which could accommodate the parking demand generated by the proposed use. Limiting the initial approval term to twelve (12) months will also provide opportunity for the applicant and the Shire to consider and address any potential issues that may have arisen as part of a new development application to formalise the use on a permanent basis.</p>
<p>Point 9 – Operating Hours</p> <ul style="list-style-type: none"> The permitted hours under the <i>Liquor Control Act 1988</i> are: <ul style="list-style-type: none"> a) on a day other than a Sunday - from 6 am to 12 midnight b) on a Sunday- from 10 am to 12 midnight c) on New Year’s Day from immediately after 12 midnight on New Year’s Eve to 2 am and then in accordance with (a) or (b) 	<p>Noted.</p> <p>Condition of consent that the approved operating hours are:</p> <ul style="list-style-type: none"> Friday: 3pm to 12 midnight Saturday and Sunday: 11:00am to 12 midnight Public Holidays: 11:00am to 12 midnight, except on Good Friday or Christmas Day from 12 noon to 10pm and ANZAC

<p>d) on Good Friday or Christmas Day from 12 noon to 10 pm, but only for liquor sold ancillary to a meal supplied by the licensee. e) on ANZAC Day from 12 noon to 12 midnight.</p> <p>If this business were to be operated within the permitted hours of the Act, the York CWA Branch would be significantly impacted by this, and would be likely to experience numerous negative impacts, as detailed above.</p>	<p>Day from 12 noon to 12 midnight</p> <p>The operating hours of the proposed Small Bar are not anticipated to detrimentally impact the continued use of the York Branch of the CWA which usually operates between 9am and 12 noon.</p>
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Strategic

Strategic Community Plan 2020-2030

Goal 4: Built for lifestyle and resilience

To have a built environment which supports community, economy and the environment, respects the past and creates a resilient future.

Policy Related

The recommendation does not result in any policy implications for the Shire.

Financial

There are no immediate financial implications for the Shire, aside from the administrative costs associated with processing the application which are provided for in the annual budget and have been offset in part by the development application fee paid by the applicant. All costs associated with the development have and will continue to be met by the landowner.

It is significant to note should the applicant/landowner be aggrieved by Council’s final decision in this matter, they have the right seek a formal review of that decision by the State Administrative Tribunal. Should this occur, the Shire would need to respond. The cost to respond to an appeal cannot be determined at this preliminary stage but could be expected, based on the recent experience of other local government authorities in Western Australia, to range anywhere from \$5,000 to \$60,000 excluding GST depending upon how far the matter proceeds through the review process.

Legal and Statutory

Local Planning Scheme No.3
Planning and Development Act 2005
Planning and Development (Local Planning Schemes) Regulations 2015
Liquor Control Act 1988

Risk Related

A risk assessment of the proposal has been undertaken, and there was no medium to high risks identified with the proposal. Standard appeal rights to the State Administrative Tribunal are available to the applicant as explained previously above (see Financial Implications).

Workforce

The scope of this report is managed within current operational capacity.

VOTING REQUIREMENTS

Absolute Majority: No

RECOMMENDATION

That, with regard to the Development Application - Additional Use (Small Bar) - Lot 52 (152) Avon Terrace, York, Council:

1. Approves the development application for an Additional Use (Small Bar) at Lot 52 (152) Avon Terrace, York, subject to the following conditions:
 - a. The development hereby approved is limited to an initial twenty-four (24) month term only. A further development application and approval will be required to allow for the continuation of the use after the initial twenty-four (24) month period.
 - b. The development hereby approved shall be undertaken in accordance with the signed and stamped approved development plans enclosed, including any notes placed thereon in red by the local government and except as may be modified by the following conditions.
 - c. Any additional development which is not in accordance with the application the subject of this approval or any condition of approval will require the further approval of the local government.
 - d. Any outdoor lighting is to be designed in a manner so that there is no discharge onto the adjoining properties.
 - e. Except with the prior written consent of the local government, the additional use permitted by this approval must operate only between the following times:
 - Friday: 3:00pm to 12 midnight
 - Saturday: 11:00am to 12 midnight
 - Sunday: 11:00am to 12 midnight
 - Public Holidays: 11:00am to 12 midnight, except on Good Friday or Christmas Day from 12 noon to 10pm and ANZAC Day from 12 noon to 12 midnight
 - f. All car parking areas, and vehicle access and circulation areas are to be maintained and available for car parking, and vehicle access and circulation on an ongoing basis to the satisfaction of the local government.
 - g. The Small Bar use shall be limited to a maximum of one hundred (100) patrons at any one time.
 - h. Prior to commencement of use, a Venue Management Plan must be prepared and submitted to the local government for consideration and approval. The Venue Management Plan is to include management strategies for noise generated by the following, but not limited to:
 - Emptying of waste and bottles
 - Timing and frequency of deliveries
 - Timing and frequency of waste collection
 - Anti-social behaviour and patron noise outside the venue
- The approved Venue Management Plan shall be thereafter implemented to the satisfaction of the local government.

ADVICE NOTES:

- Note 1:** The proponent is reminded of its obligation to comply with the *Environmental Protection (Noise) Regulations 1997* at all times.
- Note 2:** If the applicant or owner is aggrieved by this determination, there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within twenty-eight (28) days of the determination.
- Note 3:** This is a development approval of the Shire of York under its Local Planning Scheme No. 3. It is not a building permit or an approval to commence or carry out development under any other law. It is the responsibility of the applicant/landowner to obtain any other necessary approvals, consents, permits and licenses required under any other law, and to commence and carry out development in accordance with all relevant laws.
- Note 4:** Failure to comply with any of the conditions of this development approval constitutes an offence under the provisions of the *Planning and Development Act 2005* and the Shire of York Local Planning Scheme No. 3 and may result in legal action being initiated by the local government.

LOCATION PLAN – LOT 52 (152) AVON TERRACE, YORK



11 October 2023

Shire of York
1 Joacquina St
York WA 6302

Dear Madam

Small Bar Licence Application for 152 Avon Tce, York

We hereby apply for permanent planning approval for the use of a 'Small Bar' at Lot 52 (152) Avon Terrace, York, effective from 1st November 2023.

It is proposed to establish the bar in the gardens at the rear of the existing café where customers can enjoy food, a drink and entertainment in a relaxed, pleasant garden setting.

It is also proposed to occasionally operate the bar within the café area with seating inside the gallery.

Trading Name (for the bar in the garden): The Rookery

Proposed Hours of operation:

Friday from 3 pm to 12 am
Saturday from 11 am to 12 am
Sunday from 11 am to 12 am.
Public Holidays 11am 12am

No of Patrons: max 100 at any one time

No of Employees: 5

Whether liquor is available without the requirement of a substantial meal: Yes

Whether the premises will feature a "Bar" style facility and encourage drinking on the premises in a manner similar to a hotel or tavern style premises: No.

What, if any, particular types of persons will the applicants seek to provide for:

The applicant will be offering mature adult customers an alternative to the existing hotels and taverns in York, a place where both locals and visitors to York can sit in quiet comfort in a pleasant garden setting, enjoy food, craft beer, live acoustic music entertainment and time with friends.

Whether liquor will only be sold for consumption on the premises or will be also available for take-away customers in packaged form:

Liquor will only be for consumption on the premises and will not be sold in packaged form.

Any other matter which may affect the amenity of the locality where the premises are located.

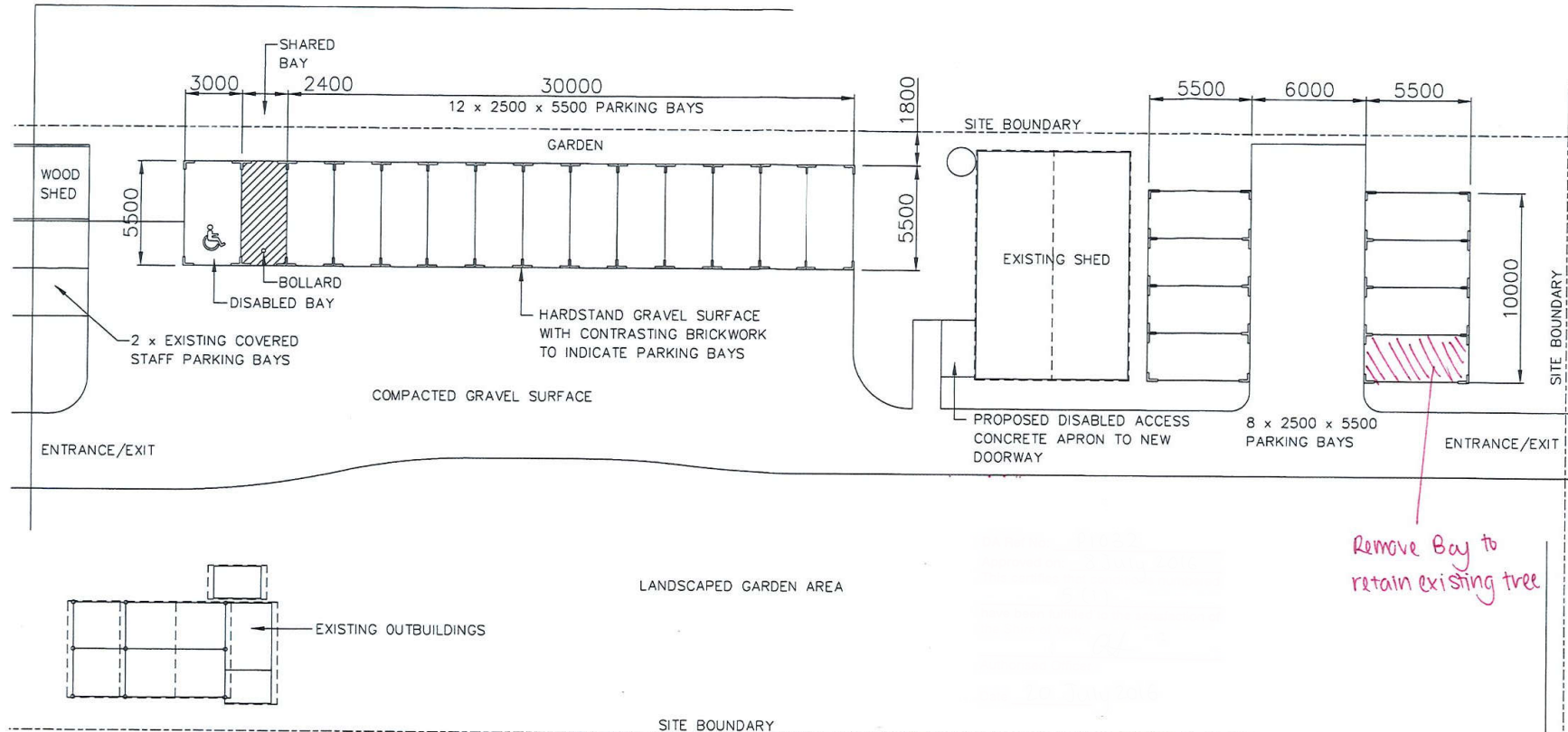
The bar will be located in the town centre, opposite Avon Park overlooking the river. The bar will be situated at the rear of the property, facing the river and away from the five residences located in its immediate vicinity. The garage of one residence adjoins the property on the north side of the property. The limited hours of operation and the acoustic nature of the entertainment that will be offered to patrons means the amenity of neighbours will not be significantly impacted.

Effect of Town Planning Scheme #3

We note that a small bar may only be in the "Regional Centre" with approval of the Shire. We refer to the Zoning and Land Use chart on page 11.

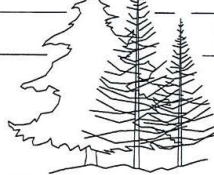
Heritage matters

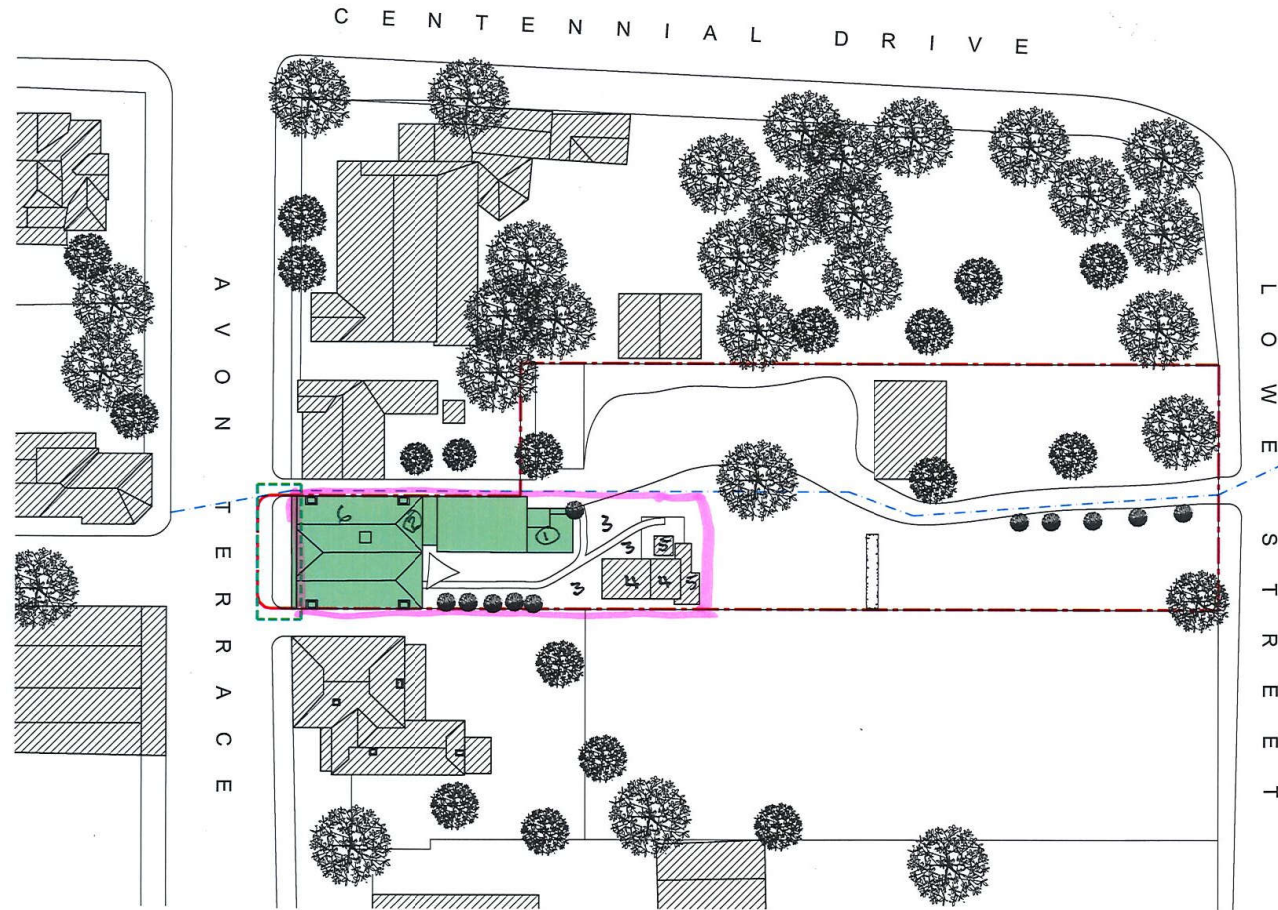
What happens in the back garden has no effect on any heritage features of the two front buildings. We refer to the Conservation Management Plan for the property.



Remove Bay to retain existing tree

 PART SITE PLAN
1 : 200

152 AVON TERRACE YORK WA 6302		PINEFIELD'S OF YORK	
		GARY W. BYFIELD PO BOX 326 YORK W.A. 6302	DRAWN GWB
		PHONE 9641 1741 MOBILE 0414 885 338	DATE JULY 16
		REVISION A	SHEET 04 A3



SITE LOCATION MAP
NTS

GENERAL LEGEND:

- SITE BOUNDARY
- AREA WHERE WORKS TO TAKE PLACE
- EXISTING BUILDINGS
- 152 AVON TERRACE
- INDICATIVE EXPECTED POSITION OF STORM WATER LINE

- █ Denotes licensed area
- 1 Bar/servery
- 2 Toilets (2xM/2xF)
- 3 outdoor seating
- 4 stage / covered seating
- 5 Storage
- 6 Inside bar

EXISTING SITE PLAN
SCALE 1:100

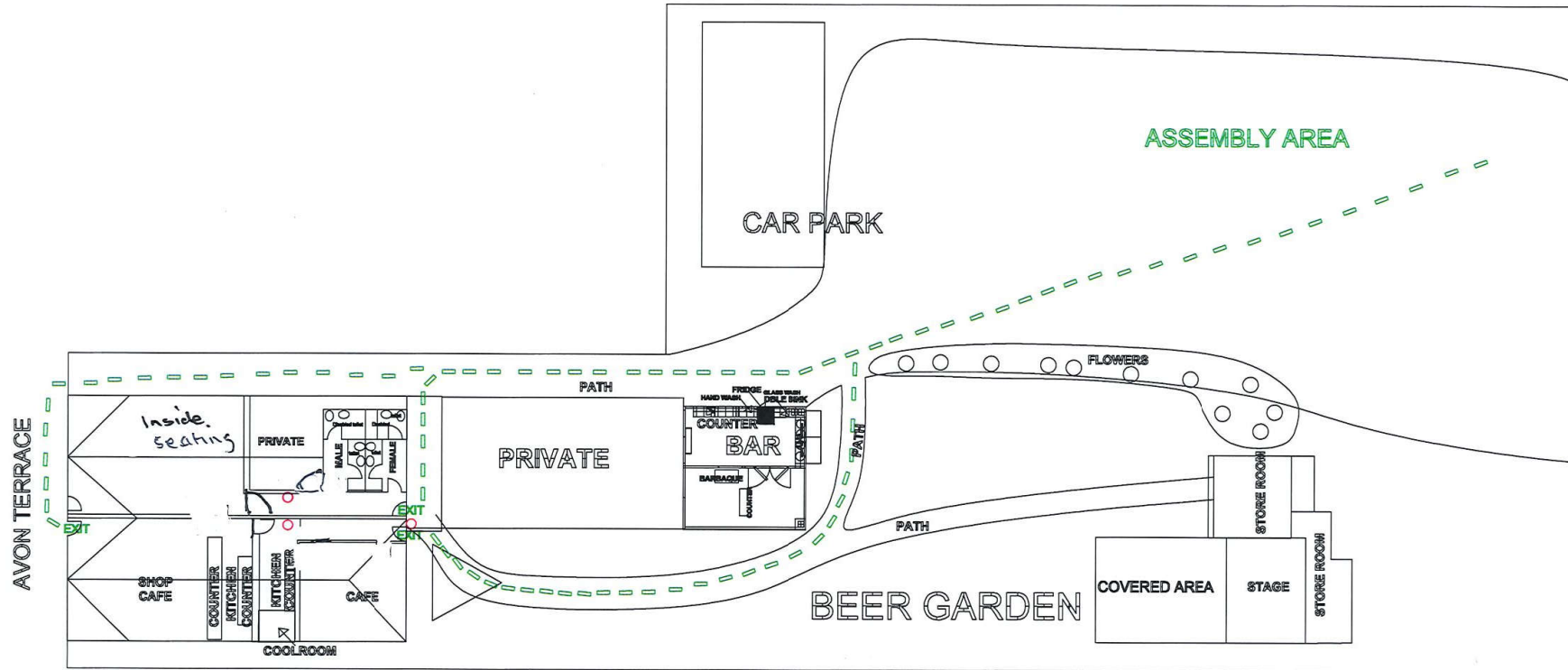
PROJECT NUMBER : 2016-02
VERANDAH EXTENSION
152 Avon Terrace, York WA 6302

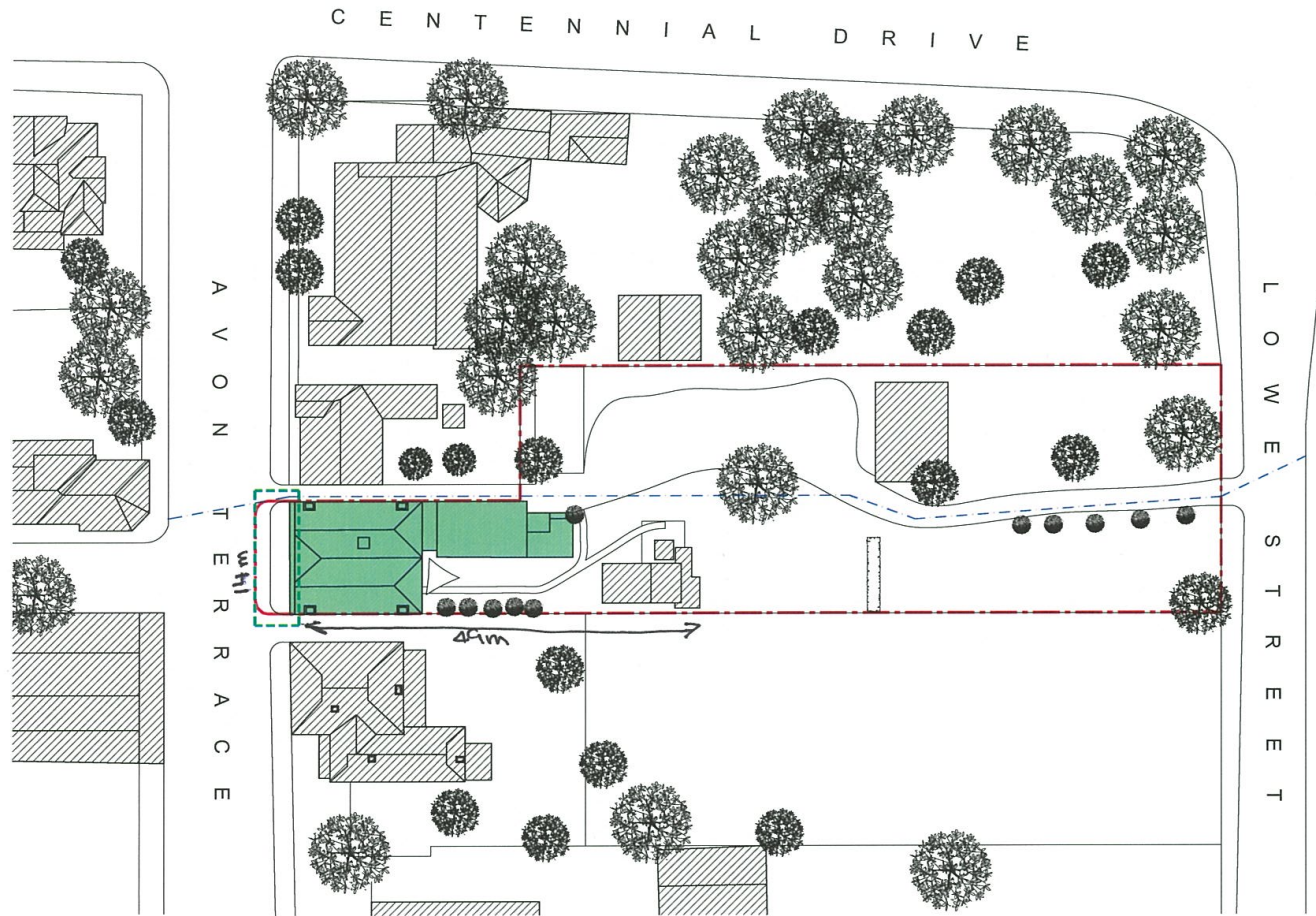


SCALE: 1:100 @A3
DATE: 21.03.2016
DRAWING: SK1.D



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SITE LOCATION MAP
NTS



- GENERAL LEGEND:
- SITE BOUNDARY
 - AREA WHERE WORKS TO TAKE PLACE
 - EXISTING BUILDINGS
 - 152 AVON TERRACE
 - INDICATIVE EXPECTED POSITION OF STORM WATER LINE

Licensed area
= 14m x 49m

EXISTING SITE PLAN
SCALE 1:100

PROJECT NUMBER : 2016-02
VERANDAH EXTENSION
152 Avon Terrace, York WA 6302

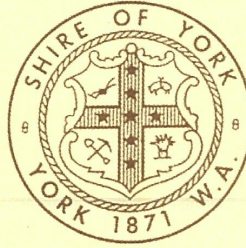
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DATE: 21.03.2016
DRAWING: SK 1.0



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SHIRE OF YORK

1 JOAQUINA STREET, YORK WA 6302
 TELEPHONE (08) 9641 2233
 FACSIMILIE (08) 9641 2202
 WEBSITE www.york.wa.gov.au
 EMAIL: records@york.wa.gov.au
 Our Ref: O125821 / 1, A4950
 Enquiries: Carly Rundle



P.O. Box 22, York
 Western Australia, 6302



8 July 2016

Jenny Garroun & Robert Smith
 10 Mulberry Farm Lane
 WHITE GUM VALLEY WA 6162

Dear Jenny and Robert,

**PLANNING CONSENT - RECONSTRUCT ORIGINAL FACADE AND VERANDAH
 ON HERITAGE PROPERTY AND CHANGE OF USE TO 'SHOP' AT LOT 52 (HSE
 152) AVON TERRACE, YORK**

With reference to the above application, please be advised that the Shire of York has approved your application under delegated authority to reconstruct original façade and verandah on a heritage property and change of use to 'Shop' at the abovementioned property.

Attached is the Notice of Determination issued under Schedule 12 of the Shire of York Town Planning Scheme.

It is the applicant's responsibility to read and understand the Notice of Determination attached to this letter and to ensure compliance with the conditions of consent.

If you are dissatisfied with this decision or the conditions of consent, refer to Note 3 of the Notice of Determination.

If you have any further queries regarding this matter please do not hesitate to contact Carly Rundle at the Council Office on 9641 2233 or by email at records@york.wa.gov.au.

Yours sincerely,

PAUL MARTIN
 CHIEF EXECUTIVE OFFICER



Planning and Development Act 2005

SHIRE OF YORK

TOWN PLANNING SCHEME NO. 2

NOTICE OF DETERMINATION ON APPLICATION FOR PLANNING CONSENT

LOCATION: Lot 52 (Hse 152) Avon Terrace, York

DIAGRAM: 46637

VOL NO: 1563

FOLIO NO: 597

Application Received: 14 April 2016

Application Number: P1032

Description of Proposed Development: Reconstruct original façade and verandah on a heritage property and change of use to 'shop'

The Application for Planning Consent is:

granted subject to the following conditions:

refused for the following reason(s):

CONDITIONS:

1. The development hereby approved shall be substantially commenced within two years of the date of this decision notice.
1. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plan(s) (enclosed), including any notes placed thereon in red by the Shire and except as may be modified by the following conditions.
2. The awning shall be constructed so it maintains the ordinary and reasonable use of the public thoroughfare or public place for the purpose to which it is dedicated and not be permanently or unreasonably obstructed.
3. At all times during construction over/on a public thoroughfare, the area of construction shall be fenced to restrict public access or be sufficiently covered to:
 - a) Prevent damage to the footpath; or
 - a) Prevent inconvenience to the public or danger from falling materials/unsafe walkway.
4. Lighting placed on the awning of the building shall be located to the underside.
5. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City's Planning department and have been approved in writing:
 - (i) A car parking plan which provides for a minimum of 19 car parking spaces on site (inclusive of one disabled bay). The parking area(s),

driveway(s) and point(s) of ingress and egress [including crossover(s)] shall be designed, constructed, drained and marked. (Advice Note 4)

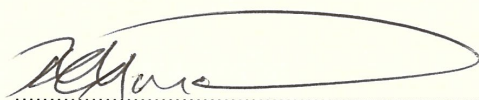
- (i) Details of Signage, which shall comply with the Shire's Local Planning No. 3 Heritage Precincts and Places (Advice Note 5).
 - (ii) A schedule of colours to be used for external materials (Advice Note 6);
 - (iii) Details of any internal works to comply with upgrades required by a change of classification application (Advice Note 7).
 - (iv) A current public liability/products insurance policy shall be taken out and maintained for the lifetime of the awning from an insurance company (at the applicant's expense) for the amount of \$20,000,000 indemnifying the Shire of York for any one claim relating to the awning on Avon Terrace as approved by the Shire.
 - (v) Notification in the form of a section 70A notification, pursuant to the Transfer of Lands Act 1893 (as amended), or similar legal instrument, is to be placed on the Certificates of Title of the lot advising that:
"This land is subject to inundation during a flood event".
 All costs related to the notification shall be at the cost of the applicant/landowner (Advice Note 8).
6. The development hereby approved, or any works required to implement the development, shall not commence until the following bonds have been paid to the Shire (Advice Note 9, 10 & 11):
- (i) A Maintenance Bond to the value of \$3,600 to repair any damage to the public thoroughfare resulting from construction to the satisfaction of the Chief Executive Officer.
7. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Condition(s) 2, 3, 6 and 7 have been implemented; and, the following conditions have been complied with :
- (i) An archival record shall be submitted and approved to the satisfaction of Council (Advice Note 12).
8. The works undertaken to satisfy Condition(s) 2, 3, 4, 5, 6 and 8 shall be subsequently maintained for the life of the development.

ADVICE NOTES:

- Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period as specified in the approval after the date of the determination, the approval will lapse and be of no further effect.
- Note 2: Where an approval has so lapsed, no development is to be carried out without the further approval of the local government having first been sought and obtained.
- Note 3: If an applicant is aggrieved by this determination there is a right of appeal under the Planning & Development Act 2005. An appeal must be lodged within 28 days of the determination.
- Note 4: The car parking plan shall show dimensions of car parking bays and location of car parking bays to comply with Schedule 4 of the Shires Town Planning Scheme No. 2, Australian/New Zealand Standard 2890.1:2004 : Parking facilities - Off street car parking and AS/NZS 2890.6:2008: Parking facilities – Off street parking for people with disabilities.

Please contact the Shire's Senior Planner to discuss required dimensions and turnaround spaces for vehicles.

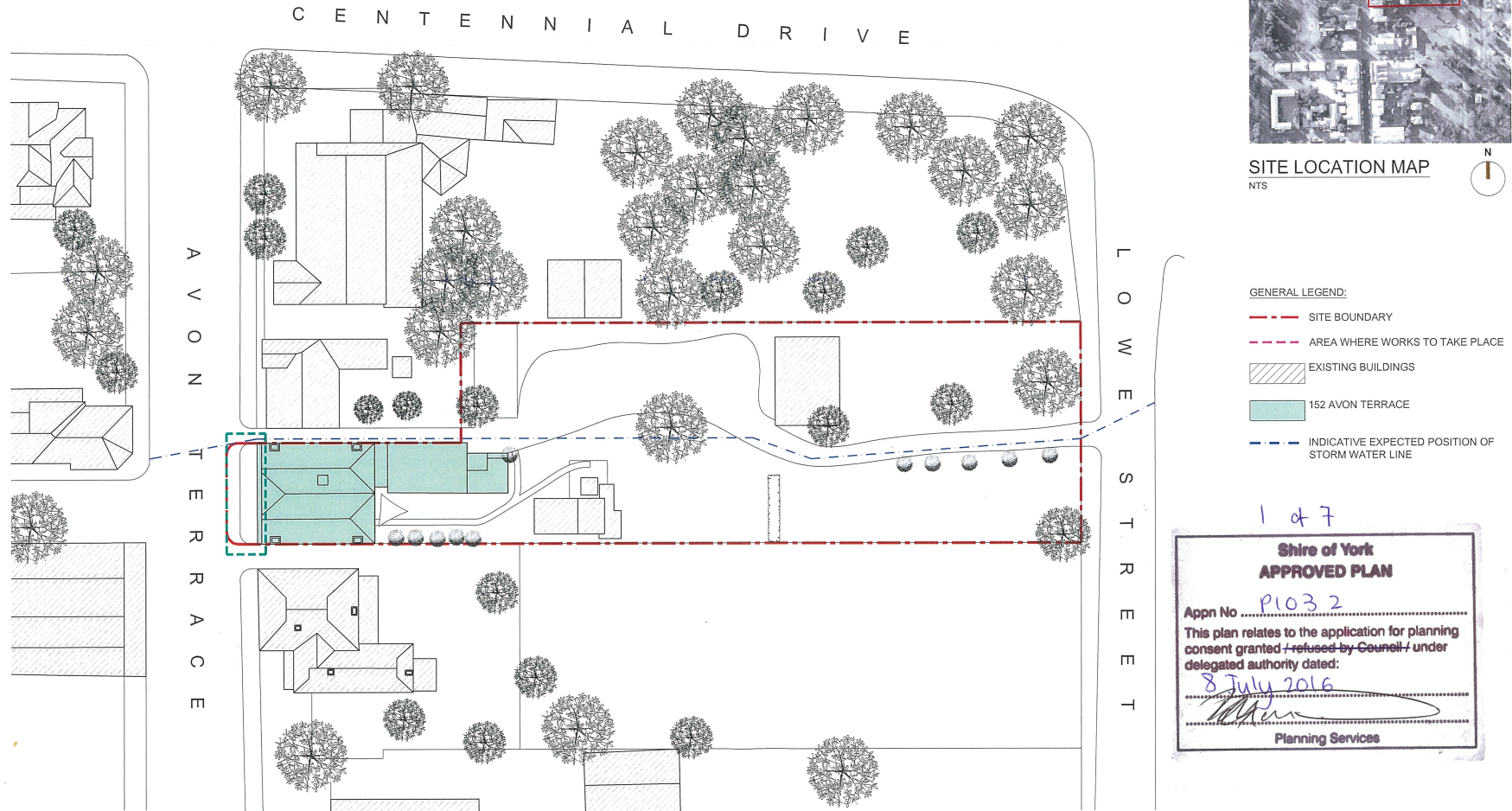
- Note 5: Please be advised that signage and colours are required to comply with the Shire of York Local Planning Policy 3: Heritage Precincts and Places. A minimum clearance of 2.75m is required to under awning signage.
- Note 6: The Burra Charter for heritage buildings provides criteria that new works shall be distinguishable as new. Should all materials and colours mimic the previous design, it may be appropriate to include an interpretation panel, detailing that the verandah is new, and a replica of a verandah which previously existed on the building.
- Note 7: Internal works are not exempt from planning consent. It is noted that the change of classification may result in the requirement for upgrades to comply with the Building Codes and further works than proposed as part of the planning approval.
- Condition 6(iv) accounts for this, and allows for additional minor upgrading works to be referred to and signed off by planning through the submission of the building permit and change of building classification application which will be referred to planning. Any works which are not reasonably required as a result of the change of classification and not included within the approved plans of this application, may require further planning consent to be granted.
- Note 8: A copy of the Section 70A application form can be found on the following link:
[https://www0.landgate.wa.gov.au/docvault.nsf/web-new/FREEHOLD_LRFORMS/\\$FILE/FOR_DLI_N1.pdf](https://www0.landgate.wa.gov.au/docvault.nsf/web-new/FREEHOLD_LRFORMS/$FILE/FOR_DLI_N1.pdf)
- To satisfy condition 6(vi) you are required to complete the Section 70A application form and lodge the original copy with the Shire for signing. Once signed by the Shire, the Section 70a will be returned to yourself to be lodged with Landgate. A copy of the lodgement receipt will need to be provided to the City to satisfy this condition.
- Note 9: The Bond may be in the form of cash, cheque or direct deposit.
- Note 10: The bond amount is calculated based on the area of footpath and kerbing which could potentially be damaged from construction. The bond will be held until the works in the road reserve have been completed or the approval lapses. Following completion of works within the road reserve, a written request shall be submitted to the Shire advising that the works have been completed. An inspection will then be undertaken by the Shire. Should the Shire be satisfied that no damage has occurred, the bond will be returned in full to the payee. Should any damage have occurred to the public thoroughfare, the Shire will provide a specified timeframe to the owner to undertake repair works, and in the absence of the works being undertaken, use the bond to undertake the repairs.
- Note 11: In respect to Condition 7(i), the bond amount will be upgraded in line with the Local Government Cost Index on 30 June each year. The fee applicable will be determined at the time of payment and may therefore vary from the quoted figure
- Note 12: The archival record is to include internal and relevant external photos of portions of the building that are being modified (including before and after photos) and notes on condition for inclusion within the Shire's Archival Record. The photos are to be captioned and dated.
- Note 10: In accordance with the provisions of the Building Act 2011, and Building Regulations 2012, an application for a building permit must be submitted to, and approval granted by the City, prior to the commencement of the development hereby permitted. New works are required to comply with AS 1428.1-2009: Design for access and mobility – General requirements for access – New building work. A Certificate of Building Classification will also be required for the change of use.



CHIEF EXECUTIVE OFFICER

8 July 2016

DATE



1 of 7

**Shire of York
APPROVED PLAN**

Appn No P1032

This plan relates to the application for planning consent granted / ~~refused~~ by Council / under delegated authority dated: 8 July 2016

[Signature]

Planning Services

EXISTING SITE PLAN
SCALE 1:100

PROJECT NUMBER : 2016-02
VERANDAH EXTENSION
152 Avon Terrace, York WA 6302



SCALE: 1:100 @A3
DATE: 21.03.2016
DRAWING: SK1.0

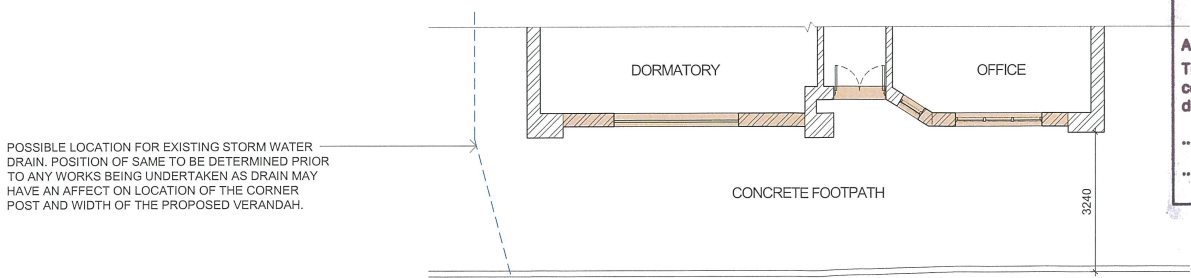


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- GENERAL LEGEND:**
- MASONRY WALLS TO BE DEMOLISHED
- DEMOLITION NOTES:**
- REMOVE EXISTING ROLLER DOOR.
 - REMOVE EXISTING MASONRY WALLS.
 - REMOVE AND SALVAGE FOR RE-USE EXISTING DOUBLE DOORS AND FANLIGHT ABOVE DOORS.
 - REMOVE EXISTING WINDOWS AND HIGH LEVEL WINDOWS.
 - REMOVE CLADDING ABOVE EXISTING ROLLER DOOR AND SHOP FRONT.
 - INVESTIGATE EXTENT OF BEAMS. DETERMINE STRUCTURAL INTEGRITY AND CONDITION OF EXISTING BEAMS PRIOR TO CONSTRUCTION OF PROPOSED SHOP FRONT AND VERANDAH ROOF.

EXISTING FRONT ELEVATION
SCALE 1:100



EXISTING FLOOR PLAN
SCALE 1:100

AVON TERRACE

2 of 7

Shire of York
APPROVED PLAN

Appn No P1032

This plan relates to the application for planning consent granted ~~refused by Council~~ under delegated authority dated:

8 July 2016

[Signature]

Planning Services

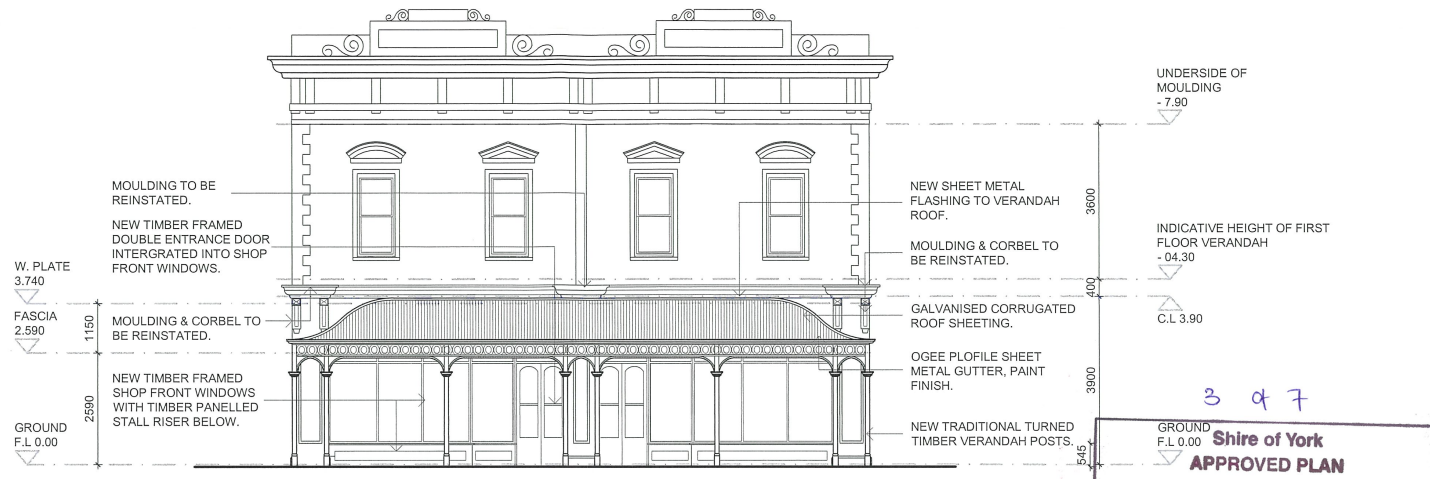
PROJECT NUMBER : 2016-02
VERANDAH EXTENSION
152 Avon Terrace, York WA 6302



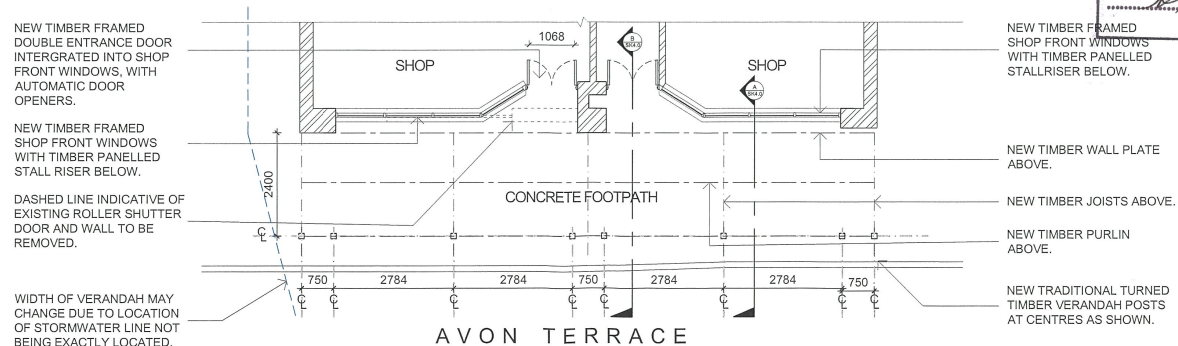
SCALE: 1:100 @A3
DATE: 07.03.2016
DRAWING: SK 2.0



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PROPOSED FRONT ELEVATION
SCALE 1:100



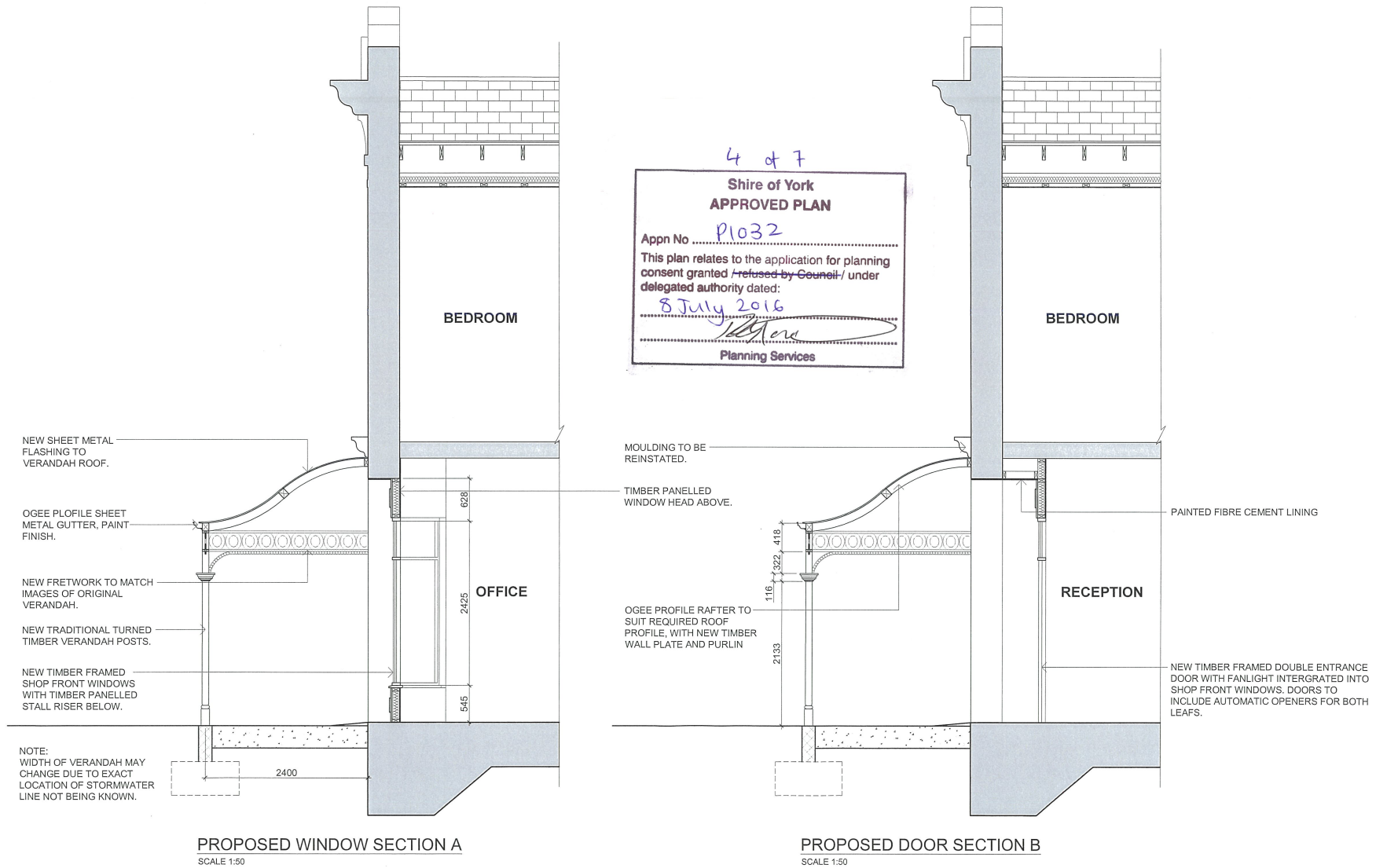
PROPOSED FLOOR PLAN
SCALE 1:100

PROJECT NUMBER : 2016-02
VERANDAH EXTENSION
152 Avon Terrace, York WA 6302

SCALE: 1:100 @A3
DATE: 07.03.2018
DRAWING: SK 3.0

HOCKING HERITAGE STUDIO

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PROJECT NUMBER : 2016-02
VERANDAH EXTENSION
 152 Avon Terrace, York WA 6302

SCALE: 1:50 @A3
 DATE: 21.03.2016
 DRAWING: SK-03



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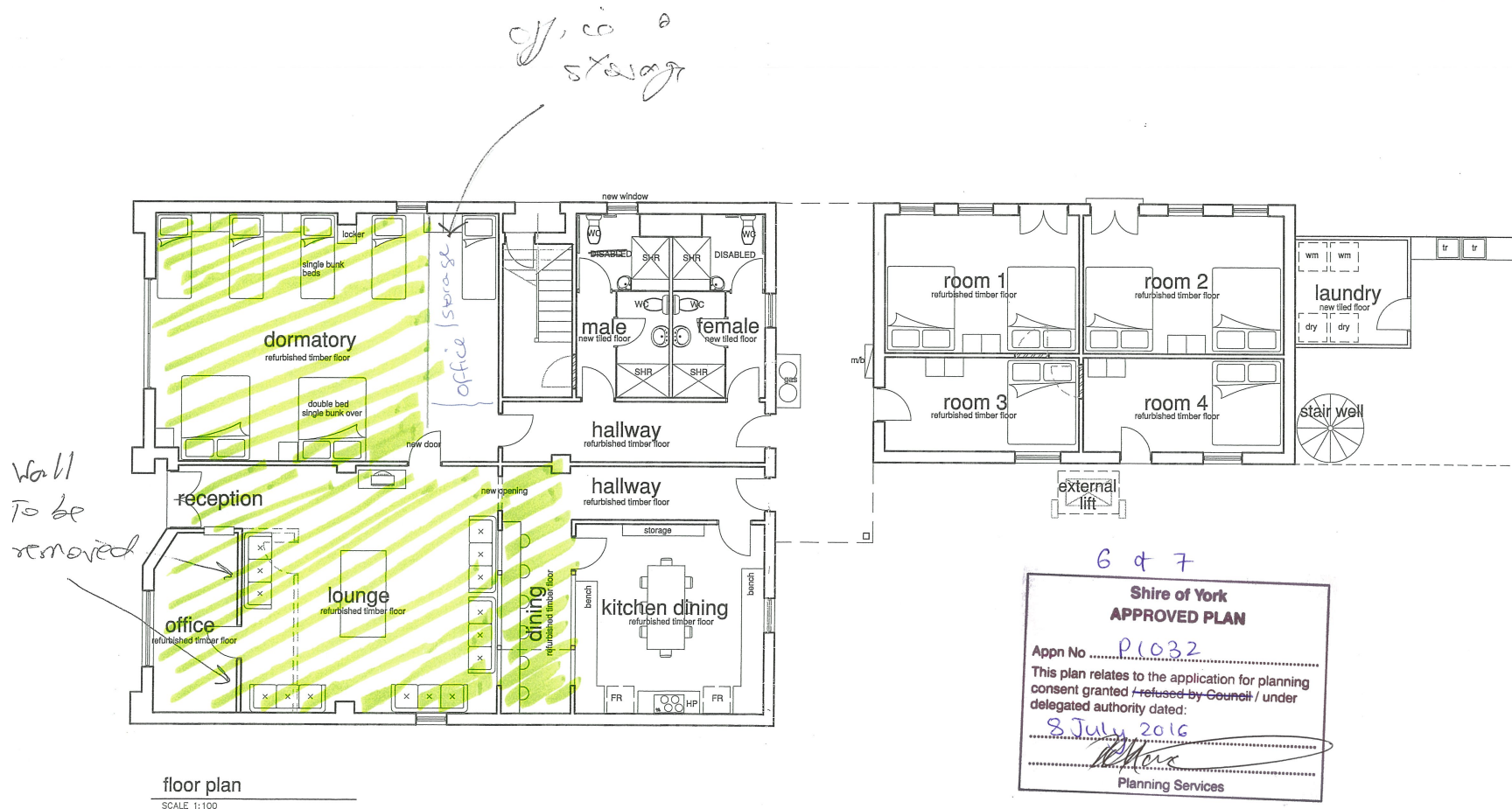


PROJECT NUMBER : 2016-02
VERANDAH EXTENSION
 152 Avon Terrace, York WA 6302

SCALE: 1:50 @A3
 DATE: 21.03.2016
 DRAWING: SK 5.0



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proposed alterations



1176 Hay Street
West Perth WA 6872
Country Women's Association of WA
1176 Hay Street
WEST PERTH WA 6872
Email: ceo@cwaofwa.asn.au
Phone: 9321 6041

Shire of York
1 Joacquina Street
YORK WA 6302
Email: records@york.wa.gov.au
Contact: :
Your reference: **OUT23/128813C1**

Dear **Shirley**,

**Re: Proposed Development – Lot 52 (152) AVON TERRACE YORK
Small Bar License Application**

Thank you for the opportunity to provide a submission in relation to the development proposal to create a Small Bar at 152 Avon Terrace York.

The Country Women's Association of Western Australia (Incorporated) is the owner of the neighbouring property namely 154 Avon Terrace York (Lot 51 on Diagram 46638, Certificate of Title Volume 1487, Folio 267). The property is on the municipal Register of buildings of heritage interest and is classified by the National Trust and has been nominated to the register of the National Trust.

The CWA of WA property has a carriageway of 3.84 metres on its southernmost boundary. The owner of Lot 52 has access to this carriageway. The CWA of WA has low fencing enclosing its backyard along the side of the carriageway which means the CWA of WA backyard (including an outdoor toilet) is relatively accessible to people using the carriageway. To date this has not posed any issues.

The proposed development application intends for the Bar patrons to enter and exit the Bar from Lowe Street into the back of 152 Avon Terrace, thereby using only part of the carriageway. However, the Bar is also accessible via the joint carriageway from Avon Terrace which is a shorter distance than from Lowe Street. It is therefore likely that Bar patrons will also use this section of the carriageway including times when they are intoxicated.

Page 1 of 3

THE COUNTRY WOMEN'S ASSOCIATION OF WESTERN AUSTRALIA INC.
1176 Hay Street, West Perth 6005 | PO BOX 97 West Perth 6872 | ABN: 75 087 227 582
T: 9321 6041 | E: info@cwaofwa.asn.au | W: www.cwaofwa.asn.au | FB: www.facebook.com/cwaofwa/



The CWA of WA and members have concerns as follows:

1. The carriageway is currently maintained by the CWA of WA even though its members do not routinely use it as they enter and exit the CWA of WA building via the front door. Obviously with more people likely to be using the carriageway, possibly in a state of intoxication and at night-time, it will be imperative that the carriageway is flat, well-lit and has no trip hazards.

The CWA of WA is of the view that there will be additional costs involved in ensuring that the carriageway is maintained in a safe fashion. This would mean the owners of the proposed bar would need to contribute to this additional expense which would only come about because of the proposed use of the back of 152 Avon Terrace as a venue serving alcohol.

2. In the circumstance that a Bar patron fell over and injured themselves in the carriageway, would the CWA of WA or the proposed Bar be responsible for any injuries sustained? Given that the carriageway is CWA of WA land, it would be likely to be the CWA of WA. This needs to be properly investigated and discussed.
3. The side and the back of the CWA of WA building is potentially at greater risk of damage from intoxicated patrons. In order to protect the backyard, it would mean the CWA of WA having to construct a side fence which is currently a memorial garden. This expense would need to be met by the CWA of WA in order to protect its assets.

Given the number of concerns and unknowns in this scenario, the CWA of WA is of the view that these issues **must** be addressed prior to the License being approved. The fact that the proposal is relying on the use of a carriageway owned by the CWA of WA with only minimal joint discussion to date on how the plan needs to be operationalised, how potential risks to both parties are considered and evaluated, what insurance is required and any other contingency plans including budget, is very worrying.

At this stage, the CWA of WA is not in favour of the proposed development going ahead until the above matters are discussed and there is a mutually satisfactory agreement made. I can be contacted on 9321 6041 for further discussion.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'L. ...', written over a faint, light blue circular stamp.

Chief Executive Officer
10th November 2023

Page 2 of 3

THE COUNTRY WOMEN'S ASSOCIATION OF WESTERN AUSTRALIA INC.
1176 Hay Street, West Perth 6005 | PO BOX 97 West Perth 6872 | ABN: 75 087 227 582
T: 9321 6041 | E: info@cwaofwa.asn.au | W: www.cwaofwa.asn.au | FB: www.facebook.com/cwaofwa/



Your ref: OUT23/128813C1

10 November 2023

Shahin Simunov

Planner

Shire of York

1 Joaquina Street

York WA 6302

Dear Shahin

Thank you for your letter of 27 October 2023, advising of the proposed development of a small bar at Lot 52 (152) Avon Terrace, York. I have forwarded your letter to the CWA of WA Head Office, as the property at 154 Avon Terrace, York, is owned by the association and occupied by the York Branch.

Your letter was presented to our members and discussed at our meeting today. Following a motion carried at this meeting, I am writing today to submit an objection to this proposal. Below is an outline of our concerns in regard to this matter.

The land area (laneway) between our building and the building at 152 Avon Terrace is owned by CWA of WA, with a Right of Carriageway having been granted to the proprietor/s of 152 Avon Terrace. We note that:

- drawings show the ROC of the laneway is to be an entrance/exit for the venue.
- drawings show the licenced area is adjacent to CWA property.
- drawings show emergency exit of venue is via the ROC laneway.
- drawings show a proposed new storm water line to be laid down the ROC/laneway.

This raises a number of concerns for us as outlined below.

There is the potential for damage to our building and its foundations during the construction of any necessary underground infrastructure, such as drains. As our building is heritage listed, damage to the building and its foundations would be costly and challenging to repair. Damage may also render our rooms unsafe for use until repaired, impacting our ability to conduct our meetings, and carry out our activities. Our rooms are also hired out or used by a number of community groups, often for vulnerable people such as seniors and children with disability. The loss of the use of the rooms if they were rendered unsafe would have a significant impact on these groups.

The proposal provides no information about what steps will be taken by the applicant to ensure the laneway is in suitable condition to be used as an entry/exit from the business. Our insurance

provides cover for authorised people who are on the property with our consent. There is no clarity on whether it would cover people on our property, without our knowledge or consent, who are accessing another property.

We have concerns about the liability of the CWA of WA for injury or harm to patrons of the proposed small bar whilst accessing the venue via CWA of WA land. The document providing right of carriageway states that ROC is given to the proprietor/s and does not refer to the proprietor being able to make this land available for their patrons to use as an access to their business. We require clarity around our legal liability in the event that a patron is injured whilst on this part of our land but accessing the proposed small bar.

We have concerns about how the use of the laneway as an entry/exit to the proposed small bar will impact the activities of the York CWA branch. This laneway is regularly used by our members to facilitate activities, such as stalls and art and craft activities with children. It is a venue of choice for many groups due to the safety and security it affords. Our members, as well as community members using our property and facilities, may be at risk of being exposed to people under the influence of alcohol, which may impact their enjoyment and reduce their sense of safety and wellbeing whilst at our rooms. Of particular concern is the potential for the children who use our rooms to be exposed to inappropriate behaviour and/or language.

The proposal shows the laneway is to be an entry/exit for the business, as well as a designated emergency exit – however it is not clear if this will be for foot traffic only or will also be used for vehicular access to the parking spaces to be developed at the back of the applicant's property. If vehicles are using the laneway to access the carpark, this in turn affects our ability to utilise this space for outdoor activities.

We have a small fence separating the laneway from our gardens. Our gardens have been developed and tended over many years by dedicated members to provide a calm and beautiful place for members to enjoy. The garden also contains memorial sites for members who have passed away. We have strong concerns that, if the laneway becomes an entry and exit point for patrons of the bar, there is significant risk that our gardens may be trespassed upon, damaged and become a place where patrons' rubbish may be dumped. Furthermore, our quiet place of calm and reflection, may be lost to the noise of patrons, vehicles and the proposed acoustic music coming from the bar. There is no indication in the proposal that the applicant will take steps to mitigate the risk of damage to our gardens by their patrons, or the reduction of noise.

Drawings do not show if there is a designated smoking area and where this might be located. We have concerns that the ROC may be used for this purpose by patrons, resulting in cigarette butts being littered throughout the laneway.

Drawings show that, despite the proposal stating they would cater for up to 100 patrons, no additional toilet facilities appear to be included in the development. Again, we have concerns that, with minimal toilet facilities during busy periods, the laneway may become a place used by patrons to relieve themselves rather than wait in queues.

Further to our concerns about the use of the laneway, we also note that drawings show 20 parking spaces being developed for the proposed 100 patrons. CWA York already experiences challenges for its members, many of whom are elderly and have reduced mobility, to find suitable parking when attending the rooms, due to the use of street parking by café customers. We have concerns that 20 parking bays will not be sufficient, and the already limited street parking at the front of our rooms will be less accessible than it is now, increasing risk to our most vulnerable members.

Today we met with Jenny Garroun to discuss her proposal and her vision for the small bar. We had an opportunity to raise our concerns with her. Whilst we were somewhat reassured by her thoughts on how the business would be conducted under her ownership, and her keenness to maintain positive neighbourly relations, we are acutely aware that verbal assurances are not legally binding. In the event that the business is sold, the new owner would be under no obligation to honour these assurances and would be within their rights to act within the laws and regulations relating to this type of business.

Jenny stated that she envisioned the bar to be operating between approximately 4pm and 10pm on most occasions, which we acknowledge would typically have little impact on our activities. However, any potential new owner may choose to operate within the hours permitted under the licence. We refer to the information regarding small bar licences, available at the Department of Local Government, Sport and Cultural Industries website - www.dlgsc.wa.gov.au . The website advises that the permitted hours for a small bar licence under section 98AA of the Liquor Control Act 1988 are:

- a) on a day other than a Sunday - from 6 am to 12 midnight
- b) on a Sunday- from 10 am to 12 midnight
- c) on New Year’s Day from immediately after 12 midnight on New Year’s Eve to 2 am and then in accordance with (a) or (b)
- d) on Good Friday or Christmas Day from 12 noon to 10 pm, but only for liquor sold ancillary to a meal supplied by the licensee.
- e) on ANZAC Day from 12 noon to 12 midnight.

If this business were to be operated within the permitted hours, CWA York would be significantly impacted by this, and would be likely to experience numerous negative impacts, as detailed above.

CWA of WA York Branch has a strong presence in the York Community and provides a safe and enjoyable place for the community to come together. Our members are heavily invested in the development of the whole community, encouraging inclusivity, accessibility and a sense of belonging. Whilst we support the development of small businesses and encourage innovation which benefits the community, we are committed to continuing to provide this safe space to our members and those in our community who access our rooms and property. Our opposition to this development is based in our concerns that our efforts in this space could be significantly impacted by reduced access to our own property, increased financial burdens on our branch, and exposure to legal liability risks for which we may not be covered.

Thank you for considering our submission. Should there be any queries, or further detail required about our submission, please do not hesitate to contact us at YorkCWA@outlook.com or by telephoning the Branch President or Secretary on the numbers below. Alternatively, you may wish to contact the CWA of WA Head Office by emailing info@cwaofwa.asn.au or by telephoning (08) 9321 6041.

Yours sincerely

President	Secretary
CWA of WA	CWA of WA
York Branch	York Branch