

DEVELOPMENT NO.:	21042393
APPLICANT:	Ho Shing Luk
ADDRESS:	270 Wright Street, ADELAIDE SA 5000
NATURE OF DEVELOPMENT:	Change of use to shop at ground floor
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • City Living <p>Subzones:</p> <ul style="list-style-type: none"> • Medium-High Intensity <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Affordable Housing • Design • Heritage Adjacency • Hazards (Flooding – Evidence Required) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy <p>Technical Numeric Variations (TNVs):</p> <ul style="list-style-type: none"> • Maximum Building Height (Metres) • Minimum Site Area • Maximum Building Height (Levels)
LODGEMENT DATE:	17 January 2022
RELEVANT AUTHORITY:	City of Adelaide Council Assessment Panel
PLANNING & DESIGN CODE VERSION:	2021.17
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Edouard Pool Senior Planner, Development Assessment
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

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ATTACHMENT 1:	Application Documents	ATTACHMENT 5:	Representations
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PERSONS SPEAKING BEFORE THE PANEL

Representors

- Ms Anita Smith of 8-10 White Lane, Adelaide
- Mr Damien Stevens of 8-10 White Lane, Adelaide

Applicant

- Ms Xujiao Pu (Fiona) – on behalf of the Applicant of 270 Wright Street Adelaide

1. DETAILED DESCRIPTION OF PROPOSAL

- 1.1 The application proposes a change of use from an existing gymnasium at ground level to a shop.
- 1.2 The proposed shop will be for provision of tattoos and will have a maximum of five employees with up to five clients at a time.
- 1.3 Hours of operations are proposed between 12pm and 8pm every day, excluding Thursdays.
- 1.4 The existing dwelling on the first floor will remain.

2. BACKGROUND

- 2.1 Approval to construct a first floor addition for use as a dwelling above an existing office/showroom was granted in 1995.
- 2.2 An application to change the use of the ground floor to shop with ancillary office and storeroom (location of a business that sells skin care, hair care, health food items, vegan packaged foods, refrigerated foods and frozen foods) was approved by Council in February 2013 (DA/903/2012).
- 2.3 The business occupied the premises however it vacated in 2015.
- 2.4 Council's then Development Assessment Panel approved an application to change the use from a shop to a personal training studio in mid-2015. The business included one-on-one training sessions with occasional classes of up to ten persons.
- 2.5 This application was submitted in response to a complaint where it was determined the use was not approved. Compliance has been ongoing since the application was submitted as the use has still been occurring intermittently. This has been despite Council ordering the use cease until this application has been determined.
- 2.6 The painted advertisement on the frontage to Wright Street is excluded from the definition of development under Schedule 4(1)(e) of the *Planning, Development and Infrastructure Regulations 2017* (SA).

3. SUBJECT LAND & LOCALITY

Subject Land

- 3.1 The subject site is located on the northern side of Wright Street and has a frontage to Wright Street of 6 metres and an internal floor area of approximately 163m² metres at ground level.
- 3.2 The site contains an existing two-storey building with two on-site car parking spaces provided from Alfred Street to the rear. The first floor contains a dwelling.

Locality

- 3.4 The locality contains a mix of land uses.
- 3.5 The southern side of Wright Street is predominately residential but also includes non-residential land uses such as a childcare centre, shops and offices.
- 3.6 The northern side of Wright Street has predominately non-residential land uses such as such as shops, offices, a warehouse and a hotel but also some dwellings.
- 3.7 Generally buildings are of low to medium scale.
- 3.8 Several of the cottages located on the southern side of Wright Street are Local Heritage Places.

Photo 1 – Subject Site viewed from southern side of Wright Street



Photo 2 – Dwellings opposite the subject site on the southern side of Wright Street



Photo 3 – Northern side of Tynte Street looking west to west Terrace with a mix of residential and commercial premises



Photo 4 – Northern side of Tynte Street looking west with the Prince Albert Hotel visible in the background on the left and a commercial premises in the foreground.



4. **CONSENT TYPE REQUIRED**

Planning Consent

5. **CATEGORY OF DEVELOPMENT**

- **PER ELEMENT:**
Change of use: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
The proposed land use is not listed within Zone Tables 1, 2 or 4 as Accepted, Deemed to Satisfy or Restricted development.
The proposal is listed in Zone Table 3 and is therefore Code Assessed – Performance Assessed development.

6. **PUBLIC NOTIFICATION**

- **REASON**
Does not qualify for exemption as being minor nor is it a change of use from an identified land use listed in the Code in Table 5 of the City Living Zone.

TABLE 6.1 – LIST OF REPRESENTATIONS		
No.	Representor Address	Request to be Heard
1	Angie Ng – Flat 204, Aria on Gouger, Adelaide SA 5000	No – in support
2	Emily Chu – 281 Gouger Street, Adelaide SA 5000	No – in support
3	Mike Sun – 116 Waymouth Street, Adelaide SA 5000	No – in support
4	Colin Campbell – Unit 13, 58 Russell Street, Adelaide SA 5000	No – in support
5	Dan Grecu – 23 Max Henry Crescent, Macarthur ACT 2904	No – opposes
6	Anita Smith – 8-10 White Lane, Adelaide SA 5000	Yes – opposes
7	Damien Stevens - 8-10 White Lane, Adelaide SA 5000	Yes – opposes

TABLE 6.1 SUMMARY OF REPRESENTATIONS

Summary of Representations	Applicant response
Support the development	No response required.
Potentially a very dynamic neighbourhood and needs new investment. It has been neglected for many decades and needs support.	No response required.
A tattoo parlour is not suited with Gouger Street, particularly near the Market. This is a quiet family orientated area. I lived in Adelaide for over 20 years and own properties in the city. Having a tattoo parlour nearby will affect the area negatively, Hindley Street may be a better location.	No specific response provided.
Does not meet the Desired Outcome of the City Living Zone.	No specific response provided.
Trading hours are outside the guidelines.	No specific response provided.
It is not a small scale commercial use, with 10 to 15 people being at the premises at any one time.	Staff will include three tattooists and one receptionist. A maximum of ten people will occupy the premises. Time will be taken in designing tattoos for clients, so client turnover will be low. Attendance will be by appointment.
A tattoo parlour is not a use that promotes an active neighbourhood.	XJ Tattoo has been involved in neighbourhood outreach, supporting mental illness programs and will offer public information and activities in the future.
Signage is not complementary to the heritage and residential character of the neighbourhood.	The only new signage is painted on the façade.
The signage is too large.	No specific response provided.
The black painted façade is not in keeping with the established streetscape which is more earth-toned.	The façade was painted black before the premises was occupied.
Insufficient on-site car parking	Some employees car-share, whilst others use public transport to come to work. Prior to rental of the property when it was vacant, it was observed that on-street car parking was already scarce, so the business would not be changing the parking situation.
The building is not sympathetic to adjacent State and Local Heritage Places	No specific response provided.

7. **AGENCY REFERRALS**

Nil

8. **INTERNAL REFERRALS**

Nil

9. **PLANNING ASSESSMENT**

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Appendix 1.

9.1 **Summary of City Living Zone Assessment Provisions**

Subject Code Ref	Assessment	Achieved ✓ Not Achieved ✗
DO 1	<ul style="list-style-type: none">Shop will add to the diversity of services in the locality.	✓
Land Use & Intensity PO 1.1	<ul style="list-style-type: none">Shop will increase the range of compatible of land uses.	✓
Car Parking & Access PO 5.1	<ul style="list-style-type: none">Vehicle access and car parking is existing and accessed from the minor street (Alfred Street).	✓

9.2 Summary of Medium-High Intensity Subzone Assessment Provisions

Subject Code Ref	Assessment	Achieved ✓ Not Achieved ✗
DO 1 & DO2	<ul style="list-style-type: none"> • Shop will add to the eclectic mix of non-residential land uses desired and will complement the urban residential amenity of this area. • Land use replaces a previous gymnasium (currently vacant) and will provided a mixed-use for this site which will increase the vibrancy in this area. 	✓ ✓
Land Use & Intensity PO 1.1	<ul style="list-style-type: none"> • While a non-residential land use is proposed, the site also contains a dwelling at the first floor. 	✓/✗

9.3 Summary of Applicable Overlays

The following Overlays are not considered to be relevant to the assessment of the application:

- *Design Overlay* – other than signage, no external changes proposed
- *Airport Building Heights (Regulated) & Building Near Airfields Overlay* – existing two storey height not of concern
- *Affordable Housing Overlay* – dwellings do not form part of the application
- *Hazards (Flooding – Evidence Required) Overlay* – existing building no flooding concern
- *Stormwater Management* – no change to existing system
- *Prescribed Wells Area Overlay* – no groundwater concerns
- *Urban Tree Canopy Overlay* – residential development not proposed
- *Regulated and Significant Tree Overlay* – no regulated or significant trees

An assessment of the relevant Overlay is provided below:

Heritage Adjacency

Subject Code Ref	Assessment	Achieved ✓ Not Achieved ✗
DO 1	<ul style="list-style-type: none"> • No building work proposed. 	✓
PO 1.1	<ul style="list-style-type: none"> • As above. 	✓

9.4 Summary of General Development Policies

Interface between Land Uses

Subject Code Ref	Assessment	Achieved ✓ Not Achieved ✗
Interface between Land Uses PO 1.1, 1.2 & 2.1	<ul style="list-style-type: none"> Land use as a shop and hours of operation will ensure proposal does not result in adverse effects on adjacent land uses. 	✓
Site Contamination DO1 PO/DPF 1.1	<ul style="list-style-type: none"> The site is suitable for its intended use as a shop. A change to a more sensitive use of the land is not proposed. 	✓ ✓
Transport, Access & Parking DO1 PO 3.1, 5.1 & 9.1	<ul style="list-style-type: none"> Safe and convenient access is provided via an existing crossover and parking arrangement. Vehicle access is provided via a lawful existing access point. Refer Section 9.5 for further detail regarding car parking rates. 	✓ ✓ ✓

9.5 Detailed Discussion

Land Use

The proposed tattoo parlour is defined as a 'shop' under *Part 7 – Land Use Definitions – Land Use Definitions Table* of the Planning and Design Code. A 'shop' includes a '*personal or domestic services establishment*' which means a '*...premises used for the provision of services catering to the personal or domestic needs of customers.*'

Medium-High Intensity Subzone DO1 seeks predominantly medium-density housing amongst an eclectic mix of supporting interspersed non-residential land uses that complement the urban residential amenity of the area. DO2 also anticipates the redevelopment of existing non-residential sites into integrated mixes-use developments to increase the residential population and vibrancy of the area.

The shop use, providing a tattoo service, will add to the eclectic mix of land uses in this urban locality. As the use is proposed to replace an existing non-residential use at ground (acknowledging the gymnasium has since vacated the site), the proposal is supported by DO2 and will contribute to the vibrancy of the area with a mixed-use proposal.

DO 1 and PO 1.1 of the City Living Zone anticipates a range and diversity of compatible non-residential uses in the zone that contribute to making the neighbourhood 'active and convenient'. Zone PO 1.2 also seeks non-residential development be located and designed to improve community accessibility to services, primarily in the form of small-scale commercial uses, community services, services associated with supported accommodation, recreation facilities and expansion of existing hospitals and associated facilities.

The proposed non-residential development supports DO 1 of the City Living Zone and Medium-High Intensity Subzone as both the small-scale nature of the proposal and its hours of operations are not expected to result in adverse amenity impacts. The land use will also add to the diversity of services to be enjoyed by City residents in a convenient location. Although it can be argued a tattoo parlour is not a land use which provides a service to the local community, it is a part of the eclectic mix of commercial activity envisaged and appropriate to the wider inner-city context.

Built Form and Heritage Adjacency

Changes to the built form are not proposed. Concern was raised by the representors during public notification in relation to the suitability of the advertisement within a 'heritage street'.

It is noted, the painted advertisement on the frontage to Wright Street is excluded from the definition of development under Schedule 4(1)(e) of the *Planning, Development and Infrastructure Regulations 2017 (SA)*.

Interface between Land Uses

It is considered the hours of operation (12pm to 8pm every day, excluding Thursdays) will ensure the amenity of sensitive receivers is maintained.

Whilst representors have raised concern with the hours of operation, the nature of the land use and its operations is not anticipated to generate adverse impacts by way of noise.

Transport, Access and Car Parking

PO 3.1 under Transport, Access and Car Parking module seeks the safe and convenient vehicle access and for the interruption on public roads to be minimised. In this case, there will be negligible change to the operation and vehicle movements along Alfred and Wright Street, with no increase in the two existing on-site car parks. One space is to be dedicated to the shop land use, with the other space provided for the residential land use at first floor.

Table 2 – Off-Street Car Parking Requirements in Designated Areas specifies a minimum car parking requirement of 3 spaces per 100m² of gross leasable floor area for non-residential development. There is an existing on-site car parking shortfall associated with the previous gymnasium and the proposed shop will maintain this existing shortfall with both uses being non-residential.

Other Matters

It is noted a number of matters were raised as part of the public consultation of the application relating to the retrospective nature of the proposal, desirability of a tattoo parlour, crime, property theft and various police matters. While noted, the proposal is defined as a 'shop' under the Planning and Design Code and the proposal has been assessed accordingly against the relevant provisions of the Code.

Case Law has established retrospective developments do not obtain either an advantage or disadvantage and where matters do not relate to the planning assessment of the application, such matters are not able to be taken into consideration in the assessment of an application. Accordingly, the matters raised above have not formed part of the planning assessment contained within this report.

10. CONCLUSION

A 'shop' land use is anticipated within the Zone/Subzone and it is considered that the tattoo parlour will add to the eclectic mix of land uses desired within this urban location. The application details demonstrates that the proposal will not detrimentally impact the amenity of nearby residences in terms of traffic, heritage, signage, car parking and the hours of the proposed land use operations.

It is considered that the proposal sufficiently meets the relevant provisions of the Planning and Design Code and warrants Planning Consent.

11. **RECOMMENDATION**

It is recommended that the Council Assessment Panel resolve that:

1. Pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
2. Development Application Number 21042393, by Ho Shing Luk is granted Planning Consent subject to the following conditions:

Conditions

1. **The Development shall be undertaken in accordance with the plans, drawings, specifications and other documents submitted to the Council that are relevant to the consent as listed below:**
 - **Additional Information document, including sign image and proposed floor plan to the reasonable satisfaction of the Council except where varied by conditions below (if any).**
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2. **The hours of operation for the shop on the Land shall be limited to 12pm and 8pm every day, excluding Thursdays.**
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3. **Patron and staff numbers combined shall be limited to up to ten people at any one time.**
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Advisory Notes

1. Building Consent for Approval

Development Approval will not be granted until Building Rules Consent has been obtained. A separate application must be submitted for such consent. No building work or change of classification is permitted until the Development Approval has been obtained.

2. Expiration Time of Approval

Pursuant to the provisions of Regulation 67 of the Planning, Development and Infrastructure (General) Regulations 2017, this consent / approval will lapse at the expiration of 2 years from the operative date of the consent / approval unless the relevant development has been lawfully commenced by substantial work on the site of the development within 2 years, in which case the approval will lapse within 3 years from the operative date of the approval subject to the proviso that if the development has been substantially or fully completed within those 3 years, the approval will not lapse.

3. Operative Date

Where an approved development has been substantially commenced within 2 years from the operative date of approval, the approval will then lapse 3 years from the operative date of the approval (unless the development has been substantially or fully completed within those 3 years, in which case the approval will not lapse).
