



YARRA CITY COUNCIL
Internal Development Approvals Committee
Agenda

**to be held on Wednesday 13 February 2019 at
6.30pm in Meeting Rooms 1 & 2
at the Richmond Town Hall**

Rostered Councillor membership

Councillor Misha Coleman
Councillor Danae Bosler
Councillor Daniel Nguyen

- I. ATTENDANCE**
Nish Goonetilleke (Senior Statutory Planner)
Amy Hodgen (Co-ordinator Statutory Planning)
Cindi Johnston (Governance Officer)
- II. DECLARATIONS OF PECUNIARY INTEREST AND CONFLICT OF INTEREST**
- III. CONFIRMATION OF MINUTES**
- IV. COMMITTEE BUSINESS REPORTS**

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***"Welcome to the City of Yarra.
Yarra City Council acknowledges the
Wurundjeri as the Traditional Owners
of this country, pays tribute to all
Aboriginal and Torres Strait Islander
people in Yarra and gives respect to
the Elders past and present."***



Guidelines for public participation at Internal Development Approval Committee meetings

POLICY

Council provides the opportunity for members of the public to address the Internal Development Approvals Committee.

The following guidelines have been prepared to assist members of the public in presenting submissions at these meetings:

- public submissions are limited to a maximum of five (5) minutes
- where there is a common group of people wishing to make a submission on the same matter, it is recommended that a representative speaker be nominated to present the views of the group
- all public comment must be made prior to commencement of any discussion by the committee
- any person accepting the chairperson's invitation to address the meeting shall confine himself or herself to the subject under consideration
- people making submissions shall address the meeting as a whole and the meeting debate shall be conducted at the conclusion of submissions
- the provisions of these guidelines shall be made known to all intending speakers and members of the public generally prior to the commencement of each committee meeting.

For further information regarding these guidelines or presenting submissions at Committee meetings generally, please contact the Governance Branch on (03) 9205 5110.

**Governance Branch
2008**

1. Committee business reports

Item	Page	Rec. Page
1.1 PLN18/0495 - 372-374 Brunswick Street, Fitzroy Sale and consumption of liquor (on-premises licence) from the first floor deck (Deck hours: Sunday: 10am - 11pm, Monday to Thursday: 9am - 11pm, Friday to Saturday: 9am - 1am the following day, Deck patrons: Maximum 78), part demolition and buildings and works including acoustic barriers and roof over the deck	5	30

-
- 1.1 PLN18/0495 - 372-374 Brunswick Street, Fitzroy**
Sale and consumption of liquor (on-premises licence) from the first floor deck
(Deck hours: Sunday: 10am - 11pm, Monday to Thursday: 9am - 11pm, Friday to
Saturday: 9am - 1am the following day, Deck patrons: Maximum 78), part
demolition and buildings and works including acoustic barriers and roof over
the deck
-

Executive Summary

Purpose

1. This report provides Council with an assessment of Planning Permit Application PLN18/0495 which affects the land at 372-374 Brunswick Street, Fitzroy and recommends approval, subject to conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Noise and off-site amenity impacts associated with the sale and consumption of liquor from the existing first floor deck (clauses 13.05-1S, 21.04-2, 22.05, 22.09 and 52.27)

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Strategic Justification
 - (b) Sale and consumption of liquor
 - (c) Buildings and works
 - (d) Objectors concerns

Submissions Received

4. Nineteen (19) objections were received to the application, these can be summarised as:
 - (a) Off-site amenity impacts (noise, anti-social behaviour, rubbish);
 - (b) Proposed hours operating past 11pm;
 - (c) Problems associated with the existing operation (amplified music, noise from plant);
 - (d) Proximity of the deck to residential zoning/residential uses;
 - (e) Confusion regarding hours/overall patrons numbers;
 - (f) Car parking and traffic.

Conclusion

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
 - (a) Further acoustic testing undertaken three months after the completion of works and commencement of the sale and consumption of liquor from the deck demonstrating that the operation of the deck complies with the relevant policies and guidelines for music, patron and operational noise.

CONTACT OFFICER: Michelle King
TITLE: Senior Statutory Planner
TEL: 9205 5333

**1.1 PLN18/0495 - 372-374 Brunswick Street, Fitzroy
Sale and consumption of liquor (on-premises licence) from the first floor deck
(Deck hours: Sunday: 10am - 11pm, Monday to Thursday: 9am - 11pm, Friday to
Saturday: 9am - 1am the following day, Deck patrons: Maximum 78), part
demolition and buildings and works including acoustic barriers and roof over
the deck**

Trim Record Number: D19/5823

Responsible Officer: Senior Coordinator Statutory Planning

Proposal:	Sale and consumption of liquor (on-premises licence) from the first floor deck (Deck hours: Sunday: 10am - 11pm, Monday to Thursday: 9am - 11pm, Friday to Saturday: 9am - 1am the following day, Deck patrons: Maximum 78), part demolition and buildings and works including acoustic barriers and roof over the deck
Existing use:	Hotel
Applicant:	Colonial Leisure Group C/- Priority Planning Pty Ltd
Zoning / Overlays:	Commercial 1 Zone Environmental Audit Overlay Heritage Overlay – Schedule 311
Date of Application:	12 July 2018
Application Number:	PLN18/0495

Planning History

6. Planning Permit PL08/1097 was issued on 2 December 2010 for *part demolition, buildings and works and a waiver of car parking requirement associated with increased floor space for use by patrons*. This planning permit allowed the construction of the first floor deck.
7. This application determined that the use of the subject site as a Hotel enjoyed existing use rights. This planning permit includes the following restrictions on the use of the site:
 - (a) The doors in the rear (east) wall of the building allowing access onto the terrace shall be closed (fixed shut) after 11pm on any day.
 - (b) Background music must only be played inside the first floor lounge room with no external speakers, no live music, amplified music or entertainment.
8. An amendment to this permit was lodged on 9 April 2018 for the items proposed within this application, however, it was discovered that not all of the works approved under planning permit PL08/1097 were completed and accordingly the permit had expired. The amendment was therefore withdrawn on 12 July 2018 and the subject application subsequently lodged.
9. Planning Permit PLN13/1133 was issued on 14 August 2014 for a *variation to the liquor licence to allow for an increase in the area of the sale and consumption of liquor to include the whole first-floor (including the use of the existing roof terrace)*. This permit proposed a similar proposal to the current application with the major differences being:
 - (a) A maximum 125 patrons on the first floor deck (within the existing allowed 350 patrons) was granted;
 - (b) The sale and consumption of liquor from the first floor deck between 7am and 11pm everyday was granted.
 - (c) No additional noise attenuation measures were proposed.
10. The applicant has stated the permit was never acted upon and the permit has therefore lapsed.

11. It is understood that the existing first-floor terrace has been used for a number of years for the sale and consumption of alcohol, but is not covered by the red line plan of the existing liquor licence (Number 31909029).
12. The operator has been trading on the deck under the assumption that the deck area is outside of the redline plan and therefore is “off-premises” and can be used in association with the trading hours for consumption off the licenced premises which the current liquor licence allows for until 11pm on any given day.
13. This approach is not supported by Planning Officers who believe patrons can use the deck but not for the sale and consumption of liquor as this would be considered as “on premises.”
14. This application seeks to legitimatise the sale and consumption of liquor on the premises in the area of the deck.
15. The existing liquor licence is a ‘late night (general)’ licence, which sets out the following restrictions on patron numbers and hours of operation within the red line area (all internal areas):

Maximum capacity of:

- *public bar (90 patrons);*
- *lounge (200 patrons);*
- *terrace (20 patrons);*
- *beer garden (40 patrons);*
- *Overall ground floor maximum of 350 patrons.*

Trading hours for the consumption of liquor off the premises of:

- *Sunday (10am and 11pm);*
- *Good Friday and Anzac Day (12noon and 11pm);*
- *on any other day (7am and 11pm); and*

Trading hours for the consumption of liquor on the premises as:

- *Sunday (10am and 3am the following morning except for Anzac Day morning);*
- *Good Friday and Anzac Day (12noon and 3am the following morning);*
- *on any other day 7am and 3am the following morning.*

16. The following is the existing red line plan, showing where liquor can be sold and consumed on premises:



Background

17. The application was received by Council on 12 July 2018. Following the submission of further information, the application was advertised and nineteen (19) objections were received.

18. A planning consultation meeting was held on 23 October 2018 and attended by fifteen objectors, the Applicant and Council Officers to discuss all issues and concerns raised in the letters of objection.
19. The Applicant did not make any commitments to make changes, moreover the proposal, as originally submitted to Council, forms the basis of assessment and decision.
20. Updated plans were provided to Council on 28 January 2019 to correct the siting and location of windows in relation to the adjoining property to the east, No. 98 Rose Street. It should form a condition of permit that the plans be updated to show this level of detail in accordance with these plans, dated 25.01.19.

The Proposal

Demolition

21. Demolition of the existing steel feature above the existing deck.
22. Part demolition of the eastern existing bar and existing servery walls.

Buildings and works

23. The following acoustic attenuation measures are proposed to facilitate the increased red line area:
 - (a) Construction of a 2.2 metre high acoustic barrier above the existing northern and eastern on boundary walls associated with the single storey garage/cool store. The wall will have an overall height of 6 metres.
 - (b) Construction of acrylic sheeting on the inside of the existing northern corrugated sheet wall and along the eastern internal boundary of the deck.
 - (c) Construction of a 3 metre high wall along the eastern internal boundary of the deck.
 - (d) Construction of a polycarbonate roof cover partially covering the deck with an overall height of 9 metres.
24. The following buildings and works are proposed to facilitate greater integration between the first floor indoor and outdoor areas:
 - (a) Provision of a second door from the existing bar to the deck.
 - (b) Provision of a folding door from the existing servery to the deck.

Sale and consumption of liquor

25. Increase the redline area to include the existing deck to allow for the sale and consumption of liquor on the deck, within the existing hours contained within liquor licence 31909029 and between the following hours:
 - (a) Sunday: between 10am and 11pm
 - (b) Monday to Thursday: between 9am to 11pm;
 - (c) Friday and Saturday: between 9am and 1am (the following day).
26. The deck area is proposed to have a maximum of 78 patrons. This will be part of the Hotel's existing overall 350 maximum patron capacity to which there will be no increase.
27. Background music will be played on the deck during the proposed licensed trading hours.
28. Food from the existing commercial kitchen will continue to be served during all licenced trading hours.

Existing Conditions

Subject Site

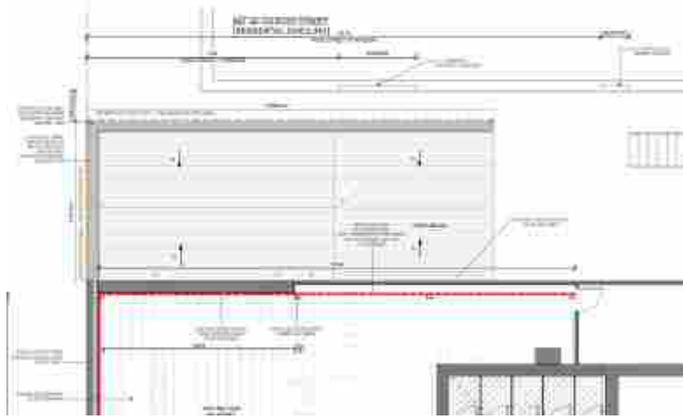
29. The subject site is located on the east side of Brunswick Street on the southern corner of Rose Street, Fitzroy. The site is a square shaped lot with street frontages to Brunswick Street (20m) and Rose Street (22.4m) yielding a total site area of 448sqm.
30. The subject site is developed with a 2-storey Victorian-era commercial building with parapet above, purpose built as a hotel. The building is built on its front (west) site boundary and both side (north and south) site boundaries for its entire length. The rear wall (east) of the main building and deck is setback by 4m, with a single storey garage built along the northern and eastern boundaries. Behind the single storey garage, and along the eastern boundary toward the west, is an external staircase.
31. The deck area has a canopy over (maximum height of 8.8m) and 3m to 4m high metal screening to Rose Street.
32. The building is currently occupied by “Bimbo Deluxe” (public bar). The front portion of the ground floor is an open-plan lounge area, and the first-floor terrace provides an outdoor seating area with bar (serving hatch), both used by patrons. The remaining ground-floor, including the single-storey outbuildings, is used for storage, bar and kitchen. The upper floor of the building provides a bar and dining/function room as well as ancillary offices and storage area. It is understood that the venue is a live music venue where DJs commonly play.
33. Patron access to the building is from the Brunswick Street and Rose Street frontages. The existing liquor licence requires that after 1am all entry and egress from the premises will be by the way of the door from the lounge into Brunswick Street. Deliveries are made to the building from access on Rose Street.
34. No on-site car parking is provided.

Restrictive Covenants

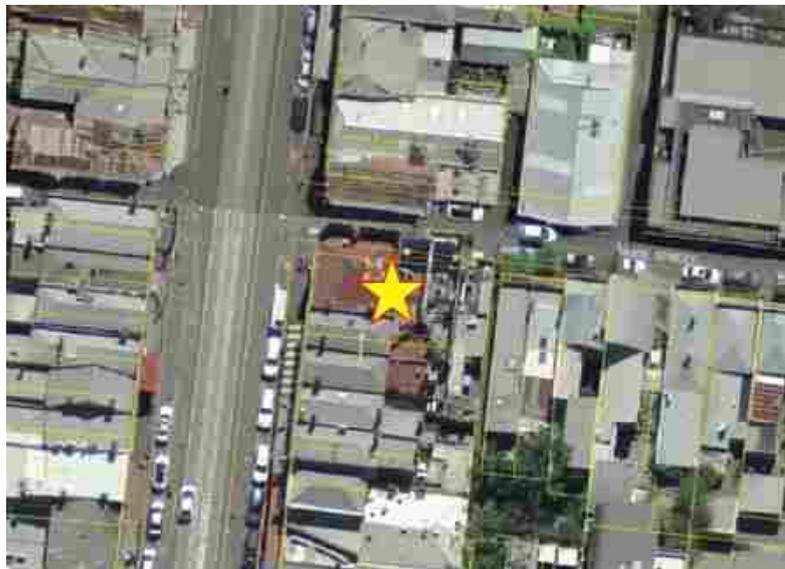
35. There are no restrictive covenants on the title submitted with the application.

Surrounding Land

36. The subject site is located within the Brunswick Street Major Activity Centre (MAC) with predominantly double-storey commercial buildings (retail shops, restaurants, take-away food and drink premises, cafes, taverns, a night club and bars) orientated to the street. Most buildings date to the same era as that of the subject site.
37. To the north of the subject site is Rose Street, beyond which is a 2-storey commercial premises at 378 Brunswick Street (“Veggie Bar” at the ground floor) orientated to Brunswick Street. To the east of this property is a single storey warehouse building at 99 Rose Street Fitzroy, used as a restaurant (“Transformer Fitzroy”). To the east of this building is a four storey warehouse to residential conversion, this development comprises seventeen dwellings. Some of these dwellings have private open space in the form of balconies facing Rose Street.
38. Immediately to the east of the subject site is a narrow Right-of-Way (ROW) which provides an access from Rose Street to several commercial uses orientated to Brunswick Street and to several residences on Rose Street. Beyond this narrow strip is land at 98 Rose Street, developed with a single-storey residential dwelling orientated to the street with an area of secluded private open space to the rear (south). The property has two windows facing the subject site, as documented on the updated rooftop bar plan, and shown below, these windows are setback 7.2 metres and 14.7 metres from Rose Street.



- 39. To the east of No. 98 Rose Street are several single dwellings oriented to face Rose Street. These dwellings all have private open space to the side or rear of the built form.
- 40. To the south of the subject site is land at 370 Brunswick Street, developed with a 2-storey building with a wine bar use (Kommune Canteen) at ground floor. To the south of this building are several other commercial buildings, largely containing food and drinks premises and restaurants. To the south east are several dwellings facing Kerr Street. One development, No. 107 Kerr Street, includes four dwellings and extends to the rear of the allotment, this development does not have a direct interface with the subject site.
- 41. To the west of the subject site is Brunswick Street, beyond which are 2-storey commercial premises (some of which have residences above) orientated to Brunswick Street. These premises contain a mix of commercial uses, from shops to food and drinks premises.
- 42. The below image demonstrates the location of the roof deck in regards to the surrounding area:



Planning Scheme Provisions

Zoning

Clause 34.01 (Commercial 1 Zone)

- 43. Pursuant to Clause 34.01-1 of the Yarra Planning Scheme (the Scheme), a hotel, nested under retail premises, is a section 1 use within the zone and therefore as-of-right, not requiring a planning permit to operate.

44. Pursuant to Clause 34.01-4 of the Scheme, a planning permit is required to construct a building or construct or carry out works.

Overlays

Clause 43.01 (Heritage Overlay Schedule 311, Brunswick Street Precinct)

45. Pursuant to Clause 43.01-1 of the Scheme, a planning permit is required to construct or carry out works and for demolition.

Environmental Audit Overlay

46. The Environmental Audit Overlay applies to the subject site. As the use of the land for a Hotel is not considered to be a sensitive use the requirements of the overlay do not apply.

Particular Provisions

Clause 52.27 (Licenced Premises)

47. The purpose of this clause is:

- (a) *To ensure that licensed premises are situated in appropriate locations.*
- (b) *To ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.*

48. Pursuant to Clause 52.27, a planning permit is required to use land to sell or consume liquor if the area that liquor is allowed to be consumed or supplied under a licence is to be increased.

49. Decision guidelines at clause 52.27 include:

- (a) *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- (b) *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.*
- (c) *The impact of the hours of operation on the amenity of the surrounding area.*
- (d) *The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.*

Clause 53.06 (Live Music and Entertainment Noise)

50. The purpose of this clause is:

- (a) *To recognise that live music is an important part of the State's culture and economy.*
- (b) *To protect live music entertainment venues from the encroachment of noise sensitive residential uses.*
- (c) *To ensure that noise sensitive residential uses are satisfactorily protected from unreasonable levels of live music and entertainment noise.*
- (d) *To ensure that the primary responsibility for noise attenuation rests with the agent of change.*

51. Pursuant to Clause 53.06-1 this clause *applies to an application required under any zone of this scheme to use land for, or to construct a building or carry out works associated with:*

- (a) *A live music entertainment venue.*
- (b) *A noise sensitive residential use that is within 50 metres of a live music entertainment venue.*

52. *Relevant to this proposal, pursuant to clause 53.06-3:*

- (a) *A live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.*

General Provisions

Clause 65 (Decision Guidelines)

53. The decision guidelines outlined at Clause 65 of the Scheme are relevant to all applications. Because a permit can be granted does not imply that a permit should or will be granted. Before deciding on an application, the Responsible Authority must consider a number of matters. Amongst other things, the Responsible Authority must consider the relevant Planning Policy Frameworks, as well as the purpose of the zone, overlay or any other provision.

Planning Policy Framework (PPF)

54. The following PPF provisions of the Scheme are relevant:

Clause 11 (Settlement)

Clause 11.03-1S (Activity centres network)

55. The objective is:

- (a) *To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community.*

Clause 11.03-1R (Activity Centres – Metropolitan Melbourne)

56. Strategies include:

- (a) *Support the development and growth of Metropolitan Activity Centres by ensuring they:*
- (i) *Are able to accommodate significant growth for a broad range of land uses.*
 - (ii) *Are supported with appropriate infrastructure.*
 - (iii) *Are hubs for public transport services.*
 - (iv) *Offer good connectivity for a regional catchment.*
 - (v) *Provide high levels of amenity.*

Clause 13 (Environmental Risks and Amenity)

Clause 13.05-1S (Noise abatement)

57. The objective is:

- (a) *To assist the control of noise effects on sensitive land uses.*

58. Noise abatement issues are measured against relevant State Environmental Protection Policy (SEPP) and other Environmental Protection Authority (EPA) regulations.

59. Strategies of this policy include:

- (a) *Ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.*

Clause 13.07-1S (Land use compatibility)

60. The objective is:

- (a) *To safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects.*

Clause 15 (Built Environment and Heritage)

Clause 15.01-1R (Urban Design – Metropolitan Melbourne)

61. The objective is:

- (a) *To create a distinctive and liveable city with quality design and amenity.*

Clause 15.01-2S (Building Design)

62. The objective is:

- (a) *To achieve building design outcomes that contribute positively to the local context and enhance the public realm.*

Clause 15.01-5S (Neighbourhood Character)

63. The objective is:

- (a) *To recognise, support and protect neighbourhood character, cultural identity and a sense of place.*

64. A strategy to achieve the Objective is:

- (a) *Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by emphasising the:*
- (i) *Pattern of local urban structure and subdivision.*
 - (ii) *Underlying natural landscape character and significant vegetation.*
 - (iii) *Heritage values and built form that reflect community identity.*

Clause 15.03-1S (Heritage Conservation)

65. The objective is:

- (a) *To ensure the conservation of places of heritage significance.*

Clause 17.02 (Commercial)

Clause 17.02-1S (Business)

66. The objective of this clause is 'To encourage development that meets the community's needs for retail, entertainment, office and other commercial services'.

67. A strategy of this clause includes:

- (a) *Locate commercial facilities in existing or planned activity centres.*

Local Planning Policy Framework (LPPF)

Clause 21.03 (Vision)

68. The following is offered in this clause:

In the City of Yarra in 2020:

Land Use

- (a) *The complex land use mix characteristic of the inner City will provide for a range of activities to meet the needs of the community*
- (b) *Yarra's exciting retail strip shopping centres will provide for the needs of local residents, and attract people from across Melbourne*

Clause 21.04-2 (Activity Centres)

69. The site is located within the Brunswick Street Activity Centre. The relevant objectives and strategies of this clause are:

- (a) *Objective 4 - To maintain a balance between local convenience and regional retail roles in Yarra's activity centres.*
 - (i) *Strategy 4.1 Increase the range of retail, personal and business services, community facilities, and recreation activities, within individual centres.*
 - (ii) *Strategy 4.2 Support the regional role of the Major Activity Centres as an important component of Yarra's economy and as a metropolitan destination.*
- (b) *Objective 5 To maintain the long term viability of activity centres.*
 - (i) *Strategy 5.2. Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.*

Clause 21.04-3 (Industry, office and commercial)

70. An objective of this clause is 'Objective 8 - To increase the number and diversity of local employment opportunities'.

Clause 21.05 – ((Built Form (Heritage & Urban Design))

71. The relevant objectives and strategies of this clause are:

- (a) *To protect and enhance Yarra's heritage places.*
- (b) *Apply the Development Guidelines for sites subject to a Heritage Overlay policy at Clause 22.02;*
- (c) *To reinforce the existing urban framework of Yarra.*
- (d) *To retain Yarra's identity as a low-rise urban form with pockets of higher development.*
- (e) *To ensure that new development contributes positively to Yarra's urban fabric.*
- (f) *Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs.*
- (g) *To enhance the built form character of Yarra's activity centres.*
- (h) *Support new development that contributes to the consolidation and viability of existing activity centres.*

Clause 21.08-7 ((Neighbourhoods (Fitzroy))

72. This clause describes the area in the following way (as relevant):

The role of the Brunswick Street centre can be characterised as hospitality, entertainment, clothing and footwear, art galleries and studios, and non-government community services, all with a metropolitan focus.

73. Within Figure 17 of Clause 21.08-7, the subject site is identified as being within the Brunswick Street Major Activity Centre. Figure 18 of Clause 21.08-7, shows the subject site as being within a Heritage Overlay, with the objective *to ensure that development does not adversely affect the significance of a heritage place.*

Relevant Local Policies

Clause 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay)

74. This policy applies to all new development included in a heritage overlay. The relevant objectives of this clause are:
- (a) *To conserve the historic fabric and maintain the integrity of places of cultural heritage significance;*
 - (b) *To retain significant view lines to, and vistas of, heritage places;*
 - (c) *To preserve the scale and pattern of streetscapes in heritage places;*
 - (d) *To ensure that additions and new works to a heritage place respect the significance of the place; and*
 - (e) *To encourage the retention of 'individually significant' and 'contributory' heritage places.*
75. This policy refers to an incorporated document (City of Yarra Review of Heritage Overlay Areas 2007 Appendix 8 (as updated from time to time), which identifies the level of significance for all buildings/sites within the Heritage Overlay. Notably, the subject site is nominated as being of 'contributory' value to the Brunswick Street Heritage Precinct.

Clause 22.05 (Interface Uses Policy)

76. This policy applies to applications for use or development within Business Zones (albeit now Commercial Zones), amongst others. The policy supports the objectives of the MSS by protecting Yarra's diverse land use mix and built form, reducing conflict between commercial, industrial and residential activities, and supporting appropriate industrial and commercial activity.
77. The policy has the following objectives:
- (a) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.*

Clause 22.09 (Licenced premises)

78. This policy applies to all applications for new licensed premises and for the extension (including the extension of hours and the extension of patron numbers) of existing licensed premises.
79. The objectives of this clause are:
- (a) *To protect the amenity of nearby properties and areas by effectively managing the location, size, operation and hours of licensed premises.*
 - (b) *To encourage best practice venue design and venue operation for licensed premises.*
 - (c) *To protect residential and other commercial uses from excess noise, traffic and car parking issues.*
 - (d) *To provide for daytime trade and active street frontages in retail strips, while providing reasonable commercial opportunities for the trading of licensed premises.*
80. This policy outlines a range of guidance at clause 22.09-3 including hours of operation and noise.

Advertising

81. The application was advertised under the provisions of Section 52 of the Planning and Environment Act (1987) with 72 letters sent to surrounding owners and occupiers and two signs displayed on site. Council received 19 objections, the grounds of which are summarised as follows:
- (a) Off-site amenity impacts (noise, anti-social behaviour, rubbish);
 - (b) Proposed hours operating past 11pm;
 - (c) Problems associated with the existing operation (amplified music, noise from plant);
 - (d) Proximity of the deck to residential zoning/residential uses;
 - (e) Confusion regarding hours/overall patrons numbers;
 - (f) Car parking and traffic.
82. A planning consultation meeting was held on 23 October 2018 and attended by fifteen objectors, the Applicant and Council Officers to discuss all issues and concerns raised in the letters of objection. The Applicant did not make any commitments to make changes, moreover the proposal, as originally submitted to Council, forms the basis of assessment and decision.

Referrals

External Referrals

83. The application was referred to the following external consultants:
- (a) SLR Consulting (Engaged by Council for acoustic peer review)

Internal Referrals

84. The application was referred to the following units within Council:
- (a) Community Amenity Unit
85. Referral comments have been included as attachments to this report.

OFFICER ASSESSMENT

86. The primary considerations for this application are as follows:
- (a) Strategic Justification
 - (b) Sale and consumption of liquor
 - (c) Buildings and works
 - (d) Objectors concerns

Strategic Justification

87. The Planning Policy Framework, including local policies, encourage the sustainability of commercial uses. These policies seek to encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities, provided that a balance is achieved in relation to off-site amenity impacts.
88. Specifically, Clauses 13.04-1, 21.04-2 and 22.05 identify that noise and the interface between uses must be managed appropriately, particularly in a municipality such as Yarra where *'almost all residents are within 400m of an activity centre... Abutting uses along the length of the strips are generally residential, creating interface conflicts where some uses are not well managed or inappropriate uses are permitted'* (Clause 21.04-2).

89. The subject site is located within a Commercial 1 Zone, with the purpose of the zone including the creation of vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
90. The continued use of the building as a licensed hotel is considered to have strategic support given state and local planning policies encourage the concentration of commercial and entertainment uses in Activity Centres, such as Brunswick Street, which are well connected to public transport (clauses 11.03-1, 11.03-2 and 21.04-2).
91. The use will not alter as a result of this application, only the ability for patrons to purchase and consume liquor on the deck will result. The licensing of the deck will not only contribute to the continued vibrancy and growth of the surrounding precinct but will provide the responsible authority with more control over the operation of the existing outdoor area.
92. Significantly, the use of land within the Commercial 1 Zone as a 'hotel' does not trigger the need for a planning permit. This indicates strong strategic support for the application in its proposed location, given a hotel is defined within the Scheme as (clause 73.03):

Land used to sell liquor for consumption on and off the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling.

93. It is noted that the deck is already in existence. The deck is not proposed to be extended. The buildings and works proposed are proposed to address issues of noise from the deck, to support the existing land use and the sale and consumption of liquor in this area to reduce off-site amenity impacts.
94. This is consistent with clause 13.05-1S, which seeks to ensure that development is not prejudiced and community amenity not reduced by noise emissions. This report will discuss further later how the proposed liquor licence extension will facilitate buildings and works that will address existing tensions between the hotel and surrounding residences.
95. Clause 22.09 encourages larger licensed premises, with capacities exceeding 200 patrons, to be located within Core Entertainment Precincts. The site is located within a Core Entertainment Precinct as outlined at clause 22.09-3, being located on Brunswick Street between Gertrude Street and Alexandra Parade.
96. The proposal to upgrade an existing venue within a Core Entertainment Precinct is encouraged by Council's local policy. Given the sale and consumption of liquor is associated with the existing operation with no increase in patron numbers or operating hours it is considered that it is unlikely to result in additional off-site amenity impacts and provides an opportunity for greater regulation of the deck.
Sale and consumption of liquor
97. The site is already established as a hotel with an operational liquor licence as outlined earlier in this report. Therefore the key issues and considerations of this application in regards to the sale and consumption of liquor is whether the licensing of the external deck would 'tip the balance' and unreasonably impact the amenity of the area.
98. To evaluate the appropriateness of the sale and consumption of liquor from the deck, clause 22.09 (Licensed Premises Policy) and clause 52.27 (Licensed Premises) contain the relevant policy guidelines.

Location and access

99. The site is located within the Brunswick Street Major Activity Centre; a consolidated urban neighbourhood with good access to services, infrastructure and public transport. The site has

a direct frontage to Brunswick Street and within proximity to Smith Street, Johnston Street and the major thoroughfares of Alexandra Parade and Nicholson Street.

100. The area is well served by public transport, having excellent access to the Principal Public Transport Network (PPTN) through the tram and bus network along Brunswick Street, Alexandra Parade, Johnston Street, Nicholson Street and Smith Street. These tram and bus services are within a 500 metre radius and provide connections to the city, northern suburbs, south eastern suburbs and eastern suburbs.
101. The closest tram stop to the site is only 60 metres away to the north, between Leicester Street and Rose Street, providing access to the city and other tram and bus routes. Given the site's location within a Major Activity Centre it is also considered that taxis and Uber services would be readily available in the area.
102. The location is considered appropriate for the sale of liquor for consumption of liquor on the premises given the zoning of the area, the transport modes available and due to the as-of-right nature of the use.
103. It is also noted at present patrons can use the outdoor area, so long as liquor is not sold/consumed there, at any hour. This application would legitimise an existing space associated with the hotel and provide an opportunity to improve how the use operates in regards to amenity impacts. This will be discussed further, later in the report.
104. In regards to access it is considered that the proposal will not impact on patron behaviours to or from the site as the overall patron numbers are not proposed to be increased, or modified at all. The queuing of patrons has not been raised as an issue by objectors, neither are there any complaints recorded on Council's records regarding this issue. The liquor licence, enforced through the VCGLR, requires the following:

After 1 a.m. on any morning all entry and egress from the premises will be by way of the door from the lounge into Brunswick Street and neither of the doors into the public bar are to be used.
105. The above measure are considered to be appropriate. It is noted that the liquor licence includes a number of conditions such as the one outlined above and that these are not included within the Noise and Amenity Action Plan (NAAP). For consistency between the two documents it can form a condition of permit that the requirements of the liquor licence be included within the NAAP.
106. As the proposal is not for a new premises, nor modifying the overall hours or patron numbers of the venue it is considered that a cumulative impact assessment is not warranted.

Venue Design

107. The policy seeks to ensure that the layout and design of a new licensed premises incorporates safe design principles, that entry and exit points and areas for queuing of patrons are located away from sensitive land uses and that waste management and storage is provided on-site and noise enclosures are provided where bottle crushers are to be used.
108. As this application does not seek to alter the layout or design of the hotel, but merely introduce the ability for patrons to consume/purchase liquor on the deck space, these policies are largely extraneous to this application.
109. In regards to waste management it is considered limited detail has been provided within the documentation provided. Whilst the deck is existing it is considered that the increase in the area for the sale and consumption of liquor may modify the existing waste arrangements. Should a permit issue it can form a condition of permit that details of waste management

(including storage and hours of collection for general rubbish and bottles associated with the licensed premise), bottle crushers, and delivery times associated with the premise be included within the NAAP.

110. It is noted that the proposed area for the sale and consumption of liquor, as shown on the red line plan, includes an area to the south of a wall/gate associated with the main deck area. To ensure that patrons do not congregate in this area and also to facilitate convenient access between the ground floor and first floor, it should form a condition of permit that this area be used for access/egress only with no congregation of patrons. This area was not covered within the acoustic testing and there is concern that if patrons were allowed to congregate in this area it may result in excessive noise to the surrounding neighbourhood.

Patron Numbers

111. The application will simply increase the area for the sale and consumption of liquor on the premises resulting in a greater spread of patrons across the site, with only a maximum of 78 patrons to be accommodated on the first floor deck.
112. At present, the number of patrons on the deck is unregulated as the use of the site for a hotel is as-of-right within the Commercial 1 Zone.
113. The applicant has submitted an assessment of the overall floor area of the deck prepared by Floreancig Smith Building Surveyors to determine the maximum number of patrons that can be physically accommodated on the deck in accordance with the requirements of clause 22.09-3.
114. The assessment determines that 78 patrons can be accommodated on the deck. It is noted at present the number of patrons on the deck is unregulated, if this application is supported a condition can be included on the permit to ensure no more than 78 patrons are on the deck at any time liquor is being sold or consumed.

Hours of Operation and Noise

115. It is important to note that the proposal does not seek to modify the overall hours for the sale and consumption of liquor associated with the existing venue. The sale and consumption of liquor on the premises, internally, will continue between the following hours:
- (a) Sunday: 10am and 3am (the following morning except for Anzac Day morning)
 - (b) Good Friday & Anzac Day: 12noon and 3am (the following morning)
 - (c) On any other day: 7am and 3am (the following morning)
116. Within the above hours the deck is proposed to operate for the sale and consumption of liquor between the following hours:
- (a) Sunday: 10am and 11pm
 - (b) Monday to Thursday: 9am to 11pm
 - (c) Friday and Saturday: 9am to 1am.
117. It is noted the applicant states alcohol is presently being consumed on the deck as this is considered to be "off the premises", and that this concludes at 11pm in accordance with the off premises restrictions on the liquor licence.
118. Whilst Council disagrees with this approach taken it is important to note that the deck structure is existing and can be used by patrons, without alcohol, unregulated at any time. This application provides an opportunity to regulate the hours for the sale and consumption of liquor on the deck, to ensure an appropriate level of amenity for the surrounding area.

119. Policy at Clause 22.09-3 provides the following relevant guidelines in regards to the hours of operation:
- (a) *Licensed premises within 30 metres of a residential zone should not provide for the sale and consumption of liquor beyond 11pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
 - (b) *Licensed premises in a Commercial or Industrial zone should not provide for the sale and consumption of liquor beyond 1am, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
 - (c) *For outdoor areas, including smoking areas, rooftops and open courtyards, the sale and consumption of liquor should not occur after 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
 - (d) *Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.*
 - (e) *Deliveries to and waste collection from a licensed premises should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday except for those allowed under any relevant local law.*
 - (f) *Emptying bottles into bins in outdoor areas should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.*
120. The proposed commencement times for the sale and consumption of liquor meet the requirements of the policy and would not commence prior to 9am at the earliest.
121. In regards to deliveries to, and waste collection from, the venue as well as the times for emptying bottles, this can be included as a condition of permit to be within appropriate times consistent with Council's local law. Whilst it is acknowledged that the building is already operating as a hotel it is considered that these conditions are warranted for an extension of the service area as it may modify the waste, deliveries and emptying of bottles practices.
122. Whilst the proposed conclusion of operating hours aligns with expectations for premises within a commercial zone, to not operate beyond 1am, it is noted that the application is within 30 metres of a residential zone and the area to be licenced is outdoors. Policy directs in these scenarios that a closing time of 11pm and 10pm be applied, respectively, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.
123. It is clear from the objections that the subject site has a history of complaints from surrounding residents. Referral comments were sought from Council's Community Amenity Unit on the proposal who recommended:
- (a) *Background music after 11pm at any outdoor deck area Friday and Saturday;*
 - (b) *No music after 12 midnight at any outdoor area Friday and Saturday;*
 - (c) *Background music only at all other times (NAAP).*
124. It is clear from the documentation submitted with the application that background music only is proposed on the deck, at all times. Therefore recommendations (a) and (c) have been satisfied. In regards to recommendation (b) the Community Amenity Unit has noted the recommendations are based on the fact noise will generally carry from an open area.
125. It is considered that recommendation (b) and the acceptability of the sale and consumption of liquor beyond 10pm on the deck is intrinsically linked to whether the noise generated as a result of this proposal would adversely affect the amenity of the area.

126. The recent amenity complaints cannot be ignored, nor can the content of the objections, that primarily raise issues with the existing operation of the premises in regards to noise, particularly from the deck that is the subject of this application.

127. It is long held by VCAT that residentially zoned land near, or abutting, Activity Centres cannot expect the same level of amenity as would be afforded within a purely residential zone.

128. Member Rundell stated in *Cubo Group Pty Ltd v Yarra CC & Ors* (2013) at paragraph 21:

Firstly, whilst the locality is primarily a residential precinct, it is one with less sensitivity or amenity than enjoyed in a local residential street in middle and outer Melbourne. The site is approximately 100 metres from Bridge Road, one of Yarra's major activity centres noted for its cafes, restaurants and entertainment. A hotel and a restaurant are located on the corner of Coppin Street and Bridge Road, with outdoor seating on Coppin Street. Patrons of these premises are likely to travel along Coppin Street to their residences or cars. Coppin Street is a major north-south link in the local road network. It is inevitable that residents in the nearby streets would already experience some spillover from Bridge Road to the north and Swan Street to the south. In my view, the amenity of the residential precinct is somewhat robust and less sensitive to activities such as this proposal. Hence the amenity expectations of residents in Coppin Street should be aligned with its context and anticipate some level of active street life and noise.

129. Senior Member Rickards concluded at paragraph 24 in *Robertson v Yarra CC* (2014) that:

Living in close proximity to a Major Activity Centre and within a mixed use zone it should be expected that there will be some level of noise over and above what might be expected in a purely residential area. The nearby residents therefore cannot expect their amenity will not be impacted to a certain extent by some level of noise from other uses within the mixed use zone.

130. It must be reiterated that the subject site is within the Brunswick Street Major Activity Centre, with Mixed Use and Neighbourhood Residential Zones directly abutting to the east. This is clearly an interface zone, and whilst considerations to residential amenity must be afforded it is clear that residential amenity expectations within an interface zone must be tempered.

131. Clause 22.09 contains specific policy requirements for the assessment of noise, as follows:

- (a) *Noise from the operation of the licensed premises should not have an unreasonable impact on the amenity of the area.*
- (b) *Noise emissions from licensed premises should comply with the standards specified in the State Environmental Protection Policy or any other relevant requirement such as accepted sleep disturbance criteria or relevant Australian Standards.*
- (c) *On-site noise attenuation measures should be applied for licensed premises where unreasonable amenity impacts on the surrounding area may result from the proposed activities.*
- (d) *Where required, a licensed premise must be designed and managed in accordance with an acoustic report approved by the responsible authority.*

132. In respect of the acoustic performance of the building and the proposal concerning the first floor deck, the applicant submitted three acoustic reports prepared by Marshall Day Acoustics (MDA) detailing the existing conditions and proposed acoustic attenuation measures to upgrade the deck to ensure compliance with the State Environmental Protection Policies. The content and recommendations of each report are summarised below.

Report 1 (19 February 2015)

133. This report was prepared by MDA following the issue of planning permit PLN13/1133 to support a Section 80 appeal to VCAT against the decision of the Responsible Authority to restrict the

hours (for sale and consumption of liquor from the first floor deck) to 11PM every day. It is noted that this VCAT appeal was later withdrawn and the permit has lapsed.

134. Whilst this report references provision of up to 125 patrons on the deck and hours until 3AM it is reiterated that this is not sought within the current application. The parameters as outlined within the proposal section of the report apply; a maximum of 78 patrons on the deck and hours until 11PM Sunday – Thursday and 1AM Friday – Saturday.
135. The report was commissioned to address **patron noise from the first floor deck in addition to music noise emanating from within the existing venue and mechanical plant noise associated with the kitchen and refrigeration equipment.**
136. In regards to patron noise, the report found that refurbishment of the existing screens would not go far enough in addressing concerns regarding noise and recommended that further work around acoustic attenuation measures be undertaken. It is considered this has been done with the buildings and works proposed within this application, with further review contained within the 28 March 2018 report, detailed below.
137. In regards to the kitchen extract fan a number of measures were proposed to address non-compliances with SEPP N-1. As for other equipment the report recommended a more detailed analysis of the rooftop plant. This has been undertaken within the 8 March 2018 report as detailed below.
138. The report identified that the existing internal operation significantly exceeded the applicable SEPP N-2 limits and the following recommendations were made in regards to music noise:
 - (a) *A limiting device is configured to restrict internal music noise to levels that will enable compliance at the neighbouring residences.*
 - (b) *The mounting and arrangement of the speakers should be reviewed to identify if the configuration is exacerbating low frequency modes and structure borne noise.*
 - (c) *The suitability of the limited internal music noise level should be evaluated by the operators. If the limited level is ultimately too low then measures to enhance the sound insulation of the ground floor should be considered. In advance of conducting such testing, we would anticipate that remedial measures would most likely compromise upgrades to the window and creation of a lobby arrangement comprising two doors for the entrance on the north façade.*

Report 2 (8 March 2018)

139. This report was prepared by MDA to supplement the 2015 report and conducts a review of **rooftop plant noise**. The rooftop plant is located to the east of the roof deck, atop the single storey portion of the building that appears as a garage to the street.
140. Upon assessment of the rooftop plant MDA recommended a number of noise attenuation measures to ensure the rooftop plant complies with the relevant legislation and guidelines for plant noise. The recommendations are as follows:
 - (a) *The plant area be enclosed by a noise barrier to the north and east sides, constructed to be 2.2 metres in height provided it includes a further 800mm cantilevered section sloping inwards from the top of the barrier at an angle of 45 degrees.*
 - (b) *The inside of the noise barrier will require treatment with sound absorptive material with a noise reduction coefficient (NRC) of at least 0.65.*
 - (c) *Absorptive lining with a noise reduction coefficient (NRC) of at least 0.65 will also need to be provided to the wall to the west of the plant deck up to a height of 2.5 metres, generally for a length of 6 metres setback from Rose Street.*
 - (d) *A discharge attenuator be provided to the outlet of the kitchen exhaust fan.*

Report 3 (28 March 2018)

141. This report was prepared by MDA to supplement the 2015 report and conducts a review of **patron and music noise associated with the first floor deck**, as well as the construction materials proposed within the design.
142. In regards to patron noise the report commented that it would be appropriate to cap the number of patrons to 100 after 10PM. With regard to this, it is noted 78 patrons overall are proposed for the first floor deck and this aspect would be satisfied.
143. The report stated that given the worst case patron scenario it is considered that the possibility of impact is low, it is recommended that the venue be assessed with measurements once it's operational to determine typical crowd noise levels.
144. The report concluded that the outlined acoustic attenuation treatments proposed are likely to enable compliance with the relevant criteria, legislation and guidelines for music and patron noise, as long as:
- (a) *The patron area is enclosed by walls to the east, north and south, constructed as follows:*
 - (i) *The eastern wall constructed of 9 mm thick fibre cement sheet with sound absorption on the side lining up to a height of 2.5 m. the sound absorption lining shall have a noise reduction coefficient (NRC) of 0.8.*
 - (ii) *The northern wall is constructed from sheet metal lined with a layer of acrylic sheet.*
 - (iii) *The southern wall is constructed of 9 mm thick fibre cement sheet that features a gate with an open section above.*
 - (b) *The covered roof area is constructed from clear polycarbonate panels with an area mass of 3.7kg/m² with a rated acoustic performance, provided as a weighted sound reduction, of Rw 18.*
 - (c) *All gaps (e.g. between the underside of the roof and wall junction) are sealed with flexible caulking agent.*
 - (d) *It is expected that the Thermoclear/Thermoclick products that meet the minimum area mass of 3.7 kg/m² such as the 32 mm thick Thermoclear sheet or the 40 mm Thermoclick sheet will meet the acoustic performance required.*
145. In regards to impacts from music, the report determined that SEPP N-2 limits would be readily complied with at all nearby residences for background music only from the first floor deck. The report stresses that the addendum did not consider music noise breakout from other sources in the venue that may contribute to the overall music noise breakout from the venue.
146. As identified, the report from 19 February 2015 referenced hours until 3am, 7 days a week and also for more patrons than what is presently being sought. The reports prepared within 2018 provide further testing and address concerns of the previous report.
147. A permit condition should require the acoustic reports to reflect the approved hours and patron numbers to ensure consistency with any permit issued. It would also be prudent to require the 29 February 2015 report and 8 and 28 March 2018 addendums to be amalgamated into one document, also for consistency.
148. In addition to the above, it would be prudent to conditionally require the plans to include details of the acoustic treatments, where relevant, to ensure that the works are constructed in accordance with the recommendations.

Noise – Patron, Music and Mechanical Equipment Noise

149. It is clear that there are three aspects of noise sources that require a detailed assessment to ensure that the proposed sale and consumption of liquor from the deck would not result in adverse amenity impacts for the surrounding residents. These three aspects are patron noise, music noise and mechanical equipment noise and will be discussed below.

Patron Noise

150. The submitted acoustic reports were reviewed by Council's external acoustic consultants, SLR Consulting (SLR). In regards to patron noise from the deck, SLR concluded that the venue will comply with the relevant patron noise targets due to the proposed noise attenuation works, particularly with regard to the cap of 78 patrons. This aspect is therefore considered satisfactory.
151. It is noted MDA recommended that compliance measurements of patron noise be undertaken once the modified outdoor patron area is operational. Whilst SLR believes this is not necessary with concluding times of 1am (not 3am as referenced in the report) it is considered the conservative approach should be undertaken considering the complaint history of the venue. This will give surrounding residents a second safeguard mechanism and assurance that the venue would have to comply with any further recommendations to ensure an appropriate level of amenity is afforded to the area. This can be dealt with by way of a planning permit condition.
152. SLR queried whether the lightweight roof was considered within the acoustic assessment to which MDA provided the basis for the noise modelling in regards to this aspect. It is clear from the updated 28 March 2018 report that this has clearly been considered, and contributes to the acceptability of the proposal when compared to the findings of the 19 February 2015 report.
153. With regard to the above it is considered that patron noise would be successfully addressed through the proposed acoustic attenuation measures. Post occupational testing would also ensure that if compliance is not achieved additional measures would be required to be implemented to guarantee compliance.

Music Noise

154. In regards to music noise this has been the primary noise complaint from objectors. Social media and the objections demonstrate that DJs and amplified music have been present on the deck to date. At present, this is allowed due to the as-of-right nature of the hotel use.
155. SLR commented that the MDA 19 February 2015 report identified substantial exceedances of both music noise limits from within the venue, and mechanical plant noise limits. Both of these items presently would be the responsibility of the Environmental Protection Authority to investigate and uphold.
156. The proposal however provides an opportunity to address this. The applicant has stated that only background music will be played on the deck. This should form a condition of permit to remove any ambiguity from the type and level of music allowed on the deck. SLR has reviewed the proposal for background music only within the deck and have recommended a music noise limiter be included in the audio chain and that it is calibrated to ensure that the proposed levels are not exceeded. This should form a condition of permit to be included within the updated report for endorsement, MDA agrees with this recommendation.
157. The 28 March 2018 report includes a number of recommendations, primarily regarding specifications for the construction materials of the acoustic attenuation measures. Whilst not easily shown on plans, it can form a condition of permit that these be added as notations.
158. It can also form a condition of permit that within the post construction report an assessment of the music noise be undertaken. This will ensure that with the proposed acoustic attenuation measures and recommended limit the noise levels will achieve compliance with the relevant State Environmental Protection Policy Requirements.
159. It is considered the recommendation of the Community Amenity Unit to have no music beyond 12am, including background music, would be onerous when it is clear that issues regarding

noise can be addressed with the proposed acoustic attenuation measures.

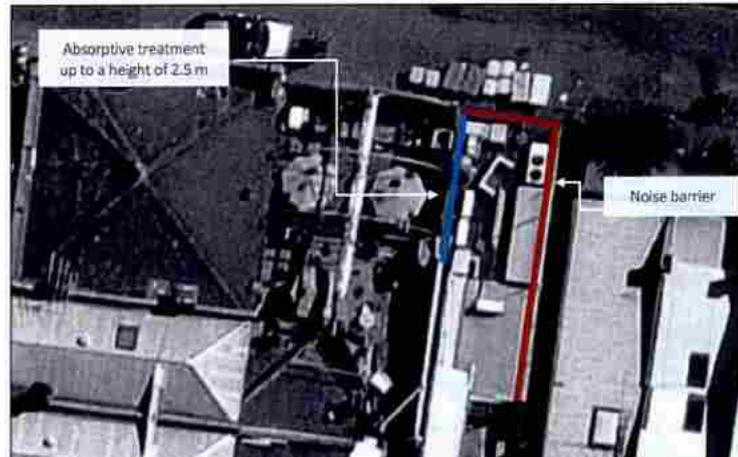
Additionally, a condition will also require verification of compliance with the relevant noise controls through a post construction acoustic assessment once operational.

160. With regard to the above it is also considered that the proposed acoustic attenuation measures have limited the impact on the amenity of the surrounding residents and would result in improved conditions. It is therefore considered that subsequent to conditions the sale and consumption of liquor until 11pm Sunday to Thursday and 1am Friday and Saturdays is appropriate.
161. In regards to the existing operation of the venue, including internal areas, social media indicates that the venue regularly hosts DJs. The requirements of Clause 53.06 (Live Music and Entertainment Noise) are triggered by the buildings and works within the Commercial 1 Zone. With regard to this it is noted that the buildings and works are associated with the deck where live music is not proposed.
162. Whilst requiring conditions to upgrade the entire venue may seem onerous, given that there will be no live music played from the deck, it is noted the submitted 19 February 2015 report identifies major exceedances to SEPP N-2 and provides recommendations to address this and ensure the venue operates in compliance.
163. This is a major area of concern for residences and the applicants' documentation confirms there is cause for concern. As discussed, the 19 February 2015 report determined that works were required to update the venue to bring it up to compliance. Whilst the 28 March 2018 does not address noise from within the venue, the report does identify that the total cumulative level of music noise from the venue would be required to meet the SEPP N-2 criteria at all nearby noise sensitive receivers.
164. It is appropriate in this instance for the recommendations of the 19 February 2015 report be implemented as it relates to music noise from the venue as a whole, with the post occupational report to demonstrate compliance with SEPP N-2 for the entire venue.
165. Additionally, a key recommendation of the 28 March 2019 report requires the southern wall of the deck to be constructed of 9 mm thick fibre cement sheet that features a gate with an open section above. This is not clear on the plans and it should form a condition of permit that this be shown on the plans to ensure this acoustic measure is implemented.
166. Furthermore, standard conditions should be included on the permit to ensure the use at all times complies with the requirements of the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2) and State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
167. This would provide Council with more control of the premises. It is noted the NAAP also outlines that to ensure no unreasonable amenity impacts result from this proposal the venue will operate in accordance with SEPP N-2 and SEPP N-1.

Mechanical Equipment Noise

168. As identified within the 19 February 2015 report, the operation of the mechanical plant resulted in substantial exceedances in acceptable noise levels. Different to the site conditions back in 2015, the current application proposes acoustic walls to the north and east of the mechanical plant area, as the 8 March 2018 report indicated in the below diagram (page 3):

Figure 1: Mechanical plant noise controls⁷



169. The 8 March 2018 report provides several recommendations to be adhered to, to enable compliance with the relevant legislation and guidelines for plant noise. As found with music noise, a number of these requirements are not easily shown in plan form and therefore can be required as notations on the plans.
170. One key aspect that was recommended by MDA and is not shown on the plans is as follows:
- (a) A further 800mm cantilevered section to the proposed 2.2 metre northern and eastern wall, sloping inwards from the top of the barrier at an angle of 45 degrees.
171. It should therefore form a condition of permit that this be shown on the plans. It is considered the additional 800mm of wall sloping inwards at an angle of 45 degrees would represent an overall height increase of 600mm angled away from both the street and the ROW/residential property to the east. This is considered to be a minor increase in the proposed wall height and will be discussed further, later in the report under buildings and works.
172. In addition to the above, the post occupational acoustic report would also provide a safeguard to ensure that these issues have been resolved, and that the venue is in compliance.
173. It is considered that with regard to the conditions recommended above the proposal would result in a vast improvement to existing conditions through the construction of acoustic attenuation measures. This echoes a previous decision *Cubo Group Pty Ltd v Yarra CC & Ors* (2013) where Member Rundell found at paragraph 20:

I am not persuaded that the sale and consumption of liquor at this restaurant would adversely affect the amenity of the surrounding area. In fact, relative to prevailing circumstances I think the grant of a permit for a restaurant with conditions relation to patron numbers, hours of operation, amenity, acoustic measures and the like would provide safeguards that are presently absent.

174. Whilst clearly this application is for the sale and consumption of liquor and not use, it is clear the same principles apply. It is considered the grant of a permit in this instance would be the catalyst for works to upgrade the existing deck area to mitigate existing issues regarding noise.

Noise and Amenity Action Plan

175. To ensure a venue is managed appropriately, Council's local policy at clause 22.09 requires submission of a NAAP which outlines management procedures aimed at ensuring good patron management. This document outlines the specific management procedures to be followed at all times, and includes details relating to staffing, responsible service of alcohol and complaint management procedures.

176. It is noted the NAAP indicates that smokers can use the deck, however, the planning documentation states food would be available. With the new laws it is considered that smoking within an eating area cannot happen concurrently. It will therefore form a condition of permit that the NAAP clarify where in the venue food will be available and at what times on the deck.
177. The NAAP is considered to be satisfactory in mitigating negative cumulative impacts associated with the venue. To ensure the venue is managed in accordance with these specifications, the NAAP should be endorsed by way of planning permit condition, on any permit issued.
178. It is noted that the NAAP references 'lightly amplified' background music. The reference to 'lightly amplified' will be removed to ensure there is no ambiguity with the type of music allowed on the deck.
179. The NAAP also states that *staff will monitor the number and behaviour of patrons on the deck and patrons therein will also be requested to respect the peace and quiet of the neighbourhood especially after 10pm on any day.* A condition of permit can be included to ensure further details are provided on how the venue will manage patrons who do not respect the peace and quiet of the neighbourhood.
180. In addition to these measures, Council's Local Law No.8 prohibits the consumption of liquor in public places and Council's Community Amenity Unit and Victoria Police are charged with ensuring these venues operate in an appropriate manner. Victoria Police generally focus on patron behaviour on the street and Council's Community Amenity Unit generally deals with issues of noise from within premises.

Buildings and works (including demolition)

181. The buildings and works require consideration in terms of both the heritage impacts and general off-site amenity (referring to clauses 22.02, 34.01-4, 43.01 and 52.43, as required).
182. The demolition works proposed include the existing steel feature above the deck and part demolition of the eastern wall of the existing bar and servery. These areas are either non-original or affect building areas that are not visible from the street. The demolition works would therefore not impact the heritage significance of the place or the precinct.
183. The majority of the proposed works relate to upgrading the roof deck to ameliorate concerns regarding noise transfer from the use of the deck by patrons.
184. The two items that are not proposed for acoustic attenuation are the provision of a second door from the existing bar to the deck and the provision of a folding door from the existing servery to the deck. These works would not be seen from the public realm and would not alter the overall appearance of the building and are therefore acceptable.
185. There are three buildings and works components associated with the deck itself, as follows:
 - (a) Construction of acrylic sheeting on the inside of the existing northern corrugated sheet wall and along the eastern internal boundary of the deck.
 - (b) Construction of a 3 metre high wall along the eastern internal boundary of the deck.
 - (c) Construction of a polycarbonate roof cover partially covering the deck with an overall height of 9 metres.
186. The proposed works listed above would be clearly associated with non-contributory fabric of the building. The proposed roofing would be the most prominent, however, it adopts a

traditional pitched roof form that would be clearly discernible from the high parapet of the retained portion of the building. It is therefore considered an acceptable addition. Whilst the roofing will be constructed around the rear chimney it is considered that this is not visible from the street and is acceptable on that basis.

187. The other works are considered internal to the site and would be concealed from view. It is noted that the demolition of the existing steel feature presents an opportunity to 'neaten' the building as it presents to Rose Street, consistent with policy contained within clause 22.02. Below is an image of the Rose Street façade submitted by the applicant:



188. Should a permit issue it is recommended that the existing and proposed northern elevation be updated to show the existing planter boxes with the proposed northern elevation to include details of new plantings with a maintenance schedule and notation confirming that all dead or dying vegetation will be replaced. Alternatively, the planter boxes can be demolished and the northern elevation of the corrugated iron feature can be reclad and painted shale grey.
189. The proposed 2.2 metre high acoustic barrier will be above the existing northern and eastern 3.8 metre high on boundary walls associated with the single storey garage/cool store must also be assessed in relation to off-site amenity impacts. As recommended above it can form a condition of permit that an 800mm cantilevered section above the proposed 2.2 metre northern and eastern wall, sloping inwards from the top of the barrier at an angle of 45 degrees, also be incorporated into the design. This would result in an additional 600mm of height.
190. It is considered that the other works proposed under this application will be well set back from sensitive residential interfaces and thus would not result in any impact to surrounding dwellings.
191. Of relevance to off-site amenity impacts is Clause 22.05 (Interface Uses Policy) which requires consideration of the off-site amenity impacts to residential properties from commercial development (including overshadowing and visual bulk) and also the Objectives and Standards of Clause 54 as required by the decision guidelines of the Commercial 1 Zone.
192. The acoustic barrier is proposed opposite the front portion of the existing dwelling to the east, 98 Rose Street, to a depth of 11.6 metres from the Rose Street front boundary line. Council records indicate that 'Asset 1836,' a pedestrian ROW, separates the subject site from this dwelling by 1.3 metres.

193. Whilst the proposed acoustic barrier is located along the site boundary it would be prudent to assess the wall pursuant to Standard A10 (Side and rear setbacks), not pursuant to Standard A11 (Walls on Boundaries) due to this 1.3 metre separation.
194. In regards to Standard A10, a 6.03 metre high wall (proposed) and 6.63 metre high wall (conditional) setback 1.3 metres from the adjoining properties boundary would not comply with the requirement for a 1.73 metre and 1.91 metre setback. Strict application of Standard A10 is not justified in this instance due to the zoning of the land and location within an Activity Centre.
195. Considering the strategic direction of the Activity Centres and the C1Z to encourage higher density developments, the expectation for intensive development of the site and surrounding land within the Brunswick Street Activity Centre is anticipated. It is considered an additional 2.6 metres in height would be akin to a two storey development. It is also noted that the height above 2.2 metres would be angled away from the adjoining property. This type of development would not be unreasonable with regard to the Activity Centre context and the transition in height of height of one storey is considered reasonable.
196. Whilst the development will be opposite one habitable room it is considered the proposal would not drastically change the outlook due to the existing 3.8 metre high wall in this location. Further contributing to the developments acceptability, it is noted that the proposal would comply with the Standard A12 (Daylight to existing windows) requirement to provide a light court to the existing windows of 3 square metres in area, with a minimum setback in excess of 1 metre due to the existing ROW that is clear to the sky.
197. The proposal would not be located opposite any north-facing windows, nor would the location result in any overlooking and would provide a secondary barrier from the existing deck walls. In regards to overshadowing due to the location of the wall there would be no increased overshadowing to the adjoining properties secluded private open space area.
198. In regards to potential off-site amenity impacts not covered by Clause 54 and covered by Clause 22.05, the proposal directly responds to noise by providing for a high level of acoustic protection to the adjoining residential property through the construction of the acoustic barrier itself. The new wall will also conceal much of the roof plant associated with the existing operation of the building. It is considered that the existing and proposed wall along the eastern boundary of the deck would presently limit light spill and views.
199. The proposed acoustic wall is clearly associated with the single storey garage and would not impact on the heritage value of the existing building. It is therefore considered that the buildings and works do not impact the amenity of the area or the heritage significance of the place.

Objectors concerns:

200. Off-site amenity impacts (noise, anti-social behaviour, rubbish):
 - (a) Noise is addressed at paragraphs 115-174;
 - (b) Anti-social behaviour is addressed at paragraph 104;
 - (c) Rubbish and waste is addressed at paragraph 109.
201. Proposed hours operating past 11pm;
 - (a) Hours of operation are addressed at 115-174.
202. Problems associated with the existing operation (amplified music, noise from plant):

- (a) Noise is addressed at paragraphs 115-174.

203. Proximity of the deck to residential zoning/residential uses;

- (a) The location of the premises is addressed at paragraphs 99-106.

204. Confusion regarding hours/overall patrons numbers;

- (a) The proposal is clearly outlined at paragraphs 21-28.

205. Car parking and traffic.

- (a) Pursuant to clause 52.06-1, Clause 52.06 (Car parking) applies to:

- (i) *a new use; or*

- (ii) *an increase in the floor area or site area of an existing use; or*

- (iii) *an increase to an existing use by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.*

- (b) The proposal is not for a new use, an increase in floor area or site area of the existing use and would not increase the measure specified in Column C of Table 1 of Clause 52.06-5 for that use, being the leasable floor area. This clause therefore does not apply.

- (c) As identified in Paragraphs 100 to 102, the location is considered appropriate for the sale of liquor for consumption on the premises given the zoning of the area, the transport modes available and due to the as-of-right nature of the use. It is not considered that the application would modify patron behaviour to and from the site as the 78 patrons proposed to consume liquor on the deck would be from the existing 350 patrons that are permitted to frequent the site.

Conclusion

206. The proposal is considered to demonstrate a high level of compliance with policy objectives contained within the Planning Policy Framework. The proposal, subject to conditions recommended, is an acceptable planning outcome that demonstrates clear compliance with the relevant Council policies.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant a Planning Permit be issued for the sale and consumption of liquor (on-premises licence) from the first floor deck, part demolition and buildings and works including acoustic barriers and roof over the deck at 372-374 Brunswick Street, Fitzroy generally in accordance with the plans noted previously as the "decision plans" and subject to the following conditions:

1. Before the sale and consumption of liquor and development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by Directitude Management dated 10.07.2018, but modified to show:
 - (a) Layout of the adjoining property at No. 98 Rose Street in accordance with the plans dated 25.01.2019;

- (b) Above the proposed 2.2 metre high northern and eastern acoustic walls, a 800mm cantilevered extension sloping inwards from the top of the walls at an angle of 45 degrees;
 - (c) The southern wall of the deck to be constructed of 9 mm thick fibre cement sheeting that features a gate with an open section above.
 - (d) A maximum of 78 patrons to the deck area annotated on the red line plan;
 - (e) The planter boxes on the existing and proposed northern elevation plans, including either:
 - (i) Details of proposed new plantings within the planter boxes including details of maintenance and a notation confirming that all dead or dying vegetation will be replaced; or
 - (ii) Demolition of the planter boxes and the corrugated iron feature reclad along the northern elevation and painted shale grey.
 - (f) Any requirement of the endorsed acoustic report required prior to commencement (condition 7) where relevant to show on plans and specific requirements annotated.
2. The sale and consumption of liquor and development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
3. The area to the south of the fence/gate on the first floor deck is to be used for access/egress between the ground and first level only with no congregation of patrons within this area without the prior written consent of the Responsible Authority.

Liquor Licence

4. No more than 78 patrons are permitted on the first floor deck at any time liquor is being sold or consumed.
5. Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor on the first floor deck may only occur between the following hours:
- (a) Sunday 10am to 11pm
 - (b) Monday to Thursday 9am to 11pm
 - (c) Friday and Saturday 9am to 1am (the following day)
6. Before the sale and consumption of liquor commences, an amended Noise and Amenity Action Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Noise and Amenity Action Plan will be endorsed and will form part of this permit. The amended Noise and Amenity and Action Plan must be generally in accordance with the Noise and Amenity Action Plan prepared by Priority Planning and dated 12 July 2018, but modified to include:
- (a) The patron numbers and hours for the sale and consumption of liquor from the deck in accordance with Conditions 3 and 4.
 - (b) The requirements of Liquor Licence 31909029;
 - (c) Details of waste management and bottle crushers (including storage and hours of collection for general rubbish and bottles);
 - (d) Delivery and collection of goods to and from the land must not occur after 10pm on any day, before 8am Monday to Saturday, or before 9am on a Sunday or public holiday;
 - (e) Clarification on whether food will be served on the deck;
 - (f) Management of smokers on the premises;

- (g) Removal of the words “lightly amplified” in regards to background music. The NAAP is to reference background music only;
 - (h) Details on how the venue will manage patrons who do not respect the peace and quiet of the neighbourhood.
7. The provisions recommendations and requirements of the endorsed Noise and Amenity Action Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
 8. Before the sale and consumption of liquor from the first floor deck commences, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Acoustic Reports prepared by Marshall Day Acoustics and dated 25 February 2015, 8 March 2018 and 28 March 2018, but modified to include (or show, or address):
 - (a) The assessment, recommendations and content of the report and letters prepared by Marshall Day Acoustics dated 29 February 2015, 8 March 2018 and 28 March 2018 consolidated into one document.
 - (b) Details of a noise limiter to be included in the audio chain for the first floor deck and details of calibration to ensure that noise levels are not exceeded.
 - (c) The patron numbers and hours for the sale and consumption of liquor from the deck in accordance with Conditions 3 and 4.
 9. The provisions, recommendations and requirements of the endorsed Acoustic Report be implemented and complied with to the satisfaction of the Responsible Authority.
 10. Before the sale and consumption of liquor from the first floor deck commences, all acoustic attenuation measures and recommendations contained within the report required pursuant to Condition 7 are to be constructed and implemented to the satisfaction of the Responsible Authority.
 11. Within 3 months of the commencement of the sale and consumption of liquor from the first floor deck, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the updated post-commencement Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:
 - (a) Confirm that the recommendations of the endorsed acoustic report required as part of Condition 7 have been implemented;
 - (b) To assess their effectiveness in meeting the predicted patron noise level and SEPP N-1 and SEPP N-2 requirements as outlined within the endorsed acoustic report required as part of Condition 7; and
 - (c) If non-compliance with Condition 9b is measured, the venue must implement additional acoustic measures as recommended by the amended acoustic report within one month of the date of the amended acoustic report.
 12. Except with the prior written consent of the Responsible Authority, the provision of music and entertainment on the first floor deck must be at a background noise level only.
 13. Speakers external to the building must not be erected or used.

14. Before the commencement of the sale and consumption of liquor, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent uses and to leave in a quiet and orderly manner.
15. The use must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
16. The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).
17. Except with the prior written consent of the Responsible Authority, the collection of waste by a private contractor must not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.
18. Except with the prior written consent of the Responsible Authority, delivery and collection of goods to and from the land must not occur after 10pm on any day, before 8am Monday to Saturday, or before 9am on a Sunday or public holiday.
19. Except with the prior written consent of the Responsible Authority, emptying bottles into bins in outdoor areas must not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.
20. This permit will expire if the sale and consumption of liquor from the first floor deck is not commenced within two years from the date of this permit. The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards.

Buildings and works

21. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
22. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
 - (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
23. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
 - (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm,;
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
24. This permit will expire if:
 - (a) the development (excluding the acoustic attenuation works required by Condition 11) is not commenced within two years of the date of this permit; or
 - (b) the development (excluding the acoustic attenuation works required by Condition 11) is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or within twelve months afterwards for completion.

NOTES:

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5585 to confirm.

A local law permit (e.g. Asset Protection Permit, Road Occupation Permit) may be required before development is commenced. Please contact Council's Construction Management Branch on Ph. 9205 5585 to confirm.

This site is subject to a Heritage Overlay. A planning permit may be required for any external works.

A local law permit (e.g. Asset Protection Permit, Road Occupation Permit) may be required before development is commenced. Please contact Council's Construction Management Branch on Ph. 9205 5585 to confirm.

CONTACT OFFICER: Michelle King
TITLE: Senior Statutory Planner
TEL: 9205 5333

Attachments

- 1 PLN18/0495 - 372-374 Brunswick Street Fitzroy - Site Plan
- 2 PLN18/0495 - 372-374 Brunswick Street Fitzroy - Decision Plans (B&W)
- 3 PLN18/0495 - 372-374 Brunswick Street Fitzroy - Decision Plans (Red Line Plan)
- 4 PLN18/0495 - 372-374 Brunswick Street Fitzroy - Noise and Amenity Action Plan
- 5 PLN18/0495 - 372-374 Brunswick Street Fitzroy - Acoustic Reports (Marshall Day Acoustics)
- 6 PLN18/0495 - 327-374 Brunswick Street Fitzroy - Community Amenity Unit Referral Response
- 7 PLN18/0495 - 372-374 Brunswick Street Fitzroy - SLR Acoustic Referral Response