



**YARRA CITY COUNCIL**  
**Internal Development Approvals Committee**  
**Agenda**

**to be held on Wednesday 25 July 2018 at 6.30pm  
in Meeting Rooms 1 & 2 at the Richmond Town Hall**

**Rostered Councillor membership**

Councillor Amanda Stone  
Councillor Mi-Lin Chen Yi Mei  
Councillor Jackie Fristacky

**I. ATTENDANCE**

Laura Condon (Senior Statutory Planner)  
Sarah Griffiths (Senior 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**

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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	PL04/1136.05 - 57-61 Swan Street Richmond - Section 72 amendment to extend the trading hours on the first floor beer garden and dining room from 11:30pm to 1:00am, seven days a week (condition 5) and extend the licenced period during which the current patron limit (950 patrons) is permitted on Friday, Saturday and the eve of public holidays from 12:00 midnight to 1:30am, reverting back to 750 patrons until 3:00am (condition 6).	5	35
1.2	45 Wangaratta Street, Richmond VIC 3121 - Planning permit application number PLN15/1260.01 - Section 72 Amendment to change approved dwelling use to offices with associated built form changes and condition changes and a reduction in the car parking requirements.	39	65
1.3	237-253 Napier Street, Fitzroy - Planning Permit Application Number - PLN17/0914 - The sale and consumption of liquor associated with a food and drink premises/cafe	71	82

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- 1.1 PL04/1136.05 - 57-61 Swan Street Richmond - Section 72 amendment to extend the trading hours on the first floor beer garden and dining room from 11:30pm to 1:00am, seven days a week (condition 5) and extend the licenced period during which the current patron limit (950 patrons) is permitted on Friday, Saturday and the eve of public holidays from 12:00 midnight to 1:30am, reverting back to 750 patrons until 3:00am (condition 6).**
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## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of an application to amend planning permit PL04/1136, originally issued in 2005, and recommends approval, subject to conditions.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Clause 11.03 – Activity Centres.
  - (b) Clause 13.04 – Noise and Air.
  - (c) Clause 17.01 – Commercial.
  - (d) Clause 21.03 – Vision.
  - (e) Clause 21.04 – Land Use.
  - (f) Clause 22.05 – Interface Uses.
  - (g) Clause 22.09 – Licensed Premises.

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Strategic justification.
  - (b) Off-site amenity impacts (from licenced premises).
  - (c) Cumulative impacts.
  - (d) Car parking.
  - (e) Objectors' concerns.

### **Objector Concerns**

4. Thirteen objections were received to the application, mostly relating to off-site amenity impacts and can be summarised as:
  - (a) Dispersal of patrons.
  - (b) Anti-social behaviour.
  - (c) Noise from the venue.
  - (d) Noise from patrons leaving the premises.
  - (e) Sleep disturbance.
  - (f) Increased litter.
  - (g) Property damage.
  - (h) Graffiti.
  - (i) Reduced safety.
  - (j) Security risk.
  - (k) Increased car parking pressures.

### **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 conditions.

**CONTACT OFFICER:** **Nikolas Muhlechner**  
**TITLE:** **Principal Planner**  
**TEL:** **9205 5456**

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- 1.1 PL04/1136.05 - 57-61 Swan Street Richmond - Section 72 amendment to extend the trading hours on the first floor beer garden and dining room from 11:30pm to 1:00am, seven days a week (condition 5) and extend the licenced period during which the current patron limit (950 patrons) is permitted on Friday, Saturday and the eve of public holidays from 12:00 midnight to 1:30am, reverting back to 750 patrons until 3:00am (condition 6).**
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Trim Record Number: D18/112273

Responsible Officer: Senior Co-ordinator Statutory Planning

- Proposal:** Section 72 amendment to extend the trading hours on the first floor beer garden and dining room from 11:30pm to 1:00am (condition 5) and extend the overall patron limit of 950 patrons on Friday, Saturday and the eve of public holidays from 12:00pm (midnight) to 1:30am, reverting back to 750 patrons until 3:00am (condition 6).
- Existing use:** Hotel bar/tavern (the Corner Hotel).
- Applicant:** SJB Planning
- Zoning / Overlays:** Commercial 1 Zone  
Heritage Overlay (Schedule 332)
- Date of Application:** 23 November 2017
- Application Number:** PL04/1136.05

### Planning History

- PL03/0005
1. On 3 July 2003, planning permit PL03/0005 was issued for part demolition, alterations and additions including façade alteration, installation of external lights and painting to the existing building.
- PL04/1074
2. On 5 April 2005, planning permit PL04/1074 was issued for part demolition and building works, including a substantial internal upgrade and refurbishment.
- PL04/1136
3. On 5 April 2005, planning permit PL04/1136 was issued for an increase in operating hours to an existing hotel. The application sought an increase in the operating hours on Sunday evenings only. The proposed hours were for between 10.00am until 1.00am, the following day on Sunday evenings (the previous hours were from 10.00am until 11.00pm). The planning permit ultimately allowed a maximum 750 patrons and the following trading hours:
- (a) Between 10:00am and 1:00am Sunday.
  - (b) Between 12:00 noon and 3:00am the following morning, Good Friday and Anzac Day.
  - (c) Between 7:00am and 3:00am the following morning, on any other day (including mornings of Good Friday and Anzac Day).
  - (d) Notwithstanding the trading hours stated above, trading must cease at 11.30pm, in the beer garden on any day.
4. The permit also included standard amenity and management based conditions (including SEPP N-1 and N-2).
- PL04/1136.01
5. On 21 May 2007, Council received a section 72 amendment to planning permit PL04/1136, which sought to:
- (a) Amend condition 4 to allow the operation of the beer garden to be extended to 3:00am (the following day), seven days a week (currently 11.30pm).

- (b) Amend condition 5 to allow a maximum of 1300 patrons on the premises at any one time (currently 750 patrons).
  - (c) Allow building and works to extend the first floor dining room into the existing beer garden.
6. Following the public notification, 33 objections were received and a consultation meeting was held. The application was refused by Council on 19 May 2008 on the following grounds:
- (a) The proposal would adversely affect the residential amenity of the surrounding area; and
  - (b) The proposal is inconsistent with principals of orderly and proper planning.
7. The applicant lodged a review of this decision with the Victorian Civil and Administrative Tribunal (VCAT) and the hearing was conducted over four days (24-27 March and 30 March 2009). The hearing was the first to explicitly consider 'cumulative impact' under the amended Clause 52.27 of the Yarra Planning Scheme and subsequently became a 'red dot' decision due to the assessment methodology outlined at paragraphs 68 to 73 in the VCAT order. The decision is informally referred to as the 'Swancom' decision.
8. The cumulative assessment methodology considers the location, density, mix, type and size of licensed venues within a 500 metre radius of a site. Existing amenity and planning controls must also be considered when having regard to reasonable amenity expectations. Essentially, there is no 'magic number' at which cumulative impact or saturation is reached. The methodology requires a holistic approach within current statutory planning parameters.
9. The Tribunal upheld Council's position that the application be refused primarily based on *'the failure by Swancom to address the likely worsening of adverse amenity impacts to residents in the surrounding area'* (paragraph 133 of the order). Importantly, although refused, the following statements were made (summary):
- (a) There are currently amenity issues in the area (including noise and antisocial behaviour).
  - (b) The Corner Hotel is well managed.
  - (c) A compromise may be reached with a smaller patron number increase and possibly an earlier closure than the 3:00am (especially within the beer garden/dining room).
10. It was also stated at paragraph 7 of the order that:  
*"Whilst we have determined to refuse the extension of hours and patron numbers in the circumstances of this application, we would not wish our decision to be interpreted as an indication that there should never be any extension of hours or patron numbers at the Corner Hotel. We have discussed in these reasons some of the circumstances that may be relevant to any future application."*
11. In the same order, the Tribunal ordered that planning permit PL09/1010 be issued for the buildings and works component of the section 72 amendment. The permit therefore allowed buildings and works for an extension to the dining room into the existing beer garden/dining room area.

PL04/1136.02

12. On 4 November 2010, Council received a second section 72 amendment application to planning permit PL04/1136 for an increase in patron numbers from 750 to 950 until 12:00 midnight (seven days), an addition of a condition to restrict the number of patrons at the first floor to 400 at any one time and associated buildings and works. The application was advertised and thirteen objections were received, raising issues mainly relating to off-site amenity impacts.
13. On 29 September 2011, Council issued a Notice of Decision to grant an amended planning permit and an objector appeal was lodged with VCAT. The Tribunal ultimately determined to grant an amended planning permit to increase the patron numbers from 750 patrons to 950 until midnight on Friday and Saturday nights and on the eve of public holidays.



Under this amended planning permit, the first floor must still cease operating at 11:30pm each night and has a maximum capacity of 400 patrons.

PLN11/0278

14. This application entailed modifications to the existing window/door arrangement to Swan Street and Botherambo Street, including part demolition. The application lapsed on 2 August 2011 as the further information requested by Council was not provided within the prescribed time.

PL04/1136.03

15. On 7 October 2015, Council received a third section 72 amendment application to planning permit PL04/1136. This amendment sought approval for the part demolition, buildings and works including alterations to the ground and first floor and to delete condition 1 relating to the provision of an acoustic angled canopy section extending from the top of the existing eastern wall for a distance of 3 metres to the west and rising to a final height of 3.5 metres above the first floor level of the deck area. The deletion of this condition was required due to the alterations proposed to the layout of the first floor which render this condition no longer relevant.
16. The application was advertised and three objections were received. The amended planning permit was issued on 1 July 2016.

PL04/1136.04

17. On 16 May 2017, Council received a fourth section 72 amendment application to planning permit PL04/1136. This amendment sought to approval amend the wording of conditions 4 (operating hours), 6 (patron numbers) and 10 (no outside music) to include the wording 'except with the consent of the Responsible Authority', and amend condition 6 to delete reference to 'extra patrons are not allowed into the premises until after the works shown on the endorsed plans are completed to the satisfaction of the Responsible Authority' as the works had already been completed.
18. The amendment application was exempted from the advertising provisions under Section 52 of the *Planning and Environment Act (1987) (The Act)* at Council's internal Development Assessment Panel meeting (DAP) on the basis that the changes sought under the amendment application would not cause material detriment to any person. The amended planning permit was issued on 15 June 2017.

## **Background**

19. This application to amend planning permit PL04/1136 is the fifth section 72 amendment application and was received by Council on 23 November 2017. Following the submission of further information, the application was advertised during March 2018. A total of thirteen objections and one letter of support were received.
20. A consultation meeting was held on 25 June 2018 and attended by Council officers, the applicant, two owners of the Corner Hotel and three residents (objectors). Issues relating to off-site amenity impacts, patron management and the existing conditions of permit were discussed. No resolution was reached at the meeting.

## **Existing Conditions**

Subject Site

21. The subject site (Attachment 1) is irregular in shape and located on the northern side of Swan Street, with a frontage of 14.6 metres to Swan Street and a frontage of 30.4 metres to Botherambo Street to the east. The site has a frontage of 30.5 metres to Stewart Street to the south-west and 9.5 metres to Wangaratta Street to the west. The site has an overall area of 1,451 square metres.

22. The subject site currently contains a double storey building used as a hotel, known as the Corner Hotel. The building includes a bar and band room on the ground floor, with stairs leading to a first floor dining room and beer garden. The main pedestrian entrance in to the hotel is via the Swan Street frontage with stair access to the first floor beer garden accessed from Stewart Street and an accessible entrance off Botherambo Street.
23. An at-grade, open car parking area containing 26 car parking spaces for hotel patrons and a bin storage area is located in the northern part of the site and is accessed via both Wangaratta Street and Botherambo Street.
24. The existing liquor license approved under planning permit PL04/1136 for the hotel allows a maximum of 950 patrons until 12:00 midnight on Friday and Saturday nights and the eve of public holidays and reducing down to 750 patrons from 12:00 midnight to 3:00am. The first floor in its entirety, including the beer garden and dining rooms, must also cease operating at 11:30pm on any day and is allowed a maximum of 400 patrons at any time.
25. The overall operating hours for the sale and consumption of liquor in the hotel are as follows:
  - Sunday 10:00am to 1:00am the following morning
  - Good Friday and Anzac Day 12:00 noon to 3:00am the following morning
  - On any other day 7:00am to 3:00am the following morning
26. It is important to note that the use of the subject site as a hotel, under the zone, does not require a planning permit (a hotel use in the Commercial 1 Zone is an 'as-of-right use', and no planning permit is required). Patron numbers and operating hours for the hotel, without alcohol sale and consumption (albeit unlikely) cannot therefore be controlled under a planning permit. The hours approved by the original planning permit therefore control the times at which alcohol can be served and consumed on the premises, and alcohol may only be served and consumed on the premises between the hours listed in the paragraph above.
27. There are several conditions of the planning permit which restrict/control the hotel use. These include a requirement to comply with State Environment Protection Policy in relation to noise, no music can be played outside the building, no speakers can be sited outside the building other than background music which may be played in the beer garden and dining room, and doors and windows must not remain open while music is being played within the building.
28. The subject site consists of four contiguous allotments. The four allotments are legally described as Lot 1 on Title Plan TP703310D, Lot 1 on Plan of Subdivision 36807, Lot 1 on Title Plan 678466 and Lot 2 on Plan of Subdivision 36807. There are no restrictive covenants on any of the certificate of titles.

#### Surrounding Land

29. The surrounding area contains a mix of uses with commercial premises dominating the Swan Street commercial precinct. Strategically, the site is located within the Swan Street major activity centre which contains a number of restaurants, hotels, bars and shops. The site is also well serviced by public transport with the Swan Street tram line travelling in front of the site and Richmond train station located approximately 210 metres away to the west.
30. The Swancom decision identified that there are a large number of licensed premises in the immediate area. Opposite the site are the Richmond Club Hotel, Bar 9T4 and the Post Office Hotel. Further to the west along Swan Street are the Precinct Hotel and Holliava, while a number of licensed restaurants and cafes, as well as the Vaucluse Hotel, are located to the east. Other nearby licensed premises include the London Tavern on the corner of Lennox Street and Richmond Terrace (approximately 300 metres to the north) and the Cricketers Arms Hotel on Punt Road (approximately 400 metres to the northwest).

31. To the immediate north of the subject site is a two storey brick commercial building, currently used for manufacturing clothes. Further north are office and commercial buildings, bound by Wangaratta Street to the west and Botherambo Street to the east, located within the Mixed Use Zone. To the north-west are office buildings on the west side of Wangaratta Street, also located within the Mixed Use Zone. To the west of the subject site, across Stewart Street, is a solid wall forming the foundations of the rail bridge that crosses over Swan Street.
32. To the south of the subject site, across Swan Street, is the Post Office Hotel. The hotel has an on-premises liquor licence, allowing trade until 1:00am. East of the Post Office Hotel is Bar 9T4, which has operating hours until 1:00am Monday to Thursday and until 3:00am on Friday and Saturday, with a maximum capacity of 110 patrons.
33. Botherambo Street borders the subject site to the east, a local street with a road reserve width of 10 metres and footpaths on either side of the street. Botherambo Street is a one-way street allowing traffic in a north bound direction between Swan Street in the south and Tanner Street to the north, with no parking on the eastern side of the street. Car parking on the western side of the street is time restricted between 7:00am and 7:00pm, Monday to Friday and public holidays.
34. To the east of the subject site, across Botherambo Street, is the side of a single storey building facing Swan Street that is currently used as a restaurant and located within the Commercial 1 Zone. Further east is a row of double storey terraces with ground floor retail and shop top housing above. North of these terraces are dwellings that front Lennox Street to the east with most gaining vehicle access from Botherambo Street located in the Neighbourhood Residential Zone.
35. The nearest dwelling is located at 320 Lennox Street which has a garage on its rear boundary facing Botherambo Street opposite the subject site and its secluded private open space between the garage and the dwelling. It is noted that the building at 19 Botherambo Street, while appearing as a dwelling, is currently used as an office for the administrative purposes of the Corner Hotel and is also located within the Commercial 1 Zone.

## The Proposal

36. This application seeks to make the following changes to the planning permit:
  - (a) Amend condition 5 of the planning permit (which currently reads *'notwithstanding the operating hours permitted in condition 4, trading must cease at 11:30pm on the first floor beer garden and dining room on any day'*) to allow extended trading hours on the first floor beer garden and dining room between 11:30pm and 1:00am, seven days a week.
  - (b) Amend condition 6 of the planning permit (which currently reads *'no more than 950 patrons are permitted on the premises until 12.00 midnight on Friday and Saturday nights and the eve of public holidays, except with the written consent of the Responsible Authority. After midnight, no more than 750 patrons are permitted on the premises seven days a week (not including the first floor beer garden/dining room)'*) to allow extended hours during which the maximum limit of 950 patrons is allowed on the premises from 12:00 (midnight) to 1:30am on Friday, Saturday and the eve of public holidays, reverting back to 750 patrons until 3:00am.
37. Essentially, the proposal will firstly allow the 400 patrons using the first floor beer garden and dining rooms to stay for an additional one and a half hours, seven days a week. And secondly, there will be no increase in the overall (maximum) patron numbers, moreover, the 950 maximum number of patrons permitted on the premises to consume alcohol will be allowed to stay for an additional one and a half hours on a Friday, Saturday and on the eve of public holidays. Therefore, between 1.30am and 3.00am on said days, the maximum number of patrons permitted on the premises to consume alcohol will revert back to 750.

## Legislative Provisions

38. The amendment has been requested pursuant to section 72 of the *Planning and Environment Act 1987* [the Act]. Section 72 of the Act states:
- (1) *A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*
  - (2) *This section does not apply to—*
    - (a) *a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or*
    - (b) *a permit issued under Division 6.*
39. The original planning permit PL04/1136 was issued by Council on 5 April 2005, while the second section 72 amendment was issued at the direction of the Victorian Civil and Administrative Tribunal. However, the Tribunal has not directed that the Responsible Authority cannot amend the planning permit. Neither the original planning permit nor the subsequent amendments were issued under Division 6 of the Act.
40. Section 73 of the Act states that sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit. Accordingly, the relevant sections will be addressed in this report. Pursuant to section 73 (2) of the Act, if the responsible authority decides to grant an amendment to a planning permit subject to conditions, the conditions must relate to the proposed amendment to the permit.

## Planning Scheme Provisions

### Zoning

#### *Commercial 1 Zone*

41. Pursuant to Clause 34.01-1 of the Yarra Planning Scheme (the Scheme), a hotel is nested under 'retail premises', which is a section 1 use within the zone and therefore as of right (no planning permit required). The proposed amendment does not trigger a planning permit requirement under the zone provisions.

### Overlays

#### *Heritage Overlay (Schedule 332)*

42. The subject site is affected by the Heritage Overlay. The proposed amendment does not trigger a planning permit requirement under the overlay provisions as no buildings or works are proposed to the building.

### Particular Provisions

#### *Clause 52.06 – Car Parking*

43. Pursuant to Clause 52.06-2 of the Scheme, the car parking spaces required under Clause 52.06-5 of the Scheme must be provided on the land and Clause 52.06-3 requires a planning permit to reduce the number of car parking spaces required under this clause. Clause 52.06 applies to, amongst other things, an increase to an existing use by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use. The measure specified for a hotel is patron numbers.

44. While no increase is sought to the 950 maximum patron number approved, and previous proposals have been assessed against this number of patrons during certain operational times of the hotel, the hours during which this maximum patron number is allowed on site is proposed to be extended through this amendment application. Given this amendment seeks to essentially increase the patron numbers between 12:00 midnight and 1:30am on Friday and Saturday nights and the eve of public holidays, this clause therefore applies.
45. Given that the previous permits approved a car parking reduction of this magnitude, this assessment is a technical (numerical) exercise and the planning permit preamble and conditions will not require any changes as a result, as the planning permit already allow a reduction in the car parking requirement.
46. Pursuant to Clause 52.06-5, the car parking requirements for the proposed development are as follows:

<b>Use:</b>	<b>Rate:</b>	<b>Spaces required:</b>	<b>Proposed:</b>	<b>Reduction sought:</b>
Hotel Maximum 950 patron numbers remains unchanged. An additional 200 patrons between 12:00 midnight and 1:30am, on Friday, Saturday and the eve of public holidays.	0.4 spaces to each patron	80	0	80

47. The existing car parking area at the rear of the premises provides 26 car parking spaces. A waiver of 80 car parking spaces was approved as part of the previous amendment (PL04/1136.02) that increased the capacity of the premises from 750 patrons to 950 patrons until 12:00 midnight on Friday, Saturday and the eve of public holidays. With a shortfall of 80 car parking spaces for the proposed 200 patrons, this application therefore seeks a further reduction in the car parking requirement.

*Clause 52.27 – Licensed Premises*

48. Pursuant to clause 52.27 (Licenced Premises) of the scheme, a planning permit is required to use land to sell or consume liquor if the hours of trading allowed under a licence are to be extended or the number of patrons allowed under a licence is to be increased. The requirement to obtain a planning permit is therefore triggered under Clause 52.27 of the Scheme.

General Provisions

*Clause 65 – Decision Guidelines*

49. 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 State and Local Planning Policy Frameworks, as well as the purpose of the zone, overlay or any other provision.

State Planning Policy Framework (SPPF)

50. The following SPPF provisions of the Scheme are relevant:

*Clause 10.01 – Integrated Decision Making*

51. This clause requires planning authorities and responsible authorities to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations

*Clause 11.03 – Activity Centres*

52. The relevant objectives of this clause include:
- (a) To build up activity centres as a focus for high-quality development, activity and living for the whole community by developing a network of activity centres.
  - (b) To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community.

*Clause 11.06 – Metropolitan Melbourne*

53. The relevant objectives of this clause include:
- (a) To create a city structure that drives productivity, attracts investment, supports innovation and creates jobs.
  - (b) To create a city of inclusive, vibrant and healthy neighbourhoods that promote strong communities, healthy lifestyles and good access to local services and jobs.

*Clause 13.04 – Noise and Air*

54. The objective of this clause is:
- (a) To assist the control of noise effects on sensitive land uses.

*Clause 17.01 - Commercial*

55. The relevant objective of this clause is:
- (a) 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.

*Clause 18.01 – Integrated Transport*

56. The relevant objective of this clause is:
- (a) To create a safe and sustainable transport system by integrating land-use and transport.

*Clause 18.02 – Movement Networks*

57. The relevant objectives of this clause are:
- (a) To promote the use of sustainable personal transport.
  - (b) To facilitate greater use of public transport and promote increased development close to high-quality public transport routes in Metropolitan Melbourne.
  - (c) To ensure an adequate supply of car parking that is appropriately designed and located.

Local Planning Policy Framework (LPPF)

*Clause 21 – Municipal Strategic Statement (MSS)*

*Clause 21.03 – Vision*

58. The relevant sections of this clause are:

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

*Clause 21.04 – Land Use*

59. The relevant objectives of this clause are:
- (a) To reduce potential amenity conflicts between residential and other uses.
  - (b) To maintain a balance between local convenience and regional retail roles in Yarra's activity centres.
  - (c) To maintain the long term viability of activity centres.
  - (d) To encourage the arts and arts venues.
  - (e) To increase the number and diversity of local employment opportunities.

*Clause 21.06 – Transport*

60. The relevant objective of this clause is:
- (a) To provide safe and convenient pedestrian and bicycle environments.
  - (b) To facilitate public transport usage.
  - (c) To reduce the reliance on the private motor car.
  - (d) To reduce the impact of traffic.

*Clause 21.08 – Neighbourhoods*

61. Clause 21.08-10 describes Central Richmond (area between Bridge Road and Swan Street) in the following way:
- (a) The land use character of this neighbourhood is predominantly residential, with the area closest to Punt Road comprising early to mid-Victorian cottages and terraces, and an increasing amount of Edwardian dwellings towards the east of the neighbourhood.
62. Within Figure 23 of Clause 21.08-10, the subject site is identified as being within the Swan Street major activity centre. Figure 24 of Clause 21.08-10 shows the site as being within a heritage overlay area.

Relevant Local Policies

*Clause 22.05 – Interface Uses Policy*

63. The objectives of this clause are:
- (a) To enable the development of new residential uses within and close to activity centres, near industrial areas and in mixed use areas while not impeding the growth and operation of these areas as service, economic and employment nodes.
  - (b) To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.

*Clause 22.09 – Licensed Premises*

64. 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.

## Other Documents

### *Late Night Freeze*

65. In 2008, the Victorian Government introduced a freeze on new post 1:00am liquor licenses being issued in the City of Yarra, City of Melbourne (including the Docklands), City of Port Phillip and City of Stonnington. In June 2015 the freeze was extended until 30 June 2019.
66. In addition to extending the freeze in June 2015, a number of exemptions were also introduced which are outlined in the gazetted decision making guidelines dated 20 July 2015. In summary, the decision making guidelines enable the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to allow the supply of liquor after 1:00am in a limited number of circumstances, provided that regard is given to the guidelines.
67. The criteria in the guidelines is aimed at allowing low risk venues to supply alcohol past 1:00am. Criteria includes the premises being used for accommodation (with alcohol being ancillary), or a venue that regularly provides live music entertainment, or a venue that provides food at all times when liquor can be supplied. The criteria also includes patron numbers not exceeding 200 people and Council supporting the application for the exemption.
68. The VCGLR has previously confirmed that the Late Night Freeze guidelines do not apply to an application to amend an existing liquor licence that already allows the consumption of liquor after 1:00am and is therefore not relevant to this amendment application.

## **Advertising**

69. This application to amend the planning permit was advertised in accordance with section 52 of the *Planning and Environment Act 1987* (the Act) by way of 470 letters sent to the surrounding property owners/occupiers and by four signs on the site, facing Botherambo Street, Swan Street, Stewart Street and Wangaratta Street.
70. A total of thirteen objections were received for the application. The concerns raised in the objections can be summarised as:
  - (a) Dispersal of patrons.
  - (b) Anti-social behaviour.
  - (c) Noise from the venue.
  - (d) Noise from patrons leaving the premises.
  - (e) Sleep disturbance.
  - (f) Increased litter.
  - (g) Property damage.
  - (h) Graffiti.
  - (i) Reduced safety.
  - (j) Security risk.
  - (k) Increased car parking pressures.
71. Council also received one letter of support for the application, which cited their support of Melbourne music venues as the reason for supporting the application.
72. A consultation meeting was held on 25 June 2018 and attended by Council officers, the applicant, two owners of The Corner Hotel and three residents (objectors). Issues relating to off-site amenity impacts, patron management and existing conditions were discussed. No resolution was reached at the meeting.

## **Referrals**

### External Referrals

#### *Victorian Commission for Gambling and Liquor Regulation (VCGLR)*



73. The application was referred under Section 55 of the Act to the VCGLR pursuant to Clause 66.03 of the Scheme as the proposal is in association with a hotel, tavern or nightclub that is to operate after 1:00am. The VCGLR have not provided a response.

*Victoria Police*

74. Notice of the application was given to the Victoria Police pursuant to Clause 66.05 of the Scheme as the proposal is in association with a hotel, tavern or nightclub that is to operate after 1:00am. The Victoria Police have not provided a response.

Internal Referrals

*Social Policy and Research Unit (Public Place)*

75. The application was formally referred to Council's social policy and research unit, who sought external comments from a social research consultant (Public Place). A full copy of the referral comments can be found in Attachment 2. The following comments and recommendations were made:
- (a) While the statutory context and mix of licensed premises in Swan Street has evolved since the Swancom decision, the need to consider how the proposed amendment would affect the functioning of the Swan Street precinct as a whole remains relevant.
  - (b) The Corner Hotel is an iconic licensed venue, which generates positive social effects such as facilitating social interaction, enjoyment of food and drink, and the performance of live music. The venue also generates employment and economic activity. These social and economic effects are beneficial and significant.
  - (c) Like all licensed venues, the Corner Hotel has the potential to generate amenity impacts for the local area, as a result of noise emissions from within the venue, or if patrons make noise or engage in loutish behaviour in the public realm near the venue.
  - (d) The Corner Hotel is located within the Swan Street core entertainment precinct. In this location, expectations relating to residential amenity are shaped by an acceptance that the area hosts a significant night time economy.
  - (e) The proposed increase in hours and patron capacity would result in the dispersal of up to 200 patrons being delayed for up to 1.5 hours. In this context, I note that the venue is in a core entertainment precinct where larger venues are encouraged because of the area's existing character and the availability of supporting infrastructure and services.
  - (f) The precinct's character is dominated by the presence of licensed venues and their patrons between 12:00 midnight and 1:30am and beyond. That is, delaying the release of patrons is not necessarily inconsistent with the prevailing character of the Swan Street core entertainment precinct between 12:00 midnight 1:30am.
  - (g) Moreover, the proposed increase in hours and patron capacity would allow the venue to accommodate smokers within designated areas until 1:00am (compared with 11:30pm), which would avoid smokers congregating on the pavement and in doing so contribute positively to the amenity of the local area.
  - (h) Accepting the above, and that Yarra's Local Policy indicates (notionally at least) that Yarra's core entertainment precincts have 'capacity to accommodate future larger licensed venues', the possibility that the proposal would generate unreasonable cumulative impacts must still be addressed.
  - (i) The proposed amendment has the potential to facilitate the misuse of alcohol. Indeed, there is considerable evidence suggesting that extending opening hours of licensed premises (in particular past 12:00 midnight), facilitates increased alcohol consumption, leading to impacts such as increases in alcohol related violence, drink driving, etc. However, as a general principle, broad concerns about social harms caused by alcohol, the accessibility of alcohol or the misuse or abuse of alcohol are not relevant planning considerations.
  - (j) As is required by Practice Note 61, the assessment identifies all venues located within 500 metres of the Corner Hotel. However, the assessment downplays the extent of late night activity within the 500 metre area.

For example, it is stated within the 500 metre area there are only thirteen licensed premises (including the subject site) that cater for more than 200 patrons and operate after 11:00pm (Holliava was not counted in the thirteen). This clustering of large late night venues is one of the most intense in Victoria.

- (k) There are an additional eleven premises located within the 500 metre area that trade to at least 1:00am but have a patron capacity of less than 200 (more than half have a patron capacity of more than 100).
- (l) Moreover, most late night venues in the Swan Street core entertainment precinct are located to the east of the Corner Hotel, whereas the Richmond Train Station and the MCG and other major sporting and entertainment venues are to the west. As a result, there is significant potential for pedestrian traffic in the immediate surrounds of the Corner Hotel.
- (m) The existing clustering of venues is not necessarily inappropriate. As the applicant's assessment identifies, the Swan Street core entertainment precinct is very well served by public transport to enable patron dispersal (including the 24-hour 'Night Network' and services such as Uber). I also accept the applicant's observation that closing times across venues in the Swan Street core entertainment precinct are staggered and that this would limit competition for transport services, crowding and loitering on Swan Street.
- (n) Indeed, between 12:00 midnight and 1:30am there were no signs of crowding in the precinct, or that patrons were having difficulties dispersing from the precinct. This is in stark contrast to conditions on Swan Street at the time of the Swancom decision, when it was common for individuals and groups seeking to leave the precinct after midnight to face extended waiting times as they lined Swan Street attempting to hail a taxi (the only method of transport available at the time).
- (o) Overall, between 12:00 midnight and 1:30am, if there was an additional 200 patrons leaving the Corner Hotel, these patrons would be able to disperse quickly and easily, without adverse effects on the amenity of the area. While the night of my inspection was relatively cold and wet, and it is likely that venues in the precinct would attract more patrons on nights with more favourable conditions, I am still in agreement with the applicant's conclusion that the proposal would not result in any unreasonable negative cumulative impacts on the amenity of the relevant area.
- (p) The Decision-Making Guidelines Relating To Freeze Exemptions seek to mitigate risks associated with supply of liquor post 1:00am by, amongst other things, ensuring that food is available at venues at all times when liquor can be supplied. The Corner Hotel has indicated a willingness to make food available within the beer garden area, and this approach would assist in mitigating the supply of liquor in this area until 1:00am, if the amendment application is granted.
- (q) The Swancom decision was premised in part on Council submissions that the Corner Hotel was not in a dedicated entertainment precinct, but rather a 'specialty retail area'. In contrast, the recently introduced Clause 22.09 - Licensed Premises, defines Swan Street west of Church Street as a core entertainment precinct, where larger licensed venues are encouraged.
- (r) It is recommended that a permit condition mandating food be available in the beer garden at all times when liquor can be supplied, be included on the amended permit.

*Civic Compliance Unit*

76. The application was formally referred to Council's civic compliance unit. In summary, the following comments and recommendations were made:

- (a) There has only been one noise complaint recorded for the hotel in the last five years and the complaint was not substantiated.
- (b) Compliance has no issues in relation to their proposed amended points 5 and 6 as long as the extension of patron usage does not adversely affect the amenity of the area and conditions 9, 10 and 11 of their planning permit are adhered to.

*Acoustic Engineering Consultant (SLR Consulting Australia)*

77. An acoustic report prepared by Marshall Day Acoustics forms part of the application package submitted to Council. The application was formally referred to Council's acoustic engineering consultant. A full copy of the referral comments can be found in Attachment 3. In summary, it was noted that if the noise criteria adopted in the acoustic report is too high, this could have significant implications on the assessment outcome. The following comments and recommendations were made in relation to the application:
- (a) We request clarification/resolution of the following items:
    - (i) Confirmation on how (or if) background levels have been averaged, and what the lowest hourly or 15 minute background level is for the proposed operating periods. We would recommend this be used for setting the noise criteria, or alternatively, SEPP N-1 limits be used.
    - (ii) The background levels applicable to 19 Botherambo Street (and associated noise criteria).
    - (iii) Comment or assessment of noise to the 45 Wangaratta Street development.
    - (iv) It may be useful to nominate further restrictions on patron numbers for the proposed extended period earlier in the week (to account for lower background levels and corresponding noise targets).
78. The referral comments at paragraph 74 were provided to the applicant and the applicant submitted a response which was referred to Council's acoustic engineering consultant. A full copy of the comments can be found in Attachment 4. In summary, the following comments were provided:
- (a) Comment regarding 45 Wangaratta Street. We accept MDA's response, but believe this response/discussion should have been included in the original report to allow for a means by which to keep track of previous application outcomes.
  - (b) Regarding method of background averaging. MDA have confirmed that they have averaged a particular interval (i.e. midnight to 00:30 h) between Sunday and Thursday, rather than use the lowest for a particular night. This approach concerns us because it does not provide a representation of the lowest background level that can occur for example on a Monday or Tuesday night. If we were provided with the background noise logging data we may be able to provide a more informed opinion on this, but without that information we are taking a worst case/conservative approach.
  - (c) Regarding background levels at 19 Botherambo Street. MDA comment that background levels we quoted were particularly old. We agree, but there have been no recent representative background levels conducted in front of this dwelling that we can refer to. MDA quote their tests from a Saturday night in November 2016, which were undertaken while there was still significant activity from the Botherambo Bar, between 22:45h and 23:00h (which is much earlier than the 1:00am proposed finished time). The logger location also looks to be close to the Botherambo Bar (and rooftop plant). We do not believe we have appropriate representative data to make a judgement of what background levels are currently in front of this dwelling. It is recommended that attended measurements be conducted in front of this dwelling on a calm, dry night, between midnight and 1:00am, early in the week.
  - (d) MDA comment that the patron noise targets are not 'hard limits'. While we agree that some flexibility can be adopted on whether targets should be formal hard limits, the assessment should aim to comply with the identified targets (especially when the determination of the targets does not represent the most conservative approach – i.e. averaging background over a number of nights).  
The proposal is to extend outdoor operations well into the critical night period, seven days a week, and has the potential to cause significant amenity and sleep disturbance impacts if appropriate conservative targets are not adopted.
79. Council's acoustic consultant was further queried by Council officers in relation to the approved development 45 Wangaratta Street and 19 Botherambo Street currently used as an office. These comments are also found in Attachment 4, and summarised below:

- (a) In relation to the development at 45 Wangaratta Street, we would just like the information in the report so there is a record of the history with this site. The memo that the applicant's acoustic consultant has prepared provides, but it's easier for it to be in the endorsed acoustic report so people don't have to spend time trying to find other documents.
- (b) In relation to 19 Botherambo Street, if that is the case, then yes, we can probably downgrade the importance of this receiver, and an agent of change approach could be adopted down the track.

*Engineering Services Unit*

80. The application was formally referred to Council's engineering services unit. A full copy of the referral comments can be found in Attachment 5. In summary, the following comments and recommendations were made:
- (a) From a traffic engineering perspective, the waiver of the car parking requirement associated with the increase in patron numbers and the extending of hours is considered appropriate in the context of the site and the surrounding area. The majority of patrons would elect to take travel modes other than private motor vehicle.
  - (b) Council's engineering services unit has no objection to the reduction in the car parking requirement for this site.

## **OFFICER ASSESSMENT**

81. The primary considerations for this assessment are as follows:
- (a) Strategic justification.
  - (b) Amenity impacts.
  - (c) Cumulative Impacts.
  - (d) Car parking.
  - (e) Objectors' concerns.

Strategic Justification

82. The subject site is located within the Commercial 1 Zone and within the Swan Street activity centre. The purpose of the Commercial 1 Zone includes creating vibrant mixed use commercial centres for retail, office, business, entertainment and community uses. The ongoing use of the land for the purpose of a hotel is therefore considered to be consistent with the zone provisions and appropriate for the site at 57-61 Smith Street, in Richmond.
83. More broadly, the State and local planning policy, at Clause 11.03, Clause 17.01-1 and Clause 21.04-2 of the Scheme, seeks to encourage the aggregation and sustainability of commercial facilities in activity centres. These policies seek to cluster employment, entertainment and service functions within identified centres that meet the needs of local residents, providing that a balance is achieved in relation to off-site amenity impacts.
84. Clause 13.04-1, Clause 21.04-2, Clause 22.05 and Clause 22.09 of the Scheme 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 400 metres of an activity centre.
85. The MSS, at Clause 21.04-2, identifies that the presence of service, retail and entertainment uses creates active and vibrant activity centres with good access to services and facilities, which is an important attribute of Yarra. Furthermore, the site has excellent access to the surrounding public transport networks, in accordance with relevant objectives found at Clause 21.06 relating to transport.

86. Moreover, Council's licensed premises policy at Clause 22.09 identifies Swan Street, west of Church Street, as a core entertainment precinct, which includes the subject site. The policy acknowledges that the core entertainment precincts have been selected because of their existing character and their capacity to accommodate future larger licensed venues with supporting infrastructure and services in the activity centres.
87. From a policy context, it is considered that the proposal is generally consistent with relevant provisions of the State and local planning policy frameworks in relation to economic development and, subject to conditions, will not unreasonably impact on the orderly planning or amenity of the surrounding area, as outlined in further detail in the following sections of this report.

#### Amenity Impacts

88. Clause 22.09 (Licensed Premises Policy) provides the relevant guidance in relation to considerations of the proposed sale and consumption of liquor on the premises on off-site amenity impacts. As part of the application process, the proposal was referred to Council's social research consultant who noted that *'expectations relating to residential amenity are shaped by an acceptance that the area hosts a significant night time economy'*.
89. Council's social research consultant also noted that *'the Corner Hotel is an iconic licensed venue, which generates positive social effects such as facilitating social interaction, enjoyment of food and drink, and the performance of live music. The venue also generates employment and economic activity'*. According to Council's social research consultant, *'these social and economic effects are beneficial and significant'*.
90. Nevertheless, Clause 22.09 of the Scheme is Council's local policy to guide the assessment of new or extended licensed premises within the municipality. It contains the following key elements that will be considered in the following section.

#### Location and Access

91. The subject site is located on Swan Street, a main arterial road within an activity centre, with a mix of both commercial and residential uses in close proximity. The location is considered appropriate for the existing use given the identification of Swan Street as a core entertainment precinct at Clause 22.09, as well as the major activity centre designation. The site's close proximity to multiple alternative transport modes also supports the location of the venue. Additionally, the premises has been operating for a considerable time and is an established venue with no major complaints recorded on Council's records.
92. The main patron entrance into the venue is from Swan Street, with a secondary entrance to the first floor beer garden and dining room via a stairwell located on Stewart Street and an accessible entrance off Botherambo Street. The noise and amenity action plan submitted with the application identifies that patrons will generally enter the premises from Swan Street or as appropriate via the stairwell on Stewart Street, with other entries to be used for emergency, staff or loading purposes, as required.
93. The liquor licence approved also restricts patrons from leaving the premises from the Botherambo Street entrance after 10:00pm on any night. This is considered appropriate to reduce potential impacts on the residential properties to the north-east on Botherambo Street, specifically, from patrons arriving and leaving the venue. This restriction is not sought to be removed.
94. The layout of the premises allows for patrons queuing for entry to the band room to be located to the west of the premises along Stewart Street, while in the event of queuing to the main entrance, patrons will be required to queue to the east of the entrance. These measures are identified in the noise and amenity action plan.

95. In relation to the smoking areas for patrons, the proposed amendment seeks to increase the hours of operation for the 400 patrons allowed on the first floor beer garden and dining rooms from 11:30pm to 1:00am, seven days a week. This would remove the need for smokers to congregate on the Swan Street footpath during the extended trading hours as is currently the practice. Council's social research consultant identified this as contributing '*positively to the amenity of the local area*'. Subject to the availability of food in sufficient areas of the first floor beer garden and dining rooms as will be discussed in more detail later in this report, this is considered an appropriate and acceptable outcome.
96. The maximum number of patrons currently allowed on site is 950 up until 12:00 midnight on Friday, Saturday and the eve of public holidays, therefore reverting down to a maximum of 750 patrons between 12:00 midnight and 3:00am on those nights. The proposal seeks to allow the maximum number of patrons on site between 12:00 midnight and 1:30am to increase from 750 patrons to 950 patrons.
97. The dispersal of potentially an additional 200 patrons from the premises at 1:30am, as opposed to 12:00 midnight, on Fridays and Saturdays and the eve of public holidays as approved by current planning permit and liquor licence, is also able to be appropriately managed and buffered. Since the original and subsequent Swancom decisions, the transport options for patrons leaving the venue have substantially changed and improved.
98. These transport option improvements include the introduction of permanent 24 hour public transport services on Friday and Saturday nights, including night trains that run every 60 minutes on all major lines. The emergence of ride sharing services (e.g. Uber) also provides further transport options for patrons. The applicant has also advised that the Corner Hotel has arranged for an 'Uber hotspot' (i.e. a virtual taxi rank) to be located in Wangaratta Street and this is reflected on the Corner Hotel's website.
99. Additionally, a dedicated taxi rank has been installed on the northern side of Swan Street, just east of Botherambo Street, providing a convenient location for patrons leaving the Corner Hotel to hail a taxi.
100. These additional dispersal methods for patrons have substantially increased the transport options for patrons leaving the hotel. As noted by Council's social research consultant, '*if there was an additional 200 patrons leaving the Corner Hotel, these patrons would be able to disperse quickly and easily, without adverse effects on the amenity of the area*'.
101. Council's social research consultant also accepted the applicant's observation '*that closing times across venues in the Swan Street core entertainment precinct are staggered, and that this would limit competition for transport services, crowding and loitering on Swan Street*'.
102. The layout of the premises and security arrangements also provides adequate opportunity for a high level of public safety and surveillance of patrons as they enter and leave the premises. As noted in the noise and amenity action plan, the venue will provide security personnel to monitor the front of the venue in the immediate vicinity of the premises and conduct patrols around the perimeter of the venue, including the rear car park, as required.
103. There is also a commitment to hourly patrols on Friday and Saturday nights and on public holidays eves between 7:00pm and close, as discussed in more detail later in this report. Patrols will have a particular emphasis on ensuring patrons dispersing the venue are not causing a detriment to the surrounding area by way of antisocial behaviour, noise or litter.

#### *Venue Design*

104. These polices seek to ensure the layout and design of licensed premises incorporates safe design principles, entry and exit points and areas for queuing of patrons are located away from sensitive land uses and waste management and storage is provided on-site and noise enclosures are provided where bottle crushers are to be used.

105. As this amendment application does not seek to alter the layout or design of the venue, these policies are largely extraneous to this application. However, entry and exit points and queueing of patrons have been discussed earlier in this report.
106. Additionally, it is noted that waste collection is limited by condition 16 of the planning permit to between 7:00am and 10:00pm on any day, while bottles, cans or other drink containers may not be emptied into garbage bins or recycling crates after 10:00pm on any night or before 7:00am on any day, as per condition 15 of the planning permit. These conditions will be retained should an amended planning permit be issued.

#### *Hours of Operation*

107. Relevant policies at Clause 22.09 call for licensed premises within 30 metres of a residential zone to not provide for the sale and consumption of liquor beyond 11:00pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area. Additionally, licensed premises in a commercial or industrial zone should not provide for the sale and consumption of liquor beyond 1:00am, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.
108. Specifically, for outdoor areas, including smoking areas, rooftops and open courtyards, policy at Clause 22.09 calls for the sale and consumption of liquor to not occur after 10:00pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.
109. The existing planning permit and liquor licence allow the licenced venue to operate until 1:00am on Sundays and until 3:00am on any other day. The first floor beer garden and dining room is currently allowed to operate until 11:30pm, seven days a week with a capacity of 400 patrons. This amendment application seeks to increase the hours of operation for the first floor beer garden and dining rooms to 1:00am, seven days a week, and extend the time in which the maximum patron capacity of 950 patrons is allowed on the premises from 12:00 midnight to 1:30am, on Friday and Saturday nights and the eve of public holidays.
110. The hours approved under the current planning permit already exceed the recommended operating hours for a licenced premises within a commercial zone as outlined in Clause 22.09-3 of the Scheme (which is 1.00am). Responsibility is placed on the responsible authority to be satisfied that there will be no adverse impact on the amenity of the area. The assessment of the impact of the increased hours of operation for the first floor beer garden and dining rooms on the amenity of the surrounding area must consider:
- (a) The proposed use and licence type.
  - (b) The zoning of surrounding land.
  - (c) The location of the premises, location of car parking and availability of public transport, taxi ranks and ride sharing.
  - (d) The nature of surrounding uses and hours of operation.
  - (e) Potential noise emissions from the premises.
  - (f) The impact of patrons arriving and leaving the premises, including:
    - (i) For venues operating after 10pm, whether access from the licensed premises to public transport is likely to be through a residential area.
    - (ii) Any cumulative impact on the amenity of the area.
111. The use of the land as a hotel has been operating for a number of years, with Council's civic compliance unit noting that there has *'only been one noise complaint recorded for the hotel in the last five years and the complaint was not substantiated'*. Additionally, the Corner Hotel is a well-known live music venue with, on average, four live music performances a week.

112. The noise and amenity action plan submitted with the application also acknowledges the importance of food offering as a measure to reduce alcohol intake and therefore reduce the risks of harm associated with the excessive consumption of alcohol. The noise and amenity action plan commits to having food available for consumption on the premises up until the conclusion of trade in all internal dining areas on the first floor which, in the event that the amendment is supported, would be all areas with the exception of the beer garden on the first floor, as shown in the endorsed plans for the site (Attachment 6).
113. However, there is no plan specifying which areas on the first floor are designated as internal dining rooms. The endorsed plans (Attachment 6) show various areas across the first floor. In order to ensure a sufficient proportion of the first floor is set aside for the serving of food to minimise the impacts of alcohol consumption, it is expected that all areas shown as 'dining' or 'dining room' and 'courtyard' on the first floor plan would be considered as internal dining areas. This leaves the 'beer garden' area remaining as the external areas. A condition contained in the recommendation section of this report requires a floor plan showing the internal dining areas to be included in the noise and amenity action plan.
114. To complement the internal food offerings on the first floor, snacks should also be available to patrons in the external first floor areas at all times that alcohol is able to be consumed. Snacks are defined as pre-packaged shelf stable food that is sealed in the container or package in which the manufacturer intended it to be sold and does not require any preparation prior to serving. These snacks are able to be served in outdoor smoking areas (*Smoke-free outdoor dining – Factsheet for business, Department of Health and Human Services, May 2017*), while no other food can because of the recent changes to the outdoor dining area smoking laws. A condition contained in the recommendation section of this report will ensure the noise and amenity action plan is updated to reflect this requirement.
115. The noise and amenity action plan will also be required to be updated to include measures to inform patrons that food is available up until the conclusion of trade, the food offerings that are available to patrons including snacks in the external areas and the method of ordering. A condition contained in the recommendation section of this report will ensure the noise and amenity action plan is updated to include these requirements.
116. The surrounding area contains a mix of zones, including commercially zoned land to the east, west and south, all with a frontage to Swan Street. Mixed Use Zone land is located to the north and north-west, while residentially zoned land is located to the north-east on the opposite side of Botherambo Street.
117. The use of the patron entrance in to the venue from Botherambo Street is restricted after 10:00pm every day, which ultimately provides a degree of separation between the premises and the residentially zoned land to the north-east. The impact on the more sensitive residential areas in Botherambo Street from patrons arriving or leaving the venue is therefore limited as the main patron entrance is on Swan Street. This will ensure patrons mainly utilise Swan Street to arrive at or leave the venue.
118. The car parking area accessed via either Wangaratta Street or Botherambo Street provided on-site to the rear of the venue will continue to operate as it currently does. On-street car parking is available on Swan Street itself with minimal restrictions during the evening and late night period.
119. However, as noted by Councils' engineering services unit, given the nature of the use as a hotel, the stringent enforcement of drink driving laws would influence patrons to travel responsibly to the venue (e.g. public transport, taxi, ride sharing service, etc.) if they intend to imbibe alcohol.



120. Overall, there are eleven premises located within 500 metres of the subject site that are allowed more than 200 patrons, seven of which close at or before 1:00am, one that closes at 2:00am and three that close at 3:00am. Four additional premises have a patron capacity of less than 200 patrons and operate until 3:00am. These premises have the following details:

Address	Licence	Patrons	Close
364 Church Street (Church 364)	General	200	1:00am
238 Lennox Street (London Tavern Hotel)	General	728	12:00 midnight
100 Swan Street (Richmond Club Hotel)	General	707	1:00am
287 Punt Road (Royal Hotel)	General	220	1:00am
327 Punt Road (Cricketer's Arms Hotel)	General	254	1:00am
425 Church Street (Swan Hotel)	Late night (general)	300	3:00am
60 Swan Street (Precinct Hotel)	Late night (general)	840	3:00am
447 Church Street (Great Britain Hotel)	Late night (general)	300	3:00am
157 Swan Street (Vaucluse Hotel)	Late night (general)	360	1:00am
433-435 Church Street (Public House)	Late night (on-premises)	225	2:00am
238 Swan Street (Ugly Duckling Wine Bar)	Late night (on-premises)	76	3:00am
94 Swan Street (Nine T Four)	Late night (on-premises)	110	3:00am
472 Church Street (Maeve Fox)	Late night (on-premises)	191	3:00am
69 Swan Street (Sneak Bar and Lounge)	Late night (on-premises)	100	3:00am
214-216 Swan Street (Fargo & Co.)	On-premises	450	1:00am

121. Notably, there is a diverse mix of licensed premises within the Swan Street core entertainment precinct and the surrounding area. As observed by Council's social research consultant, *'the precinct's character is dominated by the presence of licensed venues and their patrons between 12.00 midnight and 1:30am and beyond'*.
122. Council's social research consultant also noted that *'delaying the release of patrons is not necessarily inconsistent with the prevailing character of the Swan Street core entertainment precinct between 12.00 midnight and 1:30am'*. Moreover, it was concluded that *'the proposed increase in hours and patron capacity would allow the venue to accommodate smokers within designated areas until 1:00am (compared with 11:30pm), which would avoid smokers congregating on the pavement and in doing so contribute positively to the amenity of the local area'*.
123. In relation to noise emissions from the site, as will be discussed in further detail later in this report, Council's acoustic consultant is satisfied that the acoustic report submitted with the application appropriately addresses noise emissions from the venue. This therefore lends support to the application to increase the hours of operation of the first floor as noise issues from within the venue can be appropriately managed to avoid potential off-site amenity impacts as a result of noise emissions.

124. A condition already on the planning permit requires a prominent notice requesting patrons to take account of the needs of local residents for peace and quiet after 10:00pm on any day, to be displayed at the main exit from the venue (condition 11). This further measure assists in reducing any potential amenity impacts from patrons leaving the venue and will be retained on the planning permit.
125. Given the existing site conditions, site context and the measures to be outlined in an amended noise and amenity action plan, it is considered that the proposed amendment would result in no further unreasonable off-site amenity impacts on the surrounding area, including through anti-social behaviour, noise from patrons leaving the premises, increased litter, property damage or graffiti.

#### *Patron Numbers*

126. Policy at Clause 22.09 relating to patrons numbers aims to ensure that the number of patrons do not exceed the safe and amenable operating capacity of the premises. Additionally, the number of patrons should reflect the strategic and physical context of the site and should not adversely affect the amenity of nearby properties or the surrounding area, including by any unreasonable cumulative impact.
127. The proposal seeks to extend the time that the maximum capacity of 950 patrons is allowed on the premises. Currently, the maximum of 950 patrons is allowed on Friday and Saturday nights up until 12:00 midnight. This amendment seeks to extend the time in which the 950 patrons is allowed on the premises until 1:30am.
128. As discussed earlier in this report, the dispersal of an additional 200 patrons at 1:30am compared to 12:00 midnight as is currently approved, is considered acceptable given the introduction of 24 hour public transport, the emergence of ride sharing services and the installation of a dedicated taxi rank on the northern side of Swan Street, to the east of Botherambo Street.
129. Council's social research consultant also noted that *'the venue is in a core entertainment precinct where larger venues are encouraged because of the area's existing character and the availability of supporting infrastructure and services'* and that *'the precinct's character is dominated by the presence of licensed venues and their patrons between 12:00 midnight and 1:30 am and beyond'*.
130. Therefore, it is considered that there is strategic support for larger licensed premises in this location, the physical context also supports late night activity and, as discussed throughout this report, the proposed amendment will not unreasonably affect the amenity of nearby properties or the surrounding area.
131. Furthermore, increasing the hours that the maximum capacity of 950 patrons are allowed on the premises on Friday and Saturday nights and the eve of public holidays has less potential to cause adverse amenity impacts as there are already numerous venues operating after 1:00am in proximity to the site. Any potential impacts as a result of increasing the capacity on these nights would therefore be consistent with activity that already occurs within the Swan Street core entertainment precinct.

#### *Noise*

132. An acoustic report was submitted with the application that demonstrates that the proposed increase in hours to the first floor beer garden and dining rooms would comply with the relevant noise targets and, therefore, would not have any unreasonable impacts on nearby sensitive land uses (dwellings).

133. Council's acoustic consultant reviewed the acoustic report and noted that if the noise criteria adopted in the acoustic report is too high, this could have significant implications on the assessment outcome and sought clarification on how background levels have been averaged, the background levels applicable to 19 Botherambo Street and the lack of comment on the approved residential development at 45 Wangaratta Street.
134. It was also suggested that it *'may be useful to nominate further restrictions on patron numbers for the proposed extended period earlier in the week (to account for lower background levels and corresponding noise targets)'*.
135. The approved development at 45 Wangaratta Street allows the construction of a seven storey building containing office space, food and drink premises and dwellings. The applicant's acoustic consultant advised that the proposed development at 45 Wangaratta Street must comply with the provisions at Clause 52.43 which includes the agent of change principle which ensures the primary responsibility for noise attenuation rests with the agent of change.
136. The applicant's acoustic consultant further advised that they have previously undertaken high-level calculations of the facade construction that is likely to be required in order to control existing live music levels within the development to appropriate levels. Given the magnitude of this, which requires significant glazing, patron noise was not considered to be a significant issue at this development.
137. Council's acoustic consultant was satisfied with this response and recommended that this information should be included in the acoustic report so there is a record of the history with this site. A condition contained within the recommendation section of this report requires an amended acoustic report including this information to be included on any amended planning that issues.
138. In relation to how the background levels have been averaged and the background levels applicable to 19 Botherambo Street, it has been confirmed that the nearest dwelling at 19 Botherambo Street is actually used as an office. As 19 Botherambo Street is located within the Commercial 1 Zone, a planning permit is required to use the land as a dwelling if the frontage exceeds a width of 2 metres. Therefore, if 19 Botherambo Street were converted back to a dwelling use, a planning permit would be required to do so and the provisions at Clause 52.43, which includes the agent of change principle, would apply.
139. The applicant's acoustic report is based on 19 Botherambo Street being the closest dwelling. Given the information discussed above, Council's acoustic consultant was satisfied that this would alleviate their concerns in relation to how the background levels have been averaged and the background levels applicable to 19 Botherambo Street. Overall, it is considered that proposed increase in hours to the first floor beer garden and dining rooms would not result in any unreasonable impacts from the emission of noise.

#### *Noise and Amenity Action Plan*

140. As part of this application to amend the planning permit, a noise and amenity action plan (Attachment 7) has been submitted which proposes measures to ensure that the use of the land as a hotel and the proposed changes to the sale and consumption of liquor on the premises would not be detrimental to the amenity of the area.
141. The measures contained in the noise and amenity action plan include the provision of security personnel, patrols around the perimeter of the premises, CCTV surveillance, appropriate lighting, queuing of patrons, the responsible service of alcohol, food offerings, patron dispersal and transport, control of music noise, complaints process, cleaning of the area and waste collection.

142. Many of the requirements of Clause 22.09-4 of the Scheme, in relation to the provision of a noise and amenity action plan, are addressed in other sections of this report. The measures within the submitted noise and amenity action plan are considered appropriate to manage the extended operation of the premises without causing undue detriment to the amenity or safety of the surrounding area, subject to additional measures as discussed throughout this report.
143. Of particular note and in response to concerns raised in objections, the applicant has committed to implement additional measures that aim to minimise the impact of patron behaviour external to the venue. These measures include security staff to carry and utilise flash lights as a deterrent, should it become apparent that patrons are loitering in the immediate vicinity of the venue, security staff on patrol will wear hi-visibility vests or similar so they are noticeable from a distance and a commitment to hourly patrols on Friday and Saturday nights and on public holidays eves between 7:00pm and close, and as required all other times.
144. Objection letters clearly describe existing issues associated with licenced venues along Swan Street, not just the Corner Hotel, and these additional measures will assist in improving safety and reducing the impacts of patrons, whether they be patrons from the Corner Hotel or other venues in the Swan Street core entertainment precinct, from behaving inappropriately within residential areas in the vicinity of the premises. A condition contained in the recommendation section of this report will require the noise and amenity action plan to be updated to include these commitments.
145. Given the above, it can be seen that the premises is already tightly regulated in terms of noise emissions from the venue and patron behaviour. Indeed, as mentioned by the Tribunal in *Swancom Pty Ltd v Yarra CC (includes Summary) (Red Dot) [2009] VCAT 923 (10 June 2009)*, *'we found the hotel to be well managed both internally and in the immediate vicinity of the entrance from Swan Street'*. Overall, through a combination of the existing planning permit conditions and the improved measures in an amended noise and amenity action plan, the proposed amendment will not unreasonably impact on the amenity of the surrounding area. It could be said that through these additional measures/controls that the existing situation experienced by local residents (objectors) could be managed better and improved.

#### *Application to Amend an Existing Permit*

146. Policy at Clause 22.09-3 relating to the assessment of an application to vary or extend an existing permit for a licensed premises require the consideration of any relevant information about the previous and current operation of the premises including complaints received, any contravention of a planning permit condition or liquor licence and whether the conditions on the existing planning permit regulating the venue design, hours of operation, patron numbers, and noise and amenity impacts are adequate.
147. As discussed earlier in this report, Council's civic compliance unit has confirmed that there *'has only been one noise complaint recorded for the hotel in the last five years and the complaint was not substantiated'*. Furthermore, there is no record of any contravention of planning permit conditions or the liquor licence. Moreover, combined with an amended noise and amenity action plan as discussed throughout this report, the conditions on the planning permit will be adequate to ensure the safety of the surrounding area is not further compromised and the amenity of the adjoining residential streets is not unreasonably impacted upon.

#### Cumulative Impacts

148. The decision guidelines set out in Clause 52.27 of the Yarra Planning Scheme require consideration of the following:
- (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 impact of the number of patrons on the amenity of the surrounding area.
- (e) The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.

149. In addition to Clause 52.27 and Council’s licensed premises policy (Clause 22.09), it is necessary to give consideration to potential cumulative impacts associated with a proposal for a new or expanded liquor licence. The ‘Swancom’ decision (*Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & Ors*) provides a potential assessment methodology for considering applications that may result in cumulative impact. The decision also acknowledges that depending on the nature of the use (i.e. premises type, patron numbers and operating hours), the required level of assessment will vary.
150. Since the ‘Swancom’ decision, Council has developed an assessment tool to determine the likelihood of cumulative impacts occurring as a result of a proposal based on risk factors associated with the type of premises, size of premises and closing hours of the premises, to help determine what level of assessment is appropriate.
151. It is considered that a cumulative impact assessment is warranted for this application, as the proposal scores a nine on the determinative risk factors. Applying the matrix of risk below, a reasonable consideration would suggest that a score of one to three would be no risk, but that a score higher than three would be a potential risk and require a cumulative impact assessment.

Type of Premise	Risk Factor
Café / Restaurant	0
Bar / Restaurant / Café	1
Bar	3
<b>Hotel / Tavern</b>	<b>3</b>
Night Club	3
Place of Assembly	2

Size of Premise	Risk Factor
0 – 49 patrons	1
50 – 99 patrons	1
100 – 199 patrons	2
<b>200+</b>	<b>3</b>

Closing hours	Risk factor
11pm	0
12am	1
1am	2
2am	3
<b>3am</b>	<b>3</b>
After 3am	4
<b>Total</b>	<b>9</b>

152. The subject site operates as an existing licenced premises. As discussed previously in this report, the site is within a Commercial 1 Zone, a core entertainment precinct as identified by Clause 22.09 of the Scheme and in a major activity centre, adjacent to a road in a Road Zone, Category 1 with a tram line.

The amendment seeks to extend the trading hours on the first floor beer garden and dining room from 11:30pm to 1:00am, seven days a week and extend the time to which the maximum patron capacity of 950 patrons is allowed on the premises on Friday, Saturday and the eve of public holidays from 12:00 midnight to 1:30am, reverting back to 750 patrons thereafter.

153. Additionally, Practice Note 61 – Licensed Premises: Assessing Cumulative Impact provides further guidance on assessing the cumulative impact of a licensed premise. The practice note applies to new or expanded licensed premises that will be licensed after 11:00pm and in an area where there is cluster of licensed premises. The site is clearly located within a cluster of licensed premises contained within the core entertainment precinct.
154. Additionally, the amendment seeks to increase the trading hours of the first floor beer garden and dining room from 11:30pm to 1:00am, seven days a week and extend the time to which the maximum capacity of 950 patrons is allowed on the premises from 12:00 midnight to 1:30am, on Friday and Saturday nights and the eve of public holidays. As such, a cumulative impact assessment is also required under the criteria set by the Practice Note.
155. Practice Note 61 recommends that planning policy context, surrounding land use mix and amenity, the mix of licenced premises, transport and dispersal and impact mitigation should be considered when assessing the cumulative impact of licenced premises. These matters are further discussed below.

#### *Planning Policy and Context*

156. In relation to the planning policy and context, the proposal has been assessed against all relevant provisions of the State and Local Planning Policy Framework as discussed throughout this report and is considered to be generally consistent with relevant provisions, subject to conditions outlined in the recommendation section of this report.
157. Moreover, Council recently updated its local planning policy relating to licensed premises. This is a significant change to the policy context when compared to the policy considered in the previous Tribunal decisions relating to the subject site. Specifically, Swan Street, west of Church Street, is now identified as a core entertainment precinct.
158. As highlighted in the policy basis at Clause 22.09-1 of the Scheme, the core entertainment precincts have been selected because of their existing character and their capacity to accommodate future larger licensed venues with supporting infrastructure and services in the activity centres. By encouraging larger licensed premises to locate within these precincts the cumulative impacts on the surrounding area can be better assessed and managed.
159. Larger licensed premises (with a capacity exceeding 200 patrons) are encouraged to locate in core entertainment precincts. These precincts are defined by the Commercial 1 Zone and limited to properties fronting (and with pedestrian access) from the listed main streets, including Swan Street, west of Church Street. The subject site qualifies with all of the above.

#### *Surrounding Land Use Mix and Amenity*

160. The Swan Street activity centre contains a wide range of commercial and entertainment uses. As outlined earlier in this report, the subject site adjoins residentially zoned land to the north-east on the opposite side of Botherambo Street, approximately 10 metres from the site. The nearest sensitive uses to the subject site are dwellings facing Lennox Street further east, at 320 Lennox Street.

161. While there are dwellings located to the immediate north-east, the closest being 10 metres from the subject site, the proposed amendment does not seek to extend the overall licenced operating hours or the overall maximum number of patrons, capped at 950 under condition 6 of the current planning permit, and there are similar late night venues that operate in proximity to the subject site with a similar interface to residentially zoned land.
162. Anecdotal evidence and comments within the objectors' submissions suggest that the amenity of the area is already affected to a certain extent by the existence of late night venues in the area. As noted in Council's local policy for licenced premises at Clause 22.09, Swan Street, west of Church Street, is identified as a core entertainment precinct. While the location is supported by policy, the management of venues is critical if the balance between them and residential amenity is to be appropriately achieved.
163. As a result of the above and as detailed earlier in this report, the proposed amendment has the potential to generate off-site amenity impacts beyond what is reasonable, as the introduction or expansion or change to where patrons are allowed to go inside the venue, of any licenced premises would. However, due to the mix of licenced premises that operate within the Swan Street core entertainment precinct, the amenity of the surrounding area is already impacted to an extent and the proposed increase in use of the first floor beer garden and dining rooms and the extension to the time allowed to have 950 patrons on the premises would not unreasonably add to those existing impacts, as discussed throughout this report.

*The Mix of Licenced Premises*

164. A review of the density of licensed premises in the area, the mix and type of licensed premises and existing amenity levels has been undertaken. The precinct contains approximately 73 licensed premises within 500 metres (radius) of the subject site. The Swan Street precinct contains a high concentration of licensed premises, predominantly comprising late night venues, but also including a high concentration of restaurants and cafes, many of which are only open during daytime trading hours.
165. The mix and type of licensed premises associated with existing commercial uses within a 500 metre radius from the subject land is as follows, with a summary of these listed in the table at paragraph 117:
- One BYO licenced premises.
  - Five general licensed premises
  - Five late night general licenced premises
  - Five late night on-premises licensed premises
  - Thirteen on-premises licensed premises
  - Three packaged licensed premises
  - 32 restaurant and café licensed premises
  - One full club licenced premises.
  - Eighteen limited licences.
166. As mentioned earlier in this report, of the licenced premises operating within a 500 metre radius of the subject site, eight operate after 1:00am. Of these eight premises operating after 1:00am, four have a patron capacity of more than 200 patrons, including the Swan Hotel, Precinct Hotel, Great Britain Hotel and Public House.
167. Given the zoning of the land, its location within the Swan Street activity centre, the designation of Swan Street, west of Church Street, as a core entertainment precinct and the existing level of activity during both daytime and night time trading hours, particularly on Friday and Saturday nights, the amenity of dwellings within the area cannot reasonably be expected to be of the same level as dwellings located within a residential hinterland.

168. Furthermore, the amenity of these dwellings is already likely to be affected by existing noise sources including traffic and transport services on Swan Street and commercial uses operating along Swan Street. Notwithstanding, residential amenity and the balance at the interface with commercial uses must be appropriately managed.
169. The proposed extension of the trading hours for the first floor beer garden and dining rooms has the potential to affect off-site amenity. However, given the location of the site adjacent to an arterial roadway with a tram line, its physical separation from residential land uses to the north-east and the evidence outlined in the acoustic report, these impacts will be minimised to a certain extent and as far as practical for this individual hotel operator. Moreover, the potential impacts will not unreasonably affect the amenity of the surrounding area, subject to the additional measures to be included in the noise and amenity action plan, as discussed throughout this report, which will be endorsed and become part of the planning permit.

#### *Transport and Dispersal*

170. As discussed earlier in this report, the potential dispersal of an additional 200 patrons from the premises at 1:30am, as opposed to 12:00 midnight, on Fridays and Saturdays and the eve of public holidays is also able to be appropriately managed. Since the original and subsequent Swancom decisions, the transport options for patrons leaving the venue have substantially changed and somewhat improved.
171. These changes include the introduction of permanent 24 hour public transport services on Friday and Saturday nights, including night trains that run every 60 minutes on all major lines. The emergence of ride sharing services (e.g. Uber) also provides further transport options for patrons. Additionally, a dedicated taxi rank has been installed on the northern side of Swan Street, just east of Botherambo Street.
172. These additional dispersal methods have substantially increased the transport options for patrons leaving the precinct. As noted by Council's social research consultant, *'if there was an additional 200 patrons leaving the Corner Hotel, these patrons would be able to disperse quickly and easily, without adverse effects on the amenity of the area'*.
173. Council's social research consultant also accepted the applicant's observation *'that closing times across venues in the Swan Street core entertainment precinct are staggered, and that this would limit competition for transport services, crowding and loitering on Swan Street'*.
174. These transport options, combined with measures put in place to monitor patrons leaving the venue, will mean that, as far as practicable, patrons will be channelled towards methods of transport when they disperse from the hotel, which will assist in limiting the number of people walking through nearby residential streets.

#### *Impact Mitigation*

175. Overall, it is anticipated that the venue's potential to contribute to a negative cumulative impact will be limited, provided that the conditions discussed throughout this report and included within the recommendation section of this report (which are aimed at minimising any off-site amenity impacts) are applied to any amended planning permit issued. Moreover, through an amended planning permit, the venue's potential to contribute positively to the amenity of the surrounding area must be fully acknowledged.

#### Car Parking

176. Pursuant to Clause 52.06-5 of the Scheme, while the maximum number of patrons will stay at 950, the proposed amendment seeks an additional 200 patrons on the premises between 12:00 midnight and 1:30am on Friday and Saturday evenings and on the eve of public holidays. Clause 52.06 of the Scheme applies to, amongst other things, an increase to an existing use by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.



177. The measure specified for a 'hotel' is patron numbers and as the amendment is seeking to essentially increase the hours during which the maximum capacity of 950 patrons is allowed in the premises (extending it from 12:00 midnight to 1:30am on Friday and Saturday nights and the eve of public holidays), this clause applies.
178. The additional 200 patrons would require a statutory car parking provision of 80 car parking spaces at a rate of 0.4 spaces per patron. As the proposal does not include the provision of any additional car parking spaces on-site, a consideration of the further reduction in the car parking requirement is required.
179. As noted by Council's engineering services unit, 'to reduce the number of car parking spaces required under Clause 52.06-5 (including to reduce to zero spaces), the application for the car parking reduction must be accompanied by a car parking demand assessment'. In reducing the number of car parking spaces required for the proposed development, the car parking demand assessment would assess the following considerations.
180. To ascertain the likely car parking demand generated by the increase in patron numbers, the applicant's traffic consultant conducted a travel mode survey of patrons at the hotel on Friday 16 September 2016 between 6:30pm and 12:30am (coinciding with a major sporting event at the MCG). *'Some 336 patrons were surveyed (a good sample size for statistical purposes)'*, according to Council's engineering services unit.
181. The survey identified the travel modes for both arrivals and departures. Public transport and Uber use accounted for the majority of travel to and from the hotel for the patrons surveyed. The survey data indicates that for arrivals and departure travel modes at the hotel, the use of a car (as driver) accounted for 8.93 per cent and 7.74 per cent respectively. Therefore, assuming a car parking rate of 0.09 car parking spaces per patron, Council's engineering services unit calculated *'the parking demand for the increase in patrons would equate to 18 spaces'*.
182. The availability of public transport in the locality of the land is also a relevant consideration. Council's engineering services unit noted that the *'site is very well positioned to all forms of public transport'*, with the site *'a few minutes' walk to the Richmond railway station, trams services along Swan Street and bus services operating along Punt Road'*.
183. Consideration was also given to multi-purpose trips within the area. As noted by Council's engineering services unit, *'patrons might combine their trip to the hotel by visiting other venues, cafés or restaurants whilst in the area. It is possible that persons attending major sporting or entertainment events just west of Punt Road may also visit the hotel'*.
184. Moreover, Clause 52.06 lists a number of considerations for deciding whether the required number of car parking spaces should be reduced. For the subject site, Council's engineering services unit noted the availability of car parking and relevant local policy as relevant considerations.
185. In relation to the availability of car parking, Council's engineering services unit noted that *'although the level of on-street parking in this part of Richmond and Cremorne is very high, the likely parking demand of 18 spaces associated with increased patron numbers should not be critical to the overall on-street parking throughout the area'*.
186. Council's engineering services unit also considered the proposed development *'to be in line with the objectives contained in Council's Strategic Transport Statement'*. Furthermore, it was noted that the *'site is ideally located with regard to sustainable transport alternatives and the reduced provision of on-site car parking would potentially discourage private motor vehicle ownership and use'*.

187. From a traffic engineering perspective, the waiver of the car parking requirement associated with this amendment *'is considered appropriate in the context of the site and the surrounding area'* as the *'majority of patrons would elect to take travel modes other than private motor vehicle'* according to Council's engineering services unit. Overall, Council's engineering services unit supports the proposal and *'has no objection to the reduction in the parking requirement for this site'*.

#### Objectors' Concerns

188. The majority of the issues which have been raised by the objectors relate to existing issues with licenced venues along Swan Street and existing management of patrons. The issues that have been addressed within this report are as outlined below:
- (a) Dispersal of patrons.
  - (b) Anti-social behaviour.
  - (c) Noise from the venue.
  - (d) Noise from patrons leaving the premises.
  - (e) Sleep disturbance.
  - (f) Increased litter.
  - (g) Property damage.
  - (h) Graffiti.
  - (i) Reduced safety.
  - (j) Security risk.
  - (k) Increased car parking pressures.

#### **Conclusion**

189. The proposed amendment demonstrates a high level of compliance with the relevant policy objectives contained within the State and Local Planning Policy Framework. Notably, the proposed amendment will not increase overall patron numbers on the premises, but allow the first floor beer garden and dining rooms to operate for an additional one and a half hours (within its 400 patron capped capacity) and allow an additional 200 patrons to stay on the premises between 12:00 midnight and 1:30am on Friday, Saturday and the eve of public holidays.
190. While the amendment will result in the potential for an additional 200 patrons to depart the premises at 1:30am as opposed to 12:00 midnight, they are unlikely to all leave on mass and measures are proposed to be put in place by the hotel operator to manage/monitor intoxication as part of the noise and amenity action plan, which will be endorsed to form part of the planning permit and is therefore enforceable. Overall, the proposed amendment application will not result in unreasonable impacts on the surrounding area through the implementation of the noise and amenity action plan and compliance with the recommendations in the acoustic report. Moreover, through this amended planning permit, the venue's potential to contribute positively to the amenity of the surrounding area and improve the existing issues with venues which have been raised by objectors and residents in nearby streets, must be acknowledged.
191. Based on the above report, the proposed amendment is considered to comply with the relevant Planning Scheme provisions and planning policy and is therefore supported, subject to conditions outlined in the recommendation below.

## RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant an Amended Planning Permit PL04/1136.05 to extend the trading hours on the first floor beer garden and dining room from 11:30pm to 1:00am, seven days a week (condition 5) and extend the overall patron limit of 950 patrons on Friday, Saturday and the eve of public holidays from 12:00 midnight to 1:30am, reverting back to 750 patrons until 3:00am (condition 6) at 57-61 Swan Street, Richmond, subject to the following conditions (new or amended conditions highlighted in **bold**, deleted conditions shown as ~~ashed~~):

1. All buildings and works must be undertaken in accordance with the acoustic report prepared by Marshall Day Acoustics (dated 20 April 2016) and the correspondence from Marshall Day Acoustics (dated 1 October 2015) to the satisfaction of the Responsible Authority. No alterations to the report or correspondence may occur without the written consent of the Responsible Authority.
2. **Before the use approved under planning permit amendment PL04/1136.05 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 report prepared by Marshall Day Acoustics and dated 7 August 2017, but modified to include (or show, or address):**
  - (a) **Comments in relation to the approved development at 45 Wangaratta Street, as detailed in the correspondence from Marshall Day Acoustics dated 19 June 2018.**
3. **The provisions, recommendations and requirements of the endorsed acoustic report required by condition 2 of this planning permit must be implemented and complied with to the satisfaction of the Responsible Authority.**
4. All use and development must accord with the endorsed plans. Any alterations must be approved in writing by the Responsible Authority.
5. The layout of the use and development on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
6. Except with written the consent of the Responsible Authority, the use may only operate:
  - (a) Between 10am and 1am Sunday;
  - (b) Between 12 noon and 3am the following morning, Good Friday and Anzac Day;
  - (c) Between 7am and 3am the following morning, on any other day (including mornings of Good Friday and Anzac Day).
7. Notwithstanding the operating hours permitted in condition 4, trading must cease at **1:00am** on the first floor beer garden and dining room on any day.
8. No more than 950 patrons are permitted on the premises until **1:30am the following day** on Friday and Saturday nights and the eve of public holidays, except with the written consent of the Responsible Authority. After **1:30am**, no more than 750 patrons are permitted on the premises seven days a week (not including the first floor beer garden/dining room).
9. Notwithstanding the patron numbers allowed in condition 6, no more than 400 patrons are permitted in the first floor beer garden and dining room at any time.

10. **Before the amended use approved under planning permit amendment PL04/1136.05 commences, an amended noise and amenity action plan (NAAP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the plan will be endorsed and will then form part of this permit. The amended noise and amenity action plan must be generally in accordance with the NAAP submitted dated January 2018, but modified to include or show:**
  - (a) **Snacks must be available to patrons in the external first floor areas at all times that alcohol is able to be consumed.**
  - (b) **Measures to inform patrons that food is available up until the conclusion of trade, the food offerings that are available to patrons, including snacks in the external areas and the method of ordering.**
  - (c) **A floor plan clearly showing the first floor internal dining areas as mentioned in the noise and amenity action plan for the serving of food offerings (other than snacks). This must include all areas on the first floor noted as 'dining' or 'dining room' as shown on the endorsed plans.**
  - (d) **Security staff to carry and utilise flash lights as a deterrent, should it become apparent that patrons are loitering in the immediate vicinity of the venue.**
  - (e) **Security staff on patrol will wear hi-visibility vests or similar so they are noticeable from a distance.**
  - (f) **A commitment to hourly patrols on Friday and Saturday nights and on Public Holidays eves between 7pm and close, and as required all other times.**
11. The use must be managed in accordance with the endorsed Noise and Amenity Action Plan at all times to the satisfaction of the Responsible Authority.
12. No music may be played outside the building, and no speakers may be sited outside the building other than background music, which may be played in the beer garden and dining room, except with written the consent of the Responsible Authority. No live music or amplified DJ's may be played in the beer garden and dining room.
13. Patrons must be advised to take account the needs of local residents for peace and quiet after 10pm on any day, by displaying a prominent notice at the main exit point(s) with words to the effect of "Please respect our neighbours and leave the area quietly", to the satisfaction of the Responsible Authority.
14. Doors and windows must not be allowed to remain open while music is being played within the building, with the exception of the front door of the premises and the ground floor disabled access entrance on the eastern elevation that may be opened as required to allow patrons to enter and leave the building.
15. The use must not be detrimental to the amenity of the neighbourhood including through noise emission or in any other way, to the satisfaction of the Responsible Authority.
16. Noise levels from the premises must not exceed those required to be met under:
  - (d) the State Environment Protection Policy (Control of Noise Industrial, Commercial and Trade), No. N-1; and
  - (e) the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.
17. No bottles, cans or other drink containers may be emptied into garbage bins or recycling crates after 10pm on any night or before 7am on any day.
18. Deliveries to and from the site including waste collection may only take place between 7am and 10pm on any day.

19. During operating hours, a person above the age of 18 years must be present on the site who has been authorised by the occupier of the land to be responsible for the good conduct of patrons arriving, using or leaving the site (for the purposes of this permit, this person is known as "the Manager").
20. The Manager must ensure that no disturbance occurs on, or emanates from the site, which would be likely to cause a nuisance to the adjoining occupiers or be detrimental to the amenity of the neighbourhood, to the satisfaction of the Responsible Authority.
21. During all hours (whether or not liquor is served) in which the business is open to the public, entry must be made freely available to a member of the Victoria Police, an "authorised officer" of the Responsible Authority or an officer of Liquor Licensing Victoria for the carrying out of any investigations associated with the sale or consumption of alcohol on the site.
22. The Manager must at all times be authorised by the occupier of the premises to make statements on their behalf to a member of the Victoria Police, an "authorised officer" of the Responsible Authority or an officer of Liquor Licensing Victoria regarding the conduct of the premises for the activity allowed under this permit.
23. This permit will expire if the use is not commenced within two years from the amended date of this permit. All development must be completed prior to the commencement of the use. The Responsible Authority may approve an extension to these time limits if a request is made within 3 months of expiry.

NOTE: These premises are required to comply with the *Food Act 1984*. No fit-out is to commence until plans have been approved by Council's Public Health Unit. Please contact the Public Health Unit on 9205 5777.

NOTE: These premises are required to comply with the *Health Act 1958*. No fit-out is to commence until plans have been approved by Council's Public Health Unit. Please contact the Public Health Unit on 9205 5777.

NOTE: The site is subject to a Heritage Overlay pursuant to the Yarra Planning Scheme. Unless hereby approved, a planning permit is required for any demolition, re-painting or other external alterations, sandblasting, exterior works (including the installation of external air conditioning units, solar panels, and any other heating/cooling units) to an existing building or buildings, construction of a building or fence, changes to the natural topography of the land or the subdivision or consolidation of land.

**THIS PERMIT HAS BEEN AMENDED AS FOLLOWS:**

Date of amendment	Brief description of amendment
<b>1 July 2016</b>	Pursuant to section 74 of the <i>Planning and Environment Act (1987)</i> the planning permit and plans have been amended to show:  Permit: <ul style="list-style-type: none"> <li>• Delete the existing condition 1 and replace it with a new condition 1.</li> <li>• Amend condition 12 to include reference to the ground floor disabled entrance on the eastern elevation.</li> </ul> Plans: <ul style="list-style-type: none"> <li>• Superseding the previously endorsed plans (numbered 1-2 of 2) and endorsed on 15 July 2013.</li> </ul> Endorse the amended plans (sheets 1-2 of 2).

<p><b>15 July 2017</b></p>	<p>Pursuant to section 74 of the <i>Planning and Environment Act (1987)</i> the planning permit has been amended to:</p> <p>Permit:</p> <ul style="list-style-type: none"> <li>• Amend conditions 4 (operating hours), 6 (patron numbers) and 10 (no outside music) to include the wording <i>'except with written the consent of the Responsible Authority'</i>.</li> <li>• Amend condition 6 to delete reference to <i>'these 200 extra patrons are not allowed into the premises until after the works shown on the endorsed plans are completed to the satisfaction of the Responsible Authority'</i> as the works have already been completed.</li> </ul>
<p><b>(date amended permit issued)</b></p>	<p>Pursuant to section 74 of the <i>Planning and Environment Act (1987)</i> the planning permit has been amended to:</p> <ul style="list-style-type: none"> <li>• Amend condition 5 of the planning permit (which currently reads <i>'notwithstanding the operating hours permitted in condition 4, trading must cease at 11:30pm on the first floor beer garden and dining room on any day'</i>) to allow extended trading hours on the first floor beer garden and dining room between 11:30pm and 1:00am, seven days a week.</li> <li>• Amend condition 6 of the planning permit (which currently reads <i>'no more than 950 patrons are permitted on the premises until 12.00 midnight on Friday and Saturday nights and the eve of public holidays, except with the written consent of the Responsible Authority. After midnight, no more than 750 patrons are permitted on the premises seven days a week (not including the first floor beer garden/dining room'</i>) to allow extended hours during which the maximum limit of 950 patrons is allowed on the premises from 12:00 (midnight) to 1:30am on Friday, Saturday and the eve of public holidays, reverting back to 750 patrons until 3:00am.</li> </ul>

**CONTACT OFFICER:**     **Nikolas Muhllechner**  
**TITLE:**                    **Principal Planner**  
**TEL:**                       **9205 5456**

**Attachments**

- 1 PL04/1136.05 - 57-61 Swan Street Richmond - Subject Land Map
- 2 PL04/1136.05 - 57-61 Swan Street Richmond - Social policy referral comments from Public Place
- 3 PL04/1136.05 - 57-61 Swan Street Richmond - Acoustic Referral Comments from SLR Consulting Australia
- 4 PL04/1136.05 - 57-61 Swan Street Richmond - Further Acoustic Referral Comments from SLR Consulting
- 5 PL04/1136.05 - 57-61 Swan Street Richmond - Referral Comments from Council's Engineering Services Unit
- 6 PL04 1136 - 57 - 61 Swan Street Richmond - Endorsed plans (scanned) 1
- 7 PL04/1136.05 - 57-61 Swan Street Richmond - Noise and Amenity Action Plan

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**1.2 45 Wangaratta Street, Richmond VIC 3121 - Planning permit application number PLN15/1260.01 - Section 72 Amendment to change approved dwelling use to offices with associated built form changes and condition changes and a reduction in the car parking requirements.**

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### **Executive Summary**

#### **Purpose**

1. This report provides an assessment of the proposed amendment to change the use of an approved 7 storey building containing dwellings, offices and a food and drinks premises (café) at No. 45 Wangaratta Street, Richmond.

#### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) clause 15.01 – Urban Environment;
  - (b) clause 21.05 – Built Form;
  - (c) clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay;
  - (d) clause 22.05 – Interface Uses Policy;
  - (e) clause 32.04 – Mixed Use Zone; and
  - (f) clause 52.06 – Car Parking.

#### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) policy and strategic support;
  - (b) built form;
  - (c) on-site amenity;
  - (d) off-site amenity;
  - (e) car parking, traffic, waste management; and
  - (f) objector concerns.

#### **Objector Concerns**

4. A total of 12 objections were received to the application which can be summarised as:
  - (a) The approved height of the building should be reduced;
  - (b) Office use will increase activity on-site including increased car parking demand and increased waste collection;
  - (c) Concern with new design of north and south elevation;
  - (d) Preference the ground floor is used as a convenience shop;
  - (e) The height and bulk of the building are not in keeping with the character of the area;
  - (f) Construction issues; and
  - (g) Negative off-site amenity impacts including overshadowing (public and private realms), visual bulk, noise and overlooking.

#### **Conclusion**

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported.

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**1.2 45 Wangaratta Street, Richmond VIC 3121 - Planning permit application number PLN15/1260.01 - Section 72 Amendment to change approved dwelling use to offices with associated built form changes and condition changes and a reduction in the car parking requirements.**

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Trim Record Number: D18/92073

Responsible Officer: Senior Coordinator Statutory Planning

**Proposal:** Amendment to the use of an approved 7 storey building to office with associated car parking reduction and with changes building setbacks and permit conditions

**Existing use:** Two storey factory/warehouse

**Applicant:** Wangaratta Street P/L

**Zoning / Overlays:** Mixed Use Zone  
Heritage Overlay, Schedule 332  
Environmental Audit Overlay

**Date of Application:** 21 December 2017

**Application Number:** PLN15/1260.01

**Planning History**

1. Planning permit PLN15/1260 was lodged in December 2015 for demolition and construction of a 9 storey building containing dwellings, reduction in the car parking requirement associated with dwellings, food and drinks premises (cafe) and office and waiver of the loading bay requirement. The application was advertised with 52 objections to the application received. Following consideration of advice from Council including external urban design comments, the applicant provided 'sketch plans' showing, among other things, a reduced height from 9 to 7 storeys and an increased front setback from 0.9m to 3m from Wangaratta Street.
2. Council formed a position on the application at its IDAC meeting 24 August 2016. On 24 August 2016, Council determined the application and resolved to issue a Notice of Decision to grant a planning permit subject to conditions. Significantly, the decision required the following changes to reflect the changes shown on the submitted sketch plans:
  - (a) deletion of Levels 7 and 8 as well as unit 6.01 at level 6 ; and
  - (b) levels 3 and above setback at least 3m from the western boundary of the site, except for the balcony balustrade at level 3.
3. An application for review was lodged at the Victorian Civil and Administrative (VCAT) by two objectors to review the Yarra City Council's decision to grant a permit under section 82 of the *Planning and Environment Act 1987 [the Act]*. Wangaratta Street Pty Ltd / Permit Applicant lodged a review against the conditions requiring a reduction in building height under section 80 of the *Act*.
4. On 10 March 2017, Council received notice of the Permit Applicant's intention to amend the application and rely on amended plans at the hearing. The amended plans included the following key changes:
  - (a) reduction in height from 9 storeys to 8 storeys;
  - (b) street wall height to Wangaratta St raised from 3 storeys to 4 storeys; and
  - (c) levels 04, 05 and 06 setback 3m from the Wangaratta St frontage and level 7 setback 4.7m with associated internal changes.



5. The Tribunal determined the application on the 31 May 2017 and supported a 7 storey building at the site, Shaw and Wangaratta Street Pty Ltd V Yarra CC (Corrected) [2017] VCAT 758 The Tribunal stated:

*[31] Although not agreeing with Mr Shaw's suggestion for a 5 or 6 storey building, I do support Council's condition that the building be reduced in height to 7 storey....*

*[33] Determining what might be acceptable massing or composition of a building does not mean adopting a rigid approach, such as 1:1 street width to building height ratio, but is instead a more subjective assessment of how a building 'fits in' to the site context. It is my assessment that a building of 7 storeys does fit into the site context and there is no necessity to lower it further to 6, or even 5 storeys.*

6. Accordingly the Tribunal required that level 6 be deleted and that the recessed level 7 become level 6. They also required a three storey street wall, reduced from the proposed four storeys.

## **Background**

7. The amendment application was lodged on 20 December 2017 and further information subsequently requested the 11 January 2018. The information was received on 16 February 2018 and the application was then advertised with twelve objections being received. A consultation meeting was held on 15 May 2018. The Permit Applicant, Objectors and Planning Officers attended the meeting.
8. Council received notification on 4 June 2018 from the Victorian Civil and Administrative Tribunal that an application had been lodged against Council's failure to grant a permit within the prescribed time under Section 79 of the *Planning and Environment Act 1987*. To date, two objectors (who are representing others) have joined as parties to the appeals. A Practice day hearing occurred on the 6 July 2018. A compulsory conference date has been set for 28 August 2018, with the hearing on 29 October 2018.
9. Amendment VC142 was introduced into the Scheme on 16 January 2018. This amendment includes a wide range of reforms across the VPP that generally remove permit triggers, expand permit exemptions for land uses and buildings and works, remove superfluous and outdated provisions, update references, improve and update definitions, clarify common points of confusion and improve the usability of the VPP. This amendment included the deletion of clause 52.07 (*Loading and Unloading of vehicles*).

## **Existing Conditions**

### Subject Site

10. The original IDAC report, site and surrounding land description (report dated 24 August 2016) remains relevant as follows (italics):
11. *The subject site is located on the east side of Wangaratta Street 60m north of Swan Street in Richmond. The land is rectangular in shape with a frontage (width) of 10.1m and length of 36.25m, giving an area of 366sqm. It is occupied by a one-two storey brick building built to the front and side boundaries, but setback from the rear boundary by 9m.*
12. *The setback provides a car parking area accessed from Botherambo Street. The land contains no vegetation or permeable surfaces and is generally flat. The front of the building has a central crossover to a roller-door.*

### Surrounding Land

#### *Immediate surrounds*

13. *To the north of the site is a two storey brown brick office/warehouse building setback from the street to provide car parking. Further north is a three storey brown brick building with undercroft car parking. These buildings are constructed to all boundaries (save for car parking areas) and are commercial in nature.*
14. *To the south of the site is two storey commercial building built to all boundaries. Further south is a car park associated with the Corner Hotel which itself is located at the corner of Swan, Botherambo and Stewart Streets.*
15. *To the east is Botherambo Street, a one-way (northbound) local road with parallel parking on the western side. On the east side of the street are dwellings generally fronting Lennox Street.*
16. *To the west is a triangular Council 'pocket park' located between Stewart and Wangaratta Streets and a car parking area on its northern side. The park contains seating as well as a number of small and medium sized trees. Further north-west is a mixed use commercial and residential area between Stewart Street and Tanner Street which contains a number of converted factory buildings up to 7-8 storeys in height. The built form is hard edged with 2-4 story street walls, face brick exteriors and a decidedly industrial feel.*
17. *Stewart Street runs east-west from Punt Road/Hoddle Street and provides access to the Richmond Train Station. The elevated railway reserve is also located south-west of the site with a two storey equivalent concrete wall and some tree and shrub planting.*

#### *Wider area*

18. *The site sits north of Swan Street, an Activity Centre containing a wide range of retail, entertainment, dining and service offerings. To the south of Swan Street is the Cremorne area containing an emerging employment centre focussed primarily on offices but containing a number of light industrial/warehouse uses. The MCG, AMMI Park and Rod Laver Arena, sports and entertainment precinct is located on the west side of Hoddle Street, with the Melbourne CBD 2km north-west.*
19. *The Bridge Road and Church Street Activity Centres/retail precincts are also located to the north (700m) and east (450m) respectively. Both these and Swan Street contain tram lines, with other public transport options including Richmond Train Station and busses on Hoddle Street.*
20. *The area east/north east is characterised by 1-2 storey detached and semi-detached dwellings being in the Heritage Overlay and subject to the Neighbourhood Residential Zone (8m height limit). The Mixed Use zoned area to the west/north west has seen warehouse conversions with additional built form constructed above original buildings, and contains a number of large sites that can be expected to accommodate more intensive development.*

#### **The Proposal**

21. It is proposed to amend the approved 7 storey building from dwellings to offices with associated car parking reduction and with changes building setbacks and permit conditions. Changes to approved built form can be summarised as follows.

#### General

- (a) The original approval allowed for 80sqm food and drinks premises at ground floor (no permit required for use), two offices at first floor (total 277sqm - permit required for use) and 9 dwellings (no permit required for use) over the remaining levels.

The current amendment application proposes 84sqm food and drinks premises at ground floor (no permit required for use) and offices over the remaining levels (total 1,274sqm- permit required for use).

- (b) The proposed hours of operation for the offices are from 7am to 8pm - Monday to Friday.
- (c) The design of the western and eastern façades have been changed to include reduced areas of glazing and increased areas of walls (concrete finished walls pressed with a wooden floor board pattern) and repositioning of balconies. Mirrored windows are proposed to the western and eastern wall, with some external blinds proposed.
- (d) The light wells and windows to the north and south wall have been deleted with new boundary walls proposed in their place. The new southern and eastern walls will match the pressed concrete pattern to the façade, with each floor level demarcated by a horizontal line of unpatterned concrete.
- (e) Stair and lift repositioned to the north side of the building.
- (f) No change to the overall approved height of 24.2m.

#### Basement

- (g) The basement is re-positioned to a central position, with the car stacker relocated to the south side.
- (h) The number of bicycles storage racks is reduced from 18 to 15.
- (i) The number of storage cages is increased from 8 to 9 (and repositioned).
- (j) The cafe store area is repositioned with the fire pump room deleted.

#### Ground floor

- (k) Internal re-arrangement of ground floor with café, lobby, stairs, lift and DDA toilet repositioned.
- (l) The area of the café is proposed to be increased from 80sqm to 84sqm.
- (m) Substation has been deleted.
- (n) A new bike store accommodating 10 bicycles and an additional lift (total of two) is now proposed.
- (o) A storage platform for AC condensers units is proposed above the vehicle turntable.
- (p) The car stacker and pit and associated turntable and garage door are relocated from the north side of the building to the south.

#### Levels 1 and 2

- (q) The approved two offices on floor one have been amalgamated into one office (289sqm). The two dwellings on second floor have been converted into one office, with the west and east-facing dwelling balconies (built to the boundaries) occupied by office floor area.

#### Level 3

- (r) Condition 1 (c) of the current permit requires a 3m setback to Wangaratta Street. The façade achieves this setback, with a new deck setback 1.45m from the boundary.
- (s) The setback to Botherambo Street is reduced, with the façade setback reduced from 6.5m to 3.49m. The terrace setbacks are reduced from 4.7m to 1.45m.
- (t) Two dwellings converted in office (227sqm).

#### Level 4

- (u) The setback to Wangaratta Street is maintained as per the original approval at 3m and the two dwellings converted into office (207sqm). The dwelling balconies are deleted and occupied by office floor space. The balcony to the rear dwelling allowed for a 4.7m setback to Botherambo Street with the dwelling façade setback 6.5m. The office amendment has deleted the terrace with the façade proposed to be setback 5.55m.

### Level 5

- (v) The setback to Wangaratta Street is maintained as per the original approval at 3m and the two dwellings converted into office (172sqm). The dwelling balconies are deleted and occupied by office space. The balcony to the rear dwelling allowed for a 6.3m setback to Botherambo Street with the dwelling façade setback 9.2m. The office amendment has deleted the terrace with the façade proposed to be setback 9.25m.

### Level 6

- (w) As part of the original approval, condition 1(b) required deletion of level 6 and level 7 to drop down to become level 6. Level 6 (formerly level 7) proposed a façade setback of 4.7m to Wangaratta Street with a front terrace setback 3m. The amended plans show the façade setback 4.68m to Wangaratta Street, with a 0.3m wide terrace.
- (x) As part of the original approval, level 6 (formerly level 7) show the façade setback 18.88m to Botherambo Street with a plant area located on the roof below (setback approx 2m from Botherambo Street). The amended plans show the façade setback 18.14m to Botherambo Street, with a terrace (setback approx. 0.7m to the north and south boundary and approx. 10.25m to Botherambo Street).

### Roof

- (y) The solar system on the roof has been increased from a 4 KW system to a 5.4KW system. The plant equipment area has been located to the south of the solar panels (previously on roof of level below).

### Permit changes

- (z) It is proposed to update the permit preamble and conditions 1, 5 and 6 (acoustic) and 17 (lighting) to reference the office use and remove references to dwellings. The permit preamble will be updated to delete reference to the loading bay (no longer a permit trigger). It is proposed to delete condition 8(b) relating to residential waste collection and condition 18 relating to screening between balconies of dwellings.

### **Legislative provisions**

- 22. The amendment has been requested pursuant to Section 72 of the *Planning and Environment Act 1987* [the Act].
- 23. Section 72 of the Act states:
  - (1) *A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*
  - (2) *This section does not apply to—*
    - (a) *a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or*
    - (b) *a permit issued under Division 6.*
- 24. The original permit PLN15/1260 issued on 31 May 2017 at the direction of the Tribunal. The permit was not issued under Division 6 of the Act. Section 73 of the Act states that Sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit. Accordingly, the relevant sections will be addressed in this report.

### **Planning Scheme Provisions**

#### Zoning

*Mixed Use Zone (MUZ)*

25. The purpose of this zone is:
- (a) *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
  - (b) *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*
  - (c) *To encourage development that responds to the existing or preferred neighbourhood character of the area.*
26. The use of the site for an office requires a planning permit under clause 32.04-2 because the total leasable floor area exceeds 250sqm.
27. The use of the site for a food and drinks premises does not require a permit because the total leasable floor area does not exceed 150sqm.
28. Pursuant to clause 32.04-8 a permit is required to construct a building or construct or carry out works for a use in section 2 of Clause 32.04-2.

Overlays

*Heritage Overlay (HO332 – Richmond Hill Precinct, Richmond – south sub-precinct)*

29. Under clause 43.01-1 of the Scheme, a planning permit is required to demolish or remove a building, construct a building or construct or carry out works.

*Environmental Audit Overlay*

30. Pursuant to Clause 45.03-1 of the Scheme, the following requirements apply:

*Before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:*

- (a) *A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or*
- (b) *An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.*

31. The use of the site for offices and food and drinks premises are not sensitive uses and so the requirements of this overlay are not relevant to the amendment application.

Particular Provisions

*Clause 52.06 – Car parking*

32. Pursuant to Clause 52.06-5 of the Scheme, the following car parking requirements apply to the development:

Land Use	Units/Area proposed	Rate	No. required	No. proposed	Reduction sought
Cafe	84sqm	4 spaces to each 100m <sup>2</sup> of leasable floor area	3	0	3
Office	1,274sqm	3.5 spaces per 100sqm of net floor area	44	12	32
<b>Total</b>			<b>47</b>	<b>12</b>	<b>35 spaces</b>

33. Pursuant to Clause 52.06-3 of the Scheme, a permit is required to reduce (including to zero) the number of car parking spaces required under Clause 52.06-6.

*Clause 52.34 – Bicycle facilities*

34. Clause 52.34-2 states that a permit may be granted to vary, reduce or waive any requirement of Clause 52.34-3 and Clause 52.34-4. The required bicycle facilities as set out at Clause 52.34-3 are:

Land Use	Units/Area proposed	Rate	No. required	No. proposed	Reduction sought
Cafe	84m <sup>2</sup>	Employee - 1 to each 600m <sup>2</sup> of leasable floor area if the leasable floor area exceeds 1000m <sup>2</sup>	0		
		Shopper - 1 to each 500 m <sup>2</sup> of leasable floor area if the leasable floor area exceeds 1000m <sup>2</sup>	0		
Office	1,274m <sup>2</sup>	1 employee space to each 300sqm of net floor area if the net floor area exceeds 1000sqm and one visitor space to each 1000sqm of net floor area if the net floor area exceeds 1000sqm.	5		
<b>Total</b>			<b>5</b>	<b>25</b>	<b>0 spaces</b>

35. The proposal provides in excess of the Yarra Planning Scheme requirements.

General Provisions

*Clause 65 – Decision Guidelines*

36. Clause 65 is relevant to all applications and requires, amongst other things, consideration be given to:

- (a) *The matters set out in Section 60 of the Act.*
- (b) *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- (c) *The purpose of the zone, overlay or other provision.*
- (d) *Any matter required to be considered in the zone, overlay or other provision.*
- (e) *The orderly planning of the area.*
- (f) *The effect on the amenity of the area.*
- (g) *The proximity of the land to any public land.*

State Planning Policy Framework (SPPF)

37. The following SPPF provisions of the Scheme are relevant:

*Clause 11 – Settlement*

38. This clause contains the following relevant objectives:

- (a) *Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.*
- (b) *Planning is to recognize the need for, and as far as practicable contribute towards:*
  - (a) *Economic viability*
  - (b) *A high standard of urban design and amenity.*
  - (c) *Energy efficiency.*
  - (d) *Accessibility*
  - (e) *Land use and transport integration*
- (c) *Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.*

*Clause 11.02 – Urban growth*

39. The objective of this clause is:

- (a) *To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.*

40. Relevant strategies include:

- (a) *Planning for urban growth should consider:*
- (b) *Opportunities for the consolidation, redevelopment and intensification of existing urban areas.*
- (c) *Neighbourhood character and landscape considerations.*

*Clause 15 – Built Environment and Heritage*

*Clause 15.01-1 – Urban design*

41. The objective of this clause is:

- (a) *To create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.*

*Clause 15.01-2 – Urban Design Principles*

42. The objective of this clause is:

- (a) *To achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.*

*Clause 15.01-4 – Design for safety*

43. The objective of this clause is:

- (a) *To improve community safety and encourage neighbourhood design that makes people feel safe.*

*Clause 15.01-5 – Cultural identity and neighbourhood character*

44. The objective of this clause is:

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

*Clause 15.02 – Sustainable Development*

*Clause 15.02-1 – Energy and resource efficiency*

45. The objective of this clause is:

- (a) *To encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions.*

*Clause 15.03 – Heritage*

*Clause 15.03-1 – Heritage conservation*

46. The objective of the clause is:

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

47. Relevant strategies include:

- (a) *provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance, or otherwise of special cultural value;*  
(b) *encourage appropriate development that respects places with identified heritage values and creates a worthy legacy for future generations; and*  
(c) *ensure an appropriate setting and context for heritage places is maintained or enhanced.*

*Clause 17 – Economic development*

48. The objective of the clause is:

- (a) *Planning is to contribute to the economic well-being of communities and the State as a whole by supporting and fostering economic growth and development by providing land, facilitating decisions, and resolving land use conflicts, so that each district may build on its strengths and achieve its economic potential.*

*Clause 17.01-1 – Business*

49. The objective of this clause is:

- (a) *To encourage development which meet 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.*

*Clause 18 – Transport*

*Clause 18.01-1 – Land use and transport planning*

50. The objective of this clause is:

- (a) *To create a safe and sustainable transport system by integrating land-use and transport.*



51. A relevant strategy is:

- (a) *Plan urban development to make jobs and community services more accessible by:*
  - (a) *Ensuring access is provided to developments in accordance with forecast demand, taking advantage of all available modes of transport and to minimise adverse impacts on existing transport networks and the amenity of surrounding areas.*
  - (b) *Connecting activity centres, job rich areas and outer suburban areas through the Principal Public Transport Network.*

*Clause 18.02-1 – Sustainable personal transport*

52. The objective of this clause is:

- (a) *To promote the use of sustainable personal transport.*

*Clause 18.02-2 – Cycling*

53. It is an objective:

- (a) *To integrate planning for cycling with land use and development planning and encourage as alternative modes of travel.*

*Clause 18.02-5 – Car parking*

54. The objective is:

- (a) *To ensure an adequate supply of car parking that is appropriately designed and located.*
- (b) *Protect the amenity of residential precincts from the effects of road congestion created by on-street parking.*

#### Local Planning Policy Framework (LPPF)

*Municipal Strategic Statement [MSS]*

*Clause 21.04-3 Industry, office and commercial*

55. Relevant objectives include:

- (a) *Objective 8 To increase the number and diversity of local employment opportunities.*

*Clause 21.05-1 - Heritage*

56. Relevant objectives include:

- (a) *Objective 14 To protect and enhance Yarra's heritage places.*
  - (a) *Strategy 14.3 Protect the heritage skyline of heritage precincts;*
  - (b) *Strategy 14.4 Protect the subdivision pattern within heritage places;*
  - (c) *Strategy 14.5 Protect the significant landscape and heritage within streets, parks, gardens, waterways or other open spaces;*
  - (d) *Strategy 14.6 Protect buildings, streetscapes and precincts of heritage significance from the visual intrusion of built form both within places and from adjoining areas; and*
  - (e) *Strategy 14.8 Apply the Development Guidelines for sites subject to a Heritage Overlay policy at clause 22.02.*

*Clause 21.05-2 – Urban design*

57. The relevant objectives and strategies of this clause are:
- (a) *Objective 16 To reinforce the existing urban framework of Yarra.*
  - (b) *Objective 17 To retain Yarra's identity as a low-rise urban form with pockets of higher development.*
    - (a) *Strategy 17.2 Development on strategic redevelopment sites or within activity centres should generally be no more than 5-6 storeys unless it can be demonstrated that the proposal can achieve specific benefits such as:*
      - *Significant upper level setbacks*
      - *Architectural design excellence*
      - *Best practice environmental sustainability objectives in design and construction*
      - *High quality restoration and adaptive re-use of heritage buildings*
      - *Positive contribution to the enhancement of the public domain*
      - *Provision of affordable housing.*
  - (c) *Objective 18 To retain, enhance and extend Yarra's fine grain street pattern.*
  - (d) *Objective 20 To ensure that new development contributes positively to Yarra's urban fabric.*
  - (e) *Objective 22 To encourage the provision of universal access in new development.*

*Clause 21.05-4 – Public environment*

58. The relevant objective and strategies of this clause are:
- (a) *Objective 28 To provide a public environment that encourages community interaction and activity:*
    - (a) *Strategy 28.1 Encourage universal access to all new public spaces and buildings.*
    - (b) *Strategy 28.2 Ensure that buildings have a human scale at street level.*
    - (c) *Strategy 28.3 Require buildings and public spaces to provide a safe and attractive public environment.*
    - (d) *Strategy 28.5 Require new development to make a clear distinction between public and private spaces.*
    - (e) *Strategy 28.9 Apply the Public Open Space Contribution policy at clause 22.12.*

*Clause 21.06-1 – Walking and cycling*

59. The relevant objective and strategies of this clause are:
- (a) *Objective 30 To provide safe and convenient pedestrian and bicycle environments.*
    - (a) *Strategy 30.1 Improve pedestrian and cycling links in association with new development where possible.*
    - (b) *Strategy 30.2 Minimise vehicle crossovers on street frontages.*
    - (c) *Strategy 30.3 Use rear laneway access to reduce vehicle crossovers.*

*Clause 21.06-2 – Public transport*

60. The relevant objective and strategies of this clause are:
- (a) *Objective 31 To facilitate public transport usage.*
    - (a) *Strategy 31.1 Require new development that generates high numbers of trips to be easily accessible by public transport.*

*Clause 21.06-3 – The road system and parking*

61. The relevant objective and strategies of this clause are:
- (a) *Objective 32 To reduce the reliance on the private motor car.*
    - (a) *Strategy 32.1 Provide efficient shared parking facilities in activity centres.*
    - (b) *Strategy 32.2 Require all new large developments to prepare and implement integrated transport plans to reduce the use of private cars and to encourage walking, cycling and public transport.*

- (b) *Objective 33 To reduce the impact of traffic.*
  - (a) *Strategy 33.1 Ensure access arrangements maintain the safety and efficiency of the arterial and local road networks.*

*Clause 21.07-1 – Ecologically sustainable development*

- 62. The relevant objective of this clause is:
  - (a) *Objective 34 To promote ecologically sustainable development.*

*Clause 21.08-10 – Central Richmond (area between Bridge Road and Swan Street)*

- 63. The following relevant commentary is offered at this clause:
  - (a) *The land use character of this neighbourhood is predominantly residential, with the area closest to Punt Road comprising early to mid-Victorian cottages and terraces, and an increasing amount of Edwardian dwellings towards the east of the neighbourhood.*
- 64. The built form map at figure 24 identifies the site as being in the Heritage Overlay with the description, *to ensure that development does not adversely affect the significance of the heritage place.*

Relevant Local Policies

*Clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay*

- 65. The relevant objectives of this clause are:
  - (a) *to conserve Yarra's natural and cultural heritage;*
  - (b) *to conserve the historic fabric and maintain the integrity of places of cultural heritage significance;*
  - (c) *to retain significant view lines to, and vistas of, heritage places;*
  - (d) *to preserve the scale and pattern of streetscapes in heritage places; and*
  - (e) *to ensure that additions and new works to a heritage place respect the significance of the place.*
- 66. The following clauses have been considered in relation to the original approval:
  - (a) Clause 22.02-5.1 Demolition (Full demolition or Removal of a Building);
  - (b) Clause 22.02-5.7 (New Development, Alterations or Additions);
  - (c) Clause 22.02-5.7.2 Specific Requirements (where there is a conflict or inconsistency between the general and specific requirements, the specific requirements prevail).
- 67. Pursuant to the incorporated document 'City of Yarra Review of Heritage Overlay Areas 2007, Graeme Butler and Associates 2007: Appendix 8 (revised Sept 2015) City of Yarra Heritage Database' the site is nominated as "not contributory" within the Precinct.

*Clause 22.03 – Landmarks and Tall Structures*

- 68. This policy applies to all development. Whilst the site is not within close proximity to an identified sign or landmark within the policy, the following is relevant: *Ensure the profile and silhouette of new tall structures adds to the interest of Yarra's urban form and skyline.*

*Clause 22.05 – Interface Uses Policy*

- 69. The objectives of this policy are:
  - (a) *There is also a need to ensure that commercial and industrial activities are well managed having regard to their proximity to residential uses.*

- (b) *New non-residential use and development within Business and Mixed Use and Industrial Zones are designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.*

70. Clause 22.05-4.2 includes the following relevant guidelines:

(a) *Non-Residential Development Near Residential Properties*

- (a) *Minimise the potential for unreasonable overlooking of private open space areas and into habitable room windows of adjoining residential properties, through the use of appropriate siting, setbacks, articulation and possibly screens.*
- (b) *Where private open space and/or windows to adjoining residential properties are unreasonably affected, appropriate set backs from boundaries are to be provided to address loss of daylight, overshadowing and visual bulk impacts.*

*Clause 22.16 – Stormwater Management (Water sensitive urban design)*

71. This policy applies to applications for more than 50m<sup>2</sup> extensions to existing buildings (amongst others).

*Clause 22.17 – Environmentally Sustainable Development*

72. The overarching objective is that development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation. This policy outlines objectives relating to energy performance, water resources, indoor environment quality, stormwater management, transport, waste management and urban ecology.

Other Documents

*Swan Street Structure Plan*

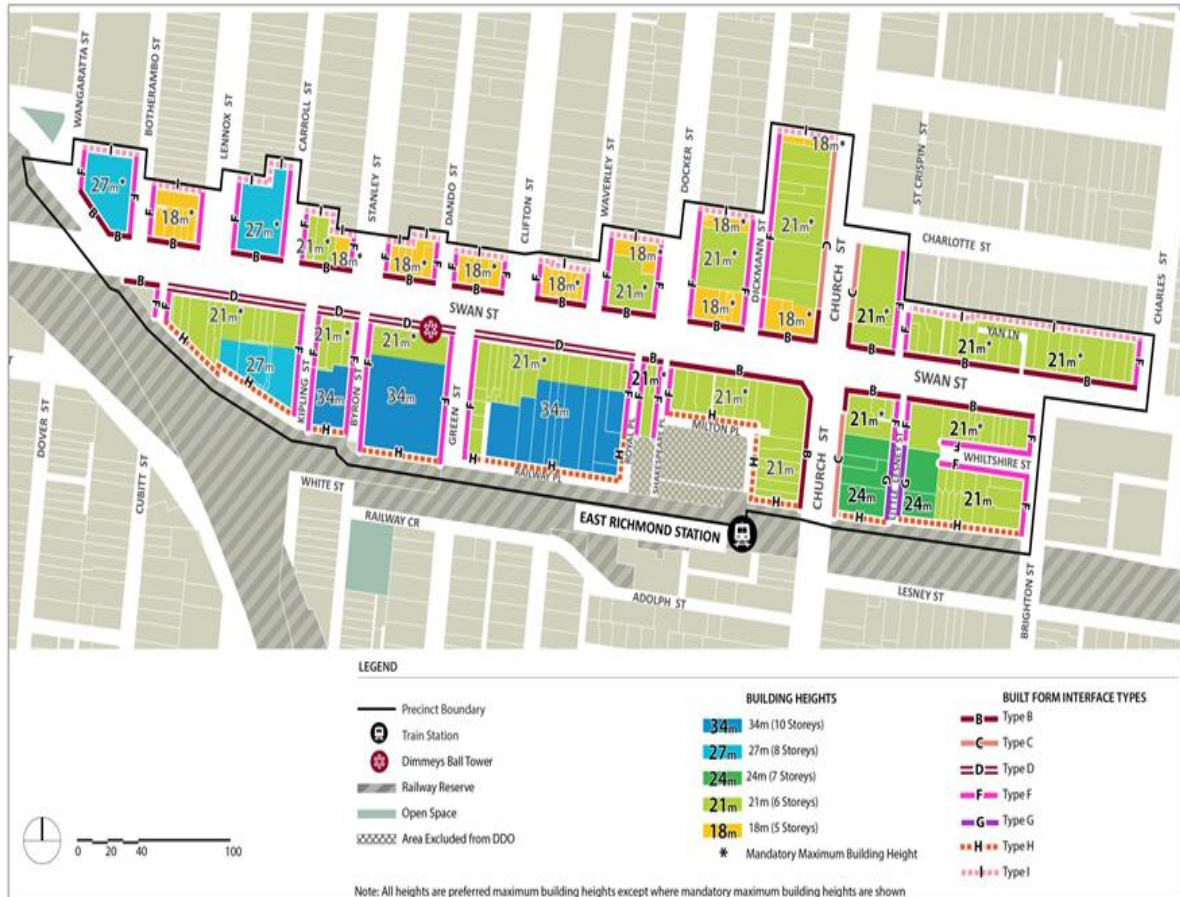
73. Council adopted the Swan Street Structure Plan (Structure Plan) at its Council meeting in December 2013. The site falls within the 'Cremorne Mixed Use' precinct. At this stage, the Structure Plan does not form part of the Scheme.

*Plan Melbourne*

- 74. The plan outlines the vision for Melbourne's growth to the year 2050. It seeks to define what kind of city Melbourne will be and identifies the infrastructure, services and major projects which need to be put in place to underpin the city's growth. It is a blueprint for Melbourne's future prosperity, liveability and sustainability.
- 75. The Richmond- Swan Street area is identified as a Major Activity Centre. The Flinders Station to Richmond Station Corridor is also identified as a Major urban renewal precinct the report stipulating *Major urban renewal precincts will play an important role in accommodating future housing and employment growth and making better use of existing infrastructure.*
- 76. Focusing on these areas, planning for their development as industrial and commercial precincts, targeting infrastructure investment in these locations and ensuring they are linked to transport networks will help maximise the city's productivity.

Draft Swan Street Design and Development Overlay – Schedule 17

77. Amendment C191 is being prepared by Council with the view to managing the scale and form of new buildings on and around Swan Street through the introduction of a Design and Development Overlay (DDO) which will guide the height and setbacks of new development so that their height scale and form responds to the heritage character of Swan Street and adjoining low scale residential area.
78. The amendment was considered by Council at its meeting on 17 October 2017. Council resolved to seek authorisation from the Minister for Planning to put the amendment on public exhibition and to seek interim controls. The Minister has not yet provided this authorisation. The subject site falls just outside of Precinct 2 (Swan Street Retail Centre) with the overlay supporting a 27m height limit 15m south of the subject site (corner of Swan Street and Wangaratta Street).



## Advertising

79. The application was advertised in March and June 2018 pursuant to Section 52 of the *Planning and Environment Act 1987* (the Act), by way of 335 letters sent to adjoining and neighbouring owners and occupiers and notices displayed on site, at the Wangaratta Street and Botherambo Street frontages.
80. A total of twelve (12) objections were made to Council, the grounds of which are summarised as follows:
- The approved height of the building should be reduced;
  - Office use will increase activity on-site including increased car parking demand and increased waste collection;
  - Concern with new design of north and south elevation;
  - Preference the ground floor is used as a convenience shop;
  - The height and bulk of the building are not in keeping with the character of the area;
  - Construction issues; and

- (g) Negative off-site amenity impacts including overshadowing (public and private realms), visual bulk, noise and overlooking.
81. A planning consultation meeting was held on the 15 May 2018 and was attended by the applicant, objectors and Council officers. No resolution of issues were achieved.

## Referrals

### External Referrals

82. The application was not required to be referred to external authorities.

### Internal Referrals

83. The following internal referrals were made:
- (a) Engineering Services Unit – traffic and car parking;
  - (b) Contract Services Unit – waste management; and
  - (c) Environmentally Sustainable Design Advisor.
84. Referral responses are contained in appendices to this report save for Contract Services which is provided below:

#### *Contract Services Unit*

85. *The Waste Management Plan (WMP) from Leigh Design, dated 9 December 2017 is unsatisfactory from the Engineering Operations Branch's perspective. The collections should occur within property boundaries by a private contractor.*
86. Neither Urban Design or heritage comments were sought given urban design and heritage issues were previously considered by the Tribunal and the proposed built form was approved, with limited changes which can be assessed against policy.

## OFFICER ASSESSMENT

87. The primary considerations for this application are:
- (a) Strategic justification;
  - (b) Change of use to office and car parking/traffic;
  - (c) Built form and amenity;
  - (d) Permit changes; and
  - (e) Objector concerns.

### Strategic justification

88. The Mixed Use Zone objectives readily encourage commercial uses and higher built form, subject to individual site constraints. State and Local policies encourage the concentration of development in and around activity centres and intensifying development on sites well connected to public transport. Plan Melbourne identifies the Richmond- Swan Street area as a Major Activity Centre. The Flinders Station to Richmond Station Corridor is also identified as a Major Urban Renewal Precinct with the report stipulating these precincts will play an important role in accommodating future employment growth and making better use of existing infrastructure.
89. The application proposes the construction of a seven storey office building on a site which is currently underutilized in an area identified for increased development under Plan Melbourne. The proposal is highly consistent with the purpose of the zone and strategic intent for this area that seeks to encourage intensification of commercial uses and provision of diverse employment opportunities.

90. The site is well connected to public transport infrastructure being in close proximity to Richmond Train Station and tram services along Swan Street, hence encouraging the use of alternative modes of transport to and from the site rather than reliance on motor vehicles, as per clauses 18.02 (*Movement Networks*); 21.06-3 (*The Road System and Parking*); and 21.03 (*Vision*) of the Scheme.
91. While there may be strong strategic direction for intensified development and car parking reductions within the subject site, the built form policy and direction under clauses 22.05 – *Interface uses* of the Scheme also outline that consideration must be given to the design of the building and its interfaces with the surrounding area. The original application was determined at the Victorian Civil and Administrative Tribunal (*Shaw and Wangaratta Street Pty Ltd V Yarra CC (Corrected) [2017] VCAT 758*) with the order outlining the strategic justification for the 7 storey building. Given there is to be no increase in height, this aspect of the amendment does not need to be further considered (ie there is approval for this height).
92. However balancing heritage, urban design and off-site amenity considerations, the Tribunal determined a 7 storey building was appropriate at the site, as follows:
- [33] It is my assessment that a building of 7 storeys does fit into the site context and that there is no necessity to lower it further to 6, or even 5 storeys.*
93. As outlined above the strategic justification for the approved 7 storey building envelope has been clearly articulated by the Tribunal. For this reason, the following assessment will be limited to the following relevant issues;
- (a) change of use from dwellings to office,
  - (b) changes to the planning permit, preamble and conditions, and
  - (c) changes in built form that expand the building envelope beyond that approved by the Tribunal.

#### Change of use to office and car parking/traffic

##### *Office use and building height*

94. Objectors have argued that the change of use from dwellings to office is justification to require that the height of the building is reduced to five or six storeys. As mentioned previously, the amendment does not seek to increase the height already approved by the Tribunal. Pursuant to section 72 and 73 of the *Planning and Environment Act*, only changes to the approved development can be considered. That is, the height as approved cannot be reconsidered.
95. Officer analysis of the Tribunal decision cannot establish a nexus between the proposed residential components of the development being espoused as the justification for the approval of seven storeys. The decision instead focuses on whether the proposed eight storeys was appropriate when balancing strategic, heritage, urban design and off-site amenity considerations, with the Tribunal ultimately concluding seven storeys is acceptable in this context.
96. This view that taller office buildings are appropriate built form outcomes in this area is further supported by *Cobuild Pty Ltd v Yarra CC [2017] VCAT 817* at No's 9-11 Cremorne Street, Cremorne. This site has a similar location to the subject site, albeit it is located on the opposite side of Richmond Station and 60m south of the intersection of Cremorne Street and Swan Street.

The sites also differs from the subject site which is located in a Mixed Use Zone (MUZ) and is non-contributory to the heritage overlay; whilst No's 9-11 Cremorne Street is located in a Commercial 2 Zone (C2Z), has an individually significantly heritage grading and is approx 70sqm larger than the subject site.

97. No's 9-11 Cremorne Street enjoys the same locational advantages as the subject site, with the Cobuild decision explicitly outlining the strategic importance of these locations:

*[20] The subject land is proximate to, and within the sphere of influence of, Richmond Station which forms part of a designated major urban renewal precinct in Plan Melbourne 2017-2050. Jobs growth is an important theme in Plan Melbourne 2017-2050. It is also instructive that the Municipal Strategic Statement recognises the importance of Cremorne in mixed use and employment terms, the latter being in a metropolitan context as cited above at paragraph 17. It is clear that there are ambitions for Cremorne to make a significant contribution to the achievement of the planning vision.*

98. This decision clearly articulates that the locational advantages of the proximity to Richmond Station make this area ideally located to satisfy the aspirations of Plan Melbourne. In light of the Cobuild decision, it is considered that sufficient parallels can be drawn between the subject site and No's 9-11 Cremorne Street (in particular, lot size and proximity to Richmond Station) to conclude that an office use in a seven storey building can be supported at the subject site.
99. Further to this, the objective of the MUZ encourages uses which '*complement the mixed-use function of the locality*'. This objective encourages commercial uses within pockets of existing commercial activity within the MUZ to minimise conflicts with sensitive uses. Given the site currently has a commercial use, and with Wangaratta Street (to Tanner Street) being used almost exclusively for commercial purposes (apart from some dwellings on south-west intersection with Tanner Street), it is considered the proposed office use is appropriately located within the MUZ.

*Increased activity and car parking*

100. Objectors have also raised concerns the office will increase activity with 120 workers proposed to attend the site daily. However given that the principal pedestrian entry will be from Wangaratta Street, it is considered that pedestrian activity is sufficiently separated from sensitive residential uses. Further the weekday and daytime operation of the site will allow for minimal disturbance in the evening and weekends to the residential areas to the east (with hours of operation from 7am to 8pm - Monday to Friday proposed).
101. In relation to traffic considerations, the previously provided summary of Tribunal Cases and discussion of Plan Melbourne objectives demonstrate that this area has strong strategic justification to support buildings of this scale, along with associated car parking reductions. Given Richmond Station is located only 50m to the south of the site, along with tram services running along Swan Street and bus services on Punt Road, the site is ideally located to take advantage of multiple modes existing public transport infrastructure within the immediate vicinity.
102. Encouraging the use of public transport as well as walking and cycling as modes of transport is central to Council's policy objectives relating to sustainable transport. Forcing developments to provide additional parking, as set out in the Scheme, will not provide any encouragement towards achieving the objectives of sustainable transport that are outlined in clauses 18.02 and 21.06 of the Scheme.
103. The reduced rate of on-site car parking will mean a reduced impact on traffic within the surrounding street network, which is considered a positive outcome in an area that is already experiencing significant traffic and parking congestion. Further Council's traffic engineers also refer to a number of development in the immediate area that have been approved by the Tribunal with similar car parking rates, which further demonstrate the strategic justification for the proposed reduction.



104. Based on surveys carried out at other development, the applicant's Traffic report suggests the level of traffic generated by the proposed development to be in the order of 0.5 vehicles movements per car space in the morning and evening peak. This is considered to not generate unreasonable demand on the existing road network. The findings in the traffic report were reviewed by Council's Engineer who responded favourably. With the above comments in mind, it is considered that the level of traffic which would be associated with the proposed development would be catered for by the existing road networks without unreasonable traffic impacts to the surrounding area.
105. Objectors have raised concerns in relation to vehicles queuing to gain access to the car stackers. The applicant's report details that it takes approximately two minutes to enter the site, complete a 180 degree turn on the turntable and reverse into the stacker. This means the stacker has the capacity to cater for 30 inbound movements per hour. The report stipulates that based on these figures and using conventional queuing theory, there is approximately a 2% chance of queuing in Botherambo Street. This is considered a reasonable outcome that will not detrimentally impact the amenity of the area. Further, Council's traffic engineers have not objected to this arrangement.
106. Objectors have raised concerns that staff and visitors may increase pressure on existing on-street car parking. However the development will not be eligible for on-street staff or visitor parking permits which minimise the impact the development will have on existing on-street car spaces. Further, given the proximity of the site to public transport and two hour on-street car parking restrictions, it is considered unlikely that staff (with no allocated car space) would drive to work as they would be aware of these restrictions.
107. An office use would not typically generate a significant number of visitor trips and so would not place undue strain on available on-street parking. Visitors also have the option to use the public car park located on the opposite side of the train line (Stephenson Street, Cremorne), with four other private car parks available off Swan Street. Further given the proximity of public transport options servicing the site and multiple commercial uses along Swan Street, it is considered likely that a large proportion of visitors will be in the area for more than one purpose and will be short term stays.
108. In conclusion and with the above in mind, the reduction in the car parking requirement being sought is considered appropriate for the following reasons:
  - (a) The subject site has good access to public transport facilities with established tram routes, and is in easy walking distance of many retail outlets, restaurants and cafes and various other facilities and resources;
  - (b) Employee or visitor permits will not be issued for the development, which will encourage employees to use alternative modes of transport which is a welcomed sustainable option in lieu of on-site car parking and consistent with local policy such as Clause 21.06; and
  - (c) A further benefit of not providing all required on-site car spaces is that pressure on traffic and congestion is not exacerbated through the provision of more car spaces.

#### *Bicycle parking*

109. The development would provide 25 bicycle parking spaces (15 in the basement and 10 at ground level). On-site shower facilities are also provided to facilitate staff cycling to the site. The number of bicycles provided exceeds the requirements of the Scheme.

#### Built form and amenity

110. The relevant permit trigger for the buildings and works is the Mixed Use Zone and Heritage Overlay, and the primary considerations for the proposed development are the decision guidelines at clause 34.02-7 (Decision Guidelines).

Furthermore, the urban design assessment for this proposal is guided by State and Local policies at clauses 15.01-2 (Urban design principles); 21.05 (Urban design); 22.05 (Interface uses policy) 22.02 (Design Guidelines for sites subject to the heritage overlay). As discussed earlier, balancing heritage, urban design and off-site amenity considerations, the Tribunal determined a seven storey building was appropriate at the site. In light of this, this assessment will only consider the amenity implications of the changes beyond that already approved by the Tribunal.

#### *Ground to level 2*

111. The basement and ground floor re-arrangement are acceptable as they do not transform the appearance of the building. Further Council's traffic engineers have reviewed the proposed car parking access and layout and have not objected, subject to condition 1h) and j) of the permit being retained requiring technical vehicle swept path and road section diagrams.
112. Objectors raised concern that noise from the car stacker and garage door would be a nuisance. However, condition 5(d) of the permit requires plant and car parking equipment to satisfy relevant SEPP N-1 and sleep disturbance criteria ensuring that this issue is adequately addressed. This condition will be retained. Condition 22 also requires for the car stacker to be installed and maintained to Council's satisfaction.
113. The deletion of the east and west facing balconies to level 2 and their conversion to office space is acceptable as this change will not radically alter the appearance of the building. The balcony openings will be glazed and the façade retained in its original approved position. There is no change to the building envelope at this level.

#### *Level 3*

114. The level 3 façade setback is at 3m, as required by the Tribunal. A new terrace is proposed to be setback 1.45m from Wangarrata Street. Of relevance is VCAT imposed Condition 1c) of the permit which reads as follows:
  - (a) *Deletion of the terrace, pergola and glass block walls to Apartment 3.01. Apartment 3.01, including the balcony, to be setback 3 metres to match the apartments above. A consequential internal reconfiguration of Apartment 3.01 will be required.*
115. It is proposed to delete this condition. While this condition requires the balcony and facade of level 3 to be setback a minimum of 3m from Wangarratta Street, the intention of this condition was to achieve a 3 storey street wall rather than the proposed 4 storey street wall. While the terrace proposed as part of the amendment application sits within the VCAT imposed 3m setback, this outcome is considered acceptable as the terrace sits behind the parapet of the level below which meets the intention of the condition by maintaining a three storey street wall presentation. Further, as the street wall has been reduced from four to three storeys, no additional overshadowing to the park on the opposite side of Wangarratta Street will occur (beyond that approved by the Tribunal).
116. The level 3 façade and terrace have both been moved an average of 3m closer to the Botherambo Street frontage (with the façade setback reduced from 6.5m to 3.49m and terrace setbacks are reduced from 4.7m to 1.45m). However the height of the 3 storey street wall will largely obscure views from the properties on the opposite side of Botherambo Street (see section A) and is considered acceptable for this reason.
117. The height of the Botherambo Street wall will increase by approx 1m. This height increase is acceptable as it is comparable with the height of other walls found on this side of the street. Further the additional shadow impact of this wall will be limited to Botherambo Street or within the existing fence shadows on the opposite side and so will not cause additional shadow to private open space.

*Level 4*

118. The position of the Wangaratta Street façade at level 4 remains unaltered, with the office floor area to be expanded into an area previously occupied by a small terrace. The extension of the office floor space at level 4 into a small terrace is considered acceptable as the previously approved terrace was enclosed by the level above and a wall on the northern boundary. Given the enclosed nature of the balcony, the expansion of the office into this area will not radically alter the appearance of the building (albeit the balcony opening will now present as a window); nor will it cause additional overshadowing and is acceptable for these reasons.
119. The original approval allows for the balcony to the rear at level 4 to be setback 4.7m to Botherambo Street with the dwelling façade setback 6.5m. The office amendment has deleted the terrace with the façade proposed to be setback 5.55m. The reduced 1m setback of the façade to Botherambo Street is considered acceptable as it is compensated for by the deletion of the terrace (which was proposed to be located 1.1m closer to Botherambo Street than the currently proposed façade setback). Given the setback of this facade, the shadow impact of this reduced setback will be contained within the shadows generated by the three levels below. For these reasons the reduced setback is considered acceptable.

*Level 5*

120. The position of the façade to Wangaratta Street at level 5 remains unaltered, with the office floor area to be expanded into an area previously occupied by a small terrace. The extension of the office floor space at level 5 into a small terrace is considered acceptable as the previously approved terrace was enclosed by the level above and a wall on the northern boundary. Given the enclosed nature of the balcony, the expansion of the office into this area will not radically alter the appearance of the building and is acceptable for this reason.
121. The setback to Botherambo Street façade is increased by 0.5m and a terrace at this level is deleted. As the setbacks are increased, there will be no increased material detriment and so this change is acceptable.

*Level 6*

122. Level 6 (formerly level 7) proposed a façade setback of 4.7m to Wangaratta Street with a front terrace setback of 3m. The amended plans show the façade setback 4.68m from Wangaratta Street, with a 0.3m wide terrace. The marginal decrease in setback of the façade to Wangaratta Street (0.2m) is compensated for by the reduction in the width of the terrace by 2.7m. This also prevents additional shadow to the park on the opposite side of Wangaratta Street beyond that deemed acceptable by the Tribunal.
123. As part of the original approval, level 6 (formerly level 7) showed the façade setback 18.88m to Botherambo Street with a plant area located on the roof below. The amended plans show the façade setback 18.14m to Botherambo Street, with a roof terrace replacing the plant area. The terrace is setback approx. 0.7m from the north and south boundary and approx. 10.25m from Botherambo Street.
124. As part of the original approval, the VCAT imposed condition 1(b) required deletion of level 6 and level 7 to drop down. While the setback of the facade to Botherambo Street is technically reduced, the section 72 amendment application process allows for this setback to be reconsidered.

The reduced setback is not considered contrary to the intention of the VCAT condition in that it only marginally (0.2m) alters the VCAT approved setback. The intention of this condition was to ensure the upper level would not be visible from the properties on the opposite side of Botherambo Street, and this minor change in setback continues to allow for this outcome to be achieved (see section A).

125. Similarly, the replacement of the plant area with a larger terrace is also considered acceptable, as it too will not be visible to the properties on the opposite side of Botherambo Street. Its height above natural ground level and its 1.5m setback from the roof edge will obscure views from the residential properties opposite. This is demonstrated by sightlines provided in Section A plan (TP300- A). Further this section also demonstrates that the terrace sits below the building envelope approved by the Tribunal and for this reason the proposed terrace is also considered acceptable. Given this lower height, the terrace will not cause additional shadows to the residential properties on the opposite side of Botherambo Street.

#### *Other Changes*

126. The relocation of the plant services to the roof is acceptable as it setbacks from Botherambo Street and Wangaratta Street will allow it to be substantially obscured by the levels below. Oblique views from the south and north will be available, but this is considered acceptable as it is typical to view plant equipment above the side walls of commercial buildings.
127. The increase in footprint through the deletion of the lightwells to the north and south wall is considered acceptable given the commercial interfaces to the north and south. The new boundary walls will abut the existing boundary walls and be opposite the roof of commercial properties to the north and south and so will not have any detrimental off-site impacts. The loss of articulation provided to the walls by the lightwells will be compensated for by the pressed concrete walls (floor board pattern) with horizontal banding provided to delineate each floor level. These treatments are considered to sufficiently articulate the wall to allow for a reasonable presentation to nearby properties.
128. This pressed concrete finish has been repeated on the upper levels to Wangaratta Street and Botherambo Street which is considered to allow for a more rationalized streetscape presentation, in-lieu of the glass brick and concrete finish approved by the Tribunal. However it is proposed to introduce mirrored glazing to a number of windows on the Wangaratta and Botherambo Street façade. Highly reflective surfaces are discouraged at clause 22.10-3.8 (*Built Form*) to minimise detrimental impacts to surrounding properties. For this reason a condition will require the mirrored glass deleted.

#### *Overlooking*

129. The original approval did not provide for overlooking treatments to the residential properties on the opposite side of Botherambo Street. Clause 22.05 allows for consideration of overlooking. While not applicable to the subject site, the *Overlooking objective* clause 55 provides the 9m 45 degree overlooking arc principal that is used as a guide for assessing overlooking. With Botherambo Street being 10m wide and the recessed upper levels providing further setbacks, the building is situated in excess of the 9m overlooking arc stipulated by the standard, and for this reason it is not considered appropriate to require overlooking treatments to the building (especially as the uses are no longer dwellings).

#### *Energy and Resource Efficiency*

130. The proposed development includes the following ESD commitments:
- (a) Exceeding the minimum NCC energy efficiency requirements of the building envelope by 20%;
  - (b) Reasonable shading through building façade and exterior blinds to the western façade;
  - (c) A STORM report with a 103% score has been submitted relying on 225m<sup>2</sup> of roof and terrace draining to 10,000 litres of rainwater storage, connected to toilet flushing on ground floor and level 1;
  - (d) Good access to natural ventilation;
  - (e) Energy efficient heating / cooling and lighting systems;
  - (f) Water efficient fixtures throughout; and

(g) Ceiling fans.

131. While outlining that the project largely meets Council's best practise ESD standard, Council's ESD advisor has recommended some changes to ensure the building is designed appropriately with regard to energy efficiency, as follows:
- (a) Glazing to have a Visual Light Transmittance (VLT) of not less than 40%;
  - (b) Amend the SMP to show the charging facilities as required by condition 1 I);
  - (c) Remove the terminology 'where feasible' in the SMP in relation to proposed ceiling fans;
  - (d) Please note the minimum 10.000ltr rainwater tank volume on the architectural drawings; and
  - (e) SMP to consistently refer to the proposed 5.4kWp solar PV array (pg 20 inadvertently refers to a (9kWp system).
132. These comments from Council's ESD advisor are considered to address the requirements of the policy under clause 22.16 – *Stormwater Management* and clause 22.17 – *Environmentally Sustainable Development*. The applicant has agreed to these changes to be required by way of amended conditions. Subject to these conditions the proposal is considered by acceptable from an ESD perspective.

Noise

133. Policy at Clause 22.05 – *Interface uses* of the Scheme seeks to ensure new commercial development is adequately managed having regard to its proximity to residential uses. The applicant has requested to amend condition 5 and 6 which require the approved dwellings are appropriately treated to protect the dwellings from noise from the Corner Hotel (located 30m to the south) and the railway line (50 m to the south). The conditions read as follows:
- 5) *Before the plans are endorsed, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the report prepared by Arup, dated 20 January 2016 but modified to include/address:*
    - (a) *Buildings and works so as achieve SEPP N-2 base noise limits inside habitable rooms.*
    - (b) *Treatments to achieve patron noise level limits of levels of 30 dBA for bedrooms and 35 dBA for living rooms as per AS/NZ 2107.*
    - (c) *Treatments to protect all dwelling occupants from external noise sources associated with the rail system to the west/south-west of the site by achieving an internal noise level of 50dBA Lmax in bedrooms and 60dBA Lmax in living rooms.*
    - (d) *Noise from mechanical plant and associated equipment designed to comply with SEPP N-1 (commercial and body corporate operated plant, including carpark infrastructure); EPA Noise Control Guidelines/Publication 1254 (privately owned air conditioning condenser units) and sleep disturbance targets of 60 dBA Lmax outside openable windows of dwellings.*
  - 6) *Within 3 months of the completion of the development, an acoustic compliance report must be prepared by a suitably qualified acoustic engineer to the satisfaction of the Responsible Authority. This report must measure the compliance of the development with the requirements of Condition 5 including:*
    - (a) *SEPP N-2 base noise limits inside habitable rooms.*
    - (b) *Patron noise level limits of levels of 30 dBA for bedrooms and 35 dBA for living rooms as per AS/NZ 2107.*
    - (c) *An internal noise level of 50dBA Lmax in bedrooms and 60dBA Lmax in living rooms.*
    - (d) *SEPP N-1 compliance.*

*The acoustic compliance report must be submitted to and endorsed by the Responsible Authority. Any non-compliances must be rectified to the satisfaction of the Responsible Authority.*

134. These conditions were placed on the permit as a result of an agreement reached with an objector party via consent order processed through the Tribunal. However as a residential use is no longer proposed, the applicant has requested these conditions be amended to reflect the commercial use now proposed at the site. This is considered acceptable given a residential use (which is a sensitive use) is no longer proposed. Further the application was advertised. For these reasons these conditions will be amended to read as follows:

*Prior to the commencement of works, an Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must include/address:*

- (a) *Demonstrate the proposed offices with not be unreasonably impacted by noise from the Corner Hotel and the railway line located to the south, with detail of appropriate noise attention measures to be provided (as applicable).*

135. Condition 14 currently requires the development comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1). This satisfactorily addresses noise issues generated by the proposed commercial uses at the site. In light of the above it is considered unlikely that the use of the building would result in any unreasonable noise amenity impacts to the surrounding area, including the residential area to the east.

#### *Waste management*

136. The revised waste management plans was submitted with the application which was reviewed by Council's Contracts Services unit. The unit were satisfied with the plans but requested it be amended to allow for collection to occur within title boundaries by private contractor. However the Waste Management Plan (WMP) already stipulates that waste management contractors will enter the site to collect bins from the bin store and so a condition will not require this. Condition 8(b) of the permit requires on-site residential collection of residential rubbish. As this condition is now redundant, it will be deleted. Condition 8(a) requires the WMP be updated to reflect condition 1 requirements. This condition is no longer relevant and will be deleted.
137. Objectors also raised concerns bins are placed on Botherambo Street for collection. As outlined above, the WMP has satisfactorily addressed this issue. Objectors also requested that waste not be permitted to be collected over night. The submitted waste management plans stipulates rubbish collection will not occur over night at page 7 and paragraph 3. This condition is considered to satisfactorily address this concern.

#### Permit changes

138. The permit preamble will be simplified and updated to reflect the proposed office use and deleted references to the dwellings and the loading bay (as a reduction in the loading bay requirements is no longer a planning permit trigger). The current permit preamble reads as follows:
- (a) *Use of land for office, demolition and construction of a 7 storey building containing dwellings, office and food and drink premises (café) above one basement level in the Mixed Use Zone, Heritage Overlay and Environmental Audit Overlay, reduction in the car parking requirements in clause 52.06 and waiver of loading bay requirement in clause 52.07 in accordance with the endorsed plans.*
139. The permit preamble will be amended to read as follow:

- (a) *Use of land for office, demolition and construction of a 7 storey building containing offices and food and drink premises (café) above one basement level in the Mixed Use Zone, Heritage Overlay and Environmental Audit Overlay, and a reduction in the car parking requirements in clause 52.06 in accordance with the endorsed plans.*
140. Condition 1 will be updated to reference the current plan numbers and delete conditions referring to dwellings. Condition 1h), j) and l) will be retained as requested by Council traffic and ESD officers. In response to concerns raised by planning officers and ESD officers (and as discussed throughout the report, the following new condition 1 requirements will be imposed, as follows:
- (a) *Office glazing to have a visual light Transmittance (VTL) of not less than 40%,*
- (b) *Remove the terminology 'where feasible' in the SMP in relation to proposed ceiling fans,*
- (c) *A minimum 10.000ltr rainwater tank volume to be noted on the architectural drawings,*
- (d) *SMP to consistently refer to the proposed 5.4kWp solar PV array, and*
- (e) *Deletion of proposed mirrored glazing.*
141. Condition 3 will be updated to reference the current Sustainable Management Plan submitted with the amendment application and will read as follows:
- 3) *Before the development commences, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by Ark Resources, dated 13/12/2017, but modified to include or show:*
- a) *Any changes as a result of condition 1.*
142. As outlined earlier in this assessment, Condition 5 and 6 will be deleted and replaced with a new condition 5.
143. As outlined earlier, condition 7 will be deleted and Condition 8 (and renumbered No. 7) will be updated to reference the current Waste Management Plan submitted with the amendment application and will read as follows:
- 7) *The provisions, recommendations and requirements of the endorsed Waste Management Plan (dated 9 November 2017) must be implemented and complied with to the satisfaction of the Responsible Authority.*
144. A new condition 8 will limit staff numbers to the proposed 120 person. The condition will read as follows:
- 8) *No more than 120 staff are permitted to operate from the land at any one time.*
145. A new condition 9 will specify the hours proposed hours of operation of the office, with all other conditions subsequently re-numbered. Condition 9 will to read as follows;
- 9) *Except with the prior written consent of the Responsible Authority, the office use authorised by this permit may only operate between the following hours:*
- a) *Monday to Friday 7.00am – 8.00pm.*
146. Condition 17 will be amended to remove reference to dwellings and will read as follows:

17) *Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the car park, pedestrian walkways and **office** entrances (including from the street) must be provided within the property boundary. Lighting must be located, directed, shielded and of limited intensity to the satisfaction of the Responsible Authority.*

147. Conditions will be subsequently re-numbered.

148. The following standard notes will also be included:

- (a) *This site is subject to a Heritage Overlay. A planning permit may be required for any external works.*
- (b) *A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5095 to confirm.*
- (c) *Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5095 for further information.*
- (d) *All future employees and occupiers residing within the development approved under this permit will not be permitted to obtain employee or visitor parking permits.*

### Objector concerns

149. Objector concerns have been addressed within the body of this report, the following section provides a summary of the assessed outcomes discussed earlier:

150. The approved height of the building should be reduced;

- (a) This issue has been discussed at paragraphs 91 to 99.

151. Office use will increase activity on-site including increased car parking demand and increased waste collection;

- (a) The office use and car parking issues have been discussed at paragraphs 100 to 113. Waste Management has been discussed at paragraph 13-137.

152. Concern with new design of north and south elevation;

- (a) This issue has been discussed at paragraph 110-128.

153. Preference the ground floor is used as a convenience shop;

- (a) As the use of the ground floor as a food and drinks premises is an as-of-right use, Council does not have the ability to change or delete this component of the proposal.

154. The height and bulk of the building are not in keeping with the character of the area;

- (a) As discussed throughout the report, the height and bulk of the building has been previously approved by the Tribunal and is acceptable for this reason.

155. Construction issues;

- (a) Condition 10 requires the submission of a Construction Management Plan which allows for construction issues to be appropriately managed.

156. Negative off-site amenity impacts including overshadowing (public and private realms), visual bulk, noise and overlooking.

- (a) These issues have been discussed at paragraphs 100 to 137.

### **Conclusion**

157. The proposal, subject to conditions outlined in the recommendation below, is an acceptable planning outcome that demonstrates compliance with the relevant Council policies. Based on the above report, the proposal complies with the relevant Planning Scheme provisions and planning policy and is therefore supported.



## RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to advise VCAT that had it been in a position to, it would have issued a Notice of Decision to Grant an Amended Planning Permit PLN15/1250 for the use of land for office, demolition and construction of a 7 storey building containing offices and food and drink premises (café) above one basement level in the Mixed Use Zone, Heritage Overlay and Environmental Audit Overlay, and a reduction in the car parking requirements at No.45 Wangaratta Street, Richmond, subject to the following conditions (new or amended conditions highlighted in **bold and italics**):

Amend permit preamble to:

***Use of land for office, demolition and construction of a 7 storey building containing offices and food and drink premises (café) above one basement level in the Mixed Use Zone, Heritage Overlay and Environmental Audit Overlay, and a reduction in the car parking requirements in clause 52.06 in accordance with the endorsed plans.***

1. Before the 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 this 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 (***being Drawings TP000, TP100, TP100, TP101, TP102, TP103, TP104, TP200, TP201, TP300, TP700, issue A, prepared by MA Architects Pty Ltd, and dated August 2017***) but modified to show:
  - (a) A demolition plan clearly showing all parts of the building on the site to be removed. ‘
  - (b) Any changes (where relevant) as a result on the endorsed acoustic report required by condition 5.
  - (c) Swept path diagrams showing that the turntable can conduct full circle movements while a car is parked on it.
  - (d) Signage in accordance with clause 52.34-5.
  - (e) A 1 in 20 scale cross sectional drawing of the development’s vehicular entrance, showing the actual reduced levels (not interpolated levels from the application drawings) of the Botherambo Street road profile, including the building line and top of kerb levels. The applicant must demonstrate by way of a ground clearance check that vehicles can traverse the new vehicle crossing without scraping or bottoming out.
  - (f) Graffiti proof surfaces at ground level facing Wangaratta and Botherambo Streets, Richmond.
  - (g) Charging points for electric bicycles.
  - (h) ***Office glazing to have a visual light Transmittance (VTL) of not less than 40%,***
  - (i) ***Remove the terminology ‘where feasible’ in the SMP in relation to proposed ceiling fans,***
  - (j) ***A minimum 10.000ltr rainwater tank volume to be noted on the architectural drawings,***
  - (k) ***SMP to consistently refer to the proposed 5.4kWp solar PV array, and***
  - (l) ***Deletion of mirrored glazing***
  
- 2 The 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.

### **Sustainable Management Plan**

- 3 ***Before the development commences, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by Ark Resources, dated 13/12/2017, but modified to include or show:***
- (a) ***Any changes as a result of condition 1.***
- 4 The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Acoustic Report**

- 5 ***Prior to the commencement of works, an Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must include/address:***
- (a) ***Demonstrate the proposed offices will not be detrimentally impacted by noise from the Corner Hotel and the railway line located to the south, with detail of appropriate noise attention measures to be provided (as applicable).***
- 6 The provisions, recommendations and requirements of the endorsed Acoustic Report and acoustic compliance report must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Waste Management Plan**

- 7 The provisions, recommendations and requirements of the endorsed Waste Management Plan (***dated 9 November 2017***) must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Use**

- 8 ***No more than 120 staff are permitted to operate from the land at any one time.***
- 9 ***Except with the prior written consent of the Responsible Authority, the office use authorised by this permit may only operate between the following hours:***
- (a) ***Monday to Friday 7.00am – 8.00pm***

### **Construction Management**

- 10 Before the development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for the following as appropriate:
- (a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure.
- (b) Works necessary to protect road and other infrastructure.
- (c) Remediation of any damage to road and other infrastructure.

- (d) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.
  - (e) Facilities for vehicle washing, which must be located on the land.
  - (f) The location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street.
  - (g) Site security.
  - (h) Management of any environmental hazards including, but not limited to:
    - (i) contaminated soil;
    - (ii) materials and waste;
    - (iii) dust;
    - (iv) stormwater contamination from run-off and wash-waters;
    - (v) sediment from the land on roads;
    - (vi) washing of concrete trucks and other vehicles and machinery;
    - (vii) spillage from refuelling cranes and other vehicles and machinery; and
    - (viii) the construction program;
  - (i) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency.
  - (j) Parking facilities for construction workers.
  - (k) Measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan.
  - (l) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services.
  - (m) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.
  - (n) The provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.
- 11 The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

**General**

- 12 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the area(s) set aside on the endorsed plans for the car parking spaces, access lanes, driveways and associated works must be:
- (a) Constructed and available for use in accordance with the endorsed plans.
  - (b) Formed to such levels and drained so that they can be used in accordance with the endorsed plans.
  - (c) Treated with an all-weather seal or some other durable surface.
- All to the satisfaction of the Responsible Authority.
13. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.

14. The development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
15. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
16. All pipes, fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
17. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the car park, pedestrian walkways and **office** entrances (including from the street) must be provided within the property boundary. Lighting must be located, directed, shielded and of limited intensity to the satisfaction of the Responsible Authority.
18. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority.  
  
Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
19. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
20. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any redundant vehicular crossing must be demolished and re-instated as standard footpath and kerb and channel at the permit holder's cost and to the satisfaction of the Responsible Authority.
21. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any new/modified vehicle crossing(s) must be constructed in accordance with any requirements or conditions imposed by Council, at the permit holder's cost and 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, the car stackers and car turntable must be installed in accordance with the manufacturer's specifications by a suitably qualified person. The car stackers and turntable must be maintained thereafter to the satisfaction of the Responsible Authority.

### **Civil works**

23. Council assets must not be altered in any way except with the prior written consent of the Responsible Authority.
24. Prior to the completion of the development, subject to the relevant authority's consent, the relocation of any utility or other services providers poles, structures or pits necessary to facilitate the development must be undertaken in accordance with any requirements or conditions imposed by the relevant authority, at the permit holder's cost and to the satisfaction of the Responsible Authority.
25. Within 2 months of the completion of the development, 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 (if required by the Responsible Authority) at the permit holder's cost and to the satisfaction of the Responsible Authority.

26. Within 2 months of the completion of the development, or by such later date as approved in writing by the Responsible Authority, footpath and kerb and channel along the property's Wangaratta and Botherambo Street road frontages must be reconstructed at the permit holder's cost and to the satisfaction of the Responsible Authority.
27. Within 2 months of the completion of the development, or by such later date as approved in writing by the Responsible Authority, the full width of the Botherambo Street road pavement, extending in line with the site's northern and southern boundaries must be must stripped and re-sheeted at the permit holder's cost and to the satisfaction of the Responsible Authority.
28. 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.

**Expiry of permit for development**

29. This permit as it relates to development will expire if one of the following circumstances applies:
  - (a) The development is not started within two (2) years of the issue date of this permit.
  - (b) The development is not completed within four (4) years of the issue date of this permit.
  - (c) This permit as it relates to use will expire if the use does not commence within two (2) years after the completion of the development.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

**Note**

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

***A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5095 to confirm.***

***Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5095 for further information.***

***All future employees and occupiers residing within the development approved under this permit will not be permitted to obtain employee or visitor parking permits.***

**CONTACT OFFICER:** Laura Condon  
**TITLE:** Senior Statutory Planner  
**TEL:** 92055016

**Attachments**

- 1 PLN15/1260.01- 45 Wangaratta Street, Richmond- Subject Site
- 2 PLN15/1260.01 - 45 Wangaratta Street Richmond - Plans
- 3 PLN15/1260.01- 45 Wangaratta Street - ESD Referral comments
- 4 PLN15/1260.01 - 45 Wangaratta Street Richmond - Engineering comments
- 5 PLN15/1260 - 45 Wangaratta Street Richmond -Current Planning Permit

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**1.3 237-253 Napier Street, Fitzroy - Planning Permit Application Number -  
PLN17/0914 - The sale and consumption of liquor associated with a food and  
drink premises/cafe**

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**Executive Summary**

**Purpose**

1. This report provides an assessment of planning permit application PLN17/0914 for Nos. 237 -253 Napier Street, Fitzroy for the sale and consumption of liquor associated with an existing food and drink premises (café). The report recommends approval subject to conditions.

**Key Planning Considerations**

2. Key planning considerations include:
  - (a) Clause 13.04 – Noise and Air;
  - (b) Clause 17 – Economic Development;
  - (c) Clause 22.05 – Interface Uses Policy;
  - (d) Clause 22.09 – Licenced Premises; and
  - (e) Clause 52.27 – Licenced Premises; and
  - (f) Clause 65 – Decision Guidelines.

**Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Sale and consumption of liquor;
  - (b) Off-site amenity impacts; and
  - (c) Objector concerns.

**Objector Concerns**

4. Twelve (12) objections were received to the application, these can be summarised as:
  - (a) Noise (inadequate sound proofing, outdoor seating, music, deliveries, rubbish collections);
  - (b) Hours of operation are inappropriate;
  - (c) Lack of crowd control;
  - (d) Saturation of licenced premises in the area;
  - (e) Intoxicated and anti-social behaviour;
  - (f) Lack of operational details and smoking areas;
  - (g) Close proximity to schools is inappropriate; and
  - (h) Waste management.

**Conclusion**

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported.

**CONTACT OFFICER: Gary O'Reilly**  
**TITLE: Senior Statutory Planner**  
**TEL: 9205 5040**

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**1.3 237-253 Napier Street, Fitzroy - Planning Permit Application Number - PLN17/0914 - The sale and consumption of liquor associated with a food and drink premises/cafe**

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Trim Record Number: D18/88798

Responsible Officer: Senior Coordinator Statutory Planning

**Proposal:** The sale and consumption of liquor associated with a food and drink and drink premises

**Existing use:** Food and drink premises/cafe

**Applicant:** Brentwood Fitzroy Pty Ltd

**Zoning / Overlays:** Mixed Use Zone  
Environmental Audit Overlay  
Heritage Overlay (Schedule 334)

**Date of Application:** 27 October 2017

**Application Number:** PLN17/0914

### Planning History

1. Planning Permit Application PLN14/0084 was issued on 27 October 2014 for the “*part demolition of existing buildings in the Heritage Overlay; Construction of a three and five storey building; use for food and drinks premises (café); reduction in car parking under clause 52.06 of the Yarra Planning Scheme and waiver of loading bay provision under clause 52.07 of the Yarra Planning Scheme generally in accordance with the endorsed plans.*”
2. Amended Permit Application PLN14/0084.01 was issued on 22 July 2016 for a, “reduction to the first and second floor setbacks of townhouses to Exhibition Street, including associated reconfigurations to balconies and internal areas”.
3. Amended Permit Application PLN14/0084.02 was issued on 21 August 2017 for, “*Amendments to the plans to show increased building heights of the Exhibition Street townhouses, changes to basement ramp and service areas, internal alterations and other changes*”.

### Background

#### Application process

4. The application was lodged on 27 October 2017 with the application then advertised and 12 objections received. A consultation meeting was held on 15 May 2018 where issues were discussed with the Permit Applicant, Objectors and Planning Officers present.
5. During the consultation meeting the applicant agreed to cease serving liquor within the outdoor seating area to the north of the subject site at 4.00pm.

#### Section 57A Plans

6. The applicant submitted a revised application form pursuant to Section 57A of the *Planning and Environment Act 1987* on the 27 June 2018. The amendment was to the address of the application to include the open area to the north of the subject site (Lot 1R PS738837B), which is located within common property.



7. A review of the endorsed plans for the food and drink premises (café) under planning permit PLN14/0084, identified that this outdoor area was included within the overall area to the café but not included during the subdivision stage. This has resulted in the outdoor portion of the café (which is fenced off) to be located within the common property area. The above amendment seeks to include this outdoor area as part of the red line area for the liquor licence.
8. The application was not re-advertised as plans have clearly shown the outdoor area being part of the liquor sales area and the only change was to include the common area in the address.

## **Existing Conditions**

### Subject Site

9. The subject site is located on the western side of Napier Street, at the junction of Napier Street and St David Street in Fitzroy.
10. The lot is located within a part five, part six storey mixed use development approved under planning permit PLN14/0084. The subject site is located along the ground floor of the development, within the south-east corner fronting Napier Street and St David Street. The lot is rectangular in shape having a frontage to Napier Street of 21m and a frontage of 10.2m to St David Street.
11. The title submitted does not show any restrictive covenants or easements affecting the subject site.
12. The café has a total area of 215sqm, with capacity for 100 patrons (however the current application is for a maximum of 90 patrons). Seating is provided with 82 inside the building and 8 located within an outdoor seating area adjacent to a common accessway for apartments within the mixed use development.
13. The internal layout provides seating within the majority of the floor area, with outlook to both Napier Street and St David Street. The kitchen, cool room and toilets are located along the western boundary.
14. Vehicle access is via St David Street, leading into a two-level underground basement car park. The bin storage area is located to the west of the subject site, with direct access from the kitchen area.

### Surrounding Land

15. The surrounding area is predominantly residential, both within the host building and surrounding streets. The subject site is also in close proximity to Brunswick Street (180m to the west), which is designated as a Major Activity Centre. Brunswick Street comprises a variety of land uses including cafes, retail premises, offices, residential and bars. Brunswick Street provides a two-way traffic flow and a tram route (No. 11 tram).
16. Within 100 metres of the subject site, there are two licenced premise (Fitzroy Rainbow Hotel & the Napier Hotel). Within 500 metres are approximately 184 licenced venues, most of which are associated with food and drink premises with 15 general licences venues and 23 late night venue.
17. The properties immediately to the north are apartments associated with the development of Nos. 237-253 Napier Street (Lots T1 to T4). These lots have a separation of approximately 4m from the outdoor area to the kitchen wall/living room, with the open spaces located to Exhibition Street. Along the upper floors are the dwellings' bedrooms.

18. To the west of the subject lot is the building lobby, bin storage area and substation, beyond which are more apartments. The lobby area provides an 8.2m separation from the café to the nearest apartment along the ground floor (to the west).
19. Directly above the café are more apartments associated with the mixed use development. The apartments directly above contain an open plan kitchen/dining area, bathroom and two bedrooms.
20. To the east is Napier Street, which is a two-way street with kerb side parking along both sides and street trees. On the opposite side of the street is a row of single storey dwellings, located within a Neighbourhood Residential Zone.
21. To the south is St David Street, which is a one-way street with kerb side parking. On the opposite side of the street is a single storey commercial building, also located within the Mixed Use Zone.
22. The site comprises good access to public transport, retail and activity centres, including:
  - (a) Brunswick Street Activity Centre is 180m to the west and provides a mix of shops, restaurants and supermarkets and has the No. 11 tram operates along it;
  - (b) Smith Street Activity Centre is 315m to the east and provides a mix of shops, restaurants and supermarkets and has the No. 86 tram operate along it;
  - (c) There are two bus routes (Nos. 200 and 207) operating along Johnston Street to the north (240m); and
  - (d) Hoddle Street is located 1km to the east, with bus routes operating along it;
  - (e) Victoria Park Train Station is located approximately 1.2km to the east and accessible via the No. 200 and 207 buses along Johnston Street.

## **The Proposal**

23. The proposal is for the sale and consumption of liquor associated with a food and drink premises (café). Details of the proposal are as follows:
  - (a) The proposed trading hours for the sale of liquor are as follows:
    - (i) Monday – Sunday 9am to 10pm;
    - (ii) ANZAC Day & Good Friday Midday to 10pm;
  - (b) The property will be licenced for 90 patrons;
  - (c) Licenced red-line area includes the entire internal area and outdoor seating area (courtyard) for 8 seats; and
  - (d) Background music is proposed.

## **Planning Scheme Provisions**

### Zoning

#### *Mixed Use Zone*

24. Pursuant to Clause 32.04-2 of the Yarra Planning Scheme (the 'Scheme') there is no planning permit requirement for the sale and consumption of liquor.

### Overlays

#### *Heritage Overlay*

25. Pursuant to Clause 43.01 of the Scheme there is no planning permit requirement for the sale and consumption of liquor. There are no buildings and works proposed and as such, no planning permit trigger under this overlay.

#### *Environmental Audit Overlay*

26. An environmental audit is required prior to a sensitive use (i.e. dwelling or child care centre) commencing. The provisions of this clause have been addressed in the existing planning permit PLN14/0084, reminding the permit holder that the requirements of this overlay must be met prior to the commencement of the development.

#### Particular Provisions

##### *Clause 52.06 – Car Parking*

27. As discussed earlier in the report, the café has a planning permit for a 100 seat restaurant under planning permit PLN14/0084. Given this current application is for a maximum of 90 patrons, no permit is required for a reduction in car parking.

##### *Clause 52.27 – Licenced Premises*

28. A permit is required to use land to sell or consume liquor if *a licence is required under the Liquor Control Reform Act 1998*. The requirement for a permit is triggered.

#### General Provisions

##### *Clause 65 – Decision guidelines*

29. 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 State Planning Policy Frameworks, Local Planning Policy Frameworks and any local policy, as well as the purpose of the zone, overlay or any other provision. An assessment of the application against the relevant sections of the Scheme is provided later in this report.

#### State Planning Policy Framework (SPPF)

30. There are several policies in the State Planning Policy Framework (SPPF), which can be applied but given the extent of the proposed development, the most relevant policy is described as follows:

##### *Clause 13.04-1 – Noise Abatement*

31. The objective of this clause is, “*to assist the control of noise effects on sensitive land uses*”.

##### *Clause 17.01-1 – Business*

32. The objective of this clause is, “*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*”.

#### Local Planning Policy Framework (LPPF)

##### *Clause 21 – Municipal Strategic Statement (MSS)*

##### *Clause 21.04-2 Activity centres*

33. The relevant objectives of this clause are:
- (a) *To maintain a balance between local convenience and regional retail roles in Yarra’s activity centres; and*
  - (b) *To maintain the long term viability of activity centres.*

##### *Clause 21.04-3 – Industry, office and commercial*

34. The objective of this clause is, “to increase the number and diversity of local employment opportunities”.

*Clause 21.05-4 Public environment*

35. The objective of this clause is, “to provide a public environment that encourages community interaction and activity”.

*Clause 21.08-7 Neighbourhoods (Fitzroy)*

36. The neighbourhood character statement for this area states:

*“Fitzroy is a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/industrial activities.*

*Victoria Parade, an important boulevard with substantial office development and the St Vincent’s Hospital precinct, is on the south side of this neighbourhood. The Brunswick Street and Smith Street major activity centres run north south through the middle, while the Johnston and Gertrude Streets neighbourhood activity centres run east west through the neighbourhood. The Smith Street centre borders on Collingwood and is discussed in clause 21.08-5.”*

#### Relevant Local Policies

*Clause 22.05 – Interface uses policy*

37. The policy comprises various considerations and decision guidelines for non-residential use and development located near residential properties relating to overlooking, overshadowing, noise, fumes and air emissions, light spillage, waste management and other operational disturbances that may cause unreasonable detriment to the amenity of nearby residential properties.

*Clause 22.09 – Licenced premises policy*

38. This policy addresses matters relating to location and access, hours of operation, patron numbers, noise and general amenity considerations. These will be considered in the ‘Assessment’ section of this report.

#### **Advertising**

39. The application was advertised in November, 2017 with 203 letters sent to surrounding owners and occupiers, and two sign erected on site along Napier Street and St David Street. A total of fourteen (14) objections were received. The objections are summarised as follows:
- (a) Noise (inadequate sound proofing, outdoor seating, music, deliveries, rubbish collections);
  - (b) Hours of operation are inappropriate;
  - (c) Lack of crowd control;
  - (d) Saturation of licenced premises in the area;
  - (e) Intoxicated and anti-social behaviour;
  - (f) Lack of operational details and smoking areas;
  - (g) Close proximity to schools is inappropriate; and
  - (h) Waste management.

40. As discussed earlier in this report, an amended application was lodged pursuant to Section 57A of the *Planning and Environment Act 1987*. This amendment included the common property into the address (outdoor area to the north of the café which was shown on plans and referenced in the accompanying documentation).
41. Given that this outdoor area was included in the original application for the café under planning permit PLN14/0084, and included within the red line area under the advertised plans (November 2017), re-advertising was not required. The amendment was formally exempted from re-advertising at Council's Development Assessment Panel (DAP) on the 29 June 2018.

## Referrals

### External Referrals

42. The application was not required to be referred (or notice given) to any referral authorities under Clause 66 of the Scheme.

### Internal Referrals

43. The application was referred to the following internal Departments, with the advice included in the attachments to this report:
  - (a) Community amenity enforcement

## OFFICER ASSESSMENT

44. The following key issues and policies will be used to frame the assessment of this planning permit application:
  - (a) Policy context and strategic support;
  - (b) Licenced premises; and
  - (c) Objections.

### Policy context and strategic support

45. The State and Local Planning Policy frameworks encourage the aggregation and sustainability of commercial facilities in and around activity centres. These policies seek to cluster employment, entertainment and service functions within identified centres that meet the needs of local residents, providing that a balance is achieved in relation to off-site amenity impacts. 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).
46. The relevant permit triggers in this instance are Clause 52.27, which together with the local policy at Clause 22.09 articulates decision guidelines relating to cumulative impact, off-site amenity impacts, and land use conflict considerations (which will be discussed in detail in the balance of this report).
47. The MSS identifies that the presence of service, retail and entertainment uses creates active and vibrant activity centres with good access to services and facilities, which is an important attribute of Yarra. Furthermore, the site has excellent access to surrounding tram and bus networks, in accordance with relevant objectives found at Clause 21.06 (Transport).

48. The subject site is located within a Mixed Use Zone (MUZ) and within close proximity to two Major Activity Centres (Brunswick Street -180m and Smith Street 315m). A Mixed Use Zone has a purpose *“to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality”*. The licensed premises, in association with a cafe will add to this area which contains a range of shops, cafes and restaurants within the immediate area. It is considered that the proposal will meet the needs of the surrounding area, which subject to conditions will not unreasonably affect the amenity of residents and facilitate the continued development of the zone and surrounding area. A full assessment of the amenity impacts is contained later in this report.
49. It is an objective of Clause 17.01 (Economic Development) to *“encourage development which meet 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”*. In order to do this Council will make it a strategy to *“provide new convenience shopping facilities to provide for the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres”* and to *“Provide small scale shopping opportunities that meet the needs of local residents and workers in convenient locations”*.
50. It is considered that given the subject site’s location within close proximity to two Activity Centres and within a MUZ, the proposal will provide convenient facilities that meet the needs of the community while also allowing a business that will create employment within the municipality.
51. It is considered that the proposal is generally compliant with Council’s Vision and Neighbourhoods strategies in that the proposal will provide ready access to a use that serves the needs of the local community and will not prejudice the needs of the surrounding Activity Centres, as identified in Clauses 21.03 and 21.08 of the Yarra City Planning Scheme. A full assessment of potential the amenity impacts are contained below.

Licensed premises

52. Clause 22.09 (Licensed Premises Policy) and Clause 52.27 (Licensed Premises) provide the relevant guidance in relation to considerations of the proposed sale and consumption on off-site amenity impacts, including cumulative impacts.
53. The guidelines set out in Clause 52.27 of the Scheme, require consideration of the following headings;
54. *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- (a) The proposal has been assessed against all relevant provisions of the State and Local Planning Policy Framework as discussed above and is considered to comply.
55. *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.*
- (a) In addition to Council’s local licensed premises policy (*Clause 22.09*), it is necessary to give consideration to potential cumulative impacts associated with the new liquor licence. The “Corner Hotel” decision (*Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & Ors*) provides a methodology for considering applications that may result in cumulative impact. The decision also acknowledges that depending on the nature of the use (i.e. premise type, patron numbers and operating hours) the required level of assessment will vary.

- (b) It is considered that a cumulative impact assessment is not warranted for this application, as the proposal is afforded a score of 1 pursuant to the determinative risk factors formulated by Council Officers (based on the outcome of the *Corner Hotel* decision). Applying the matrix of risk below, a reasonable consideration would suggest that a score of 1-3 would be *no risk*, but that a score higher than 3 would be a *potential risk* and require a cumulative impact assessment.

Type of Premise	Risk Factor
Café / Restaurant	0
Bar / Restaurant / Café	1
Bar	3
Hotel / Tavern	3
Night Club	3
Place of Assembly	2

Size of Premise	Risk Factor
0 – 49 patrons	1
50 – 99 patrons	1
100 – 199 patrons	2
200+	3

Closing hours	Risk factor
11pm	0
12am	1
1am	2
2am	3
3am	3
After 3am	4

- (c) The proposed licenced premise would be associated with a food and drink premises (cafe). The subject site is located a Mixed Use Zone and is within close proximity to two Major Activity Centres. Under the MUZ and the Activity Centre designation, retail uses along with ancillary or complementary commercial uses which complement the mixed-use function of the locality are encouraged. As such, the proposed use is considered appropriate for the site.
- (d) The site has a sensitive residential interface within the host building and along the opposite side of Napier Street (which is in a Neighbourhood Residential Zone). As discussed earlier in this report the dwellings within the host building are located within the same MUZ, with the café approved under the same permit (PLN14/0084). Therefore, residents would expect normal café operations and associated impacts. The proposed hours for the sale and consumption of liquor are less than the approved café hours. With regard to residents to the east along Napier Street, the street physically separates the subject site from the dwellings. This provides a buffer between the subject site and these more sensitive interfaces. Also, the serving of liquor will be contained within the title boundaries with the 8 outdoor seats to cease serving alcohol by 4.00pm as agreed to by the applicant.
- (e) No live music will occur, with only background music proposed within the café and which is common for this type of use. Permit conditions on PLN14/0084 state that only background music can be played, with no speakers external to the building. Therefore these conditions already deal with noise, and it is not expected that the service of liquor will increase this noise – especially as the hours sought are less than the hours already approved.

Noise emanating from within the host building (i.e. between floors) is not a planning matter and is addressed under the building permit process. However concerns have been raised with regards to noise emanating from the outdoor seating area. To address this concern, the applicant has agreed to cease the consumption of liquor in this area by 4.00pm. Combined with the standard noise SEPP N-1 and SEPP N-2, it is considered that noise impacts are sufficiently addressed for a mixed use development and a site within a MUZ. Conditions will also be included to restrict the hours for deliveries and emptying of bottles.

- (f) The potential amenity impacts are considered negligible given the operation of the café and surrounding context. However appropriate conditions will be included regulating the noise level emitted from the site, hours of operation and general amenity impacts. These conditions will ensure that the proposal does not unreasonably compromise the amenity of the surrounding neighbourhood.
- (g) There is an existing bin storage area located to the west of the subject site.
- (h) With respect to car parking, the site has a permit for a 100 seat food and drink premises (café) which is less than the demand generated by the proposed use (i.e. 90 patrons). As such the parking demand will be met via the existing parking conditions associated with the existing use.

56. *The impact of the hours of operation on the amenity of the surrounding area.*

- (a) The primary use of the land is as a cafe. The premises will not operate past 10.00pm, which is consistent with the permitted hours permitted within a MUZ under Clause 22.09 (licensed premises). The majority of other licensed premises within the surrounds cease operation at the same time. There are approximately 38 venues of 184 which would be considered high-risk (within 500 metres) and which are associated with late night venues or general licences. Given the site's location between two activity centres, this number would be expected given the surrounding context.
- (b) Pursuant to clause 22.09, "a licenced premise within a MUZ should not provide for the sale and consumption of liquor beyond 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area". The proposed licence is to operate until 10pm, in accordance with Clause 22.09. To reduce the impact to adjoining properties, the outdoor area is to close at 4pm, even though it can operate until 10pm under the provision of Clause 22.09.
- (c) Furthermore, given the cafe nature of the proposed use it is unlikely that large groups will leave the premises at the same time. More than likely patrons will leave the premises once their meals are finished. This is unlike a pub or nightclub where patrons could leave in one large group when the property ceases operation that night. It is considered that the hours of operation are appropriate to the proposed liquor licence. With respect to the opening hours, 9.00am is considered acceptable and meets Clause 22.09.

57. *The impact of the number of patrons on the amenity of surrounding area*

- (a) It is proposed to have a maximum of 90 patrons on the subject site at any one time. This is below the permitted number of 100 patrons under the original planning permit. Given the primary use as a cafe (a low-risk venue), the location of the subject site within a MUZ, close proximity to two Activity Centres and other commercial properties within the surrounding area it is considered that the impact of patrons will be negligible. The site is also in close proximity to public transport, with the No. 11 tram route available along Brunswick Street and 86 along Smith Street.



Furthermore considering the nature of the use, it is unlikely that large groups will arrive or leave the premises at the same time.

58. *The cumulative impact of any existing and the proposed liquor licence, the hours of operation and number of patrons, on the amenity of the area.*
- (a) The surrounding area is a mix of residential and commercial uses associated with the Brunswick Street Major Activity Centre. There are approximately 184 licenced venues within 500 metres of the subject site and 2 within 100 metres (Fitzroy Rainbow Hotel & Napier Hotel). The majority of these premises operate on similar Restaurant/Café licenses, with only 15 having a general licence and 23 having a late-night licence. With the exception of these venues the majority of the remaining premises are considered low risk venues associated with food and drink premises. Furthermore, given the surrounding context (between two major Activity Centres), this number of licenced premises would be expected.
  - (b) While the total number of licensed premises within the 500m radius exceeds the recommended number under the clustering of licensed premises within the Cumulative Impact Guidelines, the site's inner city context, location/proximity to two Major Activity Centres/MUZ and low risk nature food and drink of the premises demonstrates that the site is suitably located. Furthermore, the majority of licenced premises are associated with restaurant/food and drink venues, which is consistent within an Activity Centre where a wide array of restaurants and cafes are characteristic and sought in this location. In addition Council's Amenity Enforcement Department did not object to the proposal.
  - (c) Given the type of licence being applied for, the existing number of restaurant/café premises within the immediate area, location within close proximity to a Major Activity Centre and as there are a limited number of potential high risk venues within the immediate area (i.e. 100m) it is considered that the proposal will not negatively impact the amenity of the area.

#### Objector Concerns

59. Noise (inadequate sound proofing, outdoor seating, music, deliveries, rubbish collections);

Refer to paragraphs 55(a)-(h).

60. Hours of operation are inappropriate;

Refer to paragraphs 56(a)-(c)

61. Lack of crowd control;

Given the nature of the café (i.e. not a bar or nightclub) it is considered that cafe staff will be able to adequately control the access to and from the site by patrons. Specific concerns have been raised in relation to the queuing of patrons entry off Napier Street and blocking of the common access to the apartments. Given the scale of the proposal, this is considered unlikely as access to the café does not include access through the residential entrance.

62. Saturation of licenced premises in the area

Refer to paragraphs 58(a)-(c)

63. Intoxication and anti-social behaviour

Given the type of licence being applied for (restaurant/café liquor licence), it is not anticipated there would be significant issues with regards to excessive intoxication and anti-social behaviour. This is further reduced given the low-risk designation of the venue (ref. paragraphs 55 (a)-(h)). As part of this proposal, a Noise and Amenity Action Plan (NAAP) has been submitted. The NAAP has sections within the plan which seek to address any potential anti-social behaviour through the training of staff in the responsible serving of alcohol. A condition will require the NAAP to be adhered to.

64. Lack of operational details and smoking areas

The noise and amenity action plan provides a satisfactory level of detail into the operation of the proposed licence. The food and drink premises is already controlled by the permit conditions (PLN14/0084). Smoking and the effects of smoking is not a planning matter and cannot be addressed under this application.

65. Close proximity to schools is inappropriate

The proximity of licensed venues to schools is not specifically addressed under the Scheme or *Planning and Environment Act 1987*. The above assessment however has reviewed the proximity of the proposed venue to neighbouring residential properties/zones and deemed the proposal acceptable.

66. Waste management.

Waste management has been addressed under the previous planning permit for the site (PLN14/0084). Additional conditions will be included however with regards to permitted times for delivery and emptying of waste (including bottles and cans).

## Conclusion

67. Based on the report, the proposal is considered to generally comply with the relevant policies of the Yarra Planning Scheme and is recommended for approval subject to conditions.

## RECOMMENDATION

That having considered all relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant Planning Permit PLN17/0914 for the sale and consumption of liquor associated with a food and drink premises (café) at 237-253 Napier Street, Fitzroy VIC 3065, generally in accordance with the decision plans and subject to the following conditions:

1. Before the liquor licence 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 this 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 decision plans but modified to show:
  - (a) A notation stating that the outdoor area to cease consuming liquor at 4pm.
2. The sale and consumption of liquor 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. 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 submitted but modified to include (or show, or address):

- (a) The inclusion of reference to the portion of land within common property; and
  - (b) The outdoor area within the common property area to cease sale and consumption of liquor at 4pm.
4. The provisions recommendation and requirements of the endorsed Noise and Amenity Action Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
  5. Except with the prior written consent of the Responsible Authority, the sale of liquor may only occur between:
    - (a) Monday to Sunday: 9.00am to 10.00pm
    - (b) ANZAC Day and Good Friday: 12.00 Noon to 10.00pm
    - (c) Outdoor area: 9.00am to 4.00pm
  6. No more than 90 patrons are permitted on the land at any time liquor is being sold or consumed.
  7. The amenity of the area must not be detrimentally affected by the use, including through:
    - (a) The transport of materials, goods or commodities to or from land;
    - (b) The appearance of any buildings, works or materials;
    - (c) The emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; or
    - (d) The presence of vermin
  8. The use must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
  9. The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).
  10. Except with the prior written consent of the Responsible Authority, the provision of music must be at a background level.
  11. Except with the prior written consent of the Responsible Authority, speakers external to the building must not be erected or used.
  12. Emptying of waste (including bottles and cans) into bins may only occur between 7am and 10pm on any day.
  13. Except with the prior written consent of the Responsible Authority, delivery and collection of goods to and from the land may only occur between 7am and 10pm on any day.
  14. This permit will expire if the sale of liquor 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.

**NOTES:**

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

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

**CONTACT OFFICER:** Gary O'Reilly  
**TITLE:** Senior Statutory Planner  
**TEL:** 9205 5040

**Attachments**

- 1 PLN170914 - 237 Napier Street Fitzroy - Subject Land
- 2 PLN170914 - 237 Napier Street Fitzroy - Advertised Plans
- 3 PLN 170914 - 237 Napier Street Fitzroy - Community Amenity Enforcement Advice