



YARRA CITY COUNCIL
Internal Development Approvals Committee
Agenda – Part 1

to be held virtually on
Wednesday 27 May 2020 at 6.30pm

Rostered Councillor membership

Councillor Misha Coleman
Councillor Mi-Lin Chen Yi Mei (substitute for Cr Nguyen)
Councillor Danae Bosler

- I. ATTENDANCE**
Amy Hodgen (Senior Co-Ordinator Statutory Planning)
Ally Huynh (Senior Co-Ordinator Statutory Planning)
Lara Fiscalini (Principal Planner)
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 Woi-wurrung 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."***

Internal Development Approvals Committee Submissions

“Prior to the consideration of any Committee Business Report at a meeting of the Internal Development Approvals Committee, members of the public shall be invited by the Chairperson to make a verbal submission. In determining the order of submissions, the Chairperson shall first invite the applicant or their representatives to submit, followed by formal objectors and finally any other interested persons.

All submitters accepting the invitation to address the meeting shall make submissions in accordance with these guidelines (or a variation of these guidelines as determined by the Chairperson at their sole discretion).

- Speak for a maximum of five minutes;
- Direct their submission to the Chairperson;
- Confine their submission to the planning permit under consideration;
- If possible, explain their preferred decision in relation to a permit application (refusing, granting or granting with conditions) and set out any requested permit conditions.
- Avoid repetition and restating previous submitters;
- Refrain from asking questions or seeking comments from the Councillors, applicants or other submitters;
- If speaking on behalf of a group, explain the nature of the group and how the submitter is able to speak on their behalf.

Following public submissions, the applicant or their representatives will be given a further opportunity of two minutes to exercise a right of reply in relation to matters raised by previous submitters. Applicants may not raise new matters during this right of reply.

Councillors will then have an opportunity to ask questions of submitters. Submitters may determine whether or not they wish to take these questions.

Once all submissions have been received, the formal debate may commence. Once the debate has commenced, no further submissions, questions or comments from submitters can be received.”

Extract from the Council Meeting Operations Policy, September 2019

1. Committee business reports

Item		Page	Rec. Page
1.1	PLN19/0539 - 193 Queens Parade Clifton Hill - Partial demolition, the construction of a four-storey (plus basement) building comprising office and food and drinks premises (cafe) uses (no permit required for uses) and a reduction in the car parking requirements.	5	48
1.2	PLN19/0751 - 375 & 377 Punt Road, Cremorne - Development and use of the land as a residential hotel, food and drink premises and bars with associated sale and consumption of liquor (on-premises), construction and display of signage and a reduction in the car parking requirements.	54	104
1.3	PLN19/0818 - 555 - 561 Victoria Street Abbotsford - Change of use to a restricted recreation facility (24 hour gymnasium) and display of business identification signage	114	128
1.4	PLN19/0624 - 267 Swan Street Richmond - Buildings and works associated with the use of the land as a place of assembly (art and exhibition space) and an ancillary retail space (as of right use), the sale and consumption of liquor (on and off the premises) between the hours of 10.00am to 1.00am, Monday to Sunday (7 days a week), with 145 patrons on the premises at any time and a reduction in the associated car parking requirement of the Yarra Planning Scheme.	130	157
1.5	3572.01 - 46 Johnston Street Fitzroy - Section 72 Amendment to Planning Permit 3572 to extend the licensed area of the existing bar (an as-of-right use in the zone) to include the covered courtyard at the rear of the site and the deletion of Conditions No.4 and No.5.	163	186

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- 1.1 PLN19/0539 - 193 Queens Parade Clifton Hill - Partial demolition, the construction of a four-storey (plus basement) building comprising office and food and drinks premises (cafe) uses (no permit required for uses) and a reduction in the car parking requirements.**
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Executive Summary

Purpose

1. This report provides Council with an assessment of Planning Application PLN19/0539 which is for partial demolition, the construction of a four-storey (plus basement) building comprising office and food and drinks premises (cafe) uses (no permit required for uses) and a reduction in the car parking requirements at No. 193 Queens Parade, Clifton Hill. The report recommends approval subject to conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 15.01 – Urban Environment – Higher Density Guidelines;
 - (b) Clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay;
 - (c) Clause 22.10 – Built Form and Design Policy;
 - (d) Clause 34.01 – Commercial 1 Zone;
 - (e) Clause 43.02 – Design and Development Overlay (Schedule 20); 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 and Heritage, and;
 - (c) Off-Site Amenity.

Submissions Received

4. Ninety-two (92) objections were received to the application, these can be summarised as:
 - (a) Heritage concerns regarding:
 - (i) demolition of the Victorian-era dwelling;
 - (ii) partial demolition and alterations to the shop building; and,
 - (iii) building height and setbacks not respectful of heritage precinct.
 - (b) Upper level setbacks of the development inconsistent with requirements of the Design and Development Overlay built form controls;
 - (c) Off-site amenity impacts, including overshadowing, overlooking, loss of daylight, waste impacts and visual bulk;
 - (d) Amenity impacts during the construction stage including noise, overlooking, traffic congestion and potential damage to property;
 - (e) Concerns regarding traffic in the laneway and Hodgkinson Street generated by the proposed development, including associated safety concerns;
 - (f) Insufficient provision of car parking on the land;
 - (g) Concerns that the development will be approved prior to the finalisation of the C231 Planning Scheme Amendment process;
 - (h) Lack of detail on roof services and potential for these to be visible;
 - (i) Concern that the subject site has been submitted to Heritage Victoria for inclusion in the Victorian Heritage Register, and;
 - (j) Concern that the application proposes demolition of walls within the title boundaries of the east-adjointing site.

Conclusion

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
- (a) Upper levels of the development to comply with the mandatory minimum street setback (8m) of the Council-adopted Schedule 16 to the Design and Development Overlay;
 - (b) Rear balconies of the development to be set back in accordance with the preferred rear setback control of Schedule 20 to the Design and Development Overlay;

CONTACT OFFICER: Chris Stathis
TITLE: Senior Statutory Planner
TEL: 9205 5352

1.1 PLN19/0539 - 193 Queens Parade Clifton Hill - Partial demolition, the construction of a four-storey (plus basement) building comprising office and food and drinks premises (cafe) uses (no permit required for uses) and a reduction in the car parking requirements.

Reference: D20/80980
 Authoriser: Senior Coordinator Statutory Planning

Ward: Langridge Ward
Proposal: Partial demolition, the construction of a four-storey (plus basement) building comprising office and food and drinks premises (cafe) uses (no permit required for uses) and a reduction in the car parking requirements.
Existing use: Massage Parlour and dwelling
Applicant: Omnicon Pty Ltd
Zoning / Overlays: Commercial 1 Zone / Heritage Overlay (Schedule 330), Design and Development Overlay (Schedule 20) and Environmental Audit Overlay
Date of Application: 16 August 2019
Application Number: PLN19/0539

Planning History

1. Planning application PLN16/1209 was withdrawn by the applicant on 09 May 2018. The application was for *development of the land for eight new dwellings and ground floor shop within a five-storey building (plus basement), including associated demolition works and reduction in car parking requirements.*

Background

Planning Scheme Amendments

2. On 17 March 2020, Council formally adopted Planning Scheme Amendment C231 which seeks to replace the current Schedule 20 to the Design and Development Overlay (DDO20) with a revised Schedule 16 to Design and Development Overlay (Council-adopted DDO16). Whilst not currently part of the Yarra Planning Scheme, it has been through exhibition and Planning Panel process and is now adopted by Council. As such, the Council-adopted DDO16 must be interpreted as a seriously-entertained Planning Scheme Amendment. The DDO20 and Council-adopted DDO16 include built form controls and objectives which will be articulated and assessed through this report.

Orientation

3. The subject site is rectangular in shape but has an irregular orientation (as does Queens Parade). For the purposes of consistency with the decision plans (and for ease of reference), the:
 - (a) Front façade will be referred to as the northern façade;
 - (b) Rear façade will be referred to as the southern façade;
 - (c) The side façade facing northeast will be referred to as the eastern façade;
 - (d) The side façade facing southwest will be referred to as the western façade.
4. All references to orientation will be described in the above fashion within this report.

The Proposal

5. The proposal is for partial demolition, the construction of a four-storey (plus basement) building comprising office and food and drinks premises (cafe) uses (no permit required for uses) and a reduction in the car parking requirements.

Use

- (a) The application proposes to use the land for:
- (i) office, with a net floor area of 539sqm and;
 - (ii) food and drinks premises (café), with a leasable floor area of 134sqm
- (b) A planning permit is not required for either of the proposed uses.

Demolition

- (c) Full demolition of the Victorian-era dwelling and associated rear garage and outbuildings.
- (d) Partial demolition of the Inter-war-era shop building including:
- (i) The western walls (i.e. both the front and rear western walls of the shop);
 - (ii) Full extent of the roof (except for front parapets);
 - (iii) Rear walls, and;
 - (iv) Internal walls (no permit required for internal demolition works)

Development

Basement

- (e) One basement level will be accessed via the rear laneway with the following:
- (i) 8 car stacker spaces;
 - (ii) 14 employee bicycle spaces and end of trip facilities;
 - (iii) A service area which includes two rainwater tanks (3,000L total capacity).

Ground Floor – Works to shop building

- (f) Construction of a new roof to form a sunken roof terrace above associated with the office component of the development. The terrace is set behind the existing front parapet and will have an area of approximately 35sqm.
- (g) New western wall to feature a large window adjacent to the proposed office entry courtyard;

Ground Floor – New Build

- (h) The shop building will be extended to a depth of 18m for the proposed café.
- (i) To the west of the café, an open courtyard area will function as the entry to the office which is set back 5m from the street boundary. Along the street frontage, this courtyard is access via a ramp at the western corner. An MFB booster and L-shaped landscaping planter box will be located at the street frontage to the east of the planter. Other than the entry courtyard, the ground floor will be constructed flush to both side boundaries.
- (j) The lift core and stairwell will be provided to the west of the cafe and connects to the rear car parking and waste areas towards the rear of the site.
- (k) A large vehicle circulation area is provided along the rear boundary so that the car stacker entry has a rear setback of 8m.

First, Second and Third Floor

- (l) Each of these levels feature two office tenancies, separated by a central light court with a width of 2.4m. The total office floor area is as follows:
- (i) 207sqm at first floor plus rear balcony (28sqm);
 - (ii) 189sqm at second floor plus rear balcony (32sqm) and front balcony (9sqm);
 - (iii) 143sqm at third floor plus rear balcony (30sqm) and front balcony (13sqm);
- (m) The massing of each of each level can be described in the following way:

- (i) First floor constructed flush to eastern boundary, flush to front portion of western boundary, set back 1.3m from rear portion of western boundary, set back 3m from the rear boundary (except for the rear balcony which is constructed flush to rear boundary);
- (ii) The second floor has the same massing as above except that a rear portion of the eastern wall is set back 0.965m from the boundary for the rear balcony to wrap around along the eastern boundary.
- (iii) The third floor is set back 0.965m from the eastern boundary, constructed flush to the western boundary (front portion only) - for the central and rear sections of the development, western side setbacks between 1.3m and 2.055m are provided. Rear setbacks of 5.87m (wall) and 2.84m (balcony) are proposed.

Roof Level

- (n) The café exhaust is shown to the east of the stairwell.

Height

- (o) The development proposes a maximum building height of 13.71m.

Materials and finishes

- (p) The dominant materials proposed by the application are masonry red brick (with selected application of white wash), metal cladding (in a charcoal finish), and concrete (in a light grey colour). The proposed material palette also includes expressions of metal mesh at the rear façade;
- (q) The form of the proposed building is rectilinear with vertical-rectangular format fenestration across the facades of the building.

6. A three-dimensional perspective of the development is provided below at Figure 1.



Figure 1: Three dimensional render of the proposed development showing the existing shop building in the foreground (application package).

Existing Conditions

Subject Site

7. The subject site is located on the southern side of Queens Parade, approximately 12m west of the intersection with Turnbull Street in Clifton Hill. The lot itself is rectangular in shape, with a frontage of 11.79m to Queens Parade and with a depth of 31.75m, covering a total area of approximately 374sqm.
8. The lot contains multiple buildings, being:
 - (a) a single-storey, Inter-war-era shop constructed flush to the street frontage and taking up roughly two-thirds of the frontage. The shop is constructed of brick and features a front parapet which obscures a flat roof form behind. The shop has large, metal-framed windows and a central glazed door presenting to the street which appear to be of the post-war era. The shop also features a front awning which projects over the footpath along Queens Parade;
 - (b) A Victorian-era dwelling constructed within the centre of the lot. The dwelling is constructed of brick and features a simple gabled roof form (in corrugated iron), a partially altered front verandah with a chimney located towards the eastern part of the roof. The dwelling has street setbacks of 5.4m (verandah) and 7m (front wall) and is largely obscured from the public realm by the shop building to the east and the double-storey commercial building at No. 187 Queens Parade to the west.
 - (c) Rear garage and outbuildings which are single storey and constructed of corrugated iron.



Figure 2: The subject site viewed from the northeast (Planning Officer photo, November 2019)



Figure 3: the Inter-war-era shop building (red), Victorian-era dwelling (purple) and the rear garage and outbuildings (orange).



Figure 4: The subject site viewed from the northwest (Planning Officer photo, November 2019)

9. The site presents to the rear laneway as a single-storey form, including the aforementioned garage and outbuildings. A sewer vent is located on the rear boundary of the subject site.



Figure 5: The rear garage and outbuildings of the subject site as they present to the laneway (Planning Officer Photos, November 2019).

Surrounding Land

10. The subject site is located in the Commercial 1 Zone (C1Z) which extends along both sides of the Queens Parade Neighbourhood Activity Centre (QPNAC). The Neighbourhood Residential Zone (NRZ1) is located to the south and southwest (as well as to the north of the NAC in Fitzroy North). To the east, land associated with Mayor’s Park is zoned Park and Public Recreation Zone (PPRZ). The zoning context is shown at figure 6 overleaf:

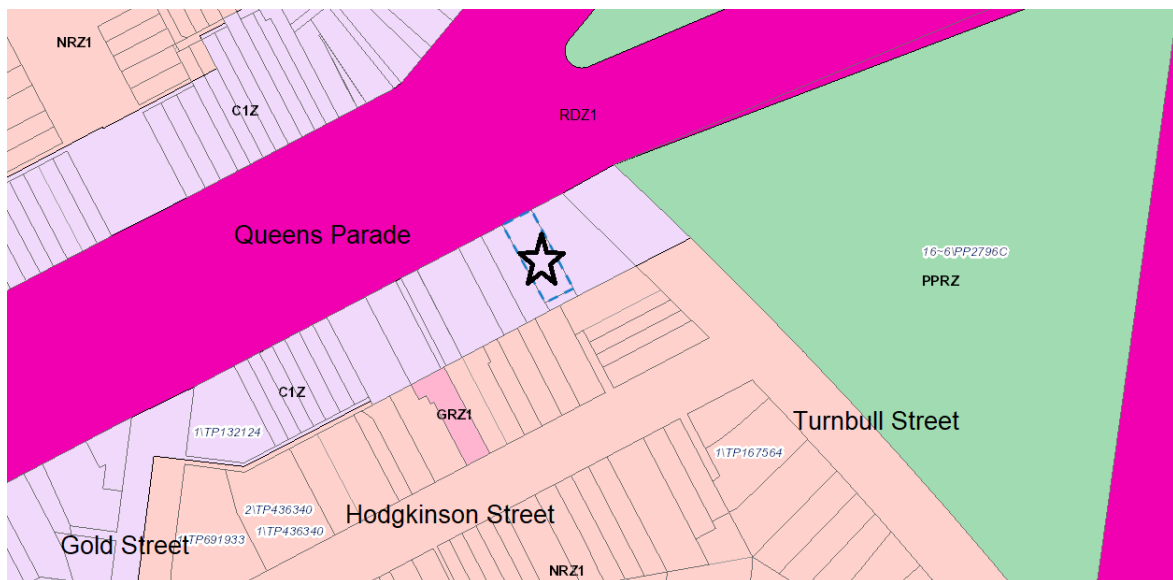


Figure 6: Zoning context of the subject site and the surrounding land (Victorian Government, 2020)

11. The surrounding land is defined by two typologies – the commercial strip along the QPNAC and the residential land which borders both sides of the QPNAC. The QPNAC is a Victorian-era commercial strip with a mix of hospitality, retail and community-based offerings.

Built form within the QPNAC is characterised by mostly Victorian-era and some Edwardian and Inter-war-era commercial buildings which are typically double-storey, constructed of brick, fenestrated in vertical-rectangular formats and feature parapets which obscure views of roof forms. The majority of commercial buildings are constructed flush to the street with high site coverage being a feature of the precinct.

12. The residential areas to the south and north of the QPNAC are largely zoned NRZ1 and dominated by Victorian and Edwardian-era, single and double-storey dwellings typically constructed in brick. Modest areas of SPOS are typically provided to the rear of a dwelling's allotment, which are often small and highly built up.

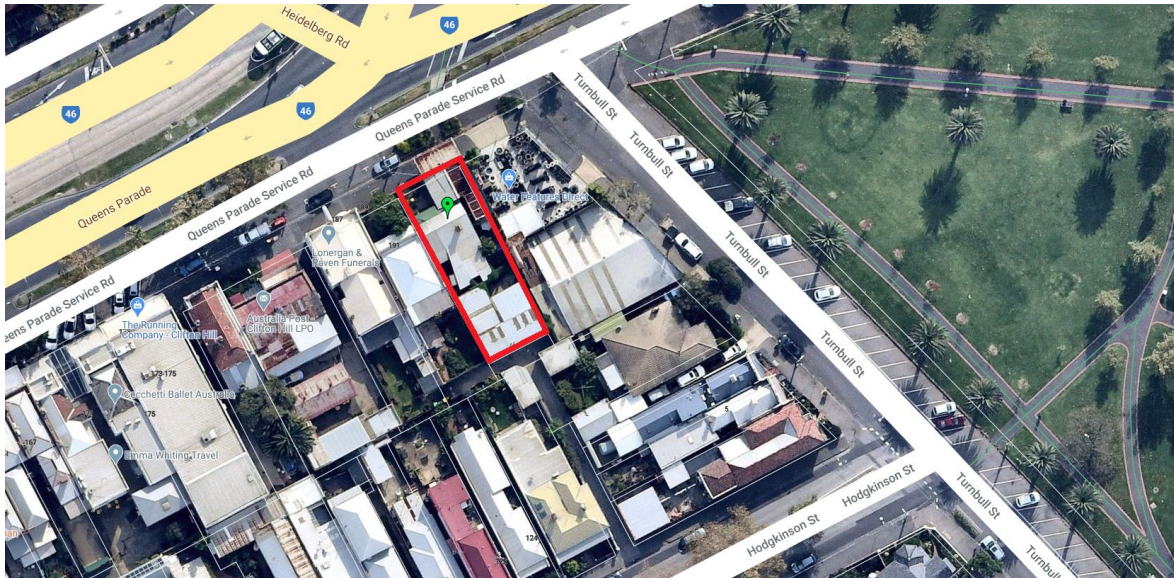


Figure 7: The subject site (red outline) and the surrounding land (Nearmap, April 2020)

13. The site is well serviced by public transport and public open space facilities, including:
 - (a) Clifton Hill Train Station 300m to the east of the site;
 - (b) The 86 tram route servicing Queens Parade;
 - (c) Queens Parade is serviced by the following bus routes:
 - (i) The 546 (Heidelberg – Melbourne University – Queen Victoria Market via Clifton Hill and Carlton) travels along Queens Parade;
 - (ii) The 504 (Moonee Ponds – Clifton Hill via East Brunswick) stops on North Terrace approximately 180m south-east of the site, and;
 - (iii) The 246 (Elsternwick – Clifton Hill via St Kilda) travels along Hoddle Street and stops at North Terrace approximately 470m east of the site;
 - (d) Darling Gardens, located approximately 100m to the south;
 - (e) Mayors Park (including the Collingwood Leisure Centre), located approximately 50m to the east, and;
 - (f) Edinburgh Gardens, located approximately 200m to the west.

14. There is an emergence of higher density development occurring in the QPNAC. To the west of Turnbull Street, these developments are largely up to four - five storeys in height and are generally of a contemporary design with a mix of materials including brick, concrete and metal cladding. The following developments have been granted planning approval:
 - (a) A five-storey, mixed-use development (office and apartments, including partial demolition) at No. 388-390 Queens Parade (80m north) approved under Planning Permit PLN17/0705. Construction works have not yet commenced.
 - (b) A four-storey apartment building (including partial demolition) at No. 141 – 147 Queens Parade (120m southwest) approved under Planning Permit PLN17/0708. Construction works have not yet commenced.

- (c) A four-storey apartment building (including partial demolition) at No. 137 Queens Parade (180m southwest) approved under Planning Permit PLN14/0902. Construction works have not yet commenced.
- (d) A four-storey apartment building (including partial demolition) with ground floor commercial uses at No. 101 - 103 Queens Parade (280m southwest) approved under Planning Permit PLN14/0209. The development has been completed.
- (e) A three-storey townhouse development (including partial demolition) at No. 97 – 99 Queens Parade (300m southwest) approved under Planning Permit PLN18/0525. Construction works have not yet commenced.



Figure 8: Four-storey apartment development at No. 101 – 103 Queens Parade

- 15. Further east is an island precinct bound by Queens Parade, Heidelberg Road and Hoddle Street. This precinct features a number of larger sites which have been developed into mid-rise and high-rise developments including the following:
 - (a) A 10-storey aged care facility at No. 217 – 241 Queens Parade (250m northeast) approved under Planning Permit PLN15/1101. The development has been completed.
 - (b) A 12-storey apartment building at No. 243 – 247 Queens Parade (280m northeast) approved under Planning Permit PLN14/0311. The development has been completed.
 - (c) A fourteen-storey apartment building at No. 249 – 265 Queens Parade (320m northeast) approved under Planning Permit PLN16/0494. Construction works have not yet commenced.
- 16. Nearby properties to the subject site include the following:
 - (a) To the west at No. 191 Queens Parade is a double-storey Victorian-era, brick terrace dwelling situated on a lot roughly two thirds the width of the subject site. The dwelling has street setbacks of 6.5m (front verandah) and 8.3m (front wall). The dwelling is setback 1m from the common boundary shared with the subject site. Along the eastern wall, the dwelling has three habitable room windows located opposite the subject site – one at ground floor and two at first floor. Towards the rear of the site, the dwelling is provided with 74sqm of secluded private open space (SPOS). This dwelling is located in the C1Z and is listed as contributory to the heritage precinct.

- (b) Further west is No. 187 Queens Parade which is a double-storey, Edwardian-era commercial building constructed flush with the street boundary and to both side boundaries. An open area is provided to the rear of the site. The building is used for a funeral parlour. Aerial imagery indicates that part of the building may be used as a dwelling, with the rear open area appearing as SPOS. To ensure a conservative assessment, this report will assume that the building is partly used for a dwelling. This site is located in the C1Z and is listed as individually significant to the heritage precinct.
- (c) To the east of the subject site is No. 195 Queens Parade, which is a large, irregular-shaped lot at the corner of Queens Parade and Turnbull Street. The site is used as a retail outlet specialising in water features. The front half of the site is completely open and used for stock display. The rear half of the site is developed with an Inter-war or early Post-war, single-storey warehouse building which is accessed off Turnbull Street and constructed flush to the common boundary with the subject site. The site is located in the C1Z and is listed as not-contributory to the heritage precinct.
- (d) To the southeast of the subject site is No. 1 Turnbull Street which is a single-storey, post-war brick dwelling situated on a medium-sized lot with 80sqm of SPOS towards the rear. The site abuts the laneway that abuts the rear of the subject site. An outbuilding is located in the corner of the lot which is closest to the subject site. The dwelling is located in the NRZ1 and is listed as not-contributory to the heritage precinct.
- (e) To the south of the dwelling (i.e. opposite the laneway) is No. 126 Hodgkinson Street, which is a single-storey Victorian-era dwelling constructed of brick. The dwelling features 46sqm of SPOS towards the rear of the site. The dwelling is located in the NRZ1 and is listed as contributory to the heritage precinct.



Figure 9: Hodgkinson Street at the intersection of the rear laneway to the subject site. No. 126 Hodgkinson Street is shown in the foreground. The subject site is at the end of the laneway, depicted by the red arrow (Planning Officer Photos, May 2020).

Planning Scheme Provisions

Zoning

Commercial 1 Zone

- 17. Pursuant to Clause 34.01-1 of the Yarra Planning Scheme (the Scheme), a planning permit is not required for the use of the land for office or for food and drinks premises.
- 18. Pursuant to Clause 34.01-4 of the Scheme, a planning permit is required to construct a building or construct or carry out works.

Overlays

19. The subject site is affected by Schedule 20 to the Design and Development Overlay (DDO20). Pursuant to Clause 43.02-2, a planning permit is required to construct a building or construct or carry out works. DDO20 incorporates general and heritage design requirements and categorises properties into different precincts with specific built form controls. The general design requirements state the following:

General design requirements

The following requirements apply to an application to construct a building or carry out works and must be read in conjunction with the relevant precinct design requirements:

- (a) *A permit cannot be granted to construct a building or carry out works which are not in accordance with the mandatory requirements specified in the relevant Precinct Tables*
- (b) *A permit cannot be granted to construct a building or carry out works which exceeds the preferred building height and setbacks shown in the relevant Precinct Tables unless the following requirements are met, to the satisfaction of the responsible authority:*
 - (i) *The built form outcome as a result of the proposed variation satisfies the general design objectives in Clause 1.0; and*
 - (ii) *The built form outcome as a result of the proposed variation satisfies the relevant requirements specified in this schedule.*
- (c) *Facades at ground level must be designed with floor to floor ceiling heights suitable to accommodate commercial activity in the Commercial 1 Zone and the Mixed Use Zone*
- (d) *Development must create a consistent street wall height along the streetscapes.*
- (e) *Future vehicle access and services must be provided from a rear laneway or side street where possible.*
- (f) *Development must provide setbacks which ensure that upper level additions seen from the public realm are high quality and do not diminish the appreciation of the heritage building and streetscape.*
- (g) *Development must avoid repetitive stepped built form at upper levels of development.*
- (h) *Unless specified in another table in this schedule, any part of a building adjacent to land in a residential zone must comply with the following.*

Boundary wall height and setback requirements for development adjoining a residential zone

	Boundary wall height	Setback
<i>Common boundary</i>	<i>5 metres</i>	<i>45 degree above boundary wall height</i>
<i>Laneway interface</i>	<i>8 metres</i>	<i>45 degree above boundary wall height</i>

The overlay provides further requirements for properties affected by heritage overlays. Of most relevance are the design requirements for:

Element	Design response
<i>Building facades and street frontages</i>	<p><i>Infill buildings and development adjoining a heritage building</i> <i>Façade treatments and the articulation of infill buildings on land affected by a heritage overlay and development on land immediately adjoining a heritage building must:</i></p> <ul style="list-style-type: none"> • <i>Ensure façade treatments and the articulation of the new development are simple and do not compete with the more elaborate detailing of the adjoining heritage building(s);</i> • <i>Respect the vertical proportions of the nineteenth and twentieth century facades in the heritage streetscape and/or the adjoining heritage building(s);</i>

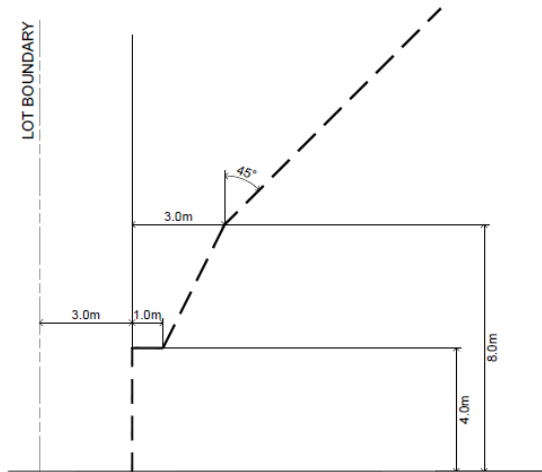
Element	Design response
	<ul style="list-style-type: none"> • Avoid large expanses of glazing with a horizontal emphasis except for ground floor shopfronts; • Reflect the existing canopy/verandah height of the heritage streetscape and/or adjoining heritage building(s) <p>Adaption of contributory or individually significant buildings Adaptation of contributory or individually significant buildings must:</p> <ul style="list-style-type: none"> • Avoid highly reflective glazing in historic openings • Encourage the retention of solid built form behind retained facades and avoid balconies behind existing openings; • Maintain the inter-floor height of the existing building and avoid new floor plates and walls cutting through historic openings.
Upper level behind heritage street wall	<p>Upper level development on land within a heritage overlay and on land immediately adjoining a heritage building must:</p> <ul style="list-style-type: none"> • Be visually recessive and not visually dominate the heritage building and the heritage streetscape; • Retain the primacy of the three-dimensional form of the heritage building as viewed from the public realm to avoid 'facadism' • Utilise visually lightweight materials and finishes that are recessive in texture and colour and provide a juxtaposition with the heavier masonry of the heritage facades • Incorporate simple architectural detailing that does not detract from significant elements of the heritage building and the heritage streetscape • Be articulated to reflect the fine grained character of the streetscape

20. DDO20 further separates properties into precincts with specific height and setback requirements. Relevant to this application, the subject site is located within precinct 4. The following built form requirements are relevant to precinct 4:

Built form	Mandatory requirement	Preferred requirement
Building height	21.5 metres	
Front street wall height on Queens Parade	Retain height of existing heritage façade.	
Upper level setback Queens Parade		Minimum 6 metres
Side and rear setback (NRZ interface)		45 degree angle above 8 metres from rear boundary to laneway

21. On 17 March 2020, Council formally adopted planning Scheme Amendment C231 which seeks to replace the current DDO20 with a revised DDO16. Whilst it is not currently part of the Yarra Planning Scheme, it has been through the exhibition and Planning Panel processes and has been adopted by Council. As such, the DDO16 must be interpreted as a seriously-entertained Planning Scheme Amendment. Most relevant to the subject application are the changes made to the mandatory and preferred built form controls for precinct 4. These are outlined in the following table:

Built form	Mandatory requirement	Preferred requirement
Building height	14 metres	

Front street wall height on Queens Parade	Retain height of existing heritage façade.	
Upper level setback Queens Parade	8m	
Street wall setback		Retain existing setback
Side and rear setback (NRZ interface)		Height and setbacks as shown at figure 2: 

22. The subject site is affected by the Heritage Overlay (Schedule 330 – Queens Parade Precinct). Pursuant to Clause 43.01-1, a planning permit is required to:
- (a) Demolish or remove a building;
 - (b) Construct a building or construct or carry out works.
23. The subject site is affected by the Environmental Audit Overlay. Pursuant to Clause 45.03-1, *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.*
24. Given that the proposed uses are for office and food and drinks premises (i.e. non-sensitive uses), the above requirements do not apply.

Particular Provisions

Clause 52.06 – Car parking

25. Clause 52.06-1 of the Scheme prescribes that a new use must not commence or the floor area of an existing use must not be increased until the required car spaces have been provided on the land. The table overleaf outlines the car parking requirements for the proposed office and food and drinks premises uses (pursuant to Table 1 at Clause 52.06-5), the proposed car parking provision on site and the resultant car parking reduction.

Land Use	Units/Area proposed	Rate	No. required	No. proposed	Reduction sought
Office	539 sqm* net floor area	3 car parking spaces per 100sqm of net floor area	16	8	8
Food and Drinks Premises	134 sqm leasable floor area	3.5 spaces per 100sqm of leasable floor area	4	0	4
Total			20	8	12

* Council's Engineering Services Unit stated that the net floor area is 790sqm, however this is incorrect as it includes balcony areas. The correct net floor area is 539sqm.

26. As shown in the table above, the development requires a planning permit for a car parking reduction pursuant to Clause 52.06-3. A reduction of 12 spaces is sought.

Clause 52.34 – Bicycle facilities

27. A new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities have been provided on the land. The table below outlines the bicycle parking requirements for the proposed use.

Land Use	Units/Area proposed	Rate	No. required	No. proposed	Surplus
Office	539 sqm net floor area	<i>Employee spaces</i> 1 space to each 300m ² net floor area (if the net floor area exceeds 1000m ²)	0	14	14
		<i>Visitor spaces</i> 1 visitor space to each 1000sq.m. of net floor area (if the net floor area exceeds 1000m ²)	0	0	
		<i>Showers / Change Rooms</i> 1 to the first 5 employee spaces and 1 to each additional 10 employee spaces	0	2	2
Food and Drinks Premises	134 sqm leasable floor area	<i>Employee spaces</i> 1 space to each 300m ² leasable floor area	0	0	
		<i>Shopper spaces</i> 1 space to each 500m ² leasable floor area	0	0	
		<i>Showers / Change Rooms</i> Only applicable if 5 or more bicycle spaces required by use	0	0	
		Total	Employee spaces	0	14
	Visitor / Shopper spaces	0	0	0	
	Showers / Change Rooms	0	2	2	

28. As detailed in the above table, the proposal provides a surplus of 14 employee spaces and 2 showers / change rooms. The application does not provide any visitor spaces however there is no requirement for this. As such, a planning permit is not triggered under this provision.

General Provisions

29. The decision guidelines outlines at Clause 65 of the Scheme are relevant to all applications. 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.

Planning Policy Framework (PPF)

Clause 11.01-1R (Settlement - Metropolitan Melbourne)

30. Relevant strategies include;
- (a) *Develop a network of activity centres linked by transport; consisting of Metropolitan Activity Centres supported by a network of vibrant major and neighbourhood activity centres of varying size, role and function.*
 - (b) *Create mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities.*

Clause 11.02 (Managing Growth)

Clause 11.02-1S (Supply of Urban Land)

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

Clause 11.03 (Planning for Places)

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

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

Clause 13.04-1S (Contaminated and potentially contaminated land)

33. The objective is to ensure that potentially contaminated land is suitable for its intended future use and that contaminated land is used safely.

Clause 15.01 (Built Environment and Heritage)

34. This clause outlines the following guidelines;
- (a) *Planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context.*
 - (b) *Planning must support the establishment and maintenance of communities by delivering functional, accessible, safe and diverse physical and social environments, through the appropriate location of use and development and through high quality buildings and urban design.*
 - (c) *Planning should promote development that is environmentally sustainable and should minimise detrimental impacts on the built and natural environment.*
 - (d) *Planning should promote excellence in the built environment and create places that:*
 - (i) *Are enjoyable, engaging and comfortable to be in.*
 - (ii) *Accommodate people of all abilities, ages and cultures.*
 - (iii) *Contribute positively to local character and sense of place.*
 - (iv) *Reflect the particular characteristics and cultural identity of the community.*
 - (v) *Enhance the function, amenity and safety of the public realm.*

Clause 15.01-1S (Urban design)

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

Clause 15.01-1R (Urban design - Metropolitan Melbourne)

36. The objective is:
- (a) *To create distinctive and liveable city with quality design and amenity.*

Clause 15.01-2S (Building Design)

37. The objective is:
- (a) *To achieve building design outcomes that contribute positively to the local context and enhance the public realm.*
38. The strategies of this clause are:
- (a) *Ensure the site analysis provides the basis for the consideration of height, scale and massing of new development.*
 - (b) *Ensure development responds and contributes to the strategic and cultural context of its location.*
 - (c) *Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.*
 - (d) *Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.*
 - (e) *Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.*
 - (f) *Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.*
 - (g) *Ensure development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.*

Clause 15.01-4R (Healthy neighbourhoods - Metropolitan Melbourne)

39. The strategy is:
- (a) *Create a city of 20 minute neighbourhoods, that give people the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home.*

Clause 15.01-5S (Neighbourhood character)

40. The objective is:
- (a) *To recognise, support and protect neighbourhood character, cultural identity, and sense of place.*
41. Strategies are:
- (a) *Ensure development responds to cultural identity and contributes to existing or preferred neighbourhood character.*
 - (b) *Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by emphasising the:*
 - (i) *Pattern of local urban structure and subdivision.*
 - (ii) *Underlying natural landscape character and significant vegetation.*
 - (iii) *Heritage values and built form that reflect community identity.*

Clause 15.02 (Sustainable Development)

Clause 15.02-1S (Energy and resource efficiency)

42. The objective 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 15.03-1S (Heritage conservation)

43. The objective is:
- (a) *To ensure the conservation of places of heritage significance.*

44. Strategies include:
- (a) *Encourage appropriate development that respects places with identified heritage values.*
 - (b) *Retain those elements that contribute to the importance of the heritage place.*
 - (c) *Encourage the conservation and restoration of contributory elements of a heritage place.*
 - (d) *Ensure an appropriate setting and context for heritage places is maintained or enhanced.*
 - (e) *Support adaptive reuse of heritage buildings where their use has become redundant.*

Clause 17 (Economic development)

45. The clause states:
- (a) *Planning is to contribute to the economic wellbeing of the state and foster economic growth by providing land, facilitating decisions and resolving land use conflicts, so that each region may build on its strengths and achieve its economic potential.*

Clause 17.01-1S (Diversified economy)

46. The objective is:
- (a) *To strengthen and diversify the economy.*

47. Relevant strategies are:
- (a) *Protect and strengthen existing and planned employment areas and plan for new employment areas.*
 - (b) *Improve access to jobs closer to where people live*

Clause 17.01 -1R (Diversified economy – Metropolitan Melbourne)

48. Strategies include:
- (a) *Facilitate the development of National Employment and Innovation Clusters by ensuring they:*
 - (i) *Have a high level of amenity to attract businesses and workers;*
 - (ii) *Are supported by good public transport services and integrated walking and cycling paths;*
 - (iii) *Maximise investment opportunities for the location of knowledge intensive firms and jobs.*

Clause 17.02-1S (Business)

49. The objective is:
- (a) *To encourage development which meet the communities' needs for retail, entertainment, office and other commercial services.*
50. Relevant strategies include:
- (a) *Plan for an adequate supply of commercial land in appropriate locations.*
 - (b) *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.*

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

Clause 18.02-1S – (Sustainable personal transport)

51. The objective is:
- (a) *To promote the use of sustainable personal transport.*
52. Relevant strategies are:
- (a) *Encourage the use of walking and cycling by creating environments that are safe and attractive.*
- (b) *Develop high quality pedestrian environments that are accessible to footpath-bound vehicles such as wheelchairs, prams and scooters.*
- (c) *Require the provision of adequate bicycle parking and related facilities to meet demand at education, recreation, transport, shopping and community facilities and other major attractions when issuing planning approvals.*
- (d) *Ensure provision of bicycle end-of-trip facilities in commercial buildings*

Clause 18.02-1R (Sustainable personal transport- Metropolitan Melbourne)

53. Strategies of this policy are:
- (a) *Improve local travel options for walking and cycling to support 20 minute neighbourhoods.*
- (b) *Develop local cycling networks and new cycling facilities that support the development of 20-minute neighbourhoods and that link to and complement the metropolitan-wide network of bicycle routes - the Principal Bicycle Network*

Clause 18.02-2S (Public Transport)

54. The objective is:
- (a) *To facilitate greater use of public transport and promote increased development close to high-quality public transport routes.*

Clause 18.02-2R (Principal Public Transport Network)

55. A relevant strategy of this clause is to:
- (a) *Maximise the use of existing infrastructure and increase the diversity and density of development along the Principal Public Transport Network, particularly at interchanges, activity centres and where principal public transport routes intersect.*

Clause 18.02-4S (Car Parking)

56. The objective is:
- (a) *To ensure an adequate supply of car parking that is appropriately designed and located.*
57. A relevant strategy is:
- (a) *Protect the amenity of residential precincts from the effects of road congestion created by on-street parking.*

Local Planning Policy Framework (LPPF)

58. The following LPPF provisions of the Scheme are relevant:

Clause 21.04-2 (Activity Centres)

59. This clause highlights the following relevant matters:

- (a) *Activity centres in Yarra have a retail, hospitality, and service focus. Because of the pattern of development in the municipality, almost all residents are within 400m of an activity centre. The provision of local services is therefore important for maintaining the character of activity centres as local destinations.*
- (b) *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 the municipality;*

60. Relevant strategies include;

- (a) *Strategy 4.1 Increase the range of retail, personal and business services, community facilities, and recreation activities, within individual centres.*
- (b) *Strategy 5.2 Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.*
- (c) *Strategy 5.3 Discourage uses at street level in activity centres which create dead frontages during the day.*

Clause 21.04-3 (Industry, office and commercial)

61. The objective of this clause is *to increase the number and diversity of local employment opportunities.*

62. The clause also acknowledges that *Yarra's commercial and industrial sectors underpin a sustainable economy and provide employment. Yarra plans to retain and foster a diverse and viable economic base.*

Clause 21.05-1 (Heritage)

63. Relevant objectives and strategies include;

- (a) *Objective 14 To protect and enhance Yarra's heritage places:*
 - (i) *Strategy 14.3 Protect the heritage skyline of heritage precincts.*
 - (ii) *Strategy 14.4 Protect the subdivision pattern within heritage places.*
 - (iii) *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.*
 - (iv) *Strategy 14.8 Apply the Development Guidelines for Heritage Places policy at clause 22.02*

Clause 21.05-2 (Urban design)

64. The relevant objectives and strategies 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:*
 - (i) *Strategy 17.2 encourages new development to be no more than five – six storeys unless it can be demonstrated that the development 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 21 To enhance the built form character of Yarra's activity centres;*

- (i) *Strategy 21.1 Require development within Yarra's activity centres to respect and not dominate existing built form; and*
- (f) *Objective 22 To encourage the provision of universal access in new development.*

Clause 21.05-4 (Public environment)

65. The relevant objective and strategies are:

- (a) *Objective 28 To provide a public environment that encourages community interaction and activity:*
 - (i) *Strategy 28.1 Encourage universal access to all new public spaces and buildings*
 - (ii) *Strategy 28.2 Ensure that buildings have a human scale at street level.*
 - (iii) *Strategy 28.3 Require buildings and public spaces to provide a safe and attractive public environment.*

Clause 21.06 (Transport)

66. This clause builds upon the objectives outlined at clause 18, promoting cycling, walking and public transport as alternatives to private motor vehicle usage.

Clause 21.06-1 (Walking and cycling)

67. This clause builds upon the Objectives outlined at Clause 18, promoting cycling, walking and public transport as alternatives to private motor vehicle usage.

- (a) *Objective 30 To provide safe and convenient bicycle environments:*
 - (i) *Strategy 30.2 Minimise vehicle crossovers on street frontages.*

Clause 21.06-2 (Public transport)

- (b) *Objective 31 To facilitate public transport usage.*
 - (i) *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)

- (c) *Objective 32 To reduce the reliance on the private motor car.*

Clause 21.07-1 (Environmentally sustainable development)

68. The relevant objective of this clause is:

- (a) *Objective 34 To promote ecologically sustainable development:*
 - (i) *Strategy 34.1 Encourage new development to incorporate environmentally sustainable design measures in the areas of energy and water efficiency, greenhouse gas emissions, passive solar design, natural ventilation, stormwater reduction and management, solar access, orientation and layout of development, building materials and waste minimisation;*

Clause 21.08-4 Neighbourhoods (Clifton Hill)

69. The following relevant commentary is offered at this clause:

- (a) *The Queens Parade centre is a mixed use centre with strong convenience retailing. There is an opportunity to create stronger linkages between the community facilities to the east and the centre.*

Local Policies

Clause 22.02 (Development Guidelines for sites subject to Heritage Overlay)

70. The relevant objectives of this clause are as follows
- (a) *To retain significant view lines to, and vistas of, heritage places.*
 - (b) *To preserve the scale and pattern of streetscapes in heritage places.*
 - (c) *To ensure that additions and new works to a heritage place respect the significance of the place.*

71. The relevant parts of this clause are as follows:

Clause 22.02-5.1 (Demolition)

Full demolition or removal of a building

- (a) *Generally encourage the retention of a building in a heritage place, unless*
 - (i) *The building is identified as being not contributory.*
 - (ii) *The building is identified as a contributory building, and*
 - *new evidence has become available to demonstrate that the building does not possess the level of heritage significance attributed to it in the incorporated document, City of Yarra Review of Heritage Areas 2007 Appendix 8 (as updated from time to time) and;*
 - *the building does not form part of a group of similar buildings.*

Removal of Part of a Heritage Place or Contributory Elements

- (b) *Encourage the removal of inappropriate alterations, additions and works that detract from the cultural significance of the place.*
- (c) *Generally discourage the demolition of part of an individually significant or contributory building or removal of contributory elements unless:*
 - (i) *That part of the heritage place has been changed beyond recognition of its original or subsequent contributory character(s).*
 - (ii) *For a contributory building:*
 - *that part is not visible from the street frontage (other than a laneway), abutting park or public open space, and the main building form including roof form is maintained; or*
 - *the removal of the part would not adversely affect the contribution of the building to the heritage place.*

Painting and Surface Treatments

- (d) *Encourage the removal of paint from originally unpainted masonry surfaces.*

Clause 22.02-5.7 (New Development, Alterations or Additions)

Clause 22.02-5.7.1 (General)

72. The relevant objectives of this clause are as follows
- (a) *Encourage the design of new development and alterations and additions to a heritage place or a contributory element to a heritage place to:*
 - (i) *Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.*
 - (ii) *Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.*
 - (iii) *Be visually recessive and not dominate the heritage place.*
 - (iv) *Be distinguishable from the original historic fabric.*
 - (v) *Not remove, cover, damage or change original historic fabric.*
 - (vi) *Not obscure views of principle façades.*
 - (vii) *Consider the architectural integrity and context of the heritage place or contributory element.*

Clause 22.02-5.7.2 (Specific Requirements - Industrial, Commercial and Retail Heritage Place or Contributory Elements)

73. *Encourage new upper level additions and works to:*
- (a) *Respect the scale and form of the existing heritage place or contributory elements to the heritage place by being set back from the lower built form elements. Each higher element should be set further back from lower heritage built forms;*
 - (b) *Incorporate treatments which make them less apparent.*

Clause 22.05 (Interface Uses Policy)

74. The relevant policy is:
- (a) *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.*

Clause 22.07 (Development abutting laneways)

75. This policy applies to applications for development that is accessed from a laneway or has laneway abuttal, with the relevant objectives as follows;
- (a) *To provide an environment which has a feeling of safety for users of the laneway.*
 - (b) *To ensure that development along a laneway acknowledges the unique character of the laneway.*
 - (c) *To ensure that where development is accessed off a laneway, all services can be provided to the development. To ensure that development along a laneway is provided with safe pedestrian and vehicular access.*

Clause 22.16 Stormwater Management (Water Sensitive Urban Design)

76. This policy applies to (as relevant) new buildings and contains the following objectives;
- (a) *To achieve the best practice water quality performance objectives set out in the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999 (or as amended).*
 - (b) *Currently, these water quality performance objectives require:*
 - (i) *Suspended Solids - 80% retention of typical urban annual load*
 - (ii) *Total Nitrogen - 45% retention of typical urban annual load*
 - (iii) *Total Phosphorus - 45% retention of typical urban annual load*
 - (iv) *Litter - 70% reduction of typical urban annual load*
 - (c) *To promote the use of water sensitive urban design, including stormwater re-use.*
 - (d) *To mitigate the detrimental effect of development on downstream waterways, by the application of best practice stormwater management through water sensitive urban design for new development.*
 - (e) *To minimise peak stormwater flows and stormwater pollutants to improve the health of water bodies, including creeks, rivers and bays.*
 - (f) *To reintegrate urban water into the landscape to facilitate a range of benefits including microclimate cooling, local habitat and provision of attractive spaces for community use and well being.*

Clause 22.17 (Environmentally Sustainable Design)

77. The overarching objective is that development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation. The considerations are energy performance, water resources, indoor environment quality, storm water management, transport, waste management and urban ecology.

Advertising

78. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 318 letters sent to surrounding owners and occupiers and by two signs displayed on site. Council received ninety-two (92) objections, the grounds of which are summarised as follows:
- (a) Heritage concerns regarding:
 - (i) demolition of the Victorian-era dwelling;
 - (ii) partial demolition and alterations to the shop building; and,
 - (iii) building height and setbacks not respectful of heritage precinct.
 - (b) Upper level setbacks of the development inconsistent with requirements of the Design and Development Overlay built form controls;
 - (c) Off-site amenity impacts, including overshadowing, overlooking, loss of daylight, waste impacts and visual bulk;
 - (d) Amenity impacts during the construction stage including noise, overlooking, traffic congestion and potential damage to property;
 - (e) Concerns regarding traffic in the laneway and Hodgkinson Street generated by the proposed development, including associated safety concerns;
 - (f) Insufficient provision of car parking on the land;
 - (g) Concerns that the development will be approved prior to the finalisation of the C231 Planning Scheme Amendment process;
 - (h) Lack of detail on roof services and potential for these to be visible;
 - (i) Concern that the subject site has been submitted to Heritage Victoria for inclusion in the Victorian Heritage Register, and;
 - (j) Concern that the application proposes demolition of walls within the title boundaries of the east-adjointing site.
79. A planning consultation meeting was held on 11 February 2020 and attended by 18 objectors, the applicant and Planning Officers to discuss issues and concerns raised in the letters of objection. No changes to the proposal were made following the meeting.

Referrals

80. The referral comments are based on the decision plans (i.e. the advertised plans).

External Referrals

81. The application was not required by the Scheme to be referred to any external authorities.

Internal Referrals

82. The application was referred to the following units within Council:
- (a) Council's Urban Design Unit
 - (b) Council's Heritage Advisor;
 - (c) Council's ESD Advisor;
 - (d) Council's Engineering Services Unit, and;
 - (e) Council's Strategic Transport Unit
83. Referral comments have been included as attachments to this report.

OFFICER ASSESSMENT

84. The primary considerations for this application are as follows:
- (d) Policy and Strategic Support;
 - (e) Built Form and Heritage;
 - (f) On-Site Amenity;
 - (g) Off-Site Amenity;
 - (h) Car Parking, Vehicle Access, Traffic, Loading and Waste;
 - (i) Bicycle Facilities, and;
 - (j) Objector Concerns.

Policy and Strategic Support

85. The proposed development has strong strategic support at State and local level. The subject site is located within the C1Z, which has a key purpose *to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses*.
86. Consistent with the zone, the use of the land for office and food and drinks premises does not require a planning permit and only the buildings and works are triggered by this provision. This indicates strong strategic support for both of the proposed uses in this location. Additionally, policies (such as clauses 11.03-1R and 18.01-1S) encourage the concentration of development near activity centres and more intense development on sites well connected to public transport.
87. At a State level, the metropolitan planning strategy *Plan Melbourne* seeks to create 20-minute neighbourhoods, where people can access most of their everyday needs (including employment) within a 20-minute walk, cycle or public transport commute. These neighbourhoods must be safe, accessible and well connected for pedestrians and cyclists.
88. The site fulfils this criteria as it is located within the QPNAC, which provides a wide range of retail, hospitality and community-based offerings with excellent access to public transport including trams along Queen's Parade and Clifton Hill Railway Station within 300m.
89. This site context therefore encourages the use of alternative modes of transport to and from the site rather than encouraging the reliance on motor vehicles. This is an outcome pursued by clauses 18.02 – *Movement Networks*; 21.06-3 – *The Road System and Parking*; and 21.03 – *Vision* of the Scheme. Further, the site is located within proximity to a comprehensive cycling network; with the Merri Creek Trail within 450m and the 'Copenhagen-style' bicycle lanes established along Wellington Street 800m to the southwest, both of which are highly utilised by cyclists.
90. It is clear that the zoning of the land preferences uses such as offices and seeks higher density development. Notwithstanding this, the site is affected by the DDO20 which provides requirements and policy objectives for new development. The requirements contained within the Council-adopted DDO16 are also relevant. The proposal complies with the majority of these requirements, which gives further evidence to the strategic support of the proposal. A number of minor changes to the development will be recommended by condition so as to ensure that the objectives both overlays are fully realised, as will be discussed within the Built Form section of this assessment.
91. In light of the above considerations, the proposed development of the site for a mid-rise office development is considered to have strong strategic support. However, such strategic direction must be balanced against site constraints (including heritage), the local built form context, the architectural response and the potential for off-site amenity impacts.

Built Form and Heritage

92. This section of the report considers the built form of the proposed development and is guided primarily by the decision guidelines of the Commercial 1 Zone at clause 34.01-7 the design requirements and objectives of the DDO20 and the Council-adopted DDO16, local heritage policy at Clause 22.02 and the decision guidelines to the heritage Overlay at Clause 43.01-7.
93. These provisions and policies seek a development that responds to the existing or preferred neighbourhood character and provides a contextual urban design response reflective of the aspirations of the area. Particular regard must be given to the site context, demolition, building height, massing, architectural response, the pedestrian experience and the development's interface with sensitive uses. These will be considered in the following paragraphs.

Site Context

94. As outlined earlier within this report, built form in the immediate area can be defined by both the double-storey, Victorian and Inter-war-era commercial buildings along the QPNAC and the single and double-storey dwellings which characterise the residential zones to the south and north of the QPNAC. The principal section of the QPNAC has experienced an emergence of higher scale developments of up to five storeys in recent years.
95. The proposed development is responsive to the primary heritage context along Queens Parade. The front, Inter-war-era shop building is to be retained with the new build provided with a street setback of 8m (as required by condition) to ensure a recessive appearance from the public realm. Further, the design response has opted for materiality and forms that are reflective of the heritage precinct, as will be discussed in greater detail in a latter part of this report.
96. The proposed development also acknowledges its residentially-zoned interface to the south. The massing of the development has been designed to step away from the south so as to minimise visual bulk and overshadowing impacts to dwellings. An 8m-high southern boundary wall has been adopted as well as a rear setback of 5.87m for the uppermost level (i.e. the fourth floor). These measures demonstrate the proposal's responsiveness to its site context. As will be discussed, a condition will require adjustments to the rear balconies so as to ensure compliance with the preferred rear setback control of the DDO20.
97. As outlined previously, there is no dispute that strategically the subject site is well-located for a higher-density development, being located in the C1Z and within a NAC, with excellent access to cycling networks, public transport, services and facilities. Based on these attributes, it is a reasonable expectation that this site will experience intensification in use and development.

Demolition

98. Local heritage policy at Clause 22.02 discourages full demolition of contributory buildings unless the following matters can be demonstrated:
 - (a) *new evidence has become available to demonstrate that the building does not possess the level of heritage significance attributed to it in the incorporated document, City of Yarra Review of Heritage Areas 2007 Appendix 8 (as updated from time to time) and;*
 - (b) *the building does not form part of a group of similar buildings.*
99. Clause 22.02 also states that partial demolition of a contributory building can be supported only when:
 - (a) *that part is not visible from the street frontage (other than a laneway), abutting park or public open space, and the main building form including roof form is maintained; or*
 - (b) *the removal of the part would not adversely affect the contribution of the building to the heritage place.*
100. The application proposes the following extent of demolition:
 - (a) Partial demolition of the Inter-war-era shop building (i.e. roof, rear walls, western side wall and internal walls);
 - (b) Full demolition of the Victorian-era dwelling;
 - (c) Full demolition of the rear garage / outbuilding.
101. With regards to the shop, the demolition of the rear walls is supported as these are not visible from the public realm and do not make any identifiable contribution to the heritage precinct. As the Schedule to the heritage overlay does not stipulate that internal alterations require a planning permit, internal wall demolition does not require a permit and is thus supported. The demolition of the western side wall, however, is not supported as it is visible from the public realm and is an integral component of the building's three-dimensional form. To lose this wall would be to compromise the integrity of the heritage place. Council's Heritage Advisor concurred, stating that the shop building should be retained to a depth of 6m from the street boundary.

This will be required by condition. Further, the demolition floor plans do not accurately reflect the demolition elevations. A condition will require the demolition floor plans to match the demolition elevations.

102. The demolition of the roof of the shop is supported as it is not visible from the public realm. A following section of this report, however, will outline that the terrace proposed within the roof area is not supported by heritage policy.
103. With regards to the Victorian-era dwelling, full demolition is supported in this instance for a number of reasons. Firstly, the dwelling has been altered to make way for the Inter-war-era shop building. Notably, the eastern half of the front verandah has been demolished. This reduces the dwelling's contribution to the wider heritage streetscape (refer to figure 10 below).



Figure 10: The front-verandah of the Victorian-era dwelling has been altered to make way for the Inter-war-era shop building.

104. Secondly, the Inter-war-era shop building is located in front of the dwelling (constructed to the street boundary) and takes up roughly two thirds of the street frontage. As such, the shop building significantly reduces views of the dwelling from the public realm. Views of the dwelling are only possible from the western third of the street frontage or from limited oblique views to the northwest of the site. Further west, oblique views of the dwelling are obscured by the double-storey shop located at No. 185 Queens Parade which is built flush to the street boundary. The minimal public views of the dwelling mean that its significance to the wider heritage streetscape is secondary to the shop building.
105. Further to the above, the Statement of Significance for the heritage precinct outlines that the heritage significance is based upon:
 - (a) *late 19th century and early 20th century shops...*
 - (b) *building styles from the mid-19th century to the late 1930s, and;*
 - (c) *the group of early-20th century villas...in the residential areas to the west and north-east ends of Queens Parade.*
106. With regards to (a), the dwelling was constructed in the 1870s and is therefore not considered to form part of the *late 19th century shops* that emerged during the boom of the 1880s and formed much of the commercial development in the precinct. However, the shop building (of the Inter-war-era) is considered to be an example of the early 20th century shops outlined by the Statement as confirmed by Council's Heritage Advisor. This gives further evidence to the shop building's greater contribution to the heritage streetscape (as compared to the dwelling). With regards to (b), both the dwelling and the shop building are examples of building styles from this roughly 80 year period. With regards to (c), the dwelling is not an early-20th century villa and is therefore not covered by this particular item.

In light of these findings from the Statement of Significance, the dwelling is considered to make a lesser contribution to the heritage precinct than that made by the shop building.

107. Finally, the building *does not form part of a group of similar buildings* which is the second criterion for demolition pursuant to Clause 22.02. To the west is a double-storey, late Victorian-era dwelling and to the east is a not-contributory industrial building with a deep front setback. Queens Parade has a more in-tact heritage streetscape further west as shown by figure 11 below. This is further evidenced by the fact that the DDO20 does not include the subject site (or either of the adjoining properties) as being in the ‘significant heritage streetscape’, which commences at No. 167 Queens Parade, 60m (and seven properties) west of the subject site (refer to figure 12 below).



Figure 11: The heritage context of the site – red shows individually significant buildings, beige shows contributory buildings and green shows not-contributory buildings (Council GIS, May 2020).

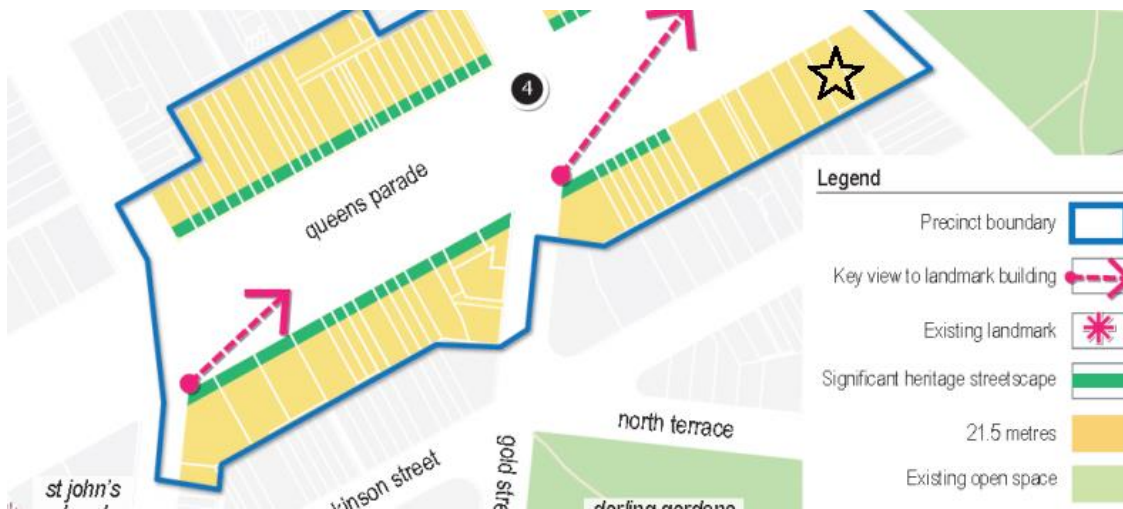


Figure 12: The subject site (starred) is not included within the ‘significant heritage streetscape’ as shown by the DDO20.

108. Council’s Heritage Advisor largely concurred with these findings and found that *whilst both the cottage and the shop make a contribution to the significance of the precinct, surprisingly it is the shop that potentially appears to make the stronger contribution.*
109. In light of the above considerations, the full demolition of the dwelling is supported by local heritage policy at Clause 22.02. The retained shop building will continue to provide a strong contribution to the broader heritage precinct, particularly with a retained western wall.

Alterations to Shop Building

110. The application does not seek any alterations to the front façade of the shop building. Council's Heritage Advisor recommended that the shopfront be replaced with new windows and doors which are typical proportioned but simple versions of the Interwar style for commercial buildings. A condition will require that this be undertaken to enhance the building's contribution to the heritage streetscape, as encouraged by local heritage policy at Clause 22.02.
111. The application also seeks to install a new terrace associated with the office development at roof level of the shop building. This contradicts specific local heritage policy at Clause 22.02 which discourages roof terraces from being publicly visible. Further, a terrace in this location would enable occupants to be visible on the roof (as well as temporary furniture associated with terraces such as umbrellas). For these reasons, the terrace would unreasonably compromise the significance of the shop building and must be deleted. A condition will require this.

Building Height

112. The development presents to Queens Parade with a four-storey built form set behind the heritage shop building. Towards the rear of the site, the development steps down to two storeys in response to the residential interface. The overall building height proposed is 13.71m, which complies with the mandatory building height requirement under the DDO20 (maximum 21m) and the Council-adopted DDO16 (14m). The building height proposed is also consistent with recent approvals within the central section of the QPNAC.
113. The proposed building height is also in accordance with Strategy 17.2 of Clause 21.05, which states a preference for new development to not exceed 5 – 6 storeys. At four storeys, the proposal is clearly within the realm of building height expectations across the municipality.
114. Council's Urban Design Unit were supportive of the overall four-storey building height (although recommended an increased street setback which is outlined in the following section of this report) and acknowledged that the height proposed is compliant with the DDO20 and Council-adopted DDO16. Similarly, Council's Heritage Advisor did not raise any concerns with regard to the overall height of the development but rather sought increased street setbacks.
115. Based on these considerations, the proposed building height is compliant with both the DDO20 and Council-adopted DDO16 and is supportable in this commercial precinct.

Massing

116. The development provides a four-storey wall presenting to Queens Parade which is set behind the retained heritage shop building with a street setback of 5m. Towards the rear of the site, the massing reduces to two storeys at the rear boundary.
117. The application complies with the street wall height requirement of both the DDO20 and the Council-adopted DDO16 which require the retention of the heritage street wall (i.e. the shop building).
118. The proposed street setback of the new build (5m) is considered to be insufficient in this context for the following reasons:
 - (a) The width of Queens Parade (significantly wider than most commercial strips within the municipality) means that views of new development from the opposite side of the street are far more visible. As such, new development has a greater potential to visually interrupt the established heritage streetscape;

- (b) The single-storey heritage shop building will offer little in the way of obscuring views of the new development given the difference in building heights and that the shop does not extend across the full width of the lot. Similarly, the relatively deep street setbacks of adjoining sites (8.3m and 12m) mean that these buildings cannot be relied upon to obscure oblique views of the development from the public realm.
 - (c) A street setback of 5m is non-compliant with the mandatory requirement of the Council-adopted DDO16 which requires a minimum upper level setback of 8m. Given that the DDO16 has gone through exhibition, Planning Panel and Council adoption stages, it is considered to be seriously-entertained and must be given considerable weight in assessing current planning applications;
 - (d) A street setback of 5m is also non-complaint with the preferred upper level setback of 6m under the DDO20.
119. For these reasons, a condition will require that the upper levels (i.e. first, second and third floors – those above the existing shop building) are provided with a minimum street setback of 8m in accordance with the mandatory requirements of the Council-adopted DDO16. This condition is consistent with the recommendation from Councils Urban Design Unit for an increased upper level setback for the fourth storey.
120. Council's Heritage Advisor recommended that the third and fourth floors be provided with a street setback of least 10m. This recommendation will not be pursued for the following reasons:
- (a) a 10m setback exceeds the requirements of the Council-adopted DDO16 for the site, which has gone through the Planning Panel process and undergone the scrutiny of both urban design and heritage experts.
 - (b) due to the site context, there is little opportunity for the new build to be completely concealed from public views. The test is not whether the new build is *completely invisible*, but rather whether it is *recessive* in appearance so as not to unreasonably interrupt the heritage streetscape in accordance with local heritage policy at Clause 22.02 and both the DDO20 and Council-adopted DDO16.
 - (c) The west-adjoining site (No. 191 Queens Parade) is double-storey contributory dwelling and has street setbacks of 6.5m (verandah) and 8.3m (front wall). Therefore, an 8m street setback (as opposed to a 10m setback) will not unreasonably interrupt views of the adjoining heritage place.
 - (d) Council's Heritage Advisor made the recommendation for a 10m setback based on policy from a different municipality. This has no weight with respect to the Yarra Planning Scheme. Rather, weight must be given to the Council-endorsed DDO16, which allows for a minimum street setback of 8m.
121. The requirement to provide an upper level setback of 8m will affect the functionality of the layouts of the office tenancies 'Office 1', 'Office 2' and 'Office 3' based on the current layout of the lift core, stairwell and central light court. As such, the condition for an 8m street setback will be worded to allow for any associated internal reconfigurations and any reduction in size of the central light court. This will allow a more efficient and usable floorplate for the development. A reduction in the light court will not result in any new material detriment because the property to the east is a commercial use and is largely built up to the common boundary with the subject site. A reduction in the light court will not result in any adverse ESD impacts to the proposed development – the office component will continue to be provided with daylight access in from selected north, south, west and east aspects which is more than typically provided for office developments.

122. The 8m setback condition will also require that there is no resultant reduction to the western and southern setbacks of the office component, so as to ensure no new material detriment to the residential interfaces.
123. Towards the rear of the site, the development responds to its southern residential interface with a double-storey wall at the laneway with upper levels set back so as to achieve a 45 degree alignment in accordance with the preferred rear setback requirements of the DDO20. Whilst the rear walls comply with the 45 degree control, the rear balconies do not. As previously described, the southern interface of the subject site is sensitive as it contains multiple areas of SPOS associated with residentially-zoned dwellings. As such, there is no justification for any non-compliance with the preferred rear setback requirements of the DDO20. A condition will require that the balconies at second and third floor be set back in accordance with the requirement.
124. The Council-adopted DDO16 has a different preferred rear setback requirement as outlined previously in this report. The rear setback requirements of the DDO20 and Council-adopted DDO16 are both *preferred* controls rather than mandatory. As such, they can be assessed through a performance-based lens. The rear setback requirement under the DDO20 is recommended in this instance given that the proposed development currently poses minimal off-site amenity impacts to the residentially-zoned interface, as discussed in a latter section of this report. Council's Urban Design Unit concurred, stating that the requirement under the DDO20 should be applied.

Public realm and pedestrian spaces

125. This principle requires the design of interfaces between buildings and public spaces to enhance the visual and social experience of the use. This outcome has been achieved at ground level, with the glazing of the retained shop building, which will be used for a food and drinks premises – i.e. an active frontage. The western portion of the street frontage will be dedicated to a pedestrian entrance ramp, landscaping and a modest entry courtyard. The pedestrian entry ramp is in alignment with the principal entrance door for the office use, demonstrating a strong sense of address for the office. Together, these measures provide a high level of street activation along Queens Parade in accordance with policy objectives of clause 22.10, the DDO20 and the Council-adopted DDO16. Further, passive surveillance opportunities are provided by the balconies proposed within the north-facing wall at second and third floors.
126. A 1m-wide section of the building would be used for site services (MFB / Booster). This is considered appropriate given that this is less than 10% of the street frontage and that the remainder of the frontage will be dedicated to openings. Further, the elevations show that these services will be low in height, enabling views through to the entry courtyard.
127. Vehicle access and the waste area have been provided off the rear laneway. This ensures that vehicles do not interrupt the pedestrian experience along the site's principal street frontage at Queens Parade and allows the majority of this frontage to be dedicated to active frontages as previously described.
128. Council's Urban Design Unit made the following recommendation about the public realm interface of the development:

The surface treatment to the entrance should be provided, as well as the details of the proposed planter and rain garden (volumes, species, irrigation method, drainage system, water proofing, as well as ongoing maintenance arrangements). The reuse of existing heritage brick could be investigated in the detail design of the pedestrian entry and planters.

129. A condition will require details on the proposed surface treatment to the entry area, with a requirement that existing heritage brick be incorporated into these details. Further details of the planter and rain garden have been required via Council's ESD Advisor as will be described in a latter section of this report.

130. Based on the above considerations, the presentation of the development to the public realm is well designed and will provide a positive interface with the street. The response to the public realm of the rear laneway will be discussed in a latter section of this report.

Architectural quality

131. Policy at clause 15.01-2S encourages high standards in architecture and urban design, whilst clause 22.02, the DDO20 and Council-adopted DDO16 encourage the design of new development to respect (amongst others) the pattern, spatial characteristics, fenestration, roof form and materials of the surrounding area.

132. Heritage shops and dwellings are integral to the architectural context of the precinct, and are largely constructed of exposed brick or painted brick facades, feature vertical-rectangular (including arched) windows and elaborate parapet detailing. The majority of heritage shop roof forms are flat and obscured by parapets. Contemporary, medium density built form is now forming part of Queens Parade. Within the main commercial strip, these developments are up to four-storeys in height and provide recessive designs that are contemporary yet reflective of the heritage context. These developments include rectilinear designs, brick, metal and concrete facades, vertical-rectangular fenestration formats and flat roof forms.

133. The dominant materials proposed by the application are masonry red brick (with selected application of white wash), metal cladding, and concrete. The proposed material palette also includes expressions of metal mesh at the rear façade.

134. The proposed brick will feature across the ground and first floor of the front façade and is considered to provide a successful interpretation of the heritage shop buildings in the precinct in accordance with local heritage policy at Clause 22.02. Council's Heritage Advisor concurred, stating that the brickwork will *relate well to the visual character of the heritage buildings to the south (i.e. west) of the subject site.*

135. The second and third floor of the front façade will be constructed of metal cladding and finished in a charcoal colour. Council's Heritage Advisor was supportive of this material but recommended that these levels be set back 10m from the street to minimise their appearance. As previously discussed, a condition will require an 8m setback for first, second and third floors in accordance with the Council-adopted DDO16. With this condition in place, the darker coloured metal cladding will not unreasonably impose on the heritage streetscape in accordance with local heritage policy at Clause 22.02.

136. The side facades of the development are composed largely of metal cladding and concrete. These materials have been configured in an effective way to provide articulation across each façade and assist in breaking up the massing of the development, as outlined by Council's Urban Design Unit.

137. Similarly, the rear façade provides an effective sense of articulation through a mix of materials and colours – metal cladding, concrete and metal mesh in white and charcoal finishes. As will be discussed in a latter section of this report, the metal mesh provides screening so as to mitigate overlooking impacts to the southern residential interface, as encouraged by the DDO20 and Council-adopted DDO16.

138. In assessing the overall material palette, Council's Urban Design Unit were supportive, stating that *in general the contrast of brick and cladding is supported, utilising tactile visually interesting materials at the lower levels near the public interface.*

139. The proportion of glazing across the development is restrained, with fenestration taking up less than 50% of the front façade. This is consistent with the extent of openings in existing heritage buildings along Queens Parade. The proportions of the windows are in vertical-rectangular formats which successfully reference the formats found in the heritage precinct and help to integrate the new build with the surrounding streetscape. Council's Heritage Advisor agreed, stating that the extent and proportions of fenestration are adequately respectful of the heritage precinct.

140. Council's Urban Design Unit requested additional detail on the proposed materials, as follows:

To allow for an accurate assessment and ensure the quality of the outcome, the Material Schedule and corresponding Elevations require further detail and clarification, including:

- *Discrepancy in mesh treatments as shown and labelled (M1 Queens Parade Elevation);*
- *Planter boxes façade materiality/treatment;*
- *Garage door treatment; and*
- *Fixed metal shading treatments (Level 1 and 3).*

141. This will be required by condition to ensure that the materiality of the development is comprehensively detailed on the plans.

Landscaping

142. The development includes some landscaping in planters to selected balconies and the L-shaped planter along the site frontage. Whilst the development does not rely significantly on landscaping as part of the design response, a condition will require that a landscape plan be submitted to clarify plant species, planter specifications and maintenance regimes. This will ensure that the landscaping components are managed effectively with successful plantings.

Site coverage

143. The development proposes a site coverage of 93%, which is reflective of commercial buildings in proximity to the land, with high site coverage rates a characteristic of the QPNAC. The extent of site coverage is not considered to result in an imposing building or in any unreasonable visual bulk impacts. Further, the provision of an open, front entry courtyard will provide a sense of spaciousness when viewed from Queens Parade.

Laneway Abuttal

144. Clause 22.07 of the scheme aims to maintain the unique character of laneways, ensure that development abutting laneways respects the scale of surrounding built form and that vehicle access via laneways will not detrimentally impact other users of the laneway. The subject site abuts an unnamed laneway to the rear (ranging from 3m to 3.4m in width), accessed from Hodgkinson Street and terminates at No. 187 Queens Parade. The laneway provides a 'back of house' context to four properties along Queens Parade (including the subject site), four properties along Turnbull Street and two properties on Hodgkinson Street. As the laneway has a dead-end, it cannot be used as a thoroughfare for pedestrians between Hodgkinson Street and Queens Parade.

145. The ground floor façade is largely dedicated to an open circulation area for vehicle movements. Whilst this is not an active frontage, it is important for providing the required space for vehicle access (given the narrow width of the laneway). First, second and third floors all have balconies facing the laneway which provide passive surveillance to the laneway in accordance with Clause 22.07. Council's Engineering Services Unit have assessed the car stacker arrangement and found it to be acceptable. This will be expanded upon in a latter section of this report, however it clarifies that vehicle access will not pose an unreasonable safety or access issue to other users of the laneway.

146. Clause 22.07 also encourages new development to acknowledge any unique character of the laneway. As previously outlined, the proposed development will be visible from the laneway, presenting largely as a four-storey building. This presentation to the laneway will stand out from the largely one and two-storey built form. Notwithstanding this, the laneway is not considered to have any intrinsically 'unique' character. The heritage contributions of the properties along Queens Parade and Hodgkinson and Turnbull Streets are made to their respective street frontages rather than to the laneway, where there is little in the way of heritage fabric.

Light and shade

147. The proposed development will not result in any new shadowing to the footpath on Queens Parade (given the site orientation). The proposed development will result in new shadowing to the rear laneway – this is acceptable given that it has a back-of-house and service context. Further, neither the DDO20 nor the Council-adopted DDO16 require any mitigation of shadowing to laneways. Shadowing to adjacent properties will be discussed in a following section of this report.

On-Site Amenity

148. The development is considered to achieve a good level of internal amenity through the following:
- (a) provision of ESD features which include natural ventilation to all floors, installation of rainwater tanks for re-use, external solar shading devices to the western and northern façades and excellent daylight access with the majority of office space provided with daylight access from three or four aspects;
 - (b) majority of floors provided with balconies;
 - (c) all floors provided with landscaped planters;
 - (d) provision of a ground floor food and drink premises, providing convenience for employees of the office component;
 - (e) bicycle parking for employees and associated end of trip facilities;
149. With regards to the wider ESD features proposed for the development; the following have been proposed:
- (a) rainwater captured in a 2,000L tank for flushing of toilets and a 1,000L tank for landscape irrigation;
 - (b) water efficient fixtures and taps,
 - (c) electric heat pump for hot water and;
 - (d) sustainable products used throughout the design.
150. These features (amongst others) achieve a BESS score of 51%, with a score of 50% signifying 'best practice'. Notwithstanding this, the ESD response is considered unresolved with no provision of solar panels and a STORM Report that appears to have overstated the performance of the relatively small rainwater tank. Council's ESD Advisor concurred with this and recommended that:
- (a) a minimum 10kW solar panel system be installed on the roof of the development, and;
 - (b) a corrected STORM Report be submitted as part of a revised Sustainability Management Plan (SMP).
151. The revised STORM Report should show a minimum score of 100% with all of the floor areas correctly identified.
152. Further to the above, Council's ESD Advisor recommended a number of additional modifications to the SMP in order to increase the development's energy efficiency (and to ensure that the development will actually achieve the stated BESS score). These include the following:
- (a) Provision of a DTS glazing calculator for reference case;

- (b) Confirmation that external solar shading will be provided to the second floor window at the North Elevation;
 - (c) Sections detailing water metering and bicycle parking updated to refer to the office and food and drinks premises of the proposed development;
 - (d) Confirm collection of organic (food) waste for at least the food and drinks premises;
153. These improvements and updates can be included as conditions for an updated SMP. Further, a condition can be added to condition 1 to ensure that all details associated with the endorsed SMP be included on the development plans.
154. Council's ESD Advisor also recommended the following as optional improvement opportunities for the development:
- (a) Explore potential for skylight from light well into food and drinks premises;
 - (b) Incorporate ceiling fans for cooling, and;
 - (c) Add external shading devices to the east-facing windows of the second and third floors;
155. With regards to items (a) and (b), these would have limited improvement to the ESD performance and as such can remain as optional for the applicant. However, the external shading to the east-facing windows is considered to be an important matter, particularly given that these windows are technically facing *northeast* (higher sun exposure than an easterly aspect) and that the plans do not show any form of solar shading to these windows. This recommendation will thus be required by way of an updated SMP.

Off-Site Amenity

156. Clause 15.01-2S of the Scheme aims to provide building design that minimises the detrimental impacts on neighbouring properties, the public realm and the natural environment, with potential impacts relating to overshadowing of SPOS, loss of daylight to windows, visual bulk and overlooking of sensitive areas. The relevant policy framework for amenity considerations is contained within clauses 22.05 as well as the decision guidelines of the Commercial 1 Zone at Clause 34.01-7.
157. Situated within the C1Z, the subject site does not have any immediate abuttal with residentially zoned land. However, the NRZ1 is located to the south of the rear laneway. Furthermore, the west-adjointing property is a dwelling in the C1Z. Given this context, a detailed assessment of off-site amenity impacts is required.

Daylight to windows

158. The closest habitable room windows (for a dwelling in a residential zone) are the north-facing rear windows of No. 126 Hodgkinson Street, which have a setback of approximately 12 metres from the southern boundary of the subject site. Whilst not strictly applicable, this would comply with both components of Standard A12 (Daylight to habitable room windows) of ResCode as:
- (a) The windows will continue to have access to a light court with an area of greater than 3sqm and a minimum dimension of greater than 1m.
 - (b) The setback (minimum 12m) from the southern boundary wall is greater than half (4m) of the height of the eastern boundary wall (8m).
 - (c) The setback (minimum 17.8m) from the southern wall of the third floor (i.e. top floor) is greater than half (6.95m) of the height of the eastern level 3 wall (13.9m).
159. In light of the above, the nearest habitable room windows of nearby dwellings in the residential zone will not be unreasonably impacted with regard to daylight access.

160. The proposal will impact daylight access to the east-facing habitable room windows of No. 191 Queens Parade which is located in the C1Z. Whilst not strictly applicable, development has been assessed against Standard A12 (daylight to habitable room windows) of ResCode with regard to No. 191 Queens Parade in the following tables:

Wall	Wall Height	Prescribed Setback	Proposed Setback	Shortfall	Complies?
Ground floor western boundary wall	3.86m	1.93m	1m	-0.93m	No
First-floor western wall	7.7m	3.85m	2.3m	-1.55m	No
Second floor western wall	10.6m	5.3m	2.3m	-3m	No
Third floor western wall (lift core)	13.8m	6.9m	2.3m	-4.6m	No
Third floor western wall (recessed section)	13.8m	6.9m	3.05m	-3.85m	No

161. The calculations in the above table are based on the ground floor window of the dwelling at No. 191 Queens Parade to ensure a conservative assessment. As such, the impacts to the first-floor habitable room windows would be less than shown above. The development's response to the habitable room windows of No. 191 Queens Parade is supported for the following reasons:

- The design response has acknowledged these windows by providing strategically located setbacks from the western boundary and by using a light-grey coloured material (concrete) to the majority of the western façade. This has the benefit of reflecting daylight into the affected habitable room windows.
- No. 191 Queens Parade is a dwelling located in the C1Z. As such, Clause 54 of the Scheme does not apply to this site. It is a well-established planning principle that dwellings in commercial zones do not have the same amenity expectations as dwellings in a residential zone;
- The built up, inner city context, where even dwellings in *residential* zones are often not afforded daylight access in accordance with Standard A12.

Overshadowing

162. Although not strictly applicable in this instance, Standard B21 of Clause 55 notes:

- Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September; and*
- If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.*

163. There are five dwellings that will be affected by new overshadowing as a result of the proposed development. These are analysed in the following tables

No. 191 Queens Parade (74sqm SPOS)

	9am	10am	11am	12pm	1pm	2pm	3pm
Proposed new shadowing	12m ²	25m ²	36m ²	16m ²	6m ²	0m ²	0m ²
Remaining unshaded	4m ² (6%)	4m ² (6%)	6m ² (8%)	26m ² (36%)	35m ² (48%)	32m ² (44%)	13m ² (18%)

No. 185 Queens Parade (87sqm SPOS)

	9am	10am	11am	12pm	1pm	2pm	3pm
Proposed new shadowing	8m ²	0m ²	0m ²	0m ²	0m ²	0m ²	0m ²
Remaining unshaded	38m ² (44%)	52m ² (60%)	58m ² (67%)	60m ² (69%)	59m ² (68%)	56m ² (65%)	46m ² (53%)

No. 126 Hodgkinson Street (46sqm SPOS)

	9am	10am	11am	12pm	1pm	2pm	3pm
Proposed new shadowing	0m ²	0m ²	4m ²	1.5m ²	1m ²	0m ²	0m ²
Remaining unshaded	4m ² (9%)	9m ² (20%)	13m ² (29%)	19.5m ² (43%)	26m ² (57%)	32m ² (70%)	29m ² (63%)

No. 1 Turnbull Street (80sqm SPOS)

	9am	10am	11am	12pm	1pm	2pm	3pm
Proposed new shadowing	0m ²	0m ²	0m ²	0m ²	0m ²	0m ²	8m ²
Remaining unshaded	34m ² (43%)	45m ² (57%)	55m ² (69%)	42m ² (53%)	39m ² (49%)	30m ² (38%)	12m ² (15%)

164. As identified in the second table above, the proposed overshadowing to No. 185 Queens Parade complies with the Standard given that greater than 40sqm of unshaded SPOS is retained for five consecutive hours.
165. The proposal does not meet the Standard with respect to the other properties, however this is supported for the following reasons:
- (a) No. 191 Queens Parade is a dwelling located in the C1Z, which means that it is not afforded the same amenity expectations as a dwelling in a residential zone. Notwithstanding this, the proposal retains a reasonable amount of unshaded open space in the afternoon hours – 26sqm at 12pm, 35sqm at 1pm and 32sqm at 2pm. This is considered to be an acceptable provision for a dwelling located in a commercial zone.
 - (b) With regard to No. 126 Hodgkinson Street, the new shadow impacts are with a maximum increase in shadowing of 4sqm at 11am. This is not an unreasonable impact for a dwelling located at the interface of a commercial zone. The proposal will not result in any new equinox shadowing at 9am, 10am, 2pm and 3pm. The retained solar access for this dwelling will range from 19.5sqm to 32sqm in the afternoon hours. The impact is considered to be minimal.
 - (c) With regard to No. 1 Turnbull Street, the equinox shadow impact is minimal as new shadowing will commence at 3pm with only 8sqm affected. This is not an unreasonable impact for a dwelling located at the interface of a commercial zone. The SPOS will be unaffected between the equinox hours of 9am and 2pm with a minimum of 30sqm of unshaded SPOS.
 - (d) More broadly the extent of overshadowing is supported given it is located in a mixed, built-up inner city context where lots are small with modest areas of SPOS. The area benefits from extensive parklands including Mayors Park (50m east) and (Darling Gardens (200m south) which provides amenable public open space. Furthermore, the design response has considered overshadowing by providing a rear setback to upper levels. The aforementioned condition for compliance with the rear setback requirements of the DDO20 will further reduce shadow impacts.

Overlooking

166. Standard B22 of Clause 55 (ResCode) of the Scheme includes requirements for managing overlooking, and requires that:

A habitable room window, balcony, terrace, deck or patio should be located and designed to avoid direct views into the secluded private open space of an existing dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio. Views should be measured within a 45 degree angle from the plane of the window or perimeter of the balcony, terrace, deck or patio, and from a height of 1.7 metres above floor level.

167. The application of the Standard is not required in this instance because the proposal is for an office development in the C1Z. Notwithstanding this, the development has minimised overlooking impacts by providing 1.7-high screening (maximum transparency of 25%) to the majority of the rear balcony balustrades. The remainder of these balustrades are provided with planter boxes for landscaping which mitigate overlooking by creating non-trafficable zones. Furthermore, the majority of windows along the western façade of the development feature obscure glazing to 1.7m above finished floor level. These measures will effectively mitigate overlooking to nearby properties, and are considered to provide a greater level of screening than required by the C1Z.

Wind Impacts

168. Wind impacts relate to the public realm, with a particular focus on potential impacts to pedestrians using the public realm. A wind assessment was not undertaken as part of the proposal as the proposed height of the development is only two storeys higher than the existing double-storey dwelling located to the west of the subject site.
169. Further, the retention of the heritage shop building (and its awning) will protect pedestrians and office employees from any potential 'downwashing' of wind that would otherwise occur of the building façade. Landscaping, terraces and built form articulation across all facades will also mitigate wind impacts in all directions.

Equitable Development

170. To ensure the 'fair, orderly, economic and sustainable development of land' in accordance with the objective of the *Planning and Environment Act 1987*, matters of equitable development must be considered.
171. Properties to the east and west are both located in the C1Z and are subject to heritage controls as well as the DDO20 and Council-adopted DDO16 with the same mandatory and preferred built form controls as the subject site.
172. No. 191 Queens Parade (i.e. to the west) is listed as a contributory building to the heritage precinct and it is anticipated that any future development would need to retain the front-most part of the dwelling. The proposed development provides equitable development opportunities to No. 191 Queens Parade in that a light court has been provided along the western façade with a minimum setback of 1.3m. This will ensure that the subject development can access daylight from within its own title boundaries.
173. No. 195 Queens Parade is listed as a not-contributory building to the heritage precinct and thus full demolition would be supported subject to an appropriate new build proposal. The proposed development provides equitable development opportunities to No. 195 Queens Parade in that solid boundary walls are proposed at the interface of No. 195. Minor setbacks at second and third floors would not unreasonably affect development opportunities for the adjoining site given that this site will have a mandatory maximum building height of 14m as anticipated by the Council-adopted DDO16.

174. Land to the south is residential and separated from the subject site by the rear laneway which is 3 – 3.4m wide. These residential properties are located in the NRZ1 and are affected by the heritage overlay. As such, a maximum building height of 9m or two storeys applies to these sites with at least partial retention of the dwellings required. The rear areas of SPOS abut the laneway interface. Given this planning and site context, it is considered that these sites have limited development opportunities, particularly along the interface with the rear laneway. In light of these considerations, the proposed development does not pose any unreasonable issues with regards to equitable development.

Noise impacts

175. The proposed office and food and drinks premises uses are both as-of-right uses under the C1Z and therefore do not require a planning permit under the Planning Scheme. Notwithstanding this, the office use is considered to be a low-risk use in terms of noise impacts as offices are generally occupied during business hours and are not associated with amplified music or large events. The food and drinks premises use is also considered to be low risk in terms of noise impacts – it will be housed within a solid structure and will face on to Queens Parade (i.e. away from the residential interface to the south). A liquor licence has not been applied for as part of this application. Should this be proposed in the future, planning approval would be required and a thorough investigation of noise impacts would be undertaken by Council.
176. Site services at roof level are limited to the café exhaust which is located centrally at roof level. Given its height (two storeys above the nearest building) and its central location on the roof, the exhaust is considered to be a low noise risk. Regardless, a condition will require that the development complies at all times with relevant EPA noise requirements.
177. The car stacker system is unlikely to generate noise impacts for the residential interface given it is set back generously from the laneway boundary. The above-mentioned EPA condition applies to the whole development and as such, the car stacker will be required to comply with EPA requirements at all times. Further, a condition will require the car stacker to be installed and maintained to Council satisfaction.

Car parking, vehicle access, traffic, loading and waste

Provision of car parking

178. The proposed development would provide 8 on-site car parking spaces, all within the proposed stacker system accessed from the rear laneway. As previously outlined, the proposal triggers a car parking reduction of 19 spaces.
179. The proposed car parking (and associated car parking reduction) are supported for the following reasons:
- (a) The site has excellent access to public transport, including tram services on Queens Parade and Clifton Hill Railway Station, all of which are within walking distance. This level of public transport access will encourage employees and visitors to arrive to the development via non-vehicular means;
 - (b) The provision of bicycle infrastructure in the surrounding area, including the Merri Creek Trail (500m north) and the 'Copenhagen-style' lanes on Wellington Street in Collingwood (800m south), both of which are highly utilised by commuters. The surrounding area also has shared lane markings for bicycles on many streets including Gold Street, North Terrace and parts of Hodgkinson Street. Further, the proposal provides 14 secure employee bicycle spaces (exceeding the minimum prescribed by the Scheme as well as the best practice rates set by Council). These measures (as well as the proposed end of trip facilities) will encourage employees to arrive via bicycle. Furthermore, the two existing visitor spaces along the site's frontage on Queens Parade will encourage visitors to arrive by bicycle.

- (c) On-street car parking in the surrounding area has a mix of restrictions and includes 10 minute and 1 hour spaces on Queens Parade, 1 hour spaces on Gold Street, 2 hours spaces on Hodgkinson Street and 4 hour and unrestricted spaces along Turnbull Street. The unrestricted spaces along Turnbull Street suggest that there is capacity in the surrounding network to accommodate car parking demand generated by the proposal. The 2 hour spaces on Hodgkinson Street do not apply to permit-holding residents. As such, this restriction will continue to protect car parking availability for existing, permit-holding residents. The 10 minute and 1 hour spaces are designed for patrons of businesses along the QPNAC and will not be affected by employees of the proposed development because 10 minute and 1 hour intervals are not compatible with office employees.
 - (d) Local planning policy at clauses 18.02, 21.03, 21.06-3 and 21.07 encourages reduced rates of car parking provision for development sites within close proximity to public transport routes and activity centres.
 - (e) Traffic is a key issue affecting the road network. By providing a lower rate of on-site car spaces, it will ensure that the development does not generate any unreasonable increase in traffic levels for the surrounding road network.
 - (f) Council's Engineering Services Unit reviewed the proposed car parking provision and raised no issue to the proposed reduction, stating that the site *has very good accessibility to public transport and connectivity to the on-road bicycle network*. Further, Council's Engineering Services Unit highlighted that the proposed car parking provision (at a rate of 1.01 car spaces per 100sqm of floor area) is similar to that of other office developments recently approved by Council in nearby Collingwood which ranged from rates of 0.89 to 1.4 spaces per 100sqm floor area.
180. Council's Engineering Services Unit highlighted that the applicant's car parking occupancy survey was undertaken in 2016 and suggested that an updated survey be provided. This recommendation will not be pursued given:
- (a) the merits listed in the previous paragraphs which demonstrate the strategic location of the subject site;
 - (b) the modest size of the subject site, which would make it impractical to provide a greater number of car spaces on site;
 - (c) conditions (as mentioned earlier in the report) will require a reduction in the floor area of the development which will effectively reduce the car parking demand associated with the development.

Vehicle Access

181. The application provides vehicle access from the rear laneway, with access to the basement car stacker via a generously-sized circulation area that spans the width of the site. The circulation area will allow space for vehicles to change direction so that egress in a forward motion is possible which ensures that vehicle movements along the laneway will be safe. Other than requesting additional information to be shown on the plans, Council's Engineering Services Unit did not raise any issues with vehicle access and safety. The additional items recommended are as follows:
- (a) The width of the development's entrance along the northern edge of the Right of Way is to be dimensioned on the drawings;

- (b) The headroom clearance at the garage entrance off the Right of Way is to be dimensioned on the drawings;
 - (c) The length of the ramp grade is to be dimensioned on the drawings;
 - (d) The applicant must relocate the sewer vent in the rear Right of Way to the satisfaction of the relevant water authority and Council. It is noted that a number of proposed balconies and decks face the rear Right of Way and need sufficient clearance from the sewer vent. All costs and works associated with relocating the sewer vent must be borne by the Permit Holder.
 - (e) All service cabinet doors that open outwards must be able to swing 180-degrees and be latched to the wall when opened and serviced;
 - (f) For any new internal concrete work, the finished floor levels along the edge of the slab must be set 40 mm above the edge of laneway – Council Infrastructure requirement.
182. With respect to items (a), (b), (c), (e) and (f), these can all be included on the plans by way of condition.
183. With respect to item (d), this is a critical matter – the sewer vent must be removed and replaced (with permission from the relevant water authority) prior to works commencing. This is because the current location of the sewer vent would pose an interruption to the vehicle access. A condition will require that the permit applicant obtain written permission from the relevant water authority to remove and relocate the sewer vent. This will then need to be submitted to Council. The condition will stipulate that this must be undertaken prior to any endorsement of plans. This will make sure that the endorsed plans show the new sewer vent location (to Council satisfaction).
184. A number of additional recommendations were made by Council's Engineering Services Unit; these relate to various infrastructure requirements immediately surrounding the site that should be undertaken to Council's satisfaction and at the Permit Holder's cost.
185. The majority of these additional recommendations can be appropriately captured under general infrastructure, drainage and construction management conditions and/or notes that are usually placed on a permit of this type. However, the engineering advice includes comments provided by Council's Construction Management Unit in 2017 (i.e. from planning application PLN16/1209) which states that the section of the laneway along the edge of the subject site should be reconstructed to council satisfaction as well as the north-south section of the laneway to be made good and reconstruction of a drainage channel. This recommendation will not be pursued for the following reasons:
- (a) The recommendation comes from planning application PLN16/1209 and not the subject application. PLN16/1209 is a different proposal – a five storey apartment development. As such the previous advice cannot be applied to the subject application.
 - (b) The recommendation is onerous for a four-storey office development situated on a modest-sized lot. Public realm improvements are only applied to projects of a significantly larger scale.
 - (c) The proposal includes only 8 car spaces on site. As such, the vehicle movements generated by the proposal will not have any unreasonable impact on the laneway surfacing for the purposes of maintenance.

Traffic

186. As a general principle, the proposed on-site car parking provision for the development (which is significantly lower than that prescribed by Clause 52.06) will ensure that the development does not unreasonably burden the surrounding street network with an influx of new traffic.
187. Council's Engineering Services Unit reviewed the plans and found that the proposed development would likely result in 4 individual trips in the morning peak and 4 in the evening peak (adopting a traffic generation of 0.5 trips per space per peak hour). Council's Engineering Services found that these were not unduly high and would not pose adverse impacts on the surrounding road network. As previously outlined, the generous circulation area will enable vehicles to egress the site in a forward motion. As such, vehicles will not exit the laneway via reversing (which would be an unsafe outcome).

Loading, unloading and waste

188. The Scheme does not provide any requirements for loading bays, rather Council must consider loading and unloading as relevant to the application. A loading bay has not been specifically notated as part of the development. This is considered to be an acceptable outcome given that the development is largely associated with an office use – i.e. there will not be any sales of goods occurring on the land associated with the office use. Some deliveries will be required for the café use, however given the limited scale of the use (134sqm of leasable floor area), the café use is not anticipated to unreasonably impact the loading capacity of Queens Parade or the rear laneway. Furthermore, the development has provided an open circulation area at the rear boundary which will create additional space for vehicle movements along the rear laneway including any delivery vehicles that may visit the site.
189. Notwithstanding the above, outside the subject site along Queens Parade, parking restrictions are set to 10 minutes during business hours. This will mean that these spaces are consistently vacant so as to enable deliveries to the café use via Queens Parade.
190. The plans show a sizeable (10sqm) waste storage area located towards the rear of the site, adjacent to the circulation area. The waste area shows capacity for seven waste bins, a 660L recycle bin and an area for hard waste storage. Given these provisions, waste collection is likely to occur from the rear laneway. This is supported given that the laneway has a minimum width of 3.09m, which is wide enough to handle the width of a small rigid vehicle (2.3m) which is typically used for waste collection of smaller developments. The circulation area also has a minimum clearance of 3.93m which is greater than the height of a small rigid vehicle (3.5m). Further, the generous rear circulation area will enable a waste collection vehicle to exit via the rear laneway in a forward motion. To ensure that waste management practices are to Council satisfaction, a condition will require the submission of a Waste Management Plan.

Bicycle Facilities

191. With regards to employee bicycle spaces, 14 spaces exceeds the statutory requirements outlined in Clause 52.34 (0 spaces), and also Council best practice rates (7 spaces) along with the provision of adequate end-of-trip facilities for employees. The employee spaces are well located at basement level which is accessible for cyclists via lift. The employee spaces are located adjacent to the end-of trip facilities – a total of two separate shower / change rooms and 10 lockers. Council's Strategic Transport Unit reviewed the proposed bicycle arrangement and commented that no further changes were required.
192. With regards to visitor spaces, the development will not provide any on site, which is consistent with Clause 52.34. The lack of visitor spaces falls short of Council's best practice rate (2 spaces), however Council's Strategic Transport Unit stated that the existing visitor spaces on the footpath along Queens Parade are considered to be sufficient in meeting the visitor parking requirements of the development. No further changes were recommended by Council's Strategic Transport Unit.

Objector Concerns

193. Objector concerns have been discussed at the following paragraphs of the report:

- (a) *Heritage concerns regarding:*
 - (i) *demolition of the Victorian-era dwelling;*
 - (ii) *partial demolition and alterations to the shop building, and;*
 - (iii) *building height and setbacks not respectful of heritage precinct.*These matters have been discussed at paragraphs 98 – 124.
- (b) *Upper level setbacks of the development inconsistent with requirements of the Design and Development Overlay built form controls* - discussed at paragraphs 116 – 124.
- (c) *Off-site amenity impacts, including overshadowing, overlooking, loss of daylight, waste impacts and visual bulk* – discussed at paragraphs 156 – 177.
- (d) *Amenity impacts during the construction stage including noise, overlooking, traffic congestion and potential damage to property* – This is not a planning matter, however a condition will require that a Construction Management Plan (CMP) to be submitted and endorsed by Council prior to commencement of works. The CMP must be to Council's satisfaction and will detail measures undertaken for minimising off site amenity during construction.
- (e) *Concerns regarding traffic in the laneway and Hodgkinson Street generated by the proposed development, including associated safety concerns* - discussed at paragraphs 186 – 187.
- (f) *Insufficient provision of car parking on the land* - discussed at paragraphs 178 – 180.
- (g) *Concerns that the development will be approved prior to the finalisation of the C231 Planning Scheme Amendment process* – The difference between the DDO20 and the Council adopted DDO16 has been outlined at paragraphs 19 – 21. As stated throughout this report, the Council-adopted DDO16 (i.e. Planning Scheme Amendment C231) is now a seriously-entertained amendment and has been given considerable weight in the assessment of this application. The application has been assessed against both the DDO20 and the Council-adopted DDO16 at paragraphs 98 – 124.
- (h) *Lack of detail on roof services and potential for these to be visible* – The plans show minimal roof services. Should this change in the future, an amendment would be required, at which point any additional roof services would be assessed in close detail.
- (i) *Concern that the subject site has been submitted to Heritage Victoria for consideration.* Council has not received any notification about the suggested submission to Heritage Victoria. Furthermore, the current Yarra Planning Scheme does not recognise the subject site as being on the Victorian Heritage Register.
- (j) *Concern that the application proposes demolition of walls within the title boundaries of the east-adjointing site.* It appears that the objection relates to the imagery shown on the three-dimensional rendered images of the proposed development. These images are not relied upon for the purposes of demolition. Notwithstanding this, a condition will require a notation to confirm all demolition works will occur within the title boundaries of the subject site.

Conclusion

194. As outlined throughout this assessment there is strong policy support at both State and local levels for urban consolidation. Given the site's strategic location within the QPNAC, and excellent public transport links; the site lends itself as an ideal development site for medium density office development. With the inclusion of conditions, the design of the proposal will respond appropriately to the site context, residential interfaces and the heritage place. The proposal will create a positive contribution to its urban environment with a strong environmental outcome.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant Planning Permit PLN19/0539 for partial demolition, the construction of a four-storey (plus basement) building comprising office and food and drinks premises (cafe) uses (no permit required for uses) and a reduction in the car parking requirements at 193 Queens Parade, Clifton Hill, subject to the following conditions:

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 must 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 prepared by Megowan Architectural (dated 06 November 2019) but modified to show:
 - (a) The first, second and third floors provided with a minimum setback of 8m from Queens Parade with any required internal reconfigurations and reduction to the central light court; without any reduction in the rear or western setbacks;
 - (b) Rear balconies at second and third floor set back from the rear laneway in accordance with the relevant preferred rear setback control of Table 4 of Schedule 20 to the Design and Development Overlay;
 - (c) Retention of the western wall of the shop building to a depth of 6m from Queens Parade;
 - (d) Deletion of the terrace above the roof of the shop building;
 - (e) Front windows and doors of the shop building replaced with windows and a door with proportions reflective of the Interwar-era with simple, restrained detailing;
 - (f) Demolition plan updated to show the removal of the sewer vent at the rear boundary and to show all demolition within title boundaries;
 - (g) Demolition plan corrected to show the extent of demolition shown by the demolition elevations;
 - (h) The location of the new sewer vent (as required by condition 3);
 - (i) Details of surface treatments for the front courtyard associated with the entry to the office with reclaimed bricks from the dwelling to be used;
 - (j) Materials schedule updated to clarify the following:
 - (i) Further detail on the different mesh treatments at the North Elevation;
 - (ii) Planter boxes materiality/treatment;
 - (iii) Raingarden materiality/treatment;
 - (iv) Garage door material treatment; and

- (v) Material treatment to the metal shading details at first and third floors.
 - (k) Width of the development's entrance dimensioned along the edge of the laneway;
 - (l) Headroom clearance at the vehicle entrance dimensioned;
 - (m) Length of the ramp grade dimensioned;
 - (n) Notation to confirm all service cabinet doors that open outwards must be able to swing 180-degrees and be latched to the wall when opened and serviced;
 - (o) Notation to state that for any new internal concrete work, the finished floor levels along the edge of the slab must be set 40 mm above the edge of the rear laneway;
 - (p) Any change required by the endorsed Sustainability Management Plan (as required by condition 4), where relevant to show on the plans;
 - (q) Any change required by the Landscape Management Plan (as required by condition 6);
 - (r) Any change required by the endorsed Waste Management Plan (as required by condition 8), where relevant to show on the plans;
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.

Sewer Vent Removal and Relocation

3. Before the plans (under condition 1 of this permit) are endorsed, written permission from the relevant water authority must be obtained to remove and relocate the sewer vent at the rear boundary of the site. The written permission must be submitted to the Responsible Authority and the new location of the sewer vent must be to the satisfaction of both the relevant water authority and the Responsible Authority. All costs and works associated with relocating the sewer vent must be borne by the permit holder.

Sustainability Management Plan

4. 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 EW Environment, dated 25 July 2019) but modified to include;
- (a) Minimum 10kW solar array provided to the roof area;
 - (b) Revised STORM Report to show a minimum STORM score of 100% with all impermeable surfaces outlined and quantified correctly;
 - (c) Any increase in the capacity of the rainwater tanks associated with condition 4(b) above;
 - (d) Provision of a DTS glazing calculator for reference case;
 - (e) Confirmation that external solar shading will be provided to the second floor window at the North Elevation;
 - (f) Sections detailing water metering and bicycle parking updated to refer to the office and food and drinks premises of the proposed development;
 - (g) Confirm collection of organic (food) waste for at least the food and drinks premises, and;
 - (h) Provision of external solar shading to the east-facing windows at second and third floor.

5. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Landscape Management Plan

6. Before the development commences, a Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Landscape Plan will be endorsed and will form part of this permit. The Landscape Plan must:
 - (a) show the type, location, quantity, height at maturity and botanical names of all proposed plants;
 - (b) indicate the location of all areas to be covered by lawn or other surface materials; and
 - (c) provide a specification of works to be undertaken prior to planting, to the satisfaction of the Responsible Authority.
7. Before the building occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:
 - (a) implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
 - (b) not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
 - (c) replacing any dead, diseased, dying or damaged plants,to the satisfaction of the Responsible Authority.

Waste Management Plan

8. Before the development commences, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Waste Management Plan will be endorsed and will form part of this permit.
9. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
10. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.

Infrastructure

11. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated, including the footpath, bicycle spaces and pram crossing along the property's Queens Parade frontage, with these to be reinstated:
 - (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.

General

12. The development must comply at all times with the State Environment Protection Policy — Control of Noise from Commerce, Industry and Trade (SEPP N-1).

13. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the car stackers must be installed in accordance with the manufacturer's specifications by a suitably qualified person. The car stackers must be maintained thereafter to the satisfaction of the Responsible Authority.
14. 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 pedestrian and vehicular entrances must be provided on the subject site. Lighting must be:
 - (a) located;
 - (b) directed;
 - (c) shielded; and
 - (d) of limited intensity,to the satisfaction of the Responsible Authority.
15. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
16. 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.
17. Before the building is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.

Construction Management Plan

18. 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:
 - (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.
 - (i) The construction program.
 - (j) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency.
 - (k) Parking facilities for construction workers.

- (l) Measures to ensure that all work on the land will be carried out in accordance with the construction management plan.
 - (m) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services.
 - (n) 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.
 - (o) 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.
19. The provisions, recommendations and requirements of the endorsed construction management plan must be implemented and complied with to the satisfaction of the Responsible Authority.
20. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
- (a) Monday to Friday (excluding public holidays) before 7:00am or after 6:00pm.
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9:00am or after 3:00pm.
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

Permit Expiry

21. This permit will expire if:
- (a) the development is not commenced within two years of the date of this permit;
 - (b) the development is not completed within four years of the date of this permit;

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

NOTES:

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 5555 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.

Areas must be provided inside the property line and adjacent to the footpath to accommodate pits and meters. No private pits, valves or meters on Council property will be accepted.

Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the permit holder's expense after seeking approval from the relevant authority.

No parking restriction signs or line-marked on-street parking bays are to be removed, adjusted, changed or relocated without approval or authorisation from Council's parking management unit and construction management branch.

Any on-street parking reinstated as a result of development works must be approved by Council's parking management unit.

All future employees working within the development approved under this permit will not be permitted to obtain business car parking permits.

CONTACT OFFICER: Chris Stathis
TITLE: Senior Statutory Planner
TEL: 9205 5352

Attachments

- 1 PLN190/539 - 193 Queens Parade Clifton Hill - Decision Plans
- 2 PLN19/0539 - 193 Queens Parade Clifton Hill - Applicant's Heritage Expert Report
- 3 PLN19/0539 - 193 Queens Parade Clifton Hill - Heritage advice
- 4 PLN19/0539 - 193 Queens Parade Clifton Hill - Urban Design Comments
- 5 PLN19/0539 - 193 Queens Parade Clifton Hill - Engineering comments
- 6 PLN19/0539 - 193 Queens Parade Clifton Hill - ESD Comments
- 7 PLN19/0539 - 193 Queens Parade Clifton Hill - Strategic Transport Comments

-
- 1.2 PLN19/0751 - 375 & 377 Punt Road, Cremorne - Development and use of the land as a residential hotel, food and drink premises and bars with associated sale and consumption of liquor (on-premises), construction and display of signage and a reduction in the car parking requirements.**
-

Executive Summary

Purpose

1. This report provides an assessment of the proposed development and use of the land as a residential hotel, food and drink premises and bars with associated sale and consumption of liquor (on-premises), construction and display of signage and a reduction in the car parking requirements at No. 375 and 377 Punt Road, Cremorne and recommends approval, subject to conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Built form and Heritage (Clauses 15.01, 15.03, 21.05, 22.02, 32.08-9, 43.01 and 43.02 of the Yarra Planning Scheme)
 - (b) Liquor Service and Off-site amenity impacts (Clauses 13.07 and 22.09); and
 - (c) Car parking (Clauses 18.01, 18.02, 21.06, 52.06 and 52.34).

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Land use;
 - (b) Built form and heritage;
 - (c) On-site amenity (ESD);
 - (d) Off-site amenity;
 - (e) Sale and Consumption of Liquor;
 - (f) Car parking, vehicle access, traffic, loading & waste;
 - (g) Signage;
 - (h) Objector concerns; and
 - (i) Other matters.

Submissions Received

4. Thirty (30) objections were received to the application, these can be summarised as:
 - (a) Noise from rooftop bar and balconies facing Huckerby Street.
 - (b) Traffic congestion issues to Huckerby Street and Rout Street.
 - (c) Antisocial patron behaviour.
 - (d) Disruption due to increased activity, rubbish generation, patrons smoking outside building.
 - (e) Use more suited to Swan Street, or Commercially Zoned land.
 - (f) Loss of the previously approved on-site car spaces.
 - (g) Insufficient loading facilities.
 - (h) Overlooking.

- (i) Light impact of neon signs.
- (j) Devaluation of nearby properties.

Conclusion

5. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
- (a) Reduction in the proposed hours of liquor service,
 - (b) Restrictions to the operation of the roof terrace; and
 - (c) Restrictions to the hours for waste collection and deliveries to no later than 8pm.

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

1.2 PLN19/0751 - 375 & 377 Punt Road, Cremorne - Development and use of the land as a residential hotel, food and drink premises and bars with associated sale and consumption of liquor (on-premises), construction and display of signage and a reduction in the car parking requirements.

Reference: D20/79968
 Authoriser: Senior Coordinator Statutory Planning

Ward: Melba
Proposal: Development and use of the land as a residential hotel, food and drink premises and bars with associated sale and consumption of liquor (on-premises), construction and display of signage and a reduction in the car parking requirements
Existing use: Building under construction
Applicant: Hellier and McFarland Consultants
Zoning / Overlays: General Residential Zone – Schedule 4
 Road Zone
 Heritage Overlay - Schedule 364
 Design and Development Overlay - Schedule 2
 Design and Development Overlay – Schedule 17
 Special Building Overlay
 City Link Project Overlay
Date of Application: 29 October 2019
Application Number: PLN19/0751

Planning History

1. Planning application PL06/0899 for three, three-storey dwellings at No. 375 Punt Road was withdrawn on 28 July 2008.
2. Planning application PL09/0976 for a 33-floor residential development with a ground floor food and drinks premises at land between Nos. 375 and 381 Punt Road, Cremorne was withdrawn on 1 July 2010.
3. Planning permit PLN14/0318 was issued by the Victorian Civil and Administrative Tribunal (VCAT) on 5 December 2014 for the use and development of the land for a six-storey building plus lift overrun and basement) with 10 dwellings (no permit required for the dwelling use) and ground floor food and drinks premises, a reduction in the associated car parking requirements and waiver of loading bay requirements. This permit was acted upon with the building nearing completion at the time of writing this report. This planning permit will expire for the completion of works and commencement of use (food and drinks premises use) on 5 December 2020.

Planning Scheme Amendments

4. The subject site is affected by planning scheme amendment C191. This amendment seeks to amend the interim basis of DDO17 (interim controls gazetted 24 December 2019) to allow it become a permanent control.

The amendment also seeks to remove the redundant Heritage Overlay affecting the site as the original dwellings on the site were demolished between January and April 2014, prior to the introduction of the Heritage Overlay on 27 August 2015. The amendment also seeks to change the GRZ4 zoning affecting the land to a Commercial 1 Zone to facilitate land uses appropriate to the role and function of a major activity centre.

5. A Panel Hearing for the amendment commenced on 2 December 2019 and was subsequently adjourned on 5 December 2019 to allow Council the opportunity to replace previous Urban Design expert evidence with alternate Urban Design evidence. The new Panel Hearing date for the amendment is scheduled for 27 July 2020.

The Proposal

6. The proposal is for the following:
 - (a) Development of the land within the existing building (internal and external alterations);
 - (b) Use as a residential hotel (61 rooms), food and drink premises and bars;
 - (c) Sale and consumption of liquor (On-Premises) associated with the hotel food and beverage service for max 200 patrons,
 - (d) Construction and display of signage; and
 - (e) Reduction in the car parking requirements (associated with the food and drink premises).
7. Specific details of the proposal are as follows:
8. Development of the land within the existing building (internal and external alterations):
 - (a) The 6 storey apartment building approved under Permit PLN14/0318 is currently under construction and nearing completion. The exterior of the building is largely completed apart from the installation of external cladding. Windows have been installed and the applicant has indicated that the internal walls have also been constructed in accordance with this permit. Under the subject application, the building remains exactly as per the original approval apart from the following changes:
 - (i) Removal of the approved car parking stackers in the two approved basement levels. Storage area (including bin store), 12 bicycle spaces with male and female end of trip-facilities and kitchen are proposed in the lower basement. A hotel conference room, a food/beverages service area, toilets and lounge area are now proposed on the upper basement level.
 - (ii) The approved food and drinks premises, refuse area and car lift entry area at ground floor will be replaced with the hotel lobby, a food/beverage service area and toilets.
 - (iii) A solid wall at the east end of the ground floor south wall is to be replaced with glazing,
 - (iv) A solid wall and roller door at the south end of the ground floor east wall is to be replaced with glazing and with the roller door on the west side to be replaced with a solid wall,
 - (v) The ground floor planter to the rear of the building is to be reduced in size,
 - (vi) The first and second floor windows to the rear end of the south wall deleted and made narrower,
 - (vii) The building to the rear will be reconfigured and extended at ground floor. The south end of the ground floor east wall is proposed to be setback 7.8m from the rear boundary to accommodate an accessible car space/guest drop-off zone/loading bay. The north end is now proposed to be setback 3.6m from the rear boundary to accommodate a rear pedestrian entry to the hotel and a vehicle drop-off zone for guests and deliveries.

(viii) The 10 dwellings approved under permit PLN14/0318 on first to fifth floor are proposed to be replaced with 61 hotel rooms. There will be 14 rooms on both the first and second floors and 11 rooms on each of the third to fifth floors. Apart from the internal reconfiguration of these levels, there will be no further changes apart from the following:

- The balconies from first to fifth floor facing Punt Road have been deleted and been absorbed into the building footprint with a glazed facade. The metal balustrades approved under the original permit to the balcony edges will be retained and will be installed to the front of the glazed façade, with planter bed installed just below and in-front of these metal picket balustrades.
- The rear setback for the third floor has been increased from 8.91m to 8.93m with the size of the approved balconies reduced to accommodate a plant area.
- The rear setback for the fourth and fifth floor has been increased from 3.45m to 3.67m.
- The roof terrace has been increased in size through the relocation of the plant to the rear of the terraces on the third floor. Roof terrace side and rear setbacks remain as per the original approval. An area previously approved as an enclosed plant area and roofed area to the terrace is now proposed to be enclosed with glazing and used as a flexible use space with a bar for the use of the hotel (with the size of this roofed area, setback and height remaining as per the original approval).
- Solar panels that were previously approved in the rear plant area on the terrace are to be relocated to the roof of the flexible space.
- The metal cladding finishes on the building changed from the approved charcoal/ gunmetal coloured finishes to black.

9. Use as a residential hotel (61 rooms), food and drink premises and bars and liquor service:

- (a) 61 residential hotel rooms are proposed between first and fifth floor, with the food/beverage services areas and a conference room to be at ground floor and upper basement level and a flexible space with bar to the roof terrace.
- (b) The main hotel food/beverage service is located at ground floor. It measures 124sqm and fronts onto Punt Road. The hotel lobby is to the rear of this area and measures 119sqm, with its entry addressing Rout Street and with an entry pathway that extends to both Rout Street and Punt Road. Customers accessing the hotel via vehicle drop-off areas will access the lobby via an entrance from Huckerby Street.
- (c) The hotel conference room in the upper basement level will measure 116.6sqm, and the hotel food and beverage/lounge area at this level will measure 141.5sqm. The residential hotel will have an on-site duty manager 24 hours a day. It will also have a 24 hour concierge service/caretaker which will actively manage operations including allowing guests' access to the hotel late at night, taking bookings, checking guests in, organising housekeeping etc.
- (d) The conference room, food/beverages areas and roof top bar/ flexible space will be primarily used by hotel patrons. The roof top bar has a maximum capacity of 35 patrons and 123 for the terrace. The hotel has a maximum capacity for 125 sleeping guests and with the proposal requesting permission for a maximum of 200 patrons, a maximum of 75 visitors would be permitted in the hotel at any one time. The proposal seeks permission for a maximum of 200 patrons overall in the hotel.

- (e) The conference room is intended to be used by small groups and to be used predominantly by patrons staying at the hotel. The applicant has confirmed that the maximum hotel capacity of 200 patrons will not be exceeded at times when the conference centre is used.
- (f) Sale and consumption of liquor associated with the hotel food/beverage service will also allow for max 200 patrons (to align with the hotel patron numbers outlined above). Service and consumption of alcohol in the roof top terrace is only proposed in the indoor flexible space with no alcohol proposed to be permitted on the terrace. The submitted redline plan confirms this.
- (g) The proposed hours are as follows:

		Food & Drink Premises / Hotel Conference Room	Food & Drink Premises	Hotel Rooms	Bar
		<i>Upper basement level</i>	<i>Ground floor level</i>	<i>First, Second, Third, Fourth, Fifth floor levels</i>	<i>Roof top level</i>
Sunday	to	12pm to 10pm	12pm to 10pm	12pm to 10pm	12pm to 9pm
Thursday					
Friday	to	12pm to 12 midnight	12pm to 12 midnight	12pm to 12 midnight	12pm to 11pm
Saturday					

- (h) Music will be played at background levels with no live music or dj’s proposed to perform at the premises. The windows to the ground floor food/beverage service area are not operable.
- (i) Deliveries and collection of laundry etc will be generally undertaken in small delivery van. Loading and unloading will be accommodated on site in the shared loading bay/accessible space.
- (j) 4 x1100lrt garbage bins and 3 X1100ltr recycling bins are proposed in a 40sqm bin store on the lower basement. Collection will be twice a week by a private contractor in a smaller waste collection vehicle.

10. Construction and display of signage:

11. Five business identification signs are proposed. All are proposed to be illuminated 24/7 and to be white coloured neon tubes in black open space boxes. The size and position of the signs are as follows:

- (a) One to the top of each of the northern and southern wing wall extensions to Punt Road and will measure 6.3m in height x 1.2m in width.
- (b) At the ground floor Punt Road fascia above the pedestrian entry path and measuring 0.7m in height and 2.4m in width.
- (c) To the recessed wall adjacent to the rear DDA space/loading area, measuring 0.8m in height and 2.1m in width.
- (d) To the recessed ground floor south wall adjacent to the pedestrian walkway, measuring 0.8m in height and 2.1m in width.

12. Reduction in the car parking requirements for 9 car spaces is proposed (associated with the food and drink/bar premises). Car parking for the residential hotel is to Council’s satisfaction.

13. ESD Commitments:

- (a) A 7,200 L rainwater with a STORM score of 109%, operable windows to each individual hotel room, a 12kW array of solar panels will be located on the roof, 12 bicycle spaces and sustainable products will be used throughout the design. The proposed ESD features achieve a BESS score of 54%, with a score of 50% signifying ‘best practice’.

Existing Conditions

Subject Site

14. The subject site is located on the eastern side of Punt Road on the northern side of its intersection with Rout Street and to the south of Swan Street in Cremorne. Huckerby Street forms the eastern boundary of the subject site.
The site comprises two lots and has a combined street frontage to Punt Road of 12.2m and a secondary frontage of 36.68m to Rout Street, yielding an overall site area of approx. 447sqm.
15. As highlighted earlier, the subject site is currently under construction in accordance with Planning permit PLN14/0318 for the construction of a six storey building and is nearing completion. The work has been carried in accordance with the above permit with all external and internal works appearing to be near completion apart from the installation of cladding to the building facades, the internal fit out and the basement car park stackers have not been installed. The applicant has confirmed the layout of interior walls has also been completed in accordance with the permit.
16. The building is generally constructed to all site boundaries, apart from at ground floor where it is setback 1.17m and 1.67m to Punt Road to accommodate fire services and a planter bed. The building is also setback approx. 2m from the west end of Rout Street to accommodate the pedestrian walkway to the building. The building is setback to the rear boundary at ground floor.
17. The first and second floor are built to all site boundaries apart from a 2.18m wide light well to the southern boundary and a 10.3m wide light well to the northern boundary and a 1.9m setback to the rear boundary. The third floor has the same setback configuration as the first and second floor apart from to the rear boundary where a 3.67m setback is proposed. The fourth and fifth floor has the same setback configuration as the third apart from to the rear boundary where an 8.93m setback is proposed. The building has a roof terrace of 164.3sqm.

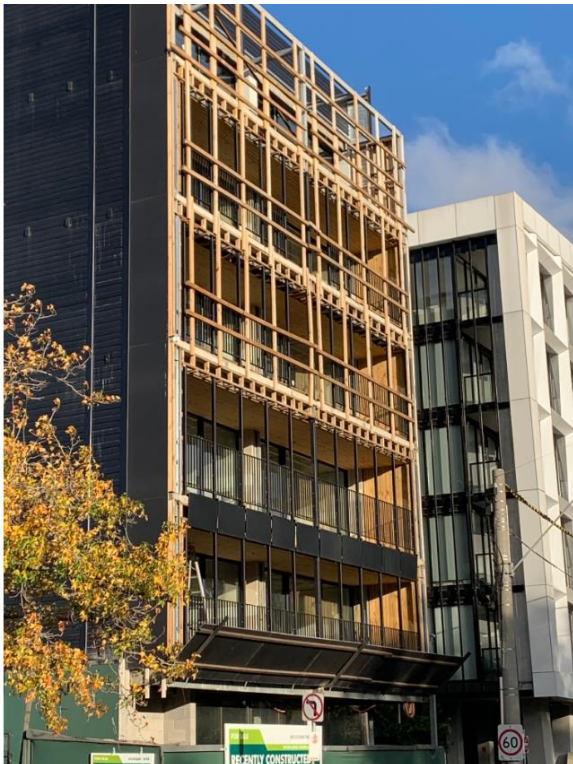


Figure 1: Punt Road view of subject site.



Figure 2: Huckerby Street view of subject site.

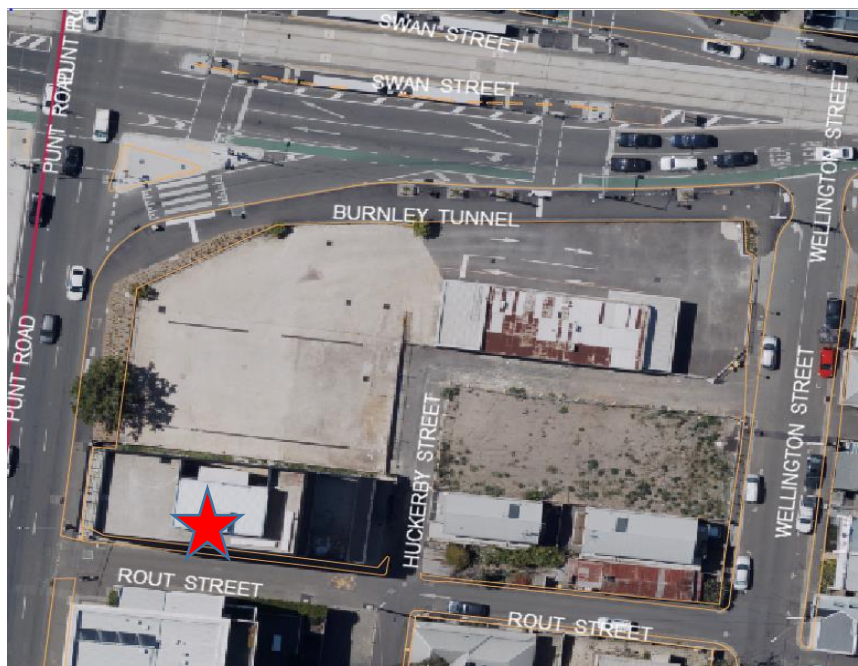


Figure 3: Subject site.

Restrictive Covenants

18. There are no restrictive covenants which affect the subject site. Two Section 41 Agreements are listed on the titles provided (D288051 10/01/1969 and H775449 23/11/1979). They relate to compensation paid by the Melbourne and Metropolitan Board of Works (MMBW) to certain parties.

Surrounding Land

19. The surrounding area is mixed in terms of built form and uses. The subject site is located in a prominent location, framing the eastern edge of Melbourne's international sports precinct and with the Richmond train station to the north. Generally speaking, the built form of the area is hard-edged or with minimal front setbacks, with fine grain residential developments to the east, and to a lesser extent to the north and south of the site. Building heights in this area are primarily low rise, between one and three storeys.

North

20. At the south-east intersection of Punt Road and Swan Street is a vacant site. A single storey building is located on this site. Further north (beyond Swan Street) is a small park with Richmond Train Station to the east of the park.
21. To the north-east is the Swan Street Major Activity Centre (MAC), which is home to a range of restaurants, bars, shops and community services. The MAC is well-known as being an entertainment precinct with a number of late-night music venues, pubs and bars. Swan Street is also an arterial road.

South

22. To the south of the site is Rout Street, a 4.8m wide one-way street, with traffic directed west-bound, towards Punt Road. On the opposite side is a six storey residential building at No.381 Punt Road approved under planning permit PLN10/1037. This development presents as five (5) x three (3) storey townhouses with roof terraces to Huckerby Street, part single storey on the north-east corner of the building (basement car park entry) and with the remainder of the building being six (6) storeys to Rout Street and Punt Road and containing 63 apartments.

23. The six storey section of the building has east and west-facing balconies for all units from first floor to the fifth floor, with 9 of the balconies also having a secondary northern orientation (ie facing the subject site). Planning permit PLN10/1037 was amended on the 20th January 2017 to allow for a maximum of 40 of these dwellings to be used as a residential hotel. The residential hotel is currently operating at the site.



Figure 4: Punt Road view of No.381 Punt Road. Figure 5: Huckerby Street view of No.381 Punt Road.

24. Further to the south of this building is a two-storey, brick, multi-unit development, known as 'Cremorne Courts' then two, two-storey Victorian-era terraces, and beyond is a service station. To the south-east of the site within Kelso and Melrose Streets are low-rise, finer grain residences with minimal (if any) front and side setbacks.

East

25. To the east is Huckerby Street, a 3.85m wide local road extending in a north-south direction, with a west to east leg accessing Wellington Street 14m north of the site. Huckerby Street functions more like a Right-of-way (ROW), providing rear vehicular access to properties fronting Punt Road and Wellington Street.
26. Directly to the east of the subject site is No.5 Huckerby Street and also the rear of properties facing Wellington Street at Nos. 2, 4 and 8. No.5 Huckerby Street is a double storey townhouse with a first floor balcony fronting Huckerby Street and secondary open space to the rear. A second double storey dwelling is located on this site (No. 6 Wellington) and fronts Wellington Street.

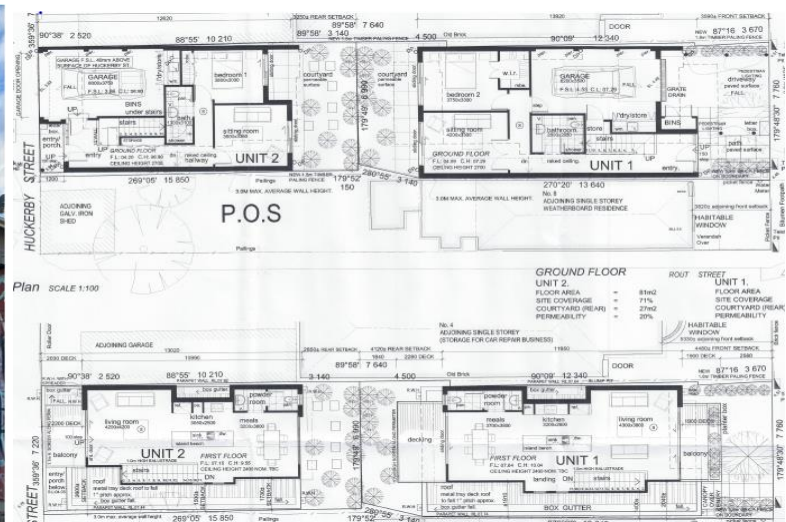


Figure 6: No.5 Huckerby Street.

Figure 7: No.5 Huckerby Street and No. 6 Wellington Street.

27. No.2 and 4 Wellington Street is currently being developed with six (6) three (3) storey townhouses with roof terraces. All of these dwellings have private open space in the form of first floor balconies and roof terraces that front the west to east extension of Huckerby Street. The nearest roof terrace is located approx. 10m from the subject site.

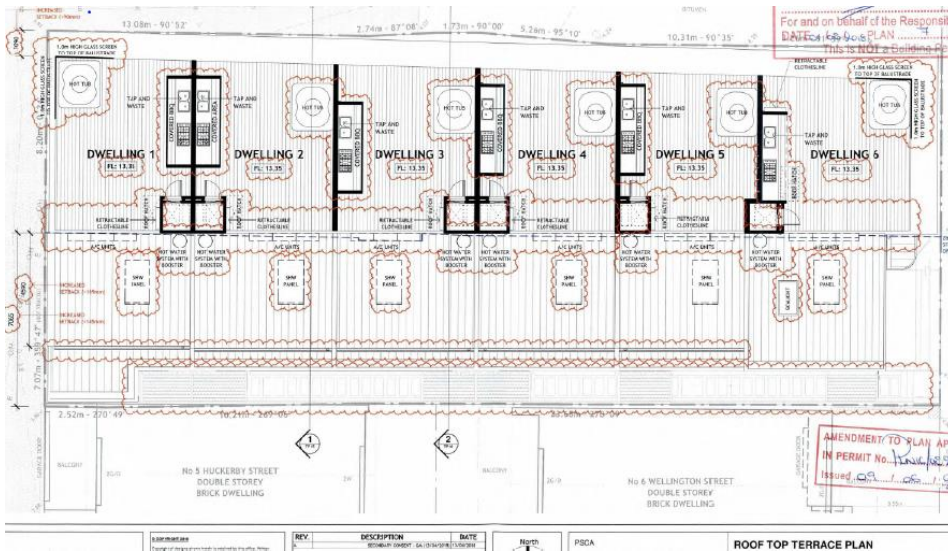
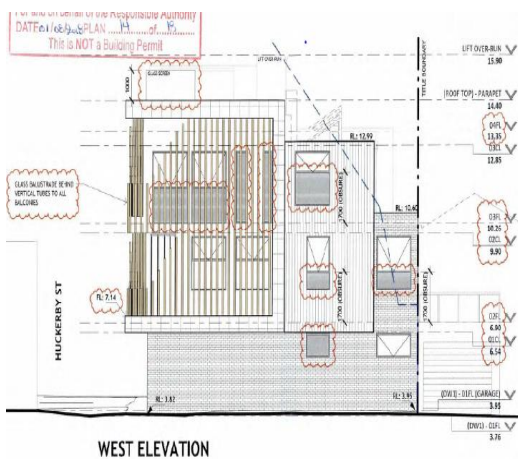


Figure 8: No.2-4 Wellington Street.

28. No.8 Wellington Street is a single storey dwelling fronting Wellington Street, with a sideage to Rout Street and with a 5m deep single storey outbuilding located to the rear. Private open space (POS) is located between the outbuilding and the rear of the dwelling. Opposite this dwelling on the south side of Rout Street is a single storey dwelling (with POS to the rear) with a frontage to Rout Street on the Huckerby Street intersection and a double storey dwelling with a frontage to Wellington Street (with POS to the Rout Street frontage and to the rear).



Figure 9: View of Rout Street from rear of subject site toward Wellington Street.

29. Further south along Huckerby Street are the rear outbuildings and open space of dwellings that front Wellington Street and the three storey townhouse frontages that form part of the development at No.381 Punt Road. Beyond this, are fine grain residences with building heights being primarily low rise, between one and three storeys within the residential streets such as Wellington and Jessie Streets.



Figure 9: View of Huckerby Street from rear of subject site to the south.

West

30. To the west, and on the opposite side of Punt Road is land under the jurisdiction of the City of Melbourne, including Gosch's Paddock and extensive sporting facilities and public open space. Punt Road, through this section of Cremorne, is a six-lane road which carries traffic in a north-south direction across the city.

Access to transport

31. The inner-suburban locale ensures the site is well serviced by infrastructure and excellent public transport accessibility, with:
- (a) Swan Street being serviced by tram route No.70 which provides service between Wattle Park and Bourke Street (Docklands).
 - (b) Richmond Train Station is within walking distance; 117m north-east of the site.
 - (c) Punt Road serviced by bus.

Planning Scheme Provisions

Zoning

General Residential Zone – Schedule 4 (GRZ4)

32. The subject site is located within the General Residential Zone – Schedule 4. The relevant purposes of the GRZ4 include;
- (a) *To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*
33. A Residential Hotel is nested under 'Residential Building' and 'Accommodation' in clause 73.04-1 of the Yarra Planning Scheme (the Scheme).
34. Pursuant to clause 32.08-2 of the Scheme, Accommodation (other than Community care accommodation, Dependent person's unit, Dwelling, Residential aged care facility and Rooming house) is a 'Section 2 – permit required use' in the GRZ4.
35. Pursuant to clause 32.08-2 of the Scheme, a food and drinks premises (including hotel food services area and bars) are 'Section 2 – permit required use' in the GRZ4. These areas are not considered ancillary to the residential hotel use.

While they are used predominantly in association with hotel guests, the proposed patron capacity allows for a maximum of 125 guest staying/sleeping at the residential hotel, a further 75 patrons are proposed to be permitted to access the bars and food services areas that will not be guest staying at the hotel. As such these areas are not considered purely ancillary to the hotel use and so a planning permit is considered required for their use.

36. The areas of the development designated as the 'hotel lobby' and 'conference room' are considered to be 'ancillary' to the proposed residential hotel use, and are not standalone uses in their own right. Whilst the Scheme does not provide a formal definition of 'ancillary', it is defined in the Macquarie Dictionary as: *an accessory, subsidiary or helping thing or person*. In this instance, these areas are provided for the use of hotel guests, and are therefore an accessory to the overall hotel use.
37. Pursuant to clause 32.08-6 a permit is required to extend a residential building. This clause specifies a development must meet the requirements of clause 55. The clause then goes on to specify this does not apply to development of five or more storeys and specifies an apartment development of 5 or more storeys must meet the requirements of clause 58. As the proposal is not an apartment building and is more than 5 storeys, neither clause 55 or 58 are applicable.
38. Pursuant to clause 32.08-10 and the Schedule 4, a building must not contain more than three storeys or be more than 11.5m in height. However, Schedule 4 states this is not applicable for an extension of an existing building where the height of the existing building is not increased. It is proposed to enclose an approved roofed area to the roof top terrace with glazed walls at a height greater than 11.5m. As the existing roof height is not to be increased, this proposed extension qualifies for the exemption to the 11.5m height requirement detailed above.
39. Pursuant to Clause 32.08-9 of the Scheme a permit is required to construct a building or construct or carry out works for a use in section 2 of clause 32.08-2.
40. Pursuant to Clause 32.08-14 of the Scheme the business identification signage requirements are at for the zone are Clause 52.05. This zone is in Category 3.
41. Clause 32.08-11 '*Application Requirements*' and 32.08-13 provides relevant '*Decision Guidelines*' for '*Non-residential use and development*' as follows:
 - (a) *The likely effects, if any, on adjoining land, including noise levels, traffic, the hours of delivery and despatch of good and materials, hours of operation and light spill, solar access and glare.*
 - (b) *Whether the use or development is compatible with residential use.*
 - (c) *Whether the use generally serves local community needs.*
 - (d) *The scale and intensity of the use and development.*
 - (e) *The design, height, setback and appearance of the proposed buildings and works.*
 - (f) *The proposed landscaping.*
 - (g) *The provision of car and bicycle parking and associated access ways.*
 - (h) *Any proposed loading and refuse collection facilities.*
 - (i) *The safety, efficiency and amenity effects of traffic to be generated by the proposal.*

Road Zone

42. The subject site is located adjacent to a Road Zone Category 1 (Punt Road). The relevant purposes of the RZ1 include;
 - (a) *To identify significant existing roads.*

43. Pursuant to clause 36.04-4 A permit is required to display a sign over the road formation or over land within 600 millimetres of the road formation. Is it within 600mm of the road?? Yes as the footpath forms part of the road formation with the zone running right up to building edge and the sign constructed to the boundary
44. Pursuant to clause 36.04-3 the Responsible Authority must consider the views of the relevant Roads Authority (ie VicRoads).

Overlays

Heritage Overlay Schedule 364 (Wellington Street Precinct)

45. The subject site is affected by Schedule 364 to the Heritage Overlay. The following provisions are applicable:
 - (a) Pursuant to clause 43.01-1 of the Scheme, a planning permit is required to demolish or remove a building and to construct or carry out works.
 - (b) The site is listed in *Appendix 8, City of Yarra Review of Heritage Overlay Areas 2007. (rev. May 2018)* as being 'contributory' to the heritage overlay.
 - (c) However at the time planning permit PLN14/0318 issued on 5 December 2014, the site was not affected by the Heritage Overlay with Amendment C129 Gazetted 27 August 2015 (which introduced the Heritage Overlay Schedule 364 to the two dwellings at the site). Further the two dwellings were demolished between January and April 2014 and so were demolished just prior to the lodgement of planning permit PLN14/0318 (application received at Council 17 April 2014) and prior the introduction of the Heritage Overlay.
 - (d) Hence a planning permit was not required for the demolition of these dwellings at the time they were removed. Further as discussed in the *Amendment* section, given the circumstances outlined above, Amendment C191 is currently being processed and proposes to remove the Heritage Overlay from the subject site.

Design and Development Overlay (Schedule 2) (Main Roads and Boulevards)

46. The subject site is located within Design and Development Overlay (Schedule 2) (Main Roads and Boulevards). The relevant purposes of the DDO2 include;
 - (a) *To encourage high quality contemporary architecture.*
 - (b) *To encourage urban design that provides for a high level of community safety and comfort.*
 - (c) *To limit visual clutter.*
 - (d) *To maintain and where needed, create, a high level of amenity to adjacent residential uses through the design, height and form of proposed development.*
47. Pursuant to Clause 43.02-2, a permit is required to construct a building or construct or carry out works.

Design and Development Overlay (Schedule 17) (Swan Street Activity Centre)

48. The subject site is located within Design and Development Overlay (Schedule 17) (Swan Street Activity Centre). The subject site is located in the Precinct 1 (Richmond Station). The relevant purposes of the DDO17 include;
 - (a) *To recognise and respond to the distinct character and varying development opportunities defined by the four precincts along Swan Street.*

- (b) *To minimise the amenity impacts on residential properties adjoining the Swan Street Activity Centre including overlooking, overshadowing and visual bulk impacts.*
- (c) *To ensure that vehicular access to development does not adversely impact the level of service, efficiency and safety of the arterial and tram network.*

49. Pursuant to Clause 43.02-2, a permit is required to construct a building or construct or carry out works.

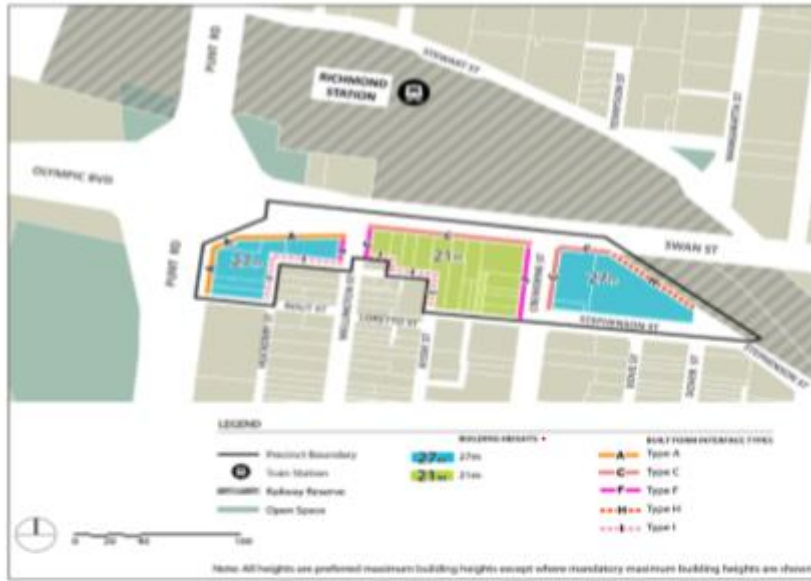
50. Relevant Precinct Design Requirements are as follows:

- (a) *Development must provide a consistent built form edge to the street.*
- (b) *The street wall of development on the corner of Swan Street and Punt Road must mark the entry into the Swan Street Activity Centre.*

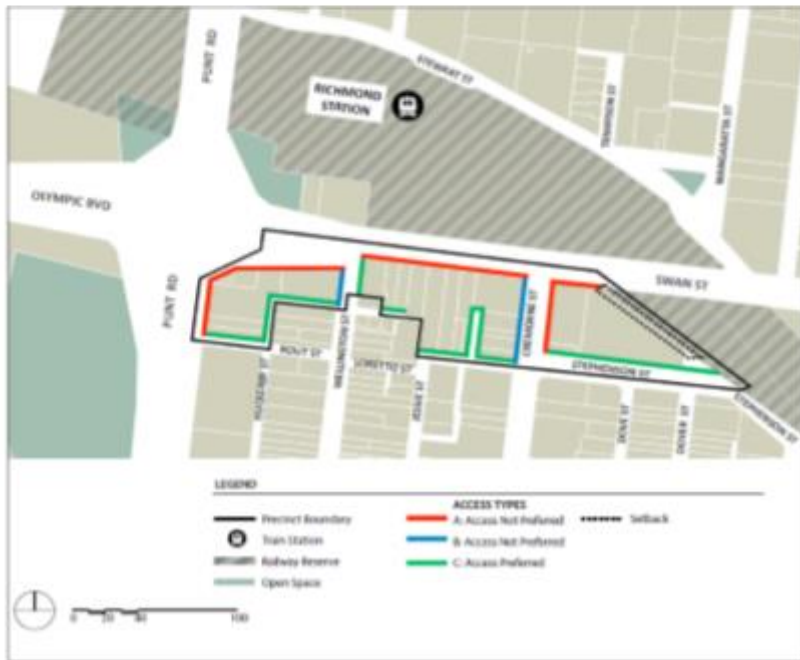
Table 1 – Street Wall Heights and Setbacks for Precinct 1

Interface Ref	Design Element	Mandatory Requirements	Preferred Requirements
A	Street wall height		21m maximum
	Street wall setback		0m
	Upper level setback		5m minimum

Plan 1: Height and Interface Plan – Precinct 1 – Richmond Station



Plan 2: Access and Movement Plan – Precinct 1 – Richmond Station



Special Building Overlay

51. The subject site is located within a Special Building Overlay (SBO). The relevant purposes of the SBO include;
 - (a) *To ensure that development maintains the free passage and temporary storage of flood waters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.*
 - (b) *To protect water quality in accordance with the provisions of relevant State Environment Protection Policies , particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy(Waters of Victoria).*
52. Pursuant to Clause 44.05-2 of the Scheme a permit is required to construct a building or construct or carry out works.

53. An application must also be referred under Section 55 of the Act to Melbourne Water.

City Link Project Overlay

54. The subject site is located within a City Link Project Overlay (CPLO). The relevant purposes of the CPLO include;

- (a) *To ensure the efficient construction, operation and maintenance of the Melbourne City Link Project, the Exhibition Street Extension Project and City Link Tulla Widening Project.*

55. Pursuant to clause 45.07 of the Yarra Planning Scheme, this application does not require a planning permit for the proposed works, but does require referral to VicRoads pursuant to clause 45.07-6.

Particular Provisions

Clause 52.05 Signs

56. Pursuant to clause 52.05-13 of the Scheme, a planning permit is required for internally illuminated signs. The purpose statement of this policy outlines the following considerations:

- (a) *To ensure signs are compatible with the amenity and visual appearance of an area, including the existing or desired future character.*
- (b) *To ensure signs do not contribute to excessive visual clutter or visual disorder.*
- (c) *To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.*

Clause 52.06 Car parking

57. Pursuant to clause 52.06-2 of the Scheme, before a new use commences the number of car parking spaces required under Table 1 at Clause 52.06-5 must be provided to the satisfaction of the responsible authority.

58. Clause 52.06-6 notes that where a use of land is not specified in Table 1, car parking spaces must be provided to the satisfaction of the responsible authority. The use of the land as a Residential Hotel is not specified in this table, therefore the provision of car parking is to the satisfaction of the responsible authority.

59. It is noted that the introduction of amendment VC148 amended Clause 52.06 so that the car parking rates of Column B applies if any part of the land is identified as being within the Principal Public Transport Network Area. The subject site is within this area and therefore the Column B car parking rates apply to this planning permit application. Under clause 52.06-5, the following parking rates are required for the ground and upper basement floor food and drinks premises/bar and the roof top flexible space/bar.

Proposed Use	Quantity / Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated	Reduction required
Food and drink premises and bars	312sqm	3.5 spaces per 100sqm of leasable floor area	10	0	10
Total			10	0	10

60. A car parking reduction for 10 spaces is required. It is noted the two on-site parking areas are not considered car parking spaces for the purposes of this assessment as they will operate as drop-off and loading zones and not dedicated long term parking car parking spaces.

Clause 52.34 - Bicycle facilities

61. Pursuant to Clause 52.34-1, a new use must not commence until the required bicycle facilities and associated signage are provided on the land. The following table identifies the bicycle parking requirement under Clause 52.34-3 and the provision on site.

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
Residential building (other than specified in the table)	61 lodging rooms	In developments of four or more storeys, 1 resident space to each 10 lodging rooms	6 resident spaces	14 resident / employee spaces
		In developments of four or more storeys, 1 visitor space to each 10 lodging rooms	6 visitor spaces	2 visitor spaces
Retail premises (other than specified in this table)	313 sqm	1 employee space to each 300 sqm of leasable floor area	1 employee spaces	
		1 visitor space to each 500 sqm of leasable floor area	1 visitor spaces	
Bicycle Parking Spaces Total			7 resident / employee spaces	14 resident / employee spaces
			7 visitor spaces	2 visitor spaces
Showers / Change rooms		1 to the first 5 employee spaces and 1 to each additional 10 employee spaces	1 showers / change rooms	2 showers / change rooms

62. The development complies with the number of on-site employee bicycle parking spaces required, along with the shower/change rooms required by the clause. With a total of 14 spaces provided a reduction is not required. Residents as outlined in this table refers to hotel residents.

Land adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road

63. The subject site is located adjacent to a Road Zone, Category 1. The relevant purposes of the clause 52.29 include;

(a) *To ensure appropriate access to identified roads.*

64. Pursuant to clause 52.29-2 a permit is required to create or alter access to a road in a Road Zone, Category 1. The proposed change of use of the building is considered an alteration to the road zone access.
65. Pursuant to clause 52.29-4 an application to create or alter access to, a road declared as a free way or arterial road under the Road Management Act 2004, must be referred to the Roads Corporation under section 55 of the Act.

General Provisions

66. 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 Municipal Planning Strategy and the Planning Policy Framework., 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 offered in further in this report.

Referral and Notice Provisions

67. These provisions set out the kinds of applications which must be referred under section 55 of the Act or for which notice must be given under section 52(1)(c) of the Act. Pursuant to clause 66 notice of an application of the kind listed in Clauses 66.05 and 66.06 must be given in accordance with section 52(1)(c) of the Act to the person or body specified as a person or body to be notified.
68. Pursuit to Clause 66.02.11 (*Integrated Public Transport Planning*) an application to carry out works for a residential building comprising 60 or more lodging rooms must be referred to the Head of Transport for Victoria.

Planning Policy Framework (PPF)

69. Relevant clauses are as follows:

Clause 11.01-1R (Settlement - Metropolitan Melbourne)

70. Relevant strategies include;
- (a) *Develop a network of activity centres linked by transport; consisting of Metropolitan Activity Centres supported by a network of vibrant major and neighbourhood activity centres of varying size, role and function.*
 - (b) *Create mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities.*

Clause 11.02 (Managing Growth)

Clause 11.02-1S (Supply of Urban Land)

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

Clause 11.03 (Planning for Places)

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

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

Clause 11.03-1S (Activity Centres)

73. The relevant objectives of this clause include:

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

Clause 13.05-1S (Noise abatement)

74. The objective is:

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

75. The strategy is:

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

Clause 13.07 (Amenity and Safety)

Clause 13.07-1S (Land use compatibility)

76. The objective is:

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

Clause 15.01 (Built Environment and Heritage)

77. This clause outlines the following guidelines;

- (a) *Planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context.*
- (b) *Planning must support the establishment and maintenance of communities by delivering functional, accessible, safe and diverse physical and social environments, through the appropriate location of use and development and through high quality buildings and urban design.*
- (c) *Planning should promote development that is environmentally sustainable and should minimise detrimental impacts on the built and natural environment.*
- (d) *Planning should promote excellence in the built environment and create places that:*
 - (i) *Are enjoyable, engaging and comfortable to be in.*
 - (ii) *Accommodate people of all abilities, ages and cultures.*
 - (iii) *Contribute positively to local character and sense of place.*
 - (iv) *Reflect the particular characteristics and cultural identity of the community.*
 - (v) *Enhance the function, amenity and safety of the public realm.*

Clause 15.01-1S (Urban design)

78. The objective is:

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

Clause 15.01-1R (Urban design - Metropolitan Melbourne)

79. The objective is:

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

Clause 15.01-2S (Building Design)

80. The objective is:

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

81. The strategies of this clause are:

- (a) *Ensure the site analysis provides the basis for the consideration of height, scale and massing of new development.*
- (b) *Ensure development responds and contributes to the strategic and cultural context of its location.*
- (c) *Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.*
- (d) *Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.*
- (e) *Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.*
- (f) *Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.*
- (g) *Ensure development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.*

Clause 15.01-4S (Healthy neighbourhoods)

82. The objective is:

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

Clause 15.01-5S (Neighbourhood character)

83. The objective is:

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

84. Strategies are:

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

Clause 15.02 (Sustainable Development)

Clause 15.02-1S (Energy and resource efficiency)

85. The objective 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 15.03-1S (Heritage conservation)

86. The objective is:

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

87. Strategies include:

- (a) *Encourage appropriate development that respects places with identified heritage values.*
- (b) *Retain those elements that contribute to the importance of the heritage place.*

- (c) *Encourage the conservation and restoration of contributory elements of a heritage place.*
- (d) *Ensure an appropriate setting and context for heritage places is maintained or enhanced.*
- (e) *Support adaptive reuse of heritage buildings where their use has become redundant.*

Clause 17 (Economic development)

Clause 17.02-1S (Business)

88. The objective is:

- (a) *To encourage development which meet the communities' needs for retail, entertainment, office and other commercial services.*

89. The relevant strategies of this clause is:

- (a) *Plan for an adequate supply of commercial land in appropriate locations.*
- (b) *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.*
- (c) *Locate commercial facilities in existing or planned activity centres.*

Clause 17.04 (Tourism)

Clause 17.04-1S (Facilitating tourism)

90. The objective is:

- (a) *To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.*

91. Relevant strategies are:

- (a) *Encourage the development of a range of well-designed and sited tourist facilities, including integrated resorts, accommodation, host farm, bed and breakfast and retail opportunities.*
- (b) *Encourage investment that meets demand and supports growth in tourism.*

Clause 18.01 (Integrated Transport)

Clause 18.01-1S – (Land use and transport planning)

92. The objective of this clause is:

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

93. Relevant strategies to achieve this objective include:

- (a) *Develop transport networks to support employment corridors that allow circumferential and radial movements.*
- (b) *Plan urban development to make jobs and community services more accessible by (as relevant):*
 - (i) *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.*
 - (ii) *Coordinating improvements to public transport, walking and cycling networks with the ongoing development and redevelopment of urban areas.*
 - (iii) *Requiring integrated transport plans to be prepared for all new major residential, commercial and industrial developments.*
- (c) *Integrate public transport services and infrastructure into new development.*

Clause 18.02 (Movement Networks)

Clause 18.02-1S – (Sustainable personal transport)

94. The objective is:
- (a) *To promote the use of sustainable personal transport.*
95. Relevant strategies are:
- (a) *Encourage the use of walking and cycling by creating environments that are safe and attractive.*
 - (b) *Develop high quality pedestrian environments that are accessible to footpath-bound vehicles such as wheelchairs, prams and scooters.*
 - (c) *Require the provision of adequate bicycle parking and related facilities to meet demand at education, recreation, transport, shopping and community facilities and other major attractions when issuing planning approvals.*
 - (d) *Ensure provision of bicycle end-of-trip facilities in commercial buildings*

Clause 18.02-1R (Sustainable personal transport- Metropolitan Melbourne)

96. Strategies of this policy are:
- (a) *Improve local travel options for walking and cycling to support 20 minute neighbourhoods.*
 - (b) *Develop local cycling networks and new cycling facilities that support the development of 20-minute neighbourhoods and that link to and complement the metropolitan-wide network of bicycle routes - the Principal Bicycle Network*

Clause 18.02-2S (Public Transport)

97. The objective is:
- (a) *To facilitate greater use of public transport and promote increased development close to high-quality public transport routes.*

Clause 18.02-2R (Principal Public Transport Network)

98. A relevant strategy of this clause is to:
- (a) *Maximise the use of existing infrastructure and increase the diversity and density of development along the Principal Public Transport Network, particularly at interchanges, activity centres and where principal public transport routes intersect.*

Clause 18.02-4S (Car Parking)

99. The objective is:
- (a) *To ensure an adequate supply of car parking that is appropriately designed and located.*
100. A relevant strategy is:
- (a) *Protect the amenity of residential precincts from the effects of road congestion created by on-street parking.*

Local Planning Policy Framework (LPPF)

101. The following LPPF provisions of the Scheme are relevant:

Clause 21.04 (Land Use)

102. Relevant objectives and strategies include;
- (a) *Objective 3 To reduce potential amenity conflicts between residential and other uses.*
 - (i) *Strategy 3.2 Apply the Interface Uses policy at clause 22.05.*

- (ii) *Strategy 3.4 Discourage late night and 24 hour trading activities located near residential zones to minimize impacts on residential amenity.*

Clause 21.04-2 (Activity Centres)

103. Relevant strategies include;
- (a) *Strategy 4.1 Increase the range of retail, personal and business services, community facilities, and recreation activities, within individual centres.*
 - (b) *Strategy 5.2 Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.*
 - (c) *Strategy 5.3 Discourage uses at street level in activity centres which create dead frontages during the day.*

Clause 21.04-3 (Industry, office and commercial)

104. The objective of this clause is 'to increase the number and diversity of local employment opportunities.'

Clause 21.05-1 (Heritage)

105. Relevant objectives and strategies include;
- (a) *Objective 14 To protect and enhance Yarra's heritage places:*
 - (i) *Strategy 14.3 Protect the heritage skyline of heritage precincts.*
 - (ii) *Strategy 14.4 Protect the subdivision pattern within heritage places.*
 - (iii) *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.*
 - (iv) *Strategy 14.8 Apply the Development Guidelines for Heritage Places policy at clause 22.02*

Clause 21.05-2 (Urban design)

106. The relevant objectives and strategies 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;*
 - (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 21 To enhance the built form character of Yarra's activity centres;*
 - (i) *Strategy 21.1 Require development within Yarra's activity centres to respect and not dominate existing built form; and*
 - (f) *Objective 22 To encourage the provision of universal access in new development.*

Clause 21.05-3 – (Built form character)

107. The general objective of this clause is:
- (a) *To maintain and strengthen the identified character of each type of identified built form within Yarra.*
108. The subject site is located within a non-residential area, where the built form objective is to "improve the interface of development with the street".
109. The strategies to achieve the objective are to:
- (a) *Strategy 27.1 - Allow flexibility in built form in areas with a coarse urban grain (larger lots, fewer streets and lanes).*
 - (b) *Strategy 27.2 - Require new development to integrate with the public street system.*

Clause 21.05-4 (Public environment)

110. The relevant objective and strategies are:

- (a) *Objective 28 To provide a public environment that encourages community interaction and activity:*
 - (i) *Strategy 28.1 Encourage universal access to all new public spaces and buildings*
 - (ii) *Strategy 28.2 Ensure that buildings have a human scale at street level.*
 - (iii) *Strategy 28.3 Require buildings and public spaces to provide a safe and attractive public environment.*

Clause 21.06 (Transport)

111. This clause builds upon the objectives outlined at clause 18, promoting cycling, walking and public transport as alternatives to private motor vehicle usage.

Clause 21.06-1 (Walking and cycling)

112. This clause builds upon the Objectives outlined at Clause 18, promoting cycling, walking and public transport as alternatives to private motor vehicle usage.

- (a) *Objective 30 To provide safe and convenient bicycle environments:*
 - (i) *Strategy 30.2 Minimise vehicle crossovers on street frontages.*

Clause 21.06-2 (Public transport)

113. *Objective 31 To facilitate public transport usage.*

- (i) *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)

114. *Objective 32 To reduce the reliance on the private motor car.*

Clause 21.07-1 (Environmentally sustainable development)

115. The relevant objective of this clause is:

- (a) *Objective 34 To promote ecologically sustainable development:*
 - (i) *Strategy 34.1 Encourage new development to incorporate environmentally sustainable design measures in the areas of energy and water efficiency, greenhouse gas emissions, passive solar design, natural ventilation, stormwater reduction and management, solar access, orientation and layout of development, building materials and waste minimisation;*

Clause 21.08-7 Neighbourhoods (Burnley, Cremorne, South Richmond)

116. This clause identifies the neighbourhood as “*largely an eclectic mix of commercial, industrial and residential land use. With two railway lines and both north south, and east west tram routes, the neighbourhood has excellent access to public transport.*”

117. Specifically, Cremorne is identified as a truly mixed use character with Victorian cottages, apartments and warehouse conversions intermingled with commercial and industrial uses. Council recognises and fosters this mix of uses, which is highly valued by the local community.

Local Policies

Clause 22.01

118. This policy applies to applications for permit required uses in Residential Zones. The relevant objectives as follows;
- (a) *To ensure that residential amenity is not adversely affected by non-residential uses.*
119. Pursuant to clause 22.01-3, it is policy that:
- (a) *Existing buildings constructed for non-residential purposes are the preferred location for non-residential uses.*
 - (b) *Food and drink premises, places of assembly, places of worship and plant nurseries should have access to and adjoin a road in a Road Zone. Except on land adjoining and gaining direct access from a road in a Road Zone:*
 - (i) *all required car parking should be on-site.*
 - (ii) *the scale of the proposed use should be compatible with providing service to the local residential community. Hours of operation should be limited to 8am to 8pm except for convenience shop.*
 - (c) *New buildings and works should be consistent with the scale, bulk and character of the area.*
 - (d) *Noise emissions should be compatible with a residential environment.*

Clause 22.02 (Development Guidelines for sites subject to Heritage Overlay)

120. The relevant objectives of this clause are as follows
- (a) *To retain significant view lines to, and vistas of, heritage places.*
 - (b) *To preserve the scale and pattern of streetscapes in heritage places.*
 - (c) *To ensure that additions and new works to a heritage place respect the significance of the place.*
121. The relevant parts of this clause are as follows:

Clause 22.02-5.1 (Demolition)

- (a) *Generally encourage the retention of a building in a heritage place, unless*
 - (i) *The building is identified as being not contributory.*

Clause 22.02-5.7 (New Development, Alterations or Additions)

Clause 22.02-5.7.1 (General)

122. The relevant objectives of this clause are as follows
- (a) *Encourage the design of new development and alterations and additions to a heritage place or a contributory element to a heritage place to:*
 - (b) *Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.*
 - (c) *Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.*
 - (d) *Be visually recessive and not dominate the heritage place.*
 - (e) *Be distinguishable from the original historic fabric.*
 - (f) *Not remove, cover, damage or change original historic fabric.*
 - (g) *Not obscure views of principle façades.*
 - (h) *Consider the architectural integrity and context of the heritage place or contributory element.*

Clause 22.07 - Development abutting laneways

123. This policy applies to applications for development that is accessed from a laneway or has laneway abuttal, with the relevant objectives as follows;

- (a) *To provide an environment which has a feeling of safety for users of the laneway.*
- (b) *To ensure that development along a laneway acknowledges the unique character of the laneway.*
- (c) *To ensure that where development is accessed off a laneway, all services can be provided to the development. To ensure that development along a laneway is provided with safe pedestrian and vehicular access.*

Clause 22.04 – Advertising signs policy

124. The relevant objectives of this clause are:

- (a) *To allow for the promotion of goods and services.*
- (b) *To ensure that signs contribute to and do not detract from the visual amenity of commercial precincts, activity centres and residential areas.*
- (c) *To minimise visual clutter. To ensure that signs are not the dominant element in the streetscape. To protect and enhance the character and integrity of places of heritage significance.*

125. This policy outlines a range of guidance at clause 22.04-3.5, 22.04-3.6 and 22.04-3.

Clause 22.09 – Licensed premises

126. This policy applies to all applications for new licensed premises and for the extension (including the extension of hours and the extension of patron numbers) of existing licensed premises.

127. The objectives of this clause are:

- (a) *To effectively manage the location, operation and hours of trade of licensed premises, in order to protect the amenity of nearby properties and areas.*
- (b) *To protect residential and other commercial uses from excess noise, traffic and car parking issues.*
- (c) *To provide for daytime trade and active street frontages in retail strips, while providing reasonable commercial opportunities for the trading of licensed premises.*

128. This policy outlines a range of guidance at clause 22.09-3 including (as relevant):

- (a) *Licensed premises in a Residential zone (other than a Mixed Use Zone) should not provide for the sale and consumption of liquor beyond 8pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
- (b) *For outdoor areas, including smoking areas, rooftops and open courtyards, the sale and consumption of liquor should not occur after 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
- (c) *Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.*
- (d) *Deliveries to and waste collection from a licensed premises should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday except for those allowed under any relevant local law.*
- (e) *Emptying bottles into bins in outdoor areas should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.*

- (f) *The number of patrons should not exceed the safe and amenable operating capacity of the premises. An assessment of the maximum number of patrons that can be physically accommodated within avenue should be based on the VCGLR Liquor Licensing Fact Sheet– Maximum Patron Capacity (2016).*
- (g) *Where required, a licensed premise must be designed and managed in accordance with an acoustic report approved by the responsible authority.*

Clause 22.16 Stormwater Management (Water Sensitive Urban Design)

129. This policy applies to (as relevant) new buildings and contains the following objectives;
- (a) *To achieve the best practice water quality performance objectives set out in the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999 (or as amended).*
 - (b) *Currently, these water quality performance objectives require:*
 - (i) *Suspended Solids - 80% retention of typical urban annual load*
 - (ii) *Total Nitrogen - 45% retention of typical urban annual load*
 - (iii) *Total Phosphorus - 45% retention of typical urban annual load*
 - (iv) *Litter - 70% reduction of typical urban annual load*
 - (c) *To promote the use of water sensitive urban design, including stormwater re-use.*
 - (d) *To mitigate the detrimental effect of development on downstream waterways, by the application of best practice stormwater management through water sensitive urban design for new development.*
 - (e) *To minimise peak stormwater flows and stormwater pollutants to improve the health of water bodies, including creeks, rivers and bays.*
 - (f) *To reintegrate urban water into the landscape to facilitate a range of benefits including microclimate cooling, local habitat and provision of attractive spaces for community use and well being.*

Clause 22.17 - Environmentally Sustainable Design

130. The overarching objective is that development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation. The considerations are energy performance, water resources, indoor environment quality, storm water management, transport, waste management and urban ecology.
- (a) *To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

Advertising

131. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 227 letters sent to surrounding owners and occupiers and by a three sign displayed on site. Council received 30 objections, the grounds of which are summarised as follows):
- (a) Noise from roof top bar and balconies facing Huckerby Street.
 - (b) Traffic congestion issues to Huckerby Street and Rout Street.
 - (c) Antisocial patron behaviour.
 - (d) Disruption due to increased activity, rubbish generation, patrons smoking outside building.
 - (e) Use more suited to Swan Street, or Commercially Zoned land.
 - (f) Loss of the previously approved on-site car spaces.
 - (g) Insufficient loading facilities.

- (h) Overlooking.
- (i) Light impact of neon signs.
- (j) Devaluation of nearby properties.

132. A planning consultation was not meeting was not held for the application due to the outbreak of the Covid19 Pandemic.

Referrals

133. The referral comments are based on the advertised plans.

External Referrals

134. The application was referred to the following authorities:

- (a) Vic Roads.
- (b) Melbourne Water.
- (c) Head for Transport Victoria.

135. Melbourne water offered no objection to the application (subject to conditions) with the other authorities not providing Council with a referral response.

Internal Referrals

136. The application was referred to the following units within Council:

- (a) Social Planning.
- (b) Engineering Services.
- (c) Contracts Management Services.
- (d) Community Amenity Services.
- (e) Open Space.
- (f) Strategic Transport.
- (g) External Acoustic Engineers (SLR Consultants).

137. Referral comments have been included as attachments to this report.

OFFICER ASSESSMENT

138. The primary considerations for this application are as follows:

- (a) Land use;
- (b) Built form and heritage;
- (c) On-site amenity (ESD);
- (d) Off-site amenity;
- (e) Sale and Consumption of Liquor;
- (f) Car parking, vehicle access, traffic, loading & waste;
- (g) Signage;
- (h) Objector concerns and
- (i) Other matters.

Land Use

139. The purpose of the GRZ4, which is to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

Clause 32.08-11 (GRZ) and Clause 22.01 (Discretionary uses in a Residential 1 Zone) of the Scheme apply to applications for use and development within the GRZ, and aims to manage conflict that may occur at the interface of these land uses, with particular regards to impacts upon surrounding residential uses. The relevant policy at clauses 22.01 and 32.08-11 encourage new non-residential use and development within the GRZ to be designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.

Patron numbers

140. A maximum of 200 patrons are proposed comprising 125 staying guests and 75 visitors. The proposed patron numbers are considered acceptable with the application material outlining that the conference room, ground floor and lower basement food/beverage service areas and the roof terrace have a combined maximum patron capacity of 595 based on the VCGLR Liquor Licensing Fact Sheet- Maximum Patron Capacity (September 2018). Given only one third of this maximum permitted patron capacity is proposed, the patron numbers are considered acceptable and in-line with the objectives clause 22.01 and 32.08-11 that encourage commercial uses in Residential zones to be appropriately restrained to minimise impacts to residential properties.

Hours of operation and Noise

141. Given the proposed use of the land as a residential hotel (with ancillary conference room), the hotel/accommodation component would be open and available to guests 24 hours a day, 7 days a week. Given the nature of the hotel use, the 24 hour operation of the hotel component is acceptable as guests using their rooms are unlikely to disturb nearby residential properties during the day or overnight, with hotel guests likely to be out of their rooms during the day and sleeping at night. The 24 hour concierge service will ensure that guests are appropriately received and managed for any late night arrivals and departures; minimising any noise impacts on surrounding residents.
142. The application has not specified the hours of operation for the food and drinks premises and bars but outlines the following hours of operation for the service of liquor;

		Food & Drink Premises / Hotel Conference Room	Food & Drink Premises	Hotel Rooms	Bar
		<i>Upper basement level</i>	<i>Ground floor level</i>	<i>First, Second, Third, Fourth, Fifth floor levels</i>	<i>Roof top level</i>
Sunday Thursday	to	12pm to 10pm	12pm to 10pm	12pm to 10pm	12pm to 9pm
Friday Saturday	to	12pm to 12 midnight	12pm to 12 midnight	12pm to 12 midnight	12pm to 11pm

143. The following liquor licence assessment will outline why these hours are considered acceptable, apart from conditions limiting the operation of the roof terrace and reducing the proposed Friday and Saturday night liquor service in the bars and food and drinks premises by 1 hour from midnight to 11pm. Clause 22.01 stipulates a preference for commercial uses in Residential Zones to operate from 8am to 8pm. However given the proposed use as a residential hotel, the food and beverage services areas would need to operate beyond these hours to service the needs of guests. It is considered appropriate that the internal food/beverage service areas be permitted to operate between 6am and 10pm Sunday to Thursday and 6am to 11pm on Friday and Saturday. The applicant is accepting of a condition to this effect. This allows for breakfast service at the hotel and allows for the food and bar services areas to align with the completion of liquor service.

144. These extended hours beyond those suggested by clause 22.01 is considered acceptable in this instance given the ground floor food service areas and bar front onto Punt Road and Rout Street and are away from the sensitive residential interfaces to the rear (with commercial uses and service areas located at the ground floor of No.381 Punt Road on the opposite side of Rout Street). As outlined previously, the site is currently undergoing an amendment process to re-zone it a Commercial 1 Zone which reflects the suitability of the site for a more intensive commercial uses. Further the location of the site on the edge of Commercial 1 Zone and fronting one of the busiest road in Melbourne gives the site a very different context than one typically experienced in residential areas. For these reasons, the extended hours of operation beyond those suggested by clause 22.01 is considered acceptable. Subject to the conditions outlined above, support is recommended for the proposed ground floor and basement food and drinks premises and bar uses and for their proposed hours of operation uses.

145. Of concern is the proposed roof terrace operating hours (proposed 9pm close Thursday to Sunday and 11pm close Friday and Saturday) may become problematic in terms of noise emissions, particularly should the general public be permitted access to it. The plans indicate this area has a maximum capacity for 123 patrons. The plans also show the roof top bar/flexible space to have an additional maximum capacity of 35 patrons.

The town planning report and acoustic report submitted with the application states the terrace will be generally used for hotel guests and occasional external guests. The acoustic report outlines that the roof terrace outdoor area will close at 10pm and with the bar operating until 11pm (on Friday and Saturday) but with windows and doors closed to manage noise from 10pm.

146. It is considered that with a combined patron capacity of 158 people, this may have unreasonable noise impacts to the sensitive residential interfaces. Of particular concern is the impact to the dwellings on the opposite side of Huckerby Street, the rear balconies to the 6 storey component of the building at No.381 Punt Road and the roof terraces to the townhouses at No.381 Rout Street that front onto Huckerby Street. Given the separation of these properties from Punt Road, they currently enjoy a reasonable level of amenity at night with road noise from Punt Road buffered by the building at the subject site and No.381 Punt Road. The noise impact to the balconies that front Punt Road at No.381 Punt Road are not considered to be as sensitive. They are currently heavily impacted from traffic noise from Punt Road which would reduce noise impacts from the proposed roof terrace.

147. To manage the operation of the roof terrace it is considered appropriate that only guests of the hotel be permitted to use the roof bar/flexible space and terrace and not the general public. This will limit the use of the terrace and prevent it having the capacity to be leased to the general public as an event space. This can be easily facilitated with key pass access, with a condition possible to require this be addressed in a Hotel Management Plan.

148. Whilst this restriction would reduce impacts generated within this space, a restriction to the hours in which this space can be accessed by the hotel guests and limiting the late night use of the rear/eastern section of the terrace would further mitigate any unreasonable noise impacts which may occur. This concern was discussed with the applicant who agreed to close off the rear part of the terrace from the west side of the lift shaft to the eastern terrace balustrade from 8pm, with the remainder of the terrace to operate only between noon to 10pm and with the bar to also cease alcohol service at 10pm. This reduction in the size of the terrace after 8pm also reduces its patron capacity from 158 to 100 (35 in flexible space/bar and 65 on outdoor terrace). This combination of the reduction in hours of operation and the limiting of patron numbers after 8pm is considered sufficient to manage noise impacts to the sensitive residential interfaces.

149. It is noted the applicants Acoustic report did not specify the proposed 123 patron to the outdoor roof terrace areas and so Council's Acoustic Engineers (SLR) when reviewing the report based their assessment only on the 35 patrons to the bar/flexible space detailed in the report. This aspect was reassessed by SLR and based on the applicant's patron and road noise data provided and based on their experience, SLR agrees with the suggested reduction in total patron numbers to 100 to the outdoor and indoor areas of the roof terrace. They were satisfied that the reduction in patrons combined with shutting off the rear part of the terrace adjacent to the sensitive residential interface at 8pm and the 10pm closing time for the remainder of the terrace would be sufficient to adequately protect these properties from excessive patron noise intrusions, particularly in the absence of liquor service in the outdoor terrace area. They also suggested that no formal outdoor dining tables be offered on the outdoor roof terrace to ensure this area is used as informal relaxation space for guests rather than a more formal food and drink premises use. These recommendations should be addressed by way of permit conditions.
150. In relation to the hotel use, this use is considered acceptable as it is low impact in terms of noise emissions (subject to conditions). Issues relating to patron and vehicles access will be discussed later in this assessment. But in summary, subject to conditions requiring pedestrian access is via the Punt Road/ Rout Street entrance and that the rear access is limited to only servicing guest drop-off and pick-ups, deliveries and waste; the activity generated by patrons accessing the site will be appropriately located away from the sensitive residential interface to the rear.
151. A 24 hour duty manager or concierge will be available on site to facilitate late night access to the site and would also be able to manage patron behaviour should an issues arise. Music inside the building is also limited to background levels with no live or dj music proposed and so this is acceptable. No music is proposed to be played in the outdoor part of the roof terrace and with background music only the bar and flexible space. The submitted acoustic states windows to the food and drinks premises and bar facing Punt Road and Rout Street are fixed/not operable to mitigate noise spill to the upper level apartments/residential hotel on the opposite side of Rout Street. However this is not clearly shown on plan. A condition will require this. A further condition will require the hotel lobby doors to Rout Street and Huckerby Street (apart from ingress and egress) and the new windows to the ground floor lobby area to be closed between 8pm and 8am to further mitigate noise spill to the upper level apartments/residential hotel on the opposite. These operational details could be formalised by way of a Hotel Management Plan.
152. Finally the use of the rear balconies in association with the Residential hotel is also considered acceptable. As the original approval provided these balconies for the use of dwellings, the proposed occupants of the hotel rooms are more likely to use these balconies less frequently than a residential use and so is likely to reduce noise impacts associated with the balconies, particularly during daytime hours. Regardless of this, it remains a concern that some disturbances to the residential areas to the rear could occur should the occupants of the hotel room use their balconies in the evening time (particularly given the service of alcohol). To address this a condition will require these balconies are not permitted to be occupied by hotel guests between 8pm and 8am to align with the closing time of the rear part of the roof terrace. This also aligns with the objectives of clauses 22.01 and 22.09 which discourage commercial use/service of alcohol during these times in residential zones. Given the rear part of the site is where the particularly sensitive interfaces are located, a condition to this effect is considered justified.

Acoustic assessment and plant noise

153. The application included an acoustic report which outlines potential external noise impacts that may unreasonably affect the amenity of the hotel rooms. The advertised report was prepared by Form Engineers with Council's acoustic engineers seeking clarification on a number of items.

In response to SLR's request for further detail on technical noise measurements details, the applicant submitted a revised report from Marshall Day Acoustics (dated 21 February 2020).

154. Council's Acoustic engineers reviewed this report and requested further detail on technical noise measurements and requested consideration of restricting access to the roof terrace in the evening period, a commitment to waste collection and deliveries to cease at 8pm (as opposed to 10pm as proposed) and that the report contain a statement requiring that the mechanical plant, once designed, be assessed by a qualified acoustic engineer.
155. In response a second acoustic report was submitted by Marshall Day Acoustics (also dated 21 February 2020: Revision 1) which contains all the relevant information requested by SLR with them indicating this detail was satisfactory. The report also provided a statement that mechanical plant would be further assessed by a qualified consultant once its design was completed. It did not show waste collection and deliveries to cease at 8pm (as per the EPA guidelines recommended by Council's Acoustic engineers) but continued to propose deliveries until 10pm. This will be dealt with via a permit condition.
156. The second Marshall Day Acoustics report identifies external noise sources such as traffic, trains, hotel deliveries and waste collection, mechanical equipment and patron noise from the proposed venue. This report recommends the adoption of specific glazing and façade systems to ensure that external noise intrusion to the hotel rooms is adequately controlled. It stipulates that some late night noise intrusion events may occur (eg vehicle horns on Punt Road) that would exceed the internal Sleep disturbance requirements, but given these events would be intermittent, this outcome is acceptable. Council's Acoustic Engineers (SLR) reviewed this report and were accepting of this analysis.
157. The report also specifies that music will be limited to background levels in the internal areas and will meet relevant SEPPN-2 criteria, subject to the all windows and doors to the food and beverage services areas and flexible space being closed after 10pm. Council's Acoustic engineers were also accepting of this analysis. Further music noise emanating from the site prior to 10pm was not considered a concern as all music levels are to be played at background levels and with no music to be provided in outdoor areas and no live or dj music proposed.
158. The Marshal Day acoustics report also does not provide a detailed analysis of plant noise stating that the plant design has not yet been finalised preventing a detailed acoustic assessment to be carried out at this stage. The assessment does state that the proposed plant (roof exhaust and a condenser/compressor ventilation louvre located at first floor on Rout Street) are anticipated to however be able to comply with relevant SEPPN1 requirements. A permit condition should require this SEPPN 1 compliance and the submission of a further acoustic details on the completion of plant design stage. Council's acoustic engineers were satisfied with a statement in the submitted report stating this assessment would occur. However given that plant noise has not been assessed to the rear level three balconies and its impact to the hotel rooms and dwellings opposite, it is considered appropriate that a condition requires this report be provided to Council for a further peer review prior to the commencement of the use.
159. Subject to the above conditions, support is recommended for the use of the land as a residential hotel, food and drinks premises and bar.

Built form and Heritage

160. With only minor changes proposed to the approved and constructed building, the policies in the GRZ4, DDO2, DDO17-1 and along with heritage policy considerations at clause 15, 21.05. 43.01 and 22.02 have limited applicability.

The scope of works proposed under this application include the enclosure of an approved roofed area on the roof terrace with glazed walls, relocation of a plant area from the roof to the rear third floor balcony and reconfiguration of the ground floor interface to Huckerby Street.

161. The relocation of the plant and subsequent extension of the roof terrace have potential noise and overlooking amenity impacts to the residential areas to the rear, and these will be/have been discussed in detail in Amenity/Noise assessments. However in terms of visual appearance, all of these proposed works are of little consequence from a heritage and neighbourhood character perspective and are acceptable for this reason. The appearance of the roof terrace will not be altered by the removal of the plant with the approved balustrades remaining, and the repositioned plant will be obscured behind tall screens that are already approved under the original Scheme. An approved landscape bed (under PLN14/0318) to the third floor balcony has been removed to accommodate the repositioned plant. However this is acceptable as this approved landscaping was largely not visible from the public realm as it was located behind 1.7m high privacy screens.
162. The reconfiguration of the ground floor interface to Huckerby Street will not radically alter the appearance of the rear of the building. Further this area was originally approved as a services area and the utilitarian appearance of this area is acceptable as it is generally in accordance with the original approval. Further its location to the rear, fronting onto what is effectively a laneway, the appearance of this area will be in line with the existing development along the lane which is characterised by service areas fronting onto the lane. Some glazing is now proposed to this wall servicing a stair to the basement.

This change is not thought to present unreasonable light spill to the residential properties opposite, as it is recessed 7.8m from the rear boundary and is located in an undercroft (overhung by the level above by 5.6m). As the window services a downwards stairs, it will not present unreasonable levels of activity to the residential properties opposite, given most of the stair treads will be below the window level. As discussed earlier a further condition will require these windows are fixed prevent noise spill to the properties opposite.

163. Some more new windows wrap around onto the east end of the south wall. As they are opposite the ground floor service areas of No.381 Punt Road, these hotel lobby windows will not present unreasonable levels of activity to the residential properties on the upper floors. As discussed earlier a further condition will require these windows are fixed prevent noise spill to these residential properties opposite.
164. This extension of the floor area to the rear of the building was required to be referred to Melbourne Water. They offered no objection to this subject to conditions requiring specific floor levels and that the basement is sealed to prevent entry of flood waters. Conditions to this effect were placed on the original building approval and so the building already meets these requirements. These conditions should be included on any permit that may issue.
165. Deletion of the terraces fronting Punt Road and repositioning of the glazing flush to the façade is also acceptable as this will not radically alter the appearance of the building. The enclosure of the roofed area on the roof terrace is of no consequence as it will generally not be visible from the public realm.

Public Realm and pedestrian spaces

166. This principle requires the design of interfaces between buildings and public spaces to enhance the visual and social experience of the user. This outcome has been achieved at ground level, with a high degree of openings allowing good interaction between internal areas of the residential hotel and the adjacent street. Active uses are proposed at this level and windows allowing direct interaction and casual surveillance between the hotel dining room/kitchen and the public realm.

167. The drawings indicate that a degree of landscaping will be incorporated into the street frontages and the Punt Road façade. Council's Open Space unit requested additional detail on planter sizes to the façade, their species selection and their maintenance schedules. The applicant provided this information with Council's Open Space Unit now satisfied with the landscaping specification to the facade. A condition will require that the advertised landscape plans are updated to include this additional information.
168. Vehicle and loading access has been provided from Huckerby Street. This ensures that these services do not unduly impose on the pedestrian experience. Based on these changes, the proposed presentation of the hotel to the public realm is considered to be adequately designed, and will integrate positively with the adjoining streets.

On-Site Amenity

169. Whilst residential hotels are not expected to provide the same level of internal amenity as permanent accommodation (i.e. a dwelling), a level of amenity commensurate with the expectations of temporary accommodation still needs to be considered. This was explored through the recent VCAT decision for the development at Nos. 42-44 Oxford Street, 61-63 Cambridge Street and 16 Langridge Street, Collingwood, in Langridge and Cambridge Funding Development Pty Ltd v Yarra CC [2018] VCAT 703, which at paragraph 126 stated that:
- (a) *We accept there is limited guidance in the scheme as to the benchmarks that would demonstrate that a hotel room provides acceptable amenity. Clearly daylight, ventilation, safety and communal spaces are necessary starting points.*
170. The development is considered to achieve a good level of internal amenity through the provision of operable windows allowing for daylight access and ventilation to all rooms, a good degree of daylight to all rooms and the provision of outdoor space in the form of the roof terrace (and balconies for a number of rooms). Employee and guest bicycle parking is provided, along with generous EoT facilities within the basement for employees. However an employee break-out space has not been provided. Considering the use as a residential hotel, this staff facility is considered essential. The applicant has agreed to a condition requiring the lounge area to the rear of the upper basement be converted to staff space (with access is maintained for patrons to the toilets).

Room Layout

171. The proposed development seeks a mix of hotel room typologies. Rooms vary in size from 16.89sqm to 21.4sqm, with 17 of 61 rooms provided with balconies. Whilst small in size, the rooms are considered to provide an appropriate internal amenity for guests given the following:
- (a) The typical floor plans show that circulation through the rooms will be possible with the placement of a double bed in the rooms;
- (b) The development will provide additional areas for recreation including a roof terrace as well as dining and lobby areas at ground floor;
- (c) High floor-to-ceiling heights of approx. 2.7m will be provided to all rooms which will create a sense of spaciousness for guests;
- (d) Areas have been designated for providing storage to all rooms;
- (e) The location of the subject site within proximity to the Swan Street MAC will allow visitors easy access to a wide variety of retail, hospitality and art-based offerings, which provide additional amenity; and
- (f) The applicant has confirmed that a total of 4 rooms are currently accessible with the remainder having accessible bathrooms allowing them to be converted to accessible rooms through the incorporation of single beds to allow increased circulation areas (apart from rooms 36-38, 47-49, 58-60).

This is as per NCC 2019 Part D3 Access for people with a disability, table D3.1 which states for Class 3, 61-80 sole-occupancy units requires 4 accessible sole-occupancy units.

172. Based on these factors, the internal layout provided to each room is considered acceptable for a residential hotel. It is noted that while the applicant has confirmed all rooms will have operable windows, this is not clearly noted on plans. A condition will address this.

ESD

173. With regards to ESD features, as outlined by Council's ESD officer advice, the submitted SMP outlines the following commitments:
- (a) Operable windows to each individual hotel room;
 - (b) All internal sealants and paints, adhesives, and carpets will be low VOC, and all engineered timber products will be E0 or better (ie low level formaldehyde release from laminated wood);
 - (c) Achieving and exceeds NCC minimum energy consumption performance standard. JV3 report shows improvement of 9% above NCC minimum;
 - (d) 54% BESS score;
 - (e) 46% reduction in GHG calculated in BESS;
 - (f) Highly energy efficient mechanical gas heating /packaged AC cooling system;
 - (g) Efficient HVAC (at least 10% better than NCC minimum);
 - (h) HVAC fans to have minimum energy efficiency in line with NCC 2016;
 - (i) VSD for fan motors and programmable timers to manage HVAC operation to minimise energy demand and costs;
 - (j) LED fixtures throughout and 20% lower lighting power density than NCC requirements;
 - (k) Programmable timers, occupancy sensor controls to common area and external lighting systems;
 - (l) Roof mounted solar PV array (up to 14kW);
 - (m) Industry best practice standard WELS rating specified for all water fixtures:
 - (i) Taps: 6 star;
 - (ii) Toilets: 5 star;
 - (iii) Showers: 3 star;
 - (iv) Dishwashers 5 star;
 - (v) Urinals: 6 star;
 - (n) 7,200 L rainwater storage tank to serve toilet flushing, landscape irrigation and bin wash down;
 - (o) A STORM report with a 109% STORM score has been submitted that demonstrates best practice and relies on 303m² of roof connected to a 7,200 litre rainwater tank connected to toilet flushing;
 - (p) 12 bike parking spaces provided; and
 - (q) Building user guides containing ESD design features, intents and objectives to be developed and made available to facility management and occupants.
174. Council's ESD advisor recommended a number of additional items be addressed, including:
- (a) The building should target a 10% improvement without reliance on Solar PV.

- (b) A commitment to FCS or PEFC timber is required;
- (c) Organic waste collection is required to be included in the development and allocation made in the waste room;
- (d) Recommend that an Environmental Management Plan be developed by the building contractor to monitor and control activities undertaken during construction;
- (e) Plans need to confirm operability of windows on west and east elevation (as noted in SMP);
- (f) The JV3 result relies on 14kWp PV. Confirmation is required on the following statement for accuracy. "As our development is an existing building with a heritage overlay, we are restricted in the level of building fabric improvement we can install."
- (g) More information is required on the HVAC approach including whether the system is centralised or not;
- (h) We expect fan efficiency to exceed NCC minima.
- (i) The architectural plans be updated to reflect the 14kW commitment – currently shows 12 x 280W = 3.36kWp and 5kW inverter.
- (j) More information is required on how recycled / reused materials have been included in the design.
- (k) More information is required on how the embodied energy of the building has been reduced.
- (l) Provide a Green Travel Plan with performance targets and monitoring and reporting components included.
- (m) Nominate a target for construction waste of at least 80%.
- (n) Include Green Waste in WMP.
- (o) Confirmation is required for the intention to include a roof top garden.
- (p) Provide a statement documenting how the choice of materials assists in mitigating the urban heat island effect.
- (q) Consider providing a key switch to turn off lights and HVAC on exit.
- (r) Consider a small pallet of materials and construction techniques that can assist in disassembly.
- (s) Consider pipes, cabling, flooring to do not contain PVC or meeting best practice guidelines for PVC.
- (t) Provide information to guests regarding nearby car share schemes.
- (u) Consider a green roof or wall to improve the ecological value of this site.
- (v) Consider the Head contractor to be accredited to ISO 14001.

175. The submitted advertised Sustainable Management Plan was reviewed by Council's ESD Advisor who requested a number of items related to construction process assuming that the development was in the early stages of construction (namely d), f), r), s) and u) in the above list. When made aware that the building was nearing completion, the ESD advisor confirmed these items were not applicable. In response to these comments, the applicant provided a revised SMP (by Form, No. 17070 RPT- ESD- 01, Rev 1 dated 27 April 2010) which addressed most of the concerns of the ESD officer outlined above, with the SMP updated to match the solar array detail shown on the architectural plans (solar array) and included all the remaining technical information sought by Council' ESD officer.

176. In response to Council's ESD advisor request for a Green Travel Plan, the revised information provided by the applicant referred to the submitted traffic report (pg12) which details the proximity of the site to public transport options, negating the need for a Green Travel plan to be provided. Council's ESD officers was accepting of this. However Planning officers consider it appropriate to require a Green Travel Plan to ensure patrons who would be unfamiliar with the local area are made aware of available public transport options. The applicant is accepting of a condition to this effect.
177. The only remaining outstanding issues outlined by Council's ESD advisor are as follows:
- (a) The operability of the western and eastern facing windows must be confirmed - currently it is clear that the north facing windows are operable but there is inconsistency in the western and eastern facing windows, and
 - (b) A landscape plan for the roof top terrace must be provided, confirming significant greenery to provide adequate shade to guests using the rooftop terrace and reducing urban heat island effect.
178. The applicant is accepting of conditions to this effect. Subject to conditions addressing these items, the proposal is considered acceptable from an ESD perspective.

Off-Site Amenity

179. Clause 15.01-2S of the Scheme aims to provide building design that minimises the detrimental impact of development on neighbouring properties, the public realm and the natural environment, with potential impacts relating to overshadowing of SPOS, loss of daylight to windows, visual bulk and overlooking of sensitive areas. Potential noise and emission impacts already addressed within this report.
180. Given the building has been largely constructed and with overshadowing, daylight to windows and visual bulk assessed as part of the original building approval, these items are considered satisfactory. With the approved first, second and third floor balconies retaining their approved 1.7m high overlooking screen, these balconies do not require further treatment. The fourth and fifth floor balconies to the rear were approved with 1m high balcony screens under the approved residential scheme as they are located in excess of the 9m separation required under Rescode. However, now that a commercial use is proposed, it is appropriate that these 1m high screens are reconsidered.
181. In this case, the 1m high screens are considered acceptable as they service only six rooms and are located approx. 13.5m from the nearest residential property, with this separation considered sufficient to reduce overlooking to an acceptable level. With the rooms accessing these terrace having a maximum capacity of two occupants (and with no room to accommodate additional beds) the balconies will not generate unreasonable levels of activity or overlooking to the properties opposite (particularly as a condition discussed earlier will restrict patrons accessing these balconies between 8pm and 8am).
182. However in relation to the rooftop terrace, the removal of the plant area will allow patron access to the east side of the roof terrace and views to the residential properties beyond. As views will be available above this screen and over the approved 1.5m high screen to the south and east to the adjacent sensitive residential interfaces, reconsideration should also be given to these overlooking treatments given the change of the roof terrace from a residential to a commercial use.
183. Unlike the rear balconies to the hotel rooms discussed above, the roof terrace has a much higher patron capacity. Given the capacity for groups of individuals to approach the terrace edges this is likely to be a nuisance to the residential interfaces and it is considered appropriate further overlooking treatments be employed to address this.

184. The ESD advisors request for additional landscaping at the roof terrace to reduce heat island effect, lends another opportunity to address this overlooking issue. One way to do this is through the provision of a minimum of 0.7m to 1m wide (to allow flexibility for the applicant in the design stage) landscape beds around the southern and eastern terrace perimeter. This will prevent occupants directly accessing the roof terrace edges along the residential interfaces and so will reduce views to these nearby residential properties. This outcome also retains distant outward views for the occupants of the terrace while reducing direct downwards views to nearby residential properties. Support for a condition to this effect is recommended.
185. With no additional built form resulting in increased building volume the proposal will not generate any additional shadow impacts. It is proposed to increase the size of the flexible space on the roof terrace, however this area was previously approved as an open area with a roof and as the roof is not being extended; thus it will not generate any additional shadow impacts. It is proposed to reposition the existing Punt Road façade windows from the inside to the outside edge of the proposed balconies. However as these balconies were already enclosed by roof and wings wall, this will not generate any additional off-site amenity impacts.
186. As will be discussed in further detail later in the “Liquor Licence” assessment, a condition will require that patrons accessing vehicles after 8pm from the drop-off zone will not be permitted to wait outside the property to further reduce impacts to the residential properties to the rear.
187. The reports submitted with the application also states that ground floor outdoor areas will be lit by down lights with subtle illumination levels to minimise off-site light spill impacts. A condition will further require this and include the roof terrace and rear balconies to ensure lighting to these areas will not be a nuisance to nearby residential properties. The light impact of the proposed signage will be discussed in further detail later in this assessment.
188. The submitted information does not deal with issues relating to smoking. A condition will require this is addressed in the Hotel Management Plan and that the position of the smoking area be selected to minimise impacts of surrounding residential uses.

Sale and Consumption of Liquor

189. Closely tied to the food and beverage areas is an application for the sale and consumption of liquor ‘On-Premises licence’. In addition to the Planning Policy Framework considerations, the Clause 52.27 decision guidelines take into consideration the general impact of the proposed sale and consumption of liquor, the hours of operation, the patron numbers and the cumulative impact of any existing and proposed licensed premises on the amenity of surrounding area.
190. The majority of the above considerations are addressed in Council’s Licensed Premises policy at Clause 22.09 and will be discussed in more detail later in the report. However it is necessary to give consideration to potential cumulative impact associated with the new liquor licences.
191. The “Corner Hotel” 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. premise type, patron numbers and operating hours) the required level of assessment will vary. In 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
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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	0
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

192. In this instance, the proposed application does triggers a cumulative impact assessment, as the proposal is afforded a maximum score of 7. As previously stated, the Licensed premises policy at Clause 22.09 guides the assessment of new licensed premises within the municipality and contains six key elements that will be considered in turn:

Location and access

193. Council's local policy encourages licensed premises with a capacity of more than 200 patrons to locate in a Core Entertainment Precinct. The proposed have a combined patron capacity of 200 patrons (with a maximum of 595 permitted by VCGLR patron guidelines, as outlined earlier). The subject site is not located within one of the outlined areas, however considering that the subject site is located in close proximity to the Swan Street MAC and the food/bar service area faces Punt Road rather than the residential interface to the rear, this is considered acceptable. Council's Local Policy also discourages licensed premises in Residential areas, and with the site located in a GRZ4 it does not comply with this aspect.
194. In this instance support is recommended for the licensed premises within the GRZ4 given the particular locational attributes of this site and the use as a residential hotel. The site is located on the periphery of the GRZ4 and on Punt Road being one of the busiest thoroughfares in Melbourne, and so is not the typical residential context where applications of this type would not generally be supported. This proposition is also supported by the fact that Council is currently pursuing an amendment (as outlined earlier) to rezone the subject site to a Commercial 1 Zone with accompany documentation stating this rezoning is being pursued to facilitate land uses appropriate to the role and function of a major activity centre.
195. Further the food/bar service areas are located away from the residential interface and with alcohol not permitted on the external areas of the roof terrace and subject to the earlier recommended hours, it is considered the proposal adequately balances interface issues with the residential areas to the east and south. Council's Social Planning Unit also agrees that the site is appropriately located to support the proposed sale and consumption of liquor.

196. Patron ingress and egress will be from Rout Street and approx. 12.5m from Punt Road which is a key road in the surrounding area that will allow patrons to easily disperse and provides a high level of safety due to its visibility from the public realm.
197. Patrons are more likely to disperse along the main thoroughfares (ie Punt Road) to access public transport and taxis or other licensed venues within the area given its direct access to Swan Street and safety perception. Some filtering into the residential areas to the east could be expected, but would generally be limited to local residents with the aforementioned streets being far more likely to be utilised by non-locals. Further of the permitted 200 patrons comprising 125 hotel patrons and 75 external guests, the vast majority of patrons will be staying at the hotel and not exiting onto the street at the end of service.
198. As discussed earlier in the report, the ground floor of the building does have a secondary access to Huckerby Street servicing the drop-off zone. It is acknowledged that this area may present potential annoyance to the dwellings opposite should patrons be permitted to loiter in this area while waiting for taxis/ubers. This concern was also outlined by Council's Social Planning Unit. To address this, a condition will require that the Hotel Management Plan will outline procedures to demonstrate that patrons will not be permitted to loiter in this area after 8pm and will be required to wait inside until their taxi has arrived. Council's Social Planning Unit requested a security guard be employed to monitor this, but given the lobby will have a 24 hour manned desk, it is considered these staff can adequately monitor this aspect. This will also be addressed via the Hotel Management Plan.

Venue Design and Patron numbers

199. The sale and consumption of liquor will be divided between the upper basement level (Hotel Food & Beverage), the ground floor level (Hotel Food & Beverage) and the roof top level (Flexible space/bar). Liquor is also proposed to be served to guests in hotel rooms. The layout of the licensed areas are rectangular and regular in layout, with the seating layout between the ground floor, lower basement and roof terrace allowing for a maximum of a 93 seated patrons.
Policy encourages seated patrons coupled with the service of food as opposed to vertical drinking venues where anti-social alcohol consumption is more likely. The documentation submitted with the application is for seating and standing, however there will be minimal standing spaces available in the liquor service areas with an anticipated seating ratio of 80%.
200. While the seating layout shows capacity for 93 spaces which does not account for 80% of 200 patrons being seated as outlined by the applicant, this is not considered a concern in this instance. As the proposed 200 patron capacity also includes the guest rooms, a reasonable portion of patron capacity will service those who may consume alcohol in their private rooms. Hotels also typically have flexible seating capacities and can provide additional seating to facilitate guests consuming alcohol with food. Typical operations would generally see the ground floor food/bar service area accommodate most of these activities, with the basement area generally used a spill over area for breakfasts and the conference room activities.
201. Further, given the nature of the use as a residential hotel, management would discourage anti-social levels of alcohol consumption, to ensure other guests are not unreasonably disturbed. Further when alcohol may be served to the maximum patron capacity, this is likely to only occur when the conference room is use in conjunction with the food/bar service areas. And even in this instance, it is unlikely that anti-social alcohol consumption would occur, with these conferences usually having a business focus.
202. With no live or dj music proposed, it is not a concern that the conference room would be used for parties or similar events where antisocial drinking could occur. Further the conference room is in a utilitarian area that is more likely to be used by guests at the hotel seeking meeting spaces. At only 116sqm, with no live/dj music permitted and not serviced by any windows, it is not a space that would be attractive to use for social functions.

Further, with no alcohol service or consumption proposed on the outdoor roof terrace, it is not a concern that large groups consuming alcohol would congregate in this area. Further restrictions to the operation of the roof terrace have been discussed in detail earlier in the Noise assessment.

203. Council's Social Planning Unit has requested conditions to ensure each 'space' or 'zone' where liquor is intended to be sold or consumed be designated a maximum number of patrons at any one time, to ensure a maximum of 200 patrons are not located at the bar/roof top terrace at one time, for example. However, given alcohol is not proposed to be served or consumed on the terrace and with the flexible space being a very small area, it is not a concern that the terrace would be used for large groups who may engage in anti-social levels of alcohol consumption. Further as discussed earlier, a condition will require a maximum of 35 in the roof top flexible/space with alcohol service and a further 65 permitted on the outdoor terrace area with no alcohol service, which is considered to adequately address this issue.
204. In relation to the ground and basement food/bar service areas and conference area, it is not considered appropriate to limit the maximum number of patrons in each zone as this is unlikely to be operationally feasible. For instance, should a conference where these areas at operating at maximum capacity, patrons are likely to move between these service areas throughout the day, with perhaps all patron being in the ground floor food/bar service area and lobby at certain times and with most patrons moving to the conference room level should speeches/ presentations etc occur. To try to cap maximum patron numbers in each is likely to be very impractical for the operation of the hotel and so it is not considered justified to require this.
205. Finally in this regard, the proposed maximum of 200 patrons is a very low number when considering the areas available to guests. As outlined by the applicant, based on the VCGLR Liquor licensing Fact Sheet Maximum Patron Capacity (September 2018) the ground and basement floor food/bar service areas, lobbies, the conference room and flexible roof area could accommodate a maximum of up to 595 patrons.

Given this, and for the reasons outlined earlier, the number of proposed patrons are sufficiently low to negate the need for conditions requiring maximum numbers of permitted in particular zones.

206. The social planning unit also requested the red line should be revised to exclude amenity areas (including toilets/kitchen/storage areas) and all transit points. This is to contain the service and consumption of alcohol to 'zones' throughout the building. However again, the practicalities of managing this from an operational perspective would be extremely difficult in a hotel environment. For instance, a person may not have finished a drink at dinner and may want to take it to their room. Or people using the conference room may wish to move upstairs for food service and it is not practical to require that everybody leave their drink behind. Further, given these sort of activities is very unlikely to result in anti-social behaviour problems, it is not considered necessary to require that alcohol consumption be prohibited amenity areas (including toilets/kitchen/storage areas) and all transit points.

Hours of Operation for the service of liquor

The proposed hours of operation are as follows:

- (a) 12 noon-10.00pm Sunday to Thursday and 12 noon-12 midnight Friday to Saturday for the ground and basement food and drinks premises/bar, conference room and hotel rooms; and
- (b) 12 noon-9.00pm Sunday to Thursday and 12 noon-11.00pm Friday to Saturday for the roof bar;

207. Council's local policy discourages the sale and consumption of liquor before 9am. All of the service area comply with policy objective with no alcohol service proposed before noon. In terms of closing times, Council discourages the service of alcohol after 8pm in Residential Zones. However, as discussed earlier, the site is considered to have locational attributes that would allow for the consideration of extend service hours (apart from the closure of the terrace at 10pm as discussed earlier in the Noise assessment). Council Social Planning Unit offered no objection to the hours of operation to the internal spaces and provides comments on this aspect as follows:
- (a) *Given the location of the site fronting onto arguably the busiest road in metropolitan Melbourne (which also generates a significant amount of noise), it is considered that there would be lesser amenity impacts in regard to extending the hours for sale and consumption of liquor from the premises beyond 8pm. This also falls in line with the applicant stating the following in their application:*
 - (i) *It is acknowledged that the policy at Clause 22.09-3 encourages licensed premises in a residential zone to not provide for the sale and consumption of liquor beyond 8pm. However, given the nature of the proposed use, the context of the subject site and proposed Amendment C191 which proposes to rezone the subject site to a C1Z, it is considered that preventing the sale and consumption of liquor beyond 8pm for the site would compete against the broader planning strategies, ambition and vision for the area and would be detrimental to the operation of the residential hotel.*
208. While it is acknowledged the locational attributes of the site fronting onto Punt Road, its location at the edge of a MAC, combined with the acoustic measures discussed earlier do justify supporting the service of alcohol after 8pm. Further Council's Social Planning Unit and Community Amenity Unit were satisfied that the proposed hours of service are acceptable. Planning officers are accepting that the 10pm cessation of liquor service from Sunday to Thursday for all of the reasons outlined above. However planning officer remains concerned that a midnight closing time on Fridays and Saturdays is excessive given the Residential zoning of the site.
209. In consultation with the applicant it was agreed that an 11pm cessation of the service of alcohol in the ground floor and basement service areas and hotel room is acceptable on Friday and Saturday. This would be in line with typical liquor service practices where extended hours normally occur on Friday and Saturday. With this only being one hour later than mid-week service, the additional hour is unlikely to generate unreasonable additional amenity impacts to nearby residential properties.
210. Further sporting and music events typically occur on Fridays and Saturdays nights in the adjacent Sports precincts, with the area typically experiencing high volumes of foot traffic from people exiting events between 9pm up to approx. 10.30pm. Given this higher level of activity is existing in the street around the proposed 11pm closing time, patrons exiting the venue are unlikely to significantly increase existing noise when outside. While by midnight this foot traffic is unlikely and so patrons exiting the premises are likely to be more of a disturbance at this time. For these reasons, the cessation of alcohol service at 11pm is recommended in the ground floor and basement service areas and hotel rooms.
211. In terms of the outdoor roof area, Council's Social Planning Unit offered the following comments:
- (a) *For outdoor areas, including smoking areas, rooftops and open courtyards, Clause 22.09 states that the sale and consumption of liquor should not occur after 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area. It is considered that despite not extending the redline area out to the roof terrace, that it be closed off around 10pm, on amenity grounds, particularly toward the north, east and south-adjointing residential properties. This aligns with a staggered close with the rooftop 'enclosed' bar proposed to close at 11pm.*

212. As discussed in detail earlier in the noise assessment, the following conditions will address noise issues associated with alcohol service in the outdoor areas as follows:
- (a) cessation of alcohol service on Friday and Saturday nights at 10pm in the roof top flexible/bar (with 11pm proposed) with a maximum of 35 patrons, and 9pm on remaining nights,
 - (b) the outdoor roof terrace to close at 10pm on Friday and Saturday nights and 9pm on remaining nights and the rear part of the roof terrace is close from 8pm (with no outdoor alcohol service proposed),
 - (c) Reduction in patron numbers to the outdoor roof terrace from 123 to 65,
 - (d) No formal dining offered on the outdoor roof terrace to ensure its use as an informal recreation space for hotel guests (sunbaking etc),and
 - (e) The occupants of the rooms with rear balconies not permitted to consume alcohol on the balconies after 8pm.
213. These conditions will adequately address issues surrounding alcohol service in outdoor areas. Additional conditions will be placed on the permit in regards to deliveries, waste collection and the emptying of bottles as requested by Council's Acoustic engineers.

Noise

214. These matters have already been discussed in this assessment and will be further expanded upon in the Off-site Amenity assessment of this report. Subject to the aforementioned suite of conditions, the proposal is satisfactory and will ensure the amenity of the area is not unreasonably impacted by the proposal.

Noise and Amenity Action plan (NAAP)

215. A Noise and Amenity action plan has been provided outlining operational measures to control patron anti-social alcohol consumption, staff arrangements and other operational measures in accordance with requirements of clause 22.09. This document has been reviewed and supported by Council's Social Planning Unit and will be endorsed to form part of any permit that may issue. A condition should require it is amended to reflect all the additional relevant control measures outlined in the Hotel Management Plan and the proposed amended hours for waste collection and deliveries.

Cumulative Impact Assessment

Planning policy context and Surrounding land use mix and amenity

216. These matters have already been discussed.

The mix of licensed premises

217. Council's Social Planning Unit stated that there is a mix of licensed premises within the local area including restaurant/café licences, packaged liquor licences, limited licences and late night (on-premises) licenses. There are two (2) licensed premises within 100 metres of the subject site and a total of 36 licensed venues within 500 metres, with most concentrated along Swan Street, to the north-east of the subject site and generally in accordance with the Core Entertainment Precinct of Swan Street west of Church Street identified in Clause 22.09 of the Yarra Planning Scheme.

218. The applicant provided a breakdown of existing liquor licences in the immediate surrounding area (approximately 500 metres of the subject site) is provided below:

Premises Name	Address	Licence Type	Licence #	Capacity	Latest Hours
Eazy Peazy	108 Swan St Cremorne	Restaurant & Cafe	32351392	95	12 midnight
Frederic	9-11 Cremorne St Cremorne	Restaurant & Cafe	32353912	130	11pm
Kado Warehouse	36 Cremorne St Cremorne	On premises	32339984	33	11pm
Localized	114 Swan St Cremorne	Renewable Limited	36147779	-	8pm
Ms Frankie	24-28 Cremorne St Richmond	Restaurant & Cafe	32339976	99	12 midnight
Ms Frankie	24-28 Cremorne St Richmond	Restaurant & Cafe	32335249	50	11pm
Sloane Ranger	13 Cremorne St Cremorne	Restaurant & Cafe	32345008	60	11pm
South of the Wall	2-4 Cremorne St Cremorne	Restaurant & Cafe	32341664	200 before 10pm & 158 after 10pm	1am (internal area)
Cricketers Arms Hotel	327 Punt Rd Richmond	General	31904192	160 (internal), 94 (external)	1am (internal area) on Anzac Day
Richmond Club Hotel	100 Swan St Richmond	General	31911937	360 (internal), 347 (external)	1am (internal area)
Royal Hotel	287 Punt Rd Richmond	General	31912519	220	12 midnight
Corner Hotel	57 Swan St Richmond	Late night (general)	31903845	950 until 1.30am on Fr/Sa, 750 on any other day	3am
Precinct Hotel	60 Swan St Richmond	Late night (general)	31906712	840 on Fr/Sa	3am
Nine T Four	94 Swan St Richmond	Late night (on-premises)	31850123	110	3am
The Blacksmith Bar	69 Swan St Richmond	Late night (on-premises)	32295863	100	3am
Holliava	36-38 Swan St Cremorne	On-premises	32222234	230	1am
Macelleria Victoria	87-89 Swan St Richmond	On-premises	32270318	85	11pm
Tawunna Thai Restaurant	30-32 Swan St Richmond	On-premises	32235708	-	11pm
The G Bar	96 Swan St Richmond	On-premises	32254273	50	1am
The Posty	90 Swan St Richmond	On-premises	32251021	200	1am
Benny Burger	95-97 Swan St Richmond	Restaurant & Cafe	32339586	60	11pm
Big Dog's Deli	327 Lennox St Richmond	Restaurant & Cafe	32334976	61	9.30pm
Cheeky Monkey	101-103 Swan St Richmond	Restaurant & Cafe	32246610	148	11pm
Hanoi Hannah	79-83 Swan St Richmond	Restaurant & Cafe	32343632	132	11pm
Homeslice Pizza	321 Lennox St Richmond	Restaurant & Cafe	32327173	20	10pm
Laneway Greens	89a Swan St Richmond	Restaurant & Cafe	32293950	65	11pm
Sister of Soul	77 Swan St Richmond	Restaurant & Cafe	32320935	20	11pm
The Beer & Burger Cafe	108-112 Swan St Richmond	Restaurant & Cafe	32311504	97	1am
The Meatball & Wine Bar	105 Swant St Richmond	Restaurant & Cafe	32250863	215	1am
Richmond Football Club Social Club	Brunton Ave Richmond	Full Club	32120911	-	1am
Richmond Football Club Social Club	Brunton Ave Richmond	Renewable Limited	36121113	-	1am
Melbourne Park	Batman Ave Melbourne	Late night (on-premises)	32225305	-	3am

219. There are only a limited number of liquor licenses within the surrounding area. In the area bordered by Punt Road, Cremorne Street and Kelso Street, there are 7 licensed premises. Of these, four are on-premises licences, two are café and restaurant licences and one is a late night (general) (The Precinct Hotel). Given the low density of licences in the immediate area and Council officers believe this mix has a low risk of cumulative impact potential.

Transport and dispersal

220. Council's Social Planning Unit considered there is sufficient public transportation options from the subject site. These have already been outlined in the Surrounding Land section of this report. These include tram routes along Swan Street, and Richmond Station to the north of the site. Hoddle Street/Punt Road includes various bus routes as well as taxis available freely along Swan Street. Dispersal has also been discussed in the Location and access portion of this assessment.

Impact mitigation

221. As previously noted, impacts will be mitigated through various additional conditions imposed on any permit to be issued. Accordingly, subject to conditions, it is considered the proposed licensed venues will not result in adverse cumulative impacts to the surrounding area.

Car parking, vehicle access, traffic, loading & waste

Provision of Car parking

222. The proposed development would provide for no on-site car parking spaces with two drop-off zones proposed to be used for guest drop-offs, deliveries and the servicing of waste. One of the drop-off zones is to be parallel to Huckerby Street and will be 2.4m wide by 5.4m in length. The second drop-off zone will be a DDA compliant space and will be 4.8m wide x 4.5m in length and is proposed to be used for guest drop-offs and loading activities. It is noted there was some confusion with the advertised material, with the plans and submitted traffic report stating the DAA space and its adjoining shared area (to provide circulation area for wheelchair access) would be used for loading, as a dedicated DDA drop-off space and a staff space. It was also not clear whether the shared area to the DDA space was also proposed to be used as a separate loading area. Council Officers queried whether all of these activities could be reasonably accommodated in this space, particularly if it was also allocated as a staff car space that could be occupied for long periods.
223. In response the applicant provided a further submission from the traffic engineers that clarified that under the building regulations a DDA compliant space is required to be provided on-site but that it is not required to be used exclusively for this purpose. This allows for the area to be used as a flexible area to accommodate disabled drop-offs and loading activities. The report also detailed that given the requirements to accommodate an accessible space, it was no longer proposed to use this area as a staff parking space. A condition will require that the plans are amended to clearly specify this space will be used as an accessible space and for loading and unloading purposes. This alters the proposed on-site car parking reduction from 9 to 10 car spaces for the food and drinks premises.
224. As previously outlined, there is no prescribed car parking rate provided at Table 1 to Clause 52.06 associated with the use of the site as a residential hotel, and as such, car parking must be provided to the satisfaction of the Responsible Authority. Council's Engineering Services Unit outlined that the proposed residential hotel can be compared to the NSW Roads and Maritime Services' Guide to Traffic Generating Developments, which provides a car parking rate of 1 space per four bedrooms for residential hotels (0.25 spaces per one-bedroom lodging room). Applying this rate would result in a car parking demand of 15 car parking spaces for this residential hotel.
225. The proposed provision of the drop-off spaces on-site is considered appropriate given the following considerations:
- (a) On-street car parking in the surrounding area consists largely of 1 hour, 2 hour and permit restricted spaces. The lack of long-stay car parking in the surrounding area will significantly reduce car parking demand. Further, the permit-restricted spaces in the area will continue to protect car parking availability for existing, permit-holding residents.

- (b) The nature of the use generates transient visitors who would likely be attracted to the inner-city location and the retail, hospitality and art-based offerings within Richmond which are all readily accessible on foot. Given the site's context, it is anticipated that visitors would be less inclined to arrive via private vehicle. Further, it is anticipated that the majority of visitors would stay for short periods of time and be from outside the area, which would make the use of taxis or ubers more likely (for visitors who choose not to arrive via public transport).
- (c) The excellent access to public transport, including tram services on Swan Street, Richmond Station to the north of the site and bus services on Punt Road/Hoddle Street;
- (d) The provision of bicycle infrastructure in the surrounding area, including bicycle lanes incorporated into many streets. Further, the proposed bicycle parking facilities proposed will encourage staff associated with the use to arrive via bicycle;
- (e) The variation of car parking demand over time – the peak parking demand would be during the check in period for hotel guests. As hotel guests would arrive at different times for check-in, it is considered that the peak parking demand would be spread out across the afternoon and evening period (i.e. typical check in hours for hotels); and
- (f) Council's Engineers are supportive of the proposed reduction.

Vehicle Access

226. Council's Traffic engineers indicated some concerns regarding the accessibility of the site from Cremorne Street. As part of the streamlining of Hoddle Street, VicRoads (Department of Transport) introduced a continuous flow intersection at the Punt Road and Swan Street intersection to improve traffic flow. These works were completed in 2019. The works included the installation of concrete barriers along the edge of the tram lane in Swan Street between Hoddle Street and Cremorne Street. The barriers prevent eastbound vehicles in Swan Street from turning right into Wellington Street with access required via Cremorne Street.
227. Given the one-way street networks between Cremorne Street and the subject site, access is only available via Parkins Lane to Wellington Street with the final access route available via either northern end Huckerby Street or Rout Street. Council's traffic engineers were satisfied that taxi drivers to the site could use their own discretion to access the site. However to ensure efficient vehicle access to the site, a condition will require that the Management Hotel Plan specifies that guests booking accommodation are provided with information outlining the access options to the site when approached via Cremorne Street. This is considered to satisfactorily address this issue. Access for western bound traffic along Swan Street will continue to be from Wellington Street with an easy final approach access available via either the northern end of Huckerby Street or Rout Street.
228. Council's traffic engineers did not raised concern with the access arrangements to the two drop-off zones and was supportive of their proposed dimensions, subject to clarification on the minimum floor to ceiling height in this area subject to demonstrate private waste vehicle could access these areas. The applicant clarified a minimum height of 2.5m and Council's traffic engineers supportive of this. A condition will require this minimum height clearance is specified on the plans. Council's engineers were also supportive of the car and waste truck swept paths provided.
229. Supplementary traffic information was submitted by the applicant to demonstrate that the drop-off zone located parallel to and abutting Huckerby Street is appropriate and would not obstruct traffic movements when doors are opened. The applicant's supplementary traffic report submits that even with doors open occupy 1.49m on the street edge, a minimum dimension of 3.3m would remain to allow for vehicles passing. Council's traffic engineers were supportive of this arrangement also indicating that Huckerby Street has sufficient width to allow for passing vehicles.

230. Further given the laneway characteristic of Huckerby Street, it is a slow moving traffic environment which reduces risk associated with passengers alighting onto the road. It is finally noted that most streets experience persons alighting onto roads from parked vehicles with passing vehicles able to negotiate this once sufficient clearance space is available. Thus given this is not an unusual occurrence for passengers to alight onto roads and that sufficient passing room is provided, support is recommended for this aspect of the proposal. Council's traffic engineers, while not concerned with the setback of this parking space to the building (approx. 1.2m), they requested the setback dimension be noted on the plan. A condition could require this.
231. A number of additional recommendations were provided by Council Engineers; these relate to various infrastructure requirements immediately surrounding the site that should be undertaken to Council's satisfaction and at the Permit Holders cost, as follows;
- (a) Plans to clarify the dimensions adjacent shared area to the DDA spaces satisfies AS/NZS 2890.6:2009 and the dual loading and DDA drop-off uses of this area. A condition could require this;
 - (b) The footpath along the property's Punt Road frontage must be reconstructed. Based on an officer site visit, the re-sheet of the footpath has not yet occurred despite the development being nearing completion. As such it is considered appropriate that a condition would address this item; and
 - (c) Any damaged roads, footpaths and other road related infrastructure adjacent to the development site as a result of the construction works, including trenching and excavation for utility service connections, must be reconstructed;
 - (d) Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the owner's expense after seeking approval from the relevant authority;
 - (e) Areas must be provided inside the property line and adjacent to the footpath to accommodate pits and meters. No private pits, valves or meters on Council property will be accepted;
 - (f) The submission of a Construction Management Plan, and
 - (g) No parking restriction signs or line-marked on-street parking bays are to be removed, adjusted, changed or relocated without approval or authorisation from Council's Parking Management unit and Construction Management branch.
232. As the building is not completed, the above requirements would remain relevant (particularly as c) to f) were also included on permit PLN14/0318). If Council was to support the application, these should be captured under general infrastructure, drainage and construction management conditions and/or notes that are usually placed on a permit of this type.
233. The engineers also requested the length of the drop-off zone to be noted on the plans. However the plans do show the length of both drop-off zones to be 5.4m with the engineers later indicating this is satisfactory. They also requested the basement be appropriately water proofed but as the basement is already constructed, this is not considered warranted (particularly as this was already required by the PLN14/0318 permit). They also requested a legal point of discharge be obtain but with the building nearing completion this has already occurred.

Traffic

234. Council's traffic engineers relied on previous analysis of other proposed residential hotels in the municipality and their submitted traffic reports which provided a break-down of potential traffic generated, with an anticipated 'modal hierarchy' based on the context of the use, the location of the site and similar case studies within inner-city Melbourne. These indicated that public transport and walking would be the most significant transport modes (40% and 35% respectively), with pick-up/drop off constituting 15% and cycling and private vehicles (as the driver) both 5%.

Given the number of hotel rooms proposed, this results in an expectation that approximately 49 sustainable trips and 12 vehicle trips could occur during the busiest hour.

235. To determine the traffic demand for the proposed drop-off/pick-up zone off the Huckerby Street frontage, the applicant's traffic consultants adopted a rate of 0.017 cars per hotel suite during the AM and PM pick-up/drop-off peak period. This rate was established from video surveys undertaken of the drop-off/pick-up zone at the Olsen Hotel in Chapel Street, South Yarra. Applying this rate to the 61 suites at the proposed residential hotel would equate to a demand of one car.
236. Given the limited number of vehicle trips, this outcome is considered acceptable and would not unduly impact traffic conditions in the surrounding street network. Council's traffic engineers were also supportive of this aspect. Further the application was required to be referred to the Head of Transport Victoria for comment in relation to the impact of the development of the adjacent road network and Vic Roads for Alterations to a Road Zone Category and City Link Project. With no referral response comments provided (at the time of writing this report) from these bodies reflecting the proposal will have limited impact on the existing road network.

Loading and unloading/Waste

237. Both drop-off zone are proposed to be used for loading and unloading purposes. Given the drop-off zone will be vacant apart from patron drop-offs/pick-ups, these areas can be easily used for loading purposes. Council's traffic engineers were supportive of this arrangement. Given the laneway/Huckerby Street access to the site, large vehicles would be unable to access to the site. As such deliveries will be undertaken in smaller vehicles. Council Engineers confirmed that the dimensions of the loading bays/drop-off zone can accommodate this arrangement. The layout of the loading facility will allow delivery vehicles to reverse into the loading bay from Huckerby Street and exit in a forward direction. This outcome is acceptable.
238. Waste will be collected internally on-site, within the drop-off zones or from Huckerby Street and will occur on a twice weekly basis. The Waste Management Plan (WMP) specifies that a private contractor will collect waste from within the development. Hard waste and recyclables will be separated. A direct route is provided between the waste refuse room and loading bay. The storage and maintenance of the waste facilities, along with the collection of waste from the site, were all considered satisfactory by Council's Civil Works Unit. However they did request the WMP also specifies that food organics and e-waste will be sorted as a separate stream. Conditions could address this. Council's traffic engineers were also satisfied with waste truck access arrangements. To ensure that waste is adequately managed, if a planning permit was issued, the WMP would be endorsed accordingly. As discussed in the *Noise* assessment, Councils Acoustic engineers have limited the collection hours for waste to 8pm. A condition will require the WMP is updated accordingly.

Bicycle provision

239. The development meets the statutory requirements outlined in clause 52.34 with regards to the number of on-site employee and visitor bicycle parking spaces, along with the requirement for adequate EoT facilities for employees. Council's Strategic Transport Unit confirmed that the spaces all meet the Australian Standard (AS2890.3) for clearance and accessways, with the employee spaces contained within a secure room, directly adjacent to shower and change room facilities.

240. Council's Strategic Transport Unit confirmed two visitor bicycle spaces provided at the Punt Street entrance with the remaining 5 to be provided in the basement is acceptable given limited space on the surrounding footpaths for visitor spaces. This is also on the basis that visitors/hotel guests are granted access to store bikes within the bike store room on the lower basement level (this is noted in the Traffic report and will be required by condition).
241. Council's Strategic Transport Officer also noted the type of employee/resident bike rack is not specified, however it appears that all spaces are wall racks. Pursuant with AS2890.3, at least 20% of bicycle storage spaces should be provided as horizontal at ground-level spaces. Employee bicycle spaces and access ways appear to be in accordance with the clearance requirements of AS2890.3. Access to the employee/resident bicycle storage area is via the lift shaft. The end of trip facilities and bicycle parking is within close proximity to the lift shaft and with officer indicating this is acceptable. Two shower / change rooms are provided, which exceeds Council's best practice standards recommendation of one shower per 10 bicycle spaces.
242. As suggested by Council's Strategic Transport Officer conditions could require a minimum 20% of employee/resident bicycle spaces must be provided as horizontal bicycle rails and notations indicating the dimensions of employee/resident bicycle storage spaces and relevant access ways to demonstrate compliance with Australian Standard AS2890.3 or be otherwise to the satisfaction of the responsible authority. The applicant is accepting of conditions to this effect.

Signage

243. Policy at clause 22.04 and 52.05 provides relevant guidance in relation to illuminated sign in heritage and residential areas. Principal objectives include requiring signage to be in proportion with the building, positioned to prevent obscuring of original heritage fabric and that the levels of illumination are appropriate to the residential context.
244. While the site is located in a heritage area, its immediate context has no significant heritage features of note with a vacant site to the north, a 6 storey modern development to the south and a laneway interface to the east. Given this (and that amendment C191 seeks to remove the heritage overlay from the subject site), consideration of the impact of the proposed signage on a heritage building or streetscape are not of relevance in this case.
245. The size of the proposed signs are considered to be in proportion with the building, with the larger signs appropriately located on the side wing walls and façade and the smaller signs discretely located on the ground floor under crofts to minimise impacts on residential interfaces. The sign proposed to the Rout Street entrance is appropriate located across from the ground floor services are of the building opposite.
246. The high wall signs on the wing walls to the Punt Road interface will not generate light spill issues with the site to the north being vacant. The sign will be 9m away from the edges of upper level balconies to the south (on the north-west corner of No.381 Punt Road). As these balconies are dual aspect and with their main orientation being towards Punt Road, it is considered the position of the sign will not unreasonably impact them. Further as the majority of this building is used as a Residential hotel, given this commercial use the impact is considered acceptable. Further Punt Road is a high light environment with these balconies already impacted by vehicle lights on Punt Road. Given this environment the position of this sign is considered acceptable. Further the white neon finish to the sign will give a subdued light effect which is considered acceptable.
247. The application was required to be referred to Vic Roads given the position of the high wall sign with 600mm of a Road Zone Category 1. Vic Roads offered no comments on the application. A condition of any permit could require that the signs are not flashing to ensure they are not distracting to the occupiers of No 381 Punt Road and to vehicles on Punt Road.

Further standard conditions will address signage maintenance and permit expiry for the signage. For all the reason outlined above and on balance the proposed signage is considered acceptable in this context.

Other matters

248. Given that the application is reliant on the building approved under Permit PLN14/0318 which is currently under construction and to allow local residents certainty in what the final built form outcome and uses will be at the site, a condition will require that Permit PLN14/0318 is cancelled in the event the permit for the residential hotel is acted upon.
249. In the event the applicant determines to proceed/finalise the development with Permit PLN14/0318, at the completion of buildings and works, should there be any discrepancies between the approved built form and the on-site built form conditions (eg current outstanding works include installation of car stackers and changes to window and balcony openings on the south wall) the application will be subject to enforcement proceedings.

Objector concerns

250. The majority of the issues which have been raised by the objectors have been addressed within this report, the following section provides a recap of the issues raised by objectors.
- (a) Noise from roof top bar and balconies facing Huckerby Street.
 - (i) The above issue has been discussed in detail in the *Land Use* assessments between paragraphs 145 and 152.
 - (b) Traffic congestion issues to Huckerby Street and Rout Street.
 - (i) The above issue has been discussed in detail in the *Car parking, vehicle access, traffic, loading & waste* assessments between paragraphs 234 and 236.
 - (c) Antisocial patron behaviour.
 - (i) The condition requiring the submission of a Hotel management Plan will ensure antisocial behaviour will be appropriately managed as discussed in detail in the *Sale and Consumption of Liquor* assessment between paragraphs 189 and 220.
 - (d) Disruption due to increased activity, rubbish generation, patrons smoking outside building between paragraphs 243 and 247.
 - (i) The above issues have been discussed in detail in the *Land Use* and *Sale and Consumption of Liquor* assessments between paragraphs 139 to 159 and 189 and 220.
 - (e) Use more suited to Swan Street, or Commercially Zoned land.
 - (i) This issue has been discussed in detail in the *Land Use* assessment between paragraphs 139 and 159.
 - (f) Loss of the previously approved on-site car spaces.
 - (i) Issues associated with on-site car parking provision have been discussed in detail in the *Car parking, vehicle access, traffic, loading & waste* assessment between paragraphs 222 and 225.
 - (g) Insufficient loading facilities.
 - (i) This issue has been discussed in detail in the *Car parking, vehicle access, traffic, loading & waste* assessment between paragraphs 237 and 238.
 - (h) Overlooking.
 - (i) This issue has been discussed in the *Off-site Amenity* assessment between paragraphs 180 and 184.

- (i) Light impact of neon signs.
 - (i) This issue has been discussed in the *Signage* assessment between paragraphs 243 and 247.
- (j) Devaluation of nearby properties.
 - (i) The Yarra Planning Scheme does not include any policy objectives in relation to the protection of property values, and so this is not a relevant planning consideration.

Conclusion

251. As outlined throughout this assessment, there is good policy support at both state and local levels for the proposal, coupled with the site strategic location including proximity to the Swan Street Major Activity Centre and excellent public transport accessibility.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN19/0751 for the Development of the land within the existing building and use as a residential hotel, food and drink premises and bars with associated sale and consumption of liquor (On-Premises), construction and display of signage and a reduction in the car parking requirements, at 375 and 377 Punt Road, Cremorne subject to the following conditions::

1. Before the use and development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of 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 prepared by Architects A Genser & Associates, Job No. 2925 all dated December 2019, Plan 20, 21, 22, 23, 24, 25, 27, and 29 all Rev N, Plan 17 Rev Y, Plan 18 Rev U, Plan 19 Rev R, Plan 26, 28 and 30 all Rev M, Plan 36 Rev K and Plan 38 Rev P and landscape plans by John Patrick Landscape Architecture Job No.18-0281, Plan TP01 Rev A (dated October 2019) and Plan TP02 (dated April 2015) but modified to show:
 - (a) East and west-facing rooms to be provided with operable windows,
 - (b) Ground floor windows to Punt Road and Rout Street to be fixed/not operable,
 - (c) Provision a 0.7m to 1m wide planter bed to the full eastern and southern perimeters of the roof terrace with its height to be sufficient to prevent occupants being able to access the terrace edge,
 - (d) The lounge area to the rear of the upper basement level to be converted to staff break-out space (with patron access to toilet retained),
 - (e) A minimum floor to ceiling height of 2.5m in the drop-off zones,
 - (f) The setback from the building of the drop-off space parallel to Huckerby Street,
 - (g) Plan notation confirming the dimensions of the shared area adjacent to the DDA space and that it satisfies AS/NZS 2890.6:2009,
 - (h) Plan notation confirming the dual loading and DDA drop-off uses of the southern parking space,
 - (i) At least 20% of bicycle storage spaces to be provided as horizontal at ground-level spaces;
 - (j) Dimensions of employee/visitor bicycle storage spaces and relevant access ways and demonstrating its compliance with Australian Standard AS2890.3 or be otherwise to the satisfaction of the responsible authority,
 - (k) Any changes as a result of the amended Acoustic Report required at Condition 19;
 - (l) Any changes required by the Landscape Management Plan at Condition 21; and

(m) Any changes as a result of the amended Waste Management Plan required at Condition 24.

2. The use and development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

Hours of Operation

3. Except with the prior written consent of the Responsible Authority, the Residential hotel use authorised by this permit may operate 24 hours a day, 7 days a week.
4. Except with the prior written consent of the Responsible Authority, the ground floor and basement food and drinks premises and bar uses authorised by this permit may only operate between the following hours:
 - (a) Sunday to Thursday 6.00am – 10.00pm
 - (b) Friday and Saturday 6.00am – 11.00pm
5. Except with the prior written consent of the Responsible Authority, the roof terrace and flexible space/bar use authorised by this permit may only operate between the following hours and as follows:
 - (a) Sunday to Thursday 8.00am – 9.00pm
 - (b) Friday and Saturday 8.00am – 10.00pm
 - (c) with the eastern portion of the roof terrace (from the west side of the lift shaft to the eastern terrace balustrade) to close at 8pm every day.

Patrons

6. No more than 200 patrons are permitted on the land at any one time.
7. No more than 35 patrons are permitted in the rooftop flexible space/bar on the land at any one time.
8. No more than 123 patrons are permitted on the outdoor roof terrace at any one time and with no more than 65 patrons permitted between 8pm and 10pm.

Liquor

9. 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.
10. No more than 200 patrons are permitted on the land at any time liquor is being sold or consumed.
11. Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor in the ground floor and basement food and drinks premises and bars may only occur between the following hours:
 - (a) Sunday to Thursday 12 noon – 10.00pm
 - (b) Friday and Saturday 12 noon – 11.00pm.
12. Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor in the rooftop flexible space/bar may only occur between the following hours:

- (a) Sunday to Thursday 12 noon – 9.00pm
- (b) Friday and Saturday 12 noon – 10.00pm.

13. Before the commencement of the sale and consumption of liquor, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.

Hotel Management Plan

14. Before the use commences, a Hotel Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Hotel Management Plan will be endorsed and will form part of this permit. The Hotel Management Plan must address the following items;

- (a) The roof terrace outdoor area to be accessible only to hotel guests;
- (b) The rear part of the outdoor roof terrace (from the left side of the lift shaft to the eastern terrace balustrade) to be closed from 8pm with the remainder of the terrace to be occupied by a maximum of 65 patrons between 8pm and 10pm;
- (c) The first to fifth floor east-facing balconies not permitted to be occupied by patrons between 8pm and 8am;
- (d) the hotel lobby doors to Rout Street and Huckerby Street (apart from ingress and egress) to be closed between 8pm and 8am;
- (e) Ground floor lobby windows Huckerby Street and Rout Street to be closed between 8pm and 8am,
- (f) No music is permitted to be played on the roof terrace/balconies,
- (g) No formal dining tables to be provided on outdoor roof terrace area,
- (h) Music in the ground floor and basement food and drinks premises, conference room and roof top flexible space/bar is to be played at background levels with no live or dj music permitted,
- (i) Detail that duty manager/concierge/or other staff will be available to manage late night access to the site,
- (j) Detail of operational procedures requiring guests wait for taxis/ubers etc in the hotel lobby and not in the rear drop-off zone from 8pm to 8am;
- (k) Details of smoking areas which must be located away from nearby residential interfaces,
- (l) Detail of operational procedures allowing guests and visitors access to basement bicycle store, and
- (m) Specify that guest bookings are provided with information outlining the best access options to the site when approaching via Cremorne Street.

15. The provisions, recommendations and requirements of the endorsed Hotel Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Noise and Amenity Action Plan

16. 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 with the application but modified to include any relevant changes necessary as a result of condition 1a) & b), 4, 5, 7, 8, 11, 12, 13, 39, 40 and 41.

17. 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.

Sustainability Management Plan

18. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan (by Form dated 27/04/2020 Rev 1) must be implemented and complied with to the satisfaction of the Responsible Authority.

Acoustic Report

19. Before the use 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 (dated 21 February 2020- Rp 001 20191168- Rev 1), but modified to include:
 - (a) Acoustic testing of all proposed mechanical plant including the plant area to the rear balconies on level three demonstrating appropriate acoustic attenuation measures (as applicable) to prevent detrimental noise impacts to nearby dwellings and the hotels rooms that access these terraces, and
 - (b) Updated to include the relevant requirements outlined in condition 1a) & b), 4, 5, 7, 8, 11, 12, 13, 39, 40 and 41.
20. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.

Landscape Management Plan

21. Before the development commences, an amended Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Landscape Plan will be endorsed and will form part of this permit. The amended Landscape Plan must be generally in accordance with the Landscape Plan prepared by John Patrick Landscape Architects and dated October 2019 (job number 18-0281 TP01 Rev A and TP02 , but modified to include:
 - (a) The detail in relation to the façade planters contained in letter by Christopher Newman of John Patrick Landscape architects dated 5 February 2020,
 - (b) The planter details and references provided in Plan 27 Revision O, Plan 28 Revision N, Plan 29 Revision O, Plan 30 Revision N – all dated Feb 2020, Job No.2925 by Architects A Genser & Associates,
 - (c) Landscaping to the roof terrace using shading plant species and provision of a 0.7m-1m wide planter to the southern and eastern perimeters of the roof terrace and with its height to be sufficient to prevent occupants being able to access the terrace edge,
 - (d) show the type, location, quantity, height at maturity and botanical names of all proposed plants,
 - (e) indicate the location of all areas to be covered by lawn or other surface materials;
 - (f) provide a specification of works to be undertaken prior to planting, and to the satisfaction of the Responsible Authority.
22. Before the building occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:

23. implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
 - (a) not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
 - (b) replacing any dead, diseased, dying or damaged plants, to the satisfaction of the Responsible Authority.

Waste Management Plan

24. Before the use commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Lid and dated 16/12/2019, but modified to include:
 - (a) Include food waste diversion strategy,
 - (b) Address E-waste management and identify an e-waste storage area in the bin room, and
 - (c) Identify private collection will be provided for hard waste and green waste.
 - (d) Updated to include waste collection hours required by conditions 40 and 41.
25. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
26. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.

Melbourne Water

27. Finished floor levels of the ground floor must be constructed at a minimum of 3.73 metres to Australian Height Datum (AHD). The applicable flood level for the property is 3.43 metres to AHD.
28. All doors, windows, vents and openings to the basement must be constructed no lower than 3.73 metres to AHD.

Green Travel Plan Required

29. Before the use commences, a Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Green Travel plan will be endorsed and will form part of this permit. The Green Travel Plan must include, but not be limited to, the following:
 - (a) Strategies outlining how guests will be made aware of the availability of public transport services in the area.
30. The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Infrastructure

31. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any new vehicle crossing must be constructed:
 - (a) in accordance with any requirements or conditions imposed by Council;

- (b) at the permit holder's cost; and
 - (c) to the satisfaction of the Responsible Authority.
32. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated, including the re-sheeting of footpaths along the property's Rout Street and Punt Road frontages if requested by the Responsible Authority;
- (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
33. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the area set aside on the endorsed plans for the drop-off zone and loading 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;
 - (d) line-marked or provided with some adequate means of showing the car parking/loading spaces; and
 - (e) to the satisfaction of the Responsible Authority.

General

34. Speakers external to the building must not be erected or used.
35. The provision of music must be at a background noise level with no live or dj music permitted.
36. The development must comply at all times with the State Environment Protection Policy — Control of Noise from Commerce, Industry and Trade (SEPP N-1).
37. The development must comply at all times with the State Environment Protection Policy — Control of Music Noise from Public Premises (SEPP N-2)
38. The amenity of the area must not be detrimentally affected by the use or development, 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.
- to the satisfaction of the Responsible Authority.
39. Delivery and collection of goods to and from the land may only occur between 7am and 8pm Monday to Saturday and 9am and 8pm on Sunday and Public Holidays.
40. Emptying of bottles and cans into bins may only occur between 7am and 8pm Monday to Saturday and 9am and 8pm on Sunday and Public Holidays.
41. Waste collection may only occur between 7am and 8pm Monday to Saturday and 9am and 8pm on Sunday and Public Holidays.

42. 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 pedestrian entries, drop-off zone, roof terrace and balconies must be provided on the subject site. Lighting must be:
- (a) located;
 - (b) directed;
 - (c) shielded; and
 - (d) of limited intensity,
 - (e) to the satisfaction of the Responsible Authority.
43. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
44. 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.
45. Before the building is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.
46. 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:
- (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; and
 - (vii) spillage from refuelling cranes and other vehicles and machinery;
 - (i) the construction program;
 - (j) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
 - (k) parking facilities for construction workers;
 - (l) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
 - (m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
 - (n) 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;

- (o) 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;
- (p) a Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority.

In preparing the Noise and Vibration Management Plan, consideration must be given to:

- (i) using lower noise work practice and equipment;
- (ii) the suitability of the land for the use of an electric crane;
- (iii) silencing all mechanical plant by the best practical means using current technology;
- (iv) fitting pneumatic tools with an effective silencer;
- (v) other relevant considerations.

47. During the construction:

- (a) any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (b) stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system;
- (c) vehicle borne material must not accumulate on the roads abutting the land;
- (d) the cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
- (e) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

48. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

49. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:

- (a) Monday to Friday (excluding public holidays) before 7:00am or after 6:00pm.
- (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9:00am or after 3:00pm.
- (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.

Signs

50. The location and details of the signs, 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.

51. The signs must be constructed, displayed and maintained to the satisfaction of the Responsible Authority.

52. The signs must not include any flashing or intermittent light.

53. External sign lighting must be designed, baffled and located to the satisfaction of the Responsible Authority.

Permit Expiry

54. The use and development hereby approved must not commence until such time as Planning Permit PLN14/0318 is cancelled, with all associated costs to be borne by the permit holder.
55. This permit will expire if:
- (a) the development is not commenced within two years of the date of this permit;
 - (b) the development is not completed within four years of the date of this permit;
 - (c) the use and liquor licence is not commenced within five years of the date of this permit;
 - (d) The permit will expire if the signs are not erected within two years of the date of this permit

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

Notes:

A building permit may be required before development is commenced. Please contact Council's building services on 9205 5555 to confirm.

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

These premises will be required to comply with the Food Act 1984. The use must not commence until registration, or other approval, has been granted by Council's Health Protection Unit.

A vehicle crossing permit is required for the construction of the vehicle crossing(s). Please contact Council's Construction Management Branch on 9205 5585 for further information.

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's building services on 9205 5555 for further information.

Areas must be provided inside the property line and adjacent to the footpath to accommodate pits and meters. No private pits, valves or meters on Council property will be accepted.

Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the permit holder's expense after seeking approval from the relevant authority.

No parking restriction signs or line-marked on-street parking bays are to be removed, adjusted, changed or relocated without approval or authorisation from Council's parking management unit and construction management branch.

All future property owners, residents, business owners and employees within the development approved under this permit will not be permitted to obtain resident, employee or visitor parking permits.

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

Attachments

- 1** PLN19/0751 - 375 & 377 Punt Road - Advertised Plans Part 1
- 2** PLN19/0751 - 375 & 377 Punt Road - Advertised Plans Part 2
- 3** PLN19/0751 - 375 & 377 Punt Road - Planning Permit PLN14/0318 for existing building under construction
- 4** PLN19/0751 - 375 & 377 Punt Road - Endorsed Plans for PLN14/0318
- 5** PLN19/0751 - 375 & 337 Punt Road - Social Planning comments
- 6** PLN19/0751 - 375 & 377 Punt Road - Community Amenity comments
- 7** PLN19/0751 - 375 & 377 Punt Road - Contracts Services comments
- 8** PLN19/0751 - 375 & 375 Punt Road - Strategic Transport comments
- 9** PLN19/0751 - 375 & 377 Punt Road - Melbourne Water comments
- 10** PLN19/0751 - 375 & 377 Punt Road - Amended Acoustic Report
- 11** PLN19/0751 - 375 & 377 Punt Road - Acoustic comments
- 12** PLN19/0751 - 375 & 377 Punt Road - Supplementary Acoustic comments
- 13** PLN19/0751 - 375 & 377 Punt Road - Revised SMP
- 14** PLN19/0751 - 375 & 377 Punt Road - ESD comments
- 15** PLN19/0751 - 375 & 377 Punt Road - Supplementary applicant traffic report
- 16** PLN19/0751 - 375 & 377 Punt Road - Traffic Engineering comments
- 17** PLN19/0751 - 375 & 375 Punt Road - Revised elevations to address Open Space comments
- 18** PLN19/0751 - 375 & 377 Punt Road - Applicants supplementary landscaping advice
- 19** PLN19/0751 - 375 & 377 Punt Road - Open Space comments

1.3 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - Change of use to a restricted recreation facility (24 hour gymnasium) and display of business identification signage

Executive Summary

Purpose

1. This report provides Council with an assessment of planning application PLN19/0818 at 555-561 Victoria Street, Abbotsford for the change of use to a restricted recreation facility (24 hour gymnasium) and display of business identification signage; and recommends approval subject to conditions

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 13.05 – Noise
 - (b) Clause 21.04-2 – Activity Centres
 - (c) Clause 22.04 – Advertising Signs Policy
 - (d) Clause 22.05 – Interface Uses Policy
 - (e) Clause 34.02 – Commercial 2 Zone
 - (f) Clause 52.06 – Car Parking

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Land use;
 - (b) Off-site amenity impacts;
 - (c) Signage;
 - (d) Car parking, traffic and bicycle facilities; and
 - (e) Objector concerns.

Submissions Received

4. Twenty Four objections were received to the application, these can be summarised as:
 - (a) Car parking and traffic impacts;
 - (b) Noise – no acoustic report submitted;
 - (c) Underestimated patron numbers; and
 - (d) Over supply of gyms.

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: Joe Byrne
TITLE: Statutory Planner
TEL: 9205 5206

1.3 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - Change of use to a restricted recreation facility (24 hour gymnasium) and display of business identification signage

Reference: D20/79824

Authoriser:

Ward: Langridge Ward

Proposal: Change of use to a restricted recreation facility (24 hour gymnasium) and display of business identification signage

Existing use: Vacant warehouse building (previously used as a martial arts gymnasium)

Applicant: Virtual Home Design

Zoning / Overlays: Commercial 2 Zone
Design and Development Overlay (Schedule 2)
Design and Development Overlay (Schedule 22)

Date of Application: 15 October 2019

Application Number: PLN19/0818

Planning History

6. Planning Permit application PLN11/0926 was submitted 8 November 2011 for the change of use to a martial arts studio. This application lapsed.

The Proposal

7. application is for the use of the land for a Restricted Recreation Facility (24 hour Gymnasium), and display of business identification signage. More specifically, the application includes;

Use

- (a) Restricted Recreational Facility (Gymnasium).
- (b) Approximately 842sqm of floor area over two levels of the existing building;
- (c) Open 24 hours, 7 days per week.
- (d) The use includes group fitness classes.
- (e) Maximum of 40 patrons and 2 staff on premises at any one time.
- (f) The premises will be staffed between 10am-2pm and 4pm-7pm weekdays and staffed by one employee on Saturday
- (g) Music at background level only.

Signage

- (h) The display of 2 business identification signs with the following specifications:

Sign	Type	Location	Size
Sign 1	Non-illuminated business identification sign "Train 24/7 Fitness"	Ground floor, central pillar wall between car parking spaces facing Victoria Street	Width of 2.15m and height of 2.4m (overall size 5.16m ²)
Sign 2	Non-illuminated business identification sign	First floor, below the first floor windows facing Victoria Street	Width of 17.5m and height of 1.2m (overall size 21m ²)

	"Train 24/7 Fitness – Work out with us all day all night"		
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Car and Bicycle Facilities

- (i) 3 car parking space will remain on site within the undercroft area, access via Victoria Street.
- (j) 9 bicycle parking racks will be located on the wall of the central car parking space.

Existing Conditions

Subject Site

- 8. The subject site is located on the north side of Victoria Street, approximately 13m east of Bond Street and 25m west of Duke Street, in Abbotsford. The subject site has a Victoria Street frontage of 22m, a depth of 31.7m and an overall site coverage of approximately 697m².
- 9. The subject site contains a single storey brick warehouse building fronting Victoria Street. A small mezzanine level is located along the Victoria Street frontage. The building is constructed to all site boundaries with a pedestrian entrance to the Victoria Street façade. The building is currently unoccupied, although was previously used as a martial arts studio (this was used without planning permission). Three car parking spaces are positioned at the front of the subject site, under a cantilevered mezzanine level. Two separate crossovers ensure access from Victoria Street. The first-floor component of the building is predominately glazed. A large business identification sign is positioned on the façade between the first floor and ground floor. A roller door is located at the rear of the subject site, opening onto a lane. Internally the building is open at ground level, with a storage room at first floor to the rear and another small room towards the front, facing Victoria Street.
- 10. The proposal seeks to use both the ground and first floors constituting approximately 842sqm of internal floor space.

Restrictive Covenants/Easements

- 11. The title shows no restrictive covenants or easements on the certificate of title provided by the applicant.



Image 1: The Subject site viewed from Victoria Street (December 2018)

Surrounding Land

12. The surrounding land is characterised by the commercial spine of Victoria Street Major Activity Centre (MAC). Land uses within the immediate surrounds consist of predominantly commercial on the northern side of Victoria Street with residential dwellings located on the southern side.

13. Victoria Street is classified as a Major Activity Centre pursuant to Clause 21.08-1 (Neighbourhoods – Abbotsford). The predominant land uses along Victoria Street varies with retail and hospitality businesses the dominant land use towards the western end. The western side of Victoria Street is more varied with larger buildings and the Commercial 2 Zone encouraging restricted retail, office and semi industrial uses. There is also a number of newer mixed use developments containing commercial shop fronts at ground floor with residential above.

14. To the north, land is zoned Industrial 1 with manufacturing and industrial uses reflecting this zoning. Residential areas are located on the southern side of Victoria Street east of Johnson Street, while commercial areas are located to the west of Johnson Street.

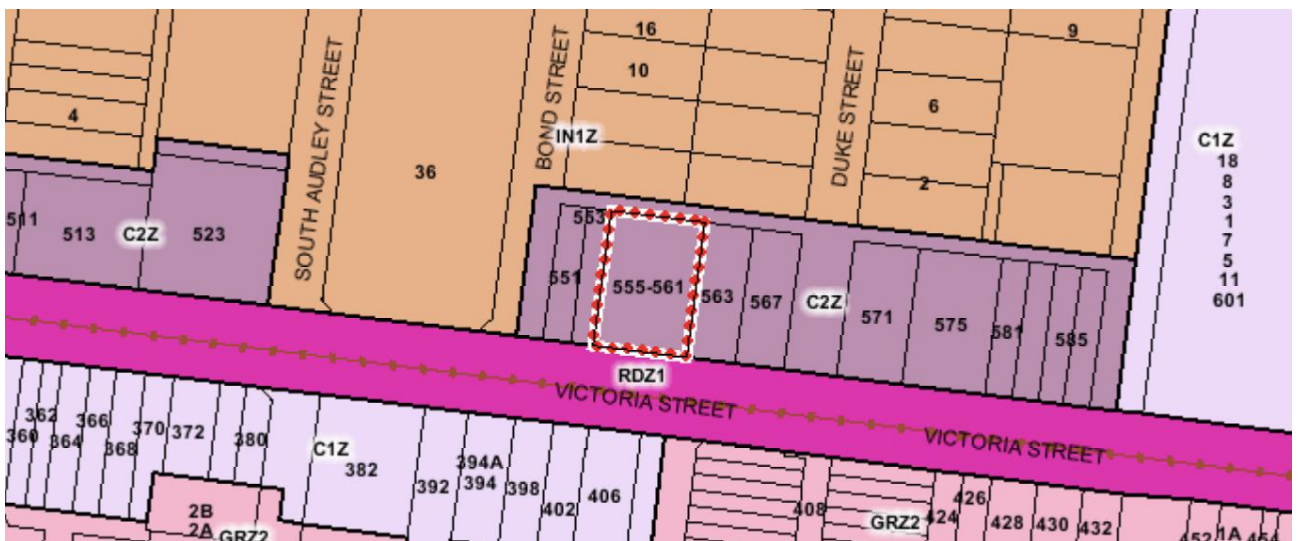


Image 2: The subject site and surrounding zoning

Nearby properties

15. To the west of the subject site is a double storey Victorian-era building. The applicant has confirmed that this property is a men's only spa venue that runs 7 days/week until midnight. Open space is positioned at the rear of the building.
16. To the east of the subject site is a double storey brick building. The building is currently used as a 24 hour gymnasium (restricted recreational facility) trading as Train 24/7 also operated by the permit applicant. This building is primarily accessed from the front of the property, on Victoria Street. Business identification signage is located flush on the fascia of the building and in an internally illuminated lightbox projecting over the footpath. A roller door abuts a laneway at the rear of this property.
17. To the rear of the subject site, beyond a laneway, is the side of a double storey warehouse building. A roller door and a bared entry door is the only access to this warehouse building on the laneway. Highlight windows at ground floor and first floor windows face the laneway.
18. To south of the subject site, across Victoria Street, comprises of double storey commercial and office buildings with business identification signage positioned on the facades. To the south east of the subject site, on the corner of Johnson and Victoria Streets is a townhouse development containing 16 townhouses, internal gardens/car parks, with balconies facing Johnson Street.

Planning Scheme Provisions

Zoning

19. The subject site is located within the Commercial 2 Zone. The following provisions apply:
 - (a) Pursuant to Clause 34.02-1 of the Yarra Planning Scheme (the Scheme), a permit is required to use the land for Leisure and Recreation (including Restricted Recreation Facility).
 - (b) Pursuant to Clause 34.02-8 of the Scheme, advertising sign requirements are at Clause 52.05. This zone is in Category 1.

Overlays

20. The subject site is located within the Design and Development Overlay (Schedule 2 – Main Roads and Boulevards and Schedule 22 – Victoria Street Activity Centre). The following provisions apply:
 - (a) Pursuant to Clause 43.02-2 of the Scheme, a permit is required to construct a building or construct or carry out works. However, given this provision does not specifically require a permit for internal rearrangement, the proposed internal rearrangement does not require a permit as it satisfied the requirements of Clause 62.02-2 of the Scheme.
 - (b) Pursuant to Clause 43.02-4 of the Scheme, sign controls are at Clause 52.05 unless otherwise specified in a schedule to this overlay.

Particular Provisions

Clause 52.05 – Advertising Signs

21. The subject site is located within the Commercial 2 Zone and as such is classified as Category 1 – Commercial area (minimum limitation). The 2 proposed signs require a planning permit as together they result in greater than 8sqm of total advertisement area (26.16m²).

Clause 52.06 – Car parking

22. Clause 52.06-1 requires that a new use must not commence or the floor area of an existing use must not be increased until the required car spaces pursuant to Table 1 have been provided on the land.
23. Pursuant to clause 52.06-6, where a use of land is not specified in Table 1, car parking spaces must be provided to the satisfaction of the responsible authority prior to a new use commencing. Neither 'Restricted recreation facility', nor its parent use 'Minor sports and recreation facility', is listed within Table 1 of Clause 52.06-5, therefore car parking must be provided to the satisfaction of the Responsible Authority.

Clause 52.34 – Bicycle Facilities

24. Pursuant to Clause 52.34-1, a new use must not commence until the required bicycle facilities and associated signage are provided on the land. The following table identifies the bicycle parking requirement under Clause 52.34-5, the provision on site, and the subsequent reduction below the statutory requirement:

Land Use	Units/Area proposed	Rate	No. required	No. proposed	Reduction sought
Minor sports and recreation facilities	2 staff max.	1 space to each 4 employees.	0	9	0
	842m ² net floor area	1 visitor space to each 200m ² of net floor area.	4 (4.21)		

25. Given that no employee spaces are required by the proposed use, the provision of change room/ shower facilities (pursuant to Clause 52.34-3) is not required for this application.

General Provisions

Clause 65 – Decision Guidelines

26. The decision guidelines outlined at clause 65 of the Scheme are relevant to all applications. Before deciding on an application, the Responsible Authority must consider a number of matters. Amongst other things, the Responsible Authority must consider the relevant sections of Planning Policy Framework, Local Planning Policy Framework and any local policy, as well as the purpose of the Zone, Overlay or any other provision.

Planning Policy Framework (PPF)

Clause 11.03-1S – Activity Centres

27. The objective of this policy is: *'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.'*

Clause 11.03-1R – Activity Centres - Metropolitan Melbourne

28. The vision outlined under this policy seeks to support the development and growth of Metropolitan Activity Centres by ensuring they: *"Locate significant new education, justice, community, administrative and health facilities that attract users from large geographic areas in or on the edge of Metropolitan Activity Centres or Major Activity Centres with good public transport"*

Clause 13.05-1S – Noise abatement

29. The objective of this clause is: *'To assist the control of noise effects on sensitive land uses.'*

Clause 17.02-1S – Business

30. The objective of this clause is: *'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 18.02-1S - Sustainable personal transport

31. The objective of this clause is: *'To promote the use of sustainable personal transport.'*

Clause 18.02-4S – Car parking

32. The objective of this clause is: *'To ensure an adequate supply of car parking that is appropriately designed and located.'*

Local Planning Policy Framework (LPPF)

Municipal Strategic Statement

33. The MSS provides a broad demographic overview of the municipality and is structured into four themes at Clause 21.01 consisting of 'land use', 'built form' 'transport' and 'environmental sustainability'. Relevant clauses are as follows:

Clause 21.04-3 – Industry, office and commercial

34. *'Within Yarra the volume of commercial and associated uses is so significant that they form clusters of interrelated activity. The commercial and industrial sectors underpin a sustainable economy and provide employment. Yarra plans to retain and foster a diverse and viable economic base.'* The objective of this clause is: *'To increase the number and diversity of local employment opportunities.'*

Clause 21.06-3 – The road system and parking

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

- (a) *'To reduce the reliance on the private motor car.'*
- (b) *'To reduce the impact of traffic.'*
- (c) *'Ensure access arrangements maintain the safety and efficiency of the arterial and local road networks.'*

Clause 21.08-1 – Abbotsford and Clause 21.08-9 – North Richmond (area north of Bridge Road

36. The subject site is at the southern end of the Abbotsford suburb and within the Victoria Street link precinct, which is described in Clause 21.08-9 as:

"This precinct spans the area between Church Street and Grosvenor Street. This linking area includes residential and commercial development and a wide range of land uses. New development in this part of the precinct must include active frontages."

Relevant Local Policies

Clause 22.04 – Advertising Signs Policy

37. This Policy applies to all permit applications for advertising signs or for development which incorporates an advertising sign.

The objectives of this clause are:

- (a) *To allow for the promotion of goods and services.*
- (b) *To ensure that signs contribute to and do not detract from the visual amenity of commercial precincts, activity centres and residential areas.*
- (c) *To minimise visual clutter.*
- (d) *To ensure that signs are not the dominant element in the streetscape.*
- (e) *To protect and enhance the character and integrity of places of heritage significance.*
- (f) *To protect major view corridors and vistas.*
- (g) *To maintain vehicular and pedestrian safety.*

Clause 22.05 – Interface Uses Policy

38. Pursuant to Clause 22.05 of the Scheme, this policy applies to applications for use or development within Mixed Use, Commercial and Industrial Zones (amongst others). The policy contains the following relevant objective and policy:
- (a) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.'*
 - (b) *'New non-residential use and development within Business [i.e. Commercial] and Mixed Use and Industrial Zones are designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.'*

Clause 22.11 – Victoria Street East Precinct

39. The subject site is located on the west side of the Victoria Street East Precinct, which has been identified as an employment focus area. Clause 22.11-2 of the Scheme includes the following relevant objectives and policy:
- (a) *'To facilitate a mix of land uses appropriate for land forming part of the Victoria Street Major Activity Centre.'*
 - (b) *'To create new local employment opportunities and protect existing ones, especially in the nearby CUB precinct.'*
 - (c) *'Uses which activate the Victoria Street, Burnley Street and River Corridor frontages at ground level are encouraged.'*

Advertising

40. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by letters sent to surrounding owners and occupiers and by two signs displayed on site. Council received 24 objections, the grounds of which are summarised as follows):
- (a) Car parking and traffic impacts;
 - (b) Noise – no acoustic report submitted;
 - (c) Underestimated patron numbers;
 - (d) Over supply of gyms.
41. Given the ongoing COVID-19 pandemic a planning consultation meeting for this application was not held.

Referrals

42. The referral comments are based on the advertised plans dated December 2019 and the Acoustic report dated 09 April 2020.

External Referrals

43. No external referrals were required for this application under Clause 66 of the Scheme. The application, however, was referred externally to SLR Acoustic Consulting for peer review of the applicant's submitted acoustic report. Initially the peer review raised concerns about the level of detail provided in the submitted acoustic report. This was forwarded to the applicant who amended the acoustic report (resubmitted 29/04/2020), including additional information and recommendations. The peer review advice is discussed in further detail throughout the report and included in the appendices to the report.

Internal Referrals

44. The application was referred to Council's Engineering Services Unit who advised the following:

From a traffic engineering perspective, the waiver of car spaces for the proposed restricted recreation facility is considered appropriate in the context of the development and the surrounding area. The site can easily be reached by public transport services. The Civil Engineering Unit has no objections to the reduction in the car parking requirement for this site.

45. Discussions were held with Council's Strategic Transport Unit regarding the accessibility of the proposed bike racks at the front of the site. They confirmed that the racks would be appropriately spaced, however, given the location of the adjacent car space would not meet the clearance requirements. They recommended either deleting the car space or relocating the racks internally and the addition of single hoop parallel to the existing car space. This will be discussed in greater detail within the body of the report.

OFFICER ASSESSMENT

46. The primary considerations for this application are as follows:

- (a) Land- use and strategic justification;
- (b) Off-site amenity
- (c) Signage
- (d) Car parking and traffic
- (e) Objector concerns

Land-use and strategic justification

47. The subject site is located within the Commercial 2 Zone, where the purpose is:

"To encourage commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services"

48. The site is also located within the Victoria Street Major Activity Centre, which Clause 21.08-9 (Neighbourhoods – North Richmond) identifies it as having:

"A variety of land uses along its length – some vibrant and others more dormant in terms of activity and street frontage."

49. Clause 21.08-1 also provides a general description for the neighbourhood of Abbotsford and acknowledges that:

"Abbotsford is a highly varied neighbourhood with a substantial number of industrial and commercial buildings of various types and eras. The residential precincts are surrounded by industrial development"

50. Clause 21.04-2 (Activity Centres) outlines the need for *"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 the municipality"*. This Clause also seeks to *"Support land use change and development that contributes to the adaptation, development and economic growth of existing activity centres."*

51. Clause 22.11-2 (Victoria Street East Precinct) objective is:

"To facilitate a mix of land uses appropriate for land forming part of the Victoria Street Major Activity Centre"

52. The proposed 'restricted recreational facility' (gym) would complement the area, providing a use that would improve the active and vibrant activity centre. The gym will deliver employment opportunities and will be primarily used by people who live and work in the area.

Consistent with Clause 22.04 of the Scheme, the proposed use will contribute to the adaptation, development and economic growth of the area and is therefore considered to be appropriate for the Victoria Street Major Activity Centre.

53. Given the patrons are likely to be from nearby residential and commercial areas, the use is unlikely to noticeably impact the availability of on-street car parking. As the proposed use is for a restricted recreational facility, loading and unloading of goods will be minimal. The surrounding loading bays are not expected to be in high demand given this use. For all of these reasons, the proposed use would not have an unreasonable impact on surrounding commercial uses as encouraged by the Commercial 2 Zone.
54. Given the patron numbers proposed (maximum of 40 at any one time) and the location within a Major Activity Centre, it is not considered that the proposed use would affect the amenity of adjacent, more sensitive uses in accordance with the Commercial 2 Zone decision guidelines.

Off-site amenity

55. State and local policies encourage the concentration of commercial uses within and around activity centres whilst providing adequate protection against off-site amenity impacts. Specifically, Clauses 13.05-1S (Noise abatement), 21.04-2 (Activity centres) and 22.05 (Interface Uses Policy) 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).

The closest residential uses to the subject site is to the south east of the subject site, across Victoria Street, where there is a row of double storey brick townhouses. Therefore, careful consideration of amenity impacts is warranted. The critical amenity consideration for this application is noise impacts. Waste impacts and light spill will also be discussed.
56. As noted previously within the report, the proposed use is associated with a gym operating 24 hours a day, 7 days a week. The identified noise sources associated with this use include gym activity noise, music associated with the gym, and mechanical plant noise.
57. Whilst an acoustic report was not originally submitted with the application, one was provided to Council after the advertising stage. The report was amended to address the initial questions raised by Council's independent acoustic consultant (SLR acoustic consulting) and re-referred for formal comments. A number of concerns were raised by SLR within the formal review including music levels based on the background noise level measurements, noise associated with any mechanical plant, use of the first floor, and the nature of use of the first floor of the western adjoining property. These were, again, sent to the applicant, who amended the acoustic report for a second time.
58. The applicant confirmed the use of the double storey building abutting the subject site to the west (553 Victoria Street) is as a men's only spa venue. SLR were therefore satisfied that the closest residential receptor was to the south east of the site, across Victoria Street, as specified above.
59. The amended acoustic report dated 27 April 2020 satisfactorily demonstrated that noise generated by the proposed gym can be appropriately contained within the existing warehouse building. The report also confirmed that with the attenuation of the façade, as well as, the distance of minimum 35m to the nearest residential receptor that the noise level would be less than 40 dB(A), which is well within the required limits.

Small speakers are proposed to be installed on the east and west side walls internally, while the music levels will be limited to background music. In accordance with the recommendations of SLR the following noise attenuation measures are adopted for the proposal:

- (a) that the music associated with the use must not exceed 70 dBA Leq and 78 dBL or dBC Leq. To ensure compliance with the SEPP N-2, noise limiters should be installed in both the upper and lower spaces and be calibrated by a suitably qualified acoustic consultant.
 - (b) that the first floor will be used for stretching / yoga and Pilates classes only.
 - (c) that the SEPP N-1 noise levels are set as limits for any mechanical plants.
60. Given findings of the peer review, it is recommended that the submitted acoustic report dated 27 April 2020 (including all operational recommendations/commitments) be endorsed to form part of the permit, should a permit issue. In light of the above considerations and subject to the inclusion of recommended conditions, it is considered that the proposal will not result in unreasonable noise impacts for nearby dwellings.
 61. In addition to this, conditions will be included on any permit to issue, requiring the premises to adhere to SEPP N-2 and SEPP N-1 noise requirements. This will ensure the use complies with these provisions at all times, thereby ensuring further noise protection for nearby residents.
 62. As noted previously within the report, the proposed use includes gym classes, and it is unclear if microphones is intended to be used or not. Given that the applicant's acoustic report did not consider this aspect, it is assumed that amplified voices are not intended and therefore to ensure the noise impacts from the classes are limited, a condition will be included on any permit issued, not permitting the use of microphones on site.
 63. The building will have one entry into the gym on Victoria Street, while a roller door and a pedestrian entry abuts the laneway at the rear. The noise associated with patrons and staff entering and exiting the premises is not considered to be unreasonable when considering the context of Victoria Street, where commercial, industrial and residential premises currently have individuals, deliveries and traffic present at all times of the day. The additional foot traffic, which is expected to be minimal, would be absorbed by the existing Victoria Street foot traffic.
 64. With regard to waste, the proposed use is not anticipated to generate significant waste and therefore would be expected to utilise Council's waste collection services. Sufficient area appears to be available within the front storage area to store bins concealed from view. However, to ensure this occurs, a condition of the permit will require the location of bin storage to be shown on the plans, concealed from the public realm. As such, a Waste Management Plan is not required for this application.
 65. With no buildings or works proposed (apart from internal works, and not increasing the floor area), the application would not create unreasonable overlooking, visual bulk, overshadowing or loss of daylight. Given the location of the windows and the setback to residential properties, unreasonable light spill is not considered to be of concern either.

Signage

66. The application proposes to display a total of two (2) signs along the Victoria Street frontage, as shown at figure 3.

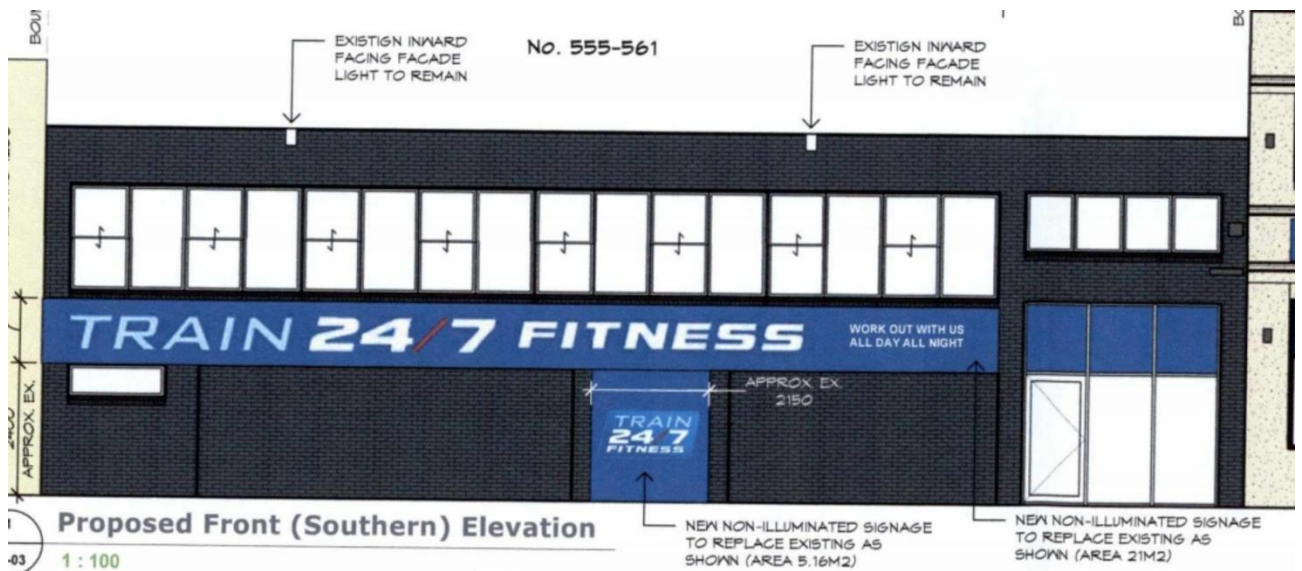


Figure 3: Proposed signage on the Victoria Street façade.

67. Clause 52.05-3 (Advertising Signs) and clause 22.04 (Advertising Signs Policy) of the Scheme provides the relevant decision guidelines for signage, and can be assessed under the following categories:

The character of the area

68. Business identification signage is a common feature on commercial buildings within the surrounding area. In this sense, the proposed signs are considered an acceptable addition to the existing building and located in a reasonable location in front of the commercial premises fronting Victoria. As such, it is considered that the proposed signs will be *compatible with the existing character of the area* which meets the objective of clause 52.05-3 of the Scheme.

Impacts on views and vistas

69. The proposed signs sit flush on the façade of the building, facing Victoria Street. The proposed signs will not *obscure any important views or vistas* and is therefore consistent with the decision guidelines.

The relationship to the site and building

70. The proposed signage is appropriate in terms of its scale and form. The combined total area of the two signs (26.16m²) is considered proportionate to the building and appropriate in the commercial context. The signs will be in the same position as existing signs on the building. The signs will not cover any existing windows, ensuring the street surveillance from the building will remain the same as existing.

The relationship to the streetscape, setting or landscape

71. The signage proposed is compatible with the existing streetscape. As previously stated, business identification signage is common for commercial buildings in proximity to the site. There are a number of signs similar in the area, particularly the property abutting the site to the east. The design is simple and uniform, which is supportive of the objective specified at clause 52.05-3 of the Scheme; *“the ability to reduce the number of signs by rationalising or simplifying signs”*.

The impact of any illumination

72. As specified earlier within the report, the proposed signs will be non-illuminated and therefore there will not be any illumination impacts.

Design and relationship of the sign(s) on the building/Opportunities and need for identification of the site.

73. The advertising signs identify the business and provide relevant information about the facility. The design and function of the signage is reflective of the commercial business (24 hour gym) that operates on site.

Construction and Support

74. The proposed signage will be affixed flush to the façade, consistent with existing signs on the site. Overall the proposed signage will not result in any adverse impacts on vehicular and pedestrian safety, pursuant to the requirements of clause 22.04-2 of the Scheme.

Car parking, traffic and bicycle facilities

Car parking

75. This section of the assessment will be guided by clause 52.06 of the Scheme. As outlined earlier, car parking for the proposed use must be provided to the satisfaction of the Responsible Authority.
76. As specified previously within the report, Council's Engineering Services Unit responded to the proposal in relation to the provisions of Clause 52.06-5 of the Yarra Planning Scheme. They concluded that they have no objection to the reduction of car parking requirements for the proposed use at this site.
77. The subject site is located within an area where public transportation is easily accessible, being within walking distance of tram services operating along Victoria Street. The subject site is also accessible for pedestrians and cyclists and is within walking distance of shops, businesses, essential facilities and amenities.
78. Council's Engineering Services Unit noted that the site has good connectivity to the Principal Bicycle Network, ensuring the site is easily accessible by bicycle.
79. Council's Traffic Engineering Services Unit specified that on-street parking is very high during business hours and the majority of streets in the area contain time based parking restrictions. They also noted that the proposed use is considered to be in line with the objectives contained within Council's Strategic Transport Statement given its excellent access to public transportation, which would discourage private motor vehicle use.
80. As noted previously within the report, there are 3 existing car parking spaces located at the front of the site. The applicant has confirmed that these spaces will be allocated to staff members during working hours (as identified within the proposal). These spaces will ensure some of the car parking demand is alleviated during different times of the day. Outside of these times, all three spaces would be available to patrons of the gym.

Traffic

81. The traffic volumes associated with the proposal are also unlikely to result in any significant impact to traffic flows given the capacity of the gym is limited to 40 people at any one time. Also for the reasons outlined in the car parking assessment, it is expected that many of the members would already be in the area, or travel to the site by foot or bike.
82. Clause 21.06 of the Scheme outlines objectives to promote walking, cycling and public transport use in order to reduce car dependency.
83. Given that a high proportion of the patrons are expected to live or work in the area, walking, cycling and catching public transport are anticipated to be common accessibility to the site.

Bicycle facilities

84. As specified previously within the report, the application includes the installation of 9 bike spaces on site. According to clause 52.34-5 of the Scheme, the proposed restricted recreational facility would require 4 bicycle spaces. Therefore, the proposal would exceed the requirement and a reduction is not required. These bicycle spaces will be located at the front of the site, beside one of the car parking spaces. However, as noted previously within the report, Council's Strategic Transport Unit reviewed the location of the bicycle racks and advised there is insufficient room for this many spaces. A total of 2.7m clearance is required to ensure access to the bikes. Currently there is a clearance of 1.2m, which will therefore not meet these requirements, and increasing this would ultimately result in the loss of a car space. It is recommended that a single hoop that runs parallel to the car space, which will accommodate 2 bikes spaces could be accommodated within the exterior area, while the remaining spaces could be relocated to the front portion of the gym. These internal spaces can be in the form of hanging bike racks. This will ensure all spaces will be easily accessible by patrons and employees.
85. A condition will be included on any permit issued, requiring the above changes.

Objector Concerns

86. The following objector concerns have been addressed within this report:
 - (a) *Car parking and traffic impacts*: addressed at paragraph 70 - 78
 - (b) *Noise – no acoustic report submitted*: addressed at paragraph 50 - 58

87. Outstanding issues raised are as follows:

Underestimated patron numbers

88. A condition will be included on any permit issued restricting the number of patrons to a maximum of 40. If the number of patrons is exceeded, the permit holder will not be acting in accordance with the planning permit and Council can take enforcement action.

Oversupply of Gyms

89. The presence of other existing gym uses nearby is not a relevant planning consideration when determining the appropriateness of the proposed use.

Conclusion

90. The proposal is considered to be acceptable having regard to the relevant State and Local Policies, the Commercial 2 Zone and relevant signage policy outlined in the above assessment and should therefore, be approved, subject to conditions.

RECOMMENDATION

That having considered all relevant planning controls and policies, it is recommended that a Notice of Decision to Grant a Planning Permit PLN19/0818 be issued for a change of use to a restricted recreation facility (24 hour gymnasium) and the display of business identification signage at 555 – 561 Victoria Street, Abbotsford, generally in accordance with the decision plans and subject to the following conditions:

1. Before the use commences or signage is displayed, 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 Plans TP-01, TP02, TP-03 by Virtual Home Design dated December 2019 but modified to show:
 - (a) The bin storage location concealed from the public realm;
 - (b) Deletion of the nine bike racks at the front of the building;
 - (c) Seven bike spaces located internally within the front portion of the gym; and
 - (d) A single bicycle hoop (accommodating 2 bike spaces) positioned parallel to the most west front car space.
2. The use, and the location and details of signage as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
3. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.

Use conditions (4 -13)

4. No more than 40 patrons are permitted on the land at any one time.
5. No more than 2 staff are permitted on the land at any one time.
6. The provision of music on the land must be at a background noise level.
7. Speakers external to the building must not be erected or used.
8. The first floor must only be used for stretching / Yoga and Pilates.
9. The use of microphones are not permitted on site.
10. 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 the presence of vermin.to the satisfaction of the Responsible Authority.
11. Prior to the commencement of the use authorised by the permit, a Noise Limiter must be installed at ground and first floor. The Noise Limiters must:
 - (a) be calibrated by a qualified acoustic consultant and set to the music levels (maximum of 70 dBA Leq and 78 dBL or dBC) as specified in the acoustic report prepared by Waveform Acoustics dated 27 April 2020;
 - (b) be maintained and operated at all times.To the satisfaction of the Responsible Authority.

12. The use must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
13. The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).

Signage Conditions (14-16)

14. The signs must be constructed, displayed and maintained to the satisfaction of the Responsible Authority.
15. The signs must not be illuminated by external or internal light.
16. The signage component of this permit expires 15 years from the date of the permit.

Permit Expiry

17. This permit will expire if:
 - (a) the use is not commenced within two years of the date of this permit; and
 - (b) the signs are not erected within two years of the date of this permit.

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

NOTES

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5555 to confirm.

A local law permit (e.g. Asset Protection Permit, Road Occupation Permit) may be required before development is commenced. Please contact Council's Construction Management Branch on Ph. 9205 5555 to confirm.

CONTACT OFFICER: Joe Byrne
TITLE: Statutory Planner
TEL: 9205 5206

Attachments

- 1 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - Site Location Plan
- 2 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - Amended SLR Review
- 3 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - Strategic Transport comments pdf
- 4 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - Engineering comments PDF
- 5 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - S52 Advertising Plans
- 6 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - Amended Acoustic Report
- 7 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - S52 Advertising Town Planning Report
- 8 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - S52 Advertising Traffic Report
- 9 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - S52 Advertising Supporting Letter 1
- 10 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - S52 Advertising Supporting Letter 2
- 11 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - S52 Advertising Application Form
- 12 PLN19/0818 - 555 - 561 Victoria Street Abbotsford - S52 Advertising Certificate of Title and Title Plan

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- 1.4 PLN19/0624 - 267 Swan Street Richmond - Buildings and works associated with the use of the land as a place of assembly (art and exhibition space) and an ancillary retail space (as of right use), the sale and consumption of liquor (on and off the premises) between the hours of 10.00am to 1.00am, Monday to Sunday (7 days a week), with 145 patrons on the premises at any time and a reduction in the associated car parking requirement of the Yarra Planning Scheme.**
-

Executive Summary

Purpose

1. This report provides Council with an assessment of an application at No. 267 Swan Street Richmond for buildings and works associated with the use of the land as a place of assembly (art and exhibition space), an ancillary retail space (as of right use), the sale and consumption of liquor (on and off the premises) between the hours of 10.00am to 1.00am, Monday to Sunday (7 days a week), with 145 patrons on the premises at any time and a reduction in the associated car parking requirement of the Yarra Planning Scheme.
2. The report recommends approval of the application subject to conditions.

Key Planning Considerations

3. Key planning considerations include:
 - (a) Clause 21.04 and 34.01 – Land Use and Commercial 1 Zone
 - (b) Clause 22.05 – Interfaces Uses Policy
 - (c) Clause 43.02 – Design and Development Overlay
 - (d) Clause 22.09 and Clause 52.27 – Licensed Premises
 - (e) Clause 53.06 – Live music and Entertainment Noise
 - (f) Clause 52.06 – Car Parking

Key Issues

4. The key issues for Council in considering the proposal relate to:
 - (a) Strategic Context
 - (b) Place of Assembly Use
 - (c) The sale and consumption of liquor
 - (d) Buildings and works
 - (e) Car parking and traffic
 - (f) Objector concerns

Submissions Received

5. Fifteen (15) objections, from fourteen (14) separate properties, were received to the application. The main concerns raised by objectors are summarised as:
 - (a) Car parking and traffic concerns.
 - (b) Noise, smoke and disturbance from the rear courtyard.
 - (c) Noise generated from music, mechanical equipment and waste collections/deliveries.
 - (d) Privacy concerns.
 - (e) Off-site amenity impacts, including littering and anti-social behaviour.

(f) Inappropriate use in the local context.

6. One letter of support was received for the application.

Conclusion

7. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to conditions as detailed within the 'recommendation' section of this report.

8. The conditions relate to music noise, maximum patronage, the use of the outdoor courtyard and waste management.

CONTACT OFFICER: Jessica Sutherland
TITLE: Statutory Planner
TEL: 9205 5365

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- 1.4 PLN19/0624 - 267 Swan Street Richmond - Buildings and works associated with the use of the land as a place of assembly (art and exhibition space) and an ancillary retail space (as of right use), the sale and consumption of liquor (on and off the premises) between the hours of 10.00am to 1.00am, Monday to Sunday (7 days a week), with 145 patrons on the premises at any time and a reduction in the associated car parking requirement of the Yarra Planning Scheme.**
-

Reference: D20/66874
 Authoriser: Coordinator Statutory Planning

Ward: Melba Ward

Proposal: Buildings and works associated with the use of the land as a place of assembly (art and exhibition space), an ancillary retail space (As of right use), the sale and consumption of liquor (on and off the premises) between the hours of 10.00am and 1.00am, Monday to Sunday (7 days a week), with 145 patrons on the premises at any time and a reduction in the associated car parking requirement of the Yarra Planning Scheme.

Existing use: Vacant showroom (retail).

Applicant: Bernie Clifford

Zoning / Overlays: Commercial 1 Zone
 Design and Development Overlay (Schedule 5 and Schedule 17-3).

Date of Application: 13 September 2019

Application Number: PLN19/0624

Planning History

1. Planning Application PL06/0733 was submitted to Council on 22 August 2006 for the construction of a flu and display of advertising signage. The application was withdrawn on 12 September 2006.
2. The site has no other planning history.

Background

3. The subject application was received by Council on 13 September 2019.
4. The application was advertised in January 2020 and 15 objections (from 14 separate properties) were received. One letter of support was received.
5. A consultation meeting was held on 10 March 2020 and was attended by six (6) objectors, the Applicant and Council Officers to discuss all issues and concerns raised in the letters of objection. Following the meeting, the applicant emailed Council Officers, offering the following conditions of permit to address matters raised:
 - (a) Total patrons reduced to 110 (from 145).
 - (b) Packaged liquor to be sold between the hours of 10.00am – 11.00pm Monday to Sunday.
 - (c) Additional management procedures, including:
 - (i) Staggered exit of patrons.
 - (ii) No ingress or egress from rear laneway.
 - (iii) Patrons will be required to book or register their attendance for art exhibitions (inclusive of free events).

- (iv) Booking confirmation will include the note – “no parking in residential side streets”.
 - (v) Exhibiting artists will be offered pre-arranged car parking or taxi vouchers.
 - (vi) Car-share apps, taxis and public transport will be promoted and encouraged.
6. The aspects of the proposal and associated recommendations will be discussed further throughout this report.

The Proposal

7. This application is for buildings and works associated with the use of the land as a Place of Assembly (art and exhibition space) and an ancillary retail space, the sale and consumption of liquor (on and off the premises) between the hours of 10.00am to 1.00am, Monday to Sunday (seven days a week) with 145 patrons on the premises at any time and a reduction in the associated car parking requirement of the Yarra Planning Scheme.

Buildings and works

- 8. Internal alterations and fit-out, including acoustic treatments (no permit required)
- 9. Construction of a landing and disability ramp to the courtyard exit and widening of the doorway to 850mm.
- 10. Construction of a 4 metre high, 300mm thick, acoustic green wall on the northern boundary to the laneway, internal to the retained boundary wall and gates. A mesh trellis is constructed above the proposed wall, angling into the site at 45 degrees and resulting in an overall height of 4.7 metres above ground level.
- 11. Minor external buildings and works to the existing building, including:
 - (a) The installation of guttering, hot water services, air-conditioning unit.
 - (b) Stud wall infill of the external door of the unisex WC.
 - (c) The western wall of the courtyard finished with Corten steel cladding.
 - (d) Seats provided in the courtyard.
 - (e) Replace existing skylights with double glazing.

Use

- 12. Use of the site as a Place of Assembly (multi-arts exhibition) and associated retail space.
- 13. The exhibition space would include (but not be limited to) performances, screenings, exhibitions, fashion shows, book readings and presentations.
- 14. The retail space will sell products associated with the exhibition or artists/art and will include (but not be limited to) art, books, clothing, films, records and workshops.
- 15. The use seeks to be able to operate between the hours of 10.00am – 1.00am (the following day) seven days a week. It is noted however, that due to the nature of the use, the actual times that the venue will be open will be dependent on the performances/exhibitions schedule. The Applicant has indicated they require flexibility but typically the venue will not be open at all times or all days of the week.
- 16. Amplified performances and live music will occur between the hours of 10.00am – 10.00pm Monday to Wednesday and 10.00am – 11.00pm Thursday to Saturday.
- 17. A maximum of 145 patrons. It is noted that the Applicant has agreed to reduce this to 110 via condition which will be addressed in the *Assessment* section of this report.
- 18. No more than 25 patrons in the external courtyard between the hours of 10.00am – 10.00pm with a maximum of 3 persons permitted (for smoking or otherwise) in the courtyard after 10.00pm. No amplified music is to be played externally.

Sale and consumption of liquor

19. The sale of packaged liquor and the service of alcohol for consumption on the premises will occur between the hours of 10.00am – 1.00am the following day, seven days a week. As indicated above, due to the unique nature of the use the actual times alcohol is served will be intermittent and will not likely be at all times or all days.
20. No food service proposed but the applicant indicated at the consultation meeting that food will often be available in association with particular exhibitions. This would be through external catering.

General

21. No car parking spaces are provided on site.
22. Two bicycle spaces are provided in the rear courtyard.

Existing Conditions

Subject Site

23. The site is located on the northern side of Swan Street, approximately 300 metres east of Church Street, in Richmond. The subject site (formally known as Lot 3 on Plan of Subdivision 448832D) has a frontage to Swan Street of 6.71 metres and a site depth of 30.48 metres, yielding an overall site area of 204sqm. The site is bound by an unnamed laneway to the rear (north).
24. The site is developed with a single storey, rendered commercial building (previously in use as a retail showroom). The building is constructed to the western boundary for its entire length, to the eastern boundary for a length of 13.2 metres and set back from the eastern title boundary by 900mm for the remainder. The building presents a relatively flat parapet and glazing with central glazed doors to Swan Street
25. A paved courtyard, 25sqm in area, is located at the rear, north-east corner of the site. The outdoor area is provided with a gate which allows access to the rear unnamed laneway.



Image 1: The subject site as it appears to Swan Street.

Surrounding Land

26. The subject site is located within the Swan Street Major Activity Centre (**MAC**) which provides a range of retail premises, food and drink premises and offices along Swan Street. North of the MAC are residentially zoned areas predominantly characterised by a mix of single storey, Victorian-era dwellings and some contemporary infill.

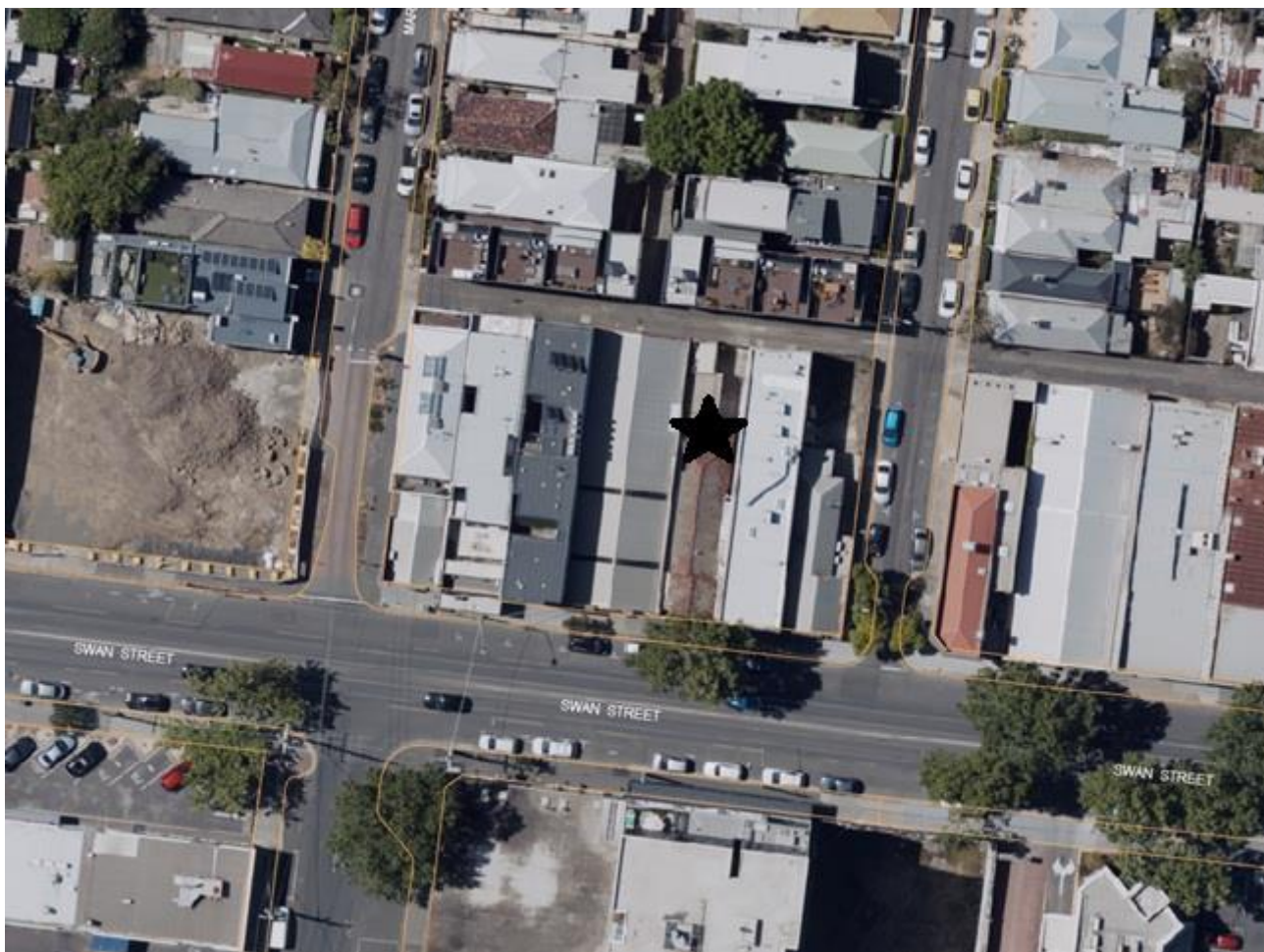


Image 2: aerial of subject site and surrounds

West

27. The properties along the northern side of Swan Street are zoned Commercial 1 Zone and are characterised by fine grain commercial uses and residential dwellings (above or behind).
28. Immediately to the west is No. 265 Swan Street which is developed with a single storey, red brick commercial building occupied by a retail premises (furniture). The building is constructed to all site boundaries, covering 100% of the site. No windows or outdoor areas present to the subject site.
29. Further west is No. 261 Swan Street which is developed with a contemporary, four storey mixed-use building (as approved under PLN13/0378). The building is occupied by a retail premises at ground floor and residential dwellings above. No windows face east towards the subject site; however, the apartments are provided terraces, one of which (semi-open balcony) presents to the rear laneway.
30. The building is provided two car parking spaces and a bin storage area as accessed from the laneway.
31. Beyond is Nos. 259 and 255 Swan Street, the latter of which is situated on the corner to Mary Street, 32 metres from the subject site.

32. No. 259 Swan Street is developed by a single storey commercial premises with a contemporary addition to the rear which is occupied by two residential dwellings (as approved under Planning Permit PL04/0806).
33. No. 255 Swan Street is developed with a single storey commercial premises fronting Swan Street and two, three storey residential premises fronting west to Mary Street.

East

34. Immediately to the east is a double storey, rendered commercial building which is occupied by a food and drinks premises (restaurant) at ground floor and a massage parlour at first floor. The building is constructed to all site boundaries, covering 100% of the site. No windows or outdoor areas present to the subject site.
35. The building presents a semi-enclosed 'alfresco dining' area to Swan Street at ground floor (as visible in image 3) and has a car garage and bin storage area presenting to the rear laneway.
36. The ground floor food and drinks premises (restaurant) has an on-premises liquor licence (as approved under Planning Permit PLN16/0803) and is permitted to have no more than 70 patrons on the land at any time and to serve alcohol between the following hours:
 - (a) Sunday to Wednesday, 12 noon to 11.00pm;
 - (b) Thursday to Saturday, 12 noon to 1am the following day; and
 - (c) Thursday to Saturday, 12 noon to 11.00pm for the alfresco dining area.

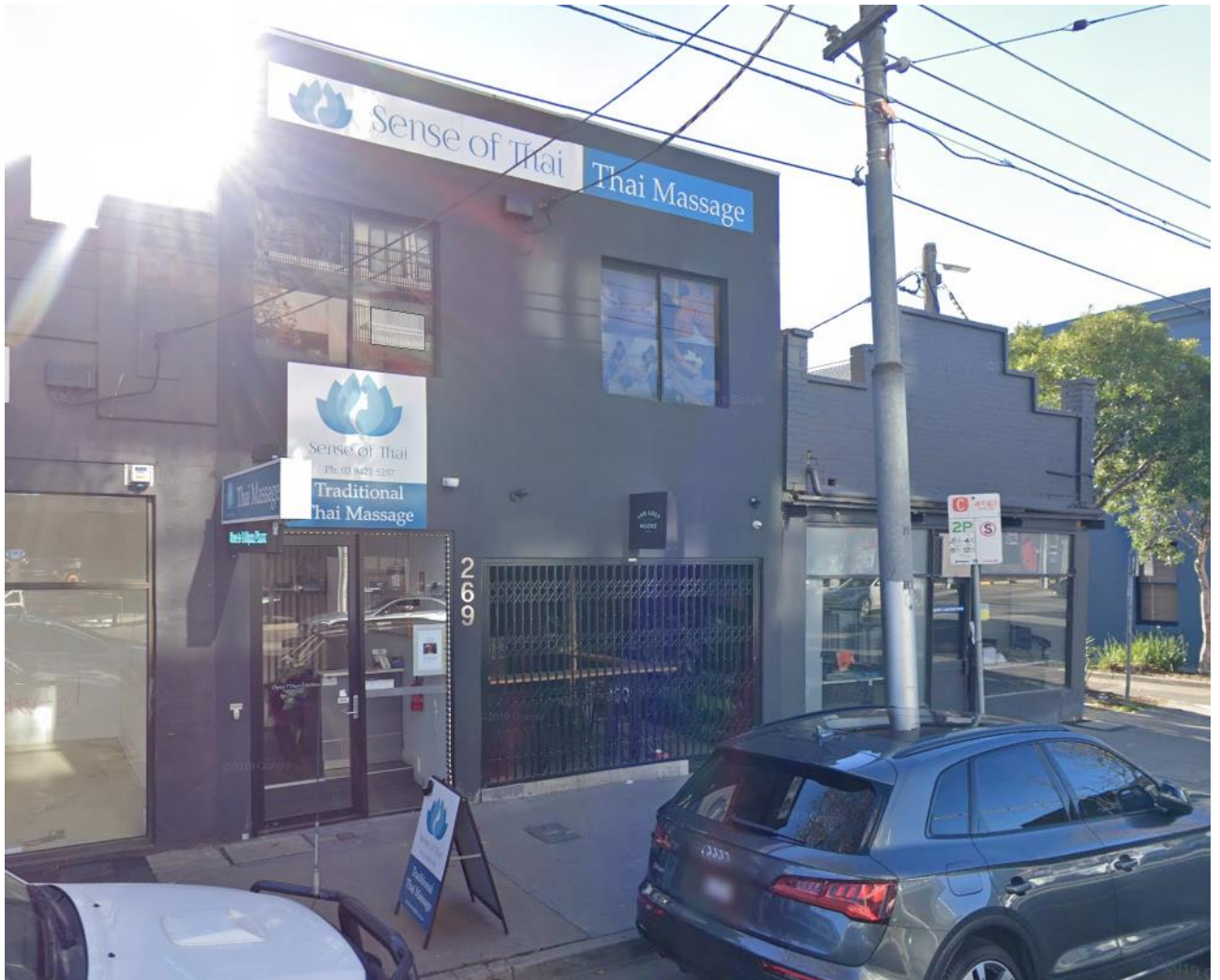


Image 3: No. 269 Swan Street as it appears to Swan Street

37. Further east is No. 271 Swan Street which is developed with a single storey, commercial building situated on the corner to Bell Street. The building is occupied by an Office.
38. Planning Permit PLN14/1486 was issued on 31 July 2015 for the site and allows the development of the land for a mixed-use (shop and residential), four-storey building, a reduction in the car parking requirements and a waiver of the loading bay requirements of the Yarra Planning Scheme. Although works have not commenced, the permit is still live (due to expire on 31 July 2020).

North

39. To the north of the subject site is the unnamed laneway and beyond is land zoned General Residential Zone.
40. Immediately opposite the subject is No. 48 Bell Street which is developed with three, two storey dwellings with roof terraces (as approved under PLN11/0470). The dwellings front north with access provided from Bell Street to the east.
41. The dwellings have windows constructed to the laneway (associated with open living and dining areas) at first floor (as is visible in Image 4). Highlight windows associated with ground floor bedrooms are also provided to the laneway. The roof terraces above are bound by 1 metre high parapets.



Image 4: The laneway to the north of the subject site, the dwelling at No. 48 Bell Street to the right

South

42. Properties along the southern side of Swan Street are zoned Commercial 1 Zone and are characterised by larger allotments and commercial uses including retail showrooms and a convenience restaurant (KFC).
43. Immediately opposite the subject site, at No. 306 – 312 Swan Street, is a seven storey building (as approved under PLN13/0933) which is occupied by retail premises at ground floor and apartments above.
44. The dwellings present balconies, a distance of 20 metres from the subject site, to Swan Street at levels 1 – 7.
45. *General surrounds*
46. The area is well serviced by public transport with trams running along Swan Street, between south-eastern suburbs (Vermont South and Wattle Park) and the city, and along Church Street (300 metres west of the site) which connects North Richmond and Prahran.
47. The subject site is also within walking distance of East Richmond Station (400 metres) which is serviced by multiple train lines.
48. Available car parking in the immediate area consists of:
 - (a) 2 hour parking on the northern side of Swan Street, between the hours of 8.30am – 4.30pm on weekdays and 8.30am – 12.30pm Saturday. It is a clearway on weekday evenings and unrestricted at other times.
 - (b) 2 hour parking on the southern side of Swan Street, between the hours of 9.15am – 5.30pm on weekdays and 8.30am – 12.30pm Saturday. It is a clearway on weekday mornings and unrestricted at other times.
 - (c) 2 hour parking on the western side of Bell Street between 7am – 6pm every day of the week. Permit parking at all other times.
 - (d) 2 hour parking on the eastern side of Bell Street between 7am – 7pm Monday to Saturday. Unrestricted at all other times.
 - (e) 2 hour parking on the western side of Mary Street between 7am – 7pm Monday to Saturday. Unrestricted at all other times.
 - (f) The eastern side of Mary Street is permit parking only.
49. Other licenced premises within immediate include:
 - (a) Union house, No. 270 - 272 Swan Street, which has an on-premises license allowing alcohol to be sold until 1am and a maximum of 328 patrons.
 - (b) No. 221 Swan Street has a restaurant and cafe license with the operating hours of 11.00am – 11.00pm, seven days a week, and a maximum 192 patrons (approved under PLN17/1016 but has not yet commenced).
 - (c) Central Club Hotel, No. 291 Swan Street, which benefits from existing use rights and operates until 1am every day of the week.

Definitions

Place of assembly

50. Pursuant to Clause 73.03 (Land Use Terms) of the Yarra Planning Scheme (**the Scheme**), Place of Assembly is defined as *land where people congregate for religious, spiritual or cultural activities, entertainment, or meetings* and includes cinema-based entertainment facilities, exhibition centres, art galleries and function centres.

51. Given the nature of the use as an arts and exhibition space, the use is considered to be best defined as 'Place of Assembly'. However, the use only incorporates an art gallery, exhibition centre and function centre, and as such, will be defined as 'Place of Assembly (arts and exhibition space) on any permit issued.

Ancillary use

52. The planning Scheme does not define "ancillary uses", however, VCAT case *Reginald and Pyrenne Alphonso v. Casey CC (2005) 529* defines an ancillary use as an "adjunct" use to the primary (permitted or as of right) use. Points of relevance from the case include:
- (a) "Ancillary activities are not regarded, in planning terms, as a separate use of the land for which planning permission might be required" (paragraph 16, page 7).
 - (b) An ancillary use may be notably different from the permitted use and may be deemed uncommon or unnecessary to the primary use.
 - (c) Whether a use is ancillary or a secondary use should be defined on a case by case basis with consideration to the scale of the activity.

Planning Scheme Provisions

Zoning

Commercial 1 Zone

53. Pursuant to Clause 34.01-1 of the Scheme, Place of Assembly is a Section 2 use; hence, the proposed use requires a planning permit.
54. Although considered ancillary in this instance, pursuant to Clause 34.01-1, the use of the land as a retail premises (shop or bar) is an as of use right and would not require planning permission.
55. Pursuant to Clause 34.01-4 of the Scheme, a planning permit is required to construct a building or construct or carry out works. This does not however include the following works as they are exempt pursuant to Clause 62.02-2 of the Scheme:
- (a) *A disabled access ramp.*
 - (b) *Services normal to a building other than a dwelling, including chimneys, flues, skylights, heating and cooling systems, hot water systems, security systems and cameras, downpipes, window shading devices, or similar.*
 - (c) *Repairs and routine maintenance to a building.*
56. Thus, the buildings and works requiring a permit include the construction of the acoustic green wall, widening of the doorway to the courtyard and the installation of Corten cladding to the western wall of the courtyard.

Overlays

Design and Development Overlay (Schedule 5 and 17)

57. Pursuant to Clause 43.02-2, a permit is required to construct a building or carry out works, unless otherwise stated in a Schedule to this Overlay.

Schedule 5

58. Clause 2.0 of Schedule 5 of the Overlay specifies that a permit is not required to construct or carry out works.
59. Pursuant to Clause 4.0 of Schedule 5 of the Overlay, where a permit is required to use the land or for the construction or carry out works under the provision in this scheme, notice must be given under section 52(1)(c) of the Planning and Environment Act 1987 to the person or body to be notified in Clause 66.06 or a schedule to that clause.
60. Notice of the application must therefore be given to the Environment Protection Authority, Transurban City Link Limited and the Roads Corporation (VicRoads). Notice was given and their comments are provided in the *Referrals* attachment to this report.

Schedule 17 (precinct 3)

- 61. A permit is required to construct a building or carry out works as Schedule 17 does not specifically state otherwise.
- 62. Clause 2.2 of Schedule 17 of the Overlay outlines general design requirements that apply to an application to construct and carry out works largely relating to building heights, street wall heights and setbacks and overshadowing. Due to the minor nature of the buildings and works, the requirements are not relevant to the proposal.
- 63. The proposal is not contrary to any design requirements or guidelines of the Schedule.

Particular Provisions

Clause 52.06 – Car Parking

- 64. This policy applies to a new use and requires that, pursuant to Clause 52.06-2, before a new use commences the number of car parking spaces required under Clause 52.06-5 must be provided to the satisfaction of the responsible authority.
- 65. Table 1 of this clause sets out the car parking requirements that applies to the use (summary provided below). In this instance, column B applies as the site is within the Principal Public Transport Network Area as shown on the *Principal Public Transport Network Area Maps* (State Government of Victoria, August 2018).

Use	Patrons	Rate	No. required	No. proposed	Reduction sought
Place of Assembly	145 patrons	0.3 car parking spaces to each patron permitted	43	0	43

- 66. No car parks are provided on the land, thus, pursuant to Clause 52.06-3, a permit is required to reduce (including reduce to zero) the number of car parking spaces required under Clause 52.06-5.

Clause 52.34 – Bicycle Facilities

- 67. Pursuant to Clause 52.34-1, a new use must not commence until the required bicycle facilities and associated signage has been provided on the land.
- 68. Table 1 at Clause 52.34-5 requires that bicycle facilities be provided for a Place of Assembly if the premises is larger than 1,500sqm. As the subject site is 204sqm the requirements of the provision are not triggered.
- 69. Two bicycle spaces are been provided on site regardless.

Clause 52.27 Licensed Premises

- 70. Pursuant to Clause 52.27 of the Scheme, a planning permit is required to use the land to sell or consume liquor if a licence is required under the *Liquor Control Reform Act 1998*. The requirement to obtain a planning permit is therefore triggered under Clause 52.27 of the Scheme.

Clause 53.06 – Live music and entertainment noise

- 71. Clause 53.06 applies to an application required under any zone of this scheme to use land for a live entertainment venue.
- 72. Pursuant to Clause 53.06-2, a live music entertainment venue means *a food and drinks premises, nightclub, function centre or residential hotel that includes live music entertainment or a rehearsal studio*.

73. The policy requires that a live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.
74. Pursuant to Clause 53.06-3, a permit may be required to reduce or waive these requirements if the responsible authority is satisfied that an alternative measure meets the purpose of this clause.
75. The policy will be discussed further in the *Assessment* section of this report.

General Provisions

76. Clause 65 – Decision Guidelines
77. 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.

Planning Policy Framework (PPF)

Clause 11.03-1S – Activity Centres

78. The objective of this clause is:
 - (a) *To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centre that are highly accessible to the community.*

Clause 13.05-1S – Noise Abatement

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

Clause 13.07-1S – Land use compatibility

80. The objective of this clause is:
 - (a) *To safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects.*

Clause 15.01-2S – Building design

81. The objective of this clause is:
 - (a) *To achieve building outcomes that contribute positively to the local context and enhance the public realm.*

Clause 15.01-5S – Neighbourhood Character

82. The objective of this clause is:
 - (a) *To recognise, support and protect neighbourhood character, cultural identity, and sense of place.*

Clause 17.01-1S – Diversified economy

83. The objective of this clause is:
 - (a) *To strengthen and diversify the economy.*
84. The relevant strategies set out to achieve this objective include:
 - (a) *Facilitate growth in a range of employment sectors, including health, education, retail, tourism, knowledge industries and professional and technical services based on the emerging and existing strengths of each region.*
 - (b) *Improve access to jobs close to where people live.*

Clause 17.02-1S – Business

85. The objective of this clause is:
- (a) *To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.*
86. The relevant strategies set out to achieve this objective includes:
- (a) *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.*
 - (b) *Locate commercial facilities in existing or planned activity centres.*

Clause 18.02-1S – Sustainable personal transport

87. The objective of this clause is:
- (a) *To promote the use of sustainable personal transport.*

Clause 18.02-2S - Public transport and Clause 18.02-2R – Principal public transport network

88. The objective of these clauses is:
- (a) *To facilitate greater use of public transport and promote increased development close to high-quality public transport routes.*

Clause 19.02-3S – Cultural facilities

89. The objective of this clause is:
- (a) *To develop a strong cultural environment and increase access to arts, recreation and other cultural facilities.*
90. The strategies set out to achieve this objective are:
- (a) *Encourage a wider range of arts, cultural and entertainment facilities including cinemas, restaurants, nightclubs and live theatres in the Central City and at Metropolitan Activity Centres.*
 - (b) *Reinforce the existing major precincts for arts, sports and major events of state wide appeal.*
 - (c) *Establish new facilities at locations well serviced by public transport.*

Local Planning Policy Framework (LPPF)

Clause 21.02 – Municipal profile

Activity Centres

91. This clause recognises “Yarra’s vibrant Major Activity Centres, being the retail strips of Brunswick, Smith, Victoria and Swan Streets and Bridge Road” and contributes “these activity centres [as] a vital part of Yarra’s culture”.
92. The profile discusses the regional role of Yarra’s Major Activity Centres and envisions that the emerging character of these centres will be an “aggregation of niche offerings in fashion, hospitality, entertainment, and homewares”.

Arts and culture

93. “Yarra’s role as a centre for live music is widely acknowledged, along with the capacity of Yarra’s music venues to support emerging musicians. Yarra is also known for the number of diversity of commercial and community arts and cultural facilities located in the municipality, in particular the number of commercial art galleries”.

Clause 21.03 – Vision

94. A key vision for the city of Yarra is to include land use that:
- (a) *Will accommodate a diverse range of people, including families, the aged, the disabled, and those who are socially or economically disadvantaged.*

Clause 21.04 – Land Use

Clause 21.04-2 Activity Centres

95. The relevant objectives of this clause include:

(a) *To maintain the long term viability of activity centres.*

(b) *To encourage the arts and art venues.*

Clause 21.04-3 – Industry, office and commercial

96. The objective of this clause is:

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

Clause 21.06 - Transport

Clause 21.06-2 – Public transport

97. The objective of this clause is:

(a) *To facilitate public transport usage.*

98. The strategy set out to achieve this objective is:

(a) *Require new development that generates high number of trips to be easily accessible by public transport.*

Clause 21.08 – Neighbourhoods

Clause 21.08-2 – Burnley, Cremorne, South Richmond

99. The subject site is identified to be on the periphery of 'Swan Street east' which is recognised in the clause as follows:

(a) *This precinct begins at Mary Street in the west and extends to Loyola Grove. It includes Burnley Station. It comprises larger showrooms and offices, with a focus on furniture and renovation stores and building supply businesses.*

100. Figure 7 (Neighbourhood Map) at Clause 21.08-2 identifies the site to be located in the Swan Street Major Activity Centre (SMAC).

Relevant Local Policies

Clause 22.05 – Interface uses policy

101. This policy applies to applications for use or development within Commercial 1 Zones (amongst others).

102. The relevant objective of this clause is:

(a) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.*

Clause 22.09 – Licensed Premises

103. This policy applies to an application under Clause 52.27 (Licensed Premises).

104. 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 the reasonable commercial opportunities for the trading of licensed premises.*

Advertising

105. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 171 letters sent to surrounding owners and occupiers and by a sign displayed on site. Council received 15 objections, the grounds of which are summarised as follows:
- (a) Car parking and traffic concerns.
 - (b) Noise, smoke and disturbance from the courtyard.
 - (c) Noise generated from music, mechanical equipment and waste collection/deliveries.
 - (d) Privacy concerns.
 - (e) Off-site amenity impacts, including littering and anti-social behaviour.
 - (f) Inappropriate use of the land in the local context.
106. One (1) letter of support was received by Council, the grounds of which are summarised as follows:
- (a) The proposed use offers a unique venue for the area which will enhance culture and amenity.
 - (b) Noise and car parking issues not expected to be a concern.
107. A planning consultation meeting was held on 10 March 2020 and attended by six (6) objectors, the Applicant and architect, and Council Officers to discuss all issues and concerns raised in the letters of objection. As previously discussed, the Applicant accepted various conditions of permit to address the concerns raised, through an email to the Council Officer.
108. Nonetheless, the Applicant did not formally amend the proposal, and as such the proposal, as originally submitted to Council and advertised in January 2020, forms the basis of assessment and decision.

Referrals

External Referrals

109. The application (as advertised in January 2020) was referred to the following authorities:
- (a) Roads Victoria (VicRoads) – no objection
 - (b) Environmental Protection Authority (EPA) – no objection
 - (c) Transurban – no response
110. The referral responses received have been included as attachments to this report.

Internal Referrals

111. The application (as advertised in January 2020) was referred to the following units within Council:
- (a) Compliance (Community Amenity)
 - (b) Social Planning Unit
 - (c) Waste Management Unit
 - (d) Civil Engineering Unit
112. Referral comments have been included as attachments to this report.

External Consultants

113. The advertised Acoustic Report (dated 19 November 2019 and prepared by Marshall Day Acoustics) was referred to SLR Consulting (Acoustic Engineers).

114. Following the review and comments provided by SLR consulting (on 17 January 2020), the applicant submitted a revised Acoustic Report (dated 23 January 2020 and prepared by Marshall Day Acoustics) to Council.
115. Both Acoustic reports and all referral comments from SLR consultants have been included as attachments to this report. The final Acoustic Report (dated 23 January 2020 and prepared by Marshall Day Acoustics) will form the basis of the assessment and decision.

OFFICER ASSESSMENT

116. The primary considerations for this application are as follows:

- (a) Strategic justification
- (b) Place of assembly use
- (c) Sale and consumption of liquor
- (d) Buildings and works
- (e) Car parking and traffic
- (f) Objector concerns

Strategic justification

117. There is strong policy support within the State and Local Planning Policy Frameworks for a use of this nature in this location, given the commercial zoning and that the site is located within a highly accessible Major Activity Centre (**MAC**).
118. The application is for a Place of Assembly (arts and exhibition space) and the associated sale and consumption of liquor, both on and off the premises. The specific implications of the use and the sale and consumption of liquor will be discussed further in this report, with particular regard to the purpose of the Commercial 1 Zone and interface to residential dwellings. The operation of the proposal will be considered against cumulative impact, off-site amenity impacts and the land use conflicts of the area.
119. Nonetheless, turning our mind solely to the location of the proposed use, it is considered to have strategic support given the state and local planning policies encourage the concentration of commercial and entertainment uses in and near Major Activity Centres, such as Swan Street, which are well connected to public transport and benefit from existing infrastructure (clauses 17.02-1S, 17.02-2S and 18.02-2R). The subject site is located within the Swan Street MAC and benefits from access to various sustainable transport modes including trains from East Richmond Station (400 metres from the site) and trams along Swan Street and Church Street.
120. The commercial zoning of the land aims to *create vibrant mixed use commercial centres, for retail, office, business, entertainment and community uses*, an objective that is further reinforced by policies within the Yarra Planning Scheme that encourage the strengthening of Yarra's entertainment and cultural offerings (such as the proposed use), particularly in already established commercial precincts (clauses 17.02-1S, 19.02-3S, 21.02, 21.03 and 21.04-2). As stated in Clause 21.04-2 (Activity Centres), *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 the municipality*. One of the objectives of Clause 21.04-2 specifically encourages arts and arts venues within Yarra's Activity Centres.
121. Finally, Clause 17.01-1S (Diversified economy) and Clause 21.04-3 (Industry, office and commercial) encourage growth that strengthens and diversifies the economy and job opportunities with Yarra, stating that growth *improve[s] access to jobs closer to where people live*. As discussed, the site is highly accessible, is zoned for commercial use and is near to where people live, thereby providing for an appropriate location for the proposed use.

Place of assembly use

122. It should be noted, that although the sale and consumption of liquor is proposed, in this instance, the use is not classified as a bar as the sale of liquor will not occur independently to the primary use of the site for pre-booked / ticketed exhibitions (Place of Assembly). The sale and consumption of liquor will only operate in conjunction with the proposed events and exhibitions. If a permit is issued a condition is to be included to this affect.
123. In this instance, the bar and retail space are considered to be ancillary activities to the primary use. In any case, the use of the site as a retail premises (which encompasses a Bar and Shop) is as of right in the Commercial 1 Zone (C1Z) and thus would not require planning permission.
124. The classification of the proposed use as a Place of Assembly regulates all the proposed activities on the site to ensure they will be appropriately managed. Although the proposal is required to be formally categorised for planning purposes, in reality it includes a diverse range of offerings including performances, film screenings, art exhibitions, fashion shows, book readings and presentations.

The proposal is representative of the emerging character and “niche” entertainment offerings as identified in the City of Yarra’s vision for Major Activity Centres (Clause 21.02). Moreover, the applicant (who also works as a disability consultant) has designed both the physical space, as well as the variety of sensory experiences on offer, so that it is highly accessible to people with disabilities - reflective of Yarra’s broader values for inclusivity and to accommodate a wide range of people (Clause 21.03 Vision).

125. A broader discussion of the appropriateness of the use will be guided by the purpose and decision guidelines of the C1Z at *Clause 34.01-8* and the requirements of the interface uses policy at *Clause 22.05* of the Scheme.
126. Clause 22.05 (Interface uses policy) of the Scheme identifies that there is a need to support commercial uses and ensure they are well managed with regard to amenity impacts and their proximity to residential uses. As demonstrated above, the location of the proposed use is supported in a strategic sense; however, these policies also recognise that when residents are continually located in and nearby to the commercial area, there are *inherent interface conflicts [resulting] where some uses are not well managed or inappropriate uses are permitted* (Clause 21.04-2 Activity centres). As such, Clause 22.05 requires that new non-residential use and development within Commercial zones is designed to minimise noise and amenity impacts upon nearby, existing residential properties. The policy includes various considerations, with decision guidelines (relevantly) relating to noise, light spill, loading and unloading, rubbish removal and storage and other potential operational disturbances that may cause detriment to the amenity of nearby residential properties. These requirements are further recognised by the objectives of the Commercial 1 Zone and will be discussed in more detail below.

Noise

127. The key considerations of noise emissions relevant to the application relate to live music and amplified music and sounds, patron noise and mechanical equipment. Each aspect will be discussed in turn. The decision guidelines of Clause 53.06 (Live music and entertainment noise) will also be relied upon.
128. For clarity, only the most recent revision of the Acoustic Report (prepared by Marshall Day and dated 23 January 2020) will be discussed. The report is based on the use operating between the hours of 10.00am to 1.00am (the following day) seven days a week with a maximum of 145 patrons on the premises at any one time.
129. The report considered patron and music noise to the closest residential use, that being No. 48 Bell Street which is situated across the rear laneway, 3.6 metres from the rear boundary of the subject site.
130. SLR Acoustic Consultants, who reviewed the report on behalf of Council, raised no concerns with the location of the receiver.

Music noise

131. The Acoustic report identifies that the music to be played within the gallery/exhibition space will include pre-recorded amplified music and live music provided by small acoustic type duos or trios. The report commits to no music being played in the courtyard and a condition should be included on any permit issued requiring this.
132. To ensure that the music noise does not result in an unreasonable impact to the nearby residential uses, the following acoustic treatments and controls were recommended (at paragraph 10.0 of the report):
 - (a) The gallery spaces to include absorptive treatments in the ceiling.
 - (b) A dedicated PA system with music noise limiter must be used and it must be calibrated by a qualified acoustic engineer.
 - (c) Doors separating the gallery exhibition space to the rear gallery space must incorporate acoustic seals and remain closed when live music is being performed. The door must have an acoustic performance of R_w30 .
 - (d) Live music should not be played past 11.00pm Thursday to Saturday and after 10.00pm Sunday to Wednesday. Live music noise should not exceed L_{A10} 93 dB within the venue. This type of limitation would allow small jazz bands, a cappella choirs, acoustic groups, such as string or woodwind ensembles or ukulele groups.
133. The report calculated, based on background noise levels recorded (between 18 to 28 October 2019), that a noise limit of 51 dBA L_{10} for the day/evening period and 47 dBA L_{eq} for night period would demonstrate compliance with the State Environment Protection Policy No. N-2 (SEPP N-2 *music noise limits*) at the receiver at No. 48 Bell Street. SLR consultants agreed that these noise limits are reasonable.
134. The report goes on to predict that, based on the above treatments being installed, the live and amplified music will comply with the day and evening noise limit of 51 dBA L_{10} , however, the music would exceed the night-time limit. As such, the live and amplified music should only occur in the day and evening period to ensure that nearby residential uses are not unreasonably impacted by music noise. A condition should be included on any permit issued requiring that live and amplified music should only occur between the hours of 10.00am – 10.00pm Sunday to Wednesday and 10.00am – 11.00pm Thursday to Saturday.
135. Moreover, as it is predicted that an up-tempo jazz band would only achieve compliance with the SEPP N-2 day and evening period by a margin of 1dBA, SLR consultants recommend that post-construction testing be conducted to determine that the live music limit of L_{A10} 93 dB (as committed to in the applicants acoustic report) will in fact demonstrate compliance with the SEPP N-2 noise limit.
136. As such, a condition should be included on any permit issued requiring that within 3 months of completion, an acoustic report should be prepared to confirm compliance is achieved and, where necessary, make recommendation to further limit the noise impacts.
137. Finally, pre-recorded music is proposed in the main and rear (internal) galleries. Background music is proposed at levels 67 -70 dBA to comply with night period SEPP N-2 noise limits. The report recommends use of a music limiter to be set to the levels committed to. SLR consultants support this but recommend that the following details are added:
 - (a) Commissioning be conducted by a qualified acoustic consultant; and
 - (b) Limiter settings based on music played simultaneously in the front and rear gallery areas.
138. A condition should be included on any permit issued requiring that the Acoustic Report (prepared by Marshall Day and sated 23 January 2020) be amended to include these requirements.
139. More generally, Council's standard condition requiring compliance with SEPP N-2 should be included on any permit issued.

140. It is noted that all physical measures committed to in the Acoustic Report have been shown or notated in the decision plans; however, a condition should be included on any permit issued requiring the plans to reference the most recent Acoustic Report, dated 23 January 2020, in lieu of the report dated 19 November 2019.
141. Subject to conditions, and post-construction testing, it is considered that the nearby residential uses will be satisfactorily protected from unreasonable live music and entertainment noise, as encouraged by Clause 53.06-5 (Live music and entertainment venues).

Patron noise

142. There are currently no legislative controls or noise guidelines which can be applied to assess patron noise from the external courtyard, therefore Marshall Day relied on a background-based limit to determine the levels of patron noise that may be acceptable. Thus, the patron noise limit for the day and evening period is the L_{90} background level plus 10 dB and the night period limit is the L_{90} background level plus 5 dB. SLR were satisfied with this assessment approach and agreed with the patron noise limits calculated.
143. Marshall Day employed environmental noise modelling software to predict patron noise levels at the receiver at No. 48 Bell Street, based on the following occurring:
- (a) A maximum of 25 patrons in the rear courtyard (with a source noise level of 82 dBA L_{eq} and 101 dBA L_{max})
 - (b) A noise barrier with a height of 4.7 metres (including the angled top section).
144. The predicted levels of patron noise, based on the modelling, comply with the calculated patron noise limits for the daytime and evening period, but not for the night-time period. As such, the report recommends that the no more than 3 people are allowed in the external courtyard area in the night time period (that being after 10.00pm on any night).
145. The condition requiring post-construction testing should also confirm compliance with the patron noise limits as set out at paragraph 7.3 of the Acoustic Report (prepared by Marshall Day and dated 23 January 2020).
146. A condition should also be included on any permit issued requiring that a maximum of 25 patrons are permitted in the external courtyard with no more than 3 patrons permitted in the area after 10.00pm.
147. Subject to conditions, and post-construction testing, it is considered that the patron noise emitting from the courtyard will not adversely affect nearby sensitive uses.
148. Finally, consideration must also be given to patron noise and behaviour, external to the premises, on arrival and departure. Ingress and egress are directed to Swan Street, an active commercial strip and it is likely that patrons will depart by public transport or taxis/ride share from Swan Street and will avoid movement into quieter residential side streets or the rear laneway.
149. A condition should be included on any permit issued requiring that the rear gate to the laneway should not be used by patrons for ingress or egress.

Mechanical noise

150. Noise emissions from mechanical equipment must comply with the noise limits of the State Environment Protection Policy No. N-1 (SEPP N-1 *commerce, industry and trade*).
151. The Marshall Day report recommends that once the building has been refurbished, all mechanical equipment should be assessed to confirm compliance with SEPP N-1. As such, the post-construction report should also be required to confirm this.
152. Council's standard condition should be included on any permit issued requiring the use to comply with SEPP N-1.

Loading and unloading

153. Deliveries and collections from the site are expected to be of a smaller scale due to the nature of the use, and to include alcohol and retail products. It is also expected that exhibitions and music acts will be accompanied by instruments and art pieces.
154. The nearest loading zone is located at in front of No. 259 Swan Street (approximately 10 metres from the subject site), thus it is expected that all deliveries and collection products, art pieces and instruments can occur through the frontage to Swan Street.
155. Council's standard condition should be included on any permit issued requiring that the delivery and collection of goods to and from the land, including the collection and delivery of exhibition pieces or instruments, may only occur between 7am and 10pm Monday to Saturday, or after 9am on Sunday or public holiday.
156. Subject to condition, the loading and unloading of deliveries is not expected to unreasonably impact the amenity of nearby sensitive uses.

Light spill

157. The use is proposed to be largely contained within the existing building. The use of the site during the daytime will obviously bare no impact on neighbouring amenities with regards to light spill.
158. Although some external lights may be provided in the courtyard, this is not expected to result in an unreasonable light spill to nearby residential dwellings for the following reasons:
 - (a) Light spill from the use of the courtyard is expected to be consistent with a habitable use, that being ambient or white light, rather than strobe or colourful lighting which may be at odds with a residential area. A condition should be included on any permit issued requiring that no colourful or flashing lights (such as an art piece) be located in the external courtyard.
 - (b) The courtyard is buffered from nearby residential uses by the 4.7 metre high green acoustic wall and laneway beyond.

Waste management

159. A Waste Management Plan was submitted with the application detailing how waste will be stored and disposed of. The plan was referred to Council's Waste Management Unit who recommended that the plan be revised to include the following details:
 - (a) All waste to be collected (general, hard and green waste) to be collected by a private contractor.
 - (b) A bin store plan showing path and access and the allocated hard waste and e-waste area.
 - (c) The size of the bin store in sqm, as well as bin types and sizes.
 - (d) Expected waste volume for the site.
 - (e) An explanation of how risk (relating to waste management) will be managed.
160. Conditions should be included on any permit issued requiring the Waste Management Plan to be amended to include the above information and for any details to achieve these to be shown in plans.
161. It is expected that the waste resulting from the proposed use can be reasonably stored and managed within the eastern side setback without adversely affecting the amenity of the area.

Conclusion

162. Overall it is considered that the proposed Place of Assembly (arts and exhibition space) will complement the purpose of the Commercial 1 Zone and will increase employment opportunities and enhance culture in the area.

The proposed operating hours of the Place of Assembly of 10.00 am to 1.00am (the following morning), subject to conditions relating to music noise, waste, loading and unloading and the use of the outdoor courtyard, will not adversely impact the amenity of the neighbouring residential properties, and are therefore supported.

Sale and consumption of liquor

163. The assessment will be directed by the policy guidelines of Clause 52.27 (Licensed premises) and Clause 22.09 (Licensed premises – local policy) of the Scheme.
164. The application proposes:
 - (a) The sale of liquor for consumption on-site, in association with the use Place of assembly use:
 - (b) The sale of packaged liquor, in association with the ancillary retail use.
165. Each of these aspects will present different considerations. The sale of packaged liquor, in this instance, will only occur where it is specifically relevant to an art exhibition (ie the exhibited artist has designed the bottle label). The purchasing of packaged alcohol is therefore expected to be infrequent, very limited and will not occur independently from the primary use of the site as a Place of Assembly. For these reasons, the sale of liquor for off-site consumption is supported, subject to the condition to hour of operation as discussed later in this report.
166. With regards to the sale and consumption of liquor on the premises, an assessment will be carried out against the hours of operation, patron numbers and the decision guidelines of Clause 52.27 which require consideration of the cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area. The decision guidelines of Clause 22.09 and Clause 52.27 will be considered in turn.

Venue design

167. Licensed premises should ensure that:
 - (a) *The layout and design of new licensed premises incorporate safe design principles as detailed in the Design Guidelines for Licensed Venues (Victorian Commission of Gambling and Liquor Regulation 2017).*
 - (b) *The entry and exits points of a licensed premise and the areas for queuing of patrons are located away from sensitive land uses.*
 - (c) *Waste management and storage is provided on-site, and noise enclosures are provided where bottle crushers are to be used.*
168. The premises is an existing building, however, it continues to generally meet the relevant layout and design guidelines for the following reasons:
 - (a) The glazing to the street (associated with lounge and entry) provide opportunities for informal and passive surveillance of the street environment.
 - (b) The entry is clearly distinguishable, with no opportunities for concealment, such as recessed doors and alcoves provided.
 - (c) The entry is provided to Swan Street, away from the residential interface to the rear (north), providing safe and easy navigation for patrons to public transport, taxis and ride share.
 - (d) Unisex and ambulant bathrooms are provided internally to the building.
 - (e) Waste is proposed to be stored within the eastern setback of the building from the title boundary, where it abuts a solid boundary wall of a commercial premises.
 - (f) Smoking is permitted in the rear external courtyard where it is protected by high boundary walls and the proposed green acoustic wall. Patrons permitted to smoke in this area will be limited to a maximum of 3 after 10.00pm on any night.

Although smoke pollution from the courtyard was raised as a concern by objectors, Council Officer's support this arrangement as it will deter people from exiting the premises to smoke in public areas. Smoking within the premises allows noise and litter to be appropriately managed by the venue.

169. In addition, a condition is recommended to be included on any permit issued requiring a sign be erected at the exit of the venue to advise patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.

Hours of operation

170. The application proposes the sale and consumption of liquor to be carried out between 10.00am to 1.00am (the following day) seven days a week. Following the consultation meeting held on 10 March 2020, the Applicant offered (via email) for packaged liquor to be sold between the hours of 10.00am to 11.00pm, seven days a week.
171. Clause 22.09 (Licensed premises policy) provides the following guidelines, relevant to the proposal:
- (a) *Licensed Premises within 30 metres of a residential zone should not provide for the sale and consumption of liquor beyond 11pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
 - (b) *Packaged liquor outlets should not provide for the sale of liquor after 11pm.*
 - (c) *Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.*
 - (d) *For outdoor areas, including smoking areas, rooftops and open courtyards, the sale and consumption of liquor should not occur after 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
172. The revised hours for the sale and consumption of packaged liquor, as offered by the Applicant following the consultation meeting, comply with the relevant local policy guidelines and thus, should form the basis of a condition to any permit issued.
173. The hours of the sale of liquor for consumption on the premises do not meet the relevant policy guidelines and as such, should only operate beyond 11pm if the responsible authority is satisfied that it will not adversely affect the amenity of the area.
174. It is considered that the sale of liquor for consumption on the premises until 1am will not adversely affect the amenity of the area for the following reasons:
- (a) The events and exhibitions will be ticketed, thus deterring 'venue hopping' and late night queues to the venue. It also means that ingress and egress of patrons can be appropriately managed to limit adverse amenity impacts to nearby sensitive uses.
 - (b) The nature of the use for events and exhibits means the use will be intermittent and unlikely to occur on all nights of the week. The Applicant has stated that events and exhibitions are most likely to be on Thursday through to Saturday and the venue will likely to be closed on Monday nights. The proposed hours of 10.00am to 1.00am every day of the week provides flexibility for the use.
 - (c) As discussed in detail, the venue will be appropriately designed and managed to ensure music noise and patron noise will not adversely impact nearby sensitive uses in the night-time period.
 - (d) Although patrons will leave the premises as late as 1am, this can be expected for the Swan Street MAC. The subject site is 300 metres from the Swan Street Core Entertainment Precinct where venues with a capacity greater than 200 patrons are encouraged to be located (Clause 22.09-3), so it is likely that Swan Street will continue to be active at this time of night. Nonetheless, it is likely that patrons exiting the premises will organise transportation from the Swan Street entry or head west towards the train station and entertainment precinct, not into the quieter residential side streets.

- (e) The consumption of liquor will only occur in association with the primary use of the site for events and exhibitions, and will not act independently as a bar. The primary purpose for visits will be to attend a presentation, fashion show, book reading, art exhibition or musical performance, thus it is likely to attract a mature patronage and is unlikely to result in excessive drinking or anti-social behaviour.

175. With regard to the courtyard, although 3 people are permitted to use the area after 10pm, a condition should be included on any permit issued requiring that no alcohol is to be taken to or consumed in the courtyard after 10pm on any night.

Patron numbers

176. The application, as advertised, proposed 145 patrons on the land at any one time. No objection to 145 patrons was raised by Council's Social Planning Unit or Compliance branch; nonetheless, following the Consultation meeting held on 10 March 2020 the Applicant offered (via email) for the maximum patrons on-site at any time to be 110.
177. A patron capacity assessment (prepared by Neocheck Kinban Group and dated 6 September 2019) was submitted with the application and determined that 160 person could be accommodated on the premises (based on the more conservative Building Code of Australia (BCA) populations).
178. Despite having no objection to the maximum patronage of 145 people, the reduced scale of 110 people as offered by the Applicant it supported by Council. A condition should thus be included on any permit issued requiring that no more than 110 patrons be on-site at any one time.

Noise

179. Noise has been substantially discussed in association with the use, with conditions included to mitigate any adverse amenity impacts. The nature of the sale and consumption of liquor, in association with the use of the site as a Place of Assembly, means that the two are ultimately linked. All conditions relating to the use with regards to compliance with SEPP N-1 and SEPP N-2, from both music and patrons, will apply to the use and the sale and consumption of liquor.
180. Council's standard condition should also be included on any permit issued requiring that the emptying of bottles into bins in the outdoor area should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.

181. Noise and Amenity Action Plan (NAAP)

182. The applicant submitted a NAAP (stamp dated 29 November 2019). The Plan addresses relevant management procedures of the venue, including:

- (a) The venues complaint procedure.
- (b) Waste collection and management.
- (c) Management of the courtyard, including that no more than 25 patrons are permitted, with only 3 permitted in the area after 10pm on any night.
- (d) Bookings will be taken for large groups who will welcomed by staff on arrival.
- (e) Staff will direct patrons leaving the premises to public transport or will be assisted in booking taxis if required.
- (f) Tickets will be required to be booked, with limited tickets available at the door to limit the queuing of patrons on Swan Street.
- (g) No use of the rear laneway for ingress or egress.

183. The above measures are considered appropriate for the site; however a condition should be included on any permit issued requiring a revised NAAP to be submitted to include the following additional information:

- (a) To reference the most recent Acoustic Report (the amended acoustic report as required by a condition of permit).
- (b) No more than 110 patrons on the premises at any one time.
- (c) Packaged liquor to be sold between the hours of 10.00am – 11.00pm Monday to Sunday.
- (d) Deliveries and collections of goods are not to occur from the rear laneway.
- (e) Additional management procedures (as offered by the Applicant via email), including:
 - (i) Staff will encourage the staggered exit of patrons.
 - (ii) Patrons will be required to book or register their attendance for art exhibitions (inclusive of free events).
 - (iii) Booking confirmation will include the note – “no parking in residential side streets”.
 - (iv) Exhibiting artists will be offered pre-arranged car parking or taxi vouchers.
 - (v) Carshare apps, taxis and public transport will be promoted and encouraged.

184. Subject to condition, the provisions within the NAAP are considered appropriate in managing the business operation without causing adverse amenity to the area. A condition is recommended to be included on any permit issued requiring that the operation of the business is carried out in strict adherence to the NAAP.

Cumulative Impact

185. The subject site is located within a ‘cluster’ of licenced premises, as there are three or more (including the proposed premises) within a radius of 100 metres of the subject site. The “Corner Hotel” 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 a cumulative impact. The decision also acknowledges that depending on the nature of the use, the required level of assessment will vary.
186. 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	0
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

187. In this instance the venue achieves a maximum score of 6, therefore the venue is considered to be a risk and a cumulative impact assessment is required.
188. In the absence of any benchmarks within the Scheme to measure cumulative impact, Council relies on the assessment methodology for cumulative impact in the VCAT decision *Swancom Pty Ltd v Yarra CC (Red Dot)* [2009] VCAT 923 as an appropriate methodology for the assessment of this proposal.
189. The assessment methodology has three key considerations:
- What is the density of licenced premises in the area?*
 - What is the mix and type of licenced premises in the area?*
 - What are the existing amenity levels of the area?*
190. To undertake such an assessment, the relevant area must first be defined:
- What is the specific precinct or area within the licensed premises is located? Is the area a dedicated entertainment precinct?*
 - What is the extent of the nearby or surrounding area within which the amenity impacts should be considered, have regard to the pattern of settlement and development (existing and proposed) and the extent of any sensitive uses?*
191. A number of these factors such as policy context and land mix of the surrounding area have been discussed previously within this report, with anticipated amenity impacts also considered in detail. An assessment including the mix of licensed premises and potential impact mitigation will need to be undertaken.

The mix of licensed premises

192. In order to provide a comprehensive assessment of the potential cumulative impact of the venue, Council undertook a survey of licenced premises within a 300-500 metre radius of the subject site, bound by Church Street to west, Burnley Street to the east, the railway line to the south and Benson Street to the north. This will generally exclude premises located in the Core Entertainment Precinct west of Church Street. Venues which cease trading prior to 11pm have been specifically excluded from the table below, as it is considered these venues contribute minimal risk to the cumulative impact for the sale of liquor in the surrounding area. Further, these types of venues are typically focused on food and drinks as opposed to 'vertical drinking'.

Business name	Address	License Type	(Maximum) closing time	Patron capacity
Swan Hotel	Corner of Swan and Church Street	Late night (General)	3am	400 patrons
Jimmy Grants	427 – 429 Church Street	Restaurant and café license	11pm	100 patrons
The Public House	433 – 435 Church Street	Late night (General)	2am	450 patrons
Union House Hotel	270 272 Swan Street	Restaurant and cafe	1am	328 patrons
Thank Me Later	203 Swan Street	On-premises license	1am	140 patrons
Jai Ho Indian	205 Swan Street	Restaurant and cafe	11pm	unknown

SaintUrban	213 Swan Street	Restaurant and cafe	12am	Unknown
The Lost Moose	269 Swan Street	On-premises license	1am	70 patrons
General Central Club	293 Swan Street	General license	3am	Unknown
Sidewalk Tango	327 Swan Street	On-premises license	1am	80 patrons
Rising Sun Hotel	395 Swan Street	General License	12am	Unknown

193. With regard to the above results, there are only three (known) large-scale premises (with over 200 patrons) within the defined radius of the subject site, two of which are located on Church Street on the cusp of the Core Entertainment Precinct. The remaining venues are predominantly restaurants or have relatively restricted patron numbers and are not considered to substantially contribute to potential cumulative impacts in the area.

Impact mitigation

194. To ensure a venue is managed appropriately, Council's local policy at Clause 22.09 requires the submission of a NAAP which outlines management procedures aimed at ensuring good patron management. The NAAP has been discussed earlier within this assessment.

This document outlines the specific management procedures to be followed at all time, and includes details relating to staffing and complaint registers, the use of the external courtyard and booking.

195. In addition to these measures, Council's Local Law No.8 prohibits the consumption of liquor in public places and Council's Community Amenity Unit and Victoria Police are charged with ensuring these venues operate in an appropriate manner. Victoria Police generally focus on patron behaviour on the street and Council's Community Amenity Unit generally deals with issues of noise from within premises.

Buildings and works

196. The minor works to the existing building and construction of a green acoustic wall are considered to meet the relevant Decision guidelines within the C1Z at Clause 34.01-8 and the Design and Development Overlay at Clause 43.02-6, for the following reasons:
- The appearance of the building to the streetscape will remain mostly unchanged and will continue to activate Swan Street and provide for a high level of accessibility.
 - The proposed acoustic green wall will not overshadow the habitable room windows of No. 48 Bell Street to the north and will limit views to the dwellings from the courtyard. Thus, the amenity of the neighbouring properties will not be detrimentally impacted by the buildings and works.
 - The proposed green acoustic wall, which will be constructed internally to the retained boundary wall and gate at a height of 4.7 metres, will not appear out of character in the laneway which is bound by high boundary wall and garage doors.
 - The buildings and works requiring a permit and contained to the rear courtyard, thus, will have no impact on the appearance of the building to the streetscape.

Car parking and traffic

197. Pursuant to Clause 52.06-5 of the Scheme, the proposed Place or Assembly with a maximum patronage of 145 persons generates a statutory car parking requirement of 43 spaces. As there are no on-site spaces proposed on site, a reduction of 43 spaces is being sought.

198. Based on the information provided, which includes parking occupancy surveys prepared by Ratio Traffic Consultants (November 2019), and in response to the relevant guidelines of Clause 52.06-7 of the Scheme, the proposed car parking reduction of 43 spaces is considered acceptable for the following reasons:
- (a) The condition requiring a maximum of 110 patrons on the premises at any time would decrease the statutory requirement to 33 spaces.
 - (b) The site has good access to public transport, with tram route 70 available along Swan Street, tram route 78 along Church Street and multiple train lines (including Alamein, Glen Waverley, Lilydale and Belgrave Lines) available from the East Richmond Station which is within 400 metres of the subject site.
 - (c) Given the site's location in the Swan Street MAC, it is likely that some patrons will reside or work within walking distance of the site or are already visiting the area for multi-purpose trips.
 - (d) Two bicycle spaces are provided on-site for the use of patrons, artists or staff.
 - (e) One approach to achieving the requirements of Clause 21.06-2 of the Scheme (which seeks to facilitate public transport usage) is to reduce the number of car parking spaces provided on-site in areas which have good availability of alternative modes of transport.
 - (f) It is impractical to provide the additional car parking spaces on site given the existing building is being retained and the site is only 204sqm in area. Further, Schedule 17 of the DDO encourages that sites do not provide for vehicle access.
 - (g) The management of the venue will encourage sustainable transport, will assist patrons in ordering taxis where required and a note will be included on all pre-ordered tickets declaring that parking is not available in residential side streets, all of which will deter patrons from driving to the premises and encourage other means of transport.
 - (h) Council's Engineering Services Unit support the car parking reduction of 43 spaces.

Objector concerns

- (a) *Car parking and traffic concerns.*

The majority of these matters have been addressed in the report at paragraphs 197 – 198 (Car parking and traffic). The waiver of the 33 car parking spaces as required by the Scheme is supported. It is expected that patrons will be discouraged from driving to the inner city venue if there are no car parking spaces provided, thereby, reducing traffic and congestion in the area.

- (b) *Noise, smoke and disturbance from the courtyard.*

The majority of these matters have been addressed in the report at paragraphs 142 – 148 (patron noise), 157 – 158 (light spill) and 168 (venue design). It is considered that subject to conditions relating to limitations on patron numbers, music, lighting and alcohol in the courtyard, a reasonable level of amenity will be achieved for nearby sensitive uses.

- (c) *Noise generated from music, mechanical equipment and waste collection/deliveries.*

The majority of these matters have been addressed in the report at paragraphs 131 – 141 (music noise), 150 – 152 (mechanical noise) and 153 – 156 (loading and unloading). It is considered that the acoustic measures undertaken will appropriately mitigate noise impacts to nearby sensitive uses. A condition has been recommended requiring post-construction acoustic testing to ensure the venue demonstrates compliance with the relevant noise limits.

(d) *Privacy concerns.*

It is considered that the limited use of the external courtyard, in conjunction with the 4.7 metre high acoustic green wall, will appropriately limit views from the courtyard to the residential dwellings across the 3.6 metre laneway.

(e) *Off-site amenity impacts, including littering and anti-social behaviour.*

The amenity impacts of the proposal are assessed throughout the report and specifically in the assessment of the use and licensed premises sections. The proposal is considered acceptable and unlikely to result in any unreasonable detrimental impact to surrounding properties given its primary purpose is for ticketed art exhibitions.

The premises will also be required to be managed in accordance with a number of permit conditions which are enforceable by Council's Planning Enforcement Unit. Also, Victoria Police would have the duty to respond to issues of anti-social patron behaviour on the street as a result of this venue or others along Swan Street.

(f) *Inappropriate use of the land in the local context.*

This has been addressed at paragraphs 117 -121 (Strategic justification) of this report and the location of the proposed use is considered to have strong policy support.

Conclusion

199. The proposal, subject to conditions outlined in the recommendation below, is considered to generally comply with the relevant policies of the Yarra Planning Scheme and is recommended for approval.

RECOMMENDATION

That having considered all the relevant planning policies, the Committee resolves to Issue a Notice of Decision to issue Planning Permit PLN19/0624 to allow for buildings and works associated with the use of the land as a Place of Assembly (art and exhibitions space) with an ancillary retail premises, the sale and consumption of liquor (General license) and a reduction in the associated car parking requirements of the Yarra Planning Scheme, in accordance with the "decision plans" and subject to the following conditions:

1. Before the use, development or sale and consumption of liquor 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 prepared by Grant Amon, Plan no. A10 (dated 28/08/19), A11 (dated 28/08/19), A12 (dated 02/07/19), A13 (dated 02/07/19) and A100 -A13 (dated 25/11/19) but modified to show:
 - (a) Remove reference to the outdated Acoustic Report and revise to reference the most recent report (as required by Condition 23).
 - (b) Details required to meet the requirements of Condition 29 (Amended Waste Management Plan).
2. The development, use and 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. The amenity of the area must not be detrimentally affected by the use, development or sale and consumption of liquor, 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.

to the satisfaction of the Responsible Authority.

Buildings and works

- 4. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
 - (a) Monday to 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.
- 5. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
 - (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.

Use (Place of assembly)

- 6. Except with the prior written consent of the Responsible Authority, no more than 110 patrons are permitted on the land at any one time.
- 7. No more than 25 patrons permitted in the courtyard between the hours of 10.00am – 10.00pm, and no more than 3 patrons permitted in the courtyard after 10.00pm, every day of the week.
- 8. Except with the prior written consent of the Responsible Authority, the use authorised by this permit may only operate between the hours of 10.00am – 1.00am (the following morning), seven days a week.
- 9. The use and development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
- 10. The use and development must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).
- 11. Prior to the commencement of the use authorised by this permit, a Noise Limiter must be installed on the land. The Noise Limiter must:
 - (a) be set at a level specified by a qualified acoustic engineer;
 - (b) be set based on music played simultaneously in the front and rear gallery areas;
 - (c) ensure the emission of noise from amplified music does not exceed the levels specified in the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2); and
 - (d) be maintained and operated at all times.

to the satisfaction of the Responsible Authority.

- 12. Live and amplified music may only occur between the hours of 10.00am – 10.00pm Sunday to Wednesday and 10.00am – 11.00pm Thursday to Saturday.

13. Speakers must not be erected or used external to the building or within the courtyard.
14. Colourful and flashing lights must not be erected within the courtyard.
15. Delivery and collection of goods to and from the land may only occur between 7am and 10pm Monday to Saturday, or after 9am on a Sunday or public holiday except for those allowed under any relevant local law.
16. No patrons are to use the rear gate to the laneway for ingress or egress to the site.

Sale and consumption of liquor

17. Except with the prior written consent of the Responsible Authority, the sale of packaged liquor may only occur between the hours of 10.00am – 11.00pm, seven days a week.
18. Except with the prior written consent of the Responsible Authority, the sale of liquor for consumption on the premises may only occur between the hours of 10.00am – 1.00am (the following day), seven days a week.
19. The sale and consumption of liquor must only occur in association with the use of the land as a Place of Assembly (art and exhibition space).
20. No alcohol is to be consumed in the courtyard after 10.00pm on any night.
21. Emptying of bottles and cans into bins may only occur between 7am and 10pm on Monday to Saturday or after 9am on a Sunday or public holiday.
22. Before the commencement of the sale and consumption of liquor, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.

Amended Acoustic Report

23. Before the use and development 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 and dated 23 January 2020, but modified to include (or show, or address):
 - (a) The patron numbers of the use in accordance with Condition 6.
 - (b) The noise limiter set by a qualified acoustic consultant.
 - (c) The noise limiter settings based on music playing simultaneously in the front and rear gallery.
24. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.

Post commencement Acoustic Report

25. Within 3 months of the commencement of the use, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:

- (a) Confirm that the recommendations of the endorsed acoustic report required as part of Condition 23 have been implemented.
 - (b) Assess their effectiveness in meeting the predicted patron noise level and SEPP N-1 and SEPP N-2 requirements as outlined within the endorsed acoustic reports required as part of Condition 23.
 - (c) In non-compliance with noise limits (as prescribed in the Acoustic Report as part of Condition 23) is measured, the venue must implement additional acoustic measures, as recommended, within one month of the date of the post-commencement acoustic report.
26. The provisions, recommendations and requirements of the endorsed Post-commencement Acoustic Report be implemented and complied with to the satisfaction of the Responsible Authority.

Amended Noise and Amenity Action Plan

27. 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, but modified to include (or show, or address):
- (a) Reference the most recent Acoustic Report as required by Condition 23.
 - (b) The patron numbers as required by Condition 6.
 - (c) Packaged liquor to be sold between the hours of 10.00am – 11.00pm every day of the week.
 - (d) Deliveries and collection of goods are not to occur from the rear laneway.
 - (e) Additional management procedures, including:
 - (i) Staff will encourage the staggered exit of patrons.
 - (ii) Patrons will be required to book or register their attendance for art exhibitions (inclusive of free events).
 - (iii) Booking confirmation will include the note – “no parking in residential side streets”.
 - (iv) Exhibiting artists will be offered pre-arranged car parking or taxi vouchers.
 - (v) Promote and encourage carshare apps, taxis and public transport.
28. 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.

Amended Waste Management Plan

29. Before the use and development commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan, but modified to include:
- (a) All waste to be collected by a private contractor (including general, hard and green waste).
 - (b) A bin store plan showing the access and pathway, as well as the allocated hard waste and e-waste storage area.
 - (c) The size of the bin store (in sqm), as well as bin type and sizes.
 - (d) Expected waste volume for the site.
 - (e) An explanation of how risk (relating to waste management) will be managed.

30. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
31. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.

Expiry conditions

32. This permit will expire if:
 - (a) the development is not commenced within two years of the date of this permit; or
 - (b) the development is not completed within four years of the date of this permit; or
 - (c) the use or sale and consumption of liquor is not commenced within two years from the date of this permit; or
 - (d) the use or sale and consumption of liquor is discontinued for a period of two years.

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

Notes

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

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

All future business owners and employees within the development approved under this permit will not be permitted to obtain resident, employee or visitor parking permits.

Use of Security Cameras must comply with Section 8(1) of the Surveillance Devices Act (2007) which outlines a permit holder's responsibility in relation to surveillance devices. Please ensure compliance with the relevant legislation at all times the security cameras are in use.

CONTACT OFFICER: Jessica Sutherland
TITLE: Statutory Planner
TEL: 9205 5365

Attachments

- 1 PLN19/0624 - 267 Swan Street Richmond - Site Location Map
- 2 PLN19/0624 - 267 Swan Street Richmond - Advertised Plans
- 3 PLN19/0624 - 267 Swan Street Richmond - Town Planning Report
- 4 PLN19/0624 - 267 Swan Street Richmond - Advertised Acoustic Report (dated 19.11.19) part 1
- 5 PLN19/0624 - 267 Swan Street Richmond - Advertised Acoustic Report (dated 19.11.19) part 2
- 6 PLN19/0624 - 267 Swan Street Richmond - Revised Acoustic Report (dated 23.01.20)
- 7 PLN19/0624 - 267 Swan Street Richmond - Patron Capacity Report
- 8 PLN19/0624 - 267 Swan Street Richmond - Traffic Impact Assessment (part 1)
- 9 PLN19/0624 - 267 Swan Street Richmond - Traffic Impact Assessment (part 2)
- 10 PLN19/0624 - 267 Swan Street Richmond - Traffic Impact Assessment (part 3)
- 11 PLN19/0624 - 267 Swan Street Richmond - Noise and Amenity Action Plan

- 12** PLN19/0624 - 267 Swan Street Richmond - VicRoads response
- 13** PLN19/0624 - 267 Swan Street Richmond - EPA response
- 14** PLN19/0624 - 267 Swan Street Richmond - Community Amenity Unit referral comments
- 15** PLN19/0624 - 267 Swan Street Richmond - Social Planning Unit referral comments
- 16** PLN19/0624 - 267 Swan Street Richmond - Engineering Traffic Unit referral comments
- 17** PLN19/0624 - 267 Swan Street Richmond - External Acoustic consultant comments
(relating to the acoustic report dated 19.11.19)
- 18** PLN19/0624 - 267 Swan Street Richmond - External Acoustic Consultant comments
(relating to acoustic report dated 23.01.20)
- 19** PLN19/0624 - 267 Swan Street Richmond - Applicant's Commitments

-
- 1.5 3572.01 - 46 Johnston Street Fitzroy - Section 72 Amendment to Planning Permit 3572 to extend the licensed area of the existing bar (an as-of-right use in the zone) to include the covered courtyard at the rear of the site and the deletion of Conditions No.4 and No.5.**
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Executive Summary

Purpose

1. This report provides Council with an assessment of an application to amend Planning Permit 3572. The application seeks to extend the licensed area of the existing bar (an as-of-right use in the zone) to include the covered courtyard at the rear of the site and the deletion of Conditions No.4 and No.5. The report recommends approval of the application, subject to conditions.

Key Planning Considerations

2. Key planning considerations include:
- (a) Clause 13.05-S – Noise Abatement;
 - (b) Clause 22.09 – Licensed Premises Policy; and
 - (c) Clause 52.27 – Licensed Premises.

Key Issues

3. The key issues for Council in considering the proposal relate to:
- (a) Policy and Strategic justification;
 - (b) Sale and consumption of liquor;
 - (c) Amendments to Planning Permit; and
 - (d) Objector concerns.

Submissions Received

4. Twelve (12) objections were received to the application, which can be summarised as:
- (a) Noise impacts;
 - (b) Excessive licensed hours;
 - (c) Lack of noise attenuation measures;
 - (d) Loitering in the laneway;
 - (e) Deletion of permit conditions 4 and 5; and
 - (f) Lack of details in submitted application and acoustic report.

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: Samantha Tham
TITLE: Statutory Planner
TEL: 9205 5083

1.5 3572.01 - 46 Johnston Street Fitzroy - Section 72 Amendment to Planning Permit 3572 to extend the licensed area of the existing bar (an as-of-right use in the zone) to include the covered courtyard at the rear of the site and the deletion of Conditions No.4 and No.5.

Reference: D20/61435
 Authoriser: Coordinator Statutory Planning

Proposal: Amendment to Planning Permit 3572.01 to extend the licensed area of the existing bar (as-of-right use in the zone) to include the covered courtyard at the rear of the site and the deletion of Conditions No.4 and No.5.

Existing use: Bar (Bad Decisions Bar)

Applicant: David Barrett

Zoning / Overlays: Commercial 1 Zone (C1Z)
 Heritage Overlay (Schedule 334)
 Environmental Audit Overlay (EAO)

Date of Application: 27 March 2019

Application Number: 3572.01

Planning History

1. Planning Permit No.1412 was granted by Council on 18 June 1992 and allowed for the use of the land as a bar/restaurant operating between 9am and 1am the following day. An amendment to Planning Permit No.1412 was approved at the direction of the Tribunal on 24 August 1995 (VCAT Order 1995/012772) allowing patron numbers to be increased to 120.
2. Planning Permit No.2449 was granted by Council on 09 May 1994 and allowed for the trading hours of the bar/restaurant on Friday and Saturday to be extended from until 1am to 3am. The permit was subject to a 12-month expiry condition.
3. Planning Application No.3572 sought approval for a permanent extension to the trading hours of the bar/restaurant from until 1am to until 3am. The application was refused by Council on the grounds that the proposed extension would contribute to a degradation of the amenity of nearby residents.
4. The applicant appealed Council's refusal of Planning Application No.3572 and the Tribunal overturned Council's decision. Planning Permit 3572 was issued at the direction of the Tribunal on 31 May 1996 (VCAT Order 1996/1311) with several conditions to restrict the bar/restaurant use, including requirements to install electronic limiters in sound systems and to display signs reminding patrons to leave in a quiet and orderly manner.
5. The subject site has since been used as a bar in accordance with Planning Permit 3572 and operates under a General (Late Night) Liquor Licence No.31921047. The redline plan for Liquor Licence No.31921047 shows all areas are licensed except for the rear courtyard area, which is the subject of this amendment application.
6. Planning Permit No.980309 was granted by Council for "alterations and additions to the existing Bar (construct new covered roof)" on 26 June 1998. The roof structure approved currently extends over the entire rear areas subject to this application.
7. Council's records show no recent noise complaints received in relation to the existing premises.

Background

8. The application was received by Council on 27 March 2019. Following the submission of further information, the application was advertised on 28 June 2019 and twelve (12) objections were received.
9. Council sought and received referral advice from internal departments, external consultants (SLR Consulting) and the Victorian Commission for Gambling and Liquor Regulation (VCGLR). Notice of the application was also given to the Chief Commissioner of Victoria Police.
10. A planning consultation meeting was held on 25 February 2020, and was attended by the applicant, Council Officers and one (1) objector. Issues raised in the letters of objection and the findings of additional acoustic studies were discussed (see below). However, no resolution was reached at the meeting.

Acoustic reports and peer reviews

11. The advertised acoustic report prepared by Acoustical Design Pty. Ltd. (dated 4 June 2019) was peer reviewed by an external acoustic consultant. The peer review found that a number of further details (e.g. patron noise limits, prediction of patron noise and maximum patron numbers in the courtyard) were required to be provided in a revised acoustic assessment.
12. A revised report was submitted to Council on 09 August 2019 to address the above. A subsequent peer review raised further questions regarding the assessments provided.
13. The applicant later engaged JTA Consultants to prepare a more detailed acoustic assessment (dated 11 October 2019) which included greater detailing of the site conditions, and further assessment of impacts upon the residential dwellings at No.19 Victoria Street. The subsequent peer review (dated 25 October 2019) found that the noise assessment from the ground level courtyard area demonstrated compliance at the receiver locations, however that the report required updating to consider sensitive receivers at Level 1 of 19 Victoria Street and further background noise measurements to assess compliance on quieter midweek nights.
14. The acoustic report by JTA Consultants was further updated in response to the above and submitted to Council on 25 January 2020. Council's external acoustic consultants subsequently confirmed that the rear courtyard area achieved compliance during the proposed operating hours, with a maximum of 25 patrons within the said area. The findings of this report were discussed at the consultation meeting and is relied upon in the assessment of this report.

The Proposal

15. The application seeks to extend the licensed area of the existing bar to include the 25sqm covered courtyard area at the rear of the building.
16. No change is proposed to the current operations of existing licensed areas, nor is there any increase proposed to the patron numbers and licensed hours as allowed under Planning Permit 3572 and General Liquor Licence No.31921047.
17. The rear courtyard currently provides some seating and also acts as a transitional space, providing stairs access between the ground floor and first floor licensed areas. Although the sale and consumption of liquor is not permitted within the rear courtyard area, there are currently no restrictions on patron numbers within this particular area, provided that liquor is not consumed.
18. The operational details relating to the sale and consumption of liquor within the rear courtyard area are as follows:
 - (a) Proposed licensed hours are as follows:
 - Monday to Wednesday: 9am to 2am
 - Thursday to Saturday: 9am to 3am

- Sunday: 10am to 3am

- (b) No music will be played within the courtyard area.
- (c) Food provision of light snacks and grazing platters will be available at all times.
- (d) Fixed tables and seats are to be provided within the rear courtyard.
- (e) The roller door along the rear boundary to remain open as an emergency fire escape, with access to the laneway restricted by a metal shutter gate.

19. As no on-site car parking is provided, the proposal seeks to delete Conditions No.4 and No.5 of the permit which read as follows:

Condition 4

"The areas set aside for car parking or loading must not be used for any purpose. All space and access lanes must be clearly marked on the ground."

Condition 5

"The loading and unloading of vehicles must be carried out entirely within the site."

The conditions set out requirements for the rear areas of the restaurant/bar (currently the undercover courtyard subject to this application) which was historically used as a car parking and unloading area for the premises.

20. The proposal will require subsequent changes to the permit preamble which currently reads 'For the purpose of Bar/Restaurant' as a bar is an as-of-right use in the Commercial 1 Zone.

Existing Conditions

Subject Site

21. The subject site is located on the southern side of Johnston Street in Fitzroy, within the Johnston Street Neighbourhood Activity Centre (NAC), approximately 184m from Brunswick Street to the east and 115m from Nicholson Street to the west. The site is rectangular in shape with a frontage of 4.4m to Johnston Street, a depth of 28m and an overall site area of approximately 119sqm. The southern boundary abuts a Right-of-Way (ROW).
22. The subject site contains a double storey, Victorian-era building with later additions towards the rear and has been used as a bar (La Sangria Bar) for a number of years dating back to 1994. The premises is now occupied by "Bad Decisions Bar" which commenced operating in early 2019.
23. The pedestrian entrance is located along the Johnston Street frontage and leads into the ground floor bar area. Further to the rear is a covered courtyard which provides for a patron seating area, toilet facilities and a timber stairway which is the sole point of access up to the first floor of the building. At the top of the timber stairway is a deck which overhangs part of the ground floor courtyard. A second bar area and toilet facilities are located at first floor and are used primarily for events and functions.
24. A metal roof structure covers the ground floor courtyard and first floor deck, with an angled polycarbonate type roof covering over the timber stairway toward the rear of the building. Along the rear boundary is a metal shutter gate set behind a roller door.
25. The following images further describes the subject site, with Figures 3 and 6 identifying the rear courtyard area proposed to be licensed:



Fig.1 The Johnston Street frontage of the site.



Fig.2 The ground floor bar layout (facing north).

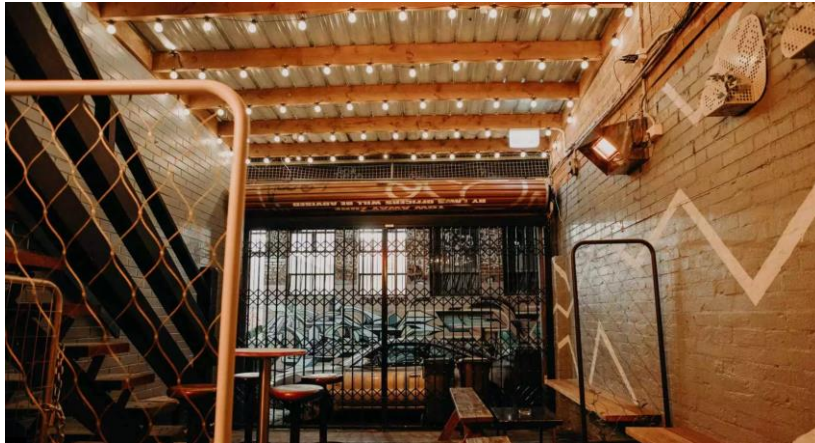


Fig.3 Rear courtyard and the laneway beyond.



Fig.4 The first floor deck above the courtyard (facing south).

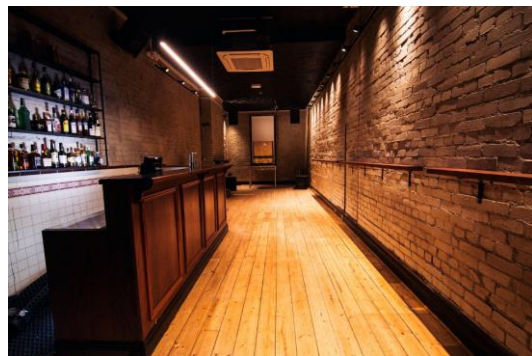


Fig.5 The first floor bar/function area (facing north).



Fig.6 The rear site boundary and the courtyard beyond as seen from the laneway.

Surrounding Land

- 26. The surrounding land is mixed, both in terms of built form and land use character with, residential and non-residential uses existing in close proximity. As shown in Figure 7 and 8 below, both northern and southern sides of Johnston Street are zoned Commercial 1 Zone (C1Z) and form part of the Johnston Street NAC in Fitzroy.
- 27. Abutting the Johnston Street NAC to the north and south is land within a Mixed Use Zone (MUZ). Further beyond the MUZ towards the south is land within the Neighbourhood Residential Zone – Schedule 1 (NRZ1).

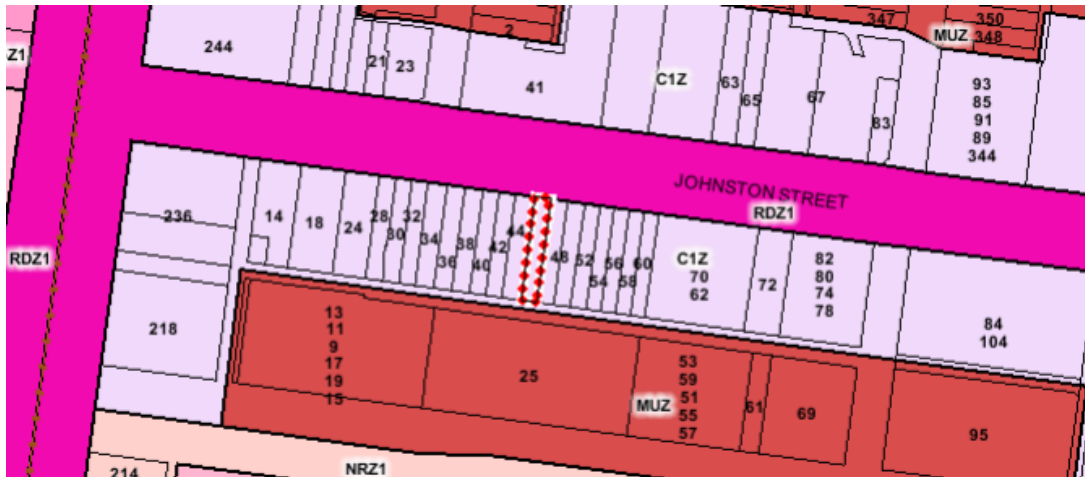


Fig.7 The land zoning context of the surrounding land.



Fig.8 The location of the subject site and the Johnston Street NAC.

- 28. The Johnston Street NAC consists of a range of services and facilities, such as retail shops, offices, cafés and restaurants, and licensed entertainment and hospitality venues.
- 29. The area is well serviced by public transport options which are within walking distance of the subject site, including the No.96 tramline along Nicholson Street and the No.11 tramline along Brunswick Street travelling north-south, and the No.200 and No.207 bus route on Johnston Street travelling east-west.

North

30. Across Johnston Street to the north are a mix of single to multi-storey buildings accommodating both residential and commercial uses. A seven-storey, mixed use building with dwellings above (approved by the Tribunal under Planning Permit PLN15/1205) is currently underway at No.57-61 Johnston Street.

South

31. Abutting the subject site to the south is a bluestone laneway with a 'back-of-house' context. The laneway is characterised by open and covered courtyards, service areas and car parking areas contained by boundary fences and roller doors along rear boundary lines.
32. The properties beyond the laneway are located within a MUZ, with the closest residential properties being the Level 1 and 2 apartments at No.19 Victoria Street approximately 23m to the south-west, and apartments at Levels 2 to 5 at No.69 Victoria Street approximately 64m south-east. Directly to the south of the site is a multi-storey, non-residential building used for education (Southern School of Natural Therapies).

East

33. Abutting the subject site to the east is No.48-50 Johnston Street; a double-storey, commercial building with full site coverage. The land is used as a bar (Laundry Bar) with open smoking areas located at the front of the site. Council's records show that the land has been used as a bar since 17 January 1992. The bar operates under a General Liquor Licence No.31921322 which allows the premises to be licensed until 3am with a maximum of 272 patrons.

West

34. Abutting the subject site to the west is No.44 Johnston Street; a double-storey building built to both side boundaries. The ground floor is used as a cafe (Fitz Curry Cafe) with a Restaurant and Café Licence approved by Planning Permit PL03/0161 issued by Council on 25 August 2003. The approved licensed hours are between 5pm and 11pm from Monday to Sunday. The first floor is currently vacant and used as a storage area.



Fig.9 Aerial image of the subject site and surrounding area.

Legislation Provisions

35. 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.*
36. Planning Permit No.3572 was issued on 31 May 1996 by the Victorian and Civil Administrative Tribunal (VCAT) and was not issued under Division 6 of the Act.
37. 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

Commercial 1 Zone (C1Z)

38. Pursuant to the requirements of Clause 34.01-1 of the Scheme, a planning permit is not required to use the land for a 'Bar'. A bar is a type of 'Food and Drinks Premises' which is nested under 'Retail Premises' (listed as a Section 1 use within the zone).
39. There is no planning permit requirement for the sale and consumption of liquor pursuant to the zone.

Overlays

Heritage Overlay – Schedule 334 (South Fitzroy Precinct)

40. The application does not propose any buildings and works and therefore the provisions of this overlay are not triggered.
41. There is no planning permit requirement for the sale and consumption of liquor pursuant to the overlay.

Environmental Audit Overlay (EAO)

42. Pursuant to Clause 45.03-1 of the Scheme, 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.*

43. This provision is not a permit trigger, but rather a requirement of the Scheme. Regardless, as the use of the site as a bar is not a 'sensitive use', the requirements of the EAO do not apply.

Particular Provisions

Clause 52.27 – Licensed Premises

44. Pursuant to Clause 52.27 (Licensed Premises) of the scheme, a planning permit is required to use land to sell or consume liquor if the area that liquor is allowed to be consumed under a licence is to be increased. As the proposed seeks to increase the currently licensed area to include the rear courtyard within the overall area that liquor can be consumed, a planning permit is required under this provision.

General Provisions

45. 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, namely:

- (a) *The relevant State and Local Planning Policy Frameworks,*
- (b) *Purpose of the zone, overlay or any other provision.*
- (c) *The orderly planning of the area.*
- (d) *The effect on the amenity of the area.*
- (e) *The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.*

Planning Policy Framework (PPF)

46. The following provision of the Scheme are relevant:

Clause 13.05-1S – Noise abatement

47. The relevant objective of this clause is:

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

48. The relevant strategy is to:

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

Clause 17.02-1S – Business

49. The relevant 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 commercial facilities.*

50. The relevant strategy of this clause is:

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

Local Planning Policy Framework (LPPF)

Clause 21.04 – Activity Centres

51. The site is located within the Gertrude Street Neighbourhood Activity Centre. The relevant objectives and strategies of this clause are:
- (a) Objective 4 - To maintain a balance between local convenience and regional retail roles in Yarra's activity centres.
 - Strategy 4.1 Increase the range of retail, personal and business services, community facilities, and recreation activities, within individual centres.
 - Strategy 4.3 Support the role of all activity centres, including Neighbourhood Activity Centres, in providing local day-today needs of residents of all abilities.
 - (b) Objective 5 - To maintain the long-term viability of activity centres.
 - Strategy 5.2. Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.

Clause 21.08 – Neighbourhoods (Fitzroy)

52. Clause 21.08-7 describes Fitzroy as 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. 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.”*

Relevant Local Policies

Clause 22.05 – Interface Uses

53. This policy applies to applications for use or development within Commercial Zones (amongst others). The policy supports the objectives of the MSS by protecting Yarra's diverse land use mix and built form, reducing conflict between commercial, industrial and residential activities, and supporting appropriate industrial and commercial activity. Relevant objections include:
- (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

54. This policy applies to all applications for new licensed premises and to vary or extend an existing license. The following objectives of this clause are relevant:
- (a) *To protect the amenity of nearby properties and areas by effectively managing the location, size, operation and hours of licensed premises;*
 - (b) *To protect residential and other commercial uses from excess noise, traffic and car parking issues, and;*
 - (c) *To provide for daytime trade and active street frontages in retail strips, while providing reasonable commercial opportunities for the trading of licensed premises.*

55. This policy outlines a range of guidelines at Clause 22.09-3 of the Scheme (including location and access, venue design, hours of operation and noise).

Advertising

56. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by with letters sent to surrounding owners and occupiers and signs displayed on site. Council received twelve (12) objections, the grounds of which are summarised as follows:
- (a) Noise impacts;
 - (b) Excessive licensed hours;
 - (c) Lack of noise attenuation measures;
 - (d) Loitering in the laneway;
 - (e) Deletion of permit conditions 4 and 5; and
 - (f) Lack of detail in submitted application and acoustic report.
57. A planning consultation meeting was held on 25 February 2019 and was attended by one (1) objector, the Applicant, and Council Officers.
58. The issues and concerns raised in the letters of objection and the findings of acoustic studies conducted were discussed. There was no resolution reached or agreements made at the meeting.

Referrals

59. The referral comments below are based on the advertised plans and reports. The application was also referred externally to SLR Consulting for peer review of the applicant's submitted acoustic reports. The external peer reviews attached to this report and are based on the later acoustic reports prepared by JTA Consultants dated 12 October 2019 and 23 January 2020.

External Referrals

Victorian Commission for Gambling and Liquor Regulation (VCGLR)

60. 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 responded on 04 July 2019 declining to comment or provide a submission against the application.

Victoria Police

61. 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. Victoria Police has not provided a response to date.

Internal Referrals

62. The application was referred to the following units within Council:
- (a) *Social Policy and Research Unit*
 - (b) *Community Amenity Unit*
63. Referral comments have been included as attachments to this report.

OFFICER ASSESSMENT

64. The primary considerations for this application are as follows:

- (a) Policy and strategic support;
- (b) Sale and consumption of liquor;
- (c) Planning permit amendments; and
- (d) Objector concerns.

Policy and strategic support

65. The Planning Policy Framework, including local policies in the Scheme, encourage the sustainability of commercial uses. These policies seek to encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities, provided that a balance is achieved in relation to off-site amenity impacts.
66. Specifically, Clauses 13.04-1 and 21.04-2 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 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).
67. The subject site is located within the Commercial 1 Zone (where a permit is not required to use land for a bar). A key purpose of the zone is *to create vibrant mixed use commercial centres for retail, offices business, entertainment and community uses*. The subject site is also located within the Johnston Street NAC and thus is considered a strategic location for a commercial premises as encouraged by planning policy at Clauses 17.02-1S, 18.01 and 21.04-2 of the Scheme.
68. Overall, the expansion of the licensed area associated with the existing bar located within the Commercial 1 Zone and the Johnston Street NAC, is considered to comply with strategic planning objectives relevant to activity centres. The premises is an established licensed venue which has operated for many years and contributed to the vibrancy of the Johnston Street NAC, where entertainment uses are specifically encouraged. Whilst the proposal has strong strategic support from the Scheme, local policy at *Clause 22.09* articulates decision guidelines relating to cumulative impact, off-site amenity impacts, and land use conflict considerations. These require further assessment (which will be discussed in detail in the balance of this report) given the 'red-line' area seeks to extend further toward the sensitive interface at the rear.

Sale and consumption of liquor

69. The decision guidelines at Clause 52.27 of the Scheme, include the consideration of the impact of the sale or consumption of liquor on the amenity of the surrounding area, the impact of the hours of operation and number of patrons on the amenity of the surrounding area and the cumulative impact of any existing licensed premises and the proposed licensed premises.
70. Clause 22.09 (Licensed premises policy) of the Scheme is Council's local policy to guide the assessment of new or extended licensed premises within the municipality. It contains six key elements that will be considered in the following section.

Location and Access

71. The subject site is located midblock within the Johnston Street NAC, with a mix of both commercial and residential uses in close proximity. The existing bar use is appropriately located given the purpose of a NAC and its close proximity to multiple alternative transport modes. In addition to being within the Principal Public Transport Network (PPTN) through nearby bus and tram networks, taxi and Uber services would also be readily available. Additionally, the premises has been operating since approximately 1994 and is an established licensed premises. It also supports less than 200 patrons and therefore its location within a NAC (as opposed to a Major Activity Centre) is supported by Clause 22.09.
72. The existing licensed premises has two bar areas, one at ground level and one at first floor with facilities for patrons established at both levels. Access to and from the existing premises is limited via the Johnston Street frontage only and the deck and the bar area at first floor is provided solely via the existing timber stairs within the rear courtyard. These current access arrangements will not change under the proposed amendment.
73. A roller door is located along the edge of the courtyard to the rear laneway. The applicant has advised officers that the roller door is kept open during operation hours for the purpose of providing an emergency fire exit and that a metal shutter gate (within title boundaries) restricts patron access to the laneway.
74. Council's Social Policy and Research Unit and Community Amenity Unit have requested that the roller door remain closed at all times. In order to ensure that patrons from the premises do not spill out onto the laneway, a condition will be placed on any amended permit to issue to require that the metal shutter gate remain closed to patrons at all times, except in the event of an emergency. With this condition in force on any amended permit to issue, there will be no change to where patrons enter and exit the premises, being the Johnston Street entrance.
75. In addition to these measures, Council's Local Law No.8 prohibits the consumption of liquor in public places and Council's Community Amenity Unit and Victoria Police are charged with ensuring these venues operate in an appropriate manner.
76. The applicant has submitted acoustic reports to clarify the ramifications of this from an acoustic amenity perspective and issues relating to potential noise impacts will be discussed later in assessment.
77. Overall, the location of the premises within the Commercial 1 Zone and Johnston Street NAC, as well as limiting patron access via Johnston Street only is supported by policy at Clause 22.09.

Venue Design

78. These policies 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. It also requires waste management and storage is provided on-site and noise enclosures are provided where bottle crushers are to be used.
79. As this amendment application does not seek to alter the layout or design of the venue, but merely allow for the sale and consumption of liquor within the rear courtyard, these policies are largely extraneous to this application.
80. Queuing outside the premises may occasionally occur during the peak periods and would be confined along the Johnston Street frontage. The Noise and Amenity Action Plan (NAAP) submitted does not provide details on how queuing will be managed. Although this amendment does not seek an increase in patron numbers, a condition will require this to be included in an amended NAAP to ensure the footpath is not obstructed.
81. With respect to waste management, the NAAP submitted confirms that bins will be stored at the rear of the premises within the title boundaries and waste collections will only occur between 7.00am and 10.00pm Monday to Saturday, or after 9.00am on a Sunday or public holiday. This complies with policy at Clause 22.09-3 of the Scheme. However, it is not reflected on the redline plan.

Hence, a condition is recommended to require an amended redline plan that shows the location of the bin storage area within the title boundaries of the site, and the submission of a satisfactory Waste Management Plan to ensure bins remain on-site, other than during collection times. There are no existing or proposed bottle crushers proposed on-site for consideration.

Patron Numbers

82. Policy at Clause 22.09 relating to patron numbers aim 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.
83. This application will simply increase the area for the sale and consumption of liquor on the premises to include the rear courtyard area (the entire site) and will allow for a greater spread of patrons across the site. The total number of 120 patrons already permitted will remain unchanged. It should be noted that there are no restrictions regarding patron numbers within this rear courtyard area, albeit that it is not licenced.
84. It is noted that the advertised submission documents do not specify the patron capacity proposed for the rear courtyard (as per existing conditions). However, as will be discussed later in this report, the acoustic studies carried out by the applicant have demonstrated that the proposal will achieve compliance with SEPP N-1 and SEPP N-2 limits by allowing no more than of 25 patrons within the rear courtyard.
85. Based on VCGLR's guidelines for maximum patron numbers, a ratio of one (1) person per 0.75sqm should be achieved to prevent overcrowding inside a venue. A maximum of 25 patrons within the 25sqm rear courtyard area would provide a one (1) person per 1sqm ratio which exceeds this requirement. It is considered that 25 patrons can be safely accommodated within the 25sqm courtyard. A condition is recommended to enforce these patron restrictions within this area.

Hours of Operation

86. The existing planning permit currently allows the premises to operate until 3:00am, seven days a week. It is important to highlight that the proposed amendment does not seek to increase the overall operating hours allowed by the planning permit
87. The application proposes the courtyard area which forms part of this amendment application to be licenced between the following hours (which fall within the parameters of the permit and existing liquor licence):
 - (a) Monday to Wednesday: 9am to 2am
 - (b) Thursday to Saturday: 9am to 3am
 - (c) Sunday: 10am to 3am
88. The relevant policies at Clause 22.09 of the Scheme provide the following guidelines in regards to hours of operation:
 - (a) Licensed premises within 30 metres of a residential zone should not provide for the sale and consumption of liquor beyond 11pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.
 - (b) Licensed premises in a Commercial or Industrial zone should not provide for the sale and consumption of liquor beyond 1am, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.

- (c) For outdoor areas, including smoking areas, rooftops and open courtyards, the sale and consumption of liquor should not occur after 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.
 - (d) Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.
89. With respect to the Late Night Freeze that applies to premises seeking to operate beyond 1am, Council's Social Policy and Research Unit have confirmed that the Late Night Freeze guidelines (recently extended to 30 June 2021) do not apply to an application to amend an existing liquor licence that already allows the consumption of liquor after 1am. It is therefore not relevant to this amendment application.
90. The proposed commencement time for the sale and consumption of liquor complies with the policy requirements of Clause 22.09 as it will not commence prior to 9am.
91. Whilst the proposed conclusion of operating hours for the rear courtyard area are consistent with that of the planning permit (already allowing operations till up to 3am), the hours exceed the recommended operating hours for open areas (until 10pm) and for a licensed premises within 30m of a residential zone (until 11pm).
92. Officers must therefore be satisfied that there will be no adverse impact on the amenity of the surrounding area from the proposed operating hours of the rear courtyard.
93. The acceptability of the proposed conclusion of operating hours for the courtyard area are intrinsically linked to whether the noise generated from the premises will adversely impact the amenity of the area, which will be discussed from paragraph No.95 to 142 (in the assessment to follow).
94. As the proposal is not for a new premises, nor modifying the overall hours or patron numbers of the venue, a cumulative impact assessment is not warranted.

Noise and Amenity

95. The use of the land as a bar has been ongoing for a number of years, dating back to 1994 during which the premises was occupied by 'La Sangria Bar'. Council's records for this site show no known noise complaints within the last 15 years, and the management of the premises has since changed (now 'Bad Decisions Bar - the applicant) in early 2019. Overall, the site has a good operational history.
96. However, the potential noise and amenity impacts from the proposed 2am and 3am closing hours of the courtyard have been raised concern by the objectors along Victoria Street. It is noted that within a 100m radius of the site, there are fifteen (15) other licensed premises, with a number of these operating until 3am through the week or restricted on certain days (weeknights and/or Sundays).
97. The map and table in Fig.10 below show details of these premises and that the majority are located on the south side of Johnston Street which interfaces the Mixed Use Zone across the laneway.



PREMISES	LICENCE TYPE	ADDRESS	PATRON CAPACITY	MAX LICENCED HOURS
The Brothers Public House	Late Night Licence	42 Johnston St	83 patrons	10am to 3am
The Shady Lady	General On Premises	36 Johnston St	60 patrons	7am to 1am
Tankerville Arms	Late Night Licence	230 Nicholson St	600 patrons	12pm to 3am
Hogar Espanol Club	Full Club Licence	59-61 Johnston St	N/A	Restricted on Sunday only (10am-1am)
Laundry Bar	Late Night Licence	48-50 Johnston St	272 patrons	7am to 3am and 10am to 3am on Sunday
Kanela Bar Restaurant	Late Night Licence	56 Johnston St	60 patrons	7am to 3am and 10am to 11pm on Sunday
VAU D'VILLE	Late Night Licence	62-70 Johnston St	266 patrons	1pm and 3am and 1pm and 1am between Thursday and Saturday
Bad Decisions Bar	Late Night Licence	46 Johnston Street	120 patrons	9am to 3am
Hares and Hyenas	On Premises Licence	63 Johnston St	80 patrons	10am and 11pm
Fitz Curry Café	Restaurant and Café Licence	44 Johnston St	N/A	5pm an 11pm
Veggie Mum Fitzroy	Restaurant and Café Licence	72 Johnston St	90 patrons	10 am and 1am and 10am and 11pm on Sunday
WA KENBO	Restaurant and Café Licence	69-71 Victoria St	46 patrons	10am and 11pm
CAFE 58	restaurant and Café Licence	58 Johnston St	50 patrons	7am and 11pm and 10am to 11pm on Sunday
BABY PINK GIN	Limited Licence	Suite 2, 1 Harrison Place	N/A	Sale of liquor only
The Old Bar	Late Night Licence	74-76 Johnston St	175 patrons	12 noon and 3am Sunday (12pm and 3am)

Fig.10 A map and table showing the location and details of licensed premises within a 100m radius of the site (Source: VCGLR interactive maps).

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

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

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

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

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

It must be noted that the subject site is within the Johnston Street NAC with a Mixed Use Zone directly abutting to the laneway to the south. This is clearly an interface zone, and whilst considerations to residential amenity must be afforded for residential properties, it is clear that residential amenity expectations within an interface zone must be tempered.

101. Clause 22.09 contains specific policy requirements for the assessment of noise, as follows:
 - (a) *Noise from the operation of the licensed premises should not have an unreasonable impact on the amenity of the area.*
 - (b) *Noise emissions from licensed premises should comply with the standards specified in the State Environmental Protection Policy or any other relevant requirement such as accepted sleep disturbance criteria or relevant Australian Standards.*
 - (c) *On-site noise attenuation measures should be applied for licensed premises where unreasonable amenity impacts on the surrounding area may result from the proposed activities.*
 - (d) *Where required, a licensed premise must be designed and managed in accordance with an acoustic report approved by the responsible authority.*
102. In respect of the acoustic performance of the existing building and the proposal concerning the rear courtyard area, the applicant has submitted a number of acoustic reports to thoroughly assess the potential noise impacts created by the proposal.
103. The purpose of each acoustic report submitted has been to address patron noise from the rear courtyard area in addition to existing levels of music and patron noise emanating from the premises, and to address the concerns raised in external peer reviews of previous reports.
104. The assessment of noise from the rear courtyard area will be based on the final findings of the JTA acoustic report dated 23 January 2020, which supersedes all earlier versions submitted to Council. The content and recommendations of this report are summarised below in paragraphs No.105 to 117.

Noise Measurements

105. Background and venue noise level measurements were collected on Saturday night on 29th September 2019 (and the Sunday morning after) and used to calculate SEPP N-2 night-time music noise limits and patron noise level limits to assess compliance at the nearest sensitive noise receivers being Level 1 and 2 apartments at No.19 Victoria Street and apartment units at Levels 2 to 5 at No.69 Victoria Street.
106. Operating conditions were typical; with a birthday party in the function space at first floor and typical patron numbers and music throughout the premises.
107. The most dominant noise sources at the residents were found to be:
 - (a) Music noise from the Function Room open door.
 - (b) Patrons noise from both ground level and level 1 undercover areas.
108. It is noted that SEPP N-1 and SEPP N-2 specifically exclude voice noise and there are currently no policy requirements controlling patron noise. To obtain appropriate limits for patron noise an assessment has been made against the following criteria:
 - (a) State Environment Protection Policy No.N-2 – Control of Music Noise from Public Premises (SEPP N-2)
 - (b) State Environment Protection Policy No.N-1 - Control of Noise from Commerce, Industry and Trade (SEPP N-1)
 - (c) NSW Road Noise Policy - Sleep Disturbance Criteria
 - (d) Background noise level (L90) plus 5dB

109. To substantiate the proposed operating hours of the courtyard area during quieter days of the week (Sunday to Thursday), predicted background noise levels were adjusted accordingly and a lower patron noise limit for the noise sensitive receivers was set to Leq 46 dB(A).
110. Overall, the report determines the following limits for patron noise at the relevant noise sensitive receivers:
- (a) Friday and Saturday operations:
 - Leq 51 dB(A) at 19 Victoria Street apartments.
 - Leq 52 dB(A) at 67-69 Victoria Street apartments.
 - (b) Sunday to Thursday operations:
 - Leq 46 dB(A) for all noise sensitive receivers.
 - (c) In addition to the predicted patron noise night time limits above, sleep disturbance criteria of Lmax 60- 65 dB(A) are set for all noise sensitive receivers and considered against predicted maximum patron noise levels (e.g patrons shouting from the courtyard).

Note: Patron noise levels below Lmax 60 dB(A) considered acceptable, levels between Lmax 60 and 65 dB(A) considered marginally acceptable, and levels above Lmax 65 dB(A) exceeding the criteria.

Noise Modelling Results

111. The most affected residential properties were found to be at Level 5 of 67-69 Fitzroy St and Level 1 and 2 apartment units at 19 Victoria St which are located closest to the premises. The predicted results at these locations are used to determine compliance with the relevant criteria.
112. The results of the assessment for music noise emissions from the premises are shown in Table 7.4 (page 17 of acoustic report) and predict that music noise emissions measured at the most sensitive noise receivers will comply with SEPP N-2 night time noise limits.
113. The noise modelling assessment for patron noise emissions is based on the rear courtyard operating at full capacity with 25 patrons.
114. The predicted patron noise levels for Friday and Saturday operations as shown in Table 7.5 (page 18 of the report) comply with the patron noise limits in paragraph No.110 (a) above. As for predicted maximum patron noise limits against the sleep disturbance criteria, the closest apartment unit at Level 1 of No.19 Victoria Street showed marginal compliance (Lmax 61 dB(A)).
115. The predicted maximum patron noise levels for Sunday to Thursday operations are shown in Table 8.3 (page 25 of the report) and show the most affected noise sensitive receivers comply with the adopted criteria.
116. Additional measurements were conducted on Sunday 12 January 2020 between 8:15am and 9:30am, including from the balcony of the Level 1 apartment unit at No.19 Victoria Street located closest to the premises. The results of the additional noise testing verify the accuracy of results from the noise modelling assessment.
117. The report does not recommend any acoustic treatment measures.

Acoustic Amenity Impacts – Music Noise

118. It is clear that there are two (2) main aspects of noise sources that require a detailed assessment to ensure that the proposed sale and consumption of liquor from the rear courtyard would not result in adverse amenity impacts for the surrounding residents. These aspects are patron noise and music noise.
119. The existing music noise sources from the premises are sound systems located within the ground and second floor bar areas of the building. The NAAP provided states that the ground floor bar area plays predominantly background level music with the function area at first floor provisioned to allow for DJ's and live acts. Condition No.6 of the existing planning permit requires electronic noise limiters within the amplifying systems to ensure music noise levels comply with SEPP N-2 and will remain on any amended permit to issue.
120. No concerns have been raised by SLR Consultants in their peer review with regards to predicted compliance for music noise levels, and it is noted that there is no music proposed to be played in the courtyard. The NAAP provided confirms this and also outlines that the premises will operate in accordance with SEPP N-2. Nevertheless, a condition will be placed on any amended permit to issue to ensure there is no music played within the courtyard area.
121. It is noted in the JTA acoustic report that the door from the ground floor bar and courtyard was closed when the noise measurement was conducted from the venue on 29 / 30 September 2019. Furthermore, the JTA acoustic report specifies that the most dominant noise sources at the residents include music noise from the function area with the door open. Officers consider it prudent to include a condition on any amended permit requiring the doors from the ground and first floor bar areas to the courtyard to be self-closing.
122. This will ensure they remain closed at all times (except for ingress and egress) and provides certainty that music noise breaking out from these areas into a fully operational courtyard area is minimised.

Acoustic Amenity Impacts – Patron Noise

123. In relation to patron noise, the peer review undertaken by SLR Consultants has concluded that the assessment methodology in the JTA Report dated 23 January 2020 is accepted and successfully demonstrates that patron noise from the courtyard, with the rear roller door remaining open, will likely comply with the appropriate noise targets at all noise sensitive locations along Victoria Street.
124. The results of the acoustic study and subsequent recommendation of the peer review are contingent on limiting patron numbers within the courtyard to no more than 25 patrons. Hence, any amended permit to issue will include a condition to restrict patron numbers within the courtyard to not more than 25.
125. It is noted that the JTA acoustic report does not identify or address noise impacts on shop-top dwellings along the southern side of Johnston Street. The acoustic report includes a signed letter from the property owner of the adjoining property at No.44 Johnston Street as an attachment stating that the first floor has not been used for residential purposes for a number of years. The closest shop-top residence to the premises is therefore at No.40 Johnston Street to the west. However, the proposal is unlikely to unreasonably add to noise impacts currently experienced by this property given that it directly abuts an existing premises (The Brothers Public House) which is licensed until 3am.
126. Although the outcome of the acoustic report and peer review lends support to the licensing of the courtyard (with a maximum capacity of 25 patrons) until the same hours as the remainder of the premises, a balanced approach should be taken as other important factors that inherently influence maximum patron noise levels. The report acknowledges the need for appropriate management controls to keep patron noise to reasonable levels by discouraging shouting type behaviour in the ground level outdoor area.

127. To ensure a venue is managed appropriately, policy at Clause 22.09 requires submission of a NAAP which outlines management procedures aimed at ensuring good patron management. If endorsed the NAAP becomes a legal document that can be enforced if the premises operates outside of the parameters.
128. The NAAP submitted to Council outlines the specific management procedures to be followed at all times, and includes details relating to staffing, responsible service of alcohol and complaint management procedures for minimising amenity impacts. The measures indicated in the NAAP that have not been addressed elsewhere in this report include:
- (a) All current and future staff members will be current holders of a Responsible Service of Alcohol Certificate.
 - (b) The venue operator and staff to take all amenity related complaints seriously and taking steps to rectify the complaint and keep an up to date record of complaints and the actions taken to resolve them will be kept in an incident log book.
 - (c) Signage will be erected at the entry of the building requesting patrons to exit from the premises in a quiet and orderly manner and staff to use all reasonable and practical methods to ensure this.
 - (d) Should a situation arise, staff are trained to approach patrons to request noise levels be reduced.
129. However, the NAAP does not address potential areas of concern with regard to the courtyard operations including:
- (a) Management of the maximum number of patrons sitting in the courtyard.
 - (b) Acknowledgement of the open rear interface of the premises.
 - (c) Specific steps in ensuring that the noise and behaviour of patrons in the courtyard does not impact the amenity of the area.
130. Any condition will require an updated NAAP which specifies these details to the satisfaction of the Responsible Authority (and removes statement that “noise sources associated with the premises seem unlikely to negatively impact on any residents”).
131. The submission documents do not include any details on the food offering on the premises. The applicant has stated that light snacks and grazing boards will be available at all times and that food catering is arranged for functions held at the first floor. The provision of an adequate food offering is considered an effective measure for reducing alcohol intake and the risks associated with the excessive consumption of alcohol. Given the late operations proposed for the courtyard, the lack of a more substantial food offering beyond light snacks and grazing boards has been raised as a significant concern by Council’s Social Policy and Research Unit. Additionally, officers note the lack of a kitchen or food preparation facilities on site as shown on the redline plan.
132. The red-line plan submitted also shows fixed tables and chairs will be provided for patrons within the courtyard. However, the exact number of seats provided is unclear. The provision of adequate seating within the courtyard would aid in reducing vertical drinking and lower the risk of intoxication. Therefore, a condition will require the number and layout of fixed seating within the courtyard to be shown on the redline plan to the satisfaction of the Responsible Authority.
133. Both Council’s Community Amenity Unit and Social Policy and Research Unit have objected to the courtyard operating beyond 1am and have requested that the roller door along the rear boundary remain closed except for emergency. The applicant has advised that the premises is obligated to keep the roller door open as an emergency fire escape. However, the metal gates beyond the roller doors will remain closed to patrons at all times except during an emergency, and will be enforced by a permit condition. Further, the JTA acoustic report and peer review by SLR Consultants have confirmed the proposals compliance with patron noise criteria and SEPP N-2 limits under these conditions.
134. Although the proposed 2am and 3am closing time proposed for the courtyard exceed the recommended 10pm closing for outdoor areas at Clause 22.09, the Mixed Use Zone interface and surrounding area is currently impacted by a mix of existing licenced premises which operate beyond 1am.

135. The premises has a good operational history and the proposed amendment does not seek to increase the number of patrons allowed on the premises or modify the current 3am operating hours that the bar has been operating on site. It purely seeks to extend the redline area to the courtyard area so the entire premises is licenced. Patrons are currently permitted to be within this courtyard area, albeit without alcohol being consumed.
136. In considering all factors including the site context, the current 3am operating hours of the premises, the absence of music within the courtyard, and predicted compliance with patron noise criteria and SEPP N-2 limits, the 3am closing time for the courtyard is supported on Fridays and Saturdays.
137. This is subject to compliance with the recommended permit conditions discussed thus far in this report as well as the endorsement and implementation of a satisfactory NAAP with confirmation that light snacks will be available up till closing time. It is understood that noise levels along the NAC on a Friday and Saturday would be higher than the rest of the week and is reflective of the weekend operation hours for most licensed premises within the area, including those which are in closer proximity to the apartments along the laneway.
138. Patron noise from the operation of the courtyard until 3am on Friday and Saturday is unlikely to result in unreasonable amenity impacts and as predicted in the acoustic report, unreasonable noise impacts on apartments along the laneway interface.
139. However, officers are not satisfied that the 3am courtyard operation will not detrimentally impact the amenity of the surrounding area during quieter times of the week. Given the limited food offering on premises, the premises relies more heavily on good management and good patron behaviour to ensure that patron noise is not excessive.
140. The acoustic report and peer review have deemed that midweek operations (with a maximum of 25 patrons in the courtyard) up to 3am do not pose a risk to the acoustic amenity of the area. However that aside, the decision guidelines at Clause 65.01 requires appropriate consideration of orderly planning and the amenity of the area. It is considered that the operation of the courtyard beyond 1am between Sunday and Thursday poses greater risk of impacting surrounding amenity and causing sleep disturbance, particularly for the most affected apartments on Victoria Street as identified in the acoustic report.
141. A balanced approach will therefore be applied, and a condition will require the sale and consumption of liquor within the courtyard area to cease at 1am between Sunday and Thursday to better safeguard the amenity of the area during quieter times of the week. The 1am restriction brings the operating time closer to compliance with Clause 22.09, with the sale of consumption of liquor beyond this time to remain largely within the confines of the building as per existing conditions. The 1am restriction time for the courtyard on these particular days is also consistent with the restricted midweek operating hours of several other licensed premises in the area.
142. In conclusion, officers are satisfied that the approval of courtyard licensing subject to permit conditions, including more restrictive midweek operating hours, will achieve a balanced outcome in improving the functioning and offerings of the premises, without significant impact upon the general amenity of the area.

Noise and Amenity Action Plan (NAAP)

143. The contents and deficiencies of the submitted NAAP have been discussed throughout the assessment above. However, with the courtyard required to close at 1am from Sunday to Thursday, the NAAP must also be updated to include detailed measures to ensure that the sale and consumption of liquor within the rear courtyard will cease outside of the permissible times.

Planning Permit Amendments

144. To reflect planning permission for the sale and consumption of liquor within the courtyard and the restrictions discussed in the assessment above, the permit preamble and conditions of Planning Permit No.3572 (which currently reflect the use of the land as a bar/restaurant will need to be modified accordingly.

Modify Permit Preamble

145. The permit preamble of any amended permit to issue will reflect permission for the sale and consumption of alcohol under a General Liquor Licence which is associated with the 'as-of-right' use of the land as a bar. The preamble will be modified from:

'For the purpose of Bar/Restaurant'

to

"Sale and consumption of liquor (General Liquor Licence) associated with a bar (no planning permit required for the use)."

Modify Permit Conditions

146. As discussed earlier in this report, the deletion of Conditions 4 and 5 which set out requirements relating to the car parking and loading requirements for the bar/restaurant is proposed. This is supported due to the following:

- (a) Council's records indicate that the rear courtyard area was historically used for the dual purpose of car parking/loading. However, with the stairwell providing sole access to the first floor space, the rear courtyard area has inherently become pedestrianised (for both staff and patrons) for many years, removing its previous functioning as a car space/loading area. This is evidenced in the endorsed plans for Planning Permit No.980309 which was granted by Council on 26 June 1998, whereby the area at ground floor is nominated as a 'courtyard'. Imposing that this space bear a sole vehicular/loading function would pose safety risks, while alternative means for deliveries remain available.
- (b) A bar is also an as-of-right use in the Commercial 1 Zone and there are no specific loading requirements that apply in the Yarra Planning Scheme. The absence of a dedicated loading area within the title boundaries is consistent with the other food and drinks premises within this section of Johnston Street.
- (c) In regard to car parking requirements, Clause 52.06 (Car parking) applies to:
 - (ii) *a new use; or*
 - (iii) *an increase in the floor area or site area of an existing use; or*
 - (iv) *an increase to an existing use by the measure specified in Column C of Table 1 in Clause 52.06-5 for that use.*
- (d) The proposal is not for a new use, an increase in floor area or site area of the existing use and would not increase the measure specified in Column C of Table 1 of Clause 52.06-5 for that use, being the leasable floor area. Therefore, this clause does not apply.
- (e) Overall, the deletion Condition No.4 and 5 is supported as they are no longer relevant under current requirements of the Yarra Planning Scheme.

147. Further to the deletion of Conditions 4 and 5 of the permit, the following changes will be required in support of the proposed amendment and to ensure the premises operates in line with current conditional requirements:

- (a) Introduction of new Condition 1 and 2 requiring lodgement of amended plans and compliance with endorsed plans;
- (b) Amended Condition 3 to make reference to licensed hours and courtyard restrictions.

- (c) Amended Conditions 6 and 8 to reflect the current wording of conditions/restrictions.
- (d) Amended Condition 11 to remove reference to 'consumption of alcohol' which contradicts the liquor licence in place.
- (e) Addition of new conditions Nos.13 to 25 to apply the further operational requirements/restrictions recommended within the assessment of this report, including an updated permit expiry condition (Condition 25).

Objector Concerns

148. Noise impacts

- (a) Noise impacts and the satisfactory findings of the submitted acoustic reports have been discussed at paragraphs No.118 -142.

149. Excessive licensed hours

- (a) The proposed licensed hours have been discussed at paragraphs No.86-94. The proposed licensed hours of the courtyard are proposed to match those of the rest of the premises, however recommended restrictions are discussed at paragraphs 140-141, requiring that the sale and consumption of liquor within the courtyard area be restricted to no later than 1am from Sunday to Thursday.

150. Lack of noise attenuation measures

- (a) All acoustic reports submitted to Council and external peer reviews carried out have not recommended any noise attenuation measures beyond limiting the patron numbers within the courtyard to 25. The recommendations of the JTA acoustic report dated 23 January 2020 and external peer review are discussed in paragraphs No.105 – 117. These can also be found within the attachments to this report.

151. Loitering in the laneway

- (a) The only and main entry to the premises is located along Johnston Street. Matters relating to the patron entry and exit points of the premises are discussed in paragraphs No.71 – 77.

152. Deletion of permit Conditions No. 4 and 5

- (a) The deletion conditions No. 4 and 5 is supported for the reasons discussed in paragraph No.146.

153. Lack of details in submitted application and acoustic report

Failure to locate address impacts on Universal Theatre Apartments.

- (a) The location and potential impacts on apartments along Victoria have been addressed in detail within the later JTA Report dated 23 January 2020 and at paragraphs No. 118 - 142 of this report.

Patron numbers in rear courtyard not specified

- (a) The number of patrons within the courtyard will be limited to 25 as recommended in the JTA Report dated 23 January 2020, which would also be enforced by a condition on any amended permit to issue.

Location of bin storage area not shown

- (a) The applicant has confirmed that a bin storage area will be located within the title boundaries of the site. A relevant plan detailing and a Waste Management Plan will be required by a condition on any amended permit to issue, and will require bins to be stored on-site (other than for the purpose of collection).

Conclusion

154. 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, subject to conditions.

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 3572 to extend the licensed area of the existing bar (an as-of-right use in the zone) to include the courtyard area at the rear of the site and deletion of permit conditions No.4 and 5 at 46 Johnston Street Fitzroy VIC 3066 subject to the following conditions:

Amend permit preamble to read:

Sale and consumption of liquor (General Licence) associated with a bar (no planning permit required for the use).

Amend permit conditions (amended or new conditions shown in bold) to read:

1. **Before the sale and consumption of liquor within the courtyard commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the redline plan dated 27 June 2019, but modified to show:**
 - (a) **Annotation to confirm the metal shutter gate will remain closed to patrons at all times, except in the event of an emergency;**
 - (b) **Annotation to require self-closing doors between the ground and first floor bar areas and the rear courtyard;**
 - (c) **Location of bin storage area within the title boundaries of the site; and**
 - (d) **The number and layout of fixed seating within the courtyard area for not more than 25 patrons, to the satisfaction of the Responsible Authority.**
2. **The sale and consumption of liquor and development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.**
3. **The sale and consumption of liquor may only occur between the following hours:**
 - (a) **Monday to Wednesday: 9am to 2am (the following day);**
 - (b) **Thursday to Saturday: 9am to 3am (the following day);**
 - (c) **Sunday: 10am to 3am (the following day);**

Within the rear courtyard area:

- (d) **Sunday to Thursday: 9am to 1am (the following day);**
- (e) **Friday and Saturday: 9am to 3am (the following day);**

And with no more than 25 patrons within the rear courtyard at any time liquor is being sold or consumed.

4. ***Deleted***
5. ***Deleted***
6. **An electric noise limiter must be installed in the amplifying systems, The noise limiter must:**
 - (a) **ensure the emission of noise from amplified music does not exceed the levels specified in the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2); and**
 - (b) **be maintained and operated at all times.**

to the satisfaction of the Responsible Authority.
7. **Alarms must be directly connected to a security service and must not produce noise beyond the premises.**
8. **The applicant must at all times, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.**
9. **No gambling is permitted.**
10. **This permit together with any other necessary permits or certificates, must be displayed in a prominent place.**
11. **A public notice board (min 100cm x 50cm) must be provided on the premises. The notice board shall include a notice governing the rules of behaviour on the premises including prevention of gambling, fighting, excessive noise and may be available for patrons' notices.**
12. **The maximum number of patrons permitted on the premises at any time is 120.**
13. **No music is permitted within the rear courtyard.**
14. **The doors between the ground and first floor bar area and rear courtyard are to remain closed at all times, except for the purpose of egress and ingress.**
15. **The metal shutter gate along the rear boundary is to remain closed to patrons at all times, except during the event of an emergency.**
16. **The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).**
17. **Before the sale and consumption of liquor commences within the courtyard, 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 Plan must be generally in accordance with the Noise and Amenity Action Plan dated 18 June 2019, but modified to include:**
 - (a) **How patrons queuing outside the premises along Johnston Street will be managed so as not to obstruct the footpath;**

- (b) **Acknowledgement of the open rear interface of the courtyard and steps to ensure noise and behaviour of patrons in the courtyard does not impact the amenity of the area;**
 - (c) **Remove statement that noise sources associated with the premises seem unlikely to impact negatively on any residents;**
 - (d) **Details of how the number of patrons sitting within the courtyard will not exceed 25;**
 - (e) **Details of how the rear courtyard will be closed to patrons consuming liquor after 1am (Sunday to Thursday); and**
 - (f) **Details of food offerings available to patrons and that these will be available until closing time.**
18. **The provisions recommendations and requirements of the endorsed Noise and Amenity Action Plan must be implemented and complied with to the satisfaction of the Responsible Authority.**
19. **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.**
20. **The delivery and collection of goods to and from the land must not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.**
21. **Emptying of bottles and cans into bins must not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.**
22. **The collection of waste must not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.**
23. **Before the sale and consumption of liquor within the courtyard commences, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must detail the location of bin storage, collection frequency, and how bins will remain on the premises at all times (other than for the purpose of collection). Once approved, the Waste Management Plan will be endorsed and will form part of this permit.**
24. **The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.**
25. **This permit will expire if:**
- (a) **The sale and consumption of liquor within the rear courtyard is not commenced within two years from the date of this permit; or**
 - (b) **The sale and consumption of liquor is discontinued for a period of two years.**

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

CONTACT OFFICER: Samantha Tham
TITLE: Statutory Planner
TEL: 9205 5083

Attachments:

- 1 Site Location Plan
- 2 Advertised Site Context Plan
- 3 Advertised Existing Planning Permit and Redline Plan
- 4 Advertised Proposed Red Line Plan
- 5 Advertised Noise and Amenity Action Plan (NAAP)
- 6 Advertised Acoustic Report
- 7 Advertised Written Responses
- 8 JTA Acoustic Report [October 2019]
- 9 JTA Acoustic Report [January 2020]
- 10 SLR Peer Review - JTA Acoustic Report [October 2019]
- 11 SLR Peer Review - JTA Acoustic Report [January 2020]
- 12 Community Amenity Referral Comments
- 13 Social Policy and Research Referral Comments