

Planning Application

DAP Report



Yarra City Council acknowledges the Wurundjeri Woi Wurrung people as the Traditional Owners and true sovereigns of the land now known as Yarra. We also acknowledge the significant contributions made by other Aboriginal and Torres Strait Islander people to life in Yarra. We pay our respects to Elders from all nations and to their Elders past, present and future.

Application Information

Council Reference	PLN21/0984		
Application Received	22/12/2021		
Officer	Lara Fiscalini		
Delegate	Ally Huynh		
Address	492 Queens Pde, Fitzroy North VIC 3068		
Proposal	<p>Partial demolition, the construction of a ground floor extension to the existing hotel including an outdoor partially covered courtyard, increase in patron numbers (from 443 to 645) and modifications to the red line plan (additional floor area to operate until 10pm in courtyard area and 1am in enclosed areas), increase operating hours in existing internal courtyard from 11pm to 1am, provision for live acoustic music, installation of a promotion sign, deletion of seven (7) car parking spaces (retention of two spaces) and a reduction in the statutory car parking and bicycle facilities rates.</p>		
Ward	Nicholls		
Zone	NRZ1 - Neighbourhood Residential Zone - Schedule 1 C1Z - Commercial 1 Zone		
Overlay(s)	DCPO1 - Development Contributions Plan Overlay - Schedule 1 (Development Contributions Plan) HO330 - Heritage Overlay (HO330) Heritage Grade: Individually Significant		
Current Land Use	The Terminus Hotel		
Aboriginal Cultural Heritage Significance	Yes		
Submissions - Support	21	Submissions - Objections	43
Statutory Days	78 as of 22 November 2022		

Officer Recommendation

Refusal to Grant a Planning Permit

Planning Scheme Amendments

Amendment C269

Amendment C269 proposes to update the local policies in the Yarra Planning Scheme by replacing the Municipal Strategic Statement (MSS) at Clause 21 and Local Planning Policies at Clause 22 with a Municipal Strategic Strategy and Local Policies within the Planning Policy Framework (PPF), consistent with the structure recently introduced by the State Government.

Amendment C269 was on public exhibition between 20 August 2020 and 4 December 2020 and proceeded to a panel hearing in October 2021. The Panel report was released on 18 January 2022. Council resolved on 19 April 2022 that having considered the Panel report, to submit the adopted Amendment to the Minister for Planning for approval.

The new clauses are largely reflected in current planning policy, which is generally not contradictory to the proposed re-write of Clauses 21 and 22. However, as this amendment is now a 'seriously entertained' planning proposal, a summary and brief assessment of the relevant policies to the proposal is provided in the table below.

Proposed C269 Local Policy reference	Brief Assessment
Clause 13.07-1L – Interfaces and Amenity & Licensed Premises	<p>The policy aspirations of this clause are addressed in detail under the Clause 22.09 assessment within this report. The updated policy requires consideration of the following;</p> <ul style="list-style-type: none"> • Location and access; • Venue design; • Hours of operation; • Venue operations; • Patron numbers; • Noise <p>These provisions are included within the current Clause 22.09.</p>
Clause 15.01-1L – Signs in a Heritage Overlay	A full assessment of the proposed sign will be undertaken – the provisions within the updated policy are consistent with the existing provisions.
Clause 15.01-2L – Building Design & Clause 15.03-1L - Heritage	Built form and design is discussed extensively in the officer assessment below and concludes that the proposal exhibits acceptable building design and heritage outcomes, in accordance with the updated provisions.
Clause 17.01-1L – Employment	These provisions will be addressed within the 'use' section of the assessment.
Clause 18.02-1L – Sustainable Transport	The provision of bicycle facilities and reduction of car parking proposed will ensure this policy is met.

Clause 18.02-4L – Car Parking	The proposal seeks a reduction of the car parking requirements to reduce reliance on private vehicle usage.
Clause 19.03-5L – Waste	Waste management is discussed in the assessment section.

Aboriginal Cultural Heritage Significance

The site is within an area of Aboriginal Cultural Heritage sensitivity. The proposed activity is exempt from the requirement to prepare a Cultural Heritage Management Plan (CHMP) as works are proposed to an existing hard-stand and developed area of the site/existing hotel where significance ground disturbance has already occurred.

Background

The following are matters of process that are relevant to this application:

Planning History

The site has the following planning history

- Permit No. 2093 – issued 8 December 1992 to *erect an advertising sign (Floodlit major promotional sky sign, display area 43.52sqm);*
- PL03/0156 – issued 12 May 2003 for *painting of façade;*
- PL06/0813 – issued 27 December 2007 for *demolition of the rear outbuilding, construction of alterations and additions to the rear of the building to form an outdoor patron dining area and the reduction in the car parking requirement;*
- PL08/1011 – issued 16 December 2008 for *part demolition and minor buildings and works for the construction of new windows on the building façade and works to the south elevation;*
- PL08/0814 – issued 29 December 2008 to *develop the land for partial demolition works and to construct and carry out buildings and works to the existing building and to construct and carry out [buildings and works] for the installation of permanent umbrella structures on the footpath;*
- PL10/0201 – issued 28 January 2011 to *develop the land by carrying out works to create an additional beer garden, enclose the existing drive-thru to create a bar area, and other minor works, including partial demolition and the removal of the crossover at the Queens Parade frontage;*
 - An amendment to this permit was issued on 20 February 2012 to *remove the existing roller door to Queens Parade and replace with a new tilt door and pedestrian door;*
 - A further amendment was issued on 14 December 2012 to *amend the existing drive-thru to create a bar area, and other minor works, including partial demolition and the removal of the crossover at the Queens Parade frontage;*
- PL10/0484 – issued 3 September 2010 to *develop the land for the construction of a roof over the beer garden, an extension to the kitchen including partial demolition;*

- An amendment to this permit was issued on 19 January 2012 for *minor alterations to the beer garden roof and kitchen extension*;
- PLN16/0916 – issued on 23 November 2016 for *construction and display of an electronic major promotion sign*.
- PLN20/0357 – issued 1 June 2020 for *external painting to the existing building*.
- Planning Application PLN20/0637 for *partial demolition, the sale and consumption of liquor (associated with an extension to the red line area of an existing liquor license), use of the land as a Bar and buildings and works* lapsed on 18 February 2021 as the required information was not submitted within the approved timeframes.

Existing Conditions

Subject Site

The subject site is located on the intersection of Queens Parade and Brennand Street, in Fitzroy North. For ease of reference, throughout this assessment the boundaries will be referred to as demonstrated in Figure 1.

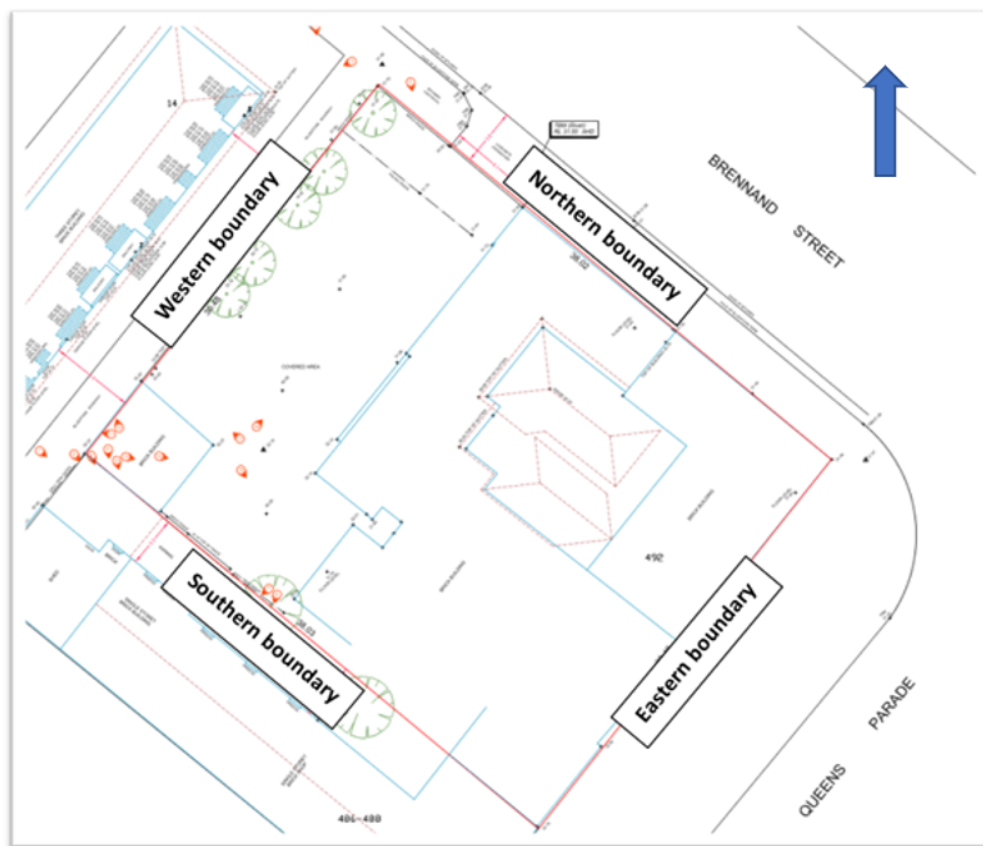


Figure 1: Orientation of site

The site has a total area of approximately 1,145sqm.

The site contains a two-storey rendered masonry commercial building, constructed along the eastern and northern boundaries. The rear portion of the site contains car parking (9 x spaces) with vehicular access from Brennand Street, with a storage room within the north-west corner. Five trees extend along the western boundary of the site.

The site is currently trading as the 'Terminus Hotel'. The hotel has operated from the subject land in some capacity since 1854. The existing floor layout contains three separate

dining areas (including one semi-enclosed outdoor beer garden), three bars, a kitchen and amenities on the ground floor and two function rooms, a kitchen, an office and three bedrooms on the first floor. There is also a submerged wine cellar and keg room. Entrances are provided from both the Queens Parade and Brennand Street interfaces.

The rear portion of the site, including the majority of the car parking spaces, has been used informally for outdoor dining during COVID. Temporary tent structures have been erected in this space; these are visible in Figure 3. The number of patrons and operating hours have not altered due to these operations; with the sale of alcohol continuing to be undertaken from within the existing red-line area. This use is authorised under Clause 52.18 of the Yarra Planning Scheme which provides exemptions from requirements applying to buildings and works and car parking due to COVID. These exemptions apply until 12 October 2023.

A major promotional electronic sign sits on the hotel roof, with a second, smaller business identification sign to the rear.



Figure 2: Building façade addressing Queens Parade



Figure 3: View from Brennand Street



Figure 4: View from NE intersection

The premise has an existing General Licence (No. 31914511) which allows a maximum internal patron capacity of 443 patrons and external patron capacity of 40 patrons (footpath dining area along Queens Parade). The licence also allows the venue to sell liquor for consumption off the premises.

The current hours of operation are as follows;

Hours for the consumption of liquor on the premises are:

- Sunday – Between 10am and 11pm
- Good Friday – Between 12 noon and 11pm
- Anzac Day (not being Sunday) – Between 12 noon and 1am
- On any other day – Between 7am and 1am

Hours for the sale of liquor for consumption off the premises are:

- Sunday – Between 10am and 11pm
- Good Friday & Anzac Day – Between 12 noon and 11pm
- Monday to Thursday – Between 7am and 11pm

- Friday & Saturday – Between 7am and 12 midnight

Title

The site is formally known as Lots 1 and 2 on TP659141S. There are no easements or other restrictions registered on title.

Surrounding Land

The subject site is located just outside the north-eastern edge of the Queens Parade Neighbourhood Activity Centre (NAC) which extends south from the site along Queens Parade to Smith Street. Land use and built form along Queens Parade within the NAC is varied and includes the following;

- Detached dwellings, multi-storey residential developments, offices and commercial uses generally single to double-store in scale, public, educational and institutional buildings and VicTrack land with an elevated train line to the north.

Queens Parade is in a Transport Zone – Schedule 2 (TRZ2) and forms part of the Principal Public Transport Network (PPTN). A substantial area of parkland is within proximity to the site, with Merri Creek to the north.



Figure 5: Site and surrounds

The land is surrounded by a mixture of planning zones, as demonstrated in Figure 6.

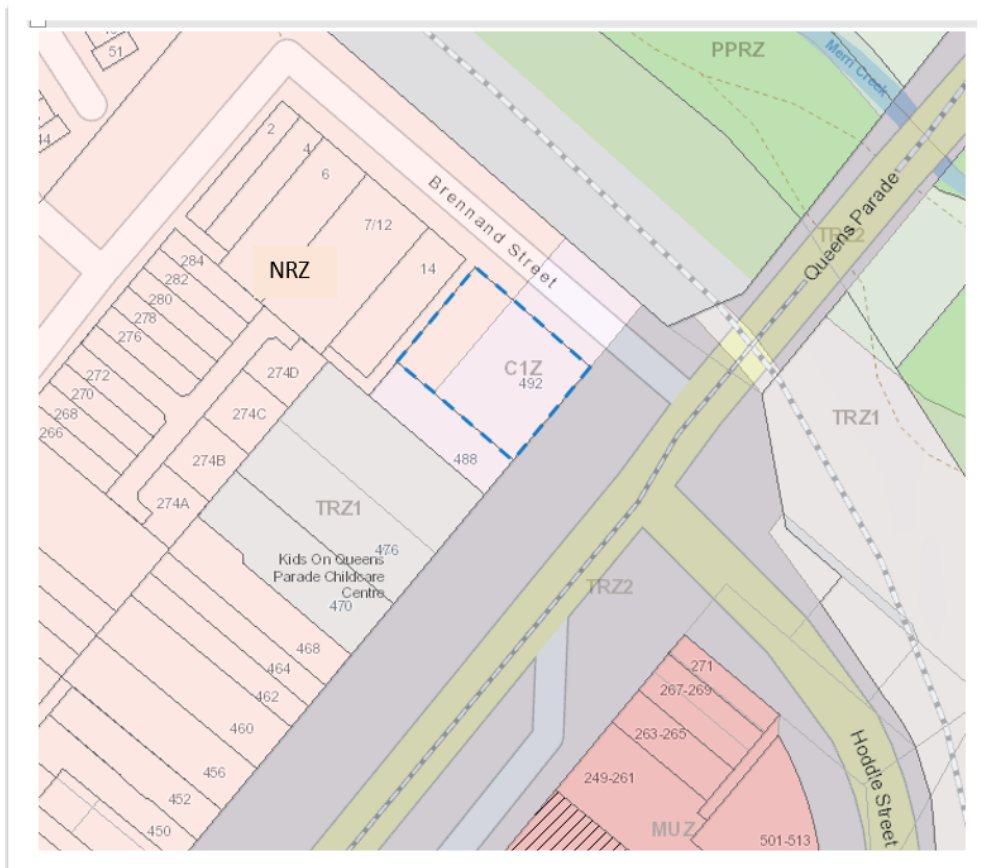


Figure 6: Surrounding zones

The immediate interfaces are outlined in detail;

North

Brennand Street extends along the northern boundary of the site, with an elevated train line (Mernda line) and Merri Creek parklands further north. Brennand Street is a two-way street which features parallel on-street car parking on each side. Additional car parking spaces are located directly opposite the hotel, on the northern side of Brennand Street.

East

Queens Parade extends along the eastern boundary. This is a major thoroughfare. Directly opposite the site on Queens Parade is Stop No. 25 (Clifton Hill Interchange) on tram route 86 (Waterfront City Docklands to Bundoora RMIT). Beyond the tram stop is the intersection of Queens Parade and Hoddle Street.

Land on the opposite side of Queens Parade is located within the Mixed Use Zone and contains a mixture of built form, including a multi-level residential development (Figure 7).



Figure 7: Land to the south-east

South

The property to the south of the site at No. 486-488 Queens Parade contains a single storey commercial building, currently tenanted by a café and a florist. The building has a large canopy which projects over the Queens Parade footpath and is located within the Commercial 1 Zone. Further to the south is a childcare centre.

West

A Council owned, unnamed laneway with a width of approximately 3m is located to the west of the site. The laneway acts as a buffer between the subject land and No. 14 Brennand Street, which contains a three-storey residential building comprising 10 dwellings on land located within the Neighbourhood Residential Zone - Schedule 1 (Figure 8). A number of balconies and windows address the subject site within all levels of this building. Residential uses extend further to the west along Brennand Street.



Figure 8: No. 14 Brennand Street

The Proposal

The application seeks partial demolition, the construction of a ground floor extension to the existing hotel including an outdoor partially covered courtyard, increase in patron numbers and modifications to the red line plan, provision for live acoustic music, installation of a business identification sign (retrospective), deletion of car parking spaces and a reduction in the statutory car parking and bicycle facilities rates.

Further details of the proposal and a link to the decision plans are below;

[D22/302373 - PLN21/0984 - 492 Queens Parade Fitzroy North - Decision Plans](#)

Use

- Internal patron capacity increased from 443 to 645 (increase of 202 patrons);
- Operating hours within new areas until 10pm and 1am (details of each individual area provided below);
- Increase red-line plan to encompass new floor areas;

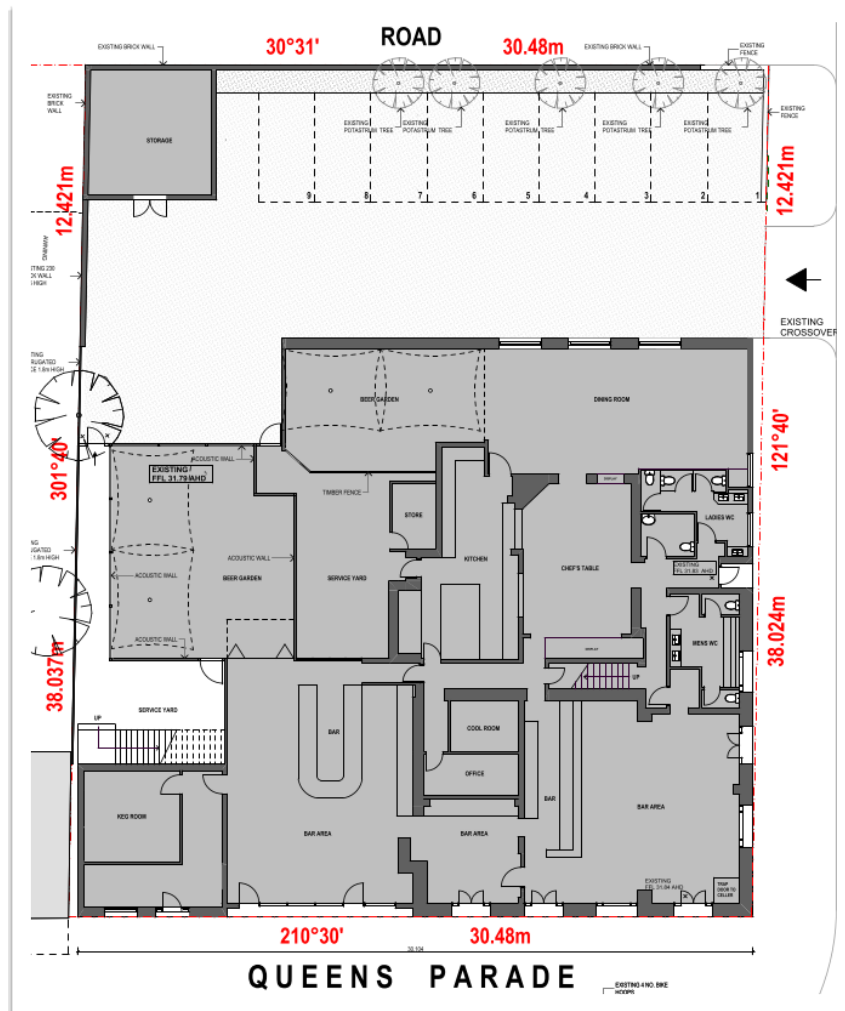


Figure 9: Existing ground floor layout

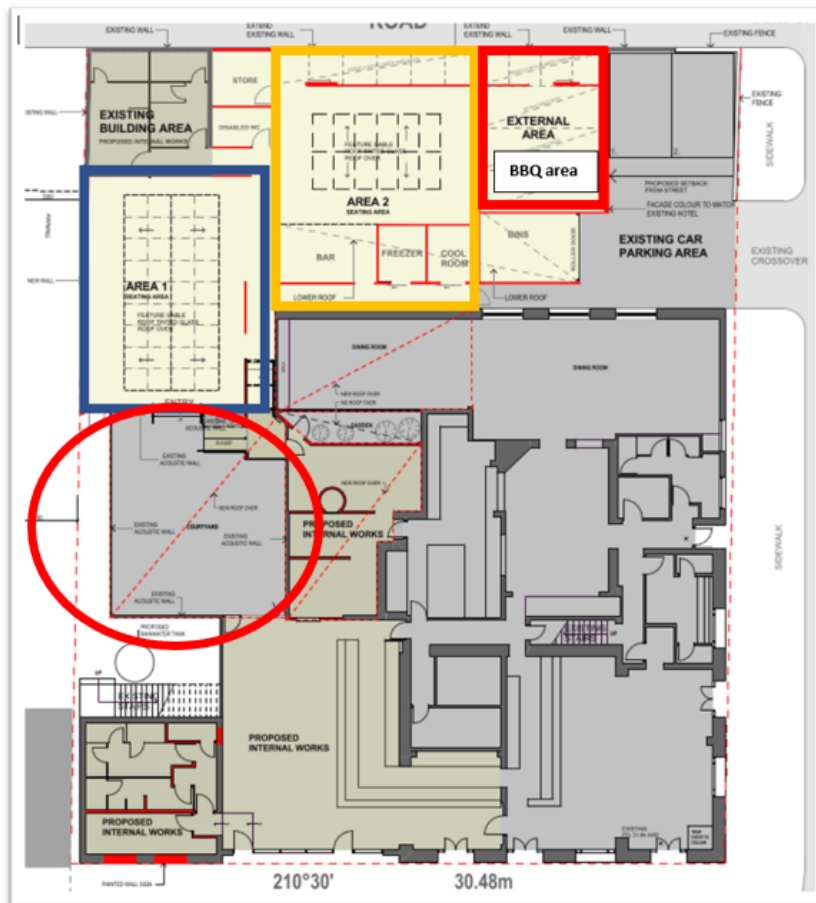


Figure 10: Proposed ground floor layout

Details of the three new areas are outlined below and demonstrated in Figure 10.

Areas 1 & 2 (outlined in blue and yellow)

- Both of these areas are fully enclosed with glass roof features;
- Operating hours until 1:00am, 7 days a week;
- Ancillary background music and/or entertainment, including live acoustic music with no drums or amplified music;

BBQ area (outlined in red)

- The BBQ area has a retractable roof and is separated from Area 2 by an automatic closing door.
- Operating hours until 10pm, 7 days a week.

Existing 'beer garden' (circled in red)

- The existing 'beer garden' is seeking to increase operating hours from 10pm until 1am.
- A new roof is proposed over this area.

Development

Demolition

- Minor demolition works including the removal of two façade windows in the south-east corner of the Queens Parade frontage (retrospective), rear sections of wall,

section of storage shed wall and internal demolition (no permit required for internal demolition works).

- Removal of 7 paved car parking spaces;
- Removal of 5 trees along the rear boundary;

Building and works

- A ground floor extension at the rear of the existing building, with part of the existing car parking area converted to indoor and outdoor seating areas;
- Increase in existing floor area from 937sqm (including ground, first-floor and cellar) to 1,221sqm;
- Three separate seating areas are proposed (Area 1, Area 2 & BBQ area) along with new amenities, storage rooms, bar, cool room and separate bin enclosure;
- The rear space will be enclosed by new sections of brick walls along the southern boundary and northern interface, ranging in height from 3m to 4.25m, with the existing brick wall along the rear (western) boundary and part of the southern boundary retained;
- Areas of pergola open to the sky will abut the western boundary; internal sliding doors will restrict access to this space when required;
- Areas 1 & 2 will have glass roofing, with a retractable roof above the BBQ space;
- Maximum height of new roof between 5.72m to 5.8m;
- The northern wall of the BBQ area will be set back 6.13m from Brennan Street;
- A roller door to the bin-storage area will provide access to waste vehicles within the side setback;
- New roofs are proposed over areas of the existing hotel;
- Addition of a 3,800L rainwater tank;
- 4 new bicycle hoops on the Queens Parade footpath, directly adjacent to existing 4 bicycle hoops.

Advertising Sign (retrospective)

- The application seeks retrospective approval for a 'business identification sign' on the eastern wall of the building (Figure 11).
- The sign is 11.25sqm in size and painted directly onto the ground floor wall.

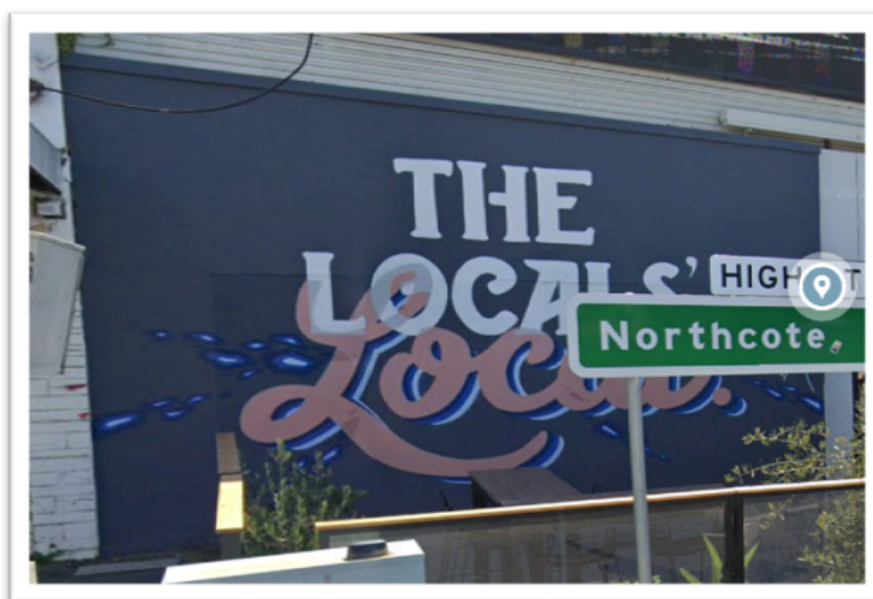


Figure 11: Retrospective sign

Yarra Planning Scheme Provisions

Zoning

The subject site is located within two zones; Commercial 1 Zone (C1Z) and Neighbourhood Residential Zone – Schedule 1 (NRZ1). These are shown in Figure 12. The majority of the new works will occur within the NRZ at the rear of the land.

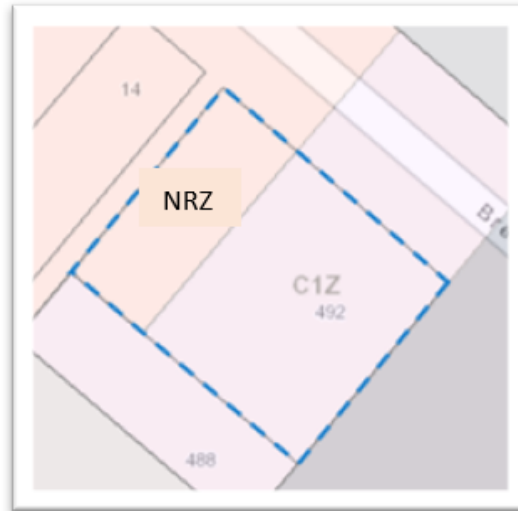


Figure 12: Zoning of land

The following provisions apply:

Commercial 1 Zone

- Pursuant to clause 34.01-4, a planning permit is required to construct a building or construct or carry out works;
- Pursuant to clause 34.0101, a planning permit is not required for the use of the land as a hotel;
- Pursuant to clause 34.01-9, advertising sign requirements are at Clause 52.05. This zone is in Category 1.

Neighbourhood Residential Zone

- Pursuant to clause 32.09-2, the use of the land as a hotel (nested under 'Food and Drink' premises at Clause 73.04-11 of the Scheme) is a 'Section 2 – Permit required use';
- Pursuant to clause 32.09-9, a planning permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.09-2.

Overlays

The subject site is affected by the Heritage Overlay and the Development Contributions Plan Overlay - Schedule 1. The following provisions apply:

Heritage Overlay (HO330 – Queens Parade Precinct, North Fitzroy/Clifton Hill)

- Pursuant to clause 43.01-1, a planning permit is required for demolition, and to construct and carry out works. A permit is also required to construct and display a sign. External paint controls apply to this heritage precinct.

'City of Yarra Database of Heritage Areas, July 2020' (as saved in incorporated documents on the DELWP website Incorporated Documents (planning.vic.gov.au) identifies the site as having an 'individually significant' heritage grading.

Development Contributions Plan Overlay - Schedule 1

- Pursuant to Clause 45.06-1 a permit granted in the DCPO must;
 - Be consistent with the provisions of the relevant development contributions plan.
 - Include any conditions required to give effect to any contributions or levies imposed, conditions or requirements set out in the relevant schedule to this overlay.

A planning permit is not required for works under the overlay. However, if a permit was issued in accordance with other permit triggers, conditions would be added to the permit as follows;

- *Prior to the commencement of the development, the Development Infrastructure Levy must be paid to Yarra City Council in accordance with the approved Development Contributions Plan; or the Owner must enter into an agreement with Yarra City Council to pay the Development Infrastructure Levy within a time specified in the agreement.*

Relevant Particular Provisions

Clause 52.05 – Signs

Pursuant to clause 73.02, a business identification sign is *'a sign that provides business identification information about a business or industry on the land where it is displayed. The information may include the name of the business or building, the street number of the business premises, the nature of the business, a business logo or other business identification information'*. The sign contains information about the business, with 'the locals' local' an identifying factor for the hotel.

Pursuant to clause 52.05-11, the sign is within 'Category 1 – Commercial areas', where a planning permit is required for the business identification sign as the overall sign area exceeds 8sqm.

Clause 52.06 – Car Parking

Pursuant to Clause 52.06-2, before the floor area of an existing use is increased, the required car parking spaces must be provided on the land. In this instance, as the site is located within the PPTN, the rates outlined in 'Column B' apply.

In this instance, the floor area of the hotel would increase from 937sqm to 1,221sqm; an increase of 284sqm. The following table identifies the car parking requirement under Clause 52.06-5.

Use	Statutory (Requirement)	Requirement (based on increased floor area of 284sqm)	Proposed provision	Reduction required
Hotel	3.5 spaces to each 100sqm of leasable floor area	9 spaces	2 spaces	7 spaces being removed 9 spaces required under Clause 52.06 Total 16 space reduction

Pursuant to Clause 52.06-3 of the Scheme, a permit is required to reduce 16 car parking spaces.

Clause 52.27 – Licensed premises

Pursuant to Clause 52.27, a planning permit is required to increase the number of patrons and the floor area within which liquor can be consumed or supplied under the existing liquor license.

Clause 52.34 - Bicycle facilities

Pursuant to Clause 52.34-1 of the Scheme, the floor area of an existing use must not be increased until the required bicycle facilities and associated signage are provided on the land.

The following table identifies the bicycle parking requirements under Clause 52.34-3 of the Scheme, the provision of bicycle parking on site, and the subsequent reduction below the statutory requirement that is being sought:

Proposed Use	Quantity/ Size	Statutory Parking Rate	No. of Spaces Required	No. of Spaces Allocated
Hotel	284sqm of bar floor area	1 employee space to each 25 sqm of bar floor area available to the public, plus 1 employee space to each 100 sqm of lounge floor area available to the public	3 employee spaces	0 employee 8 existing visitor spaces (off-site) 8 new visitor spaces (off-site)
	284sqm of lounge floor area		3 visitor spaces.	

Bicycle Parking Spaces Total		3 resident / employee spaces	0 employee spaces
		3 visitor spaces	16 visitor spaces (off-site)
Showers / Change rooms	1 to the first 5 employee spaces and 1 to each additional 10 employee spaces	0 showers / change rooms	0 showers / change rooms

The development provides a total of 3 fewer employee spaces and 13 additional visitor spaces above the requirements of the Scheme, however it is noted that all visitor spaces are proposed on the Queens Parade footpath, with no on-site spaces proposed.

Clause 52.34-2 of the Scheme states that a permit may be granted to reduce or waive this requirement. Clause 52.34-5 of the Scheme contains bicycle signage requirements.

Clause 53.06 – Live Music Entertainment Venues

The purpose of this clause is;

- *To recognise that live music is an important part of the State’s culture and economy.*
- *To encourage the retention of existing and the development of new live music entertainment venues.*
- *To protect live music entertainment venues from the encroachment of noise sensitive residential uses.*
- *To ensure that noise sensitive residential uses are satisfactorily protected from unreasonable levels of live music and entertainment noise.*
- *To ensure that the primary responsibility for noise attenuation rests with the agent of change.*

Pursuant to clause 53.06-1, these provisions apply to an application required under any zone of this scheme to use land for, or to construct a building or construct or carry out works associated with (where relevant):

- A live music entertainment venue.

Pursuant to clause 53.06-3, 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.

Clause 53.18 – Stormwater Management in Urban Development

This clause applies to an application under a provision of a zone to construct a building or construct or carry out works. An application to construct a building or to construct or carry out works:

- Must meet all of the objectives of *Clauses 53.18-5 and 53.18-6.*
- Should meet all of the standards of *Clauses 53.18-5 and 53.18-6.*

General Provisions

Clause 65 – Decision guidelines

Planning Policy Framework (PPF)

Relevant clauses are as follows:

- Clause 13.05 – Noise
 - Clause 13.05-1S – Noise abatement
- Clause 13.07 – Amenity and Safety
 - Clause 13.07-1S – Land Use compatibility
- Clause 15 – Built Environment and Heritage:
 - Clause 15.01 – Built Environment
 - Clause 15.01-1S – Urban Design
 - Clause 15.01-1R – Urban Design-Metropolitan Melbourne
 - Clause 15.01-2S – Building Design
 - Clause 15.01-5S – Neighbourhood Character
 - Clause 15.02 – Sustainable Development
 - Clause 15.02-1S – Energy and resource efficiency
 - Clause 15.03 – Heritage
 - Clause 15.03-1S – Heritage conservation
- Clause 17.01 – Employment
- Clause 17.02 – Commercial
- Clause 18.01 – Integrated transport
- Clause 18.02 – Movement networks

Local Planning Policy Framework (LPPF)

Municipal Strategic Statement (MSS)

Relevant clauses are as follows:

- Clause 21.04-2 - Activity centres
- Clause 21.04-3 – Industry, office and commercial
- Clause 21.05 – Built form
 - Clause 21.05-1 – Heritage
 - Clause 21.05-2 – Urban design
 - Clause 21.05-3 – Built form character
- Clause 21.06 – Transport
- Clause 21.08 – 8 – North Fitzroy

Local Policies

The following local policies of the Scheme are relevant:

- Clause 22.02 – Development Guidelines for Sites Subject to the Heritage Overlay
- Clause 22.05 – Interface Uses Policy
- Clause 22.07 – Development Abutting laneways
- Clause 22.09 – Licensed premises
- Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)
- Clause 22.17 – Environmentally Sustainable Development

Advertising

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 three signs displayed on site.

Council received 43 objections, with the following grounds raised;

- Increased off-site amenity impacts, with particular regard to noise, on surrounding residential sites;
- Increased pressure on car parking resources within the immediate area.

Council received 21 letters of support, with these letters noting that the hotel provides excellent support to the community, with particular reference to community sporting clubs.

Referrals

Internal Referrals

The application was referred to the following internal departments and external consultants, with recommendations contained below:

Traffic Engineering

[D22/257050 - PLN21/0984 - 492 Queens Parade, Fitzroy North - Development Engineering](#)

Social Planning

[D22/289895 - IREF22 01351 - Internal Referral Response - Social Planning](#)

Community Amenity/Compliance

[D22/251123 - PLN21/0984 - 492 Queens Parade, Fitzroy North - Compliance referral comments](#)

City Works

[D22/272436 - PLN21/0984 - 492 Queens Parade, Fitzroy North - Waste referral comments](#)

ESD

[D22/255790 - PLN21/0984 - 492 Queens Parade, Fitzroy North - ESD referral comments](#)

Heritage

[D22/262009 - PLN21/0984 - 492 Queens Parade, Fitzroy North - Heritage](#)

Strategic Transport

[D22/260486 - PLN21/0984 - 492 Queens Parade, Fitzroy North - Strategic Transport](#)
[D22/260944 - PLN21/0984 - 492 Queens Parade, Fitzroy North - Bicycle hoop costs from ST](#)

External Consultants

Acoustic Consultant (SLR Consultants)

[D22/273581 - PLN21/0984 - 492 Queens Parade, Fitzroy North - peer review of acoustic report](#)

External Referrals

The application was not required to be referred to any external authorities under the provisions of the Scheme.

Assessment

The considerations for this application are as follows:

- Use;
- Sale and Consumption of Liquor;
- Building and works;
- Advertising Sign;
- ESD;
- Car parking, bicycle parking, traffic, loading and waste; and
- Objector concerns.

Use

The Yarra Planning Scheme (the Scheme) provides strategic support for the ongoing use of the site as a hotel, with Clause 17.02-1S - Employment seeking to encourage development that meets the community's needs for retail, entertainment, office and other commercial services. The site sits just outside the Queens Parade Neighbourhood Activity Centre (NAC), with Clause 11.03-1S aiming to encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community. Strategies aim to provide activity centres that deliver a focus for business, shopping, working, leisure and community facilities, are connected by transport and maximise choices in services, employment and social interaction. The hotel has provided a social connection to the community for many years and is located in an accessible location that has good integration with existing transport networks.

On this basis, the benefits of the existing use and location of the hotel are acknowledged. However, the expanded scale of the use being sought, which incorporates increased hours of operation, increased floor area and a significant increase in patron numbers, must be balanced to ensure that off-site amenity impacts are adequately managed. The surrounding context of the land is mixed, with a significant area to the west located within residentially zoned land. This, and the residential zoning that affects the rear of the subject site, places constraints on the intensification of this use. Further to this, the intensified use of the hotel is intrinsically linked to the sale and consumption of liquor. These factors cannot be considered in isolation.

Clause 22.05-1 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. The policy includes various considerations for non-residential uses located near residential properties, with decision guidelines (relevantly) relating to noise, light spill, loading and unloading, rubbish removal and storage and other operational disturbances that may cause detriment to the amenity of nearby residential sites. Clause 13.05-1S of the Scheme aims to manage noise effects on sensitive land uses by ensuring that development is not prejudiced, and community amenity and human health is not adversely impacted by noise emissions, with a relevant strategy at Clause 13.07-1S to ensure that use or development of land is compatible with adjoining and nearby land uses.

The majority of the new section of hotel would be located within the NRZ. Clause 22.01 provides guidance on discretionary uses in the residential zone, with the objective at Clause 22.01-2 to ensure that residential amenity is not adversely affected by non-residential uses. This is achieved via the following policy;

- *Existing buildings constructed for non-residential purposes are the preferred location for non-residential uses;*
- *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:*
 - *all required car parking should be on-site.*
 - *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.*
- *New buildings and works should be consistent with the scale, bulk and character of the area.*
- *Noise emissions should be compatible with a residential environment*

Whilst a number of the above provisions are met, the proposed hours, which range from 10pm to 1am, do not meet the expectations outlined above. It is also not clear whether the noise emissions generated by the increased density of the use would be compatible with the adjacent residential environment. This aspect will be explored in depth later within this report.

Given the length of time the hotel has continuously operated on the site, the hotel benefits from 'existing use rights', with these rights extending to the area seeking expansion within the residentially zoned land. Clause 63.05 notes that a use in Section 2 or 3 of a zone for which an existing use right is established may continue provided:

- *No building or works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other building or works requirement in this scheme.*
- *Any condition or restriction to which the use was subject continues to be met. This includes any implied restriction on the extent of the land subject to the existing use right or the extent of activities within the use.*
- *The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right.*

The demolition of two façade windows and the construction of the sign on the hotel façade have been undertaken without planning permission. The extent of activities within the existing hotel would increase under the proposal, and the increased hours and patron numbers have the potential to further damage the amenity of the area by a change in the activities beyond the limited purpose of the use preserved by the existing use right.

Given the primary use of the hotel is associated with the sale and consumption of liquor, it is essential for this aspect to be fully considered prior to ascertaining whether the expanded use of the premises results in a reasonable outcome. However, based on the discussion above, it is considered likely that the intensification of the current use will result in increased off-site amenity impacts, particularly within the adjacent residential land.

Sale and Consumption of Liquor

Clause 22.09 guides the assessment of licensed premises within the City of Yarra and by extension, the decision guidelines of Clause 52.27. The key objectives of Clause 22.09 are:

- *To protect the amenity of nearby properties and areas by effectively managing the location, size, operation and hours of licensed premises.*
- *To encourage best practice venue design and venue operation for licensed premises.*
- *To protect residential and other commercial uses from excess noise, traffic and car parking issues.*
- *To provide for daytime trade and active street frontages in retail strips, while providing reasonable commercial opportunities for the trading of licensed premises*

The proposed application seeks to increase the density of scale of the existing licensed premise, and thereby requires a permit under Clause 52.27 of the Scheme based on a proposed increase in patron numbers, floor area and hours of operation. The purpose of this provision is to ensure that licensed premises are situated in appropriate locations, and that the impact of the licensed premises on the amenity of the surrounding area is considered.

The above considerations are contained in Council's local licensed premises policy at Cause 22.09, which will be discussed in turn. In addition to this, it is necessary to give consideration to potential cumulative impacts associated with the new liquor licence. The "Corner Hotel" decision (*Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & Ors*) provides a 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.

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

The proposed extension to the existing hotel achieves a score of 8 and therefore would require a cumulative impact assessment. It is noted that such an assessment was not provided with the application material. An assessment against the provisions of Clause 22.09 is provided below.

Location and Access

Clause 22.09-3 of the Scheme states that licensed premises should be located where;

- *The land is not zoned Residential (excluding the Mixed Use Zone).*
- *Potential amenity impacts from (but not limited to) patron noise, ingress and egress of patrons, queuing of patrons, smoking areas for patrons, and dispersal of patrons from the site can be appropriately managed or buffered.*
- *There is opportunity for a high level of public safety and surveillance of patrons as they enter and leave the premises.*
- *The premises would not result in an unreasonable cumulative impact on the amenity of the surrounding area.*

Further to the above, this provision notes that licensed premises with a capacity of more than 200 patrons should locate in the following Core Entertainment Precincts (defined by the Commercial 1 Zone (C1Z) and limited to properties fronting (and with pedestrian access) from the listed main streets.):

- Swan Street west of Church Street;
- Bridge Road west of Burnley Street;
- Victoria Street west of Burnley Street;
- Smith Street between Gertrude Street and Alexandra Parade;
- Brunswick Street between Gertrude Street and Alexandra Parade.

The Core Entertainment Precincts (CEP) are defined by their existing character and their capacity to accommodate future large, licensed venues with supporting infrastructure and services in the activity centres. Whilst the site is located within proximity to a NAC and is partly within the C1Z, it is not within a CEP. The land in which the hotel seeks to expand is within a residential zone, with residential uses directly to the west of the site.

As noted in Council’s Social Planning comments; ‘typically, according to clause 22.09, any licensed premises within 30 metres of a residential area should not provide for the consumption and sale of liquor beyond 11pm, and any licenced premises in a residential zone should not provide for the sale and consumption of liquor beyond 8pm. The existing permit and liquor licence is beyond both points’.

In addition to currently operating beyond the hours recommended by local policy, the venue already operates with a capacity greater than 200 patrons, with a licence allowing a maximum of 443 patrons within the premises. The amendment seeks to increase this number by almost 50%, or 202 patrons. This would result in an overall patronage three times greater (645 patrons) than venues recommended within CEPs.

Given the current exceedances of operating hours and patron numbers, it is necessary to consider whether it is appropriate to further exceed these parameters. This outcome is dictated by the location of the venue, and the potential for additional impacts from these

changes to cause detriment to surrounding sites. As noted, the direct interface to the west contains a triple-storey apartment building, with balconies and windows addressing the subject site. The 3m laneway between the sites provides limited separation between the uses.

It is acknowledged that whilst noise complaints have been received by Council's Enforcement team in the past, investigations of the complaints determined no formal permit or noise breaches had occurred. However, given the sensitive interface with the site, it is not considered that a further increase in operating hours, floor area and patron numbers would result in an orderly planning outcome. There is limited, if any, local or state-wide policy to support these factors, with the location of the hotel considered to place a level of constraint on the proposal that deems it unsupportable. It is considered that the proposed extension to the liquor licence and the associated intensification of the use has the potential to result in unreasonable amenity impacts. This will be discussed in further detail throughout this report, however on this ground alone, the amendment is not supported.

Venue design

The venue would increase substantially in size, with new areas accommodated at the rear of the land. Whilst part of the new floor area would be roofed, an external area with a retractable roof is proposed directly adjacent to the rear boundary. This section is proposed to operate until 10pm each day. There will be minimal changes to the layout and interfaces of the existing hotel addressing both streets.

This ensures that the primary entry/exits will be retained on Queens Parade, with a secondary entrance on Brennand Street. The windows and entry points provide opportunities for informal and passive surveillance of the street environment and ensure that the areas for queuing of patrons are located away from sensitive land uses.

Waste management and storage is provided on-site, within separate fully enclosed areas.

Hours of Operation

The venue currently operates until 1am throughout the week, and 11pm on Sundays. The existing 'beer garden' also closes at 11pm, with this amendment seeking to increase the hours of this area until 1am.

Clause 22.09-3 states that an assessment of the impact of the hours of operation on the amenity of nearby properties and the surrounding area must consider the following aspects:

- *The proposed use and licence type.*
- *The zoning of surrounding land.*
- *The location of the premises, location of car parking and availability of public transport, taxi ranks and ride sharing.*
- *The nature of surrounding uses and hours of operation.*
- *Potential noise emissions from the premises.*
- *The impact of patrons arriving and leaving the premises, including:*
 - *for venues operating after 10pm, whether access from the licensed premises to public transport is likely to be through a residential area; and*
 - *any cumulative impact on the amenity of the area.*

The venue seeks to extend its existing 'General licence' to encompass the new floor areas, with the majority of the new section of venue located within residentially zoned land. Clause 22.09-3 provides the following relevant guidance with particular regard to operating hours;

- *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.*
- *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.*
- *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.*

Whilst the proposed 10pm close of the outdoor BBQ area is in line with part of this policy, the decision guidelines specify an 8pm close for all land within a residential zone. This includes the remaining section of proposed floor area (within Areas 1 & 2). Whilst there is potential for amenity impacts within the roofed areas to be managed appropriately to allow operation beyond this time, it is not considered that a 1am close for any parts of the venue within such proximity to sensitive uses is an appropriate outcome. This view is shared by Council's Social Planner, who noted, *'it is not supported that the BBQ area be open until 10pm at night'* and *'it is not supported for the new areas (1 & 2), to be open until 1am the following day'*.

The hotel has good access to public transport options, however the route to access the closest train station is via residential land. The dispersal of patrons will be discussed later within this report.

Patron numbers

The patron numbers are proposed to be a maximum of 645 patrons internally, including the outdoor BBQ area. In accordance with Clause 22.09, an assessment of the maximum number of patrons that can be physically accommodated within a venue should be based on the VCGLR *Maximum Patron Capacity*. The maximum number of patrons that may be accommodated on the premises could be based on a ratio of 0.75 square metres per person, as per the *Victorian Commission for Gambling and Liquor Regulation (2018) Liquor Licensing Fact Sheet - Maximum Patron Capacity*. Based on this guideline the following table sets out a maximum number of patrons per tenancy:

Area	Floor area	Proposed no. of patrons	Allowable max. no. of patrons
Ground Floor (including outdoor BBQ area with 30 patrons)	937m ²	645	937/0.75 = 1249
TOTAL			1249

Whilst the expanded floor area of the hotel may be able to comfortably accommodate the increased number of patrons, this does not mean that it is appropriate to do so. This provision also notes that the number of patrons should reflect the strategic and physical

context of the site and will not adversely affect the amenity of nearby properties and the surrounding area, including by any unreasonable cumulative impacts.

As previously outlined, the site is not located within an area that has strategic support for the provision of large-scale entertainment venues. The existing hotel already operates with a significant patronage; given the sensitive interfaces with the site, it is not considered reasonable to further increase this number.

Noise

The objective of Clause 13.05-1S is to assist the management of noise effects on sensitive land uses by ensuring that community amenity and human health is not adversely impacted by noise emissions, with Clause 13.07-1S aiming to protect community amenity, human health and safety while facilitating appropriate commercial uses with potential adverse off-site impacts. Strategies to achieve these outcomes aim to ensure that use or development of land is compatible with adjoining and nearby land uses and to avoid or minimise adverse off-site impacts from commercial uses through land use separation, siting, building design and operational measures.

The proposal seeks to allow the provision of live acoustic and recorded background music in the new indoor areas and the existing 'beer garden'. An Acoustic Report, prepared by Enfield Acoustics (Enfield), was submitted with the application. This report provided guidance on potential noise impacts generated by live music, along with noise emissions from the increase in patron numbers. The report was reviewed on behalf of Council by SLR Consultants (SLR), with these aspects discussed in detail below.

With regards to the type of live music proposed, the Enfield report states that "no drums, percussions or bass is permitted during live acoustic performances". SLR interpret 'acoustic' performances to not include any form of amplification – including for vocals or a guitar, however this is not explicitly outlined in the acoustic report. This aspect would require clarification if any future permit was issued for the site.

Live Music

The purpose of Clause 53.06 – Live Music Entertainment Venues is to ensure that noise sensitive residential uses are satisfactorily protected from unreasonable levels of live music and entertainment noise, and to ensure that the primary responsibility for noise attenuation rests with the agent of change. In this instance the hotel would be the agent of change.

Strategies to manage the provision of live music are outlined in Clause 13.07-3S, which seeks to identify areas where live music venues are encouraged or where there are high concentrations of licensed premises or clusters of live music venues, and to implement measures to ensure live music venues can co-exist with nearby residential and other noise sensitive land uses. In this instance, the venue is not in a location where live music venues are encouraged, with the hotel being the only venue of this nature within the surrounding area.

In their review, Enfield determined that the most affected sensitive receivers within proximity to the hotel are the upper storey windows and balconies of two apartment buildings to the northwest of the site (14 Brennand Street directly to the west and 274D McKean Street, a two-storey building located approximately 20m from the site boundary).

Whilst SLR agreed with this aspect, they noted that further details in relation to the measurement position should be provided; including microphone height and distance from any reflective surfaces, preferably in the form of photographs. If the noise levels are affected by reflections or other factors, this may have flow-on effects for the assessment (particularly the patron noise assessment).

The Acoustic report outlines mitigation measures that are recommended for the areas in which live music is proposed; these include the glazing construction, roof construction, absorptive panels, an automatic closer for the swing door and the requirement for the sliding door to the outdoor pergola area to remain closed at all times. The report also recommends that a music noise limiter be installed and calibrated to meet the EPA Protocol noise limits.

Based on predicted noise levels outlined in the report, the live music is predicted to comply with the 47 dBA noise limit for the period until 10 pm, by a margin of 6dB. Based on the significant margin of compliance, the report states that live music is also expected to comply up until 11 pm on Monday to Saturday. For the night period, recorded music is predicted to comply with the noise limit by a minimum margin of 3dB.

Whilst compliance appears to be achieved, SLR note that it is not clear whether the levels were based on the operable roof of the BBQ area being open or closed. To ensure these measurements are correct, it would be necessary to confirm this detail, and if the measurements are based on the roof being closed, then this would have to occur whenever music is played in this area. It is therefore not clear whether full compliance is achieved under the circumstances in which the venue seeks to operate.

Patron noise

With regards to patron noise, SLR note that compliance within the third-storey apartments at No. 14 Brennand Street is marginal, with high reliance on room absorption. They also note that as only a single night survey was undertaken, there is the possibility that background levels could be lower at times, resulting in reduced compliance within these dwellings. The potential for non-compliance is related predominantly to the outdoor BBQ area, with SLR noting it would be necessary for the operators to consider partially closing the operable roof if compliance isn't achieved.

SLR also noted that noise from the bin room, glass movements in the outdoor areas and waste collections should be assessed for any night period activities.

Based on the above, Council officers are not convinced that the associated noise impacts with the expanded use will be appropriately managed, and that there will be no increased detriment upon the amenity of the adjacent sensitive uses.

Noise and Amenity Action Plan (NAAP)

To ensure a venue is managed appropriately, Clause 22.09 requires the submission of a Noise and Amenity Action Plan (NAAP) which outlines management procedures aimed at ensuring good patron management. If a permit is issued, the NAAP is endorsed so that it can be enforced if the premises operates outside of specified parameters.

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 complaints register kept on the premises will be maintained. Staff on duty will take the complaint and pass on all information to the manager of the venue to appropriately deal with the issue;
- The management of dispersal of patrons;
- The management of smokers;
- The management of external queues;
- The provision of food.

The level of detail provided in the NAAP is considered acceptable

Application to amend an existing permit

An assessment of an application to vary or extend an existing permit for a licensed premises, must consider:

- *Any relevant information about the previous and current operation of the premises including, but not limited to complaints received by relevant authorities such as the Yarra City Council, Victoria Police, and the Victorian Commission for Gambling and Liquor Regulation.*
- *Any contravention of a permit condition or liquor licence.*
- *Whether the conditions on the existing permit regulating the venue design, hours of operation, patron numbers, and noise and amenity impacts are adequate.*

As already noted, a number of complaints have been received by Council's Enforcement team over the years, however these were investigated and found to not be in breach of current permissions over the land. It is acknowledged that 43 objections to the application were received by community members; all of these objections related to current off-site amenity concerns, predominantly related to noise.

Cumulative Impact

As previously outlined, the expanded licensed premise achieves a risk score of 8 and therefore would require a cumulative impact assessment. A detailed assessment against the cumulative impact of the amended liquor licence was not provided with the application.

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.

A number of factors such as policy context and land mix of the surrounding area have been discussed previously in the 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.

There are 15 licensed premises within 500 metres of the subject site. As per Practice Note 61 (Licensed Premises), 15 or more licenced premises within a 100m radius of the site constitutes a cluster of licenced premises. This site is therefore technically not located within a cluster, with the hotel being one of the only licensed premises within this section of Queens Parade. The majority of other venues within proximity have restaurant and café

licences. This is largely based on the predominantly residential zoning surrounding the site.

This proposal includes a significant increase to patron numbers (202 additional), and an increase in hours of operation associated with an extended red line plan. As noted in the Social Planning comments; *'Given the site's proximity to sensitive uses, it is considered that this is a proposal with a higher risk of negative impact on the amenity of the area. The proposed number of patrons (645) may pose a greater risk of alcohol-related harm and result in a negative cumulative impact'*. The lack of similar such licensed premises within proximity to the site is not considered to reduce the possibility of these impacts occurring.

Transport and dispersal

Practice Note 61 requests consideration of the dispersal routes of patrons from the premises, noting that how patrons leave the licensed premises at closing time can have a significant impact on the amenity of an area.

As the main entry/exit for patrons is to Queens Parade, people are likely to disperse along the main thoroughfare to access public transport and taxis or other licensed venues within the area. However, Rushall Station is located 250m to the west of the site; with patrons passing residential uses if they wish to access this station. Whilst the dispersal of patrons from the venue is likely to be staggered, it is considered likely that the increase in patron numbers may result in additional foot traffic, and additional noise impacts, along Brennand Street to the west.

Impact mitigation

To ensure a venue is managed appropriately, Council's local policy at clause 22.09 requires submission of a NAAP which outlines management procedures aimed at ensuring good patron management. The NAAP has been discussed earlier within this assessment. This document outlines the specific management procedures that would be followed at all times, and includes details relating to staffing and incident registers, patron and noise management.

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.

As specified previously within the report, Planning Scheme Amendment C269 is currently seriously entertained. The proposed new Licensed Premises policy (13.07-1L) remains largely unchanged as a result of the amendment, with the Planning Panel noting *"The Panel accepts the policy is a neutral translation of existing policy. The Panel acknowledges the challenge of translating existing policy into the new PPF format, and notes extensive application requirements have been recast as strategies and policy guidelines. Any further or additional protections would need to be strategically justified and introduced through a separate process."*

The amendment is subsequently of no consequence to the above assessment against current policy.

Based on the combination of factors outlined throughout the assessment and the potential that the extended use of the hotel will result in some level of increased detriment within the surrounding environment, on balance it is considered that the proximity of the land to residential uses, when combined with the proposed increase in hours, size and patronage, and provision of live music, will result in unreasonable off-site amenity impacts which cannot be supported in its current form. It is therefore the position of Council officers that the application to increase the density of the hotel be refused based on increased off-site amenity concerns.

Building and works

The extent of demolition proposed by this application includes the demolition and removal of the following;

- Sections of the southern and western boundary fences, shade-cloths and small sections of walls to the existing rear service yard and beer garden;
- Removal of five trees in the rear car park;
- Minor internal demolition works (no permit required); and,
- Removal of two existing windows to the storage room within the Queens Parade frontage (retrospective works).

The key consideration for assessing this aspect of the works is whether the proposed demolition will adversely affect the significance of the heritage building or the broader heritage precinct.

Policy at Clause 22.02-5.1 of the Scheme generally discourages the demolition of part of an individually significant building or removal of contributory elements unless:

- *that part of the heritage place has been changed beyond recognition of its original or subsequent contributory character; and,*

For individually significant building or works:

- *it can be demonstrated that the removal of part of the building or works does not negatively affect the significance of the place.*

In this instance, the proposed extent of demolition is acceptable. The majority of the works are confined to the rear of the property and will have no impact on the significant fabric of the place. The changes to the windows on the Queens Parade frontage are to a later addition that does not form part of the original fabric of the place, therefore the removal of these windows is acceptable. There are no vegetation overlays affecting the site, therefore the removal of the trees along the rear boundary does not require planning permission. Further to this, the internal works do not require a planning permit. Council's Heritage Advisor has reviewed the extent of demolition works proposed and has raised no issue with this element of the application.

The extent of new works proposed by this application includes a single-storey extension to the rear of the existing hotel, with the additional works to abut the western and southern boundaries and set back 6.133 m from the Brennand Street interface. The location and design of the new works were assessed by Council's Heritage Advisor, who noted;

'The proposed new rear dining area is appropriately sited to the rear of the heritage building. It will have some visibility from Brennand Street, however this is a secondary frontage and the new development is appropriately separated from the main form of the heritage building. The design and form of the addition, where it is visible is acceptable'.

Relevant objectives at Clause 15.01-2S aim to ‘achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development’ and to ‘recognise, support and protect neighbourhood character, cultural identity, and sense of place’.

Given the location of the works at the rear of the building and the single-storey scale proposed, the addition achieves an appropriate outcome that respects the existing building and the surrounding neighbourhood character. This aspect of the application is supported.

Further to this, the proposed development of the site will result in no unreasonable off-site amenity impacts attributed to visual bulk or overshadowing. The addition is limited in scale to single-storey, which will limit visual impacts within adjacent sites. Whilst a minimal area of additional overshadowing will affect the site to the south between 9am and midday; this site is a commercial building located within commercially zoned land. There will be no shadows cast within the NRZ to the west. These outcomes are acceptable.

Advertising Sign

The painted advertising sign, which is currently in situ, is located on the Queens Parade façade. An image of the sign is provided in Figure 13;



Figure 13: Advertising sign

Council’s local advertising sign policy at Clause 22.04 seeks to ensure that signs contribute to and do not detract from the visual amenity of commercial precincts, activity centres and residential areas, by minimising visual clutter, protecting the character of heritage places and maintaining vehicular and pedestrian safety. In particular, Clause 22.04-3.8 seeks to protect heritage areas by limiting the number of signs on buildings and ensuring that signs do not obscure the heritage features of the building.

In this instance, the most significant section of the hotel is the double-storey component on the corner of Queens Parade. The sign does not impact this area of the façade, with the content and design of the sign relatively simple. The scale and form of the sign is in proportion with the overall envelope of the hotel, with the ground level location providing an acceptable visual relationship with the original hotel building. Whilst an existing

electronic sign sits directly above this section of wall; when viewed in combination the visual outcome is not overwhelming, with the lower wall sign appearing more as a painted mural that does not present as a traditional advertising sign. This limits the overall impact of the signs and is not considered to be an unreasonable outcome given the commercial context of this portion of the site.

Council's Heritage Advisor raised no concerns with the design or location of the sign with respect to its presentation on the heritage building. Given the fact that this application is not supported based on amenity grounds, and that the sign (and associated demolition works of two windows within the hotel façade) have already occurred, it will be necessary for the applicant to apply for these works in a separate application to ensure they achieve the appropriate planning permissions.

ESD

A Sustainable Management Plan (SMP), prepared by GIW Environmental Solutions (GIW) and dated 31 March 2022, was submitted with the application. The SMP indicated that the following principal ESD features will be incorporated into the extension of the existing hotel;

- The development will achieve an overall BESS score of 50%, with water efficient fixtures and fittings used throughout;
- A STORM score of 100% will be achieved, with the installation of a 3,800L rainwater tank to be connected to all new toilets;
- The indoor areas are targeting a 2% Daylight Factor to 60% of the nominated area;
- 4 new bicycle hoops are proposed within the Queens Parade footpath; and,
- General, recycling, composting/green waste and hard waste & e-waste facilities will be provided within the new bin room.

Notwithstanding the above ESD commitments, Council's ESD advisor was not satisfied that the proposed development would adequately meet Council's ESD Standards. Specific concerns and recommendations were made as follows;

- The SMP specifies that there are no new landscaping features, however, there appears to be a degree of new vegetation shown on the plans. Clarification of this is required and given the removal of 5 existing trees for the extension, the landscaping strategy should be revised. A Landscape Plan should be provided to support these changes;
- A small rooftop PV system should be installed to offset the daytime energy demand;
- Daylight modelling (computer or hand drawn) is required to support daylight access claims, taking into account the proposed window tinting;
- The design and operability of the tinted laminated glass is required, to support natural ventilation claims;
- The BESS report should be amended to include provision of bicycle parking spaces;
- A Section J assessment should be provided that details how the development will meet (and consider exceeding) the NCC 2019 requirements and reduce energy and GHG emissions against a reference case;
- Demolition and construction waste target should be clarified (e.g. minimum 80%);
- Clarify evidence underpinning the assumptions that FOGO will only make up 10% of the waste generated on site. Given the land use as a food and beverage outlet, this is expected to be much higher. For example, NSW EPA estimates this at approximately 60%;
- Clarify external colour of new roof areas, with a recommendation to specify a high SRI (>50) finish to assist with urban cooling;

- Include details of the green wall within the Landscape Plan – noting that while the BESS credit has been claimed, a green wall system in BESS is a vertical system for growing vegetation on a wall; and,
- Provide a statement as to how the design has responded to and mitigates the urban heat island effect.

If the planning permit had been supported, all of the above recommendations would have been incorporated into the permit via conditions.

Car parking, bicycle parking, traffic, loading and waste

Under the provisions of Clause 52.06-5 of the Yarra Planning Scheme, the development's parking requirements are as follows:

Use	Statutory (Scheme) Requirement	Requirement (based on increased floor area of 284sqm)	Proposed provision	Reduction required
Hotel	3.5 spaces to each 100sqm of leasable floor area	9 spaces	2 spaces 7 existing spaces removed	16 spaces

Pursuant to clause 52.06-3, a planning permit is required to reduce 16 car parking spaces, with 2 car parking spaces retained at the rear of the site.

Before a requirement for car parking is reduced, the applicant must satisfy the Responsible Authority that the provision of car parking is justified having regard to the assessment requirements of Clause 52.06-6.

Availability of Car Parking

The on-street parking demand in this part of Fitzroy North is low to moderate during business hours; however, Brennand Street contains unrestricted parking and anecdotal evidence indicates that the parking demand in the street can be moderate to high, particularly during the evenings. The streets surrounding the site contain unrestricted and short-stay parking restrictions which provide regular parking turnover throughout the day until early in the evening, as well as long-stay parking.

Parking Demand

To ascertain existing parking demand generated by the hotel, TTM Consulting undertook mode of travel surveys for hotel patrons on Friday 10 December and Saturday 11 December 2021, between the hours of 6pm and 9pm. For the Friday night, approximately 10% of patrons arrived at the hotel via car, with a combination of public transport, taxis and walking comprising more than 70% of the arrival mode. Similarly, the Saturday evening results indicated that approximately 15% of patrons drove to the hotel, with the combination of public transport, taxis and walking comprising almost 60% of the arrival mode.

The mode of travel survey data collected indicated parking demand is generated at a rate of 0.10 and 0.15 spaces per person in attendance, inclusive of staff. Based on these rates, the proposal (with maximum of 645 patrons) is anticipated to generate a peak parking demand in the order of 66 to 99 spaces, if the venue is at capacity.

The site's patronage, and therefore parking demand, is expected to be highest during the evenings, with attendance during the day and afternoon anticipated to be lower with an increased likelihood of attracting a higher proportion of people who live, shop or work within the area.

Car parking reduction

Clause 52.18 contains several exemptions from the requirements of the Planning Scheme in order to support Victoria's social and economic recovery from COVID 19. These exemptions enable outdoor dining and facilitate the reopening and safe operation of hospitality and other businesses.

The existing use is currently utilising the entire on-site car park as temporary outdoor seating for customers, with waste also appearing to be stored in this space. As a result, all parking demand generated currently by the site is being accommodated within the on-street provision surrounding the site. The above mode of travel survey data was obtained whilst no on-site car parking spaces were provided, which indicates that sufficient on-street car parking was provided to those using a private motor vehicle to arrive to the site.

There is clear support for changes to private motor vehicle reliance demonstrated in a Red Dot VCAT decision (*Ronge v Moreland CC [2017] VCAT 550*). In this decision, the Member advocated for a reduction in the statutory car parking provision in inner-city sites such as this.

Whilst this decision pertains to a site in Brunswick, the context is similar, being located in an inner-city suburb within proximity to public transport opportunities. Relevant statements within the summary of this decision are applicable to this application, as follows;

- *State and local planning policies are already acknowledging the change that is required in the way in which people travel with Plan Melbourne 2017-2050 and State policies referring to 20-minute neighbourhoods and greater reliance on walking and cycling.*
- *Our roads are already congested and will be unimaginably so if a 'business-as-usual' approach is accepted through until 2050. The stark reality is that the way people move around Melbourne will have to radically change, particularly in suburbs so well served by different modes of public transport and where cycling and walking are practical alternatives to car-based travel.*
- *A car parking demand assessment is called for by Clause 52.06-6 when there is an intention to provide less car parking than that required by Clause 52.06-5.*
- *However, discussion around existing patterns of car parking is considered to be of marginal value given the strong policy imperatives about relying less on motor vehicles and more on public transport, walking and cycling. Census data from 2011 or 2016 is simply a snapshot in time, a base point, but such data should not be*

given much weight in determining what number of car spaces should be provided in future, for dwellings with different bedroom numbers.

- *Policy tells us the future must be different.*
- *Oversupplying parking, whether or not to comply with Clause 52.06, has the real potential to undermine the encouragement being given to reduce car based travel in favour of public transport, walking and cycling.*
- *One of the significant benefits of providing less car parking is a lower volume of vehicle movements and hence a reduced increase in traffic movements on the road network.*

The reduction of on-site car parking for this proposal is further supported by the following;

- The constrained parking environment would discourage employees and guests from driving or attempting to park on-street;
- The site is ideally located with regard to sustainable transport alternatives and the lack of on-site car parking would discourage private motor vehicle use;
- The following public transport services can be accessed to and from the site by foot:
 - Queens Parade trams – 30m
 - Queens Parade buses – 70m
 - Clifton Hill railway station – 340m
 - Rushall railway station – 360m
 - Hoddle Street buses – 360m
 - Heidelberg Road buses – 400m.
- Public transport is considered a viable option for both staff and customers to access the site and is a practical alternative to private motor vehicle use, especially in metropolitan areas;
- The proposal includes secure bicycle parking spaces in excess of rates specified within the Scheme. Employees and patrons would be able to take advantage of the nearby bicycle infrastructure, with on-road and informal bicycle lanes surrounding the site;
- Employee or visitor parking permits will not be issued for the development, which will discourage people from driving to the site given the high utilisation of existing on-street car parking, and;
- The lack of on-site car parking will limit traffic impacts within the surrounding street networks.

Relevant Local Policy or Incorporated Document.

In addition to the above, the proposed reduction in car parking aligns with objectives contained in Council's Strategic Transport Statement (2006) and relevant policy within the Scheme. The following excerpts from the Strategic Transport Statement highlight the future vision for transport within the municipality;

- *Yarra's Council Plan, its Municipal Strategic Statement and Municipal Public Health Plan strongly reinforce the need to reduce car dependence in the City of Yarra by promoting walking, cycling and public transport use as viable and preferable alternatives. This is also a key message of the State Government's plan for Metropolitan Melbourne - Melbourne 2030.*

- *To improve our community's way of life, we must increase the range of personal transport options. The more sustainable transport choices people make, the better the environment will be for everyone's health and well-being. Sustainable transport, by definition, puts the emphasis on walking, cycling and public transport.*

Practice Note 22 - Using the Car Parking Provisions (June 2015) indicates that car parking should be considered on a centre-basis rather than on a site/individual basis. This is applicable to activity centres, where spare on-street car parking capacity would be shared amongst sites within the activity centre.

From a traffic engineering perspective, the reduction in parking associated with the site is considered appropriate in the context of the development and the surrounding area. The Engineering team has no objection to the reduction in the car parking requirement for this site.

Car parking layout

An assessment of the carpark/loading bay was undertaken by Council Engineers, who noted that the dimensions of the car parking spaces and the loading bay were acceptable. Whilst a designated loading bay is not provided; it is assumed the open area directly adjacent to the two retained car parking spaces can be used for loading. The swept path diagrams demonstrate adequate entry and exit movements to and from the site via Brennand Street

The proposal will retain the use of the car park to undertake deliveries and loading, with Small Rigid Vehicles proposed to carry out these activities. The size of these trucks will ensure that they do not encroach on the footpath which loading/unloading is occurring.

Alternatively, if a larger vehicle is required, the Applicant noted that on-street parking along the Brennand Street frontage can be used if available, which is how loading/waste collection has occurred during the current operations, with temporary outdoor seating accommodating the entire car park.

Bicycle parking

There are currently no on-site bicycle parking spaces provided, with 4 bicycle hoops located directly adjacent to the site on the Queens Parade footpath. The proposal seeks to install an additional 4 hoops, which would equate to a total of 16 off-site bicycle spaces. Council's Strategic Transport Officer is supportive of the overall number of off-site spaces proposed, noting that there is limited space available for any on-site spaces. He also noted that the provision of the off-site hoops can be used by both employees and visitors to the site.

However, the advice noted that the existing location of the bicycle hoops is not ideal, being located directly adjacent to electricity poles and planter boxes. If additional bicycle hoops were installed in the future, it is Council's preference that the existing and new bicycle hoops be relocated to a more suitable location that satisfies the siting requirements of Clause 52.34 and AS2890.3. The cost of this would be borne by the permit holder. Had the application been supported, this could have been facilitated via a permit condition.

Waste management

A Waste Management Plan (WMP) was prepared by Sustainable Development Consultants (dated July 2022). The WMP outlines the management procedures to be undertaken for all waste collection from the site. Provision for separate waste streams (food organics, commingled recyclables, glass and paper/cardboard) will be provided, with separate private collection vehicles for each stream. All waste will be stored in a ventilated purpose built waste room with direct access to the bin collection point, where waste vehicles can reverse into the site, prop to collect the bins and drive out in a forward direction.

The WMP was referred to Council's City Works branch, who confirmed that all procedures were satisfactory.

Objector concerns

The two main areas of concern raised in objections to the application relate to off-site amenity impacts, with particular regard to noise, and the reduction in on-site car parking spaces. Off-site amenity impacts have been discussed in detail throughout this assessment, with the reduction in car parking also addressed.

Conclusion

The application includes a number of elements to consider, ranging from use, increased density in the sale and consumption of liquor, building and works and a reduction in car parking, amongst others. There are components of the application that are considered acceptable. These include the development of the hotel, with no concerns raised regarding the proposed built form outcome, from either an urban design or heritage perspective. The advertising sign on the Queens Parade frontage is supported, as is the reduction in on-site bicycle parking. Whilst it is acknowledged that car parking is at a premium in the immediate area; the actual reduction in car parking is limited to 7 spaces when assessed against the statutory requirements of the Scheme. Given the location and nature of the use, this reduction is considered appropriate.

It is however the principal component of the application that is not supportable; that being the increased density of the sale and consumption of alcohol within the premises, and the associated increase in hours, floor area and patronage, along with the provision of live music. Fundamentally it is considered that the location of the hotel limits the potential for an intensification of the scale being sought. Whilst it is acknowledged that a different combination of these factors, perhaps resulting in earlier closing times or less patrons, may provide an acceptable outcome, it is not Council's role to dictate what this combination may be. Based on the balance of the increases being sought, it is considered that the combined factors would result in unreasonable off-site amenity impacts, which are at odds with relevant planning policy within the Scheme.

On this basis, the proposal is not considered to comply with the relevant planning policies and therefore should be refused.

Recommendation

That a Notice of Refusal PLN21/0984 be issued for partial demolition, the construction of a ground floor extension to the existing hotel including an outdoor partially covered courtyard, increase in patron numbers (from 443 to 645) and modifications to the red line plan

(additional floor area to operate until 10pm in courtyard area and 1am in enclosed areas), increase operating hours in existing internal courtyard from 11pm to 1am, provision for live acoustic music, installation of a promotion sign, deletion of seven (7) car parking spaces (retention of two spaces) and a reduction in the statutory car parking and bicycle facilities rates at 492 Queens Pde, Fitzroy North, on the following grounds:

1. The proposed intensification of the use and sale and consumption of liquor lacks the strategic support of the Yarra Planning Scheme.
2. The proposed increase in operating hours, patron numbers, floor area (and red-line plan), as well as the provision of live music, will result in unreasonable off-site amenity impacts to the surrounding residential land.

Declaration of conflict of interest

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

- No conflict declared by Planner: Lara Fiscalini
- No conflict declared by Delegate: Ally Huynh

Planner: **Lara Fiscalini** Signature:

Date: 15/12/2022



Delegate: **Ally Huynh** Signature:

Date: 15/12/2022

