

## Revised Recommendation



This recommendation has been prepared by the report author and replaces the Council Officer's recommendation which appears in the Council Agenda.

<b>Report Title</b>	PLN21/0984 - 492 Queens Parade, Fitzroy North
<b>Date of Council Meeting</b>	20 June 2023

### BACKGROUND

At the time of preparing the report, officers understood that the amended application no longer sought an increase in the hours of operation of the venue. The officer report reflects this position. Officers have subsequently become aware that the amendment does seek an extension in operating hours for the beer garden (referred to as 'Area 3' in the officer report) from the existing 11.00pm to 1.00am (Monday to Saturday).

Officers have now conducted a further assessment of that aspect of the proposal. Which is provided here.

Following this assessment, officers continue to recommend that Council adopt a position of support for the application, albeit with a slight alteration to the wording of the recommendation.

#### [The proposal](#)

1. The existing liquor licence authorises the sale and consumption of liquor throughout the hotel.
2. Hours for the consumption of liquor on the premises are:
  - (a) Sunday – Between 10am and 11pm;
  - (b) Good Friday – Between 12 noon and 11pm;
  - (c) Anzac Day (not being Sunday) – Between 12 noon and 1am; and
  - (d) On any other day – Between 7am and 1am.
3. The hotel has been operating under these hours, and the current application seeks to largely continue operating under these hours within an extended floor area (with the exception of a proposed outdoor area to the rear).
4. Whilst the operating conditions of the hotel have established existing use rights, a planning permit (PL10/0201), issued on 28 January 2011, authorised the construction of a 'beer garden' on the southern side of the hotel. This permit contained a condition that specifically noted that the beer garden must not be used by patrons after 11pm each day.
5. As part of the current application, the existing beer garden would be fully converted to an indoor space.
6. The application seeks to allow this area to operate until 1am Monday to Saturday, in line with the existing and newly proposed area of the hotel. Given the existence of the planning permit, it is therefore necessary to assess whether an increase from 11pm until 1am for these days within this area is an appropriate outcome.

7. It is considered that any new permit issued would effectively supersede the permit issued in 2011, with the works approved under this permit carried out, and the permit essentially 'spent'. Therefore, any new application and subsequent permit allowing an increase in operating hours within this space would take precedence.

#### Increased operating hours

8. The application requires a permit under Clause 52.27 of the Scheme based on the proposed increase in hours of operation from 11pm until 1am within Area 3. As noted in the officer's report, there is no increase in patron numbers sought. The existing 'beer garden' currently operates until 11pm, 7 days a week. The amendment seeks to increase these hours until 1am from Monday to Saturday, with Sunday and Good Friday to remain with an 11pm closing time.
9. Therefore, the relevant assessment under Clause 22.09 of the Yarra Planning Scheme is limited to whether the additional 2 hours of operation between Mondays and Saturdays would result in unreasonable off-site amenity impacts to surrounding land.
10. The existing beer garden is partially enclosed, with a roof and acoustic walls. The application seeks to install a new roof above this space, with the existing acoustic walls maintained. The courtyard would be fully enclosed by these works. This area is located to the side of the existing hotel, with no direct interface with the resident land to the west. As noted in the previous report for the application, the buildings and works proposed at the rear of the site will incorporate significant noise attenuation features into the design, with acoustic glazing integrated throughout. Acoustic panels will be incorporated into walls, and all internal swing doors will be fitted with automatic door closers and acoustic seals. These works will benefit the noise attenuation from Area 3, given its further separation from the residential interface.
11. The previous report discussed in detail any additional noise impacts that would be generated by the extended floor area of the hotel, with these impacts associated with music and patrons. This discussion did not raise any concerns with noise issues within Area 3, with the only potential issues associated with the newly created outdoor area adjacent to the site's western boundary. This has been addressed via conditions of any future permit, with an updated Acoustic Report and the installation of a noise limiter required. Based on this, it was considered that no unreasonable noise impacts would occur within the adjacent residential land.
12. The location of Area 3 ensures that patrons will continue to exit the premises via the main doors on Queens Parade. The increase in operating hours from 11pm until 1am Monday- Saturday would not change this outcome.
13. Given the limited increase in hours sought, and the physical alterations to be undertaken within this area, it is not considered that this change will affect the amenity of any sites surrounding the hotel. This is further supported by the existing operating hours within the premises, and the newly created areas proposed within the site.

## **REVISED RECOMMENDATION**

*Additional words shown as underlined*

That having considered the relevant planning policies, Council resolves to advise the Victorian Civil and Administrative Tribunal that it has amended its position of refusal to a position of support for the following:

*Partial demolition, the construction of a ground floor extension to the existing hotel including an outdoor covered courtyard and modifications to the red line plan, provision for live acoustic music, increase operating hours in existing internal courtyard from 11 pm to 1 am (Monday to Saturday), 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 Parade, Fitzroy North, subject to the following;*

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and must be generally in accordance with the decision plans prepared by Burton & Carter Pty Ltd, TP00 to TP14, dated 1 August 2022 and 18 May 2023, but modified to show:
  - (a) The demolition plan updated to include the demolition of the two windows within the Queens Parade façade;
  - (b) The proposed east elevation updated to include the proposed colour of the new wall;
  - (c) Any changes required by the amended Sustainable Design Assessment at Condition 3 of this permit;
  - (d) Any changes required by the amended Acoustic Report at Condition 5 of this permit.
2. The development 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.

### **Sustainable Management Plan**

3. Before the development commences, an amended Sustainable Design Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainable Design Assessment must be generally in accordance with the Sustainable Design Assessment prepared by GIW Environmental Solutions and dated 31 May 2022, but modified to include or show:
  - (a) All details updated to reflect the amended application;
  - (b) Clarification of any landscaping proposed on-site. If landscaping is proposed, a Landscape Plan should be provided;
  - (c) The provision of daylight modelling (computer or hand drawn) to support daylight access claims, taking into account the proposed window tinting;
  - (d) The design and operability of the tinted laminated glass, to support natural ventilation claims;
  - (e) The BESS report amended to include provision of bicycle parking spaces;
  - (f) A Section J assessment that details how the development will meet (and consider exceeding) the NCC 2019 requirements and reduce energy and GHG emissions against a reference case;
  - (g) Demolition and construction waste target clarified (e.g. minimum 80%);
  - (h) 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%;
  - (i) Clarify external colour of new roof areas, with a recommendation to specify a high SRI (>50) finish to assist with urban cooling;

- (j) 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,
  - (k) Provide a statement as to how the design has responded to and mitigates the urban heat island effect.
4. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Acoustic Report**

5. Before the 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 Enfield Acoustic Consultants and dated 1 August 2022, but modified to include (or show, or address):
- (a) Clarification on whether 'acoustic' music includes any form of amplification;
  - (b) Additional details of the measurement position; including microphone height and distance from any reflective surfaces, preferably in the form of photographs; and
  - (c) Noise from the bin room, glass movements in the outdoor areas and waste collections assessed for any night period activities.
6. Within 3 months of the commencement of the increased area of the sale and consumption of liquor 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) The compliance of the use and music levels and, where necessary, make recommendations to limit the noise impacts in accordance with Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021) or any other requirement to the satisfaction of the Responsible Authority, as may be amended from time to time.
7. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Noise and Amenity Action Plan**

8. The provisions recommendation and requirements of the endorsed Noise and Amenity Action Plan (dated May 2023) must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Waste Management Plan**

9. Before the 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 prepared by Sustainable Development Consultants and dated 22 July 2022 but modified to include:

- (a) All details updated to reflect the amended application.
- 10. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Sale and Consumption of liquor**

- 11. No more than 443 patrons are permitted on the land at any time liquor is being sold or consumed, with no more than 30 patrons permitted in the external area.
- 12. Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor within Areas 1, 2 and 3 may only occur between the following hours:
  - (a) Sunday – Between 10am and 11pm;
  - (b) Good Friday – Between 12 noon and 11pm;
  - (c) Anzac Day (not being Sunday) – Between 12 noon and 1am;
  - (d) On any other day – Between 7am and 1am.
- 13. Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor within the external area may only occur between the following hours:
  - (a) Sunday – Between 10am and 10pm;
  - (b) Good Friday & Anzac Day– Between 12 noon and 10pm;
  - (c) On any other day – Between 7am and 10pm.
- 14. Except with the prior written consent of the Responsible Authority, live music must only be played in Areas 1, 2 and 3 between the following hours;
  - (a) 10pm Sundays and public holidays;
  - (b) 11pm Monday to Saturday.
- 15. Except with the prior written consent of the Responsible Authority, background music must only be played in Areas 1, 2 & 3 between until 1am all days.
- 16. No music (live or background) is to be played in the external area at any time.

### **Noise Limiter**

- 17. Prior to the increased sale and consumption of liquor 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) ensure the emission of noise from amplified music does not exceed the levels specified in the Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021) or any other requirement; and
  - (c) be maintained and operated at all times.to the satisfaction of the Responsible Authority.
- 18. 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,  
to the satisfaction of the Responsible Authority.
- 19. Speakers external to the building must not be erected or used.
- 20. Emptying of bottles and cans into bins may only occur between 7am and 10pm on any day.
- 21. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.
- 22. 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.
- 23. Within 2 months of the completion of works, 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.
- 24. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
- 25. The existing and proposed bicycle hoops must be relocated to a more suitable location that satisfies the siting requirements of Clause 52.34 and AS2890.3;
  - (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
- 26. Before the new areas of the building are occupied, or by such later date as approved in writing by the Responsible Authority, the area set aside on the endorsed plans for the car parking spaces, access lanes and associated works must be:
  - (a) constructed and available for use in accordance with the endorsed plans;
  - (b) formed to such levels and drained so that they can be used in accordance with the endorsed plans;
  - (c) treated with an all-weather seal or some other durable surface;
  - (d) line-marked or provided with some adequate means of showing the car parking spaces; and
  - (e) to the satisfaction of the Responsible Authority.
- 27. 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.
- 28. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
  - (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
  - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
  - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
- 29. 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 sale and consumption of liquor within the extended floor area is not commenced within two years from the date of this permit; and
- (d) the 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:**

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.

A local law permit may be required for tree removal. Please contact Council's Compliance Branch on 9205 5555.

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.

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

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.

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.

**RATIONALE**

Since the finalisation of the officer report, an error has been identified which requires the issuance of a revised officer recommendation.

Paragraph 8 of the officer report erroneously states that the amendment no longer seeks to increase the operating hours of the venue. In actuality, the amendment does seek to increase the operating hours