



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

**to be held on Wednesday 18 September 2019  
at 6.30pm in Meeting Rooms 1 & 2  
at the Richmond Town Hall**

**Rostered Councillor membership**

Councillor James Searle  
Councillor Bridgid O'Brien  
Councillor Stephen Jolly (apology)

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

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



## Guidelines for public participation at Internal Development Approval Committee meetings

### **POLICY**

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

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

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

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

**Governance Branch  
2008**

## 1. Committee business reports

| Item |  | Page | Rec. Page |
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| 1.1  | 200 / 658 Church Street Cremorne - Melba - Planning Permit Application PLN19/0007 - Display of internally-illuminated sky signage  | 5    | 18        |
| 1.2  | PLN17/1124.01 - 33 - 39 Keele Street Collingwood - Section 72 Amendment to the permit and plans to; change the use from food and drinks premise (cafe) to a restaurant with up to 200 patrons, in conjunction with the restricted retail (as-of-right); increase the hours of the restaurant from Monday to Sunday 7.00am - 7.00pm to Monday to Sunday 7.00am - 11.00pm; include the sale and consumption of liquor (on and off the premises) between Monday to Sunday 7.00am - 11.00pm; and internal alterations. | 20   | 41        |
| 1.3  | PLN17/1016.01 - 221 Swan Street, Richmond - Section 72 Amendment to the plans to increase the floor area to include a basement (for sale and consumption of liquor) and further reduce the car parking requirement of the Yarra Planning Scheme  | 45   | 59        |

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**1.1 200 / 658 Church Street Cremorne - Melba - Planning Permit Application  
PLN19/0007 - Display of internally-illuminated sky signage**

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## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of a planning permit application submitted for 200 / 658 Church Street Cremorne, which seeks approval for the display of internally-illuminated sky signage. The report recommends approval, subject to conditions.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Clause 22.04 – Advertising Signs Policy
  - (b) Clause 52.05 – Signs

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Signage

### **Submissions Received**

4. Twenty-nine objections were received to the application, these can be summarised as:
  - (a) Visual impact of a roof top sign – specifically impacting the Yarra River corridor, Cremorne skyline and character of the surrounding neighbourhood;
  - (b) Light spill to balconies and habitable room windows;
  - (c) Loss of views to the river and city; and
  - (d) Impact on property value.

### **Conclusion**

5. Based on the following report, and an obtrusive lighting report received by Council on the 9 September 2019 (included as an attachment), the proposal is considered to comply with the relevant planning policy and should therefore be supported, subject to standard conditions and conditions recommended by VicRoads.

**CONTACT OFFICER: Daniel Goode**  
**TITLE: Statutory Planner**  
**TEL: 03 9205 5171**

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**1.1 200 / 658 Church Street Cremorne - Melba - Planning Permit Application  
PLN19/0007 - Display of internally-illuminated sky signage**

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Reference: D19/149065  
Authoriser: Coordinator Statutory Planning

**Proposal:** Display of internally-illuminated sky signage  
**Existing use:** Office building  
**Applicant:** 7-Eleven Stores Pty Ltd  
**Zoning / Overlays:** Commercial 2 Zone; Design and Development Overlay (Schedules 1-J and 5); Significant Landscape Overlay (Schedule 1); Land Subject to Inundation Overlay  
**Date of Application:** 7 January 2019  
**Application Number:** PLN19/0007

### Planning History

1. The subject site has the following planning permit history on record:
  - (a) Planning permit no. PL06/0429 was issued on 21 July 2006 to *develop the land through the display of two major promotional signs* at 200 / 658 Church Street.
  - (b) Planning permit no. PLN17/1093 was issued on 14 June 2018 for *development of the land for internal and external alterations to the existing building, construction of pergolas, landscaping works and an associated reduction in the car parking requirements* at 200, 230, 245 & 250 / 658 Church Street.
  - (c) Planning permit no. PLN18/0960 was issued on 16 April 2019 for *use of the land as a convenience shop and display of internally-illuminated business identification signage* at 200 / 658 Church Street.
  - (d) Planning permit no. PLN19/0008 was issued on 28 May 2019 for *display of signage, including internally-illuminated, high wall, business identification and a major promotional sign* at 200 / 658 Church Street. This permit updates and replaces the major promotional signage approved under permit no. PL06/0429.

### Background

#### Aboriginal Cultural Heritage Significance

2. The subject site is located in an 'area of cultural heritage sensitivity' as defined under the *Aboriginal Heritage Regulations 2018*. Under these regulations, a significant land use change (e.g. a subdivision into 3 or more lots) or a 'high impact activity' would trigger the requirement for a 'Cultural Heritage Management Plan'. The proposed display of signage is not considered to be a high impact activity, given there will be no significant ground disturbance. As such, the proposal does not require the preparation of a Cultural Heritage Management Plan.

#### Lighting Report

3. Following discussions at the consultation meeting held on 20 August 2019, the applicant has submitted an additional lighting report to assess the proposed signs compliance against obtrusive light spill criteria. The lighting report was received by Council on 9 September 2019, and is included as an attachment to this report.

**The Proposal**

4. The application is for the display of internally-illuminated sky signage. Details of the proposed signage are as shown in the table below:

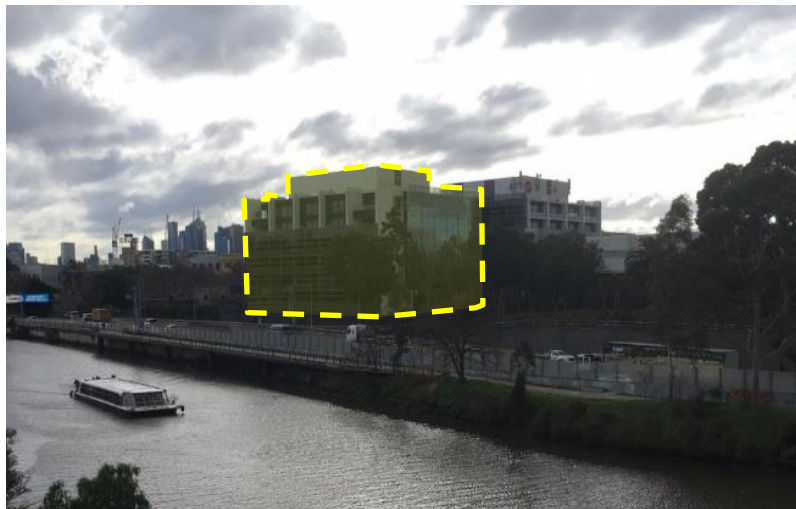
|                              | Type   | Location   | Combined Area |
|------------------------------|--|--|---------------|
| <b>7-Eleven Logo Signage</b> | Two internally-illuminated sky signs (4.5m by 4.5m each) | Atop the roof of the existing office building, oriented to the south and arranged in a 'V-shape' (23.03m from the southern boundary) | 40.5sqm       |

**Existing Conditions**

Subject Site

5. The subject site is located in southern Cremorne within a large business park known as '658 Church Street.' The site is bound by Hargreaves Street to the west, Dale Street to the north, and an unnamed street to the east (all of which are private roads within the larger business park fronting on to Church Street). The site has an area of approximately 4836sqm.
6. The subject site is the southern-most building of the two multi-storey office buildings, which is located to the south-western corner of the lot. The building is six storeys in height with a plant room on top, and is constructed of mostly glazing and cladding giving the building a contemporary appearance. A common forecourt runs east to west and separates the two office buildings. A second, larger forecourt is located in the northwest of the subject site and appears to be associated with the southern building only. At ground floor, the southern building includes the main entrance and lobby, lift/services core, office space, a 7-Eleven convenience shop and a café located in the northwest corner of the ground floor of the building. The floors above are used for office space, which is occupied by 7-Eleven Stores Pty Ltd.





### Surrounding Land

7. Surrounding the subject site are similar office buildings located on the larger business park known as '658 Church Street'. Given the immediately surrounding land is within a Commercial 2 Zone, dwellings are prohibited from being located within close proximity of the site. To the west is a campus of multi-storey office buildings associated with the international headquarters of the retail brand Country Road. These offices have access to a large, open car parking area that is restricted via boom gates.
8. To the east is a group of 2-3 storey office buildings currently tenanted by Wilson Storage, Valmorgan as well as a selection of other companies. These tenancies also have access to an open car parking area. Further east, approximately 200m from the subject site are the nearest dwellings, which are located on the opposite side of Church Street. These dwellings are located within a Commercial 1 Zone.
9. To the immediate north of the subject site is another 6-storey office building that is very similar in appearance and shares the common forecourt with the subject site. This building is currently displaying business identification signage for Mattel (on the rooftop plant room) and Hardie Grant. Further north is Dale Street, which is a private road within the larger business park. It features a central median strip and private paid car spaces operated by the land owner. On the opposite side of Dale Street, is a double storey car show room for Tesla Motors.
10. To the south is the CityLink toll road, running east-west, as well as the Yarra River. On the opposite side of the River, in South Yarra (Stonnington City Council), is Melbourne High School. To the east of the school there are residential buildings, on the corner of Chapel Street and Alexandra Avenue, which look out to the River. These buildings are approximately 250m from the subject site, and are located within an Activity Centre Zone (under the Stonnington Planning Scheme).





## Planning Scheme Provisions

### Zoning

11. The subject site is zoned Commercial 2 Zone. The following provisions apply:
  - (a) Pursuant to Clause 34.02-8, sign requirements are at Clause 52.05. This zone is in Category 1.

### Overlays

#### *Significant Landscape Overlay (Schedule 1)*

12. The subject site is affected by the Significant Landscape Overlay. The following provisions apply:
  - (a) Pursuant to Clause 62.02-2, the construction and display of signage does not require a permit unless specifically required by a provision of the scheme. As the schedule to the overlay does not specifically state that a permit is required for the display of signage, no permit is required under this overlay.

#### *Design and Development Overlay (Schedules 1-J and 5)*

13. The subject site is affected by the Design and Development Overlay (Schedules 1-J and 5). The following provisions apply:
  - (a) Pursuant to Section 4.0 of Schedule 5 of the overlay and the schedule to Clause 66.06, where a permit is required to use land or for the construction of a building or the construction or carrying out of works, notice of the application must be given to the Environment Protection Authority, Transurban City Link Limited and the Roads Corporation (VicRoads).
  - (b) Pursuant to Clause 62.02-2, the construction and display of signage does not require a permit unless specifically required by a provision of the scheme. As the above provisions do not specifically state that a permit is required for the display of signage, no permit is required under this overlay.

*Land Subject to Inundation Overlay*

14. The subject site is affected by the Land Subject to Inundation Overlay. The following provisions apply:
- (a) The signage proposed is not located within the overlay and therefore the provisions of the overlay do not apply. Additionally, pursuant to Clause 62.02-2, the construction and display of signage does not require a permit unless specifically required by a provision of the scheme. As the above provisions do not specifically state that a permit is required for the display of signage, no permit would be required under this overlay anyhow.

Particular Provisions

*Clause 52.05 - Signs*

15. The following provisions apply:
- (a) Pursuant to Clause 52.05-11 (Category 1), no permit is required for internally-illuminated signage provided the signage does not exceed 1.5sqm, no part of the sign is above a verandah, and the sign is more than 30m from a residential zone or traffic lights.
  - (b) Pursuant to Clause 52.05-11 (Category 1), a permit is required for a sky sign.
16. As the combined display area of the internally-illuminated signs exceeds 1.5sqm (at 40.5sqm), and the signs are sky signs, a permit is required under this provision.
17. Whilst the signs each exceed 18sqm, they are not considered to be major promotional signs as they are business identification signs and only promote the business which operates on the site. This means that the content of the sign cannot be changed to promote third parties (unless they operate on site), goods or services.

General Provisions

*Clause 65 – Decision Guidelines*

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

Planning Policy Framework (PPF)

19. Relevant clauses to this application are as follows:
- (a) Clause 15.01 – Built Environment
- Clause 15.01-1S – Urban Design*
20. The objective of this clause is *to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity*. The relevant strategies of this policy are as follows:
- (a) *Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate.*
  - (b) *Ensure development contributes to community and cultural life by improving the quality of living and working environments, facilitating accessibility and providing for inclusiveness.*
  - (c) *Ensure the interface between the private and public realm protects and enhances personal safety.*
  - (d) *Ensure development, including signs, minimises detrimental impacts on amenity, on the natural and built environment and on the safety and efficiency of roads.*
  - (e) *Promote good urban design along and abutting transport corridors.*

Local Planning Policy Framework (LPPF)

21. The clauses of the Municipal Strategic Statement (MSS) that are relevant to this application are as follows:

- (a) Clause 21.05 – Built Form
- (b) Clause 21.08 – Neighbourhoods

*Clause 21.05-2 – Urban design*

22. The relevant objectives and associated strategies of this clause are as follows:

- (a) *To reinforce the existing urban framework of Yarra*
  - (i) *Reinforce the Yarra River Corridor as the key ecological and open space element of the urban framework.*
  - (ii) *Maintain and strengthen the preferred character of each Built Form Character Type within Yarra.*
  - (iii) *Maintain key vistas along the Yarra River Corridor.*
- (b) *To ensure that new development contributes positively to Yarra's urban fabric.*
  - (i) *Ensure development is designed having particular regard to its urban context and specifically designed following a thorough analysis of the site, the neighbouring properties and its environs.*

*Clause 21.08-2 – Burnley, Cremorne, South Richmond*

23. This clause sets out the locally specific implementation of the objectives and strategies for Yarra's neighbourhoods. The subject site is located within the 'Burnley – Cremorne – South Richmond' neighbourhood, and is identified as having the 'Freeway River Edge' built form character. The specific objective for this built form character is to *ensure that development does not dominate the river*. The clause also sets out that the implementation of built form strategies in Clause 21.05 includes:

- (a) *Supporting development that maintains and strengthens the preferred character of the relevant Built Form Character type.*
- (b) *Ensuring that development of land adjacent to the Yarra River downstream of Church Street does not dominate the River.*
- (c) *Maintain the visual prominence of the Ball Tower of Dimmeys, the Nylex Sign, and Slade Knitwear Sign.*

Relevant Local Policies

24. The only relevant local policy to this application is Clause 22.04.

*Clause 22.04- Advertising Signs Policy*

25. This policy applies to all permit applications for development that incorporate signage. The relevant objectives of this policy are:

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

**Advertising**

26. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 786 letters sent to surrounding owners and occupiers. Council received 29 objections, the grounds of which are summarised as follows:

- (a) Visual impact of a roof top sign - specifically impacting the Yarra River corridor, Cremorne skyline and character of the surrounding neighbourhood;
  - (b) Light spill to balconies and habitable room windows;
  - (c) Loss of views to the river and city; and
  - (d) Impact on property value.
27. Notice of the application was also sent to Parks Victoria give the site's close proximity to the Yarra River. No response was received from this authority.
28. A planning consultation meeting was held on 20 August 2019 and attended by three objectors, the Applicant, and Council Officers to discuss all issues and concerns raised in the letters of objection. No agreements were reached between the parties. Following discussions at the consultation meeting, the applicant submitted an additional lighting report on 9 September 2019 that assesses the proposed signage against obtrusive light criteria. This report is referenced in detail in the 'Signage' assessment of this report. The lighting report is included as an attachment to this report.

### **Referrals**

29. The referral comments are based on the advertised plans that form the decision plans for the application.

#### External Referrals

30. Notice of the application was given to the following authorities pursuant to Section 52(1)(c) of the Act:
- (a) The Roads Corporation (VicRoads);
  - (b) The Environmental Protection Agency (EPA);
  - (c) Transurban
31. A response was received from VicRoads, who advised that they do not object to the proposal however suggested standard conditions if a permit is to issue. These conditions will be discussed further in the 'other matters' section of this report. VicRoads' comments have been included as an attachment to this report.

#### Internal Referrals

32. The application was not required to be referred to any other units within Council.

## **OFFICER ASSESSMENT**

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

- (a) Signage; and
- (b) Objector concerns.

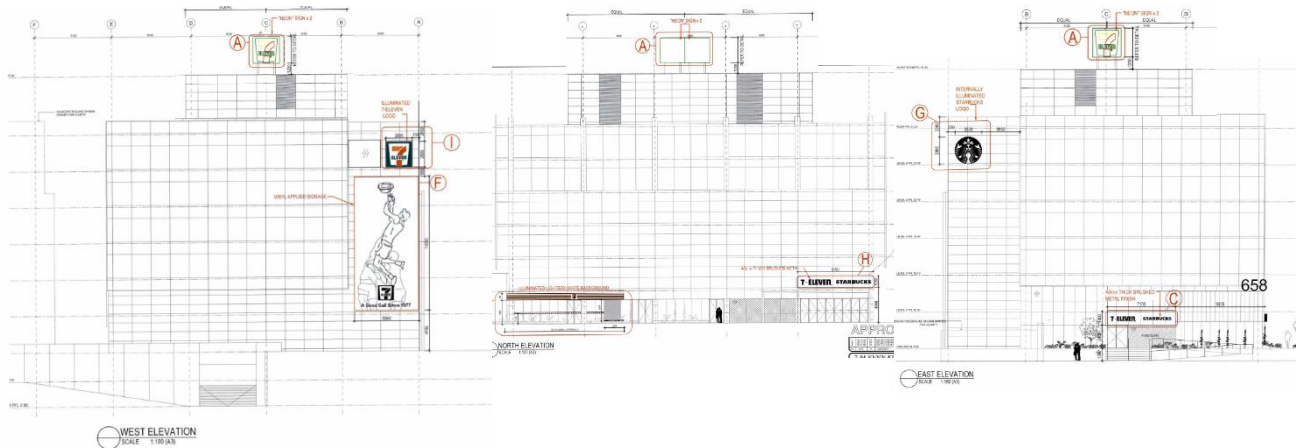
#### Signage

34. The proposed signs will be assessed against the decision guidelines of Clause 52.05 and the local advertising signs policy of Clause 22.04.
35. The signage provisions of Clauses 52.05 and 22.04 have consistent objectives pertaining to the protection of the visual amenity of the area – particularly the minimisation of visual clutter – as well as major view corridors and vistas, and the amenity of dwellings.

#### *Design*

36. The proposed internally-illuminated sky signage will be located on the roof of the plant room of the existing six storey building. The proposed dark finishes of the signs, as well as their rectilinear form will complement that of the building which incorporates tinted glazing and has a contemporary appearance.

With dimensions of 4.5m by 5.7m (including the support structure), the scale of the signs are well proportioned relative to the large building on which they sit, which is approximately 33m wide by 30m high. Whilst the building already has existing signage, it is considered that given the large surface area of the building and the varying heights and locations of the signs, the combination of all signage will not result in visual disorder or clutter. An image of the combined signage across the building is provided below. Signage 'A' relates to the signage currently proposed with all other signage already approved under planning permit nos. PLN18/0960 and PLN19/0008.



37. Whilst Clause 22.04 specifically states that signs should “*not be erected on the roof of a building*”, the policy also states that on main roads and boulevards, sky signs should be considered where the general policy requirements are met. Given the existing office building directly abuts the major thoroughfare of the CityLink to the south, and the signage will directly face this motorway, the sky sign should be considered on its merits against the general policy requirements. Additionally and importantly, in *Drive by Developments Pty Ltd v Kingston CC [2016] VCAT 473* the Tribunal did not accept that “*local policy on outdoor advertising effectively prohibits*” certain types of signage because it is specifically discouraged. Instead the Tribunal argued that discouraged signs “*can be considered an acceptable outcome provided that it reasonably responds to the policy framework and the particular guidelines of Clause 52.05*”. The Tribunal added “*the guidelines of Clause 52.05 mainly address a sign’s context and its potential impact on road safety*”. The design response of the signage to the surrounding context is assessed in detail below.

*Streetscape*

38. The proposed signs will face onto CityLink and the Yarra River and being on the roof of the building, will be visible from the south, east and west. Whilst the Yarra River is a significant natural feature in the area, the signage must also be considered in the immediate context with the busy motorway and the Commercial 2 Zoning of the business park in which the office building sits. Signage, including large major promotional signs are common along the motorway (such as that shown in the image below, approximately 100m west of the subject site), as well as those already existing on the subject site. Additionally, there is a strong character of higher built form along the northern side of the River as well as some examples of large and prominent sky signage (most notably the Nylex Sign). Furthermore, notice of the application was given to Parks Victoria given the proximity of the sign to the Waterway (and surrounding open space), and no objection or comments were received.



Major promotional sign on railway bridge (electronic)



'Our Magic Hour' rainbow sign (internally-illuminated)



'Nylex' sky sign (internally-illuminated)

39. The Church Street Bridge provides an important view to the Melbourne CBD across the river. Clause 22.04 states that signs should “*not obscure important views of vistas*”. Clause 52.05 breaks down the impacts on views and vistas into four decision guidelines:
- (a) *The potential to obscure or compromise important views from the public realm.*

- (b) *The potential to dominate the skyline.*
- (c) *The potential to impact on the quality of significant public views.*
- (d) *The potential to impede views to existing signs.*

40. Whilst the proposed sky signage will be visible from the Church Street Bridge, as illustrated in the image below, the proposed signage would not obscure the view of the CBD from the public realm as this view is provided across the river and not over the roof of the existing office building. Additionally, given the robust built form on the northern side of the river and the small size of the signage relative to this built form, the signage will not dominate the skyline of Cremorne. The signage will not block any views to other existing signage, and in consideration of the above, will not unreasonably impact the quality of significant public views.



Approximate size & location of signage

41. The signage will be visible to drivers from CityLink, however given the relative size of the signage and the strong character of signage along this motorway, the signs will not result in a detrimental impact to this streetscape. The proposed internally-illuminated signage will not interfere with any traffic signals, directional signs or street signs as encouraged by Clause 22.04-3.2. The impact of illumination on driver safety is discussed below.

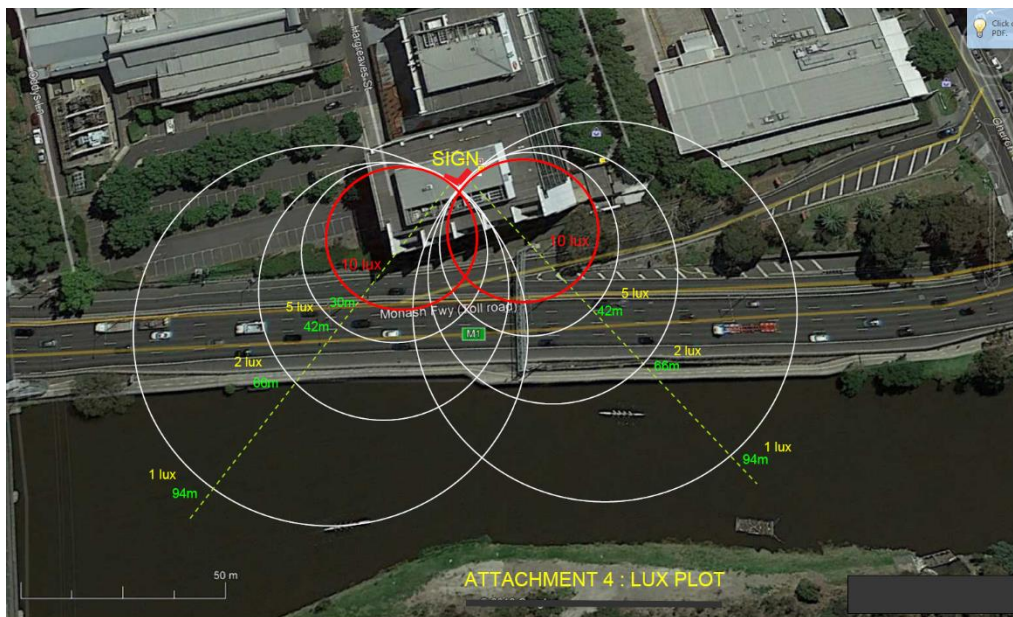
#### *Construction and support*

42. The proposed signs are appropriate given they will be fixed to the roof of the building, and will therefore not impede the movement of pedestrians or vehicles. All electrical equipment and supports will be integrated into the overall structure and will be concealed from view from surrounding streets. Whilst the rear side of the signs are exposed to the north, these views will be largely blocked by the 6 storey office building directly adjoining to the north. As discussed above, the siting of the sign and its supporting structures and equipment will not result in any impact to important views or vistas, as encouraged by the policy.

#### *Illumination and animation*

43. Whilst the proposed internally-illuminated signs will be visible from CityLink, given the height of these signs (over 30m above the natural ground level) and that they will not be animated or flashing, these signs will not be a safety hazard or cause a nuisance to drivers. Additionally, the applicant has provided a lighting report that indicates the veiling luminance to the driver would not exceed 0.014cd/sqm, which is well below the 0.25cd/sqm threshold requirement for VicRoads. Upon review of the application, VicRoads raised no concerns regarding the impact of the signage on road safety and offered standard conditions. These conditions will be discussed further later in this report.

44. It is considered that the illuminated signage will not result in unreasonable light spill to surrounding dwellings, given the significant separation of the site from these buildings. The nearest residential buildings to the east (nos. 631 Church Street Cremorne, 8 Howard Street Cremorne and 16 Howard Street Cremorne) are located between 180m – 250m away from the proposed signs and the nearest dwellings to the south (nos. 709 Chapel Street South Yarra and 83 Alexandra Avenue South Yarra) are separated from the signs by between 220m – 250m).
45. Whilst the aforementioned lighting report assesses the veiling luminance from CityLink and not directly from the nearest dwellings, a further lighting report has been provided to Council since the consultation meeting was held. The report provides an assessment against the *Australian Standard AS 4282 – 2018 – Control of the Obstrusive Effects of Outdoor Lighting*. The analysis shows that the 10 lux vertical plane illuminance threshold (for pre-curfew hours) only extends 30m from the proposed signage, and the 2 lux vertical plane illuminance threshold (for curfew hours between 11pm to 6am) only extends 66m from the signs, as shown in the image below.



46. Given the nearest dwellings are between 180m – 250m from the signage, the report shows that the proposed signage will comply with the Australian Standard for obtrusive light spill. The lighting report will be introduced by condition to form part of the permit. The dwellings are also separated from the site by major roads which already have street lights and the glare of headlights that will mean the illumination would be less noticeable than in a quiet residential context with limited lighting anyhow. Additionally, while it is considered that measures to block the light from the sign would not be necessary, in *oOh! Media Assets Pty Ltd v Yarra CC [2016] VCAT 1670* the Tribunal contended that “residents retain the opportunity to draw blinds to avoid excessive distraction that may arise if sitting in a darkened room with the blinds open” and that “deciding to close blinds or not, and indeed the type of blinds residents use is their choice”. This is particularly pertinent to residential buildings that are located in the Commercial 1 Zone (Cremorne) and Activity Centre Zone (South Yarra), where residents cannot expect the same level of amenity as they would in a residential zone.

*Commercial and industrial areas*

47. The proposed signage is generally consistent with the policy for commercial areas, and as previously discussed, the scale and type of all signs are appropriate and are similar to other signage found on adjoining sites and in the wider surrounding area.
48. Overall, it is considered that the proposed signage is generally consistent with local advertising signs policy of Clause 22.04 and the decision guidelines of Clause 52.05.



Objector concerns

*Visual impact of a roof top sign (Yarra River corridor, Cremorne skyline and character)*

49. This concern has been discussed at paragraphs 36 – 42.

*Light spill to balconies and habitable room windows*

50. This concern has been discussed at paragraphs 43 – 46.

*Loss of views to the river and city*

51. Views from the public realm have been discussed at paragraphs 37 – 40. With regards to views from private land, in *Guthrie v Yarra CC [2016] VCAT 862* the Tribunal found that “*with regard to loss of views, they are an important amenity element, but there is no legal right to views in the town planning sense, unless it is provided for in the planning scheme*”. Council does not have any policy that seeks to protect views to the City, or the Yarra River from private land.

*Impact on property value*

52. The impact of a development on surrounding property values has no basis in planning policy and is not a relevant consideration for this assessment.

Other Matters

53. As previously discussed, VicRoads did not object to the proposal however offered standard conditions should a permit be issued. These conditions are outlined below:

- (a) *The luminance of the advertising signs must be such that it does not give a veiling luminance to the driver, of greater than 0.25 cd/sqm, throughout the driver’s approach to the advertising sign.*
- (b) *The control of the internally illuminated signs must be in accordance with the submitted lighting reports, which must form part of any issued Planning Permit:*
  - (i) *Report on Motorist Glare of 7-Eleven Illuminated Sign at 200/658 Church Street, Cremorne by Dr. Richard Dluzniak Consulting Engineering, dated 30 May 2019.*
- (c) *The sign and any displayed advertisement must not include ancillary extension, embellishment or accessorisation within or outside the permitted advertising area, unless VicRoads has agreed in writing, prior to installation.*
- (d) *The sign must not be flashing, scrolling or intermittent light.*
- (e) *The sign must remain static at all times.*
- (f) *The signs must not:*
  - (i) *Dazzle or distract drivers due to its colouring;*
  - (ii) *Be able to be mistaken for a traffic signal because it has, for example, red circles, octagons, crosses or triangles;*
  - (iii) *Be able to be mistaken as an instruction to drivers.*

54. Whilst conditions (a), (b), (d), (e) and (f) are considered to be reasonable and will be included if a permit is to be issued, condition (c) above will not be included. Whilst VicRoads are required to be notified under the Design & Development Overlay (Schedule 5) as it relates to the CityLink exhaust stack, the application was not required to be referred pursuant to Section 55 of the *Planning & Environment Act 1987*.
55. Condition (c) above would require any changes to the signage structures to be approved by VicRoads, which is not considered to be reasonable given VicRoads is not a determining Referral Authority for the application. Furthermore, given VicRoads is not a determining Referral Authority, Council has the discretion to include or exclude suggested conditions. The standard condition 1 included below would already require the signs to be constructed in accordance with the endorsed plan and therefore any ancillary extension, embellishment or accessorisation would require further approval from Council as the Responsible Authority. As such, all conditions other than Condition (c) will be included should a permit be issued.
56. Condition (b) above will be re-worded in line with Council's standard conditions (conditions 3 and 4 included below) and will also include reference to the additional lighting report by the same author dated 3 September 2019.

## **Conclusion**

57. Based on the above report, the proposal is considered to comply with the relevant planning policy and should therefore be supported, subject to standard conditions and conditions recommended by VicRoads.

## **RECOMMENDATION**

That a Notice of Decision to Grant a Planning Permit PLN19/0007 be issued for display of internally illuminated sky signage at 200 / 658 Church Street, Cremorne generally in accordance with the plans noted previously as the "decision plans" and subject to the following conditions:

1. The location and details of the signs, including the supporting structure, 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.
2. The signs must be constructed, displayed and maintained to the satisfaction of the Responsible Authority.
3. Before the development commences, an amended Lighting Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Lighting Report will be endorsed and will form part of this permit. The amended Lighting Report must be generally in accordance with the Report on Motorist Glare of 7-Eleven Illuminated Sign at 200 / 658 Church Street, Cremorne by Dr. Richard Dluzniak Consulting Engineering, dated 30 May 2019 but modified to include (or show, or address):
  - (a) The assessment of obtrusive light spill included in the Report on Obtrusive Light of Proposed 7-Eleven Illuminated Sign at 200/658 Church Street, Cremorne by Dr Richard Dluzniak Consulting Engineering, dated 3 September 2019.
4. The provisions, recommendations and requirements of the endorsed Lighting Report must be implemented and complied with to the satisfaction of the Responsible Authority.

*VicRoads conditions (conditions 5 – 8)*

5. The luminance of the advertising signs must be such that it does not give a veiling luminance to the driver, of greater than 0.25 cd/sqm, throughout the driver's approach to the advertising sign.
6. The sign must not be flashing, scrolling or intermittent light.
7. The sign must remain static at all times.
8. The signs must not:
  - (a) Dazzle or distract drivers due to its colouring;
  - (b) Be able to be mistaken for a traffic signal because it has, for example, red circles, octagons, crosses or triangles;
  - (c) Be able to be mistaken as an instruction to drivers.
9. This permit will expire if the sign is not erected within 2 years of the date of this permit. The Responsible Authority may extend the period referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or twelve months afterwards for completion.
10. This permit expires 15 years from the date of the permit.
11. On expiry of this permit the approved signs and structures built specifically to support or illuminate it must be removed.

Notes:

A building permit may be required before development is commenced. Please contact Council's Building Services on 9205 5428 to confirm.

**CONTACT OFFICER:** Daniel Goode  
**TITLE:** Statutory Planner  
**TEL:** 03 9205 5171

**Attachments**

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- 1.2 PLN17/1124.01 - 33 - 39 Keele Street Collingwood - Section 72 Amendment to the permit and plans to; change the use from food and drinks premise (cafe) to a restaurant with up to 200 patrons, in conjunction with the restricted retail (as-of-right); increase the hours of the restaurant from Monday to Sunday 7.00am - 7.00pm to Monday to Sunday 7.00am - 11.00pm; include the sale and consumption of liquor (on and off the premises) between Monday to Sunday 7.00am - 11.00pm; and internal alterations.**
- 

## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of an application at No. 33 – 39 Keele Street Collingwood to amend the permit and plans to allow for a change of use, extension of the hours of operation, increase to the number of patrons and introduction of the sale and consumption of liquor (on and off the premises).

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) Clauses 21.04 and 34.02 – Land Use and Commercial 2 Zone;
  - (b) Clause 22.05 - Interfaces Uses Policy; and
  - (c) Clauses 22.09 and 52.27 – Licensed Premises.

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Strategic Context;
  - (b) Restaurant (Use);
  - (c) The Sale and Consumption of Liquor;
  - (d) Objector Concerns; and
  - (e) Other matters.

### **Submissions Received**

4. Seven (7) objections were received to the application, these can be summarised as:
  - (a) Off-site amenity impacts, including noise and antisocial behaviour;
  - (b) Car parking and traffic impacts; and
  - (c) Transformation of the use.

### **Conclusion**

5. Based on the following report, the proposal is considered to comply with the relevant planning policy, subject to conditions as detailed within the 'recommendation' section of this report.
6. The conditions relate to the maximum patron number, hours of operation and acoustic controls associated the use of a restaurant and sale and consumption of liquor.

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

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- 1.2 PLN17/1124.01 - 33 - 39 Keele Street Collingwood - Section 72 Amendment to the permit and plans to; change the use from food and drinks premise (cafe) to a restaurant with up to 200 patrons, in conjunction with the restricted retail (as-of-right); increase the hours of the restaurant from Monday to Sunday 7.00am - 7.00pm to Monday to Sunday 7.00am - 11.00pm; include the sale and consumption of liquor (on and off the premises) between Monday to Sunday 7.00am - 11.00pm; and internal alterations.**
- 

Reference: D19/146042  
 Authoriser: Coordinator Statutory Planning

**Proposal:** Section 72 Amendment to the permit and plans to:

- a) Change the use from food and drinks premise (café) to a restaurant with up to 200 patrons, in conjunction with the restricted retail use (as-of-right);
- b) Increase the hours of the restaurant from Monday to Sunday 7.00am – 7.00pm to Monday to Sunday 7.00am – 11.00pm;
- c) Include the sale and consumption of liquor on and off the premises between Monday to Sunday 7.00am – 11.00pm; and
- d) Include internal alterations.

**Existing use:** Food and Drinks Premises (café) and Restricted Retail (homewares)

**Applicant:** Message Consultants

**Zoning / Overlays:** Commercial 2 Zone

**Date of Application:** 31 May 2019

**Application Number:** PLN17/1124.01

### Planning Scheme Amendment

1. Since the original permit was issued on 13 June 2018, Amendment VC148 was gazetted into the Yarra Planning Scheme (**the Scheme**) on 31 July 2018.
2. Amendment VC148 introduced changes to the car parking requirements and permit triggers at *Clause 52.06 (Car Parking)* of the Scheme. The following changes introduced by the Scheme amendment are relevant to this application:
  - (a) Column B (of Table 1) applies to the application given that the site is identified as being within the Principle Public Transport Network Area as shown on the Principal Public Transport Area Maps (*State Government of Victoria, 2018*).
  - (b) Column B prescribes the following car parking requirements for each use:
    - (i) 2.5 spaces to each 100sqm of restricted retail (previously 3 spaces)
    - (ii) 3.5 spaces to each 100sqm of food and drinks premises or Restaurant (previously 4 spaces)
  - (c) These rates are lower than the prescribed rates relied upon when assessing the original application, the consequence of which will be discussed under the *Particular Provision - Clause 52.06 Car Parking* section of this report.
3. Amendment VC159 was gazetted into the Scheme on 8 August 2019 and introduced new land use terms and revised the definitions of existing land uses. The amendment did not alter the land use definitions associated to restricted retail, food and drinks premise or restaurant, thus is not relevant to this application.

## Planning History

4. Planning Permit PLN17/1124 was issued on 13 June 2018 for *buildings and works and reduction in the car parking requirement associated with the use of the land for restricted retail (as-of-right use) and food and drinks (café) Monday - Sunday 7.00am – 7.00pm.*
5. Should an amended permit be issued, the preamble should be corrected to remove reference to the operating hours as it was incorrectly included as a result of human error. The operating hours form a condition of the permit issued which will be carried over to form a condition of the amended permit, if it is to be issued.
6. Also relevant to this application, Planning Permit PLN17/1124 did not restrict the number of patrons in association with the permitted use of the land for food and drinks premises, though 85 seats for patrons were shown in endorsed plans and was discussed within the original report. This was an omission resulting from human error. The omission will be corrected through this application and a maximum patronage will form a condition of any permit issued.
7. In the event that an amended permit is not issued, Council will issue a corrected permit (to the original permit), through Section 71(1) of the *Planning and Environment Act 1987*, to include the condition requiring a maximum of 85 patrons on premise at any one time in association with the food and drinks premise and to remove the reference of the operation hours from the permit preamble.
8. Plans were also endorsed on 13 June 2018.
9. The permit has been acted upon, with all buildings and works completed and uses commenced.
10. Planning Application PLN19/0202 was submitted to Council on 5 April 2019 for the *sale and consumption of liquor associated with the use of the land for a food and drinks premises (café) and restricted retail.* The application proposed to carry out the use and an associated sale and consumption of liquor from Monday to Sunday 7.00am – 11.00pm, thereby conflicting with the previously approved hours of use (as per Planning Permit PLN17/1124). Council requested Further Information for the application on 16 April 2019 and requested that, should the alternate operating hours be pursued, the application be withdrawn and an amendment application be submitted to amend Planning Permit PLN17/1124.
11. The subject amendment application was subsequently submitted and Planning Application PLN19/0202 was formally withdrawn on 5 June 2019.

## Background

12. The amendment application was received by Council on 31 May 2019.
13. The application was advertised in June 2019 and seven (7) objections were received.
14. A consultation meeting was held on 20 August 2019 and was attended by the Applicant, two (2) objectors and Council Officers to discuss all issues and concerns raised in the letters of objection. Following the meeting, the applicant emailed Council Officers, offering the following conditions of permit to address matters raised:
  - (a) Patron numbers limited to 150 in association with the use of a restaurant.
  - (b) A reduction in the proposed hours of operation of the restaurant to:
    - (i) Sunday, Tuesday and Wednesday – 7.00am to 10.00pm;
    - (ii) Monday – 7.00am to 7.00pm; and
    - (iii) Thursday to Saturday – 7.00am – 11.00pm.
  - (c) The sale and consumption of liquor reduced so that they commence no earlier than 9.00am (10.00am on Sunday) with the proposed hours as follows:
    - (i) Sunday – 10.00am to 10.00pm;
    - (ii) Monday – 9.00am to 7.00pm;

- (iii) Tuesday and Wednesday – 9.00am to 10.00pm; and
  - (iv) Thursday to Saturday – 9.00am to 11.00pm.
- (d) Roller doors to be closed from 8.00pm Sunday to Thursday and from 10.00pm Friday and Saturday. The Applicant requested that a glazed screen be allowed in conjunction with the roller door, so that it may sometimes be closed in lieu of the existing roller door.

15. These aspects of the proposal and associated recommendations will be discussed further throughout this report.

### **The Proposal**

16. The application seeks to amend the planning permit PLN17/1124, Condition 2 (operating hours) and the endorsed plans to allow for the use of the site as a restaurant and the sale and consumption of liquor (on and off the premises).

#### *Use*

17. No change to the restricted retail component.
18. The Food and Drinks Premises (café) amended to be a restaurant, and this component of the use to be extended into the existing covered courtyard along the eastern boundary (previously used as informal car spaces). This results in a total of 266sqm of restaurant area, an increase of 35sqm from the 231sqm of food and drinks premises previously approved under the original permit.
19. The hours of operation proposed are Monday to Sunday, 7.00am to 11.00pm, increased from Monday to Sunday 7.00am to 7.00pm.
20. A total of 200 patrons are proposed, increased from 85.

#### *Sale and consumption of liquor*

21. The sale and consumption of liquor both on and off the premises.
22. The sale and consumption of liquor on the premises is associated with the use of the site as restaurant, proposing 200 patrons.
23. The sale of liquor for consumption off the premises is associated with restricted retail component of the use, with the applicant intending to sell a small range of Japanese branded alcoholic goods.
24. The 'red line plan' for the liquor licence shows that the liquor will be sold, served and stored within the internal areas of the building.

### **Existing Conditions**

#### Subject Site

25. The site is located on the southern side of Keele Street, approximately 120 metres east of Smith Street, in Collingwood. The subject site (formally known as lot 1 on Title Plan 247056Y) is mostly regular in shape, with the exception of an indentation to the south-east corner which is covered by a carriageway easement. The site has a frontage to Keele Street of 29.5 metres wide, a maximum site depth of approximately 27 metres along the western boundary and an overall site area of approximately 625sqm. The rear (southern) boundary abuts an unnamed laneway.
26. The site is developed with a single storey, brick building (originally in use as a warehouse), which has been altered in accordance with the buildings and works approved under Planning Permit PLN17/1124.



*Image 1: front of the subject site as viewed to from Keele Street*

27. The building is constructed entirely to the Keele Street frontage and presents as a red brick façade, with a flat white painted parapet, five window openings, a centrally located wooden doorway, and a roller door situated to both the east and west ends. Internally the building is notably open plan, comprising of an open kitchen, seating areas associated with the food and drinks premises and homeware displays associated with the restricted retail portion.
28. The tenancy is currently occupied by CIBI, which is a Japanese-styled café and concept store specialising in homewares, specialised food goods, and novelty products.





Image 2: Existing internal arrangement of CIBI, with cafe to the left and restricted retail to the right.

#### *Restrictive covenants*

29. There are no restrictive covenants that affect the subject site.

#### *Easements*

30. A party wall easement is located on the western title boundary. The application is not affected by the easement.
31. The site incorporates two sections of expunged road (as confirmed by Council's Subdivision Officer and Council's Traffic Engineer Unit), to the east and south, however, a portion of carriageway easement remains to the south-east corner of the site. The easement is not affected by the proposal.

#### Surrounding Land

32. An assessment of the surrounding area indicates that the features have not substantially changed since the time of writing the report for the original permit. As such, the following descriptions (*italic*) of the surrounds has been taken from the original recommendation:
33. *The surrounding area represents a former industrial area that is moving towards commercial uses. The land generally abutting the subject site is zoned as Commercial, extending to Smith Street to the west. Opposite the subject site, the Neighbourhood Residential 1 Zone applies to the heritage graded dwellings and general residential areas in the non-significant residential areas. The Smith Street Major Activity Centre (MAC) is located within 120m of the subject site.*



34. The abutting and nearby properties include:  
*27 – 31 Keele Street (west)*
35. *A two-storey brick commercial building abuts the subject site and shares a party wall with the building on the subject site. The building features boundary to boundary construction, windows to the street and features roller door access to Keele Street and a new glazed pedestrian access to the west of the building. The site is currently in use as offices (Medical Recruitment).*  
*41 Keele Street (east)*
36. The site was previously in use by CIBI, the business currently occupying the subject site. The site is currently in use as offices. The built form is a two storey, modern commercial building presenting multiple window openings, a central doorway and a white/grey rendered finish.  
*North side of Keele Street*
37. *A series of single and double storey dwellings are located on the north side of Keele Street and situated within the NRZ1 or GRZ2. The dwellings directly opposite the subject site (Nos. 26 – 34 Keele Street) incorporate a small street setback, front entrances and timber front fencing. Nos. 28 to 34 Keele Street have all been developed with secondary dwellings to rear of the site with access to these dwellings provided from Keele Street.*
38. These dwellings have habitable room windows (HRW) facing the subject site from within the front setbacks, a minimum distance of approximately 18 metres from the subject site. Areas of private open space (POS) are located to the rear of the dwellings, protected from the street frontage and a distance of approximately 30 metres from the subject site.  
*34 – 36 Easey Street*
39. *The site to the rear of the subject site is currently used as an at-grade car parking area abutted by two and three storey commercial buildings.*

### **Legislation Provisions**

40. *The amendment has been requested pursuant to Section 72 of the Planning and Environment Act 1987 (the Act). Section 72 of the Act states:*
- (1) A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*
- (2) This section does not apply to—*
- (a) a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or*
- (b) a permit issued under Division 6.*
41. Planning Permit PLN17/1124 was issued on 13 June 2018. The Tribunal has not directed that the responsible authority must not amend the permit, nor was the permit issued under Division 6 of the Act.
42. Section 73 of the Act states that Sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit.

### **Planning Scheme Provisions**

#### Zoning

#### *Commercial 2 Zone*

43. Pursuant to Clause 34.02-1 of the Yarra Planning Scheme, *no permit is required to use the land for Restricted Retail.*

- 44. Pursuant to Clause 34.02-1, a *planning permit is required to use the land as a Food and Drinks Premises where the leasable land exceeds 100sqm.*
- 45. The leasable floor area associated with the use of a Restaurant is 266sqm, thus a permit is required under the zone.

Overlays

- 46. No overlays apply to the site.

Particular Provisions

*Clause 52.06 Car Parking*

- 47. Pursuant to Clause 52.06-1, the clause applies to a new use or an increase in the floor area of an existing use; thus, the clause applies to the proposed use of the site as a restaurant and the increased leasable floor area to this component of the use.
- 48. Pursuant to Clause 52.06-2, before a new use commences or the floor area of an existing use is increased, the number of car spaces required under the Clause 52.06-5 must be provided to the satisfaction of the responsible authority.
- 49. Pursuant to Clause 52.06-3, a permit is required to reduce (including reduce to zero) the number of car parking spaces required under Clause 52.06-5.
- 50. As previously discussed, the subject site is located under the Principal Public Transport Network (PPTN) Area, thus Column B of table 1 of the Clause 52.06-5 applies to the amendment application.
- 51. The original planning permit approved no on-site car parking for the food and drinks premise (café) and restricted retail uses and a reduction of the 19 car parking spaces was approved. Under this amendment, the food and drinks premises is changing from a café to a restaurant and the leasable floor area associated with this use is increasing by 35sqm. The amendment continues to provide no on-site car parking spaces. The following table outlines the car parking requirements resulting from the amended proposal.

| Use   | Quantity/ Size                | Statutory Parking Rate                           | No. of Spaces Required by the Scheme | No. of Spaces Allocated | Reduction Required |
|---|-------------------------------|--|--------------------------------------|-------------------------|--------------------|
| <b>Permitted (prior to Amendment VC148)</b>                           |                               |  |                                      |                         |                    |
| Shop (restricted retail)  | 359sqm of leasable floor area | 3 spaces to each 100sqm of leasable floor area   | 10                                   | 0                       | <b>19</b>          |
| Food and Drinks Premise (café)  | 231sqm of leasable floor area | 4 spaces to each 100sqm of leasable floor area   | 9                                    |                         |                    |
| <b>Overall application including amendment (post Amendment VC148)</b> |                               |  |                                      |                         |                    |
| Restricted Retail   | 359sqm of leasable floor area | 2.5 spaces to each 100sqm of leasable floor area | 8                                    | 0                       | <b>17</b>          |
| Restaurant  | 266sqm of leasable floor area | 3.5 spaces to each 100sqm of leasable floor area | 9                                    |                         |                    |
| <b>Additional Car Park reduction required from the amendment</b>      |                               |  |                                      |                         | <b>-2</b>          |

52. The amendment therefore requires less car spaces than what was previously approved under the original application, despite the changes to the use.

*Clause 52.34 Bicycle Facilities*

53. Pursuant to Clause 52.34-1, a new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities has been provided on the land.

54. Table 1 of Clause 52.34-5 specifies the following rates:

- (a) One (1) bicycle space for employees to each 100sqm of floor area available to the public, associated with a restaurant (**resulting in 2**);
- (b) Two (2), plus one (1), bicycle space for visitors to each 200sqm of floor area available to the public, if the floor area associated with a restaurant exceeds 400sqm (**resulting in 0**);
- (c) One (1) bicycle space for employees to each 300sqm of leasable floor area associated with a retail premises (**resulting in 1**); and
- (d) One (1) bicycle space for visitors to each 500sqm of leasable floor are associated with the retail premises (**resulting in 0**).

55. The original permit approved a 'bike store' accommodating 14 bike spaces, exceeding the required three (3) bicycle spaces pursuant to Clause 52.4-5 of the Scheme.

*Clause 52.27 Licensed Premises*

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

57. Before deciding on an application, the Responsible Authority must consider as appropriate:

- (a) *The Municipal Planning Strategy of the Planning Policy Framework;*
- (b) *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area;*
- (c) *The impact of the hours of operation on the amenity of the surrounding area;*
- (d) *The impact of the number of patrons on the amenity of the surrounding area; and*
- (e) *The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.*

General Provisions

Clause 65 – Decision Guidelines

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

Planning Policy Framework (PPF)

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

*Clause 13.05-1S Noise Abatement*

60. The relevant objective of this clause is:

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

*Clause 13.07-1S Land Use Compatibility*

61. The relevant objective of this clause is:

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

*Clause 17.01-1S Diversified economy*

62. The objective of this clause is *to strengthen and diversify the economy*. A relevant strategy to achieve this is to:

- (a) *Improve access to jobs closer to where people live.*

*Clause 17.02-1S Business*

63. The relevant objective of this clause is:

- (a) *To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.*

*Clause 17.02-2S Out-of-Centre development*

64. The relevant objective of this clause is:

- (a) *To manage out-of-centre development.*

65. A relevant strategy set out to achieve this is objective is to:

- (a) *Give preference to locations in or on the border of an activity centre for expansion of single use retail, commercial and recreational facilities.*

*Clause 18.02-2R Principal Public Transport Network*

66. The objective of this clause is to:

- (a) *Maximise the use of existing infrastructure and increase the diversity and density of development along the Principal Public Transport Network, particularly at interchanges, activity centres and where principal public transport routes intersect.*

Local Planning Policy Framework (LPPF)

67. *Clause 21.04-3 Industry, office and commercial*

68. The objective of the clause it:

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

*Clause 21.08-5 Neighbourhoods – Collingwood*

69. Relevant to this application, Clause 21.08-5 describes Collingwood as *industrial in character with the residential precincts surrounded by or interspersed with industrial buildings*.

70. Figure 14 - Built Form Character Map: Collingwood of Clause 21.08-5 identifies the subject site as being in a non-residential area, the objective of which is *to improve the interface of development with the street*.

Relevant Local Policies

*Clause 22.05 Interfaces Uses Policy*

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

72. A relevant objective of the clause is:

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

*Clause 22.09 Licensed Premises*

73. The policy applies to an application under Clause 52.27 (Licensed Premises)

74. The objectives of this clause are:

- (a) *To protect the amenity of nearby properties and areas by effectively managing the location, size, operation and hours of licensed premises.*

- (b) *To encourage best practice venue design and venue operation for licensed premises.*
- (c) *To protect residential and other commercial uses from excess noise, traffic and car parking issues.*
- (d) *To provide for daytime trade and active street frontages in retail strips, while providing the reasonable commercial opportunities for the trading of licensed premises.*

## **Advertising**

75. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 166 letters sent to surrounding owners and occupiers and by a sign displayed on site. Council received seven (7) objections, the grounds of which are summarised as follows:
- (a) Off-site amenity, including noise and antisocial behaviour;
  - (b) Car parking and traffic; and
  - (c) Results in a transformation from the proposed use.
76. A planning consultation meeting was held on 20 August 2019 and attended by two objectors, the Applicant and Council Officers to discuss all issues and concerns raised in the letters of objection. As previously discussed, the Applicant accepted various conditions of permit to address the concerns raised, through an email to the Council Officer.
77. Nonetheless, the Applicant did not formally amend the proposal, and as such the proposal, as originally submitted to Council and advertised in June 2019, forms the basis of assessment and decision.

## **Referrals**

78. The referral comments are based on the decision plans, as advertised in June.

### External Referrals

79. The application was not referred to any external authorities.

### Internal Referrals

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

- (a) Compliance (Community Amenity)
- (b) Social Planning Unit

81. The referral comments have been included as attachments to this report.

### External Consultants

82. SLR Consulting (Acoustic Engineering)

83. The referral comments are included as attachments to this report.

## **OFFICER ASSESSMENT**

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

- (a) Strategic justification;
- (b) Restaurant use;
- (c) Sale and consumption of liquor;
- (d) Objector concerns; and
- (e) Other matters.

### Strategic justification

85. There is policy support within the State and Local Planning Policy Frameworks for a use of this nature in this location, given the commercial zoning and that the site is within walking distance of public transport networks and a Major Activity Centre (**MAC**).

86. With regards to this amendment, the use of the site for restricted retail is 'as-of-right' and does not need planning permission. Consideration lies with the proposed use of the land as a restaurant and the sale and consumption of liquor both on and off the premises. The specific implications of the use and the sale and consumption of liquor will be discussed further in this report, with particular regard to the purpose of the Commercial 2 Zone and the interface to residential dwellings across Keele Street. The operation of the proposal will be considered against the cumulative impact, off-site amenity impacts and land use conflicts of the site.
87. Nonetheless, turning our mind solely the location of the proposed licenced restaurant, it is considered to have strategic support given that state and local planning policies encourage the concentration of commercial and entertainment uses in and near Major Activity Centres, such as Smith Street, which are well connected to public transport and benefit from existing infrastructure (clauses 17.02-1S, 17.02-2S and 18.02-2R). The subject site is within 120 metres of the Smith Street MAC, and also benefits from access to various sustainable transport modes including the 86 tram along Smith Street to the west and 'Copenhagen' style bike lanes along Wellington Street, 150 metres to the east.
88. Further, Clause 17.02-2S (Out-of-centre development) specifically directs preference of locations in or on the border of an activity centre (such as the subject site) for the expansion of single use retail and commercial uses. Clause 17.02-1S (Business) encourages *use and development which meets the communities' needs for retail, entertainment, office and other commercial services*. One of the strategies suggested to achieve this is *to provide small scale shopping opportunities that meet the needs of local residents and workers in convenient locations*. The subject site itself, which is situated in a commercial zone near to residential dwellings, is an appropriate scale to provide local residents and workers with convenient dining and take away food and drink opportunities.
89. Moreover, Clause 17.01-1S (Diversified Economy) and Clause 21.04-3 (Industry, office and commercial) encourage growth that strengthens and diversifies the economy and job opportunities, encouraging that any growth *improve(s) access to jobs closer to where people live*. As discussed, the site is highly accessible, is zoned for commercial use and is near to where people live, thereby providing for an appropriate location for a restaurant use.

#### Restaurant use

90. The discussion of the appropriateness of the use will be guided by the purpose and decision guidelines of the Commercial 2 Zone (C2Z) at *Clause 34.02-7* and the requirements of the Interfaces use policy at *Clause 22.05* of the Scheme.
91. It is considered that the proposed use of the site as a restaurant is consistent with the purpose of the Commercial 2 Zone, which *encourage(s) commercial areas for offices, appropriate manufacturing and industries, bulky goods retailing, other retail uses, and associated business and commercial services*. As such, the zone directs commercial uses to this area. This is further justified by the fact that the commercial uses of a café and restricted retail premise currently occupy the site. A restaurant in itself is not significantly different from a café in its use (ie they are both for the service of food and drinks), however, it is acknowledged that the scale is proposed to increase. The proposal is amending the food and drinks café to a restaurant, extending the leasable floor area within the existing building envelope and increasing the hours of operation and patron numbers. Each aspect will be discussed in turn.
92. As discussed, the location of the proposed restaurant is acceptable in a strategic sense; however, consideration must be given to the potential impacts on the surrounding area and interfacing land uses.
93. 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. These requirements are further reiterated by the objectives of the Commercial 2 Zone.

94. The restaurant component of the use only requires a permit should it exceed 100sqm, as such, policy provides clear support for this use to operate in these locations, with the permit trigger ensuring that venues over 100sqm in floor area are appropriately considered and managed. The subject site, despite being located within a Commercial 2 Zone and within close proximity to a MAC, is located directly opposite dwellings (approximately 18 metres away) within Residential Zones. As such, consideration to this interface is necessary.

*Definition of a restaurant*

95. It is important to assess whether the proposal constitutes a 'restaurant', as although this use is supportable in principle, a significant increase to the scale and offerings of a restaurant can result in the transformation of the use to a higher impact use such as a function centre or bar (or similar). Pursuant to Clause 73.03 of the Scheme, a restaurant as defined as *land used to prepare and sell food and drink, for consumption on the premises. It may include:*

- (a) *entertainment and dancing; and*
- (b) *the supply of liquor other than in association with the serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time;*
- (c) *it does not include the sale of packaged liquor.*

96. The submitted floorplans show 116 seats in association with the restaurant. Applying the requirement that table and chairs are to be provided for 75% of patrons, a total of 155 patrons would be permissible on the premises at any one time. The proposed 200 patrons, in association with the restaurant use, would require that 150 seats be provided, and as this number of seats is not met, would ultimately result in the transformation of the use from a restaurant to a higher impact use such as a bar or function centre. Firstly, these uses have not been applied for through this application. Moreover, the principle purpose of a restaurant is for the service of food and drinks, where as a bar or function centre (or similar) can often be associated with a greater consumption of liquor and a lesser focus on a food experience.

97. To ensure the premises is meeting the definition of a restaurant and is not resulting in the transformation of the use from what was applied for, a condition will be included on any permit issued limiting the patrons in association with the use of the site as a restaurant to 150 at any one time. Further, a condition will be included to ensure that 75% of patrons are provided tables and seats so that the restaurant use will be ongoing and cannot transform in the future.

98. This condition is supported by Council's Social Planning Unit and has been accepted by the Applicant.

99. Finally, the definition of a restaurant excludes the sale of packaged liquor, however, this aspect of the proposal is associated with the as-of-right use of restricted retail and therefore has no implications on the validity of the restaurant use. A condition will be included on any permit issued requiring that the sale and consumption of liquor for consumption off the premise is to be associated with the restricted retail use.

*Noise*

100. It is noted that objections were received from both residents and business owners/operators with regards to noise. Despite its residential interface (within 20 metres to the north), the subject site is located within, and is otherwise surrounded to the east, west and south by the Commercial 2 Zone which encourages areas for uses such as retail and associated businesses. It is also on the immediate periphery of the Smith Street MAC, within which active and vibrant commercial uses and retail activity is present and expected.

As such, the amenity expectations of residents in this area need to be somewhat tempered in order to maintain the viability of industrial and business areas, as is recognized in Clause 22.05 (Interface Uses Policy). Nonetheless, subject to conditions, it is considered that a reasonable level of amenity can be experienced by neighbouring uses.

101. While noise impacts will also be discussed with relation to the sale and consumption of liquor later in this report, it is considered that the noise generated from the proposed restaurant would not be unreasonable given the context, reduction of patron numbers from proposed (associated with the restaurant) to 150 and the existing conditions included on the permit relating to internal noise limits and no external speakers permitted. Further, a food and drinks premise already exists on site with Council's Compliance Team having no record of complaints against the premises or the use.
102. An Acoustic Report, prepared by Clarity Acoustics and dated 28 May 2019, was submitted with the subject application and was reviewed by Council's External Acoustic Consultant (SLR Consultants). The proposed hours of operation as per the application and accompanying Acoustic Report are Monday to Sunday 7.00am to 11.00pm.
103. Council's Acoustic Consultants regarded that the level of patron noise, internal to the premises, during these hours (assuming the 200 patrons proposed) would be acceptable subject to the roller doors being closed from 8pm Sunday to Thursday and from 10pm Friday and Saturday. This will form a condition of any permit issued. The applicant accepted this condition, however, expressed the desire to install glazed screens behind the existing roller doors so that it may be a transparent alternative to the solid metal roller doors, allowing for natural light into the premises and for views to the public realm whilst still providing acoustic mitigation. This is accepted on the basis that the Acoustic report, as prepared by Clarity Acoustics, is amended and provided to Council to show that the alternative glazed screens achieves compliance with SEPP N-2 noise limits. This will form part of a condition to any permit issued.
104. Further, Council's Acoustic Consultant also noted that the level of patron noise on arrival and departure may be of a concern due to the large patron capacity and extended hours into the night time, although also noted that this is not a matter that can be readily addressed through built form acoustic controls. Officers agree with Council's Acoustic recommendations to reduce the hours of operation and consider that the impacts of noise from patrons arriving and departing the site can be appropriately mitigated through the reduction to the scale and duration of the use. As previously discussed, patron numbers will be capped at 150 with 75% of patrons to be provided seating. Further, it is commonly accepted that residential area sensitivity is higher at night time (10pm onwards) and as such, the operating hours of the restaurant will be further reduced by way of a condition included on any permit issued - based on the acoustic recommendations – so they are as follows:
  - (a) Sunday to Thursday 7.00am to 10.00pm;
  - (b) Friday and Saturday 7.00am to 11.00pm; and
  - (c) Monday 7.00am to 7.00pm (as approved).
105. These hours generally match those offered by the applicant following the consultation meeting with the exception of the Thursday evening hours being reduced from an 11pm closure time to a 10pm closure.
106. It is considered that, subject to the conditions relating to patron numbers, operating hours and roller door closure, the patron noise emitting from the restaurant use will not unreasonably impact neighbouring residential uses.
107. Finally, music is proposed to be played at a background level and a condition is already included on the existing permit requiring that the use must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).

Nonetheless, Council's Acoustic Consultant has recommended that the restaurant sound system incorporate spectrum shaping capabilities (an acoustic compressor/equalizer) and that the music levels be set by a suitably qualified acoustical consultant to ensure SEPP N-2 compliance (night noise limits applying after 10pm Monday to Saturdays, before midday and after 9pm Sundays). These conditions will be included on any permit issued, requiring the Acoustic Report, prepared by Clarity Acoustics and dated 28 May 2019, to be amended accordingly.

A condition will also be included requiring that within 3 months of the commencement of the use (or sale and consumption of liquor), an acoustic report be prepared to confirm the compliance with noise limits and, where necessary, make recommendations to limit the noise impacts in accordance to the state SEPP N-2 and SEPP N-1.

108. With regard to the objection received concerning potential noise impact on adjacent businesses, the Commercial 2 Zone does and is intended to support a diversity of commercial uses, including office, bulky goods, and retail in appropriate locations. The conditions imposed to mitigate excessive patron noise or music will ensure that an office can also operate without unreasonable disturbance during the day.

*Loading and unloading*

109. The amendment application proposes that deliveries are to be carried out Monday to Saturday between 7.00am and 10.00pm and Sunday (and public holidays) between 9.00am and 10.00pm. However, a condition is already included on the original permit specifying that deliveries are to occur between 7.00am – 7.00pm.
110. Although Council policy is to allow for delivery and collection of all goods to and from the land, associated with the use, to only occur between 7.00am and 10.00pm Monday to Sunday, the existing condition will remain to ensure that deliveries occur during daytime hours when they are less likely to disturb nearby residential uses.
111. A condition on the permit states that *loading and unloading of vehicles and the delivery of goods to and from the land associated with the use must be conducted entirely within the land, to the satisfaction of the Responsible Authority*. As no access points are available or allocated for deliveries to be loaded and unloaded within the building, this condition was included in error and will be removed. It is noted that a loading bay currently exists at the front of the premises.

*Light spill*

112. The use is proposed, in this planning application, to be contained entirely within the existing building. The use of the site throughout the day time will obviously bare no impact on neighbouring amenities with regards to light spill. Although the existing building presents five windows and two roller doors to Keele Street, it is not expected that the use will result in an unreasonable light spill to nearby residential dwellings for the following reasons:
- (a) A condition will require that the roller doors are closed from 10pm Friday and Saturday and from 8pm Sunday through to Thursday when the sensitivity of residential amenity is traditionally higher (although it is acknowledged that a glazed screen may be used in lieu of the solid roller door, if approved);
  - (b) Light spill from a restaurant is expected to be consistent with a habitable use, that being ambient or white light, rather than strobe or colourful lighting which may be at odds with a residential area; and
  - (c) The site is a minimum distance of 18 metres from the nearest dwelling and is buffered by a road. This distance, and the presence of on street lighting and car lights, will appropriately buffer any light from the restaurant to residential dwellings.

*Waste management*

113. Details of waste management are required, pursuant to Clause 22.05 of the Scheme. No specific details were provided regarding the storage or collection points of waste and as such, to ensure the potential amenity impacts associated with waste are minimised, a condition will be included on any permit issued requiring a Waste Management Plan to be prepared by a suitably qualified consultant, to the satisfaction of the Responsible Authority.
114. Considering the nature of the use, within an existing building which already operates as a food and drinks premises, it is not expected that unreasonable impacts will result from waste that cannot be appropriately managed, subject to conditions.

*Conclusion*

115. Overall it is considered that the proposed restaurant use will support the purpose of the Commercial 2 Zone and will increase employment opportunities in the area. Subject to various conditions of permit aimed at protecting the amenity of nearby residential land, the restaurant will operate without adversely impacting upon the amenity of the neighbouring residential land, and is therefore supported.

Sale and consumption of liquor

116. Clause 52.27 and policy at Clause 22.09 of the Scheme are used to guide the assessment of the new licenced premises.
117. The proposed application applies for:
- (a) The sale and consumption of liquor on-site, in association with the restaurant use; and
  - (b) The sale of liquor for consumption off-site, in association with the restricted retail use.
118. Each aspect of the proposal will present different considerations. Traditionally, the nature of the sale of liquor for consumption off the premises is less likely to result in adverse amenity impacts associated with patrons consuming liquor on-site. Visits to purchase bottled alcohol will likely be short and reasonably dispersed, particularly in this instance where it is associated with a restricted retail use where liquor is a minor sales component and for specialised products. Trips to the site for this purpose will likely be multi-purpose, with the primary focus of customer visits likely to be for the food and drink or retail experience. For these reasons, the sale of liquor for off-site consumption component of the proposal is supported, subject to the condition to hours of operation as discussed further below.
119. With regards to the sale and consumption of liquor on-site, an additional assessment is necessary. Amongst other things such as the hours of operation, patron numbers, and the general impact of licensed premises on the amenity of the area, the decision guidelines of Clause 52.27 require consideration of the cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.
120. A majority of the above considerations are contained in Council’s local licensed premises policy (Clause 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.
121. 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                  |
|                        |                    |
| <b>Size of Premise</b> | <b>Risk Factor</b> |
| 0 – 49 patrons         | 0                  |
| 50 – 99 patrons        | 1                  |
| 100 – 199 patrons      | 2                  |
| 200+                   | 3                  |
|                        |                    |
| <b>Closing hours</b>   | <b>Risk factor</b> |
| 11pm                   | 0                  |
| 12am                   | 1                  |
| 1am                    | 2                  |
| 2am                    | 3                  |
| 3am                    | 3                  |
| After 3am              | 4                  |

122. In this instance, whether the patron numbers are restricted or not, the proposed application does not trigger a cumulative impact assessment, as the proposal is afforded a maximum score of 3.
123. *Clause 22.09 (Licenced premises policy)* of the Scheme is council's local policy to guide the assessment of new licensed premises within the municipality. It contains six key elements that will be considered below.
- Location and access*
124. New licensed premises should be located such that:
- 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 no 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.*
125. As previously discussed, the premise has strategic support in the subject location. The site is on the periphery of the Smith Street Activity Centre, is within a Commercial 2 Zone and a consolidated neighbourhood with good access to services, infrastructure and public transport. The issue of noise has been substantially addressed previously in this report and conditions employed to minimise the scale and duration of the proposed use and associated sale and consumption of liquor.
126. Traditionally, the sale and consumption of liquor in association with a restaurant does not tend to result in excessive drinking or anti-social behaviour that adversely impacts the amenity of a place, as the primary focus of the use is for the service of food and drinks. With 116 seats provided and the opportunity to peruse the restricted retail portion of the premise, queuing of patrons is not expected. Further, ingress and egress will be limited to the central doorway in evenings, particularly on Sunday through to Thursday when roller doors will be required to be closed by 8pm. Further, given the nature of the use, the dispersal of patrons from the venue is likely to be staggered, with patrons coming and going at various times throughout the day and evening.
127. Given the existing built form restraints of the site, there is no smoker's area provided internally. As such, patrons can smoke within the public realm, in accordance with the relevant smoking regulations.

### *Venue Design*

128. Licensed premises should ensure that:
- (a) *The layout and design of new licensed premises incorporate safe design principles as detailed in the Design Guidelines for Licensed Venues (Victorian Commission of Gambling and Liquor Regulation 2017).*
  - (b) *The entry and exits points of a licensed premise and the areas for queuing of patrons are located away from sensitive land uses.*
  - (c) *Waste management and storage is provided on-site, and noise enclosures are provided where bottle crushers are to be used.*
129. The premise is an existing building, however, it continues to generally meet the relevant layout and design guidelines for the following reasons:
- (a) The windows and entry points provide opportunities for informal and passive surveillance of the street environment.
  - (b) The entry points are clearly distinguishable, with few opportunities for concealment such as recessed doors and alcoves provided.
  - (c) The internal premise is open plan, avoiding high congestion of patrons near entry points.
  - (d) Although the entry and exit point is to Keele Street, where it is opposite residential properties, this is an existing condition and moreover, is the ideal entry and exit point when regarding patron safety and navigation to public transport, taxis and ride share.
  - (e) Bathrooms are provided internally, to the rear of the premises.
  - (f) A Waste Management Plan is required by way of a condition to any permit issued. The proposed floorplans locates back-of-house areas and bathrooms towards the rear of the site, where it is easily accessed from the rear laneway. As such, it is expected that an appropriate location for waste storage can be provided to the rear, away from the sensitive residential interfaces.
130. In addition, a condition will be included on any permit issued requiring a sign be erected at the exit(s) of the venue to advise patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.

### *Hours of operation*

131. The application proposes the sale and consumption of liquor to be carried out between 7.00am to 11.00pm seven days a week. Following the consultation meeting held on 20 August 2019, the applicant agreed to the following amended hours:
- (a) Sunday – 10.00am to 10.00pm;
  - (b) Monday – 9.00am to 7.00pm;
  - (c) Tuesday and Wednesday – 9.00am to 10.00pm; and
  - (d) Thursday to Saturday – 9.00am to 11.00pm.
132. Clause 22.09 Licensed Premises Policies provides the following guidelines, relevant to the proposal:
- (a) *Licensed Premises within 30 metres of a residential zone should not provide for the sale and consumption of liquor beyond 11pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
  - (b) *Packaged liquor outlets should not provide for the sale of liquor after 11pm.*
  - (c) *Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.*

133. The revised hours of sale and consumption of liquor, as offered by the Applicant following the consultation meeting, comply with all the relevant local policy guidelines. However, as previously discussed, the operating hours will be reduced on a Thursday to mitigate noise concerns during a typical work week. As such, the hours will be adopted, subject to the 10pm closure on a Thursday, and will form a condition of any permit issued to appear as follows:
- (a) Sunday – 10.00am to 10.00pm;
  - (b) Monday – 9.00am to 7.00pm;
  - (c) Tuesday to Thursday – 9.00am to 10.00pm; and
  - (d) Friday and Saturday – 9.00am to 11.00pm.

134. These hours would also meet the recommendations of Council's Social Planning Unit and External Acoustic Consultant. Council's Compliance Team offered no objection to the proposed operating hours of the use or sale and consumption of liquor.

*Patron numbers*

135. As previously discussed, a condition will reduce from the originally proposed 200 patrons to 150 on premise at any one time in association with the restaurant (with 75% of patrons provided seating). This also meets the recommendations of Council's Social Planning Unit, though no objection was made from Council's Compliant Team. At the consultation forum and in response to objections received, the applicant has agreed to a maximum number of patrons to be 150.
136. As confirmed in the submitted patron capacity assessment prepared by a registered building surveyor, the internal areas of the premises can safely accommodate a maximum 200 patrons which exceeds the conditioned limit of 150.

*Noise*

137. Noise has been substantially discussed in association with the use, with conditions included to mitigate any adverse amenity impacts. The nature of the sale and consumption of liquor, in association with the use of the site as a restaurant, means that the two are ultimately linked. All conditions relating to the use with regards to compliance with SEPP N-1 and SEPP N-2, from both music and patrons, will apply to the use and sale and consumption of liquor.
138. Further, the conditioned hours of the sale and consumption of liquor will ensure that any noise resulting from the egress of patrons in the evening will subdue around 7pm on a Monday, 10pm on Tuesday through to Thursday and 11pm Friday and Saturday. These hours are earlier than what is directed by policy and will protect the amenity of the nearby residential areas during the typical work week.
139. A condition will be included on any permit issued requiring that the emptying of bottles and cans into bins may only occur between 7am and 10pm on Monday to Saturday or after 9am on a Sunday or public holiday (as per Council policy at 22.09 Licensed Premises Policy).

*Noise and Amenity Action Plan (NAAP)*

140. The policy stipulates that a NAAP is not required for a restaurant (or a packaged liquor outlet) and as such was not required for this application.
141. Finally, the expiry conditions of the original permit will be amended to include the following conditions relevant to the sale and consumption of liquor:
- (a) the sale and consumption of liquor is not commenced within two years from the date of this permit; or
  - (b) the sale and consumption of liquor is discontinued for a period of two years.

Objector concerns

142. The majority of the issues raised by objectors have been addressed throughout the assessment section of this report. For ease of reference, the concerns raised and corresponding report sections and/or paragraph numbers are outlined below, as relevant:

*Off-site amenity impacts, including noise and antisocial behaviour*

143. This concern has been discussed at paragraphs 94 – 101, 111, 119 and 130 - 132 of this report. Various conditions have been included, regarding patron numbers, music levels, operating hours, hours of sale and consumption of liquor and patron noise limits, ensuring an appropriate degree of amenity is achieved for nearby residential areas.

*Car parking and traffic concerns*

144. Clause 52.06 Car Parking does not apply to the amendment application, as discussed at paragraphs 43 – 48 of this report.

*Transformation of the use*

145. This concern has been discussed at paragraphs 88 - 93 and a condition has been included requiring a maximum of 150 patrons on the premises at any one time to ensure there is no transformation from the proposed use of a restaurant. Further, a condition will require that at least 75% of patrons are provided seating.

Other matters

146. If an amended permit were to issue, the following is noted:

- (a) The permit preamble would be amended to read:
  - (i) *Sale and consumption of liquor (on and off the premise) associated with a restaurant and restricted retail (as-of-right use), a reduction in the car parking requirements of the Scheme and buildings and works.*
- (b) No conditional changes to plans would be required.
- (c) The Decision Plans, as prepared by OLA and dated April 2019 (TP2.01) will be endorsed and the previous versions of this plan be superseded.
- (d) The endorsed set of plans would thereby include TP2.01 (dated April 2019) and TP3.01 (dated January 2018) as prepared by OLA.
- (e) The following changes to conditions:
  - (i) Condition 3 will be deleted. It previously read “*the loading and unloading of vehicles and the delivery of goods to and from the land associated with the use must be conducted entirely within the land, to the satisfaction of the Responsible Authority*”.
  - (ii) Conditions 1, 9 and 23 amended to include reference to the sale and consumption of liquor in conjunction with the permitted use.
  - (iii) New conditions 2, 4, 5, 8 and 11 – 20 included based on the recommendations as discussed throughout the assessment of this report.

**Conclusion**

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



## **RECOMMENDATION**

That having considered all relevant planning policies, the Committee resolves to Issue a Notice of Decision to Amend a Planning Permit PLN17/1016 to allow for buildings and works and reduction in the car parking requirement associated with the use of the land for restricted retail (as of right use) and food and drinks (cafe), and subsequent changes to the permit preamble, endorsed plans and condition 2, at 33 – 39 Keele Street Collingwood, in accordance with the decision plans and subject to the following conditions:

### **Preamble (amended)**

**Sale and consumption of liquor (on and off the premise) associated with a restaurant and restricted retail (as-of-right use), a reduction in the car parking requirements of the Scheme and buildings and works.**

### **Conditions (amended or new conditions in bold)**

1. The use, 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.

### Use – Restaurant

2. **Except with the prior written consent of the Responsible Authority, the use authorised by this permit may only operate between the following hours:**
  - (a) **Sunday to Thursday 7.00am to 10.00pm;**
  - (b) **Friday and Saturday 7.00am to 11.00pm; and**
  - (c) **Monday 7.00am to 7.00pm.**
3. Deleted.
4. **No more than 150 patrons are permitted on the land at any one time in association with the use of the land as a restaurant.**
5. **Seating for a minimum of 75% of patrons must be provided at all times liquor is made available for sale and consumption.**
6. There must be no speakers external to the building erected or used.
7. The use must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
8. **The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).**
9. The amenity of the area must not be detrimentally affected by the use or development or **sale and consumption of liquor**, including through:
  - (a) the transport of materials, goods or commodities to or from land;
  - (b) the appearance of any buildings, works or materials;
  - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; or
  - (d) the presence of vermin;

to the satisfaction of the Responsible Authority.

10. Except with the prior written consent of the Responsible Authority, delivery and collection of all goods to and from the land associated with the use approved under this permit may only occur between 7.00am and 7.00pm Monday to Sunday.
11. **Emptying of bottles and cans into bins may only occur between 7am and 10pm on Monday to Saturday or after 9am on a Sunday or public holiday.**
12. **Except with the prior written consent of the Responsible Authority, the roller doors (or an alternative physical sound barrier in accordance with condition 16) must be closed from 8pm onwards Sunday to Thursday and from 10pm Friday and Saturday.**

#### **Sale and consumption of liquor**

13. **Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor may only occur between the hours of:**
  - (a) **Sunday – 10.00am to 10.00pm;**
  - (b) **Monday – 9.00am to 7.00pm;**
  - (c) **Tuesday to Thursday – 9.00am to 10.00pm; and**
  - (d) **Friday and Saturday – 9.00am to 11.00pm.**
14. **Before the commencement of the sale and consumption of liquor, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.**
15. **The sale of liquor for consumption off the premise is associated with the restricted retail use.**

#### **Acoustic Report**

16. **Before the use or sale and consumption of liquor 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 Clarity Acoustic and dated 28 May 2019, but modified to include (or show, or address):**
  - (a) **Confirm that the roller doors (or an alternative physical sound barrier) will be closed from 8pm onwards Sunday to Thursday and from 10pm Friday and Saturday and compliance with SEPP N-2 requirements is demonstrated;**
  - (b) **The in-house music system to incorporate spectrum shaping capabilities, and the music levels to be set by a suitably qualified acoustical consultant for SEPP N-2 compliance and to be maintained at all times; and**
  - (c) **The patron numbers and operating hours of the use in accordance with Conditions 2 and 3.**
17. **The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.**

18. **Within 3 months of the commencement of the use or 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 updated post-commencement Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:**
- (a) **Confirm that the recommendations of the endorsed acoustic report required as part of Condition 16 have been implemented;**
  - (b) **Assess their effectiveness in meeting the predicted patron noise level and SEPP N-1 and SEPP N-2 requirements as outlined within the endorsed acoustic report required as part of Condition 16; and**
  - (c) **If non-compliance with Condition 16 is measured, the venue must implement additional acoustic measures as recommended by the amended acoustic report within one month of the date of the amended acoustic report.**

**The provisions, recommendations and requirements of the endorsed post-commencement Acoustic Report be implemented and complied with to the satisfaction of the Responsible Authority.**

#### **Waste Management Plan required**

19. **Before the use or sale and consumption of liquor commences, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the Waste Management Plan will be endorsed and will form part of this permit.**
20. **The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.**

#### **Buildings and works**

21. **Before the building is occupied by the use approved under this permit, 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.**
22. **Except with the prior written consent of the Responsible Authority, demolition or construction works approved under this permit must not be carried out:**
- (a) **Monday-Friday (excluding public holidays) before 7 am or after 6 pm,;**
  - (b) **Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or**
  - (c) **Sundays, ANZAC Day, Christmas Day and Good Friday at any time.**

#### **Expiry conditions**

23. **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; or**

- (c) **the use and sale and consumption of liquor is not commenced within two years from the date of this permit; or**
- (d) **the use and 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:

The restaurant 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.

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

The use of the site for Restricted Retail does not require a planning permit pursuant to Clause 34.02-1 of the Yarra Planning Scheme using the definition set out at Clause 74 (Definitions) of the Yarra Planning Scheme. A planning permit may be required to use the land for the purpose of Retail.

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

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

The signage shown on plans for this application does not require a planning permit pursuant to Clause 52.05-7 (Advertising signs) of the Yarra Planning Scheme and was therefore not assessed under this policy.

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

**Attachments**

- 1 PLN17/1124.01 33 - 39 Keele Street - Site Map
- 2 PLN17/1124.01 33 - 39 Keele Street - Amended Plans
- 3 PLN17/1124.01 33 - 39 Keele Street - Acoustic Report
- 4 PLN17/1124.01 33 - 39 Keele Street - Town Planning Report
- 5 PLN17/1124.01 33 - 39 Keele Street - Existing Permit
- 6 PLN17/1124.01 33 - 39 Keele Street - Endorsed Plans
- 7 PLN17/1124.01 33 - 39 Keele Street - Acoustic Referral comments
- 8 PLN17/1124.01 33 - 39 Keele Street - Referral comments

- 
- 1.3 PLN17/1016.01 - 221 Swan Street, Richmond - Section 72 Amendment to the plans to increase the floor area to include a basement (for sale and consumption of liquor) and further reduce the car parking requirement of the Yarra Planning Scheme**
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## **Executive Summary**

### **Purpose**

1. This report provides Council with an assessment of an application at No. 221 Swan Street Richmond to amend the endorsed plans and increase the floor area of the approved development to include a basement level, extend the red line for the sale and consumption of liquor to the basement level and further reduce the car parking requirement of the Yarra Planning Scheme.

### **Key Planning Considerations**

2. Key planning considerations include:
  - (a) clause 22.09 and 52.27– Licensed premises policy; and
  - (b) clause 52.06 – Car parking

### **Key Issues**

3. The key issues for Council in considering the proposal relate to:
  - (a) Built Form;
  - (b) Sale and Consumption of Liquor;
  - (c) Car Parking; and
  - (d) Objector Concerns.

### **Submissions Received**

4. Eight (8) objections were received to the application, these can be summarised as:
  - (a) Off-site amenity associated with the sale and consumption of liquor, including noise and antisocial behaviour;
  - (b) Car parking and traffic impacts;
  - (c) Overdevelopment of the site;
  - (d) Potential for future expansion to the business; and
  - (e) Construction impacts.

### **Conclusion**

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

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

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**1.3 PLN17/1016.01 - 221 Swan Street, Richmond - Section 72 Amendment to the plans to increase the floor area to include a basement (for sale and consumption of liquor) and further reduce the car parking requirement of the Yarra Planning Scheme**

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Reference: D19/139447  
 Authoriser: Coordinator Statutory Planning

**Proposal:** Section 72 Amendment to the plans to increase the floor area to include basement for the sale and consumption of liquor) and further reduce the car parking requirement of the Yarra Planning Scheme

**Existing use:** Restaurant

**Applicant:** Metropol Planning Solutions

**Zoning / Overlays:** Commercial 1 Zone, Design and Development Overlay (Schedule 5 and Schedule 17-2), Heritage Overlay (Schedule 335)

**Date of Application:** 8 March 2019

**Application Number:** PLN17/1016.01

**Planning History**

1. Planning Permit PLN17/1016 was issued on 11 January 2019 for *full demolition of the existing building and construction of a multi-storey building with roof terraces, display of an internally-illuminated sign, use of the land for sale and consumption of liquor (restaurant and café licence) and reduction in car parking and bicycle parking requirements associated with a restaurant (as-of-right-use).*
2. Plans were endorsed on 18 April 2019.
3. The plans and reports required through Condition 9 (Acoustic Report), Condition 13 (Waste Management Plan), Condition 15 (Sustainable Management Plan), Condition 17 (Landscaping Plan), Condition 19 (Arborist Report) and Condition 25 (Construction Management Report) have not yet been submitted.
4. Relevant to this application Planning Permit PLN17/1016 allowed the sale and consumption of liquor subject to the following conditions:
  - (a) Must only occur between the hours of 11.00am and 11.00pm, seven days a week; and
  - (b) No more than 192 restaurant patrons are permitted on the land at any time liquor is being sold or consumed.
5. The application does not propose to amend these conditions (regarding hours of operations or number of patrons).

**Background**

6. The application was received by Council on 8 March 2019. Following the submission of further information on 17 May 2019, the application was advertised and seven (7) objections were received.
7. A consultation meeting was held on 6 August 2019 and was attended by the Applicant, five (5) objectors and Council Officers to discuss all issues and concerns raised in the letters of objection.
8. The Applicant did not make any commitments to make changes, thus the proposal as originally submitted to Council forms the basis of the assessment and decision.

## The Proposal

9. The amendment seeks to make the following changes to plans associated with Planning Permit PLN17/1016.

### *Buildings and works*

10. Construction of a basement level, comprising of a seating, wine cellar, underground water tank, storage and stairs, with the following details:
  - (a) A maximum length of 27 metres and maximum width of 7.5 metres, resulting in an overall floor area of approximately 200sqm;
  - (b) To a maximum depth of 4.37 metres below NGL.

### *Sale and Consumption of liquor*

11. The 'red line' area extended to the entire basement level.
12. No change to the approved hours of operation or patron numbers which have previously been permitted.

### Subject Site

13. The permit has not yet been acted upon and works have not begun; thus, the subject site has not substantially changed since the time of writing the report for the original application. The following description of the subject site has been taken from the original IDAC report:
14. *The subject site is located on the north side of Swan Street, approximately 100m east of Church Street and 120m west of Mary Street, in Richmond.*
15. *The subject site is rectangular in shape and has a frontage to Swan Street of 7.62m, a depth of 27.43m and overall area of approximately 209sqm.*
16. *The subject site is occupied by a single-storey commercial building with shopfront windows, central double doors fronting the street and it appears to have been unsympathetically altered by the addition of a high metal parapet. The building is constructed to the street frontage and western boundary and setback approximately 1m from the eastern site boundary and 8m from the northern (rear) boundary. Open space is located to the rear of the building and includes four mature Tree of Heaven (*Ailanthus altissima*) trees.*
17. *The building on the subject site is currently vacant. Based on a 2016 Google street view image, it was formally used a shop (flooring specialists).*



Image 1: Photo of the subject site facing north (taken 14 August 2019)

### Surrounding Land

18. An assessment of the surrounding land indicates that the area has not substantially changed since the time of writing the report for the original application. The following description of the surrounds has been taken from the original recommendation:
19. *The subject site is located within the Swan Street Major Activity Centre (MAC). It is surrounded by other commercial uses concentrated along Swan Street and residences to the north fronting Charlotte Street. The area is well serviced by public transport with trams running along Swan Street, between Burwood and the CBD, and along Church Street (100m west of the site), between North Richmond and Prahran. The subject site is also within 300m from the East Richmond Station which is serviced by multiple train lines (i.e. Alamein, Glen Waverly, Lilydale and Belgrave Lines).*
20. *Surrounding built form is predominantly single- and double-storey in scale, with commercial buildings constructed hard edge to Swan Street. The immediate area is characterised by Commercial buildings of mixed appearance – some of which are Victorian-style while others are more contemporary.*



*High site coverage and on-boundary construction are common in the street, with the majority of buildings constructed on or in close proximity to at least one side boundary (as shown in the image below).*



*Image 2: Aerial photo of the subject surrounding area (taken from the original IDAC report)*

21. *Within the Swan Street MAC, there are a number of existing licensed premises, particularly further west towards Church Street. The majority of these premises are licensed restaurant and cafes which trade until 11pm. Others are pubs and bars, which have on-premises or general licences and are predominantly located at street intersections.*
22. *The direct abutments of the subject site are as follows:*
  - (a) *To the east (No. 233 Swan Street) is commercial 1 Zoned land occupied by a single storey commercial building constructed to both side boundaries, which is graded as 'non-contributory' to the Swan Street Heritage Precinct. The building has a high metal parapet similar to that on the subject site, a recessed front entry with non-illuminated sign above and an outdoor dining area to the front. The building is currently used as a food and drinks premises (café).*
  - (b) *To the west (No. 219 Swan Street) is Commercial 1 Zoned land occupied by a double storey Victorian-era commercial building, which is graded as 'Individually Significant' to the Swan Street Heritage Precinct. The building is constructed to the street frontage with a verandah projecting onto the footpath and is constructed to its eastern (shared) boundary with a first floor window facing the subject site. It is currently used as a hairdresser at ground floor and a dwelling at first floor. Since the subject permit was issued, Planning Permit PLN18/0227 was issued for the land at No. 219 Swan Street for the development of the land for the construction of a first floor balcony, including part demolition on 7 September 2018. Works have not commenced; however, the permit is still live.*

- (c) *To the north (No. 26-30 Charlotte Street) is General Residential Zoned land occupied by a detached, double-storey brick residential building fronting Charlotte Street. The building contains 8 dwellings and has habitable room windows facing the subject site. The building has communal open space to the rear with a single-storey shed constructed abutting the subject site.*
- (d) *To the south, across Swan Street (No. 274-282 Swan Street), is Commercial 1 Zoned land occupied by a petrol station and car wash. To the south-west (at the corner of Swan Street and Brighton Streets) is the Union House Hotel, which has an On-premises Licence allowing the sale and consumption of liquor on the premises until 1am on any day with a maximum of 228 patrons (as approved by Planning Permit PLN17/0359 on 10 November 2017). Since the time of the subject permit being issued, Planning Permit PLN17/0359 was amended pursuant to Section 72 of the Act to increase the overall patron numbers to 328, to increase the patrons permitted within the first-floor deck to 100 and to delete condition 9 which allowed amplified music.*

### Legislation Provisions

23. *The amendment has been requested pursuant to Section 72 of the Planning and Environment Act 1987 (the Act). Section 72 of the Act states:*
- (1) *A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*
- (2) *This section does not apply to—*
- (a) *a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or*
- (b) *a permit issued under Division 6.*
24. Planning Permit PLN17/1016 was issued on 11 January 2019. The Tribunal has not directed that the responsible authority must not amend the permit, nor was the permit issued under Division 6 of the Act.
25. Section 73 of the Act states that Sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit.

### Planning Scheme Provisions

#### Zoning

##### *Commercial 1 Zone*

26. Pursuant to Clause 34.01-1 of the Yarra Planning Scheme (**the Scheme**), a permit is not required to use the land for a Food and Drinks Premises (nested under Retail Premises which is a Section 1 use).
27. Pursuant to Clause 34.01-4 of the Scheme, a permit is required to construct a building or construct and carry out works.

#### Overlays

##### *Heritage Overlay (Schedule 335)*

28. The subject site is located under the Heritage Overlay (Schedule 335). The following provisions apply:
29. Pursuant to Clause 43.01-1, a permit is required to construct or carry out works.

##### *Design and Development Overlay*

30. Pursuant to Clause 43.02-2 of the Scheme, a permit is required to construct a building or to construct and carry out works, unless otherwise stated in a schedule to the overlay. Schedule 5 and Schedule 17 relate to the subject site.

### *Schedule 5*

31. Schedule 5 (City Link Exhaust Stack Environs) specifically exempts buildings and works from requiring a planning permit.
32. Pursuant to Clause 4 of Schedule 5 to the Overlay, where a permit is required to use the land or for the construction of works under the provision of this scheme, notice must be given under section 52(1)(c) of the *Planning and Environment Act 1987* to the person or body specified as a person to be notified in Clause 66.06 or a schedule to that clause.
33. A permit is required under the zone and overlays, thus notice of the application must be given to the Environmental Protection Authority, Transurban City Link Limited and the Roads Corporation (VicRoads) pursuant to Clause 66.06.

### *Schedule 17*

34. Schedule 17 (Swan Street Activity Centre) of the Design and Development Overlay is silent on the permit requirements, thus the controls of the Overlay apply and a permit is required to construct and carry out works.
35. The subject site is identified to be located in Precinct 2 and is a Type B in Plan 3 (Height and Interface Plan). Table 2 (Street Wall Heights and Setbacks for Precinct 2) applies the following mandatory and preferred provisions to the subject site:
  - (a) A mandatory street wall with:
    - (i) a maximum height of 11 metres or the parapet height of the adjoining individually significant or contributory building if higher than 11 metres; and
    - (ii) a minimum height of 8 metres.
  - (b) A mandatory provision of no street wall setback.
  - (c) A mandatory upper level setback greater than 5 metres.
36. The original IDAC report considered these controls. The controls are not relevant to the amendment to construct a basement level. Further, none of the Precinct Design Requirements are relevant to the amendment proposal.

### Particular Provisions

#### *Clause 52.06 Car Parking*

37. Pursuant to Clause 52.06-1, the clause applies to a new use or an increase in the floor area of an existing use; thus, the clause applies to proposal to use the site as a restaurant in a new building.
38. Pursuant to Clause 52.06-2, before a new use commences or the floor area of an existing use is increased, the number of car spaces required under Clause 52.06-5 must be provided to the satisfaction of the responsible authority.
39. Pursuant to Clause 52.06-3, a permit is required to reduce (including reduce to zero) the number of car parking spaces required under Clause 52.06-5.
40. The subject site is located under the Principal Public Transport Network (PPTN) Area, thus Column B of table 1 of Clause 52.06-5 applies to the application.
41. The original planning permit approved no on-site car parking for the restaurant use and a reduction of the 14 car parking spaces required to be provided pursuant to Clause 52.06-5 of the Scheme. Under this amendment application the floor area of the proposed development is increased by 199.7sqm and continues to provide no on-site car parking spaces. The following table outlines the car parking requirements of the amended proposal.

| Use   | Quantity/ Size                  | Statutory Parking Rate                           | No. of Spaces Required by the Scheme | No. of Spaces Allocated | Reduction Required |
|---|---------------------------------|--|--------------------------------------|-------------------------|--------------------|
| <b>Permitted</b>  |                                 |  |                                      |                         |                    |
| Restaurant  | 423.3sqm of leasable floor area | 3.5 spaces to each 100sqm of leasable floor area | 14                                   | 0                       | 14                 |
| <b>Overall application including amendment (which increases the floor area by 199.7sqm)</b> |                                 |  |                                      |                         |                    |
| Restaurant  | 623sqm of leasable floor area   | 3.5 spaces to each 100sqm of leasable floor area | 21                                   | 0                       | 21                 |
| <b>Additional Car Park reduction required from the amendment</b>                            |                                 |  |                                      |                         | 7                  |

*Clause 52.34 Bicycle facilities*

42. Pursuant to Clause 52.34-1, a new use must not commence of the floor area of an existing use must not be increased until the required bicycle facilities and associated signage has been provided on the land.
43. The permitted development provided one bicycle rack on the kerbside footpath, however as it is not located within the title boundaries of the subject site, it was not considered within the original assessment to contribute to the bicycle facility requirements of the Scheme. This amendment retains the kerbside spaces and includes two additional bicycle spaces on-site.
44. The following table outlines the bicycle requirements of the amended proposal.

| Use   | Floor Area                                  | Rate   | No. required                           |
|---|---|--|--|
| <b>Permitted</b>  |   |  |  |
| Restaurant  | 423.3sqm (327.3sqm available to the public) | 1 employee space to each 100sqm of leasable floor area, and 2 visitor spaces plus 1 visitor space to each 200sqm of floor area available to the public if the floor area available to the public exceeds 400sqm. | 4 employee spaces and 2 visitor spaces |
| <b>Overall development (increases the floor area by 199.7sqm)</b>       |   |  |  |
| Restaurant  | 623sqm (379.5sqm available to the public)   | 1 employee space to each 100sqm of leasable floor area, and 2 visitor spaces plus 1 visitor space to each 200sqm of floor area available to the public if the floor area available to the public exceeds 400sqm. | 6 employee spaces and 2 visitor spaces |
| <b>Additional Bicycle requirements (No. of spaces) of the amendment</b> |   |  | 2                                      |

45. As two bicycle facilities are proposed under the amendment, the requirements of the Scheme associated with the amendment are met, pursuant to Clause 52.34-2 of the Scheme. The spaces are not specifically allocated to staff or visitors; however, the proposed location within the front entry would make them easily accessible to either.

*Clause 52.27 Licensed Premises*

46. Pursuant to Clause 52.27 of the Scheme, a planning permit is required to use land to sell or consume liquor if a licence is required under the *Liquor Control Reform Act 1998* and to increase the area that liquor is allowed to be consumed or supplied under a licence. As this amendment proposes to extend the 'red line' to the basement to allow for the sale and consumption of liquor in this area, a planning permit is triggered.
47. The amendment does not propose to increase the hours and patron numbers associated with the sale and consumption of liquor from what is already permitted.
48. Decision Guidelines of Clause 52.27 relevantly include:
- (a) *The Municipal Planning strategy and the Planning Policy Framework.*
  - (b) *The impact of the sale and consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.*
  - (c) *The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.*

General Provisions

*Clause 65 – Decision Guidelines*

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

Planning Policy Framework (PPF)

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

*Clause 11.03-1S Activity Centres*

51. The relevant objectives of this clause include:
- (a) *To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community.*

*Clause 13.05-1S Noise abatement*

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

*Clause 15.01-2S Building Design*

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

*Clause 15.01-5S Neighbourhood Character*

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

*Clause 15.02-1S Energy and Resource Efficiency*

55. The objective of this clause is:
- (a) *To encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises gas emissions.*

*Clause 17.02-1S Business*

56. The objective of this clause is:
- (a) *To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.*

*Clause 18.02-2S Public Transport*

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

Local Planning Policy Framework (LPPF)

*Clause 21.04-2 Activity Centres*

58. The relevant objectives of this clause are:
- (a) *To increase the range of retail, personal and business services, community facilities and recreation activities, within individual centres.*
  - (b) *To maintain the long term viability of activity centres.*

*Clause 21.04-3 Industry, Office and Commercial*

59. The objective of this clause is:
- (a) *To increase the number and diversity of local employment opportunities.*

*Clause 21.06 Transport*

60. The intention of the Clause is identified to be as follows:
- (a) *Yarra needs to reduce car dependence by promoting walking, cycling and public transport use as viable and preferable alternatives. This a key message of Melbourne 2030 and fundamental to the health and well-being of the community.*

*Clause 21.08-2 Neighbourhoods (Burnley, Cremorne, South Richmond)*

61. Relevant to the application, Clause 21.08-2 describes Swan Street west (where the subject site is located) as a precinct which *'incorporates the core retail area of Swan Street and includes East Richmond Station. Swan Street, unlike the other major activity centres within Yarra, has smaller pool of non-local visitors, reflecting its stronger orientation towards servicing the needs of local residents'*.
62. The Figure 8 (Built Form Character Map) identifies the subject site as a main road interface. The figure recognizes the objective of these areas is to *maintain the hard edge of the strip.*

Relevant Local Policies

*Clause 22.05 Interface Uses Policy*

63. This policy applies to applications for use or development within Commercial 1 Zones (amongst others). The objectives of this clause are to enable the development of new residential uses within and close to activity centres, near industrial areas and in mixed use areas while not impeding the growth and operation of these areas as service, economic and employment nodes and to ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.

*Clause 22.09 Licensed Premises*

64. This policy applies to applications under Clause 52.27 (Licensed Premises). The objectives of this clause are:
- (a) *To protect the amenity of nearby properties and areas by effectively managing the location, size, operation and hours of licensed premises.*
  - (b) *To encourage best practice venue design and venue operation for licensed premises.*
  - (c) *To protect residential and other commercial uses from excess noise, traffic and car parking issues.*

### **Advertising**

65. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 62 letters sent to surrounding owners and occupiers and by a sign displayed on site. Council received eight (8) objections, the grounds of which are summarised as follows:
- (a) Off-site amenity impacts associated with the sale and consumption of liquor, including noise;
  - (b) Car parking and traffic impacts;
  - (c) Overdevelopment of the site;
  - (d) Potential for future expansion to the business; and
  - (e) Construction impacts.
66. A planning consultation meeting was held on 6 August 2019 and attended by five objectors, the Applicant and Council Officers to discuss all issues and concerns raised in the letters of objection. The issue of anti-social behaviour was also discussed at the Consultation, though not specifically raised in the written objections. The Applicant did not make any commitments to make changes.

### **Referrals**

67. The referral comments are based on the decision plans, advertised in May.

#### External Referrals

68. The application was referred to the following authorities:
- (a) VicRoads (no objection to the proposal);
  - (b) Transurban (no comments received); and
  - (c) EPA (no comments received).

#### Internal Referrals

69. The application was referred to the following units within Council:
- (a) Compliance (Community Amenity)
  - (b) Engineering Services Unit
70. The referral comments have been included as attachments to this report.

### **OFFICER ASSESSMENT**

71. The primary considerations for this application are as follows:
- (a) Built form and design;
  - (b) Sale and consumption of liquor;
  - (c) Car parking; and
  - (d) Objector concerns.

#### Built form and design

72. In considering the design and built form of the proposed development, the most relevant aspects of the Scheme are provided at Clause 15 (Built Environment and Heritage), Clause 21.05 (Built Form) and Clause 22.02 (Development Guidelines for the Sites Subject to the Heritage Overlay) as well as the decision guidelines associated with the Commercial 1 Zone and Heritage Overlay.
73. Most of the heritage, urban design and built form policies of the scheme are not relevant to the amendment application due to the limited nature of the amendment works, that being confined to a basement level which is completely constructed below ground level. The proposed amendment will not be visible from or have a perceptible impact to the street interface. As such, the inclusion of the basement is accepted from a built form and heritage perspective.
74. Further, although the objections raised concerns regarding the impacts of construction on immediately abutting neighbours, this is not a planning consideration and will be dealt with at the building permit stage. A basement will have no impact on the amenity of neighbouring properties, particularly with regards to overlooking, overshadowing or visual bulk as is encouraged for non-residential development near residential properties by Clause 22.05-4.2 (Interface Uses Policy).
75. Finally, although the basement is not provided any natural daylight or cross-ventilation, this is an acceptable response when considering the commercial nature of the use and the intention to use the basement as a cellar with associated dining and for storage.
76. In consideration of the above, the amended proposal is supported from a built form and design perspective.

#### Sale and consumption of liquor

77. Clause 22.09 (Licensed Premises Policy) of the Scheme provides the relevant guidance in relation to off-site amenity impacts associated with the proposed sale and consumption of liquor on premises. Clause 22.09 of the Scheme is Council's local policy which guides the assessment of all new or extended licensed premises within the municipality and contains key elements that must be considered. It contains six key elements that will be considered below.

#### *Location and access*

78. The sale and consumption of liquor is already approved through the existing permit as it was determined that the location of the premises substantially complied with the relevant policy of Clause 22.09 and other relevant Local and State Planning Policy (including Clause 11.03-1S, 17.02 and 18.02-2R).
79. The amendment proposes to include the sale and consumption of liquor to the basement level. However, no increase to patron numbers or hours of operation is proposed and as such, the amendment will not result in an intensification of the sale and consumption of liquor or off-site amenity impacts. As such, the inclusion of the basement level would not result in a cumulative impact on the amenity of the surrounding area as is encouraged by Clause 22.09-3.

#### *Venue Design*

80. The relevant policies seek to ensure that the layout and design of licensed premises incorporates safe design principles, that entry and exit points and areas for queuing of patrons are located away from sensitive land uses, waste management and storage is provided on-site and noise enclosures are provided where bottle crushers are to be used.
81. The proposed basement level can only be accessed from the ground floor of the restaurant, and as such, will not impact the flow of people into or out of the building. Patron ingress and egress will remain to Swan Street, via the ground floor entry, as per the original permit. Although allowing for dining (in association with the cellar) at the basement level, the proposed amendment will not result in an increase in patrons. The basement will also allow for additional storage for the premises, without impacting the management of waste.



*Licensed hours*

82. No change from the approved hours is proposed.

*Patron numbers*

83. No change from the approved patron number is proposed.

*Noise*

84. The basement will provide dining opportunities, with the cellar also intended to be used for group bookings. However, the nature of a basement, being completely underground, negates concerns of noise as there are no proposed windows or openings facing sensitive areas. As the amendment application does not propose to increase the number of permitted patrons on the premise at any one time, the inclusion of the basement will not impact the intensity of the sale and consumption of liquor.
85. Nonetheless, the conditions of permit relating to the sale and consumption of liquor, patron numbers, operating hours and noise limits will be carried over to any amended permit to ensure the sale and consumption of liquor within the basement does not result in an unreasonable off-site amenity. These conditions include an Acoustic Report, generally in accordance with the report prepared by Cogent Acoustics and dated 2 July 2018, but modified to include (amongst other things) compliance with SEPP N-2 noise limits in the evening.
86. Concerns of antisocial behaviour were raised in the objection letters received and at the consultation meeting. It is not considered that the inclusion of the sale and consumption of liquor to the basement level will directly impact patron behaviour, particularly given no change is proposed to patron numbers or operating hours. Nonetheless, the condition of permit relating to the primary activity of the restaurant to be for the service of food will be carried over to the any amended permit. This will ensure that liquor is mostly consumed with a meal and that the use will not transform into a bar, which is traditionally associated with the higher levels of liquor consumption and the potential for anti-social behaviour. Further, an existing condition of the original permit will be carried over to any amended permit issued, requiring that the *sale of liquor for consumption on the premises must be managed so that the amenity of the area is not detrimentally affected.*
87. Further to this, Council's Compliance Team raised no objection to the amended proposal.

*Noise and Amenity Action Plan (NAAP)*

88. The policy stipulates that a NAAP is not required for a restaurant or a packaged liquor outlet and as such was not required for this application.

*Conclusion*

89. Overall, it is considered that the amendment proposal to include the sale and consumption of liquor to the proposed basement will meet the objective of Clause 22.05 (Interface Uses Policy) to *ensure that residential uses located within or near commercial centres enjoy a reasonable level of amenity.*

Car parking

90. The original permit approved a reduction of 14 car parking spaces for a restaurant. Pursuant to clause 52.06-5 of the Scheme, the proposed basement level which has a leasable floor area of 199.7sqm, generates an additional statutory car parking requirement of seven (7) spaces. As there are no car parking spaces proposed on site, a further reduction of 7 spaces is being sought through this amendment, resulting in an overall reduction of 21 car parking spaces.
91. The proposed a car parking reduction of 7 spaces is considered acceptable for the following reasons:

- (a) The site has good access to public transport, with tram route 70 available along Swan Street, tram route 78 along Church Street (within 200 metres of the subject site) and multiple train lines available from East Richmond Station which is within 300 metres of the subject site. These methods of transport provide alternatives to car use and ultimately the need for car parking near the venue.
  - (b) Given the site's location in the Swan Street MAC, and within a dense, mixed use, inner city suburb, it is likely that patrons will reside or work within walking distance of the site or already be visiting the area for multi-purpose trips.
  - (c) The nature of a licenced premises (albeit, a restaurant) implies that visitors may consume liquor and will opt not drive to the venue and rather rely on public transport, ride sharing or taxis.
  - (d) Policy within the Scheme seeks to facilitate public transport use (Clause 21.06-2 Transport and Clause 18.02-2S Public Transport).
  - (e) It is not practical to provide the additional car parking spaces on site given it has no existing vehicle cross-over and Schedule 17 to the Design and Development Overlay discourages the construction of new cross-overs to Swan Street. Moreover, the site is notably narrow and small, thus, the provision of car parking spaces is not practical.
  - (f) It would be difficult to detect any noticeable impact of on-street parking associated with the operation of the restaurant alone. Throughout the entire municipality, on-street car parking (a public asset) is shared by a multitude of different users. Moreover, no parking permits or visitor permits will be permitted to the owners, staff or visitors of the premises.
  - (g) Although the car parking rate is measured by leasable floor area (thus the increased requirement resulting from the extension), the patron numbers will not be increased from what is approved. As such, the amendment does not result in an actual increase to the car parking demand expected from the permitted use.
  - (h) Council's Engineering Services Unit support the further car parking reduction and state that it *is considered appropriate in the context of the development and the surrounding area*.
92. Based on all of the above, it is considered that the lack of on-site car parking due to the site context and the availability of public transport are sufficient to support a car parking reduction of an additional seven (7) spaces in this instance.

#### Objector Concerns

*Off-site amenity impacts associated with the sale and consumption of liquor, including noise and antisocial behaviour*

93. This concern has been discussed at paragraphs 75 - 77 of this report.

*Car parking and traffic impacts*

94. This concern has been discussed at paragraphs 78 - 80 of this report.

*Overdevelopment of the site*

95. The proposal satisfies the substantive provisions of the Zone, the Heritage Overlay and Built Form policy, thus, the proposal is not considered an overdevelopment of the site.

96. State Government Policy, as well as Council Policy supports higher density areas that are within an Activity Centre, or within areas with good access to public transport and other services, such as the subject site.

*Potential for future expansion to the business*

97. The existing permit restricts the hours, sale and consumption of liquor, use and patron numbers. Should this wish to be altered or increased in the future, this will need to form the basis of a separate amendment application which will be assessed against its merits.

98. Any breach of the conditions of this permit is an enforcement matter and will be dealt with by Council's Compliance Team.

*Construction impacts*

99. This is not a planning consideration and will be covered during the building permit stage.

Other matters

100. If an amended permit were to issue, the following is noted:
- (a) The permit preamble will not be amended.
  - (b) No conditional changes to the plans would be required.
  - (c) The Decision Plans prepared by YBL Remmus and dated April 2019 (TP-05, TP-06, TP-11, TP-12) will be endorsed and the previous versions of these plans be superseded.
  - (d) The endorsed set will become TP05 – TP12 (dated April 2019).
  - (e) An amended Landscape Plan (LA01) prepared by Thai Tongue and dated October 2018 was submitted with the amendment application to reflect the inclusion of the basement. As such, this amended plan will be endorsed to form part of the permit. Condition 17 will be amended to reflect this change, so that the sectional diagrams within the report correspond with the endorsed plans.
  - (f) The expiry conditions incorrectly omitted the following:
    - (i) *the sale and consumption of liquor is discontinued for a period of two years.*This is a requirement of Section 68(1)(b) of the *Planning and Environment Act 1987* and as such, the condition will be included on any amended permit issued.

**Conclusion**

101. Based on the report, the proposal is considered to generally comply with the relevant policies of the Yarra Planning Scheme and is recommended for approval with the original permit conditions carried over and no new conditions included.

**RECOMMENDATION**

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Amend a Planning Permit PLN17/1016 which approved *full demolition of the existing building and construction of a multi-storey building with roof terraces, display of an internally-illuminated sign, use of the land for sale and consumption of liquor (Restaurant and Café Licence) and reduction in car parking and bicycle parking requirements associated with a restaurant (as-of-right use)*, at 221 Swan Street, Richmond, with no change to the permit preamble but with amendments to permit conditions.

**Conditions (amended and new conditions in bold):**

Amended Plans

1. Before the use and development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans (prepared by YBL Remmus, Job No. 17062, Drawing Nos. TP-05 to TP-12 and TP-21, Rev. No. C, received by Council on 10 July 2018) but modified to show the following:
  - (a) Details depicted on the sketch plans prepared by YBL Remmus received by Council on 12 October 2018, as follows:

- (i) A vent and duct system running from the void (located adjacent to the boundary window of the western adjoining property) to the Swan Street façade;
    - (ii) Two canopy trees and planters on the second floor, lower level and upper level roof terraces.
  - (b) Clear transparent glazing to the ground floor front façade.
  - (c) The solar PV array on the roof plan in accordance with the commitments in the Sustainable Management Plan (referenced at condition 15 of this planning permit).
  - (d) The notation "*bins to be placed here for Council pick up*" deleted from the ground floor plan.
  - (e) The height of the acoustic barriers to the mechanical plant.
  - (f) The installation of one bicycle hoop on the footpath in accordance with condition 21 and deletion of all plan notations referencing 6 bicycle hoops.
  - (g) All buildings, works and licensed area within the title boundaries of the subject site; and
  - (h) The provision of at least 2 on-site bicycle spaces for staff.
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.
  3. 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.

#### Restaurant and Café Liquor Licence

4. The sale and consumption of liquor on the premises must only occur between the hours of 11:00am and 11:00pm, seven days a week.
5. No more than 192 restaurant patrons are permitted on the land at any time liquor is being sold or consumed, and further restricted as follows:
  - (a) From 10pm to 11pm, patron numbers within the lower level roof terrace reduced from 48 to 22.
6. No patrons are permitted within the upper level roof terrace beyond 10:00pm on any night, as per the commitment reference in the correspondence from Metropool Planning Solutions dated 4 July 2018.
7. The predominant activity in the restaurant, at all times, must be the preparation and serving of meals for consumption by patrons on the premises, during the times that liquor is allowed to be sold and consumed under this permit.
8. Before the commencement of the sale and consumption of liquor, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons / customers to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.
9. Deliveries associated with liquor may only occur between 8:00am and 4:00pm, unless with the prior written consent of the Responsible Authority.

#### Acoustic Report

10. Before the use and development commences, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Acoustic Report will be endorsed and will form part of this permit.

The amended Acoustic Report must be generally in accordance with the Acoustic Report prepared by Cogent Acoustics and dated 02 July 2018, but modified to include (or show, or address) the following:

- (a) The evening period SEPP N-1 noise limits (used for the mechanical services noise assessment and patron noise assessment) revert to the zoning levels (based on neutral background levels), making the evening targets 2dBA lower than currently shown in the report.
  - (b) The operator to undertake a full acoustical review of the mechanical plant (by an acoustic consultant) to ensure the final selected equipment and acoustic treatments will be sufficient to ensure SEPP N-1 compliance.
  - (c) The lowest 15 minute background level collected for the day/evening period be used for setting the day/evening period SEPP N-2 noise limits.
  - (d) The provision of electronic noise limiters/compressors on the amplifiers/speakers within the indoor and outdoor dining areas of the venue with setup guided by an acoustic consultant prior to operations commencing.
  - (e) The music levels to have minimal bass content during the SEPP N-2 Night period.
  - (f) The ventilation duct system running along the void (located adjacent to the boundary window of the western adjoining property) to the Swan Street frontage in accordance with the architectural drawings.
  - (g) The setbacks of the mechanical plant acoustic barriers from the boundaries in accordance with the architectural drawings.
11. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.
  12. The provision of music and entertainment on the land must be at a background noise level.
  13. The sound system on the premises must not consist of bass speakers.

#### Waste Management Plan

14. Before the use and development commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Leigh Design and dated 10 January 2018, but modified to include the following:
  - (a) The collection times for the bins rather than saying outside of peak hours.
  - (b) How the private collection contractor will avoid double parking in Swan Street during collection.
  - (c) How the private collection contractor will avoid causing delays to trams operating along Swan Street during collection.
15. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

#### Sustainable Management Plan

16. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan (prepared by Sustainable Development Consultants, dated December 2017) must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

17. Before the building is occupied, a completed JV3 energy modelling report must be prepared by a suitably qualified person and submitted to the Responsible Authority demonstrating that the 10% energy efficiency target committed to in endorsed Sustainable Management Plan will be reached.

#### Landscaping Plan Required

18. Before the development commences, a Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Landscape Plan will be endorsed and will form part of this permit. The Landscape Plan must:
  - (a) be in accordance with the draft landscape plan prepared by TT Design, dated 01/10/2018 showing two trees and planters on the second floor and lower level and upper level roof terraces, including details of species, size, irrigation method and plant spacing; **and**
  - (b) show the basement level in sectional diagrams.**
19. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:
  - (a) implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
  - (b) not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
  - (c) replacing any dead, diseased, dying or damaged plants,to the satisfaction of the Responsible Authority.

#### Arborist Report

20. Before the development commences, an amended Arborist Report prepared by a suitably qualified Arborist must be submitted to and approved by the Responsible Authority. When approved the Arborist Report will be endorsed and will form part of this permit. The Arborist Report must:
  - (a) be in accordance with the draft arborist report prepared by Bluegum, dated 13 February 2018 & 11 October 2018, identifying Trees 6 and 7 consistently throughout the report and showing additional tree protection measures for Tree 7.

#### Street Trees

21. Before the development starts, the permit holder must provide an Asset Protection Bond of \$2,193.45 (or an amount as agreed with Council's Streetscapes and Natural Values Unit) for the street tree to the Responsible Authority. The bond:
  - (a) must be provided in a manner, and on terms, to the satisfaction of the Responsible Authority;
  - (b) may be held by the Responsible Authority until the works are completed to the satisfaction of the Responsible Authority; and
  - (c) in accordance with the requirements of this permit; or
  - (d) otherwise, to the satisfaction of the Responsible Authority.

#### Bicycle hoop provision

22. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, one (1) bicycle hoop must be installed:
- (a) on the footpath, aligned with the awning post of the western adjoining property, between the awning post and the existing parking sign pole;
  - (b) at the permit holder's cost and all costs borne by the permit holder; and
  - (c) in a location and manner, all to the satisfaction of the Responsible Authority.

### Sign

23. The location and details of the sign 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.
24. The sign must be constructed, displayed and maintained to the satisfaction of the Responsible Authority.
25. The sign must not include any flashing or intermittent light.

### Construction Management Required

26. Before the development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:
- (a) a pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure;
  - (b) works necessary to protect road and other infrastructure;
  - (c) remediation of any damage to road and other infrastructure;
  - (d) containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land;
  - (e) facilities for vehicle washing, which must be located on the land;
  - (f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
  - (g) site security;
  - (h) management of any environmental hazards including, but not limited to, :
    - (i) contaminated soil;
    - (ii) materials and waste;
    - (iii) dust;
    - (iv) stormwater contamination from run-off and wash-waters;
    - (v) sediment from the land on roads;
    - (vi) washing of concrete trucks and other vehicles and machinery; and
    - (vii) spillage from refuelling cranes and other vehicles and machinery;
  - (i) the construction program;
  - (j) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
  - (k) parking facilities for construction workers;
  - (l) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
  - (m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
  - (n) an emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced;

- (o) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads;

If required, the Construction Management Plan may be approved in stages. Construction of each stage must not commence until a Construction Management Plan has been endorsed for that stage, to the satisfaction of the Responsible Authority.

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

### General

- 28. The sale and consumption of liquor must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
- 29. The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).
- 30. Emptying of bottles and cans (associated with liquor) into bins may only occur between 7:00am and 10:00pm on any day.
- 31. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
- 32. The sale of liquor for consumption on the premises must be managed so that the amenity of the area is not detrimentally affected including through:
  - (a) The transport of materials, goods or commodities to or from land;
  - (b) The appearance of any buildings, works or materials; and
  - (c) The emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or the presence of vermin.
- 33. Within two months of the completion of development, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
  - (a) at the permit holder's cost; and
  - (b) to the satisfaction of the Responsible Authority.
- 34. 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.

### Permit Expiry

- 35. 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; or



- (c) the sale and consumption of liquor is not commenced within five years of the date of this permit; or
- (d) the sale and consumption of liquor is discontinued for a period of two years.

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

36. The signage approved under this permit expires 15 years from the date of the permit.

**NOTES:**

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

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

Provision must be made for drainage of the site to a legal point of discharge. Please contact Council's Building Services on 9205 5585 for further information.

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

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

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

**Attachments**

- 1 PLN17/1016.01 221 Swan Street Richmond - Site Map
- 2 PLN17/1016.01 221 Swan Street Richmond - Decision Plans
- 3 PLN17/1016.01 221 Swan Street Richmond - Applicant Traffic Assessment
- 4 PLN17/1016.01 221 Swan Street Richmond - Permit
- 5 PLN17/1016.01 221 Swan Street Richmond - Endorsed Plans
- 6 PLN17/1016.01 221 Swan Street Richmond - Referral Comments