



Agenda

Planning Decisions Committee

6.30pm, Wednesday 26 May 2021

Richmond Town Hall

The Planning Decisions Committee

The Planning Decisions Committee is a delegated committee of Council with full authority to make decisions in relation to planning applications and certain heritage referrals. The committee is made up of three Councillors who are rostered on a quarterly basis.

Participating in the Meeting

Planning Decisions Committee meetings are decision-making forums and only Councillors have a formal role. However, Council is committed to ensuring that any person whose rights will be directly affected by a decision of Council is entitled to communicate their views and have their interests considered before the decision is made.

There is an opportunity for both applicants and objectors to make a submission to Council in relation to each matter presented for consideration at the meeting.

Before each item is considered, the meeting chair will ask people in attendance if they wish to make submission. Simply raise your hand and the chair will invite you to come forward, take a seat at the microphone, state your name clearly for the record and:

- Speak for a maximum of five minutes;
- direct your submission to the chair;
- confine your submission to the planning permit under consideration;
- If possible, explain your preferred decision in relation to a permit application (refusing, granting or granting with conditions) and set out any requested permit conditions
- avoid repetition and restating previous submitters;
- refrain from asking questions or seeking comments from the Councillors, applicants or other submitters;
- if speaking on behalf of a group, explain the nature of the group and how you are able to speak on their behalf.

Once you have made your submission, please remain silent unless called upon by the chair to make further comment or to clarify any aspects.

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

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

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

Arrangements to ensure our meetings are accessible to the public

Planning Decisions Committee meetings are held at the Richmond Town Hall. The following arrangements are in place to ensure they are accessible to the public:

- Entrance ramps and lifts (via the entry foyer).
- Interpreting assistance is available by arrangement (tel. 9205 5110).
- Auslan interpreting is available by arrangement (tel. 9205 5110).
- A hearing loop and receiver accessory is available by arrangement (tel. 9205 5110).
- An electronic sound system amplifies Councillors' debate.
- Disability accessible toilet facilities are available.

1. Appointment of Chair

Councillors are required to appoint a meeting chair in accordance with the City of Yarra Governance Rules 2020.

2. Statement of recognition of Wurundjeri Woi-wurrung Land

“Yarra City Council acknowledges the Wurundjeri Woi Wurrung people as the Traditional Owners and true sovereigns of the land now known as Yarra.

We acknowledge their creator spirit Bunjil, their ancestors and their Elders.

We acknowledge the strength and resilience of the Wurundjeri Woi Wurrung, who have never ceded sovereignty and retain their strong connections to family, clan and country despite the impacts of European invasion.

We also acknowledge the significant contributions made by other Aboriginal and Torres Strait Islander people to life in Yarra.

We pay our respects to Elders from all nations here today—and to their Elders past, present and future.”

3. Attendance, apologies and requests for leave of absence

Anticipated attendees:

Councillors

Cr Edward Crossland (substitute for Cr Landes)

Cr Bridgid O’Brien

Cr Gabrielle de Vietri

Council officers

Amy Hodgen (Senior Co-ordinator Statutory Planning)

Gary O’Reilly (Senior Planner)

Cindi Johnston (Governance Officer)

4. Declarations of conflict of interest

Any Councillor who has a conflict of interest in a matter being considered at this meeting is required to disclose that interest either by explaining the nature of the conflict of interest to those present or advising that they have disclosed the nature of the interest in writing to the Chief Executive Officer before the meeting commenced.

5. Confirmation of Minutes

RECOMMENDATION

That the minutes of the Planning Decisions Committee held on Wednesday 12 May 2021 be confirmed.

6. Committee business reports

Item		Page	Rec. Page
6.1	PLN20/0403 - 362 Brunswick Street Fitzroy - Sale and consumption of liquor in association with a restaurant, demolition of a rear fence and buildings and works.	5	22
6.2	PLN19/0221.01 - 142 Johnston Street Fitzroy North	26	49

6.1 PLN20/0403 - 362 Brunswick Street Fitzroy - Sale and consumption of liquor in association with a restaurant, demolition of a rear fence and buildings and works.

Executive Summary

Purpose

1. This report provides Council with an assessment of an application at No. 362 Brunswick Street Fitzroy for the sale and consumption of liquor in association with a restaurant, demolition of a rear fence and buildings and works.
2. The report recommends approval of the application subject to conditions.

Key Planning Considerations

3. Key planning considerations include:
 - (a) Clause 21.04 and 34.01 – Land Use and Commercial 1 Zone
 - (b) Clause 22.05 – Interfaces Uses Policy
 - (c) Clause 43.01 – Heritage Overlay
 - (d) Clause 22.09 and Clause 52.27 – Licensed Premises

Key Issues

4. The key issues for Council in considering the proposal relate to:
 - (a) Strategic Context
 - (b) The sale and consumption of liquor
 - (c) Heritage Overlay
 - (d) Buildings and works
 - (e) Objector concerns

Submissions Received

5. Eleven (11) objections were received to the application. The main concerns raised by objectors are summarised as:
 - (a) Noise impacts.
 - (b) Light pollution to the rear.
 - (c) Impacts on the value of surrounding residential properties.
 - (d) Impacts the rear acoustic wall will have on surrounding trees.
 - (e) Lack of detail and justification related to the acoustic measures
 - (f) Impacts to the safety of patrons and residents in the area.

Conclusion

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

CONTACT OFFICER: Joe Byrne
TITLE: Statutory Planner
TEL: 92055206

6.1 **PLN20/0403 - 362 Brunswick Street Fitzroy - Sale and consumption of liquor in association with a restaurant, demolition of a rear fence and buildings and works.**

Reference D21/48913
Author Joe Byrne - Statutory Planner
Authoriser Senior Coordinator Statutory Planning

Ward: Nicholls Ward
Proposal: Sale and consumption of liquor in association with a restaurant, demolition of a rear fence and buildings and works
Existing use: Restaurant.
Applicant: Roy Sassonkin
Zoning / Overlays: Commercial 1 Zone;
Heritage Overlay (HO311);
Development Contributions Plan Overlay (Schedule 1).
Date of Application: 17 June 2020
Application Number: PLN20/0403

Planning History

7. Planning Permit PLN18/0164 was issued on 04 April 2018 for reduction in the car parking requirement of the Yarra Planning Scheme associated with a food and drink premises (café).
8. A Section 72 Amendment to Planning Permit PLN18/0164 was submitted 25 May 2018. This application was to amend the permit to include the sale and consumption of liquor. This application was withdrawn.
9. A further Section 72 Amendment to Planning Permit PLN18/0164 was approved 22 October 2020 to further reduce the car parking requirements by increasing the leasable floor area to include the first floor and rear courtyard.
10. The site has no other planning history.

Background

11. The subject application was received by Council on 17 June 2020.
12. The application was advertised in November and December 2020 and 11 objections were received.
13. No consultation meeting was held given the COVID-19 Pandemic.
14. Post the advertising period, the applicant submitted an acoustic report assessing potential noise impacts from the rear courtyard in response to objector concerns. This was accordingly circulated to all objectors with the invitations to the PDC meeting.

The Proposal

15. This application is for the sale and consumption of liquor in association with a restaurant, demolition of a rear fence and buildings and works, including a canopy over the rear courtyard.

Demolition

16. Demolition of the eastern boundary 2.6m high galvanised iron and lattice fence and the 2m high northern boundary galvanised iron fence within the rear corner.

Buildings and works

17. Construct a 2.6m high acoustic wall along the eastern and part of the northern boundary (in the exact position as the proposed to be demolished fences).
18. Construct a retractable canopy over the rear courtyard (retrospective). This canopy will be fixed to the southern boundary wall at a height of 5m. The specific details of this canopy have not been specified on the plans. A condition will be recommended to be included on any decision issued, requiring details of the material and location of the canopy when fully extended to be shown.

Sale and consumption of liquor

19. The sale and consumption of liquor in association with the restaurant will occur between 10.00am and 9.00pm Monday to Sunday.
20. A maximum of 50 patrons, with 35 within the external courtyard and 15 internally.
21. Music will be limited to background music only, both internally and externally.
22. Waste bins will be located to the rear of the restaurant, however specific location is not shown on the plans. This is to be addressed via condition.

Existing Conditions

Subject Site

Subject Site

23. The site is located on the eastern side of Brunswick Street, approximately 40 metres north of Kerr Street and 45 metres south of Rose Street, in Fitzroy. The subject site (formally known as Lot 5 on Plan of Subdivision 041143) has a frontage to Brunswick Street of 4.3 metres, a depth of 21.9 metres and a rear width of 6.4m, yielding an overall site area of approximately 121sqm.
24. The site is developed with a double storey, brick, Victorian-era commercial building currently used as a restaurant. The building is constructed to the northern and southern boundary for its entire length, while is set back from the eastern title boundary. The building is predominately glazed on Brunswick Street at ground level, with a recessed entry door to the most northern part of the front façade. This is the only entry to the restaurant.
25. A paved courtyard, 48sqm in area, is located at the rear, eastern side of the site.



Image 1: The subject site as it appears to Swan Street (Google December 2020).

Surrounding Land

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

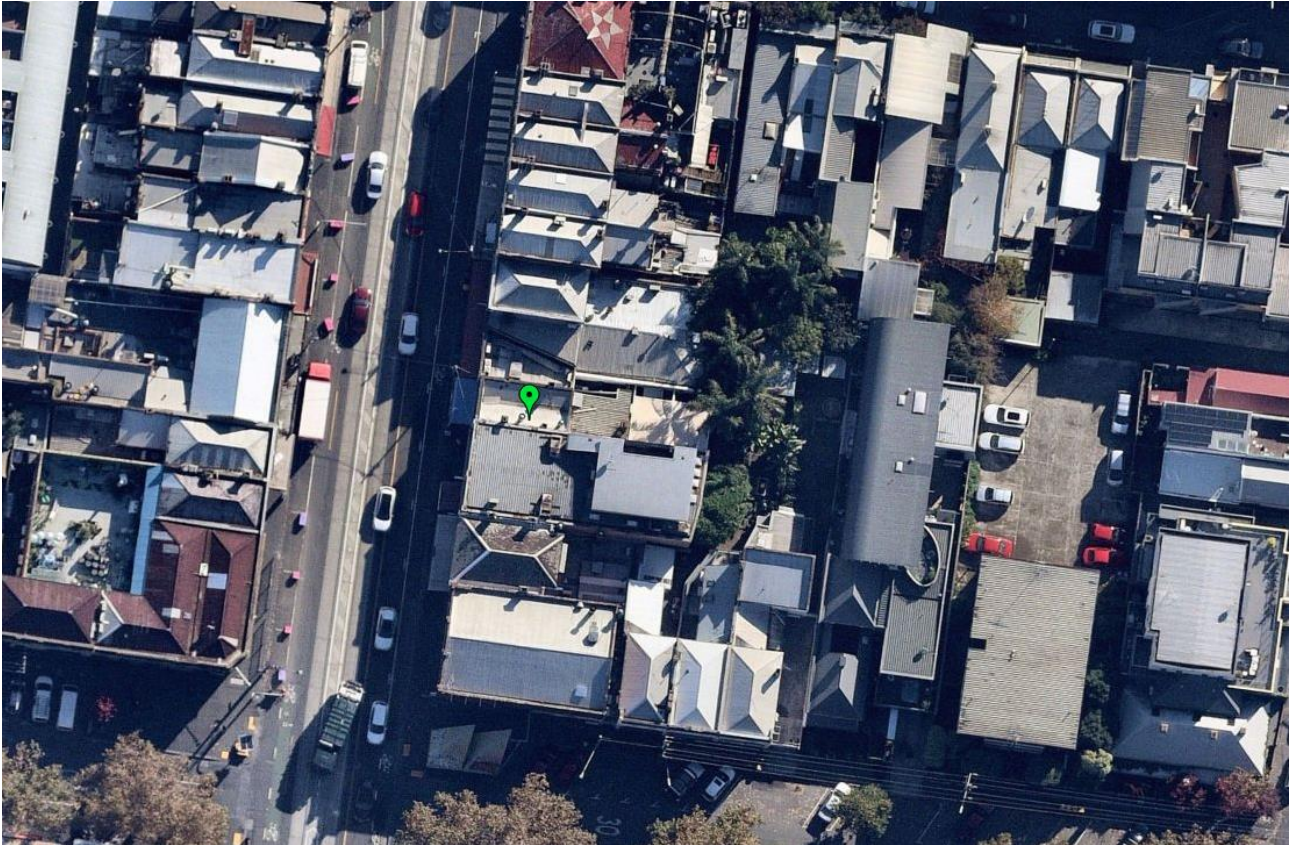


Image 2: aerial of subject site and surrounds (NearMap April 2021)

North

27. The properties along the eastern side of Brunswick Street are zoned Commercial 1 Zone and are characterised by fine grain commercial uses.
28. Immediately to the north is No. 364-366 Brunswick Street which is developed with a part double, part single storey, brick commercial building currently used as a licenced restaurant/bar. The building is constructed to all site boundaries, covering 100% of the site. No windows or outdoor areas present to the subject site.
29. This restaurant is licenced to supply liquor for consumption on the licensed premises during the following trading hours:

Sunday:	Between 10am and 1am the following morning;
Good Friday & Anzac Day:	Between 12 noon and 1am the following morning;
On any other day:	Between 9am and 1am the following morning.
30. Further north is No. 368 Brunswick Street which is developed with a double storey brick, Victorian-era commercial building. This building is currently unoccupied, although has been previously used as a take-away restaurant.

South

31. The properties to the south along the eastern side of Brunswick Street are zoned Commercial 1 Zone and characterised by fine grain commercial uses.
32. Immediately to the south is a double storey, rendered commercial building which is occupied by a retail premises at ground floor and a Pilates studio at first floor. The building is constructed to all site boundaries, covering 100% of the site. No windows or outdoor areas present to the subject site.
33. Further south at No. 360 Brunswick Street is a double storey rendered brick commercial building, which is unoccupied at ground level (previously used as a bakery) and the same pilates studio that directly abuts the subject site at first floor.

East

34. To the east of the subject site is the rear secluded private open spaces (SPOS) of double and single storey Victorian-era dwellings, facing Rose and Kerr Streets. These properties are located within the Neighbourhood Residential Zone (Schedule 1).
35. Immediately to the east of the subject site is the rear SPOS of No. 101 Kerr Street which has been developed with a double storey, brick, Victorian-era dwelling. The dwelling fronts south with access from Kerr Street.
36. Further to the east of the subject site is the rear SPOS of No. 103 and No. 105 Kerr Street. Both of these sites have been developed with double storey Victorian-era dwellings abutting Kerr Street. A single storey studio/retreat abuts the rear boundary of No. 103 Kerr Street, while sheds are contained on the northern boundary of No.105 Kerr Street.
37. Further to the direct east, is the side of a double storey residential building containing 4 units. A number of second floor habitable room windows face the subject site (set back between 13.4m and 15.2m).
38. To the north east of the subject site, facing Rose Street, is the rear SPOS areas of a row of single and double storey Victorian-era dwellings.

West

39. Properties along the western side of Brunswick Street are zoned Commercial 1 Zone and are characterised by Victorian-era commercial buildings, used as a mix of restaurants and retail premises.
40. Immediately opposite the subject site, at No. 359 Brunswick Street, is a double storey brick building, currently unoccupied (previously used as a restaurant).
41. Each side of this unoccupied restaurant contains double storey Victorian-era commercial buildings. These properties have been previously used as licenced restaurants and retail premises'.

42. *General surrounds*

43. The area is well serviced by public transport with trams running along Brunswick Street, between northern suburbs and the city, and bus routes along Johnston Street (200 metres of the site) which connects the eastern suburbs and the city.
44. Other licenced premises within immediate include:
 - (a) Evelyn Hotel, No. 351 Brunswick Street, which has a general license allowing alcohol to be consumed on the licenced premises Sunday, between 10am and 1.30am the day following, Good Friday & Anzac Day, between 12 noon and 1.30am the day following on any other day, between 7am and 1.30am the day following and a maximum of 350 patrons.
 - (b) La Bodega, No. 361 Brunswick Street has an on-premises license with the operating hours on ANZAC Day, between 12noon and 11pm and on any other day (excluding Good Friday), between 10am and 11pm and a maximum of 62 patrons.
 - (c) Babka, No. 362 Brunswick Street, has an on-premises license with the operating hours Sunday, between 10am and 11pm, Good Friday and ANZAC Day, between 12noon and 11pm and on any other day, between 7am and 11pm.
 - (d) Masti, Ground Floor No. 354-356 Brunswick Street, has an on-premises license with the operating hours Anzac Day, between 12 noon and 1am the following morning and on any other day, between 7am and 1am the following morning and a maximum of 77 patrons.
 - (e) Nyala African Restaurant, Level 1, No. 356 Brunswick Street, has an on-premises license with the operating hours Sunday, between 10am and 11pm, Good Friday & ANZAC Day, between 12noon and 11pm and on any other day, between 7am and 11pm and a maximum of 77 patrons.

Planning Scheme Provisions

Zoning

Commercial 1 Zone

45. Pursuant to Clause 34.01-1 of the Scheme, a retail premises (food and drink premises) is a Section 1 use, therefore the proposed use does not require a planning permit.
46. Pursuant to Clause 34.01-4 of the Scheme, a planning permit is required to construct a building or construct or carry out works. Therefore, the construction of the rear canopy requires a planning permit under the zone.

Overlays

Heritage Overlay (H0311)

47. Pursuant to Clause 43.01-1, a planning permit is required to demolish or remove a building and to construct a building or carry out works, including a fence, if the fence is visible from a street (other than a lane) or public park. Given that the fence is not visible from a street, no planning permit is required for construction of the acoustic fence. However, a planning permit is required for the construction of the proposed rear canopy and demolition of the existing fence.
48. Appendix 8 to the City of Yarra Review of Heritage Areas, 2007 – The site is identified as being ‘contributory’ to the Brunswick Street Precinct Fitzroy.

Development Contributions Plan Overlay (Schedule 1)

49. Pursuant to the schedule to the Development Contributions Plan Overlay, a development infrastructure levy and community infrastructure levy applies to an application that generates an increase in gross floor area. Given that the gross floor area is not proposed to increase, a permit is not required under the overlay.

Particular Provisions

Clause 52.27 Licensed Premises

50. Pursuant to Clause 52.27 of the Scheme, a planning permit is required to use the land to sell or consume liquor if a licence is required under the *Liquor Control Reform Act 1998*. The requirement to obtain a planning permit is therefore triggered under Clause 52.27 of the Scheme.
51. The policy will be discussed further in the *Assessment* section of this report.

General Provisions

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

Planning Policy Framework (PPF)

Clause 11.03-1S – Activity Centres

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

Clause 13.05-1S – Noise Abatement

55. The objective of this clause is:

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

Clause 13.07-1S – Land use compatibility

56. The objective of this clause is:

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

Clause 15.01-2S – Building design

57. The objective of this clause is:

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

Clause 15.01-5S – Neighbourhood Character

58. The objective of this clause is:

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

Clause 17.01-1S – Diversified economy

59. The objective of this clause is:

(a) *To strengthen and diversify the economy.*

60. The relevant strategies set out to achieve this objective include:

(a) *Facilitate growth in a range of employment sectors, including health, education, retail, tourism, knowledge industries and professional and technical services based on the emerging and existing strengths of each region.*

(b) *Improve access to jobs close to where people live.*

Clause 17.02-1S – Business

61. The objective of this clause is:

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

62. The relevant strategies set out to achieve this objective includes:

(a) *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.*

(b) *Locate commercial facilities in existing or planned activity centres.*

[Local Planning Policy Framework \(LPPF\)](#)

Clause 21.02 – Municipal profile

Activity Centres

63. This clause recognises “Yarra’s vibrant Major Activity Centres, being the retail strips of Brunswick, Smith, Victoria and Swan Streets and Bridge Road” and contributes “these activity centres [as] a vital part of Yarra’s culture”.

64. The profile discusses the regional role of Yarra’s Major Activity Centres and envisions that the emerging character of these centres will be an “aggregation of niche offerings in fashion, hospitality, entertainment, and homewares”.

Clause 21.03 – Vision

65. A key vision for the city of Yarra is to include land use that:

(a) *Will accommodate a diverse range of people, including families, the aged, the disabled, and those who are socially or economically disadvantaged.*

Clause 21.04 – Land Use

Clause 21.04-2 Activity Centres

66. The relevant objectives of this clause include:
- (a) *To maintain the long term viability of activity centres.*
 - (b) *To encourage the arts and art venues.*

Clause 21.04-3 – Industry, office and commercial

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

Clause 21.08 – Neighbourhoods

Clause 21.08-7 – Fitzroy

68. The clause specifies the following:
- (a) *The role of the Brunswick Street centre can be characterised as hospitality, entertainment, clothing and footwear, art galleries and studios, and non-government community services, all with a metropolitan focus.*
69. Figure 17 (Neighbourhood Map) at Clause 21.08-7 identifies the site to be located in the Brunswick Street Major Activity Centre (BSMAC).

[Relevant Local Policies](#)

Clause 22.05 – Interface uses policy

70. This policy applies to applications for use or development within Commercial 1 Zones (amongst others).
71. The relevant objective of this clause is:
- (a) *To ensure that residential uses located within or near commercial centres or near industrial uses enjoy a reasonable level of amenity.*

Clause 22.09 – Licensed Premises

72. This policy applies to an application under Clause 52.27 (Licensed Premises).
73. 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](#)

74. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 58 letters sent to surrounding owners and occupiers and by a sign displayed on site. Council received 11 objections, the grounds of which are summarised as follows:
- (a) Noise generated from the courtyard from activity associated from liquor consumption, patron numbers and background music onto neighbouring properties to the rear.
 - (b) Light pollution from the existing courtyard onto neighbouring properties to the rear.
 - (c) Impacts a licenced restaurant would have on the value of residential properties within the area.
 - (d) Impacts the rear acoustic wall will have on surrounding trees.

- (e) Lack of detail and justification related to the acoustic measures (rear acoustic wall and canopy)
- (f) Increased number of licenced venues will affect the safety to patrons and residents in the area.

75. A planning consultation meeting was not held given the COVID-19 Pandemic.

76. The applicant submitted an acoustic report post advertising, which was circulated to the objectors with the invitations to the PDC meeting.

Referrals

External Referrals

77. The application was not required to be referred to any external referral authorities.

Internal Referrals

78. The application (as advertised in November/December 2020) was referred to the following units within Council:

- (a) Compliance (Community Amenity)

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

External Consultants

80. An Acoustic Report (dated 15 March 2021 and prepared by Octave Acoustics) was referred to SLR Consulting (Acoustic Engineers).

81. The Acoustic report and referral comments from SLR consultants have been included as attachments to this report. The Acoustic Report will form the basis of the assessment and decision.

OFFICER ASSESSMENT

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

- (a) Strategic justification
- (b) Sale and consumption of liquor
- (c) Heritage Overlay
- (d) Buildings and works (Commercial 1 Zone)
- (e) Objector concerns

Strategic justification

83. There is strong policy support within the Planning Policy Frameworks for the sale and consumption of liquor in this location, given the commercial zoning and that the site is located within a highly accessible Major Activity Centre (**MAC**). These policies seek to encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities, provided that a balance is achieved in relation to off-site amenity impacts.

84. The application is for sale and consumption of liquor on the premises in association with the existing restaurant. Clauses 13.04-1 and 21.04-2 of the Scheme identify that noise and the interface between uses must be managed appropriately, particularly in a municipality such as Yarra where almost all residents are within 400m of an activity centre. Abutting uses along the length of the strips are generally residential, creating interface conflicts where some uses are not well managed or inappropriate uses are permitted' (Clause 21.04-2). Whilst the proposal has strong strategic support from the Scheme, local policy 22.09 articulates decision guidelines.

The specific implications of the sale and consumption of liquor will be discussed further in this report, with particular regard to the purpose of the Commercial 1 Zone and interface to residential dwellings. The operation of the proposal will be considered against cumulative impact, off-site amenity impacts and the land use conflicts of the area.

85. The location of the proposed use is considered to have strategic support given the planning policies encourage the concentration of commercial and entertainment uses in and near Major Activity Centres, such as Brunswick Street, which are well connected to public transport and benefit from existing infrastructure (clauses 17.02-1S, 17.02-2S and 18.02-2R).
86. Overall, the proposed licenced venue associated with the existing restaurant, within the Commercial 1 Zone and the Brunswick Street MAC, is considered to comply with strategic planning objectives relevant to activity centres. The existing restaurant currently contributes to the vibrancy of Brunswick Street, where entertainment uses are specifically encouraged and the proposed liquor licence will not contradict the related strategic planning objectives.

Sale and consumption of liquor

87. The decision guidelines at Clause 52.27 of the Scheme, include the consideration of the impact of the sale or consumption of liquor on the amenity of the surrounding area, the impact of the hours of operation and number of patrons on the amenity of the surrounding area and the cumulative impact of any existing licensed premises and the proposed licensed premises.
88. Clause 22.09 (Licensed premises policy) of the Scheme is Council's local policy to guide the assessment of new or extended licensed premises within the municipality. It contains six key elements that will be considered in the following section.
89. The application proposes the sale of liquor for consumption on-site, in association with the existing restaurant use.

Location and Access

90. The subject site is located midblock within the Brunswick Street MAC, with a mix of commercial and residential uses within close proximity. The proposed licenced restaurant is appropriately located given the purpose of a MAC and the subject site's close proximity to multiple alternative transport modes. In addition to being within the Principal Public Transport Network (PPTN) through nearby tram and bus networks, taxi and Uber services would also be readily available. Additionally, the premise has been operating as a restaurant since 2018.
91. The proposed licenced venue has a rear open courtyard and an internal dining area at ground level. The first floor will be used primarily for storage, office use and for bathrooms. Access to and from the premises will be limited via the Brunswick Street frontage only. This will be consistent with the existing restaurant use. There is no other access to and from the site.
92. Overall, the location of the premises within the Commercial 1 Zone and Brunswick Street MAC, as well as the access to the venue limited via Brunswick Street is supported by policy at Clause 22.09.

Venue design

93. 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.*
94. The premises meets the relevant layout and design guidelines for the following reasons:

- (a) The glazing to the street (associated with the entry and internal dining area) provide opportunities for informal and passive surveillance of the street environment.
 - (b) The entry is clearly distinguishable.
 - (c) The entry is provided to Brunswick Street, away from the residential interface to the rear (east), providing safe and easy navigation for patrons to public transport, taxis and ride share.
 - (d) Unisex bathrooms are provided internally to the building.
95. The red line plan includes the first floor and the staircase of the existing building. It is noted that the first floor is limited to storage, bathrooms and an ancillary office space, and does not contain any dining areas for patrons. Therefore, it is recommended that a condition be included on any permit issued requiring the first floor and staircase to be excluded from the red line plan.
96. With respect to waste management, the Noise and Amenity Action Plan (NAAP) submitted confirms that waste bins will be stored at the rear of the premises and waste collections will occur twice a week, while bins will be emptied into bins between 6pm and 7pm. This complies with policy at Clause 22.09-3 of the Scheme. However, it is not reflected on the red line plan. Hence, a condition is recommended to require an amended proposed floor plan that shows the location of the bin storage area within the title boundaries of the site, showing capacity and the separate glass recycling. The submission of a satisfactory Waste Management Plan will also be required to determine the likely waste generation so the bin size and collection frequency can be confirmed and to ensure bins remain on-site, other than during collection times.
97. In addition, a condition is recommended on any permit issued requiring a sign to be erected at the exit of the venue to advise patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.
- Hours of operation*
98. The application proposes the sale and consumption of liquor to be carried out between 10.00am and 9.00pm, seven days a week.
99. Clause 22.09 (Licensed premises policy) provides the following guidelines, relevant to the proposal:
- (a) *Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.*
 - (b) *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.*
 - (c) *Licensed premises in a Commercial or Industrial zone should not provide for the sale and consumption of liquor beyond 1am, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
 - (d) *For outdoor areas, including smoking areas, rooftops and open courtyards, the sale and consumption of liquor should not occur after 10pm, unless the responsible authority is satisfied that it will not adversely affect the amenity of the area.*
100. The proposed hours for the sale and consumption of liquor comply with the relevant local policy guidelines and thus, should form the basis of a condition to any permit issued.
101. It is considered that the sale of liquor for consumption on the premises from 10am until 9.00pm will not adversely affect the amenity of the area.

Patron numbers

102. Policy at Clause 22.09 relating to patron numbers aim to ensure that the number of patrons do not exceed the safe and amenable operating capacity of the premises. Additionally, the number of patrons should reflect the strategic and physical context of the site and should not adversely affect the amenity of nearby properties or the surrounding area, including by any unreasonable cumulative impact.
103. The application proposes 50 patrons on the land at any one time. This includes limiting the number of patrons within the rear open courtyard to 35 and 15 internally. It is noted that the site is currently used as a restaurant and there are no existing limits on patron numbers in either the courtyard or internally.
104. Based on VCGLR's guidelines for maximum patron numbers, a ratio of one (1) person per 0.75sqm should be achieved to prevent overcrowding inside a venue. A maximum of 35 patrons within the 48sqm rear courtyard area and a maximum of 15 patrons within the 18sqm internal area would both provide a one (1) person per 1sqm ratio, which exceeds this requirement. It is considered that 50 patrons can be safely accommodated within the subject site. A condition is recommended to enforce these patron restrictions.
105. Overall, the minimal number of patrons proposed will not adversely affect the amenity of nearby properties to the east, nor will it exceed the safe and amenable operating capacity of the premises.

Noise

106. In relation to noise, Clause 22.09-3 specifies that:
 - (a) *Noise from the operation of the licensed premises should not have an unreasonable impact on the amenity of the area.*
 - (b) *Noise emissions from licensed premises should comply with the standards specified in the State Environmental Protection Policy or any other relevant requirement such as accepted sleep disturbance criteria or relevant Australian Standards.*
 - (c) *On-site noise attenuation measures should be applied for licensed premises where unreasonable amenity impacts on the surrounding area may result from the proposed activities.*
 - (d) *Where required, a licensed premise must be designed and managed in accordance with an acoustic report approved by the responsible authority.*
107. It is noted that the most common objection to the proposal related to the use of the rear courtyard and the noise generated from patrons onto surrounding residential properties directly to the east of the subject site.
108. It is long held by VCAT that residentially zoned land near, or abutting, Major Activity Centres cannot expect the same level of amenity as would be afforded within a purely residential zone.
109. Member Rundell stated in *Cubo Group Pty Ltd v Yarra CC & Ors (2013)* at paragraph 21:

Firstly, whilst the locality is primarily a residential precinct, it is one with less sensitivity or amenity than enjoyed in a local residential street in middle and outer Melbourne. The site is approximately 100 metres from Bridge Road, one of Yarra's major activity centres noted for its cafes, restaurants and entertainment. A hotel and a restaurant are located on the corner of Coppin Street and Bridge Road, with outdoor seating on Coppin Street. Patrons of these premises are likely to travel along Coppin Street to their residences or cars. Coppin Street is a major north-south link in the local road network. It is inevitable that residents in the nearby streets would already experience some spillover from Bridge Road to the north and Swan Street to the south. In my view, the amenity of the residential precinct is somewhat robust and less sensitive to activities such as this proposal.

Hence the amenity expectations of residents in Coppin Street should be aligned with its context and anticipate some level of active street life and noise.

110. The subject site is within the Brunswick Street MAC with a Neighbourhood Residential Zone (Schedule 1) directly abutting the subject site to the east. Whilst considerations to residential amenity must be afforded for residential properties, the residential amenity expectations within adjacent land must be tempered, as is recognised 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.
111. In respect of the acoustic performance of the existing building and the proposal concerning the rear courtyard area, the applicant has submitted an acoustic report to thoroughly assess the potential noise impacts created by the proposal. It is noted that Clause 22.09 of the Scheme does not require an acoustic report for an application for a restaurant where the preferred hours of operation are met. Given that the proposed hours of operation are consistent with the preferred hours, an acoustic report is not required. However, in response to the objections received, the applicant has voluntarily submitted an acoustic report to assess patron noise.
112. The assessment carried out, determined that the most affected residential receivers are located approximately 15m directly to the east of the subject site and that compliance with noise criteria at this location is expected to result in compliance at all other potentially affected residential receivers. They also noted that the noise modelling indicates that noise transmission from the patrons in the rear courtyard of the subject site will comply with the noise trigger levels given the proposed construction of a rear acoustic fence.
113. The acoustic report recommended that the acoustic fence at the rear of the property be installed according to the following specification to mitigate patron noise levels at the nearest façade:
 - (a) The fence should be constructed at a height of 2.6m using either lapped timber paling, fibre cement sheeting, lightweight aerated concrete, transparent acrylic panels, glass, profiled sheet cladding or roofing materials as long the selected material (or combined skins) has a surface density of at least 12kg/m²;
 - (b) The fence shall have no gaps or holes in it, or the likelihood of such occurring through natural causes or deformations, thus allowing noise to pass through;
 - (c) The boundary fence must be designed and built in an acceptable manner so that noise will not pass underneath it;
 - (d) It is preferable that the selected cladding is pre-fabricated to be jointed with an overlap or rebated joint (e.g. ship lapped);
 - (e) Where the above requirement cannot be met, any butt joints shall be sealed with a fire rated weatherproof mastic or an overlapping piece of material meeting the mass requirements of 12kg/m² (minimum 35mm each side of the butt joint);
 - (f) Where acoustic timber palings are installed, all palings shall overlap by a minimum of 35mm;
 - (g) Where multiple cladding layers are used (e.g. FC sheeting over timber paling screen, or the roofing system), joints in the cladding materials shall not coincide.
114. To ensure that the appropriate acoustic is installed, a condition is recommended to be included on any permit issued, requiring the specifications of the fence to be in accordance with the above recommendations.
115. It is also noted that, although the proposed canopy would not result in noise attenuation from the proposed use, the other measures and conditions of the proposed use of the rear courtyard, would ensure the noise impacts to the residential properties to the east are not unreasonable.

116. Council's external acoustic engineers (SLR Acoustic Consulting) reviewed the submitted acoustic report and were satisfied that the proposed patron noise from the rear courtyard is reasonable and that the submitted report addressed noise impacts and use of the area during the proposed times would be acceptable.
117. Within the NAAP, the applicant has specified that there will not be any amplified music, live music or DJs on site. However, the applicant has confirmed that they intend to have background music internal to the restaurant as well as within the rear courtyard. Council's Compliance Unit (Community Amenity) has advised that in 2019 they received a complaint in relation to music noise from within the courtyard of the restaurant.
- While the Compliance Unit specified that the current proposal poses a low risk, they did not support external speakers within the rear courtyard (i.e. to enable music to be played) given the proximity to residential properties.
118. Notwithstanding the concerns raised by Council's Compliance Unit, background music in the courtyard is expected to be sufficiently ameliorated by the proposed rear acoustic wall, noting also that the use will cease at 9pm. However, to ensure that music noise will be adequately mitigated, a condition is recommended on any decision issued that an updated acoustic report is provided assessing background music in the courtyard. A condition will also ensure any additional noise mitigation measures required are included on the plans. Further conditions will also require music to be limited to background levels and cease at 9pm. The location of speakers has not been identified on the plans. A condition is needed to identify any external speakers within the rear courtyard.
119. It is also noted that conditions are recommended to be included on any decision, 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) and State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2). This will ensure the use complies with these provisions at all times, thereby ensuring further noise protection for nearby residents.
120. Council's standard condition should also be included on any permit issued requiring that the emptying of bottles into bins in the outdoor area should not occur after 10pm on any day, before 7am Monday to Saturday, or before 9am on a Sunday or public holiday.
121. *Noise and Amenity Action Plan (NAAP)*
122. Pursuant to clause 22.09 of the Scheme A NAAP is not required for the sale and consumption of liquor in association with a restaurant, however the applicant has voluntarily submitted one to address management procedures on the site.
123. The applicant submitted a NAAP (dated 05 November 2020). The Plan addresses relevant management procedures of the venue, including:
- (a) The venues complaint procedure.
 - (b) Waste collection and management.
 - (c) No more than 50 patrons on the premises at any one time.
 - (d) The sale and consumption of liquor will be between 10.00am and 9.00pm, seven days a week.
 - (e) The music will be limited to background.
124. The provisions within the NAAP are considered appropriate in managing the business operation without causing adverse amenity to the area. A condition is recommended to be included on any permit issued requiring that the operation of the business is carried out in strict adherence to the NAAP.

Cumulative Impact

125. The subject site is located within a ‘cluster’ of licenced premises, as there are three or more (including the proposed premises) within a radius of 100 metres of the subject site. The “Corner Hotel” decision (*Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & ORs*) provides a potential assessment methodology for considering applications that may result in a cumulative impact. The decision also acknowledges that depending on the nature of the use, the required level of assessment will vary.
126. Applying the matrix of risk below, a reasonable consideration would suggest that a score of 1-3 would be no risk, but that a score higher than 3 would be a potential risk and require a cumulative impact assessment.

Type of Premise	Risk Factor
Café / Restaurant	0
Bar / Restaurant / Café	1
Bar	3
Hotel / Tavern	3
Night Club	3
Place of Assembly	2
Size of Premise	Risk Factor
0 – 49 patrons	0
50 – 99 patrons	1
100 – 199 patrons	2
200+	3
Closing hours	Risk factor
11pm	0
12am	1
1am	2
2am	3
3am	3
After 3am	4

127. In this instance the venue achieves a maximum score of 1, therefore the venue is considered to be no risk, thus a full cumulative impact assessment is not necessary and no further consideration is required.

Heritage

128. The relevant purpose of the Heritage Overlay is to ensure that development does not adversely affect the significance of heritage places. The building on the subject site is identified as being ‘contributory’ to the Brunswick Street Precinct (HO311). The guidelines for the Heritage Overlay are set out in Clause 22.02 of the Yarra Planning Scheme.
129. Clause 22.02-5.1 of the Scheme encourages the demolition of inappropriate alterations, additions and works that detract from the cultural significance of the place, while discourages the demolition of part of an individually significant or contributory buildings or contributory elements unless the part is not visible from the street or the removal would not adversely affect the contribution of the building to the heritage place. The proposed demolition is limited to the rear fence, not visible from the street. Therefore, the proposed demolition will not detract from the cultural significance of the heritage place and is considered acceptable.
130. Clause 22.02-5.7 of the Scheme seeks to ensure that new development and alterations and additions to a heritage place respect the pattern, rhythm, fenestration, roof form, materials and heritage character of the surrounding streetscape.

131. The proposed canopy will be located at the rear of the subject site, above an existing courtyard. The canopy will not be visible from Brunswick Street and will not impact the contribution of the double storey 'contributory' graded building to the surrounding historic streetscape. The form will be small in relation to the surrounding built environment and will not be a dominant feature within the heritage area. The canopy is proposed to be constructed cloth and will be retractable. Although the design and materials will be contemporary, they will be sympathetic to the heritage character and are considered acceptable.
132. Overall, the proposed works will meet the decision guidelines set out within clause 22.02 and 43.01 of the Yarra Planning Scheme and are considered appropriate.

Commercial 1 Zone (buildings and works)

133. The proposed buildings and works triggered under the Commercial 1 Zone are limited to the construction of a retractable canopy over the rear courtyard. The proposed canopy will be located at the rear and will not be visible from Brunswick Street.
- Before deciding on an application, the responsible authority must consider the movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport. The proposed canopy will be constructed on the rear boundary abutting the rear SPOS of a dwelling to the east, and will therefore not obstruct the movement of pedestrians, vehicles and cyclist. The applicant has not clearly specified the proposed material of the canopy or how far it will extend over the courtyard. A condition is recommended on any decision issued, requiring these details. Overall the proposal will appropriately respond to the decision guidelines within the Commercial 1 Zone and are considered acceptable.
134. With regard to Council's Interface Uses Policy (clause 22.05), it is considered that the proposed works would not result in unreasonable increased noise, visual impact or appearance, odour and air emissions, light spill, loading and unloading or construction noise. Although the canopy will be located opposite SPOS, the impacts will be minimal. The proposed canopy will abut a wall to the north and south and will not impact any surrounding commercial uses.

Objector concerns

135. 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:
- Noise generated from the courtyard from activity associated from liquor consumption, patron numbers and background music onto neighbouring properties to the rear.*
136. This concern has been discussed at paragraphs 106 – 120. Various conditions have been included, regarding patron numbers, music levels, hours of sale and consumption of liquor and patron noise limits, ensuring an appropriate degree of amenity is achieved for nearby residential areas.
- Light pollution from the existing courtyard onto neighbouring properties to the rear.*
137. The rear courtyard is currently used as a restaurant and the lighting to the rear courtyard is not expected to change with the proposal.
- Impacts a licenced restaurant would have on the value of residential properties within the area.*
138. The impact on property values is not a planning consideration.

Impacts the rear acoustic wall will have on surrounding trees.

139. As specified previously within the report, a planning permit is not required for the rear acoustic fence. It is noted that the proposed fence will replace an existing fence of the same height and is setback from surrounding trees.

Lack of detail and justification related to the acoustic measures (rear acoustic wall and canopy)

140. As noted within paragraphs 115, the proposed canopy will not result in acoustic attenuation, while a condition is recommended to be included on any decision issued, requiring the acoustic fence to be of the specifications recommended within the submitted acoustic report.

Increased number of licenced venues will affect the safety to patrons and residents in the area.

141. As outlined within paragraphs 125-127, the proposed licenced venue is of no risk in terms of cumulative impact, while the proposed hours of sale and consumption of liquor and maximum patron number is reasonable. It is also noted that the proposed liquor licence is associated with an existing restaurant and the serving of food is the primary intension of the use.

Conclusion

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

RECOMMENDATION

That having considered all the relevant planning policies, the Committee resolves to Issue a Notice of Decision to issue Planning Permit PLN20/0403 to allow for the sale and consumption of liquor in association with a restaurant, demolition of a rear fence and buildings and works, in accordance with the “decision plans” and subject to the following conditions:

1. Before the development or sale and consumption of liquor commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions, and three copies must be provided. The plans must be generally in accordance with the decision plans prepared by OGT Solutions Pty Ltd, but modified to show:
 - (a) Details of any noise attenuation measures, including specifications of the proposed rear acoustic wall, in accordance with the recommendations of the endorsed Acoustic Report (condition 7);
 - (b) Location of bin storage within the title boundaries, and in accordance with the endorsed Waste Management Plan (condition 20);
 - (c) Exclude the first floor and staircase from the ‘red line’ area;
 - (d) Details of the canopy, including the material and the area of the extended canopy dashed on the ground floor plan; and
 - (e) Location of any external speakers within the rear courtyard.
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. Except with the prior written consent of the Responsible Authority, the sale of liquor for consumption on the premises may only occur between the hours of 10.00am – 9.00pm, seven days a week.
4. No more than 50 patrons are permitted on the land at any one time, in association with the licensed premises.
5. No more than 35 patrons are permitted in the outdoor courtyard at any one time.
6. Before the sale and consumption of liquor commences, the proposed acoustic fence must be constructed in accordance with the specifications recommended with the endorsed Acoustic Report (Condition 7).
7. Before the 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 Octave Acoustics and dated 15 March 2021, but modified to address:
 - (a) Background music within the rear courtyard.
8. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.
9. The amenity of the area must not be detrimentally affected by the use, development or sale and consumption of liquor, including through:
 - (a) the transport of materials, goods or commodities to or from land;
 - (b) the appearance of any buildings, works or materials;
 - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or
 - (d) the presence of vermin.to the satisfaction of the Responsible Authority.
10. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
 - (a) Monday to Friday (excluding public holidays) before 7 am or after 6 pm;
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
11. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
 - (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.
12. The use and development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
13. The use and development must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).

14. The provision of music and entertainment on the land must be at a background noise level.
15. The provision of background music within the courtyard to cease at 9pm.
16. Delivery and collection of goods to and from the land may only occur between 7am and 10pm Monday to Saturday, or after 9am on a Sunday or public holiday except for those allowed under any relevant local law.
17. 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.
18. 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.
19. The provisions recommendation and requirements of the endorsed Noise and Amenity Action Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
20. Before the commencement of the sale and consumption of liquor, a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must contain the following;
 - (a) private collection (unless Council collection is otherwise agreed by the Responsible Authority);
 - (b) anticipated waste generation of different waste streams, including separate glass recycling, waste collection process;
 - (c) location of waste storage, including bin wash down area; and
 - (d) details of collection vehicle/s and frequency of collection.
21. Once approved, the Waste Management Plan will be endorsed and will form part of this permit.
22. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
23. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.
24. This permit will expire if:
 - (a) the development is not commenced within two years of the date of this permit; or
 - (b) the development is not completed within four years of the date of this permit; or
 - (c) the sale and consumption of liquor is not commenced within two years from 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 periods referred to if a request is made in writing before the permit expires or within six months afterwards for commencement or within twelve months afterwards for completion.

Notes

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

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

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

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

Attachments

- 1 PLN20/0403 - 362 Brunswick Street Fitzroy - Subject Site Map
- 2 PLN20/0403 - 362 Brunswick Street Fitzroy - Advertising S52 - Plans
- 3 PLN20/0403 - 362 Brunswick Street Fitzroy - Acoustic Report PDF
- 4 PLN20/0403 - 362 Brunswick Street Fitzroy - SLR Acoustic Review PDF
- 5 PLN20/0403 - 362 Brunswick Street Fitzroy - Advertising S52 - Noise and Amenity Action Plan
- 6 PLN20/0403 - 362 Brunswick Street Fitzroy - Civic Compliance Referral Comments

6.2 PLN19/0221.01 - 142 Johnston Street Fitzroy North

Executive Summary

Purpose

1. This report provides an assessment of the proposed amendment to Planning Permit PLN19/0221 which seeks to change the operation type (including increased patrons) of the previously approved restricted recreation facility (fitness studio) and relocate from 142 Johnston Street to 270 Young Street, with changes to signage.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 13.05-1S – Noise Abatement;
 - (b) Clause 22.05 – Interface Uses Policy, and
 - (c) Clause 52.06 - Car parking provision.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Use-site amenity impacts;
 - (b) Car parking, traffic and bicycle provisions; and
 - (c) Objector concerns.

Submissions Received

4. Twelve (12) objections were received to the application and can be summarised as:
 - (a) Off-site amenity impacts (noise and sign lighting);
 - (b) Car parking, traffic impacts and pedestrian safety;
 - (c) Issues during construction (noise, traffic); and
 - (d) Impacts to mental health and community of residents within apartment building;
5. Fourteen (14) support letters were received to the application and can be summarised as:
 - (a) Cyclebar (gym) is desired in the local area; and
 - (b) Would like to use the Cyclebar (gym).

Conclusion

6. Based on the following report, the proposal is considered to comply with the relevant planning policy and key considerations, and should therefore be supported, subject to conditions generally requiring limited changes.

CONTACT OFFICER: Alexandra Paraskevakis
TITLE: Statutory Planner
TEL: 9205 5024

6.2 **PLN19/0221.01 - 142 Johnston Street Fitzroy North**

Reference D21/38226
Author Alexandra Paraskevakis - Statutory Planner
Authoriser Senior Coordinator Statutory Planning

Ward: Nicholls
Proposal: PLN19/0221.01 - 142 Johnston Street Fitzroy North Johnston Street to 270 Young Street, with changes to signage.
Existing use: Commercial (vacant)
Applicant: OTP Invest
Zoning / Overlays: Commercial 1 Zone (C1Z)
 Heritage Overlay (Schedule 334)
 Environmental Audit Overlay (EAO)
 Design and Development Overlay 10 (DDO10)
 Development Contributions Plan Overlay – Schedule 1 (DCPO1)
Date of Application: 1 December 2020 (for Section 72 amendment)
Application Number: PLN19/00221

Planning History

7. Council records show Planning Permit PLN15/0632 was issued at the direction of VCAT, to land at Nos. 142-144 Johnston Street and 3 Chapel Street, Fitzroy on 22 September 2016 for:
 - (a) *the demolition of existing buildings;*
 - (b) *the construction of a six storey building above two basement levels;*
 - (c) *the use of the land for dwellings;*
 - (d) *a reduction of car parking requirements; and*
 - (e) *a waiver of the loading bay requirements;**in accordance with the endorsed plans.*
8. No endorsed plans were issued under Planning Permit PLN19/0221.
9. Planning permit PLN15/0632 was issued, at the direction of VCAT, on 22 September 2016 for:
 - (a) the demolition of existing buildings;
 - (b) the construction of a six storey building above two basement levels;
 - (c) the use of the land for dwellings;
 - (d) a reduction of car parking requirements; and
 - (e) a waiver of the loading bay requirements;
 in accordance with the endorsed plans at 142-144 Johnston Street and 3 Chapel Street Fitzroy.
10. The development included two ground floor retail (shop/showroom) tenancies in addition to dwellings at first floor and above. The development has since been constructed and represents the existing on-site conditions.
11. Planning Permit SP18/0027 was issued by Council for a 32-lot subdivision at Nos. 142-144 Johnston Street Fitzroy. The subdivision was subsequently finalised and new titles created on 11 October 2018. The new lots were assigned addresses as follows:
 - 142 Johnston St – former subject site (front ground floor commercial tenancy)
 - 270 Young St – subject site (rear ground floor commercial tenancy).
 - Units 101 – 502 / 272 Johnston Street Fitzroy – 30 residences over levels 1 – 6.

12. Planning Permit PLN19/0221 was issued by Council on 28 April 2020 for *Use of the land as a restricted recreation facility (fitness studio) and construction and display of business identification signage* at No. 142 Johnston Street, Fitzroy. No plans were endorsed under this planning permit.

Background

13. The application was received by Council on 1 December 2020 and additional information was received on 10 February 2021. The application was advertised on 23 February 2021 and twelve (12) objections and fourteen (14) support letters were received.
14. Whilst the advertising process was occurring, Council sought and received external referral comments from Acoustic Consultants (SLR).

The Proposal

15. The proposal is to amend the current planning permit to locate the fitness studio to the rear commercial tenancy at No. 270 Young Street, increase the number of patrons, amend the hours of operation and construct and display signage. Further details of the amended proposal are as follows (as shown on the decision plans and reports):

16. Amend the planning permit address from No. 142 Johnston Street, Fitzroy to No. 270 Young Street, Fitzroy.

17. Amend Condition 5 (patron numbers) from:

No more than 12 patrons are permitted to participate in classes/fitness activities at any one time, without the prior written consent of the Responsible Authority.

To:

*No more than **39** patrons are permitted to participate in classes/fitness activities at any one time, without the prior written consent of the Responsible Authority.*

18. Amend Condition 7 (hours of operation) from:

Except with the prior written consent of the Responsible Authority, the use authorised by this permit may only operate between the following hours:

- (a) *Monday to Friday: 5:30am – 10:00pm;*
- (b) *Saturday: 6:30am – 7:00pm; and*
- (c) *Sunday: 8:00am – 7:00pm.*

To:

Except with the prior written consent of the Responsible Authority, the use authorised by this permit may only operate between the following hours:

- (a) *Monday to Friday: 5:30am – **8:00pm**;*
- (b) *Saturday: 6:30am – 7:00pm; and*
- (c) *Sunday: 8:00am – 7:00pm.*

19. Plans show entry is from Young Street (from the existing access), with the front portion of the tenancy to be utilised for ancillary areas (reception, a retail area, changerooms, bike parking, DDA compliant WC and waiting area).

20. The workout area (84.8sqm of floor area) is located to the east of the reception area and backs onto the stairs, bicycles and service area of the subject building. All bicycles are contained in this room which has no windows. To the south of the workout area are the change rooms and reception area.

21. The fitness studio will provide fitness cycling classes with 15 minute gaps between classes; and uses a variety of stationary (magnetic resistance) bicycles. Background music would be provided and the instructor would use a microphone.
22. Two car parking spaces would be utilised within the basement car park, for full-time staff associated with the fitness studio. Three wall-mounted bicycle racks are shown in the foyer area near the change rooms.
23. Advertising signage is proposed as follows:

	Type	Location	Area
Sign 1	Internally illuminated business identification sign of 5mm acrylic lettering (LED 800 Lumens with dimmable function)	Young Street awning fascia	0.834sqm
Sign 2	Vinyl decal sign of 50% transparency	Young Street central window	7.35sqm
Sign 3	Opaque vinyl decal sign	Young Street window adjacent tenancy entrance	6.76sqm
Sign 4	Vinyl decal sign of 50% transparency	Chapel Street east window	7.10sqm

Existing Conditions

Subject Site

24. For clarity the tenancy will be referred to as the subject site, with the building within which it is contained referred to as the subject building.
25. The subject building is located on the south side of Johnston Street, on the east side of Young Street and is bound by Chapel Street to the south. The subject building is a 6 storey mixed use building (plus basement), with a maximum overall height of 20.27m (excluding the lift overrun) and street-wall height of 11.47m (above natural ground level (NGL)).
26. The subject site is located at the south-west corner of the building at ground floor, with a frontage to Young Street. The subject site (Tenancy 2) has an area of 198sqm, and is currently vacant. The subject site is accessed directly from Young Street (there is no internal access from the subject building into Tenancy 2).
27. The front commercial tenancy (Tenancy 1) is currently used as an office; while all five (5) levels above the ground floor tenancies contain apartments which are accessed via the foyer from Young Street.
28. The subject site is described on title as Lot 2 on Plan of Subdivision 801044P. This title incorporates Tenancy 2 and two car spaces at the north end of Basement Level 1. There is no caveat on title.



Figure 1 - Subject site viewed from Johnston St (corner Young Street) - March 2020. Source: Google Streetview.



Figure 2 - Subject site (Tenancy 2 entrance) viewed from Young Street, looking toward Chapel Street - March 2020. Source: Google Streetview.



Figure 3 - Subject site (Tenancy 2 entrance) viewed from Young Street, looking toward Johnston Street - March 2020. Source: Google Streetview.

Surrounding Land

29. The subject site (and subject building) is located within Commercial 1 Zoned land associated with the Johnston Street Neighbourhood Activity Centre, and the subject building fronts an arterial road (Johnston Street). Along Johnston Street is a predominance of commercial premises, including food and drink premises, entertainment venues, shops, bulky retail and offices. There are also a number of residences fronting Johnson Street including dwellings on single lots, and more recently constructed apartment-style dwellings. In the smaller side streets, away from Johnston Street, the commercial uses transition to predominantly residential land use.
30. Commercial premises fronting Johnston Street typically have some form of business identification signage along the Johnston Street frontage, in a variety of forms including internally illuminated signs hanging from the underside of verandahs, window decals and signs applied to verandah fascias.
31. Properties immediately to the south and west of the subject site (on the opposite side of Chapel and Young Streets respectively) are former commercial buildings which are now used as dwellings.
32. The site is also located between two designated Major Activity Centres (Brunswick Street – 95m to the west and Smith Street – 270m to the east) which are both vibrant commercial hubs.
33. The locality is very well serviced by various modes of public transport including bus routes along Johnston Street, and tram routes along Brunswick Street and Smith Street.

34. To the north of the subject site is Johnston Street, a four-lane arterial road. Beyond this is a 24-hour BP service station. To the west of the service station is “The Night Cat”, a late night live music nightclub; and to the east of the service station is a furniture sales showroom.
35. To the east of the subject building (northern portion) is a Victorian-era single-storey brick dwelling, the westernmost of a row of four similar dwellings (the two easternmost with a double-storey component at the rear) all of which are located within the Commercial 1 Zone and front Johnston Street. The dwellings have ground level secluded private open space at the rear. The immediately abutting dwelling is constructed to the shared boundary with the subject building for the depth of the building.
36. To the east of the subject building (central portion) is a right-of-way at the rear of the dwellings fronting Johnston Street. On the south side of this right-of-way is a recently constructed four storey building. The building contains five dwellings with roof terraces (approved under planning permit PLN15/0334) and is addressed as No. 3 Hertford Street.
37. To the south of this building are two single-storey, double-fronted brick Victorian-era dwellings fronting Chapel Street (No. 7 & 9 Chapel Street).
38. To the south of the subject site is Chapel Street, a narrow two-way street. On the south side of Chapel Street are dwellings (two, single-storey warehouse conversions and three, three-storey contemporary townhouses with roof terraces).
39. To the west is Young Street, a narrow one-way street (south to north), beyond which are two properties - a single-storey circa 1960s showroom/warehouse fronting Johnston Street (No. 134 Johnston Street) and a double-storey brick building which appears to contain offices at ground floor and a dwelling above (No. 121-125 Victoria Street). The building has its primary pedestrian entry from Victoria Street (southern frontage).



Figure 4 – Subject site and surrounds (arrow showing entrance to subject site) Source: Council GIS Aerial Imagery. Date: 8 January 2021.

Planning Scheme Provisions

Zoning

40. The subject site is zoned Commercial Use Zone 1 (C1Z). The following provisions apply:
- (a) Pursuant to Clause 34.01-1 a planning permit is required to use the land for a restricted recreation facility.
 - (b) Pursuant to Clause 34.01-9, advertising sign requirements are at Clause 52.05. This zone is in Category 1.

Overlays

41. The subject site is affected by the Heritage Overlay (Schedule 334 – South Fitzroy Precinct). The following provisions apply:
- (a) Pursuant to Clause 43.01-1, a planning permit is required to *construct or display a sign*.
 - (b) Pursuant to Clause 43.01-4, an application for *construction or display of a sign* is exempt from the Notice Requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64 (1), (2) and (3) and the review rights of Section 82(1) of the Act.
42. The subject site is affected by the Design & Development Overlay (Schedule 10 - Johnston Street Precinct - West of Smith Street).
- (a) Pursuant to Clause 43.02-4 sign requirements are at Clause 52.05 unless otherwise specified in a schedule to this overlay. There are no requirements for signs specified at Schedule 10 to the Overlay.
43. The subject is affected by the Environmental Audit Overlay. The following provisions apply:
- (a) Pursuant to Clause 45.03-1: Before a sensitive use (residential use, child care centre, pre-school centre or primary school) commences or before the construction or carrying out of buildings and works in association with a sensitive use commences, either:
 - (i) A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or
 - (ii) An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use
44. The use is not a sensitive use and therefore this overlay does not apply. Further a planning permit is not triggered under this control.
45. The subject site is affected by the Development Contribution Plan Overlay (Schedule 1) clause 45.06. This overlay requires developers to pay a contribution towards essential city infrastructure such as roads and footpaths, as well as community facilities. However, this does not apply to the construction or carrying out of works specifically excluded by the Schedule to the Overlay, including renovations or alterations to an existing dwelling.
46. The proposed use of the site does not increase the commercial floor space, being located within Tenancy 2; a commercial tenancy was already constructed prior to the gazettal of this overlay. As the application does not construct additional commercial floor space, the property is exempt from development contribution in accordance with Section 4 of Schedule 1 to Clause 45.06.

Particular Provisions

Clause 52.05 - Advertising signs

47. Category 1 at Clause 52.05-11 states that a business identification sign does not require a planning permit where the following conditions are met:
- (a) *The total display area of all signs to each premises must not exceed 8 sqm. This does not include a sign with a display area not exceeding 1.5 sqm that is below a verandah or, if no verandah, that is less than 3.7 m above pavement level.*

48. The proposed total display area of all signs to the premises is 22.04sqm, and all signs are more than 1.5sqm, except the internally illuminated sign. Therefore, a planning permit is required for the proposed advertising signs.
49. An internally illuminated sign does not require a planning permit where the following conditions are met.
- (a) *The total advertisement area to each premises must not exceed 1.5 sq m.*
 - (b) *No part of the sign may be above a verandah or, if no verandah, more than 3.7 m above pavement level.*
 - (c) *The sign must be more than 30 m from a residential zone or pedestrian or traffic lights.*
50. The proposed internally illuminated business identification sign requires a planning permit under this provision.

Clause 52.06- Car parking

51. Pursuant to Clause 52.06-2, before a new use commences or the floor area of an existing use is increased or the measure specified in Column C of Table 1 to Clause 52.06-5 for that use is increased, the required car parking spaces must be provided on the land. Where a use is not specified in the table to clause 52.06-5, an adequate number of car spaces must be provided to the satisfaction of the responsible authority.
52. As the proposed use is not listed in the table to clause 52.06-5, car parking is to the satisfaction of the Responsible Authority.

Clause 52.34 – Bicycle facilities

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

Use	Statutory Requirement	No. Required	On-site Provision	Reduction requested
Minor sports and recreation facilities	1 space to each 4 employees.	1	3	N/A
	1 visitor space to each 200m ² of net floor area.	1		
Total		2	3	N/A

54. The proposal exceeds the minimum number of bicycles required.

[General Provisions](#)

Clause 65 - Decision Guidelines

55. 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 \(PPF\)](#)

56. Relevant clauses are as follows:

Clause 13.05-1S (Noise abatement)

57. The objective is *to assist the control of noise effects on sensitive land uses; while the strategy is to ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.*

Clause 13.07-1S (Land use compatibility)

58. The objective is *to safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects.*

Clause 17 (Economic development)

Clause 17.02-1S (Business)

59. The objective is *to encourage development which meet the communities' needs for retail, entertainment, office and other commercial services.*

Clause 18.02-1S – (Sustainable personal transport)

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

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

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

Clause 18.02-2S (Public Transport)

62. The objective is *to facilitate greater use of public transport and promote increased development close to high-quality public transport routes.*

Clause 18.02-2R (Principal Public Transport Network)

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

Clause 18.02-4S (Car Parking)

64. The objective is *to ensure an adequate supply of car parking that is appropriately designed and located.*
65. A relevant strategy is *to protect the amenity of residential precincts from the effects of road congestion created by on-street parking.*

Local Planning Policy Framework (LPPF)

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

Clause 22.02 – Development guidelines for sites subject to the heritage overlay

67. This policy applies to all permit applications for advertising signs or for development which incorporates an advertising sign, with the relevant objectives as follows;
- (a) *To allow for the promotion of goods and services.*
 - (b) *To ensure that signs contribute to and do not detract from the visual amenity of commercial precincts, activity centres and residential areas.*
 - (c) *To minimise visual clutter.*
 - (d) *To ensure that signs are not the dominant element in the streetscape.*
 - (e) *To protect and enhance the character and integrity of places of heritage significance.*
 - (f) *To protect major view corridors and vistas.*
 - (g) *To maintain vehicular and pedestrian safety.*

Clause 22.04 (Advertising Signs)

68. The relevant policy is:
- (a) *Signage should be well designed and located to respect the streetscape or host site. The placement and quality of advertising signs should also contribute positively to the character of an area.*
69. The relevant objectives are:
- (a) *To allow for the promotion of goods and services.*
 - (b) *To ensure that signs contribute to and do not detract from the visual amenity of commercial precincts, activity centres and residential areas.*
 - (c) *To minimise visual clutter.*
 - (d) *To ensure that signs are not the dominant element in the streetscape.*
 - (e) *To protect and enhance the character and integrity of places of heritage significance.*
 - (f) *To maintain vehicular and pedestrian safety*

Clause 22.05 (Interface Uses Policy)

70. The relevant policy is:
- (a) *New non-residential use and development within Business and Mixed Use and Industrial Zones are designed to minimise noise and visual amenity impacts upon nearby, existing residential properties.*

Incorporated Documents

71. Appendix 8 to the City of Yarra Review of Heritage Areas, 2007 identifies the subject site as being “Not-contributory” to the South Fitzroy Precinct (as identified by Schedule 334 to the Heritage Overlay).

Advertising

72. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 98 letters sent to surrounding owners and occupiers and by three signs displayed on site; one at the Johnston Street frontage, one on the Young Street façade near the subject site entrance, and the other on the rear Chapel Street frontage.
73. Twelve (12) objections were received to the application and can be summarised as:
- (a) Off-site amenity impacts (noise and sign lighting);
 - (b) Car parking, traffic impacts and pedestrian safety;
 - (c) Issues during construction (noise, traffic); and
 - (d) Impacts to mental health and community of residents within apartment building.
74. Fourteen (14) support letters were received to the application and can be summarised as:
- (a) Cyclebar (gym) is desired in the local area; and
 - (b) Would like to use the Cyclebar (gym).

Referrals

Internal Referrals

75. The application was referred to Council's Strategic Transport unit and Traffic and Civil Engineering unit. Both were supportive of the proposal.

Acoustic Consultant (SLR Acoustics)

76. The acoustic report and acoustic floorplan, (together with proposed plans, and management plan) were referred to external acoustic consultants SLR who were supportive of the proposal subject to conditions.
77. Referral comments have been included as attachments to this report.

Internal Referrals

Strategic Transport Unit

78. Council's Strategic Transport Unit provided referral comments in relation to the bike parking arrangements within the fitness studio during the original permit application process. The recommendation from the Strategic Transport Unit was that a permit condition require the wall mounted bicycle rack be spaced at 500mm as per AS2890.3 or otherwise to the satisfaction of the responsible authority.
79. The decision plans for the proposed amendment show an annotation which states the bicycle racks (to be installed internally within the premises) will be spaces 500mm apart. As the decision plans for the amendment satisfy both the number of bicycle spaces required, and the spacing requirements as per the permit condition, the amended application was not referred to the Strategic Transport Unit.

Acoustic Consultant (SLR Acoustics)

80. The acoustic report and acoustic floorplan, (together with proposed plans, and management plan) were referred to external acoustic consultants SLR, who were supportive of the revised proposal. All comments have been included as attachments to this report.
81. Referral comments have been included as attachments to this report.

OFFICER ASSESSMENT

82. The considerations for this application are as follows:
- (a) Policy and strategic support;

- (b) Use;
- (c) Advertising signs;
- (d) Car parking, bicycle parking and traffic;
- (e) Objector concerns; and
- (f) Planning Permit changes.

Policy and Strategic Support

83. The amendment proposal for use of the premises as a gym is clearly supported by both State and local policies, having regard to clauses 13.07, 17.02, and 22.05 particularly as the site is located between the Brunswick Street the Smith Street Major Activity Centres, and is located within the Johnston Street Neighbourhood Activity Centre.
84. The proposed use of the site provides a personal service within the local community, for the local day-to-day needs of residents and would contribute to the economic growth of the activity centre as stated in the Municipal Strategic Statement. The use is also supported given the planning permit previously considered the commercial zoning of the land and its location within an activity centre. As can be seen by the zoning map below, the entirety of the subject building and adjacent land is zoned Commercial 1 (coloured purple). With residentially zoned land (Neighbourhood Residential Schedule 1 and General Residential Schedule 1) starting further to the south of Chapel Street (coloured pink).

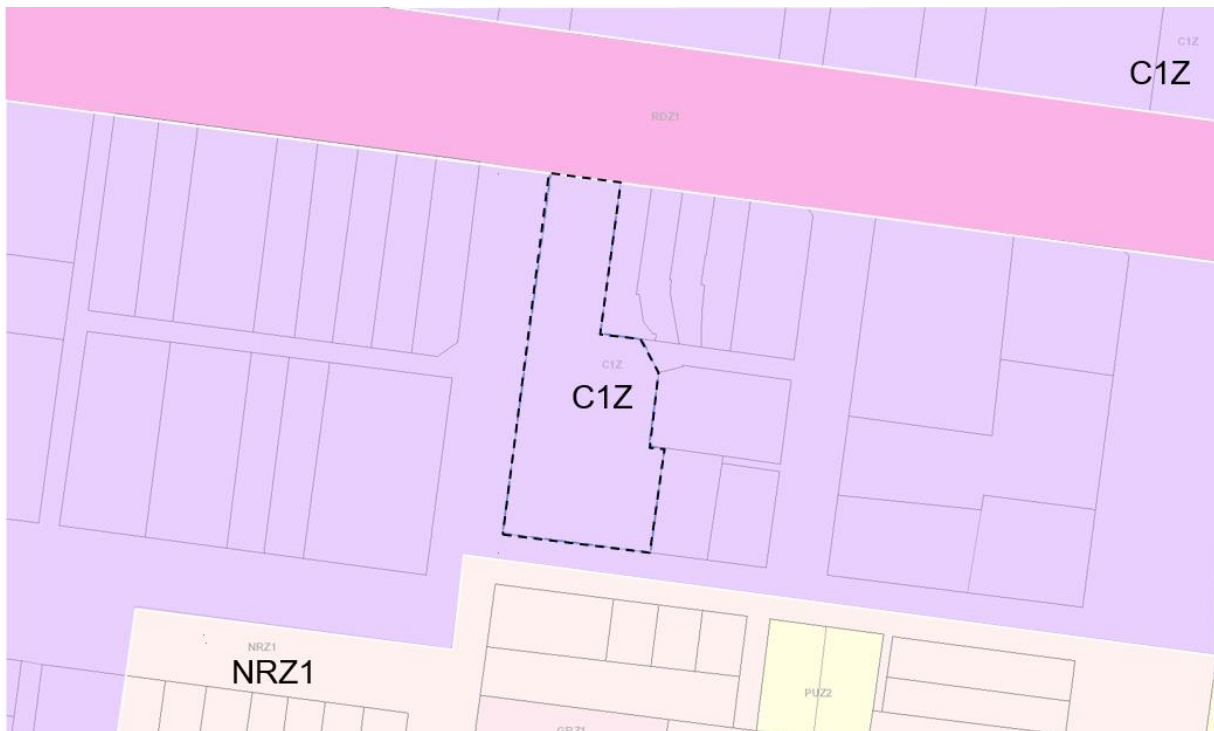


Figure 5 – Zoning map showing subject building outlined, located in Commercial 1 zone (Source: Department of Environment, Land, Water and Planning; <https://mapshare.vic.gov.au/vicplan/>)

85. Commercial 1 zone purposes include:
- (a) *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*
 - (b) *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*
86. The issuing of the initial development on site (PLN15/0632) showed a range of uses including two retail/shop/showroom tenancies at ground floor, and dwellings above. Under the commercial zoning, the dwellings required a planning permit and not the retail tenancies. The continued use of these commercial areas has not been altered, nor the floor area increased.

As such commercial activity within this area at ground level is expected and supported in creating a vibrant mixed use centre.

87. The consideration of a ground level tenancy for a fitness studio was also previously considered under PLN19/0221. As stated in the previous officer report, it was found that:

The proposed use is generally considered to be a good fit with the relevant purposes of the zone. The nature of the activities carried out on site (a variety of fitness classes) would provide a service for residents in both the immediate and wider area. The proposed use would contribute to the overall vibrancy of the area and the site is well-positioned between two major activity centres to attract multipurpose trips.

88. These considerations have not changed. However, the scale of the proposal has increased in numbers (from 12 to 39) and been located closer to the residentially zoned land to the south. Therefore close consideration of off-site amenity impacts must be undertaken and will be discussed in more detail later in the report. However it is sufficient at this stage to state that the use is supported by both the commercial zoning and location within an activity centre.

Use

89. Assessment of the proposed use will be guided by relevant decision guidelines of the Commercial 1 Zone and the Interface Uses Policy at clause 22.05 of the Scheme.

90. As stated earlier in the report, the purpose of the Commercial 1 Zone includes:

- (a) *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*
- (b) *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*

91. The proposed use is generally considered to be a good fit with the relevant purposes of the zone. The nature of the activities carried out on site (cycling fitness classes) would provide a service for residents in both the immediate and wider area. The proposed use would contribute to the overall vibrancy of the area and the site is well-positioned between two major activity centres to attract multipurpose trips and is located in a part of the building that has already been set aside for commercial activity (within Tenancy 2).

92. The location of the business at ground level and with its own separate entrance (i.e. not having to go through the common areas of the building) is an appropriate response. While the use is located in a part of the building most suited to the commercial activity, the potential amenity impacts of the use upon neighbouring residential properties will be discussed in more detail below.

93. The remainder of the assessment will be structured around the following relevant decision guidelines of the Commercial 1 Zone, with reference to the Interface Uses Policy where applicable.

The interface with adjoining zones, especially the relationship with residential areas

94. The subject site itself does not adjoin any residential zoned land, however is located immediately north of residential zoned land (Neighbourhood Residential Zone Schedule 1) which includes the southern half of Chapel Street (with a number of dwellings located opposite the subject building's basement car park entry as well as opposite the subject site). The nearest residences to the subject site are located within the Commercial 1 Zone as follows:

- (a) Apartments located within the same building (addressed as No. 272 Young Street) including those directly above the subject tenancy at first floor;
- (b) The east-adjointing single storey dwelling fronting Johnston Street to the east (No. 146 Johnston Street).

95. Other nearby residences (also within the Commercial 1 Zone) are:
- (a) The townhouse development at No. 3 Hertford Street.
 - (b) The first floor dwelling located opposite the subject tenancy on the western side of Young Street (No. 121-125 Victoria Street).
 - (c) Dwellings on the northern side of Chapel Street (No. 7 and 9)
96. Clause 22.05 (Interface Uses Policy), states that while the mix of land use creates “a diverse and interesting inner city character” it may also create conflict at the interface between the land uses, with areas of concern including
- (a) Noise;
 - (b) Visual impact and appearance;
 - (c) Overlooking;
 - (d) Odour and air emissions;
 - (e) Light spill;
 - (f) Loading and unloading;
 - (g) Rubbish removal and storage; and
 - (h) Construction noise.
97. Given that the tenancy already exists, matters relating to visual impact and appearance, and to construction noise are not relevant. However the remaining matters will be discussed below.
98. The proposal to use Tenancy 1 (addressing Johnston Street) as a gym was considered under the original planning permit. The original officer’s report discussed the use of Tenancy 1 as a gym and the potential amenity impacts of the use as follows;
99. *Other light industrial / commercial uses within the immediately surrounding area (including the other commercial ground floor (retail) tenancy in the same building) would not be particularly sensitive to amenity impacts such as lightspill, noise or additional pedestrian or vehicle traffic to the area associated with the use.*
100. *Clause 22.05 of the Scheme provides more specific guidance in relation to potential impacts on nearby residences, with a focus on noise (from music and patrons), lightspill, overlooking and waste.*
101. *The site is a ground floor tenancy and thus overlooking is not relevant.*
102. In relation to overlooking, the use of Tenancy 2 as a gym would not create any concern as this tenancy is also on the ground floor.
103. In relation to lightspill, the proposed cycle studio is not expected to adversely impact nearby dwellings as the only light emitted from the site would be through ground floor glazing and the illuminated sign to Young Street.
104. The property to the west is located in the Commercial 1 zone and therefore does not require specific consideration under the above decision guideline. Similarly the dwellings within the subject building are also zoned Commercial 1 and are not afforded the same consideration as if they were in residentially zoned land. However impacts from the proposed business should be considered within this context. The building on the opposite side of Young Street has commercial areas at the ground floor, and residential space at the upper level and therefore the only impact to the residential component would be from the internally illuminated sign. The applicant has agreed to a condition to turn off the illuminated sign (Sign 1) outside of business hours (as outlined earlier in response to concern raised by objectors. This would also address issues of any light spill from the sign to the first and second floor windows and balconies of the subject building above the tenancy. Given that the hours of operation would be limited to 8.00pm (latest) the impact of the illuminated sign would be minimal. A condition will be added to require this.

105. The nearest residentially zoned land is located to the south of Chapel Street. The ground level residence to the south that faces the subject site has no north-facing windows, therefore there will be no impact on this property from light. It is also worth noting there is a streetlight on the corner of Chapel Street and Young Street which already illuminates this section of the street; and the dwellings above the subject site would be illuminated at night which would also contribute to lighting in the area. The ground floor tenancy is not located opposite the townhouses further east and therefore would have no lighting impact to these properties.
106. In relation to waste management, the use would not be expected to generate significant quantities of waste. The gym applicant has confirmed in their written submissions that the waste management processes will be consistent with the endorsed waste management plan associated with planning permit PLN15/0632 (condition 8) for the overall building. Condition 15 of the current planning permit requires that waste be collected by private vehicle. There will be no change to this condition.
107. Similarly a condition is already on the planning permit regarding deliveries and collection of goods. This will not be altered by the proposal.
108. The remaining issue relates to noise. Potential noise sources associated with the proposed use include:
- (a) noise generated internal to the site (e.g. patrons, music, and staff (including microphones)); and
 - (b) noise generated external to the site (e.g. patrons and vehicles).
109. The applicant's Acoustic Report (as amended, dated February 2021) assessed these noise sources and found that, subject to some key recommendations, noise emissions would meet SEPP-N1, SEPP-N2 and relevant sleep disturbance criteria to the nearest noise sensitive receivers (apartments within the same building (Level 1, No. 272 Johnston St); No. 146 Johnston Street); No 266 Chapel Street; and No. 121-125 Victoria Street). These recommendations include a range of measures - physical, technological and behavioural (including adherence to the Management Plan) with key recommendations summarised as follows:
110. Control of external noise sources (patrons and vehicle noise) are addressed through the management plan and these include;
- (a) Instruction of patrons and staff not to park along Chapel Street during night-time hours (10pm to 7am) to reduce likelihood of sleep disturbance to residences from car doors closing (item 11 of management plan);
 - (b) Erection of signs at entries and exits of studio to instruct patrons not to generate excessive noise (item 12 of management plan);
 - (c) Staff to monitor patron behaviour to ensure noise is kept to a minimum, in particular, when entering or leaving the facility (item 10 of management plan).
 - (d) Control of internal noise sources (music, patrons, staff and equipment) by;
 - (i) Doors and window of the gym to be kept closed at all times (other than when patrons enter or exit – item 9 of management plan).
 - (e) Acoustic treatments undertaken to the building before use commences (as set out in the acoustic report), including:
 - (i) Two layers of plasterboard installed above the tenancy on solid joists fixed to the concrete slab, to form a 150mm gap between the plasterboard and the building structure, to recommended specifications,
 - (ii) Construction of a secondary, perforated ceiling within all areas of the gym tenancy to recommended specifications,
 - (iii) Walls of the cycle studio (internal walls) to be lined with acoustic wall covering (minimum NRC of 0.4),
 - (iv) Floor finish in studio area should be REGUPOL Everoll Core (4mm thick),

- (v) Internal walls between studio and reception constructed of 2 layers of 13mm fire rated plasterboard with cavity infill of 75mm, glasswool,
- (vi) Treatment to timber frame above the entry door (internal),
- (vii) Glazing to the windows at the adjacent noise sensitive receivers – 5mm annealed glass,
- (viii) Treatments to ceiling penetrations and other ductwork, including between tenancies,
- (ix) Acoustic sealants applied to external doors and operable windows (page 8 of acoustic report)
- (x) Door between studio and reception area constructed of 10.76mm laminated glass with compressible acoustic seals, to remain closed when session is in progress,
- (f) Ongoing internal noise levels limited to LAeq≤45 dBA (measured in the nearest bedroom) by the following methods:
 - (i) Provision of a sound limiter to be installed to continuously measure the sound pressure level in the cycle studio, and to cut the power to the system amplifier if it exceeds the values detailed in page 8 of the report;
 - (ii) Conducting of an internal and external compliance noise emission measurement during using pink noise signal to ensure compliance is met;
 - (iii) Sound limiter to be locked once compliance measurements have been carried out, so settings cannot be changed,

111. The Acoustic Report (as amended) has been supported by Council's Acoustic Consultant, with a condition to require a post occupancy acoustic report to ensure the measures achieve the outcomes specified. A condition will require a post occupancy acoustic report.

112. The original planning officer's report made the following observations in relation to a gym use in Tenancy 1 of No. 142 Johnston Street;

In relation to potential noise impacts, the dwellings most affected by the proposed use (apartments above the subject tenancy and the dwelling immediately to the south) are also located in the Commercial 1 Zone and in the inner city, within a Neighbourhood Activity Centre and between two Major Activity Centres. It is commonly accepted that it is not reasonable for dwellings located in Commercial zones and Activity Centres to expect the same level of amenity as those in residential zones. A balance between protecting residential amenity and facilitating appropriate commercial uses which contribute to the vibrancy of these areas must be found.

113. The proposed amendment to relocate the gym use to Tenancy 2, toward the rear of the building at No. 142 Johnston Street, similarly impacts apartments directly above the tenancy, in the same building, and residential properties to the south, east and further west. The residential properties within the building, and to the east and west are located within the Commercial 1 Zone, while the residential properties to the south are located in a Neighbourhood Residential Zone, directly behind the Neighbourhood Activity Centre of Johnston Street.

114. Despite the relocation to the rear tenancy and closer proximity to residentially zoned properties, the principle objective to find the balance between facilitating appropriate commercial uses and protecting residential amenity is still applicable. The residential properties in this area cannot reasonably expect the same level of amenity as in residential areas located away from neighbourhood activity centres. The management plan and acoustic report outline a number of measures taken to mitigate the potential noise impact of the gym use at the site upon the adjoining residential properties, and ensure noise generated by the use is limited, although not entirely eliminated.

115. In regard to operating hours, the fitness studio is proposing to reduce its weekday closing hours from 10.00pm to 8.00pm. There would be no change to the weekend operating hours (which closes at 7pm), and no change to the approved opening hours. The operating hours in the evening therefore do not encroach into the times where more stringent “night time” standards (ie. later than 10pm) are applicable under SEPP N-1 and SEPP N-2 which is indicative of times when residences would be more sensitive to noise.
116. While the early morning starts 5:30am on weekdays; 6:30am on Saturday and 8:00am on Sundays are within the more stringent “night time” period of the SEPP-N1 (except on Sundays) and SEPP-N2, the range of measures in place for controlling external and internal noise sources are considered to be sufficient to ensure that the venue is at low risk of causing a noise disturbance.
117. A correction is required to the acoustic report as the hours of operation listed in the acoustic report for weekdays are 05:30am – 10:00pm. This contradicts the proposed hours as shown in the management plan; 05:30am – 8:00pm. A condition will require the acoustic report be amended to reflect the proposed operating hours.
118. The number of patrons would be limited to a maximum of 39 (increase of 27 from that previously approved). To limit the impact of a potential 78 people at one time particularly in the early morning, there would be a fifteen minute period between classes (also stipulated in the Plan of Management). In addition, the management plan identifies that there would be a maximum of 5 classes on any weekday, with 2 classes each on Saturday and Sunday. Given the limited number of classes, this would also reduce the impact of patrons coming and going. As such a condition will require compliance with the management plan.
119. Standard conditions on the planning permit will be maintained so that the use does not detrimentally affect the surrounding area through transport of goods, appearance of the building and emissions (as stipulated at clause 34.01-2 of the Scheme).
120. In summary, the proposal has been designed to minimise impacts to residential properties both within the commercially zoned subject building, and to surrounding residentially zoned dwellings.

The effect that existing uses may have on the proposed use.

121. As the existing uses surrounding the site are either commercial or residential it is not anticipated that these uses would adversely impact operation the proposed gym through noise, emissions or other activities. The surrounding uses have not significantly changed since the issue of the original permit, except to note that Tenancy 1 (fronting Johnston Street) is now being used as an office. As assessed above, the proposed use in Tenancy 2 is considered to be compatible with the existing uses in the area subject to conditions.

The effect of traffic to be generated on roads.

122. Traffic will be discussed in the following section.

Car parking, bicycle parking and traffic

Car parking

123. Clause 52.06 is the main consideration guiding assessment of car parking provision. As outlined earlier, car parking for the proposed use must be provided to the satisfaction of the responsible authority (no specified rate in the Scheme). Although there are no decision guidelines at clause 52.06 for determining whether car parking provision is satisfactory, the decision guidelines for car parking reductions are considered to provide a framework for relevant factors and will be used in this assessment.

124. During the original planning application process for the fitness studio, Council's Engineers found that the provision of two car parking spaces for staff would be adequate and "should not adversely impact on existing parking conditions in the area". Council's Engineering Unit provided comment on the proposed relocation of the recreation facility to Tenancy 2, which will still provide two car parking spaces for staff within the basement car parking.
125. In support of the proposed parking arrangements, the following is noted:
- (a) The site is within walking distance of several public transport options, including:
 - (i) Johnston Street bus services (50 metres);
 - (ii) Brunswick Street tram services (100 metres);
 - (iii) Smith Street tram services (390 metres); and
 - (iv) Nicholson Street tram services (410 metres);
 - (b) The site has good pedestrian and cycling connectivity;
 - (c) The premises would be expected to draw patronage from residents and employees in the immediate surrounds located within walking or cycling distance of the site;
 - (d) Patrons to the site are likely to combine their visit with other activities within in the area;
 - (e) The provision of bicycle spaces (3) satisfies the requirement under clause 52.34 of the Scheme and encourages patrons to cycle to the site which also has good access to the bicycle network;
 - (f) The surrounding street network is generally restricted to short term parking (1-2 hours) at least during weekday business hours which will encourage turnover of spaces.
 - (g) There are significant areas of permit-only parking in the surrounding street network which would reduce competition for on-street parking with residents, including:
 - (i) The southern side of Victoria Street;
 - (ii) The northern side of Victoria Street (outside of weekday business hours during which time 1 hour parking restrictions apply);
 - (iii) The northern side of Chapel Street, immediately adjacent the subject building.
 - (h) For morning and evening classes (i.e. before 7am and after 7pm), there would be less competition with other surrounding businesses for car parking.

Bicycle Parking

126. As mentioned earlier in the report, the bicycle parking provided satisfies the requirement under the Scheme and is a positive aspect of the proposal. Condition 1(c) of the original permit required the wall-mounted bicycle racks to be spaced at least 500mm apart (as per the relevant Australian Standard). The decision plans for this amendment show the wall-mounted bicycle racks appropriately spaced, as per the existing permit condition 1(c) and as supported by Council's Strategic Transport Unit.

Traffic

127. A use of this nature (gym/recreation facility) with restricted patron numbers are likely to interest residents or employees of neighbouring businesses in the immediate vicinity. These patrons are unlikely to drive to the subject site, as they would either reside within walking distance or would combine their routine travel to work (via public transport) with their gym visit.
128. Given the maximum number of staff (4), and the limited number of classes per day (between 2-5), it is anticipated the proposed use would not substantially impact traffic in the area.
129. Overall, it is considered that the provision of car and bike parking facilities is sufficient for the premises and will not adversely impact the amenity of the surrounding area.

Advertising signs

130. The proposed signs are consistent with the heritage policy at clause 22.02 and advertising sign policy at clause 22.04 of the Scheme. Relevant objectives of these clauses require consideration of the number of signs, prevention of visual clutter, that signs not obscure important views or vistas, that illuminated signs not create light spill onto adjacent properties, nor cause hazard or nuisance to vehicular traffic.

131. Generally, the proposed signs are integrated into the design of the host building and are appropriate to the scale of the building. In particular, the signs will not conceal any "contributory" heritage fabric, being associated with a recently constructed building that is graded as "not contributory" to the South Fitzroy Heritage Precinct. The signs would not interfere with any street signs, or traffic lights, being located well away from any traffic lights and set back from the kerb.
132. The illumination of the sign is not supported by policy at clause 22.04 for heritage areas, however given the contemporary building the sign is located on, in this context it is considered appropriate.
133. Lightspill is not considered to be an issue due to the only illuminated sign will be internally lit (rather than externally lit).
134. However as discussed earlier in the report, the applicant has agreed to a condition which requires the illumination within Sign 1 to be turned off outside business hours. Given that the site is located adjacent to an area with a high concentration of commercial premises and that the illuminated sign is located adjacent to a streetlight (on the corner of Chapel and Young Streets), the illuminated sign can be supported. Standard conditions will ensure the signage is not flashing or intermittent, and the remaining signs continue to be non-illuminated.
135. The proposed vinyl adhesive (signs 2 and 3) to be applied to the Young Street windows north of the entrance, are shown as 50% opacity (sign 2) and opaque (sign 3). These two signs are proposed to cover the full height and width of the windows and will therefore limit interaction with the street and passive surveillance.
136. In discussed with the applicant, Sign 2 (on Window 1) and Sign 3 (on Window 2) will be at least 75% transparent, thus improving interaction with the street in the reception/entry area of the gym. The current decision plans show these signs as being 50% opacity (Sign 2) and opaque (Sign 3). A condition will require that signs 2 and 3 have a minimum of 75% transparency, to ensure a level of interaction and activation to this street frontage.
137. The acoustic floorplan (as advertised) erroneously shows a notation with an arrow indicating the west window (beside the entry door) will be internally lined with plaster board and glasswool for acoustic treatment. This annotation was originally applied because the bike studio room was to be located against the west (external) wall of the tenancy. The layout of the premises was revised prior to advertising, to locate the bike studio room away from all external walls, as shown on the advertised floor plan and advertised acoustic floor plan.
138. The acoustic report (as advertised) does not propose lining the external walls or windows of the premises (except for a small section of wall directly above the entry door. A condition will require the acoustic floorplan is corrected to remove the erroneous annotation.
139. As the windows will not be internally lined, 2 and 3 can have a minimum of 75% transparency, to ensure a level of interaction and activation to this street frontage, as will be required by permit condition.
140. Overall, together with the conditions as outlined above, the proposed signs are considered to be generally consistent with relevant guidelines and policies and can be supported.

Objector concerns

141. The objector concerns have generally been discussed in the above report as noted below:
 - (a) *Off-site amenity impacts (noise and sign lighting);*
Matters relating to noise are discussed at paragraphs 93-102. Matters relating to illuminated signage are discussed at paragraphs 90-91 and 124-127.

- (b) *Car parking, traffic impacts and pedestrian safety;*
Matters relating to car parking and traffic impacts are discussed at paragraphs 114, 115, and 118 – 120.
- (c) *Issues during construction (noise, traffic);*
Existing permit condition (condition 4) relating to the hours of construction work will remain on the permit, unchanged by this amendment. However the building works are entirely related to the internal fit out, and therefore unlikely to require any road or footpath closures. However any use of the road or footpath would require a Local Laws permit and is not a planning matter.
- (d) *Impacts to mental health and community of residents within apartment building.*
A number of matters were raised in relation to the apartment building. They include the following:
- (i) The impacts of noise to surrounding residences has been discussed at paragraphs 93 – 102.
 - (ii) In relation to the security of the apartment building, the proposed floor plan shows Tenancy 2 has an entrance directly from Young Street into the reception area of the gym, and there is no access between Tenancy 2 and the apartment building foyer, or into the basement car park.
 - (iii) A concern was raised in relation to the lack of bathroom facilities for the proposed use. The provision of bathroom facilities is a building permit process, and not a planning consideration. However there are three toilets and one shower provided within the gym.

Planning Permit changes

142. Given the new considerations as a result of the movement of the tenancy within the building, and changes to the operation of the business, a number of changes are required to the planning permit. These are discussed below.

Planning Permit Address

143. Since the issue of the original permit, the parent building (i.e. No.142 Johnston Street Fitzroy) has been subdivided. The subject site is now known as No. 270 Young Street, Fitzroy. The address on the amended permit will be changed from No. 142 Johnston Street Fitzroy to No. 270 Young Street Fitzroy to reflect this.

Planning Permit Preamble

144. Amended to include the internally illuminated sign from:

Use of the land as a restricted recreation facility (fitness studio) and construction and display of business identification signage,

to:

Use of the land as a restricted recreation facility (fitness studio) and construction and display of internally illuminated business identification signage,

Planning Permit Conditions

Condition 1

145. Due to the change in location, and the revised gym type, the original condition 1 of the permit is no longer relevant to the proposed amended gym use. Condition 1 will be deleted and replaced with a new condition 1 to show the new premises and layout.

146. Condition 1 will be changed from;

Before the use or 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 (received 1 July 2019) but modified to show:

- (a) *A notation on the floor plan indicating that the fitout of the tenancy will be in accordance with the recommendations of the endorsed Acoustic Report at condition 9 of the permit;*
- (b) *Deletion of extraneous notations on basement plans unrelated to planning application (bubbled text);*
- (c) *Notation confirming the wall mounted bicycle racks are spaced at a minimum 500mm.*

To:

Before the use or 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 (dated 8 February 2021) but modified to show:

- (a) *Signs 2 and 3 to be shown as a minimum 75% transparent.*

Condition 5

147. This condition will be changed from:

No more than 12 patrons are permitted to participate in classes/fitness activities at any one time, without the prior written consent of the Responsible Authority.

to:

*No more than **39** patrons are permitted to participate in classes/fitness activities at any one time, without the prior written consent of the Responsible Authority.*

Condition 7

148. This condition will be changed from:

Except with the prior written consent of the Responsible Authority, the use authorised by this permit may only operate between the following hours:

- (a) *Monday to Friday: 5:30am - 10:00pm;*
- (b) *Saturday: 6:30am - 7:00pm; and*
- (c) *Sunday: 8:00am - 7:00pm.*

to:

Except with the prior written consent of the Responsible Authority, the use authorised by this permit may only operate between the following hours:

- (a) *Monday to Friday: 5:30am - **8:00pm**;*
- (b) *Saturday: 6:30am - 7:00pm; and*
- (c) *Sunday: 8:00am - 7:00pm.*

Condition 9

149. This condition refers to the acoustic report provided during the original permit application process. As a new acoustic report has been provided for the new location, condition 9 will be deleted and replaced with a new condition to read;

Before the use commences, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority.

When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Acoustic Report prepared by Bestec dated 9 February 2021, but modified to include (or show, or address):

- (a) *The hours of operation as shown in the Acoustic Report amended to reflect the operating hours as per condition 7 of this planning permit.*
- (b) *The acoustic floorplan annotation corrected to indicate treatments to be undertaken to the (internal) walls of the studio, rather than to the external (west) wall and windows.*

150. Additionally, a new condition will be inserted after Condition 9, which requires acoustic testing and a new acoustic report to be produced after the completion of construction in accordance with the endorsed acoustic report. The condition will read as follows:

Before the use commences and following installation of all acoustic treatments in accordance with the Acoustic Report prepared by Bestec dated 9 February 2021, acoustic testing must be carried out by a suitably qualified acoustic engineer and a Post Construction Acoustic Report must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:

- (a) *Using a pink noise signal to ensure the noise level of the gym (including sound system) does not exceed those levels as recommended by the acoustic report (per condition 9);*
- (b) *Ensuring the sound limiter is installed to continuously measure the sound pressure level in the cycle studio, and to cut the power to the system amplifier if it exceeds the values detailed in the acoustic report (per condition 9);*
- (c) *Ensuring the sound limiter is locked.*

The Post Construction Acoustic Report must assess the compliance of the use and, where necessary, make recommendations to limit the noise impacts in accordance with the advertised acoustic report (per condition 9). Where the Post Construction Acoustic Report finds the noise levels of the use do not satisfy the requirements outlined in the acoustic report (per condition 9), additional works as recommended to ensure compliance with the advertised acoustic report are to be undertaken prior to the use commencing, and an additional Post Construction Acoustic Report must be submitted to and approved by the Responsible Authority.

151. Given the additional condition, condition numbers will be altered as shown below:

Condition 11 (new condition 12)

152. Condition 11 of the existing planning permit refers to a plan of management as relevant to the original gym location. As the gym is to be relocated, and the gym type will also change, the management plan must also be revised. Existing condition 11 will be deleted and replaced with;

Before the use commences, an amended Plan of Management to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Plan of Management will be endorsed and will form part of this permit. The amended Plan of Management must be generally in accordance with the Plan of Management received by Council 15 February 2021, but modified to include (or show, or address):

- (a) *Classes to begin no earlier than 5:45am;*
- (b) *Correct hours of operation, as per Condition 7*
- (c) *Confirmation that waste management will be undertaken in accordance with the endorsed Waste Management Plan associated with planning permit PLN15/0632.*

153. Conditions 12-16 (new conditions 13-17) remain unaltered.

154. New condition 18 inserted to read;

The illuminated awning sign must only be illuminated during business operating hours as per Condition 7.

155. Conditions 17 – 18 (new conditions 19-20) remain unaltered.

156. New condition 21 inserted to read;

Signs 2, 3 and 4 must not be illuminated by external or internal light.

157. Conditions 19 – 20 (new conditions 22 – 23) remain unaltered.

Conclusion

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

RECOMMENDATION

That having considered all relevant planning policies, the Committee resolves to issue an amended Planning Permit PLN19/00221 for use of the land as a restricted recreation facility (fitness studio) and construction and display of internally illuminated business identification signage, at No. 270 Young Street Fitzroy, subject to the following conditions

Planning Permit Preamble

Amended to:

Use of the land as a restricted recreation facility (fitness studio) and construction and display of internally illuminated and business identification signage.

1. **Before the use or 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 (dated 8 February 2021) but modified to show:**
 - (a) **Signs 2 and 3 to be shown as a minimum 75% transparent.**
2. The use and development as shown on the endorsed plans (including location and details of the signs) 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. Within two (2) months of completion of the works, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
 - (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.

4. 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.

Use

5. **No more than 39 patrons are permitted to participate in classes/fitness activities at any one time, without the prior written consent of the Responsible Authority.**
6. No more than 4 staff/instructors are permitted on the land at any one time, without the prior written consent of the Responsible Authority.
7. **Except with the prior written consent of the Responsible Authority, the use authorised by this permit may only operate between the following hours:**
 - (a) **Monday to Friday: 5:30am - 8:00pm;**
 - (b) **Saturday: 6:30am - 7:00pm; and**
 - (c) **Sunday: 8:00am - 7:00pm.**
8. The amenity of the area must not be detrimentally affected by the use, including through:
 - (a) the transport of materials, goods or commodities to or from land;
 - (b) the appearance of any buildings, works or materials;
 - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or
 - (d) the presence of vermin.

to the satisfaction of the Responsible Authority.
9. **Before the use commences, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Acoustic Report prepared by Bestec dated 9 February 2021, but modified to include (or show, or address):**
 - (a) The hours of operation as shown in the Acoustic Report amended to reflect the operating hours as per condition 7.
 - (b) The acoustic floorplan annotation corrected to indicate treatments to be undertaken to the (internal) walls of the studio, rather than to the external (west) wall and windows.
10. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.
11. **Before the use commences and following installation of all acoustic treatments in accordance with the Acoustic Report prepared by Bestec dated 9 February 2021, acoustic testing must be carried out by a suitably qualified acoustic engineer and a Post Construction Acoustic Report must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:**

- (a) **Using a pink noise signal to ensure the noise level of the gym (including sound system) does not exceed those levels as recommended by the acoustic report (per condition 9);**
- (b) **Ensuring the sound limiter is installed to continuously measure the sound pressure level in the cycle studio, and to cut the power to the system amplifier if it exceeds the values detailed in the acoustic report (per condition 9);**
- (c) **Ensuring the sound limiter is locked.**

The Post Construction Acoustic Report must assess the compliance of the use and, where necessary, make recommendations to limit the noise impacts in accordance with the advertised acoustic report (per condition 9). Where the Post Construction Acoustic Report finds the noise levels of the use do not satisfy the requirements outlined in the acoustic report (per condition 9), additional works as recommended to ensure compliance with the advertised acoustic report are to be undertaken prior to the use commencing, and an additional Post Construction Acoustic Report must be submitted to and approved by the Responsible Authority.

- 12. **Before the use commences, an amended Plan of Management to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Plan of Management will be endorsed and will form part of this permit. The amended Plan of Management must be generally in accordance with the Plan of Management received by Council 15 February 2021, but modified to include (or show, or address):**
 - (a) Classes to begin no earlier than 5:45am
 - (b) Correct hours of operation, as per Condition 7
 - (c) Waste management to be undertaken in accordance with the requirements of the endorsed waste management plan under PLN15/0632
- 13. The provisions, recommendations and requirements of the endorsed Plan of Management must be implemented and complied with to the satisfaction of the Responsible Authority.
- 14. The use must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
- 15. The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).
- 16. The collection of waste from the site must be by private collection, unless with the prior written consent of the Responsible Authority.
- 17. Except with the prior written consent of the Responsible Authority, delivery and collection of goods to and from the land may only occur between 7am and 10pm on any day.

Advertising Signs

- 18. **The illuminated awning sign must only be illuminated during operating hours as per Condition 7.**
- 19. The signs must be constructed, displayed and maintained to the satisfaction of the Responsible Authority.
- 20. The **internally illuminated** sign must not include any flashing or intermittent light.

21. Signs 2, 3 and 4 must not be illuminated by external or internal light.

Expiry

22. The signage component of this permit expires 15 years from the date of the permit.
23. This permit will expire if:
- (a) the signs are not displayed within two years of the date of this permit; or
 - (b) the use is not commenced within two years of the date of this permit.

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

Notes:

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

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

Attachments

- 1 PLN19/0221.01 - 142 Johnston Street Fitzroy - Engineering Referral comments
- 2 PLN19/0221.01 - 142 Johnston Street - Existing Planning Permit
- 3 PLN19/0221.01 - 142 Johnston Street Fitzroy - Advertising S52 - Certificate of Title
- 4 PLN19/0221.01 - 142 Johnston Street Fitzroy - Advertising S52 - Original Permit Decision Plans
- 5 PLN19/0221.01 - 142 Johnston Street Fitzroy - S72 Amendment decision plans
- 6 PLN19/0221.01 - 142 Johnston Street Fitzroy - S72 recreation facility Management Plan
- 7 PLN19/0221.01 - 142 Johnston Street Fitzroy - Acoustic Report
- 8 PLN19/0221.01 - 142 Johnston Street Fitzroy - Acoustic Floorplan
- 9 PLN19/0221.01 - 142 Johnston Street Fitzroy - Internal acoustic referral comments
- 10 PLN19/0221.01 - 142 Johnston Street Fitzroy - Strategic Transport referral comments