

Agenda

Planning Decisions Committee

6.30pm, Tuesday 18 January 2022

MS Teams

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 Claudia Nguyen Councillor
- Cr Gabrielle de Vietri Councillor
- Cr Sophie Wade Mayor

Council officers

- Danielle Connell Senior Coordinator Statutory Planning
- Chris Stathis Acting Principal Planner
- Cindi Johnson Governance Officer

Municipal Monitor

- Yehudi Blacher Municipal Monitor

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 15 December 2021 be confirmed.

6. Committee business reports

Item	Page	Rec. Page
6.1 PL06/0738.01 - 125 Smith Street Fitzroy	5	30

6.1 PL06/0738.01 - 125 Smith Street Fitzroy

Executive Summary

Purpose

1. This report provides the Planning Decision Committee (PDC) with an assessment of the planning permit amendment application PL06/0738.01, which seeks to extend the operating hours of the existing Bar (Rainbow International House Club), against the provisions of the Yarra Planning Scheme (the Scheme) and recommends that Council notify the Victorian Civil and Administrative Tribunal (VCAT), and all parties to the proceeding that Council supports the application, subject to key conditions, most notably to only allow extended hours until 2am from Thursday to Saturday (currently the hours are until 1am on all days).

Key Planning Considerations

2. 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 22.09 and 52.27 – Licensed Premises
 - (d) Clause 53.06 – Live Music and Entertainment

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Sale and Consumption of liquor
 - (b) Live music and deletion of Condition 2
 - (c) Objector concerns
 - (d) Other matters

Submissions Received

4. Fifteen (15) objections were received to the application, these can be summarised as:
 - (a) Noise impacts (patron noise and music)
 - (b) Increased risk of anti-social behaviour, loitering in the laneway, littering and vandalism.
 - (c) Cumulative impacts of late-night licensed premises in the area.
 - (d) The location of the toilets in the rear, unenclosed courtyard is inappropriate and exacerbates noise issues.
 - (e) Poor venue management including non-compliance with conditions of the existing planning permit.
5. One (1) letter of support was received to the application, which can be summarised as:
 - (a) A positive contribution to the cultural/entertainment precinct.

VCAT Proceedings

6. On 28 July 2021, Council was informed that the applicant had lodged a Section 79 'failure to determine within the prescribed time' appeal with the Victorian Civil and Administrative Tribunal (VCAT).
7. Two objectors have joined as parties to the appeal.
8. No Compulsory Conference is listed for the application. A VCAT Full Hearing is scheduled for two days beginning on 14 February 2022.

Conclusion

9. Based on the following report, the proposal is considered to comply with the relevant planning policy and should therefore be supported subject to the following key recommendations:
- (a) An internal sound lock door be installed to the Smith Street entrance.
 - (b) The toilets in the rear uncovered courtyard not be used after 12am and the maximum number of patrons be reduced to 100 on the premises accordingly.
 - (c) The hours of operation only be extended until 2am on Thursday through to Saturday, with no change to the approved closing time on Sunday through to Wednesday.

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

6.1 PL06/0738.01 - 125 Smith Street Fitzroy

Reference D21/189901
Author Jessica Sutherland - Statutory Planner
Authoriser Senior Coordinator Statutory Planning

Ward: Langridge Ward

Proposal: Section 72 Amendment to Planning Permit PL06/0738 to:

- increase the hours of the sale and consumption of liquor in the front lounge area only (pursuant to Condition 6 of the permit) from:
 - 7 am to 1am (the following day) Monday to Sunday and 10am to 1am (the following day) Sundays.

To:

- 11am to 2am (the following day) Sunday to Wednesday and 11am to 5am (the following the day) Thursday to Saturday.

- delete Condition 2 of the permit which reads as follows "all live entertainment and all music played and carried out on the premises must not be amplified and limited to acoustic only".

Existing use: Bar

Applicant: Rainbow International House Club P/L

Zoning / Overlays: Commercial 1 Zone
Heritage Overlay (Schedule 333), Development Contributions Plan Overlay (Schedule 1), Design and Development Overlay (Schedule 30)

Date of Application: 18 November 2020

Application Number: PL06/0738.01

Planning History

1. Planning Permit No. 926 was issued on 2 February 1990 for the use of the premises as a bar/restaurant with a general license permitting 40 patrons between the hours of 11am and 3am.
2. Planning Permit No. 3036 was issued on 4 October 1994 to increase the number of permitted patrons to 90 (70 internally and 20 within the courtyard) between the hours of 12pm – 12midnight within the courtyard and between 11am – 3am within the internal dining area, in association with the existing bar/restaurant.
3. Planning Permit PL01/0511 was issued on 12 October 2001 for the waiver of the car parking requirements and an increase to the permitted number of patrons to 120, in association with the existing restaurant.
4. Planning Application PL04/0260 was lodged to change the use to a tavern, however, it was subsequently withdrawn.

Planning Permit PL06/0738

5. Planning Permit PL06/0738 was issued on 21 September 2007 for the *development of the land for buildings and works (retrospective) and use of the land for the purpose of a tavern with a maximum of 120 patrons, including a reduction in the car parking requirements and to allow for the sale and consumption of alcohol between 7m and 1am the following day, Monday to Saturday and between 10am and 1am the following day on Sunday.*
6. The name of the previous operators was 'Grumpy's Bar'.
7. Of relevance, the permit includes the following conditions:
 - (a) *A Noise and Amenity Action Plan to be submitted that details (but is not limited to) the following... noise control, Report must be undertaken by a suitably qualified acoustic engineer to include noise readings generated by the DJ booth and microphones to demonstrate compliance with SEPP N2 requirements (Condition 1(b)(i)).*
 - (b) *All live entertainment and all music played and carried out on the premises must not be amplified and limited to acoustic only (Condition 2).*
 - (c) *The rear courtyard/dining area must not be used after midnight on any day (Condition 7).*
 - (d) *No more than 120 patrons may be permitted on-site (with no more than 30 of the patrons occupying the dining area (Condition 8).*
8. A Noise and Amenity Action Plan (**NAAP**) and Acoustic Report (prepared by Marshall Day and dated 18 February 2010) were endorsed to form part of the permit.
9. The currently endorsed NAAP relevantly states the following in relation to live and amplified music:
 - (a) *A noise limiter can be used to ensure noise from the internal sound system does not exceed the maximum allowable internal noise levels.*
10. The currently endorsed Acoustic Report relevantly states the following:
 - (a) Live band music noise, in the front of the venue, Thursday – Saturday until 12am (midnight) and Sunday Afternoon/evenings.

The assessment found the allowable internal noise level to be as shown in Table D1 (equivalent to LA10 107dBA) with the band area when the front door was closed. This level is typical of a loud rock concert and is well above the levels expected in Grumpy's Bar.

When the front door is open, the allowable internal noise level must be reduced to the maximum internal level shown in Table D2 (equivalent to LA10 98Dba). This level is considered to be acceptable for live music in a venue such as Grumpy's Bar.

Since patrons will continually be entering and existing via the front door during live music performances, the maximum allowable internal noise level should be based on the results when the front door is open. The installation of a noise limiter in the sound system will ensure that the maximum allowable internal noise limit is not exceeded.
11. As such, there are conflicting requirements with regards to live and amplified music and what is permitted. More specifically condition 2 of the current Planning Permit prohibits amplified music whereas condition 1(b)(i) (as well as the endorsed acoustic report and NAAP) infer music being played by DJs and the use of microphones.

Background

12. The subject application was received by Council on 18 November 2020.
13. The application was advertised in March and April of 2021 and fifteen (15) objections and one (1) letter of support was received.

VCAT Proceedings

14. On 28 July 2021, Council was informed that the applicant had lodged a Section 79 'failure to determine within the prescribed time' appeal with the Victorian Civil and Administrative Tribunal (VCAT).
15. One (1) objector has lodged a statement of grounds with only two (2) objector parties indicating they intend to appear and present a submission at the hearing.
16. A Compulsory Conference was not listed for the application. A VCAT Full Hearing is scheduled for two days beginning on 14 February 2022.

Lodgement of Patron Capacity Report and amended Acoustic Report (memo)

17. A Patron Capacity Report (prepared by Aitken and Associates and dated 13 May 2021) and an amended Acoustic Report (prepared by Enfield Acoustics and dated 24 June 2021) were submitted to Council on 25 June 2021.
18. The amended Acoustic Report was updated to include the first-floor dwelling at No. 123 Smith Street as a noise receiver location.
19. The reports were not submitted as a formal amendment pursuant to Section 57A of the *Planning and Environment Act* (1987) but will be referenced where applicable in this report.

Planning Scheme Amendments

Amendment C238

20. Amendment C238 was introduced into the Yarra Planning Scheme on 1 February 2021 and includes Clause 45.06 (Development Contributions Plan Overlay) with Schedule 1 into the Yarra Planning Scheme. This overlay applies to all land in the City of Yarra (note: there are some exempted sites including schools, DHHS properties and public hospitals) where there is an increase in the number of dwellings and/or an increase in retail, commercial and industrial floor space. It requires a monetary contribution from the developer.
21. The subject proposal would not trigger the requirements pursuant to Clause 45.06 of the Scheme given that the commercial floor area is not being increased.

Amendment C269

22. Amendment C269 was heard at an Independent Planning Panel in October and November of 2021 and proposes to update the local policies in the Yarra Planning Scheme by replacing the Municipal Strategic Statement (MSS) at Clause 21 and the Local Planning Policies at Clause 22 with a Municipal Planning Strategy and Local Policies with the Planning Policy Framework (PPF), consistent with the structure recently introduced by the State Government.
23. The key changes proposed, relevant to this application, is the implementation of the directions in the Yarra Council's Spatial Economic and Employment Strategy (SEES) relating to employment, retail and tourism. The proposed changes are generally consistent with the objectives of the existing policies of the Yarra Planning Scheme.

Amendment C270

24. Amendment C270 was gazetted into the Scheme on 27 August 2021 and introduced Schedule 30 (Smith Street Shops) the Design and Development Overlay (30). The amendment has no bearing on the subject application as there are no external buildings and works proposed.

The Proposal

25. The amendment application seeks to amend the planning permit PL06/0738.01 to:
 - (a) increase the hours of the sale and consumption of liquor in the front lounge area only (pursuant to Condition 6 of the permit) from
 - (i) 7am to 1am Monday to Saturday and 10am to 1am Sunday

To:

(ii) 11am to 2am (the following day) Sunday to Wednesday and 11am to 5am (the following the day) Thursday to Saturday.

- (b) delete Condition 2 of the permit which reads as follows "all live entertainment and all music played and carried out on the premises must not be amplified and limited to acoustic only".
- (c) No change to the maximum number of patrons (120) or the hours that the sale and consumption of liquor is to be sold in the courtyard and dining room (11am to 12midnight, every day of the week).
- (d) Five staff (increased to seven staff after 1am), including a manager on site at any one time.
- (e) Three security staff will be engaged on Fridays and Saturdays from 9pm to close.
- (f) Food to be available during all operating hours.
- (g) Live music/entertainment will include drag shows (live singing), a piano player, a guitarist and/or jazz band. Live music is proposed during the following hours:
 - (i) Wednesday, piano from 8pm;
 - (ii) Thursday, DJ from 9pm, Drag show from 10pm;
 - (iii) Friday, DJ from 9pm, Drag show from 10pm;
 - (iv) Saturday, DJ from 9pm, Drag show from 10pm; and
 - (v) Sunday, DJ from 9pm, Drag show from 10pm.
- (h) *No external buildings and works proposed.*

26. To facilitate these changes, the following amendments to the permit are requested:

27. Amend Condition No. 6 from:

The premises may only operate between the following hours:

*Monday to Saturday Between 7am and 1am (the following day); and
Sunday Between 10 and 1am (the following day)*

To:

The premises may only operate between the following hours:

Sunday to Wednesday Between 11am and 2am (the following day)
Thursday to Saturday Between 11am and 5am (the following day)

28. Delete Condition No. 2 which reads as follows:

All live entertainment and all music played and carried out on the premises must not be amplified and limited to acoustic only.

29. Amend Condition 3 from:

(a) *Microphones, background music and non-amplified entertainment must comply with SEPPS N2 requirements.*

To:

(b) All music including background music, dance music and live music entertainment must comply with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.

30. Amend the permit preamble to reflect the proposed trading hours under Condition 6.

Existing Conditions

Subject Site

31. The subject site is located on the western side of Smith Street between Gertrude Street to the south and Webb Street to the north, in Fitzroy. The site has a frontage to Smith Street of 10.04 metres and a site depth of 40.1 metres (northern boundary) and 40.11 metres (southern boundary), yielding an overall site area of 403sqm. The site is bound by Little Smith Street at the rear (west).
32. The subject site is a ground floor tenancy which forms part of a large two and three storey building, known as the Stanford Block which was constructed in 1883. The Stanford Block is a Victorian-era commercial building constructed of rendered brick which is occupied by four shop fronts and some dwellings and offices above.
33. The ground floor of No. 125 Smith Street (subject to this application), comprises a 'lounge' area with a mezzanine/balcony above, a dining area, kitchen facilities, toilets and a beer garden and courtyard which is primarily used for storage and services. Additional toilets are also located at the rear of the site, abutting Little Smith Street, in the uncovered courtyard. The dining area, which has a Perspex roof over, links the front lounge area to the toilets, beer garden and courtyard. A roller door and gate is located on the rear boundary to Little Smith Street.
34. The ground floor frontage is predominantly clear glazing and has an inset doorway central to the façade. The first and second floors at No. 125 Smith Street are occupied by an office and a dwelling located at the rear of the first-floor.



Image 1: the subject tenancy as viewed from Smith Street (source: Planning Officer's site visit, December 2021)

Surrounding Land

35. In terms of zoning context, the subject site and land along Smith Street is zoned Commercial 1 (shown as purple at image 2 below), with the nearest residential zone being the Neighbourhood Residential Zone (shown as pink at image 2 below) to the west of the subject site, on the opposite side of Little Smith Street. On the eastern side of Smith Street, land generally to the rear of Smith Street is located in the Mixed Use Zone (shown as red at image 2).

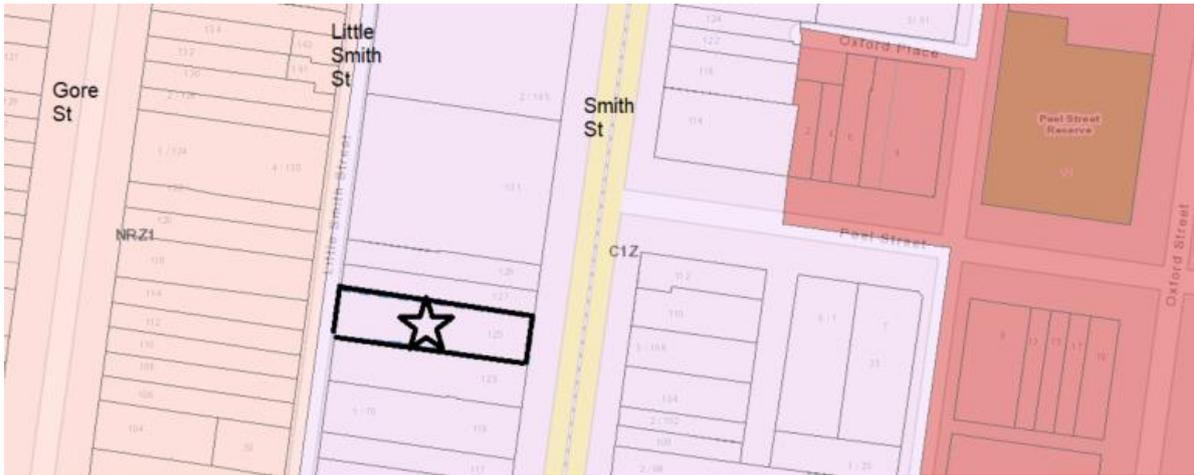


Image 1: zoning context of the site (source: VicPlan, January 2022)

36. The subject site is located in the Smith Street Major Activity Centre (**MAC**) which provides for a range of shops, restaurants, retail premises and bars/taverns. The area is characterised by attached Victorian/Edwardian shop fronts and contemporary infill. Whilst the majority of land uses along Smith Street are commercial in nature, there also exists residential properties including shop-top dwellings and a number of apartment buildings.
37. Smith Street is a two-lane road with parallel parking and tram lines running in either direction. The site is located 100 metres from Gertrude Street and 400 metres from Victoria Parade, and associated tram routes.

North

38. Immediately to the north of the site is No. 127 Smith Street which forms part of the Stanford Block building with the subject site. The building is occupied by an office which fronts Smith Street and occupies the entire site at ground floor. The upper levels are provided with north, west and east facing windows.
39. Further north is No. 129 Smith Street, the northernmost property of the Stanford Block building, which has a restaurant at ground floor and a shop-top dwelling at first floor. The shop-top dwelling has south, east and west-facing windows.
40. Further north along Smith Street are various commercial premises, including restaurants, bars, retail premises and offices.

South

41. Immediately to the south of the site is No. 123 Smith Street which forms part of the Stanford Block building and is occupied by a bottle shop (packaged liquor licence as approved under Planning Permit PLN14/0503) at ground floor and an office and storage facility at the first floor. A studio space and dwellings are provided at the rear of the first and at second floor with windows provided on the western elevation.
42. Further south along Smith Street are various commercial premises, including a barber shop, bars and retail premises.

West

43. To the west, across Little Smith Street, are dwellings located in the Neighbourhood Residential Zone which predominantly front west to Gore Street and are provided rear access from Little Smith Street (No. 106 to No. 116 Gore Street). The exceptions to this are No. 53 and No 135 – 137 Little Smith Street which are developed with two storey dwellings which front east to Little Smith Street, located 20 metres south and 17 metres north of the subject site respectively. Both of the dwellings have windows which face east to Little Smith Street.

44. Whilst not addressing Little Smith Street, the dwellings at No. 108 Gore Street (12 metres southwest of the subject site) and No. 112 Gore Street (6 metres west of the subject site) feature double-storey rear extensions, with first-floor windows facing Little Smith Street.
- East*
45. To the east, across Smith Street, are various restaurants, bars and retail premises located within the Smith Street MAC.
46. Nearby licensed premises include (but are not limited to) the following:
- (a) Circuit bar, No. 103 – 105 Smith Street 30 metres south of the subject site, 460 patrons between 10am and 3am.
 - (b) Yah Yah's, No. 99 Smith Street 40 metres south of the subject site, 107 patrons Thursday to Saturday 10am to 5am and every other day 11am to 1am.
 - (c) New Guernica, No. 64 Smith Street 100 metres south of the subject site, maximum of 410 patrons 12pm to 2am Monday to Wednesday and 12pm to 4am any other day.
 - (d) The Grace Darling, No. 114 Smith Street 30 metres north of the subject site, 300 patrons to 1am.
 - (e) The Fitzroy Beer Garden. No. 243 – 245 Gertrude Street 100 metres south of the subject site, 156 patrons until 1am every day. Planning Application PLN21/0860 was submitted to Council on 23 November 2021 and proposes to increase the approved hours of operation to 3am on Tuesday – Saturday. The application is being processed by Council at the time of this report.
 - (f) Union Club Hotel, No. 164 Gore Street 50 metres north-west of the subject site (at the end of Little Smith Street), maximum of 150 patrons until 11pm Sunday and 1am every other day.

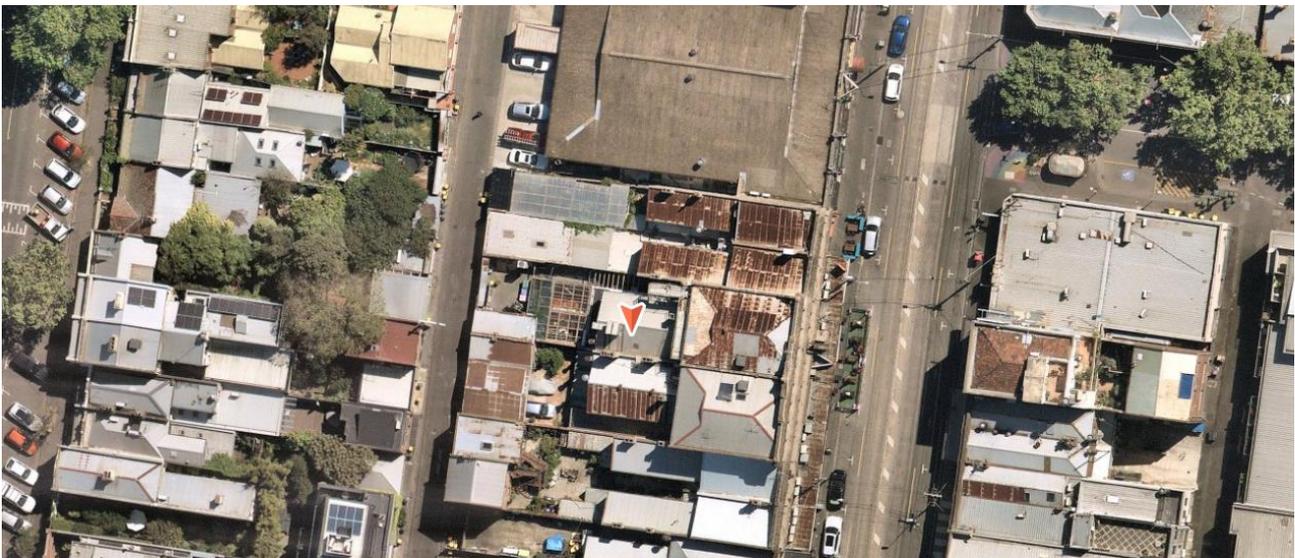


Image 3: aerial of the subject site and surrounds (source: NearMap, November 2021)

Legislation Provisions

47. The amendment has been requested pursuant to Section 72 of the *Planning and Environment Act 1987* (the Act). Section 72 of the Act states:
- (1) A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.
 - (2) This section does not apply to—
 - (a) a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or

(b) a permit issued under Division 6.

48. Planning Permit PL06/0738 was issued on 21 September 2007. The Tribunal has not directed that the responsible authority must not amend the permit, nor was the permit issued under Division 6 of the Act.
49. Section 73 of the Act states that Sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit.

Planning Scheme Provisions

Zoning

50. The subject site is zoned *Commercial 1 Zone*. The following provisions apply:
 - (a) Pursuant to Clause 34.01-1, a planning permit is not required to use the land as a Food and Drinks (Bar), which falls under the 'Retail' land use category. It is noted that the current permit preamble refers to the use as a 'Tavern'; however this term has since been replaced in the Yarra Planning Scheme.

Overlays

51. The subject site is affected by the *Heritage Overlay (Schedule 333)* and *Design and Development Overlay (Schedule 30)*. However, no buildings and works are proposed that would trigger a permit under the Overlay as the proposed works are internal to the building and the schedule to the Heritage Overlay does not have internal alteration controls.
52. The subject site is affected by the *Development Contributions Plan Overlay (Schedule 1)*. The following provisions apply:
 - (a) Pursuant to Clause 45.06-1, a permit granted must:
 - (i) *Be consistent with the provisions of the relevant contributions plan.*
 - (ii) *Include any conditions required to give effect to contribution or levies imposed, conditions or requirements set out in the relevant schedule to this overlay.*
 - (b) The proposal does not increase the floor area of the existing commercial use, therefore the application does not trigger the requirements of the Overlay.

Particular Provisions

Clause 52.27 Licensed Premises

53. Pursuant to Clause 52.27 of the Scheme, a planning permit is required to extend the hours of trading allowed under a licence under the *Liquor Control Reform Act 1998*. The requirement to obtain a planning permit is therefore triggered under Clause 52.27 of the Scheme.

Clause 53.06 – Live music and entertainment noise

54. Clause 53.06 applies to an application required under any zone of this scheme to use land for a live entertainment venue.
55. Pursuant to Clause 53.06-2, a live music entertainment venue means *a food and drinks premises, nightclub, function centre or residential hotel that includes live music entertainment or a rehearsal studio.*
56. The policy requires that a live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.
57. Pursuant to Clause 53.06-3, a permit may be required to reduce or waive these requirements if the responsible authority is satisfied that an alternative measure meets the purpose of this clause.
58. Given that the amendment proposes to delete a condition relating to the provision of live music, this provision will be discussed further in the *Assessment* section of this report.

General Provisions

Clause 65 – Decision Guidelines

59. 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

60. 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

61. 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

62. 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

63. 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

64. 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

65. The objective of this clause is:
- (a) *To strengthen and diversify the economy.*
66. 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

67. The objective of this clause is:
- (a) *To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.*
68. The relevant strategies set out to achieve this objective includes:

- (a) *Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.*
- (b) *Locate commercial facilities in existing or planned activity centres.*

Clause 19.02-3S – Cultural facilities

69. The objective of this clause is:

- (a) *To develop a strong cultural environment and increase access to arts, recreation and other cultural facilities.*

70. The strategies set out to achieve this objective are:

- (a) *Encourage a wider range of arts, cultural and entertainment facilities including cinemas, restaurants, nightclubs and live theatres in the Central City and at Metropolitan Activity Centres.*
- (b) *Reinforce the existing major precincts for arts, sports and major events of state wide appeal.*
- (c) *Establish new facilities at locations well serviced by public transport.*

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

Clause 21.02 – Municipal profile

Activity Centres

71. 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”.

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

Arts and culture

73. “Yarra’s role as a centre for live music is widely acknowledged, along with the capacity of Yarra’s music venues to support emerging musicians. Yarra is also known for the number and diversity of commercial and community arts and cultural facilities located in the municipality, in particular the number of commercial art galleries”. The policy identifies that “Many of the activities are concentrated in the vicinity of Gertrude Street, Fitzroy, and at the southern end of Smith and Brunswick Street, Fitzroy”

Clause 21.03 – Vision

74. 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

75. 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.*

76. This local policy provision also states that ‘*music venues, arts and cultural facilities also contribute to Yarra’s character and cultural life, and to its activity centres*’.

Clause 21.04-3 – Industry, office and commercial

77. 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

78. The subject site is identified to be located in the Smith Street Major Activity Centre.
79. Clause 21.08-5 (Collingwood) provides the following relevant description of the Smith Street MAC:
- (a) *'The Smith Street major activity centre serves multiple roles for local residents whilst attracting visitors from a larger catchment. It is a classic main road strip generally consisting of buildings of two to four storeys interspersed with the occasional building of up to 6 storeys'.*

[Relevant Local Policies](#)

Clause 22.05 – Interface uses policy

80. This policy applies to applications for use or development within Commercial 1 Zones (amongst others).
81. 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

82. This policy applies to an application under Clause 52.27 (Licensed Premises).
83. 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.*
84. *To provide for daytime trade and active street frontages in retail strips, while providing the reasonable commercial opportunities for the trading of licensed premises.*
85. Clause 22.09 recognises Smith Street, between Gertrude Street and Alexandra Parade, to be a Core Entertainment Precinct. The policy directs that licenced premises with a capacity of more than 200 patrons should be located in Core Entertainment Precincts.
86. The policy also (relevantly) directs that licenced 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.

[Advertising](#)

87. The application was advertised under the provisions of Section 52 of the *Planning and Environment Act (1987)* by 252 letters sent to surrounding owners and occupiers and by a sign displayed on site. Council received fifteen (15) objections and one (1) letter of support, the grounds of which are summarised as follows:

Objections

- (a) Noise impacts (patron noise and music)
- (b) Increased risk of anti-social behaviour, loitering in the laneway, littering and vandalism.
- (c) Cumulative impacts of late-night licensed premises in the area.
- (d) The location of the toilets in the rear, unenclosed courtyard is inappropriate and exacerbates noise issues.
- (e) Poor venue management.

Letter of support

- (f) A positive contribution to the cultural/entertainment precinct.
88. Clause 66.05 (Notice of permit applications under state standard provisions) requires that notice of an application (pursuant to section 52 of the Act) in association with a bar, hotel or nightclub that is to operate after 1am be given to the Chief Commissioner of Victoria Police. As of the date of writing this report, no formal comments have been received.

Referrals

External Referrals

89. The application was referred to the following authorities:
- (a) Victorian Commission for Gambling and Liquor Regulation (VCGLR)
90. The response has been included as an attachment to this report.

Internal Referrals

91. The application was referred to the following units within Council (and to external acoustic consultant):
- (a) Community Amenity and Enforcement
 - (b) Social Planning
 - (c) City Works (waste) branch
 - (d) External Acoustic Consultants (SLR)
92. Referral comments have been included as attachments to this report.

OFFICER ASSESSMENT

93. The primary considerations for this application are as follows:
- (a) Sale and Consumption of liquor
 - (b) Live music and deletion of Condition 2
 - (c) Objector concerns
 - (d) Other matters

Sale and consumption of liquor

94. Clause 52.27 (Licensed Premises), further supported by Clause 22.09 of the Yarra Planning Scheme, aims to locate licensed premises in appropriate locations whilst considering the impact of these premises on the amenity of the surrounding area. Considerations of this provision includes the hours of operation, the number of patrons and the cumulative impact of any existing venues and the proposed liquor licence. An assessment of the proposed amendments against the decision guidelines of Clause 22.09 is provided below.
95. *Licensed premises should be located/designed such that:*
- (a) *The land is not zoned Residential*
 - (b) *Potential amenity impacts from (but not limited to) patron noise, ingress and egress of patrons, queuing of patrons, smoking areas for patrons, and dispersal of patrons from the site can be appropriately managed or buffered.*
 - (c) *There is opportunity for high level of public safety and surveillance of patrons as they enter and leave the premises.*
 - (d) *The entry and exit points of a licensed premise and the areas for queuing of patrons are located away from sensitive land uses.*
 - (e) *Waste management and storage is provided on-site, and noise enclosures are provided where bottle crushers are to be used.*

96. There is policy support within the State and Local Planning Policy Frameworks for a use of this nature in this location, given the commercial zoning and that the site is located within a highly accessible Major Activity Centre (**MAC**).
97. The site is located within the Smith Street MAC, which is recognized to be a Core Entertainment Precinct pursuant to Clause 22.09 (Licensed premises). The site is 100 metres north of Gertrude Street and 800 metres east of Brunswick Street (also recognised as a Core Entertainment Precinct for the municipality). The site is however abutted by a residential zone to the west, across Little Smith Street.
98. The existing venue, which is located in a Commercial 1 Zone and benefits as an ‘as-of-right’ use in this zone, has a particular focus on arts and entertainment in conjunction with the permitted sale and consumption of liquor on the land. It is also noted that the sale and consumption of liquor at the premises, albeit with a lesser intensity, and the venue layout and design is already permitted by way of the approved original application.
99. This amendment, in conjunction with the proposed extension to the operating hours, seeks to legitimize the current entertainment offerings of the venue which includes drag shows, acoustic and piano performances, and DJ sets. The commercial zoning of the land aims to *create vibrant mixed use commercial centres, for retail, office, business, entertainment and community uses*, an objective that is further reinforced by policies within the Yarra Planning Scheme that encourage the strengthening of Yarra’s entertainment and cultural offerings (such as the proposed use), particularly in already established commercial precincts (clauses 17.02-1S, 19.02-3S, 21.02, 21.03 and 21.04-2). Further, one of the objectives of Clause 21.04-2 (Activity centres) specifically encourages arts and arts venues within Yarra’s Activity Centres.
100. Finally, Clause 17.01-1S (Diversified economy) and Clause 21.04-3 (Industry, office and commercial) encourage growth that strengthens and diversifies the economy and job opportunities with Yarra, stating that growth *improve[s] access to jobs closer to where people live*. The site is highly accessible, is zoned for commercial use and benefits from access to various sustainable transport modes including trams along Smith Street, Gertrude Street, Victoria Parade and Brunswick Street (all within 800 metres). The site also benefits, from an employment and accessibility perspective being located near to where people live; however, the sensitive residential interfaces of the site requires careful consideration in assessing the proposed amendment.
101. The amendment as it relates to the sale and consumption of liquor, is limited to the hours of operation and provision of live music. The venue is generally being maintained as it currently exists, with changes to the hours limited to the front lounge internal area. Clause 22.09 specifically requires that an assessment of an application to vary or extend an existing permit for a licensed premises must consider:
 - (a) *Any relevant information about the previous and current operation of the premises including, but not limited to complaints received by relevant authorities such as the Yarra City Council, Victoria Police, and the VCGLR.*
 - (b) *Any contravention of a permit condition or liquor license.*
 - (c) *Whether the conditions on the existing permit regulating the venue design, hours of operation, patron numbers, and noise and amenity impacts are adequate.*
102. The amendment application was referred to Council’s Community Amenity Unit who stated that various noise complaints have been logged against the existing venue (albeit some under different management). A key concern arising from some of these complaints, as well as objections received to this application, was the use of the toilets at the rear of the site. The toilets are located in the uncovered outdoor area which abuts Little Smith Street and is opposite the sensitive residential properties.
103. Although the sale and consumption of liquor is required to cease at midnight in the outdoor area (specifically, beer garden and dining area), a concern has been raised that patrons continue to congregate and use the toilets until the venue closes at 1am. This arrangement

results in increased noise levels, not only from the patron voices and movement, but also noise escaping from the internal premises when the door is opened and closed. It is considered that the proposed amendment to increase the hours of the sale and consumption of liquor until 2am Sunday to Wednesday and 5am Thursday to Saturday would further exacerbate this issue to the detriment of the neighbouring residential amenity.

104. In light of the above, the applicant has agreed for the toilets internal to the building to be solely relied upon after 12midnight when the beer garden and dining area close. This would require that the internal toilets be made unisex/gender neutral.
105. The applicant submitted a Patron Capacity Report (prepared by Aitken and Associates and dated 13 May 2021) was provided to demonstrate that the capacity of the venue, should only the internal toilets be relied upon, would be a maximum of 100 patrons. As such, it is recommended that conditions be included on the amended permit requiring that the use of the external toilets cease at midnight and the maximum patrons permitted in association with the sale and consumption of liquor drop to a maximum of 100 after midnight. A condition will also require the plans to be amended to reflect the gender neutral toilets internal to the building. This will assist in resolving some of the current noise concerns as well as mitigating the potential amenity impacts of extending the operating hours.
106. Finally, with regards to the waste arrangements of the site, a Waste Management Plan (prepared by TTM) was submitted with the application. Waste will continue to be stored at the rear of the site in the uncovered courtyard and collected from Little Smith Street. However, various commitments of the WMP and existing conditions of the permit relating to the emptying of bottles, waste collection times and general management of waste will ensure this location will not result in a detriment to the sensitive residential area opposite. The WMP was referred to Council's City Works Branch who was supportive of the plan subject to a condition requiring that all waste streams, including food waste and glass, be collected by a private commercial waste service. The WMP will be required to be amended to reflect this commitment and a stand-alone condition will also be included requiring ongoing compliance with the WMP.

Hours of operation

107. *Assessment of the impact of the hours of operation on the amenity of the surrounding area consider:*
- (a) *The proposed use.*
 - (b) *The zoning of surrounding land.*
 - (c) *The location of the premises and location of car parking.*
 - (d) *The nature of surrounding uses and hours of operation.*
 - (e) *Potential noise emissions from the premises.*
 - (f) *The impact of patrons arriving and leaving the premises.*
 - (g) *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 the use will not adversely affect the amenity of the area.*
 - (h) *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.*
 - (i) *Licensed premises (including packaged liquor outlets) should not commence the sale and consumption of liquor before 9am.*
108. The proposed amendment seeks to extend the hours that liquor can be sold for consumption on premises (for the front lounge/bar only) from:
- | | |
|--------------------|--|
| Monday to Saturday | Between 7am and 1am (the following day); and |
| Sunday | Between 10 and 1am (the following day) |

To:

Sunday to Wednesday Between 11am and 2am (the following day)
Thursday to Saturday Between 11am and 5am (the following day)

109. The nearest residential zone is located to the west of Little Smith Street at the rear of the site. As such, the operating hours already vary from policy, which encourages that venues within 30 metres of a residential zone cease at 11pm.
110. Although music noise from inside the lounge/bar will be discussed further in the *Noise* section of this report, noise from patrons arriving and leaving the site in the early morning hours should be a key consideration in assessing the appropriateness of the extended hours of the sale and consumption of liquor. Under existing arrangements, the movement of patrons is directed to Smith Street, and not to the rear to Little Smith Street and the adjacent residential area. A condition will be included to formalize this arrangement. Nevertheless, there are shop-top dwellings along Smith Street that also require consideration.
111. It is generally accepted that Sunday through to Wednesday represents the typical workweek and any noise or disturbance from late night venues during these times should be discouraged when located near to residential properties. With regards to Sunday through to Wednesday, nearby venues (including Yah Yah's, the Grace Darling, the Fitzroy Beer Garden and Union Club Hotel) are required to close at 1am, in line with the existing hours of the subject site. It is considered that if the closing time of 2am on Sunday to Wednesday were supported, it may encourage 'venue hopping' and an influx of patrons from nearby venues that close earlier. Although this is somewhat an expected occurrence in a Core Entertainment Precinct and can be reasonably managed by the licensed premises, it is discouraged during the typical work week when amenity is traditionally more sensitive. The potential queuing of patrons on the street in the night-time hours of Sunday through to Wednesday night (and Thursday morning) would result in a greater risk of noise and disturbance to dwellings located on this section of Smith Street, and is therefore not supported.
112. With regards to Thursday to Saturday, other licensed premises in the area have been permitted to cease service between 1am and 5am and so the activity and the movement of patrons along Smith Street is more expected and not unreasonable in the early morning hours. However, Clause 22.09 requires that consideration should relevantly be given to the management of an existing venue and any complaints received by the Relevant Authorities.
113. The proposed hours of 11am to 5am Thursday to Sunday would result in the licensed premises of the subject site being the latest operator in this section of Smith Street, with the exception of Yah Yah's which also closes at 5am. Council would need to be satisfied that the venue can be appropriately managed to comply with any restrictions or conditions of the planning permit and also to mitigate any detrimental amenity impacts including noise, anti-social behavior and other disturbances that can result from a late-night vertical drinking premises.
114. The complaints received to date by Council's Community Amenity and Enforcement in relation to the subject licensed premises raises concerns with the management of the site, and whether a 5am closing time would be supportable at this time. It is therefore recommended that the sale and consumption of liquor be permitted between the hours of 11am to 2am (the following day) on Thursday to Saturday. This is an additional hour from what is approved currently and is generally in line with other similarly sized licensed premises along Smith Street which range between 1am and 3am on Thursday through to Saturday.
115. There may be an opportunity in the future to further extend the hours should the venue demonstrate compliance with the permit conditions, management in accordance with the Noise and Amenity Action Plan (to be discussed later) and relevant local laws. However this is currently not the case, therefore the hours will be restricted as outlined above.

Patron numbers

- (a) *The number of patrons not exceed the safe and amenable operating capacity of the premises.*
 - (b) *The number of patrons not adversely affect the amenity of the surrounding area.*
116. The amendment does not propose to increase the number of patrons from the 120 currently permitted by the permit.
117. However as discussed, the maximum number of patrons will be required to be capped at 100 after midnight. This is guided by the Patron Capacity Report which submits that the building and internal toilets can cater for a maximum of 100 patrons.
118. Clause 22.09 recognises Smith Street (between Gertrude Street and Alexandra Parade) as a Core Entertainment Precinct where venues with a capacity of more than 200 patrons are encouraged to be located. As such, the number of patrons permitted in the licensed premises (120) is relatively modest for the precinct. This is a relevant consideration in assessing the proposed amendments as a smaller venue with less patrons may not pose the same amenity risks as a larger capacity venue. Nevertheless, the operating hours of 11am to 1am (the following day) Sunday to Wednesday and 11am to 2am (Thursday to Saturday) is considered reasonable in the context.
- Noise*
- (a) *The operation of licensed premises have minimal impact on the amenity of the area, in relation to noise.*
 - (b) *Noise emissions from licensed premises comply with the standards specified in the State Environmental Protection Policy.*
 - (c) *On-site noise attenuation measures be considered for licensed premises where amenity impacts on the surrounding area may result from the proposed activities.*
119. The key considerations of noise emissions relevant to the amendment relate to live music and patron noise associated with the proposed extension to the operating hours and patron ingress and egress. Each aspect will be discussed in turn.
120. For clarity, the Acoustic Report (prepared by Enfield Acoustics and dated 22 January 2021) and the subsequent memo (dated 24 June 2021) will be discussed. The report considered patron and music noise to the closest residential uses, that being:
- (a) 114 Gore Street, a single dwelling located across Little Smith Street to the west.
 - (b) 108 Smith Street, being a multilevel apartment building to the east across Smith Street.
 - (c) 123 Smith Street, directly abutting the site with dwellings located at the first and second floors.
121. The report was referred to SLR Acoustic consultants who raised no concerns with the location of the receivers.
122. The Smith Street receivers are located in the Commercial 1 Zone. However, the very close proximity of No. 123 Smith Street dwellings in particular make it a noise sensitive location. The amended acoustic report and accompanying memo only consider the potential music noise impacts from the front lounge/bar given these are the amendments sought to the existing operation (ie. not to the rear courtyard).
123. Enfield Acoustics undertook measurements of background noise on Thursday 14 January (Wednesday night) and Tuesday 19 January (Monday night) in 2021. These measurements were used to calculate the octave band music noise limits and are considered appropriate by SLR Acoustic consultants. It is also recognized that the measurements were conducted on Monday and Wednesday, which are anticipated to be quieter nights than Thursday through to Saturday. As such, the background noise levels and resulting noise limit calculations will likely be conservative when considering the Thursday to Saturday noise context.
124. Given the venue is existing, music noise levels within the venue (a DJ set from within the front lounge/bar) were also able to be measured. Enfield Acoustics determined a music noise

limit of 95 dBA and recommended a sound lock be installed to the venue entrance to Smith Street to manage music noise impacts.

125. SLR Acoustic consultants are generally supportive of this approach; however have recommended that a limiting device be required to ensure the identified music noise levels are not exceeded. The device should be calibrated by a suitably qualified acoustical consultant, and if live or amplified music is proposed to be played after 1am, the limiting device should include an external microphone. A condition will require that the acoustic report be amended to reflect these requirements relating to a limiting device, and a condition will require the construction of a sound lock internal to the Smith Street entrance prior to any commencement of extended hours.
126. Further to the above, the acoustic report will be required to reflect the new noise levels as set out in their subsequent memo (dated 24 June 2021).
127. Live music (DJ sets and bands) will be discussed further in this report, however planning officers are generally satisfied, based on Enfield Acoustics and SLR Acoustic consultants review, that the music noise limits/levels from within the venue are appropriate and can be reasonably achieved by the venue subject to conditions.

Noise and Amenity Plan

- (a) *Where required, a licensed premises be designed and managed in accordance with a Noise and Amenity Plan.*
128. The applicant provided a revised NAAP (prepared by Priority Planning). The Plan addresses the relevant management issues required in a NAAP, including:
 - (a) Procedures to be undertaken by staff in the event of complaints by a member of the public.
 - (b) The management and dispersal of patrons so that dispersal is conducted in an orderly manner and they do not congregate in the surrounding area.
 - (c) The management of large group bookings.
 - (d) The management of smokers on and off site with smokers being directed to the designated area in the uncovered courtyard until 12 midnight.
 - (e) The management of external queues.
 - (f) How the movement and exit of patrons is to be managed, with particular regard to the requirement to stagger the closing time of different sections of the venue.
 - (g) Details of the provision of music.
 - (h) Commitment to the service of food at all hours the venue is trading.
 - (i) General commitment to train staff.
129. The above measures are considered appropriate for the site. However, the amended application was referred to Council's Community Amenity and Enforcement Unit who requested that further requirements be included:
 - (a) The movement of patrons into the external outdoor area after midnight be restricted through the presence of security personnel or locked doors. No persons, including staff are to use the courtyard area after midnight for any purpose including smoking.
 - (b) That amplified music is not permitted to be played other than through the permanently installed (and limited) sound system in the lounge/bar area.
 - (c) Confirmation that the noise limiter is not accessible by any personnel other than a qualified acoustic engineer or technician nominated by the licensee or occupier of the land.
 - (d) Commitment to reduce the capacity of the venue to 100 patrons after midnight and how this will be managed.

(e) Greater detail to the employment of security personnel and their responsibilities.

130. In addition to the above, the NAAP fails to include details that were provided in the applicant's town planning report such as: staffing, security staff (as mentioned above), and the extended hours of operation being restricted to the internal front section of the building. Further, within the section of the NAAP labelled "Details of the provision of music including the frequency and hours of entertainment provided by live bands and DJ's" the acoustic recommendations refer to Octave Acoustics and not Enfield Acoustics. Conditions will require this information and the requirements of Council's Community Amenity and Enforcement Unit to be included in the NAAP as being measures to be undertaken to ensure no unreasonable amenity impacts from the licensed premises.
131. Subject to these conditions, the provisions within the NAAP are considered appropriate in managing the business operation without causing undue harm to the amenity of the area. A condition will also require that the operation of the business is carried out in accordance with the NAAP.

Cumulative Impact Assessment (Clause 52.27)

132. The subject site is located within a 'cluster' of licensed premises as there are three or more licensed premises (including the proposed premises) within a radius of 100 metres from the subject land. The "Corner Hotel" decision (*Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & Ors*) provides an assessment methodology for considering applications that may result in cumulative impact. The decision also acknowledges that depending on the nature of the sale and consumption of liquor (i.e. premise type, patron numbers and operating hours) the required level of assessment will vary.
133. Based on this decision, Council has developed an assessment tool to determine the likelihood of cumulative impact occurring as a result of a proposal based on risk factors associated with the type, size and closing hours of the premises, to help determine what level of assessment is appropriate.

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

134. Applying the matrix of risk, a reasonable consideration would suggest a score of 1-3 would be no risk, higher than 3 would be a potential risk. In this instance the proposed amendment achieves a maximum score of 9, therefore the venue is considered to be a risk and a

cumulative impact assessment is required. The Planning Officer recommendation to restrict the operating hours until 2am on Thursday through to Saturday would result in a maximum score of 8.

135. In the absence of any benchmarks within the Scheme to measure cumulative impact, Council relies on the assessment methodology for cumulative impact in the VCAT decision *Swancom Pty Ltd v Yarra CC* (Red Dot) [2009] VCAT 923 as an appropriate methodology for the assessment of this proposal. An assessment against these guidelines is provided below.
136. The assessment methodology has three key considerations:
- (a) *What is the density of licensed premises in the area?*
 - (b) *What is the mix and type of licensed premises in the area?*
 - (c) *What are the existing amenity levels of the area?*
137. To undertake such an assessment, the relevant area must first be defined:
- (a) *What is the relevant area?*
 - (i) *What is the specific precinct or area within which the licensed premises is located? Is the area a dedicated entertainment precinct?*
 - (ii) *What is the extent of the nearby or surrounding area within which the amenity impacts should be considered, have regard to the pattern of settlement and development (existing and proposed) and the extent of any sensitive uses?*
138. A number of these factors such as the policy context and land mix of the surrounding area have been discussed previously within this report, with anticipated amenity impacts also considered in detail. An assessment including the mix of licensed premises, the dispersal of patrons and potential impact mitigation will need to be undertaken.
139. In order to provide a comprehensive assessment of the potential cumulative impact of the venue, officers undertook a survey of licenced premises within a 500m radius of the subject site, generally bound by Victoria Parade to the south, Wellington Street to the east, Moor Street to the north and George Street to the west. Venues which cease trading prior to 11pm have been specifically excluded from the table below, as it is considered these venues contribute minimal risk to the cumulative impact for the sale and consumption of liquor in the surrounding area. Further, these types of venues are typically focused on food and drink as opposed to ‘vertical drinking’.

Business name	Address	License Type	(Maximum) closing time	Patron capacity
Evie's Bar and Diner	230 Gertrude Street Fitzroy	Restaurant/café	12midnight	170 patrons
Yah Yah's	99 Smith Street Fitzroy	General	5am	107 patrons
Pug Nickel	7 Peel Street Collingwood	On-premises	1am	15 patrons
The Fitzroy Beer Garden	243 – 254 Gertrude Street Fitzroy	On-premises	1am	156 patrons
Circuit	103 – 105 Smith Street Fitzroy	On-premises	3am	460 patrons
Caz Reitop's Dirty Secrets	80 Smith Street Collingwood	General	3am	unknown
Union Club Hotel	164 Gore Street Fitzroy	General	1am	150 patrons
The Grace Darling	114 Smith Street Collingwood	General	1am	300 patrons

The British Crown Hotel	14 – 18 Smith Street Collingwood	General	12midnight	unknown
New Guernica	64 Smith Street Collingwood	On-premises	4am	410 patrons
Sixty Smith	60 Smith Street Collingwood	On-premises	4am	120 patrons

140. With regards to the above results, there are three large-scale premises (with over 200 patrons) within a 500m radius of the subject site. The remaining venues are predominantly restaurants or small-scale bars, with relatively restricted patron numbers and are not considered to substantially contribute to potential cumulative impacts within the area.
141. Given that the site is already in use as a bar open until 1am, it is considered that the recommendation to allow operation until 2am Thursday through to Saturday with a maximum of 100 patrons between 12am to 2am will not detrimentally contribute to a negative cumulative impact within a Core Entertainment Precinct for the following reasons:
- (a) The 2am closing time, and reduction in patrons at midnight to 100 patrons will encourage a staggered egress of patrons from the site and dispersal along Smith street.
 - (b) The subject venue would be the only venue to close at 2am (most close at 1am or 3am) allowing for patrons to disperse and leave the precinct prior to the larger venues closing at 3am.

Transport and dispersal

142. The practice note requests consideration of the dispersal routes of patrons from the premises in order to assess potential impacts on the amenity of the surrounding area, noting that how patrons leave the licensed premises at closing time can have a significant impact on the amenity of an area.
143. Of the 11 licensed premises outlined in the table above, only two are located within a residential side street, both of which cease operation at 1am. This ensures that the movement of patrons will overwhelmingly be contained along Smith Street and Gertrude Street and the associated transport routes and not in the sensitive residential areas adjacent. In addition, the dispersal of patrons from the venue is likely to be staggered, with patrons coming and going at various times throughout the day, evening and night.
144. Given the locality of the premises (and involving the consumption of liquor), it can be expected that the primary modes of dispersal would be by walking, public transport and taxi. Whilst some car travel from the venue may occur, it is unlikely to be the main mode of transport for patrons.
145. As discussed earlier in the report, a condition will require that the entry/exit for patrons only be via the Smith Street entry. As such people are likely to disperse along the main thoroughfare to access public transport and taxis or other venues within the area. There is no need for patrons to pass through Little Smith Street or other quieter residential streets to the west in order to access these services.
146. Based on the location of the subject site within a MAC and Core Entertainment Precinct, the nature of the venue and the likely dispersal routes to be used, it is considered that the amendments sought will not create unreasonable additional impacts within the surrounding area subject to the conditions relating to the proposed operating hours to cease no later than 2am later in the week.

Impact mitigation

147. To ensure a venue is managed appropriately, Council’s local policy at clause 22.09 requires submission of a NAAP which outlines management procedures aimed at ensuring good patron management. The NAAP has been discussed earlier within this assessment. This document outlines the specific management procedures to be followed at all times, and

includes details relating to staffing and incident registers, responsible service of alcohol, safety procedures and emergencies.

148. The NAAP is considered to be satisfactory in mitigating negative cumulative impacts associated with the venue subject to the conditions as discussed earlier. In addition to the revisions to the NAAP by condition, and to ensure the venue is managed in accordance with these specifications, a condition will require the ongoing compliance with the endorsed NAAP.
149. In addition to these measures, Council's Local Law No.8 prohibits the consumption of liquor in public places and Council's Community Amenity Unit and Victoria Police are charged with ensuring these venues operate in an appropriate manner. Victoria Police generally focus on patron behaviour on the street and Council's Community Amenity Unit generally deals with issues of noise from within premises. Subject to the changes outlined in this report, the amendment application will allow for an appropriate use of the land as is encouraged by Clause 22.09.

Live music and deletion of Condition 2

150. Music noise levels from within the main lounge/bar area have been discussed previously and Planning Officers are satisfied that the music noise limits set out in the Acoustic Report (and subsequent memo) by Enfield Acoustics are appropriate and can reasonably be met.
151. As also discussed in the *Permit History* section of this report, the existing permit and endorsed plans are somewhat contradictory with relation to the permitted live and amplified music. Condition 1(b)(i) of the permit, as well as the endorsed NAAP and acoustic report, reference both a DJ booth and a noise limiting device in association with the band. This suggests that live music within the premises is amplified and raised issues for Council's Community and Amenity Enforcement in regulating the venue when complaints were logged.
152. As such, the amendment application has applied to delete Condition 2 of the permit and have submitted an amended acoustic report to provide greater clarity to the live music and associated noise limits to be set. Condition 2 of the permit reads as follows:
- (a) *All live entertainment and all music played and carried out on the premises must not be amplified and limited to acoustic only.*
153. Live, unamplified music such as acoustic or piano sets will continue to be permitted in accordance with the original permit. However, the amended acoustic report (prepared by Enfield Acoustics and dated 22 January 2021) and subsequent memo (also prepared by Enfield Acoustics) specifically addresses music levels from amplified DJ sets in the lounge/bar area.
154. As previously discussed, the acoustic report (and memo) calculates noise limits and will be required by the amended permit to be set by a limiting device. Planning Officers are satisfied that this will give venue operators, as well as Council, greater regulation of the music noise levels of the premises whilst ensuring that the music noise levels will not detrimentally impact the amenity of neighbouring properties. Further, the venue will be required to install a sound lock door to the Smith Street entrance and cease any use of the external toilets at the rear of the site to mitigate the potential of noise escaping from the internal lounge/bar area. In consideration of this report and revised conditions, Condition 2 can be deleted.
155. However, a new condition 2 would replace this condition and read as follows:
- (a) Live and amplified music (other than background music) is to be restricted to the front lounge/bar area to the satisfaction of the Responsible Authority.
156. The currently endorsed Acoustic Report (prepare by Marshall Day and dated 18 February 2010) contains commitments relating to the outdoor courtyard and beer garden. Although these aspects are not being amended through the subject application, they are still relevant to the operation of the licenced venue and should be carried over. As such, a condition will require that the currently endorsed Acoustic Report be amended to include:

- (a) The noise limits and recommendations relating to the front lounge/bar area outlined in Acoustic report (prepared by Enfield Acoustics and dated 22 January 2021) including the installation of a sound lock door to the Smith Street entrance.
- (b) The location of the dwellings at No. 123 Smith Street in accordance with the memo prepared by Enfield Acoustics dated 24 June 2021 including revised “resulting maximum noise levels”.
- (c) but further modified to:
 - (i) reference operating hours in accordance with Condition 6;
 - (ii) require a limiting device be installed to ensure that the anticipated noise limits are achieved and not exceeded. The device must be calibrated by a suitably qualified acoustical consultant, and if live or amplified music is proposed to be played after 1am, the limiting device to include an external microphone.

Objector concerns

- (d) *Noise impacts (patron noise and music)*

This matter has been addressed at paragraphs 107 - 131 of this report. Various conditions have been recommended, relating to noise limits and installation of a noise limiting device, the installation of a sound lock door and the closure of external toilets after midnight, to ensure that noise impacts from patrons and music is appropriately mitigated.

- (e) *Increased risk of anti-social behaviour, loitering in the laneway, littering and vandalism.*

Various conditions are included on the existing permit or have been addressed in the amended Noise and Amenity Action Plan (NAAP) which will be endorsed to form part of any amended permit issued to ensure the venue is appropriately managed to mitigate these concerns.

Of note, the NAAP has included, or will be required to include, details of security personnel and their responsibilities and management of queues and large groups. A condition would also been included to require that all ingress and egress occur through the entrance from Smith Street to deter any movement of patrons along Little Smith Street.

- (f) *Cumulative impacts of late-night licensed premises in the area.*

This matter has been discussed at paragraphs 132-146 of this report, and subject to the condition to only extend the operating hours to 2am instead of 1am on Thursday through to Saturday, it is considered that the licensed venue will not result in any unreasonable cumulative impacts in a Core Entertainment Precinct.

- (g) *The location of the toilets in the rear, unenclosed courtyard is inappropriate and exacerbates noise issues.*

This matter has been discussed at paragraphs 102-104 of this report and a condition has been included in the recommendation requiring that the external toilets not be used after midnight on any night.

- (h) *Poor venue management.*

This matter has been discussed throughout this report and it is considered that the amended permit, subject to various restrictions outlined in the recommendation, will ensure the licensed venue is appropriately managed in the future. The revised NAAP, acoustic report and amended permit will also provide greater clarity around the expectations of the licensed venue and give Council's Community Enforcement and Amenity team greater power in enforcing the permit conditions.

Other matters

Permit conditions

157. The Applicant applied to amend Condition No. 6 from:

The premises may only operate between the following hours:

*Monday to Saturday Between 7am and 1am (the following day); and
Sunday Between 10 and 1am (the following day)*

To:

The premises may only operate between the following hours:

Sunday to Wednesday Between 11am and 2am (the following day)

Thursday to Saturday Between 11am and 5am (the following day)

158. For the reasons substantiated in this report, Condition No. 6 will be amended to read as follows:

The premises may only operate between the following hours:

Sunday to Wednesday Between 11am and 1am (the following day)

Thursday to Saturday Between 11am and 2am (the following day)

159. The Applicant applied to delete Condition No. 2 which reads as follows:

All live entertainment and all music played and carried out on the premises must not be amplified and limited to acoustic only.

160. As discussed in the body of this report, Condition No. 2 will be amended to read as follows:

Live and amplified music (other than background music) is to be restricted to the front lounge/bar area to the satisfaction of the Responsible Authority.

161. The Applicant applied to amend Condition 3 from:

(a) *Microphones, background music and non-amplified entertainment must comply with SEPPS N2 requirements.*

To:

(b) All music including background music, dance music and live music entertainment must comply with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.

162. The proposed condition wording is consistent with Council's assessment and the Acoustic Report submitted and as such the amended wording will be adopted.

Permit preamble

163. The Applicant applied to amend the permit preamble to reflect the proposed trading hours under Condition 6.

164. The existing permit preamble reads as follows:

Development of the land for buildings and works (retrospective) and use of the land for the purpose of a tavern with a maximum of 120 patrons, including a reduction in the car parking requirements and to allow for the sale and consumption of alcohol between 7am and 1am the following day, Monday to Saturday and between 10am and 1am the following day on Sunday.

165. For clarity, the operating hours will be removed from the permit preamble and Condition No. 6 will be relied upon. The permit preamble will be amended to read as follows:

Development of the land for buildings and works (retrospective) and use of the land for the purpose of a tavern with a maximum of 120 patrons, including a reduction in the car parking requirements and to allow for the sale and consumption of alcohol (on the premises).

166. Finally, if Council were in a position to make a decision, the permit would need to be amended to reference all the conditions/changes as discussed throughout the body of this report, including a new condition 1 requirement. All new and amended conditions have been shown in bold in the *Recommendation* of this report.

167. The current condition 1 of the permit required that the plans be amended and submitted for endorsement. This has since occurred, with the plans endorsed on 23 November 2010, and as such the current Condition 1 requirements can be removed/replaced.
168. Further, the amendment to the permit will require that that expiry condition be amended to reference the date that the amended permit was issued. The wording will also be amended to ensure that it aligns with the most recent requirements of the *Planning and Environment Act 1987* in relation to the sale and consumption of liquor (as the use has already commenced).
169. The amended wording will read as follows from:

This permit will expire if the use is not commenced within 12 months from the date of this permit. The Responsible Authority may approve extensions to these time limits if requests are made within three months of expiry.

To:

This permit will expire if:

- (a) The sale and consumption of liquor as approved by the amended permit is not commenced within two years from the date this permit was amended.
- (b) The sale and consumption of liquor is discontinued for a period of two years.

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

Conclusion

170. The proposed amendment is considered to demonstrate a high level of compliance with policy objectives contained within the Planning Policy Framework and Municipal Strategic Statement. The proposed amendments are considered to have strategic support and are considered acceptable, subject to conditions outlined in the recommendation of this report, which will also assist in improving the management and regulation of the approved venue.

RECOMMENDATION

That having considered all submissions and relevant planning policies and controls, the Committee resolves to advise the Victorian Civil and Administrative Tribunal that had it been in the position to, it would have issued a Notice of Decision to Grant an amended Planning Permit PL06/0738.01 for the land at No 125 Smith Street Fitzroy, subject to the following changed permit preamble and conditions:

Permit preamble to read

Development of the land for buildings and works (retrospective) and use of the land for the purpose of a tavern with a maximum of 120 patrons, including a reduction in the car parking requirements and to allow for the sale and consumption of alcohol (on the premises).

Amended conditions to read (changes in bold)

1. **Before the sale and consumption liquor as approved through the amended permit 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 form part of the permit. The plans must be generally in accordance with the application plans but modified to include:**
 - (a) **Internal toilets to be shown as gender neutral.**
 - (b) **Any requirements of the amended Acoustic Report (Condition 25).**
2. **Live and amplified music (other than background music) is to be restricted to the front lounge/bar area to the satisfaction of the Responsible Authority.**

3. **All music including background music, dance music and live music entertainment must comply with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.**
4. All use must accord with the endorsed plans. Any alterations must be approved by the Responsible Authority.
5. The layout of the uses on the endorsed plans must not be altered without the written consent of the Responsible Authority.
6. **The premises may only operate between the following hours:**
 - (a) **Sunday to Wednesday Between 11am and 1am (the following day)**
 - (b) **Thursday to Saturday Between 11am and 2am (the following day)**
7. **The rear courtyard, beer garden and dining area (including the rear toilets) must not be used after midnight on any day. The dining area can only be used to access the internal toilets.**
8. **No more than 120 patrons may be permitted on-site between 11am to midnight and no more than 100 patrons after midnight (with no more than 30 the patrons occupying the dining area when permitted to be open).**
9. The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which this permit relates during or immediately after the trading hours authorised under this permit.
10. The licensee shall ensure that the level of noise emitted from the premises shall not exceed:
 - (a) The permissible noise level from mechanical equipment as specified in the State Environment Protection Policy N-1 Control of Noise Industrial, Commercial and Trade Premises with the Melbourne Metropolitan area; and
 - (b) The permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N2.
11. No music must be played outside the premises. No speakers must be sited outside the premises.
12. The operator must request patrons, by a prominent notice, to take account of the needs of local residents for peace and quiet during normal sleeping hours.
13. The operator and/or security staff must request patrons to not congregate on the footpath, on front of the premises.
14. The footpath must not be obstructed by patrons entering or leaving the premises.
15. The use permitted must not adversely affect the amenity of the locality by the appearance of any buildings, works or materials, the transporting of goods to and from the premises, emissions from the site or in any other way.
16. Any empty bottles associated with the use must be taken in bags and no emptying of bottles into garbage bins is permitted after 10.00pm on any night or before 7.00am on any day.
17. Garbage collections are restricted between 7.00am and 8.00pm on any day.
18. During all hours (whether or not liquor is served) in which the business is open to the public, entry must be made freely available to a member of the Victoria Police, an "authorised officer" of the Responsible Authority or an officer of Liquor Licensing Victoria for the carrying

out of any investigations associated with the sale or consumption of alcohol on the site.

19. During all hours (whether or not liquor is served) in which the business is open to the public, there must be present on the premises, a person above the age of 18 years, responsible for the good conduct of the premises ("the Manager").
20. The Manager must at all times be authorised by the occupier of the premises to make statements on their behalf to a member of the Victoria Police, an "authorised officer" of the Responsible Authority or an officer of Liquor Licensing Victoria regarding the conduct of the premises for the activity hereby authorised.
21. **The internal works to the toilets and sound lock door must be completed prior to the commencement of the sale and consumption of liquor approved under the amended permit to the satisfaction of the Responsible Authority.**
22. **All patron ingress and egress must be directed through the Smith Street entrance to the satisfaction of the Responsible Authority.**

Waste Management Plan

23. **Before the sale and consumption of liquor as approved under the amended permit commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by TTM, but modified to require:**
 - (a) **That all waste streams including food waste and glass, be collected by a private contractor.**
24. **The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.**

Acoustic Report

25. **Before the sale and consumption of liquor as approved through the amended permit commences, an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Acoustic Report prepared by Marshall Day and dated 18 February 2010, but modified to include (or show, or address):**
 - (a) **The noise limits and recommendations relating to the front lounge/bar area outlined in Acoustic report (prepared by Enfield Acoustics and dated 22 January 2021) including the installation of a sound lock door to the Smith Street entrance.**
 - (b) **The location of the dwellings at No. 123 Smith Street in accordance with the memo prepared by Enfield Acoustics dated 24 June 2021 including revised "resulting maximum noise levels".**
 - (c) **but further modified to:**
 - (i) **reference operating hours in accordance with Condition 6;**
 - (ii) **require a limiting device be installed to ensure that the anticipated noise limits are achieved and not exceeded. The device must be calibrated by a suitably qualified acoustical consultant, and if live or amplified music is proposed to be played after 1am, the limiting device to include an external microphone.**

26. **The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.**
27. **Within 3 months of the commencement of the sale and consumption of liquor as approved under the amended permit, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the compliance of the use and, where necessary, make recommendations to limit the noise impacts in accordance with Environment Protection Regulations under the Environment Protection Act 2017 and the incorporated Noise Protocol (Publication 1826.4, Environment Protection Authority, May 2021) or any other requirement to the satisfaction of the Responsible Authority. Any works required by the acoustic report must be undertaken within 6 months of the date of the report to the satisfaction of the Responsible Authority.**

Noise and Amenity Action Plan

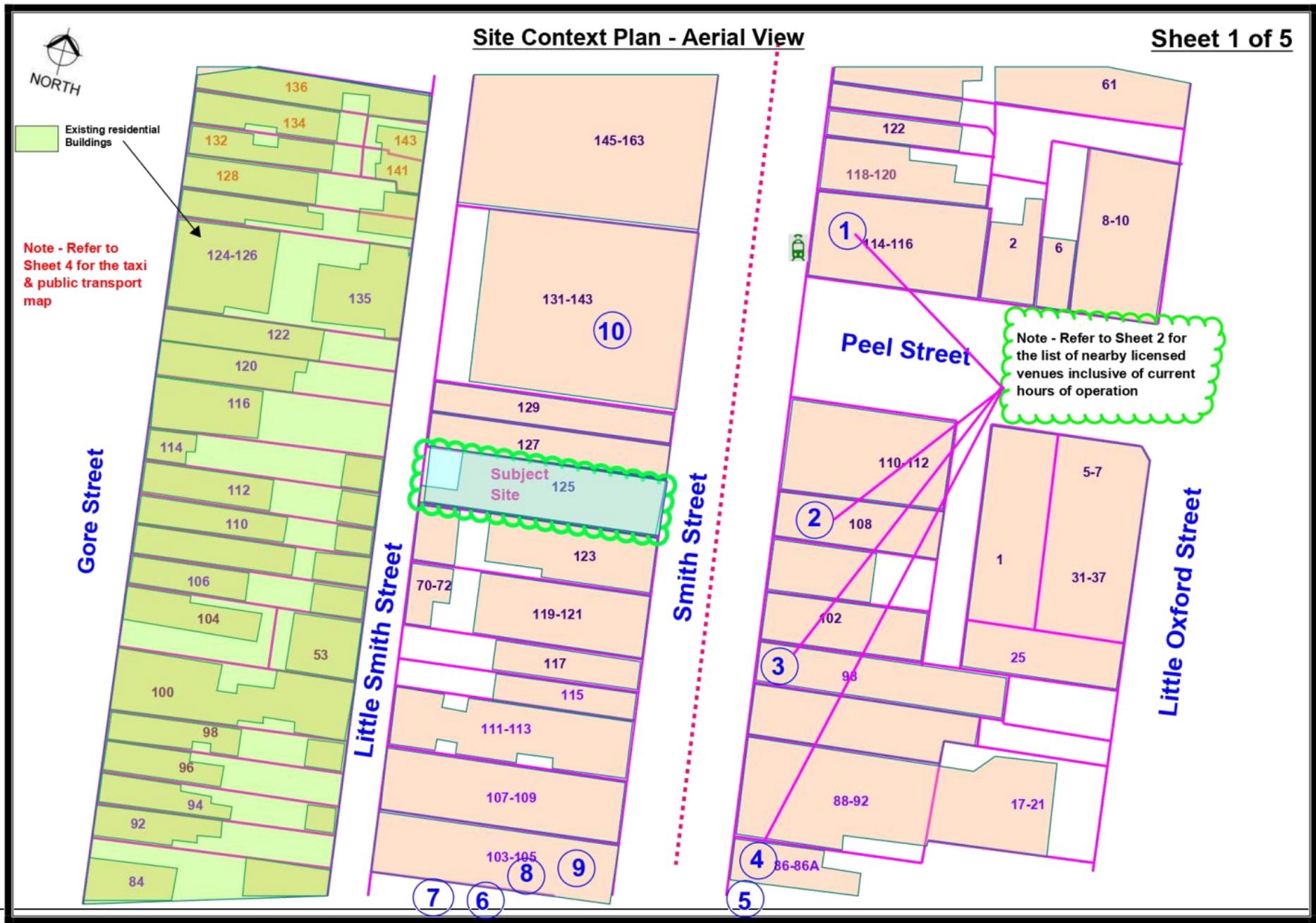
28. **Before the sale and consumption of liquor as approved through the amended permit commences, an amended Noise and Amenity Action Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Noise and Amenity Action Plan will be endorsed and will form part of this permit. The amended Noise and Amenity and Action Plan must be generally in accordance with the Noise and Amenity Action Plan prepared by Priority Planning, but modified to include (or show, or address):**
 - (a) **The movement of patrons into the external outdoor area after midnight be restricted through the presence of security personnel or locked doors. No persons, including staff are to use the courtyard area after midnight for any purpose including smoking.**
 - (b) **That amplified music is not permitted to be played other than through the permanently installed (and limited) sound system in the lounge/bar area.**
 - (c) **Confirmation that the noise limiter is not accessible by any personnel other than a qualified acoustic engineer or technician nominated by the licensee or occupier of the land.**
 - (d) **Commitment to reduce the capacity of the venue to 100 patrons after midnight and how this will be managed.**
 - (e) **Greater detail to the employment of security personnel and their responsibilities (inclusive of information detailed in applicant's town planning report).**
 - (f) **Staffing levels, and extended hours of operation limited to the internal front section of the building (as per applicant's town planning report).**
 - (g) **Reference to Octave Acoustics to be corrected to Enfield Acoustics.**
29. **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.**
30. **This permit will expire if:**
 - (a) **The sale and consumption of liquor as approved by the amended permit is not commenced within two years from the date this permit was amended.**
 - (b) **The sale and consumption of liquor is discontinued for a period of two years.**

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

Attachments

- [1](#) **1** [↓](#) PL06/0738.01- 125 Smith Street Fitzroy - Endorsed Plans
- [2](#) **2** [↓](#) PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report
- [3](#) **3** [↓](#) PL06/0738.01- 125 Smith Street Fitzroy - Planning Permit
- [4](#) **4** [↓](#) PL06/0738.01- 125 Smith Street Fitzroy - Patron Capacity Report
- [5](#) **5** [↓](#) PL06/0738.01- 125 Smith Street Fitzroy - Acoustic referral comments
- [6](#) **6** [↓](#) PL06/0738.01- 125 Smith Street Fitzroy - Referral comments

Attachment 1 - PL06/0738.01- 125 Smith Street Fitzroy - Endorsed Plans



Attachment 1 - PL06/0738.01- 125 Smith Street Fitzroy - Endorsed Plans

Legend - Licensed Premises - Smith Street, Collingwood

Sheet 2 of 5

1



Grace Darling Hotel
114 Smith Street, Collingwood
Tuesday 4-11pm
Wednesday 4pm to 12am
Thursday 4pm to 12 am
Frid & Sat 12pm to 1am

2



Lantern Lounge
108 Smith Street, Collingwood
Tuesday 5-11pm
Wednesday 5pm to 11pm
Thursday 4pm to 1 am
Frid & Sat 4pm to 1am

3



Sook Thai Kitchen Bar
98 Smith Street, Collingwood
Monday to Thursday 10.30am - 9pm
Frid 10.30am to 10.30pm

4



Maha Bar
86 Smith Street, Collingwood
Monday to Thursday 5.30pm to late (1am)
Frid & Sat 12pm to late (1am)

5



Foresters
64 Smith Street, Collingwood
Thursday 5-11pm
Friday 5pm to 2am

6



Mr Wows Emporium
97B Smith Street, Collingwood
Thursday 5pm - 1am
Friday 5pm to 1am

7



Yah Yahs
99 Smith Street, Collingwood
Friday, Sat & Sunday - 3pm to 1am
Wed & Thursday 6pm to 1am

8



Mollies Bar Lounge
103 Smith Street, Collingwood
Friday, Sat & Sunday - 3pm to 1am
Wed & Thursday 6pm to 1am

9



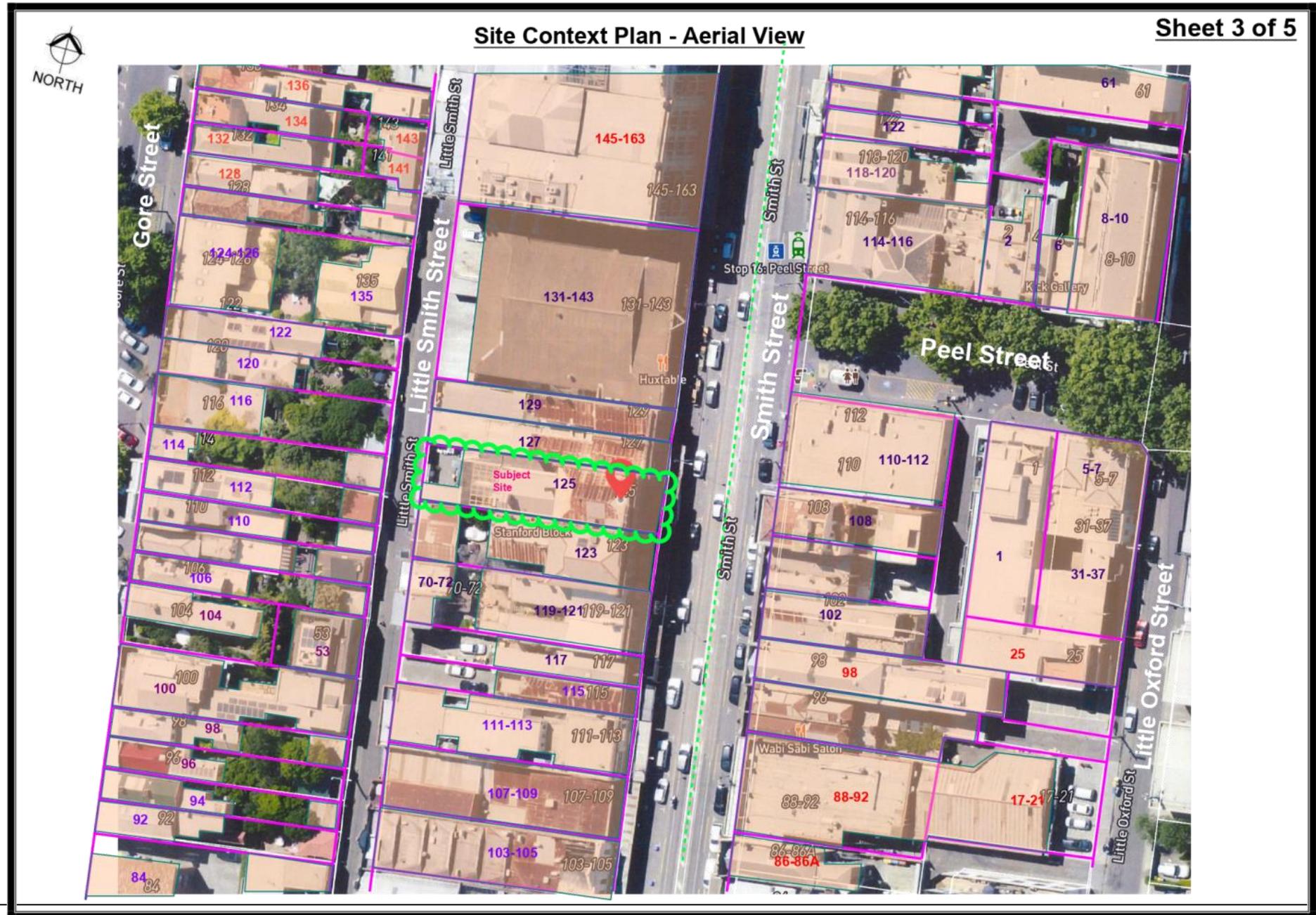
Circuit Bar
103-105 Smith Street, Collingwood
Saturday & Sunday 3pm - 3am
Wednesday 5-11pm
Thursday 5pm - 3am
Friday 5pm to 3am

10

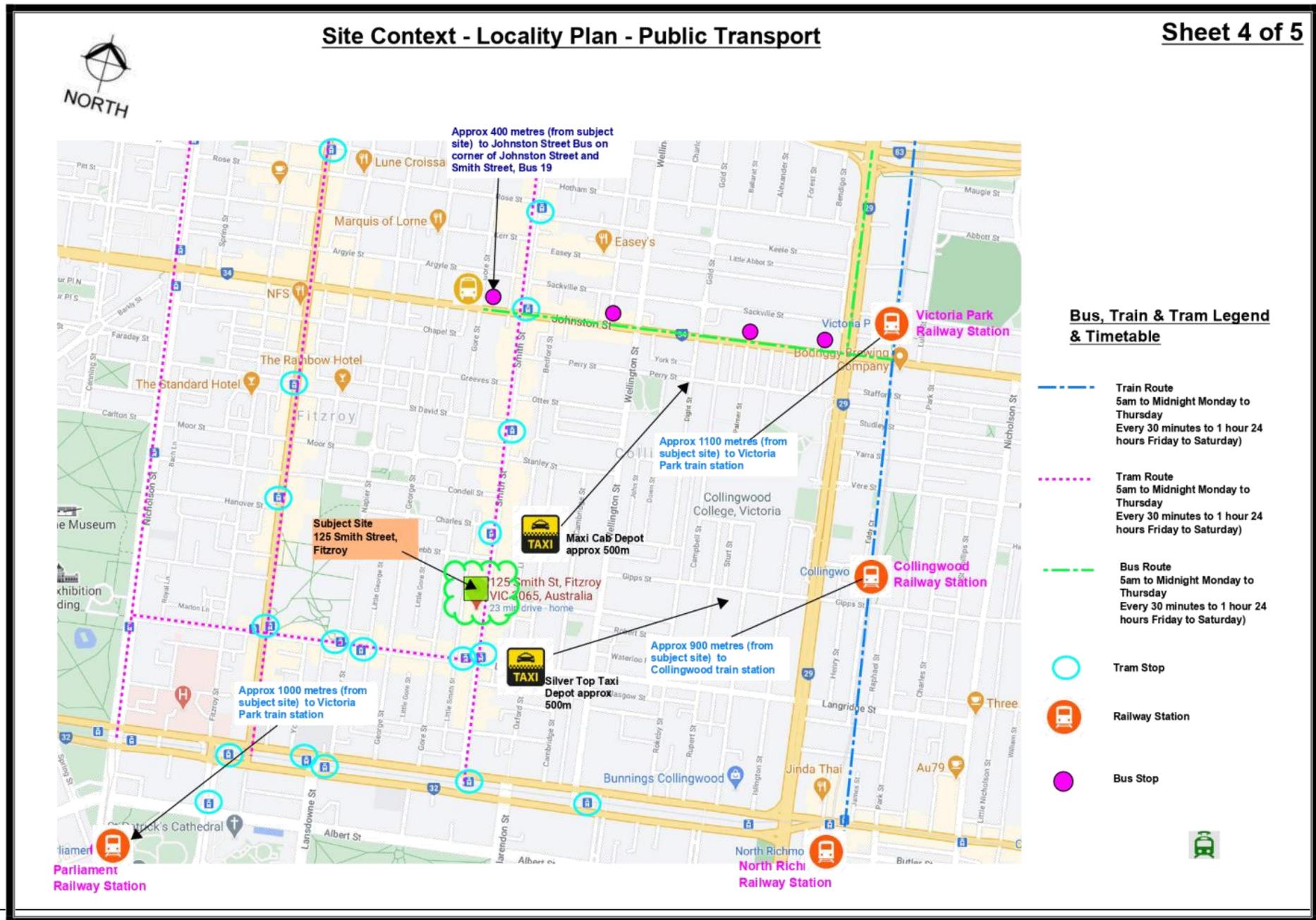


Shimbashi JKapanese Soba & Sake Restaurant
131 Smith Street, Collingwood
Monday to Saturday 12 noon to 9.30pm

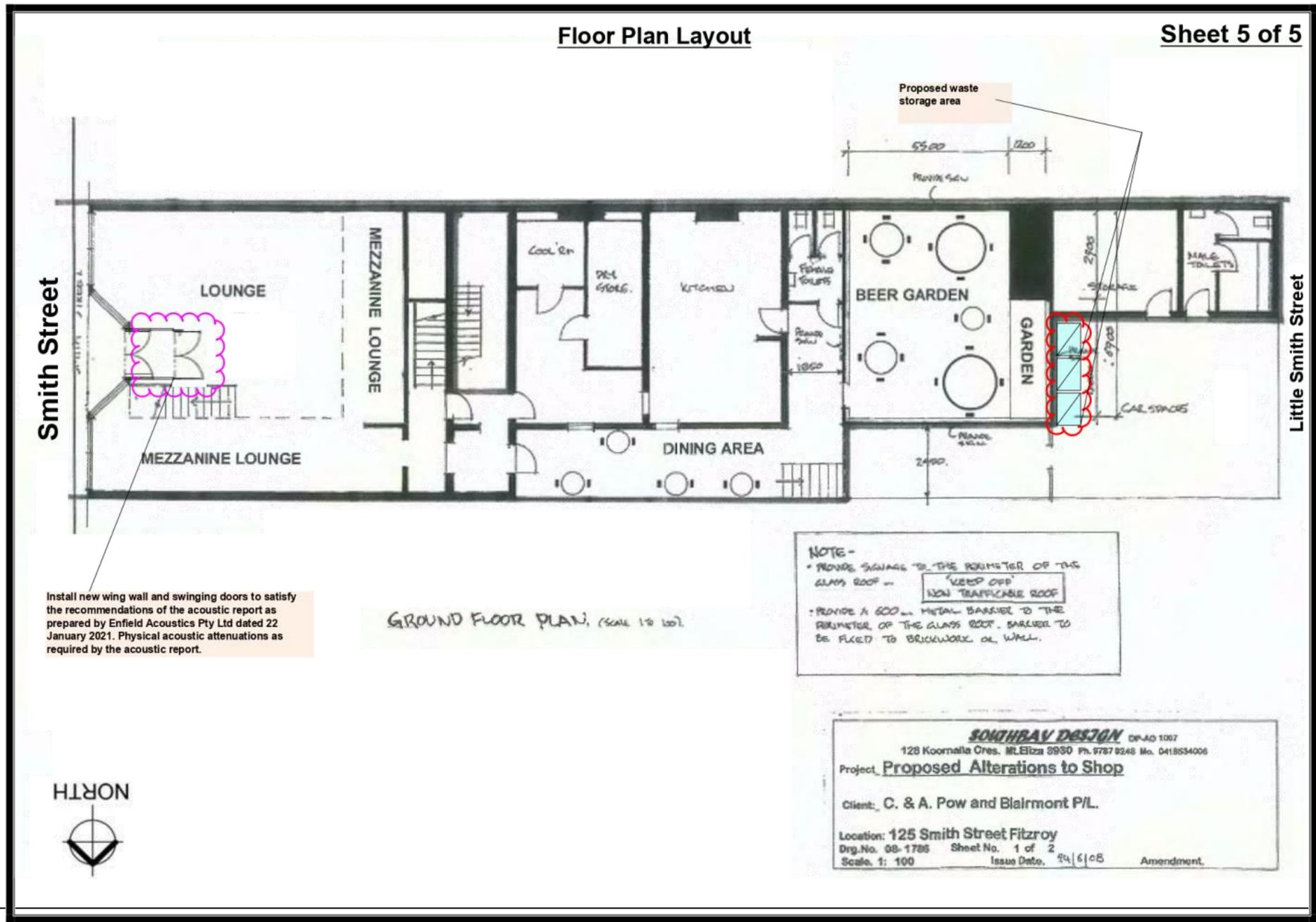
Attachment 1 - PL06/0738.01- 125 Smith Street Fitzroy - Endorsed Plans



Attachment 1 - PL06/0738.01- 125 Smith Street Fitzroy - Endorsed Plans



Attachment 1 - PL06/0738.01- 125 Smith Street Fitzroy - Endorsed Plans



Attachment 2 - PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report

Enfield Acoustics Pty Ltd
ABN 15 628 634 391
PO Box 920
North Melbourne, VIC 3051
(03) 9111 0090



June 24, 2021

Rainbow International House Club Co Pty Ltd
Attn: Alaattin Uslu

Rainbow House Club - 125 Smith Street, Fitzroy (Venue)

Re: Response to Objectors at 125A and 123 Smith Street

Enfield Acoustics was previously engaged by Rainbow International House Club Co Pty Ltd to prepare an acoustic report for the proposed extension of trading hours for the Venue at 125 Smith Street, Fitzroy.

Refer to Document No: **V518-01-P Acoustic Report (r0)** dated 22 January 2021 (Acoustic Report) which is appended to this memo.

Our understanding is that objections have been raised by residents situated directly adjacent to the Venue and that Council has requested an updated assessment to consider noise impacts to:

- 125A Smith Street, located to the rear of the Venue
- 123 Smith Street, located directly to the South of the Venue.

ASSESSMENT TO 125A SMITH STREET

With regards to 125A Smith Street, our understanding is that the current tenant has withdrawn his objection and has vacated the property. Further, our instruction is that the Applicant intends to lease the property at 125A Smith Street for their own use.

To this end, our view is that matters relating to acoustic amenity to 125A Smith Street is resolved so as long as the Client maintains his tenancy at the property and providing that the dwelling is not sublet out to any future residents.

ASSESSMENT TO 123 SMITH STREET

Enfield Acoustics visited the Venue between 4am to 5am on 11 June 2021 to:

- Inspect the property at 123 Smith Street
- Conduct Noise Reduction (NR) testing from the main room of the Venue to 123 Smith Street
- Conduct attended (indoor) background noise measurements within 123 Smith Street

125 Smith Street, Fitzroy

V518-02-P Tech Memo - Rainbow House Club (r0).docx

Technical Memo

1

Attachment 2 - PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report



Testing was carried out between 4am and 5am to ensure a high signal-to-noise ratio during the test and so that the lowest ambient noise levels were recorded.

Based on our inspection of the property and conversations with the owner of 123 Smith Street, we note the following:

Location	Comments
GF Ground Floor	<ul style="list-style-type: none"> Commercial use (bottle shop)
L1 First Floor Office (directly above ground floor tenancy)	<ul style="list-style-type: none"> Office use Located directly above the ground floor tenancy Shares a common wall with the Venue’s main room Being used as an office for the ground floor bottle shop
L1 First Floor Dwelling	<ul style="list-style-type: none"> Located towards the rear of the property (West) Does not appear to share a common wall with the Venue’s main room Open plan kitchen/living area located closer to the Venue’s main room with bedrooms setback towards the West boundary
L2 Second Floor Dwelling	<ul style="list-style-type: none"> Located directly above the first floor office Shares a common wall with the Venue’s main room, however is separated by another level (Venue’s main room extends up to L1 only) Open plan kitchen/living directly abuts the boundary of 125 Smith Street, however bedrooms are setback towards the South boundary of the property

125 Smith Street, Fitzroy

Technical Memo

V518-02-P Tech Memo - Rainbow House Club (r0).docx

2

Attachment 2 - PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report



Based on our observations, only the L1 and L2 dwellings are considered as sensitive receptors given that other areas are occupied by commercial uses.

125 Smith Street, Fitzroy

Technical Memo

V518-02-P Tech Memo - Rainbow House Club (r0).docx

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Attachment 2 - PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report



Noise reduction testing was conducted at a location representative of where 'worst-case' noise impacts from the Venue's main room was observed.

Similar to the methodology in the Acoustic Report, simulated noise testing was conducted by placing a loudspeaker in the Venue's main room. The reverberant sound pressure level of the main room was measured as follows:

Location	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
Main room reverberant noise level	94	99	99	99	97	91	94

125 Smith Street, Fitzroy

Technical Memo

V518-02-P Tech Memo - Rainbow House Club (r0).docx

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Attachment 2 - PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report



The results of our NR testing are as follows:

Location	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
Main room to L1 Kitchen/Living	54	66	65	67	75	73	76
Main room to L2 Kitchen/Living	49	53	57	62	70	70	74

Accurate NR measurement within the bedrooms was not possible as the loudspeaker signal was barely audible and indistinguishable from background. Regardless, this correlates with our observations that the worst-affected locations within the dwellings were within the open plan living/kitchen area. Where the Venue can comply at those locations, our view is that they would inherently comply within the bedrooms that are further setback from the main room.

Ultimately, this results in a conservative assessment as living rooms/kitchens are typically not considered as an area used for sleep under SEPP N-2.

The background noise levels measured and resulting SEPP N-2 noise limits are as follows:

Measurement	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L1 Kitchen/Living							
L _{A90} background noise level, between 4.30am to 5am	40	33	34	32	22	18	18
L _{OCT10} SEPP N-2 'Night' Noise Limit	48	41	42	40	30	26	26
L2 Kitchen/Living							
L _{A90} background noise level, between 4.30am to 5am	38	34	28	23	19	15	15
L _{OCT10} SEPP N-2 'Night' Noise Limit	46	42	36	31	27	23	23

125 Smith Street, Fitzroy

Technical Memo

V518-02-P Tech Memo - Rainbow House Club (r0).docx

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Attachment 2 - PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report



Based on the SEPP N-2 noise limits above, the maximum allowable noise level within the Venue’s main room before SEPP N-2 non-compliance were calculated, as follows:

Item	L _{A10} dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
Based on Receiver L1								
Approximate noise level within main room area allowable between 1am to 5am under SEPP N-2, L _{OCT10}	110	102	107	107	107	105	99	102
Based on Receiver L2								
Approximate noise level within main room area allowable between 1am to 5am under SEPP N-2, L _{OCT10}	102	95	95	93	93	97	93	97
Previous Acoustic Report Levels								
Approximate noise level within main room area allowable between 1am to 5am under SEPP N-2, L _{OCT10}	95	96	91	95	94	90	84	79
RESULTING MAXIMUM NOISE LEVELS								
Approximate noise level within main room area allowable between 1am to 5am under SEPP N-2, L _{OCT10} , for all receptors	94	95	91	93	93	90	84	79

Based on our assessment, the maximum music noise levels permissible within the Venue’s main room has not significantly changed from our initial assessment (1-2dB at some octave bands). Overall, our findings remain consistent with the Acoustic Report, with the exception that the maximum allowable noise levels shall be updated as presented above.

OTHER MATTERS

The objector has raised concerns about the noise impacts from the Venue’s rear courtyard. Our view is that this is not strictly a matter pertaining to the application for the extension of hours given that the Applicant only wishes to extend the trading hours of the Venue’s main room.

125 Smith Street, Fitzroy
 Technical Memo

V518-02-P Tech Memo - Rainbow
 House Club (r0).docx
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Attachment 2 - PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report



No changes are proposed to the operational hours of the rear courtyard.

AGENT OF CHANGE PRINCIPLE

It is unclear whether the Venue has existing use rights as it is unknown whether 123 Smith Street was a residential use prior to the Venue commencing operation.

We note that the Endorsed Acoustic Report prepared by Marshall Day Acoustics dated 18 February 2010 (**Doc Ref: 001 R02 2009044**) for 125 Smith Street highlights the following:

2.0 SITE DESCRIPTION

Grumpy's Bar is located at 125 Smith Street, in the Gertrude Street/Smith Street bar and restaurant precinct. The venue consists of a ground floor bar and band area, mezzanine lounge area, a small kitchen and outdoor courtyard area at the rear of the site. The venue is located on the ground floor of a 3-storey building that is shared with other commercial tenants. The adjacent buildings at 123 and 127 Smith Street, are also occupied by commercial tenants.

Regardless, given that our updated assessment results in marginally differences in the maximum permissible noise levels, this may not present as an issue in the context of planning.

SUMMARY

Enfield Acoustics has assessed noise impacts to the objectors at 125A Smith Street and 123 Smith Street, and is satisfied that the application can be approved, noting that:

1. Noise impacts to 125A Smith Street are resolved, provided that the Applicant leases the property. This matter may require conditioning on the permit, or a lease agreement, however is at the discretion of others to resolve;
2. Our assessment of noise impacts to 123 Smith Street results in marginal differences in the maximum permissible noise levels of the Venue. Regardless, we recommend that noise levels played within the main room do not exceed the following noise levels:

125 Smith Street, Fitzroy

Technical Memo

V518-02-P Tech Memo - Rainbow House Club (r0).docx

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Attachment 2 - PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report



Item	L _{A10} dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
RESULTING MAXIMUM NOISE LEVELS								
Approximate noise level within main room area allowable between 1am to 5am under SEPP N-2, L _{Oct10}	94	95	91	93	93	90	84	79

- Our assessment has not resulted in any changes to the recommendations made in the Acoustic Report, other than the maximum permissible noise levels stated above.

Regards

Mark Chew
Associate
Enfield Acoustics Pty Ltd

125 Smith Street, Fitzroy
Technical Memo

V518-02-P Tech Memo - Rainbow
House Club (r0).docx
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125 SMITH STREET, FITZROY

Acoustic Report for Permit Amendment

For

RAINBOW INTERNATIONAL HOUSE CLUB CO PTY LTD

DOC. REF: V518-01-P ACOUSTIC REPORT (R0)
22 JANUARY 2021

Enfield Acoustics Pty Ltd
ABN 15 628 634 391
Ph: +61 3 9111 0090
PO Box 920
North Melbourne, VIC 3051

Attachment 2 - PL06/0738.01- 125 Smith Street Fitzroy - Amended Acoustic Report



Project	125 Smith Street, Fitzroy
Subject	Acoustic Report for Permit Amendment
Client	Rainbow International House Club Co Pty Ltd
Document Reference	V518-01-P Acoustic Report (r0).docx
Date of Issue	22 January 2021

Disclaimer:

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The information contained within this document should not be relied upon by any third parties or applied under any context other than that described within this document. Advice provided in this document is done so with respect to instructions, on the basis of information supplied to Enfield Acoustics Pty Ltd at the time of writing, and in accordance with any reasonable assumptions, estimations, modelling and engineering calculations that we have been required to undertake. Enfield Acoustics Pty Ltd do not represent, warrant or guarantee that the use of guidance in the report will lead to any certified outcome or result, including any data relied on by third parties.

125 Smith Street, Fitzroy
Acoustic Report for Permit Amendment

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1 Introduction & Proposal

Enfield Acoustics has been engaged by Rainbow International House Club Co Pty Ltd (Applicant) to assess the proposal to extend the trading hours of the Rainbow House Club at 125 Smith Street, Fitzroy (Venue).

This assessment is conducted in response to Council's RFI Condition 5 for planning permit amendment PL06/0738.01, as follows:

5. The endorsed Acoustic Report (prepared by Marshall Day and dated 18 February 2010) amended to assess the use of both internal and external areas beyond the hours already approved and any methods to be undertaken to control noise emissions to satisfy SEPP n-1 and SEPP n-2 or any other relevant requirement. The Acoustic Report should also show how the proposal meets the requirements of *Clause 53.06-3 Live Music and Entertainment Noise*.

Enfield Acoustics has been provided with the acoustic report previously prepared by Marshall Day Acoustics (Document No. 001 R02 2009044, 18 February 2010), hereby referred to as the Endorsed Acoustic Report.

The Venue's existing planning permit no. PL06/0738 includes the following conditions:

6. The premises may only operate between the following hours:	
Monday to Saturday Sunday	Between 7am and 1am (the following day); and Between 10am and 1am (the following day)

Our instructions are that the Applicant wishes to extend the trading hours of the main room area, where live music (DJ's) is proposed up to 5am. No other amendments are proposed to the permit (including patron numbers and access to external areas).

Given that no permit amendments are proposed beyond Condition 6 (Application for Amendment), this assessment is specific to the extension of trading hours for the main room area only, as indicated below:



To this end, Enfield Acoustics has:

1. Reviewed the Endorsed Acoustic Report;
2. Visited the Venue to conduct attended background noise measurements during the most sensitive trading hours proposed under the Application for Amendment at nearby sensitive uses;
3. Established benchmark noise levels within the main room with Live DJ's performing under current approved trading hours;
4. Measured the noise reduction (NR) between the main room to nearby sensitive uses;
5. Assessed noise impacts against the amended trading hours and recommended noise mitigation strategies as required to comply with SEPP N-2 and/or SEPP N-1.

It is our assessment that where the Venue can continue to comply with SEPP N-2 and SEPP N-1 for the extended trading hours proposed, inclusive of any noise attenuation and/or management, the Application for Amendment should be approved.

We note that compliance with SEPP N-2 automatically infers compliance with City of Yarra's planning scheme Clause 53.06-3, as required by Item 5 of Council's RFI.

2 Site Inspection

Enfield Acoustics visited the Venue and surrounding site on 14 January and 19 January 2021 to:

1. Identify nearby sensitive uses that would be impacted by the Venue's operation;
2. Measure benchmark noise levels within the main room when Live DJ's are performing;
3. Conduct a noise reduction (NR) test between the main room and and sensitive uses identified;
4. Measure background noise levels between 4.30am to 5am at all identified sensitive uses.



Nearby sensitive uses relevant to the Application are as follows:

1. Residential dwelling at 114 Gore Street; and
2. Residential apartments at 108 Smith Street.

Given that the above dwellings identified are closest to the Venue, it is intrinsic that compliance at these locations would also result in compliance at all other sensitive uses proximate the Venue.

Refer below for a site map showing the location of sensitive uses and measurements conducted:



3 Policy

3.1 State Environment Protection Policy N-2

Any amplified music noise from the proposed licensed areas on the Venue would need to comply with *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* (SEPP N-2).

The applicable noise limits for indoor venues are determined by the following:

- for the day/evening period, the LA90 (background) + 5dB(A)
- for the night period, L_{OCT90} (background) + 8dB

Our assessment considers the more stringent 'Night' period noise limits as the extended trading hours are outside the hours of SEPP N-2's 'Day/Evening' period (Refer to Appendix A).

Based on the background noise levels recorded, the following SEPP N-2 noise limits apply during the most sensitive hours:

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Measurement	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
114 Gore Street							
L _{A90} background noise level, between 4.30am to 5am	43	41	41	38	34	28	22
L _{Oct10} SEPP N-2 'Night' Noise Limit	51	49	49	46	42	36	30
108 Smith Street							
L _{A90} background noise level, between 4.30am to 5am	60	50	46	43	39	34	27
L _{Oct10} SEPP N-2 'Night' Noise Limit	68	58	54	51	47	42	35

3.2 State Environment Protection Policy N-1

Mechanical plant noise emissions from mechanical plant on the Venue are required to comply with *State Environment Protection Policy No. N-1* (SEPP N-1).

Based on the background noise levels recorded, the following SEPP N-1 noise limits apply.

Measurement Time Period	Background Noise Level	SEPP N-1 Zoning Level	SEPP N-1 Noise Limit
114 Gore Street - 'Night' between 4.30am to 5am	39 dB(A)	44 dB(A)	44 dB(A)
108 Smith Street - 'Night' between 4.30am to 5am	45 dB(A)	46 dB(A)	48dB(A)

4 Assessment

4.1 Music Noise Assessment (SEPP N-2)

4.1.1 Benchmark Noise Testing

Noise levels within the main room with live DJ's performing during current permitted trading hours were measured, as follows:

SEPP N-2 (Night)	L _{A10} dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L _{Oct10} noise levels within the main room	98	96	100	96	96	94	88	84
Notes:	^Measurement includes patron noise contribution from within the Venue							



Main Bar Area with Live DJ Performance

4.1.2 Noise Reduction Testing

It is noted that the above music noise levels could not be tested directly at surrounding sensitive uses, due to prevailing background noise during current permitted trading hours. This indicated that the Venue is currently complying with SEPP N-2 under the permitted trading hours, however an objective assessment is still required which considers lower background and ambient noise levels during the more sensitive amended hours.

Enfield Acoustics conducted simulated noise testing, by placing a loudspeaker within the main room and measuring the Noise Reduction (NR) between the Venue and nearest sensitive uses. This test empirically determines the maximum music noise levels that can be emitted from the Venue before non-compliance with SEPP N-2, and whether specific controls would be required. We note that the NR test was conducted in absence of any external noise sources, at approximately 4am on a 19 January 2021 (Monday night).

The NR test results are summarised below:

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Location	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
Main room to 114 Gore Street [^]	45	47	52	51	54	53	55
Main room to 108 Smith Street (doors closed)	30	33	41	43	43	42	44
Notes:	^Noise reduction based on measurement taken at the rear of the Venue						

We have applied the NR levels to the measured internal noise levels to determine music noise levels at sensitive uses, as follows:

Location	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
114 Gore Street, L _{OC T10}	51	53	44	45	40	35	29
108 Smith Street, L _{OC T10}	66	67	55	54	51	46	40

SEPP N-2 noise limits taken from the Endorsed Acoustic Report confirms that music noise from venue currently complies with SEPP N-2, as follows:

Table 7
SEPP N-2 night-time noise limits

Location	Night-time octave band mid frequency noise limit, L _{OC T10}							
	63	125	250	500	1k	2k	4k	Hz
101 Little Smith Street	59	55	51	49	47	43	34	dB
106 Smith Street	69	68	63	61	59	55	47	dB

For comparison, noise limits at 101 Little Smith Street are representative of 114 Gore Street and noise limits at 106 Smith Street are representative of noise limits at 108 Smith Street.

4.1.3 Sensitivity Analysis (between 1am to 5am)

From the NR testing, the following maximum allowable music noise levels could be generated from the Venue during to the most sensitive hours (approximately 5am):

Location	L _{A10} dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
Approximate noise level within main room area allowable between 1am to 5am under SEPP N-2, L _{OC T10}	95	96	91	95	94	90	84	79

The above results in overall allowable noise emissions of approximately 95dB(A), L_{A10}. The allowable level at 5am is generally consistent with the music noise level observed during current permitted hours. For context, current internal noise levels from a live DJ performance at the Venue was measured to be approximately 98dB(A), L_{A10}.

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The above analysis indicates that the Venue would require a minor decrease in internal noise levels of up to 3dB(A), and to not exceed the octave band levels in the table above in order to comply with SEPP N-2 over the extended trading hours proposed. The 3dB(A) reduction is not considered to be significant and can be easily managed by the Venue by re-calibrating the existing sound system.

We note that our assessment is based on the front door of the Venue being closed during the most sensitive hours. To minimize noise leakage when patrons are arriving or departing the Venue, we recommend that an airlock be installed at the main entry doors.

To accomplish this, we recommend that a secondary door be installed in front of the existing swing doors, as shown below, subject to planning permission:



Airlock to be installed at main entrance

The airlock shall be constructed as follows:

1. The secondary door shall be minimum 6.38mm thick laminated glass or solid core timber;
2. Automatic closers must be installed to both doorsets (new and existing).

4.2 Mechanical Plant Noise Emissions (SEPP N-1)

Mechanical plant noise on the Subject Land was not observed to be audible during our site inspection. Further, we note that any mechanical services used for food service, such as kitchen exhaust fans are unlikely to operate between 1am to 5am as the Venue is not expected to serve food during these hours. Air conditioning units used by the Venue are moderate in size and presents as low risk given the distances to sensitive uses.

Overall, Enfield Acoustics is satisfied that the risk of adverse noise impacts from mechanical plant is low and it is expected that SEPP N-1 is complied with for all hours proposed.



5 Recommendations and Conclusion

Enfield Acoustics conclude that Item 5 of Council's RFI relating to the Application for Amendment to extend the trading hours of Rainbow House Club on 125 Smith Street up to 5am is satisfied, noting that:

1. The existing operation (up to 1am) complies with SEPP N-2 at all sensitive uses based on the noise limits provided in the Endorsed Acoustic Report;
1. Music noise levels can comply with SEPP N-2 at all sensitive uses providing internal music noise levels do not exceed the maximum allowable noise levels stated in Section 4.1.3 of this report, noting that this is generally consistent with existing music noise emissions from the Venue (-3dBA). To retain the maximum allowable noise levels, a secondary door is recommended at the main entrance to form an airlock in accordance with Section 4.1.3 of this report;
2. Clause 53.06-3 of the local planning scheme is satisfied on the basis of SEPP N-2 being complied with;
3. No further changes to the permit are proposed beyond the extension of trading hours under Condition 6;
4. The risk of adverse noise impacts from mechanical plant is low and is expected to comply with SEPP N-1 for all hours, noting that no existing mechanical noise emissions were observed on-site.

Enfield Acoustics is satisfied that Condition 6 on the planning permit can be amended to allow trading to 5am, where the above recommendations are undertaken.



Appendix A: Extract of SEPP N-2 Hours

STATE ENVIRONMENT PROTECTION POLICY (CONTROL OF MUSIC NOISE FROM PUBLIC PREMISES) NO. N-2 - CONSOLIDATED VERSION

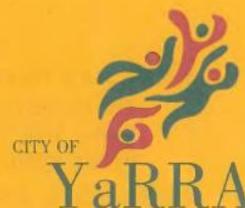
SCHEDULE A OPERATING PERIODS FOR INDOOR VENUES

The table below defines the times for the day/evening and night operating periods for indoor venues. The times vary according to the number of operations per week and the day of the week on which an operation occurs. The operating periods for the day preceding a public holiday shall be the same as for a Saturday.

NUMBER OF OPERATIONS PER WEEK	HOUR		A.M.												P.M.													
	DAY		12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	
One	Friday																											
	Saturday																											
	Sunday																											
	Other																											
Two or three	Thursday																											
	Friday																											
	Saturday																											
	Sunday																											
More than three	Other																											
	Saturday																											
	Sunday																											
			12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	
			Operating Periods																									
			Night												Day/Evening													

Attachment 3 - PL06/0738.01- 125 Smith Street Fitzroy - Planning Permit

PLANNING PERMIT



Permit No PL06/0738
 Planning Scheme Yarra
 Responsible Authority City Of Yarra

City of Yarra
 PO Box 168
 RICHMOND 3121
 DX 30205
 Telephone (03) 9205 5555
 Facsimile (03) 8417 6666
 Email info@yarracity.vic.gov.au
 Web www.yarracity.vic.gov.au
 ABN 98 394 086 520

ADDRESS OF THE LAND
 125 Smith St Fitzroy VIC 3065

THE PERMIT ALLOWS

For the purpose of the following, in accordance with the endorsed plan(s).

Development of the land for buildings and works (retrospective) and use of the land for the purpose of a tavern with a maximum of 120 patrons, including a reduction in the car parking requirements and to allow for the sale and consumption of alcohol between the 7am and 1am the following day, Monday to Saturday and between 10am and 1am the following day on Sunday.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the application plans but modified to include:
 - (a) Variation to the floor plans to illustrate the layout of the dining area with no more than 30 patrons designated to this area;
 - (b) A Noise and Amenity Action Plan to be submitted that details (but is not limited to) the following:
 - (i) noise control. Report must be undertaken by a suitably qualified acoustic engineer to include noise readings generated by the DJ booth and microphones to demonstrate compliance with SEPP N2 requirements;
 - (ii) waste disposal;
 - (iii) neighbour liaison;
 - (iv) management and staff;
 - (v) security management; and
 - (vi) business profile (detailing operational style).
 - (vii) dealing with 'smokers' (Tobacco Act)

All to the satisfaction of the Responsible Authority.

Date: 21 September 2007



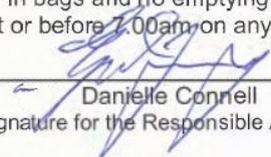
 Danielle Connell
 Signature for the Responsible Authority

Attachment 3 - PL06/0738.01- 125 Smith Street Fitzroy - Planning Permit

2. All live entertainment and all music played and carried out on the premises must not be amplified and limited to acoustic only.
3. Microphones, background music and non-amplified entertainment must comply with SEPP N2 requirements.
4. All use must accord with the endorsed plans. Any alterations must be approved by the Responsible Authority;
5. The layout of the uses on the endorsed plans must not be altered without the written consent of the Responsible Authority;
6. The premises may only operate between the following hours:

Monday to Saturday	Between 7am and 1am (the following day); and
Sunday	Between 10am and 1am (the following day)
7. The rear courtyard/ dining area must not be used after midnight on any day.
8. No more than 120 patrons may be permitted on- site (with no more than 30 of the patrons occupying the dining area).
9. The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which this permit relates during or immediately after the trading hours authorised under this permit.
10. The licensee shall ensure that the level of noise emitted from the premises shall not exceed:
 - (a) the permissible noise level from mechanical equipment as specified in the State Environment Protection Policy N-1 Control of Noise Industrial, Commercial and Trade Premises within the Melbourne Metropolitan area; and
 - (b) the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N2.
11. No music must be played outside the premises. No speakers must be sited outside the premises.
12. The operator must request patrons, by a prominent notice, to take account of the needs of local residents for peace and quiet during normal sleeping hours.
13. The operator and/ or security staff must request patrons to not congregate on the footpath, in front of the premises
14. The footpath must not be obstructed by patrons entering or leaving the premises
15. The use permitted must not adversely affect the amenity of the locality by the appearance of any buildings, works or materials, the transporting of goods to and from the premises, emissions from the site or in any other way.
16. Any empty bottles associated with the use must be taken in bags and no emptying of bottles into garbage bins is permitted after 10.00pm on any night or before 7.00am on any day.

Date: 21 September 2007



Danielle Connell
Signature for the Responsible Authority

Attachment 3 - PL06/0738.01- 125 Smith Street Fitzroy - Planning Permit

17. Garbage collections are restricted between 7.00am and 8.00pm on any day.
18. During all hours (whether or not liquor is served) in which the business is open to the public, entry must be made freely available to a member of the Victoria Police, an "authorised officer" of the Responsible Authority or an officer of Liquor Licensing Victoria for the carrying out of any investigations associated with the sale or consumption of alcohol on the site.
19. During all hours (whether or not liquor is served) in which the business is open to the public, there must be present on the premises, a person above the age of 18 years, responsible for the good conduct of the premises ("the Manager").
20. The Manager must at all times be authorised by the occupier of the premises to make statements on their behalf to a member of the Victoria Police, an "authorised officer" of the Responsible Authority or an officer of Liquor Licensing Victoria regarding the conduct of the premises for the activity hereby authorised.
21. This permit will expire if the use is not commenced within 12 months from the date of this permit. The Responsible Authority may approve extensions to these time limits if requests are made within three months of expiry.

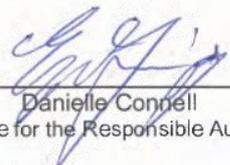
NOTE: These premises are required to comply with the *Food Act* 1984. No fit-out is to commence until plans have been approved by Council's Public Health Unit. Please contact the Public Health Unit on 9205 5777.

NOTE: These premises will be required to comply with the *Health Act* 1958. No Fit-out is to commence until plans have been approved by Council's Public Health Unit. Please contact the Public Health Unit on 9205 5777.

NOTE: This site is subject to a Heritage Overlay pursuant to the Yarra Planning Scheme. Unless hereby approved, a planning permit is required for any demolition, re-painting or other external alterations, sandblasting, exterior works (including the installation of external air conditioning units, solar panels, and any other heating/cooling units) to an existing building or buildings, construction of a building or fence, changes to the natural topography of the land or the subdivision or consolidation of land.

NOTE: A building permit must be obtained before buildings and works are commenced.

Date: 21 September 2007



Danielle Connell
Signature for the Responsible Authority

PLANNING PERMIT

IMPORTANT INFORMATION ABOUT THIS PERMIT

WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit.

(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the **Planning and Environment Act 1987**.)

WHEN DOES A PERMIT BEGIN?

A permit operates:

* from the date specified in the permit; or

* if no date is specified, from—

(i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal; or

(ii) the date on which it was issued, in any other case.

WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if—

* the development or any stage of it does not start within the time specified in the permit; or

* the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or

* the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.

2. A permit for the use of land expires if—

* the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or

* the use is discontinued for a period of two years.

3. A permit for the development and use of land expires if—

* the development or any stage of it does not start within the time specified in the permit; or

* the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or

* the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or

* the use is discontinued for a period of two years.

4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—

* the use or development of any stage is to be taken to have started when the plan is certified; and

* the permit expires if the plan is not certified within two years of the issue of the permit.

5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT APPEALS?

* The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.

* An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that notice.

* An application for review is lodged with the Victorian Civil and Administrative Tribunal.

* An application for review must be made on an Application for Review form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.

* An application for review must state the grounds upon which it is based.

* An application for review must also be served on the Responsible Authority.

* Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.

Planning and Environment Regulations 2005 No. 33 Form 4 Sections 63 and 86

Attachment 4 - PL06/0738.01- 125 Smith Street Fitzroy - Patron Capacity Report



Our Reference: 4634

Thursday, May 13, 2021

Alaattin Uslu
Rainbow International House Club Pty Ltd
125 Smith Street
FITZROY 3065

Email- usluptyltd@hotmail.com

Dear Alaattin,

**Re: Maximum Patron Capacity for Rainbow International House Club Pty Ltd
At 125 Smith Street, Fitzroy.**

Brief 1.0

As requested, we have assessed the maximum patron capacity for the above premises.

Our assessment is based on floor plan prepared by Southbay Design (Drg 08/1786 dated 24/08/08 – refer attached).

Building Classification 1.1

Based on the information provided, we understand the premises is an existing bar/dinning building classification Class 6 in accordance with the National Construction Code – Building Code of Australia (NCC BCA) 2019.

Our assessment is based on this building classification.

Assessment 1.2

Our assessment has been prepared in accordance with VCGLR Liquor Licensing fact sheet Maximum Patron Capacity 2018.

We have considered available amenities as part of the patron number calculation in accordance with the National Construction Code/Building Code of Australian 2019 (NCC BCA 2019).

Patron number calculations are set out in each of the following tables stating maximum patron capacity that can be accommodated.

POSTAL ADDRESS PO BOX 5945 BURNLEY 3121

275 SWAN STREET RICHMOND 3121
ENTER BELL STREET

TELEPHONE 9428 7797

FACSIMILE 9428 5969

INFO@AITKENANDASSOCIATES.COM.AU

WWW.AITKENANDASSOCIATES.COM.AU

CONSULTING ENGINEERS

BUILDING DESIGN CONSULTANTS

BUILDING SURVEYORS

Attachment 4 - PL06/0738.01- 125 Smith Street Fitzroy - Patron Capacity Report

Floor Areas and Calculations 1.3

Internal Areas

TABLE 1 – Victorian Commission for Gambling Liquor Regulation Allowance 0.75 sqm

Item	Location	Area per SQ M	Patrons (Based on 0.75 sqm / person)
1	Internal Area	125 sqm approx	166 persons

TABLE 2 – NCC- BCA F2.3 Sanitary Facilities

Item	Location	BCA Part F2.3 Sanitary Facilities Area CAPACITY – based on minimum NCC/BCA allowance	Total Patrons
1	Bar/Dining areas accessible to the public	Unisex Accessible 2 x pan 2 x hand basin	100 Basis of equal number male and females

Summary 1.4

We therefore certify the following capacities;

- Total maximum internal patron capacity based on Building Code of Australia Part F2.3 Sanitary Facilities is **100 persons** in accordance with Table 2.

If you require any further information or clarification on any of the above matters, please do not hesitate to contact our office.

Yours sincerely



Grant Aitken MAIBS
Registered Building Practitioner BS-U 1084



14 April 2021

640.10090.06820-125 Smith St Fitzroy-20210414.docx

Yarra City Council
PO Box 168
RICHMOND 3121

Attention: Jessica Sutherland

Dear Jessica

**125 Smith Street, Fitzroy
Development Application Acoustic Review
PLN060738.01**

SLR Consulting Pty Ltd (SLR) has been retained by the City of Yarra to provide a review of the acoustic assessment report for the proposed changes to the operation of the bar at 125 Smith Street, Fitzroy.

Details of the report are as follows.

- Title: 125 Smith Street, Fitzroy, Acoustic Report for Permit Amendment
- Reference: V518-01-P Acoustic Report (R0)
- Date: 22 January 2021
- Prepared for: Rainbow International House Club Co. Pty Ltd
- Prepared by: Enfield Acoustics Pty Ltd

The report has been prepared to address the Council RFI, Item 5. The RFI is reproduced below.

5. The endorsed Acoustic Report (prepared by Marshall Day and dated 18 February 2010) amended to assess the use of both internal and external areas beyond the hours already approved and any methods to be undertaken to control noise emissions to satisfy SEPP n-1 and SEPP n-2 or any other relevant requirement. The Acoustic Report should also show how the proposal meets the requirements of *Clause 53.06-3 Live Music and Entertainment Noise*.

1 Background Information

(Sections 1, 4 and 5 of the acoustic report)

The venue is proposing to extend the operating hours of their main room, where bands and DJs are proposed to play, from 1 am to 5 am daily.

No other changes are noted to be proposed. That is, the hours of operation of other parts of the venue, and patron numbers throughout the venue, are not proposed to change. Due to this, Enfield propose to address potential music noise impacts from the main room only, during the proposed extended hours of operation.

Attachment 5 - PL06/0738.01- 125 Smith Street Fitzroy - Acoustic referral comments

Enfield note that the requirement to demonstrate compliance with Clause 53.06-3 Live Music and Entertainment Noise, will effectively be achieved through demonstration of compliance with SEPP N-2.

The nearest noise sensitive receivers are identified as:

- 114 Gore Street – being a single dwelling separated from the subject site by the rear lane, and
- 108 Smith Street – being a multilevel apartment development separated from the subject site by Smith Street.

SLR Comments: *The description of the changes proposed generally align with information provided to us by Council, although Council state that the extension of ours is 2 am Sunday to Wednesday nights, and 5 am Thursday to Saturday nights only.*

The nearest noise sensitive receiver locations have been identified.

Council have also identified an inconsistency between the endorsed acoustic report, which assumes live and amplified music, and the current planning permit. Condition 2 of the current permit states that amplified music is not to be played on the premises. The applicant is seeking to have this condition removed.

None of the discrepancies between the acoustic report and the proposed operations / changes have the potential to result in higher noise levels or greater SEPP N-2 exceedances, than Enfield have allowed.

We agree that demonstration of the venue's compliance with SEPP N-2 will ensure that the venue's responsibilities with respect to Clause 53.06-3 are also met.

2 Background Noise Monitoring

(Section 2 of the acoustic report)

Attended measurements of background noise were conducted on either (or both) Thursday 14 January (Wednesday night) and Tuesday 19 (Monday night) January 2021. Measurement locations are shown in the aerial photograph on page 5, and the results of measurement are included on page 6.

The octave band music noise limits have been calculated from the measured background noise levels.

SLR Comments: *The measurement times and locations are appropriate for quantifying background noise at sensitive receiver locations. The report does not clarify whether the measurements were conducted on the Monday or Wednesday night, however both nights are appropriate.*

From our understanding the venue is only proposing to operate until 5 am Thursday to Saturday nights, and to 2 am, Sunday to Wednesday nights. However the background noise levels determined between 4 am and 4:30 am early in the week would be reasonable for setting limits at all times that the venue is proposing to operate.

Our calculation of noise limits is consistent with Enfield's.

3 Music Noise Assessment

(Sections 2 and 4 of the report)

Attachment 5 - PL06/0738.01- 125 Smith Street Fitzroy - Acoustic referral comments

Yarra City Council
125 Smith Street, Fitzroy
Development Application Acoustic Review
PLN060738.01

SLR Ref: 640.10090.06820-125 Smith St Fitzroy-
20210414.docx
Date: 14 April 2021

Existing music noise levels within the venue have been determined via measurement of existing music levels during a DJ performance within the main room. The measured levels (described as the benchmark levels) are provided in Section 4.1.1 of the report.

Compliance or non compliance with SEPP N-2 for the proposed later hours of operation was unable to be determined by direct measurement of music noise during a performance due to the contribution of other noise during the permitted hours of operation. Instead, Enfield has conducted noise reduction tests to enable the maximum permissible music levels to be calculated.

The measured octave band noise level differences between the main room and sensitive receiver locations are provided in the first table on page 8.

The calculated music noise levels at sensitive receiver locations, taking into consideration the venue music levels measured by Enfield, and the measured noise reduction values, are presented in the second table on page 8.

The predicted noise levels are compared with the venue's current noise limits, as identified in the endorsed report (these limits apply up until 1 am). This information is noted to demonstrate compliance with the venue's current noise limits.

Maximum allowable music levels for the proposed 1 am to 5 am operating period are provided in the table at the bottom of page 8. The overall A-weighted allowable operating levels are noted to be 95 dBA and reasonably consistent with the benchmark levels measured by Enfield.

Enfield recommend installation of a sound lock installed to manage music noise impacts when venue entrance doors are opened for use.

SLR Comments: *The assessment methodology is clearly documented and is representative of best practice.*

The benchmark music levels measured by Enfield are reasonably consistent in the critical low frequency measurement bands with the levels provided in the endorsed report (door closed scenario). The endorsed report spectrum includes higher levels in mid and high frequency measurement bands, however these would seem unlikely to occur (they are not representative of a typical music spectrum).

Based on the provided assessment, we agree that music played at both the current levels, and the levels assumed in the endorsed report (discounting the high levels the endorsed report permits in mid and high frequency measurement bands) are likely to comply with SEPP N-2 for the current approved hours of operation.

With respect to compliance during the proposed later hours of operation, we note that, while the overall permitted A-weighted levels are not very different from those the venue is currently permitted to operate it, the level is 9 dB lower in the 125 Hz band. This is a significant reduction in a critical low frequency measurement band, and if the benchmark spectrum shape was maintained would result in an overall A-weighted noise level of 89 dBA rather than the 95 dBA stated in the report. Given the appreciable reduction required in the 125 Hz band for compliance with SEPP N-2, we recommend that some form of electronic limiting device be installed to manage music during the proposed extended hours of operation. If live bands are proposed to play after 1 am, the limiter should also include an external microphone. If recorded music only is proposed, a limiter / compressor without an external microphone would be acceptable.

The music noise limiter / compressor should be capable of being set to limit octave band music levels and should be either installed in a locked cabinet or fitted with a software lock that limits access to the limiter controls to venue management.

Attachment 5 - PL06/0738.01- 125 Smith Street Fitzroy - Acoustic referral comments

Yarra City Council
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A suitably qualified acoustical consultant should be retained to advise on an appropriate limiter and to set it up such that the identified limits are not exceeded.

The proposal to include a sound lock will address noise egress via the front door.

4 Mechanical plant noise

(Section 4.2 of the report)

Based on their review of mechanical plant at the subject site Enfield conclude that equipment noise levels are unlikely to exceed the relevant noise limits because:

- Kitchen exhaust fans are not likely to operate during the proposed new hours of operation, and
- The AC units at the venue are moderately sized and reasonably remote from sensitive receiver locations.

SLR Comments: *Agreed.*

5 Summary

SLR Consulting Australia has reviewed the acoustic report prepared to support the proposed extension of operating hours for the main room of the venue at 125 Smith Street, Fitzroy.

The report generally addresses potential noise impacts however given that there would appear to be potential for the identified limits to be exceeded, SLR recommends that the venue include some form of limiting device in the audio chain. The device should be calibrated by a suitably qualified acoustical consultant to ensure that the noise limits are not exceeded. If live or amplified music is proposed to be played after 1 am, the limiting device should include an external microphone. The venue should also be aware that the permitted music levels for the later operating period are appreciably lower than the levels they currently operate at.

Based on our review of the current and endorsed acoustic reports, SLR is of the opinion that Condition 2 of the current planning permit, which states that amplified music is not to be played in the venue, could be removed.

We note, however, that the report and our review does not address music from areas of the venue other than the main room. If high levels of music are proposed to be played in these areas, the report should be revised to address that scenario.

Regards,



Dianne Williams
Principal – Acoustics

Reviewed by JA

Attachment 6 - PL06/0738.01- 125 Smith Street Fitzroy - Referral comments

REFERRAL COMMENTS – PL06/0738.01 – 125 SMITH STREET FITZROY

Community and Amenity Enforcement

Thank you for your referral in relation to 125 Smith Street, Fitzroy. The Planning enforcement team has received a number of alleged noise complaints over the past 2 years:

- 1/6/19
- 15/11/19
- 30/11/19
- 17/3/21
- 10/4/21

In addition Council received a complaint 12 March 2021 (Oracle 210318-000763) in which the author advised they continued to have noise related issues with the venue throughout 2019 (COVID) when restrictions lifted however managed to deal with them directly with the venue and due to COVID the issue was resolved. The matter of noise related, both patron and music was raised March 2021 and continues to be a concern for Council. The matter has resolved for now as Council has enforced the planning permit condition in which the open courtyard area can not be used after midnight.

In consultation with the planning enforcement team I don't support the proposal to extend the hours and in the event an extension is granted I propose the following condition:

1. No music after 11pm at any outdoor area.
2. The outdoor area must at all times have security personnel present after midnight when closed to control patron movement to the toilets.
3. No person including staff to use the courtyard area after midnight for any purpose including smoking, except for security personnel to monitor the strict movement of persons going to and from the toilet.
4. On the approval date of the amendment, the Permit Operator must have or install and maintain a Noise Limiter ("the Device"), set at a level by a qualified acoustic engineer, to ensure the escape of amplified music does not exceed the requirements of SEPP N-2, to the satisfaction of the Responsible Authority.
5. Within 14 days of the operation of the noise limiter a report to the satisfaction of the Responsible Authority prepared by a suitably qualified Acoustic Consultant must be submitted to the responsible authority and shall confirm that a Noise Monitor and Limiter ("the Device") is operating and has each and every of the following characteristics which are also operating:
 - a. The Device limits internal noise levels so as to ensure compliance with the music noise limits according to State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2).
 - b. The Device monitors noise levels at frequencies between 50Hz and 100Hz and is wired so as to ensure that the limiter governs all power points potentially accessible for amplification;
 - c. The Device controls are in a locked metal case that is not accessible by personnel other than a qualified acoustic engineer or technician nominated by the licensee or occupier of the land and notified to the Responsible Authority;
 - d. The Device is installed to control all amplification equipment;
6. The report must demonstrate compliance with the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2) noise limits.
7. Amplified music is not permitted to be played other than through the Permanently Installed Sound System and when the Device is installed and operating to ensure compliance with

Attachment 6 - PL06/0738.01- 125 Smith Street Fitzroy - Referral comments

State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2).

8. That within 3 months a further acoustic report is provided to demonstrate compliance with SEPP N-2.

Social Planning

- The site is located along Smith Street, adjacent to numerous cafes, restaurants and bars. There are 23 licensed premises located within 100m of the site and a total of 128 licensed premises within 500m radius of the site. This is considered a high density and a cumulative impact assessment is recommended and has been provided.
- The proposal seeks to delete condition 2, which states that 'All live entertainment and all music played and carried out on the premises must not be amplified and limited to acoustic only', and to include a condition which states that 'All music including background music, dance music and live music entertainment must comply with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2'. Assuming this condition is complied with, and the Noise and Amenity Action Plan is abided by, this is acceptable.
- There is no proposed change to patron numbers, which will remain at 120. As per Clause 22.09, the number of patrons should not exceed the safe and amenable operating capacity of the premises. An assessment of the maximum number of patrons that can be physically accommodated within a venue should be based on the VCGLR Liquor Licensing Fact Sheet – Maximum Patron Capacity (2016). The number of 120 is acceptable during the hours of 11am – 1am (the following day) when the whole venue is open.
- However, it needs to be clarified in the additional operating hours (as proposed in this permit), during which only the lounge will be open, what the number of patrons permitted in the lounge area is. **It is recommended that additional information is sought regarding this and included in the permit granted. The provided patron capacity report does not provide this detail.**
- It is proposed to increase the hours of alcohol for sale for consumption on premises, in the front lounge area only:
 - Sunday – Wednesday: 11am – 2am (the following day)
 - Thursday – Saturday: 11am – 5am (the following day)
- It is understood from the proposal that the other areas of the venue (rear courtyard and dining area) will cease operation at 1am, seven days a week.
- It should be noted that Clause 22.09 states that licensed premises in a Commercial 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. Therefore, to operate past 1am, it must be clear that there will be no negative amenity impacts. With no information provided as to the number of patrons expected to be on-site during these extended hours past 1am, we cannot adequately assess the expected amenity impact. This detail will be required.
- It is noted that while the front lounge area is designated as the only location in the venue that will operate past 1am, there is also the consideration that the smoking area and outdoor male toilets will be used by patrons during this time as well. Clarity around how the venue will manage potential patron noise in these two outdoor areas is required, given their proximity to the adjoining residential area at the rear. An option could be converting the

Attachment 6 - PL06/0738.01- 125 Smith Street Fitzroy - Referral comments

indoor bathrooms to unisex toilets, and closing the smoking area after 1am, with patrons to smoke on Smith Street, outside the venue if needed.

- Food will be available during all proposed licenced trading hours. As per, venues that serve food are shown to be less at risk of excessive alcohol consumption. This is acceptable.
- Pedestrian access is via Smith Street, and this is proposed to continue. This is acceptable.
- It is recommended that amenity conditions as outlined in Clause 22.09 be included in any approval granted.

City Works Branch (waste)

The waste management plan for 125 Smith Street, Fitzroy authored by TTM consulting and **undated** is not satisfactory from a City Works Branch's perspective.

Issues to be rectified include, but may not be limited to the following:

1. Councils waste service is a domestic service which has been extended to commercial properties for waste from lunchrooms and bathrooms and not for disposal of waste generated from business activities. All waste streams including food waste and glass must be collected by private commercial waste services.

SLR Acoustic consultants (in relation to the amended Acoustic Report dated 24 November 2021)

The report states that 125A is no longer residential and as such, an assessment is not required to that address. An assessment is provided to two apartments at 123 Smith Street, and the results indicate that music will comply with the limits at that address. This does not directly answer your question about whether the noise levels are 'reasonable', however compliance is usually considered a sufficient target for music noise. There is potential for other matters to be considered under the EPA change of legislation, however this is an untested area and at this point we are still accepting 'compliance' as an acceptable outcome.

VCGLR

I refer to your email dated 25 March 2021 and received by the Victorian Commission for Gambling and Liquor Regulation (the Commission) on that day.

The Commission has delegated to me its functions, powers, duties and responsibilities as a referral authority for the purposes of the *Planning and Environment Act 1987* (the Act).

I acknowledge that Yarra City Council has referred application PL06/0738.01 to the Commission under section 55 of the Act.

I confirm that the Commission does not intend to offer any comment or submission on the above application.

I note that offering no comment to the above application does not affect any decision that the Commission may make pursuant to the *Liquor Control Reform Act 1998* in respect of any application that the Applicant is required to make under that Act if the planning permit is granted.