

YARRA CITY COUNCIL

Internal Development Approvals Committee

Agenda

**to be held on Wednesday 25 October 2017 at 6.30pm
in Meeting Rooms 1 & 2 at the Richmond Town Hall**

Rostered Councillor membership

Councillor Amanda Stone
Councillor Jackie Fristacky
Councillor Mi-Lin Chen Yi Mei

- I. ATTENDANCE**
Danielle Connell (Senior Coordinator Statutory Planning)
John Theodosakis (Senior Statutory Planner)
Cindi Johnston (Governance Officer)
- II. DECLARATIONS OF PECUNIARY INTEREST AND CONFLICT OF INTEREST**
- III. CONFIRMATION OF MINUTES**
- IV. COMMITTEE BUSINESS REPORTS**

Printed on 100% recycled paper

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



Guidelines for public participation at Internal Development Approval Committee meetings

POLiCY

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

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

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

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

**Governance Branch
2008**

1. Committee business reports

| Item | | Page | Rec. Page |
|------|--|------|--------------|
| 1.1 | 166-182 Gertrude Street, Fitzroy – PLN14/0419.02 – S72 Amendment to allow for the sale and consumption of liquor associated with two approved food and drinks premises (Tenancy 1 (Cafe - 120 patrons) & Tenancy 4 (Restaurant - 266 patrons)) between 10AM and 11PM, seven days a week, and subsequent changes to the permit preamble, endorsed plans and Condition 17 | 5 | 22 |
| 1.2 | Floor 1/95-97 Smith Street Fitzroy - Planning Permit Application PL01/1096.02 - Amendment to extend the operating hours of the premises from 1:00am to 3:00am, seven days a week. | 83 | 105 |
| 1.3 | 283A Burnley Street, Richmond - PLN17/0180 - Development of the land for the construction of two new dwellings, creation of access to a Category 1, Road Zone and a reduction in the car parking requirement. | 140 | 171 |
| 1.4 | PLN16/1016 - 171 Buckingham St, Richmond - Use and development of the land for the construction of a mixed-use building, (permit required for food and drinks premises use), reduction in car parking requirements and waiver of loading bay requirements. [CONFIDENTIAL ITEM - VCAT COMPULSORY CONFERENCE WITHOUT PREJUDICE POSITION] | 206 | 210 |

-
- 1.1 166-182 Gertrude Street, Fitzroy – PLN14/0419.02 – S72 Amendment to allow for the sale and consumption of liquor associated with two approved food and drinks premises (Tenancy 1 (Cafe - 120 patrons) & Tenancy 4 (Restaurant - 266 patrons)) between 10AM and 11PM, seven days a week, and subsequent changes to the permit preamble, endorsed plans and Condition 17**
-

Executive Summary

Purpose

1. This report provides Council with an assessment of an application to amend planning permit PLN14/0419 and recommends approval subject to conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) clause 22.09 – Licensed premises policy;
 - (b) clause 52.27 – Licensed premises;
 - (c) Planning Scheme Amendment C209.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Strategic context;
 - (b) The sale and consumption of liquor from the land;
 - (c) Objector concerns;
 - (d) Other matters.

Objector Concerns

4. Forty-two objections were received to the application, these can be summarised as:
 - (a) Off-site amenity impacts (noise, smells, traffic, anti-social behaviour).
 - (b) Non-compliance with local policy and proposed C209.
 - (c) Concern with the liquor licence regarding the Restaurant:
 - (i) Patron numbers;
 - (ii) Residential zone interface;
 - (iii) Exit routes along George Street;
 - (iv) Music noise.
 - (d) Car parking and traffic.

Conclusion

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

CONTACT OFFICER: Michelle King
TITLE: Senior Statutory Planner
TEL: 9205 5333

-
- 1.1 166-182 Gertrude Street, Fitzroy – PLN14/0419.02 – S72 Amendment to allow for the sale and consumption of liquor associated with two approved food and drinks premises (Tenancy 1 (Cafe - 120 patrons) & Tenancy 4 (Restaurant - 266 patrons)) between 10AM and 11PM, seven days a week, and subsequent changes to the permit preamble, endorsed plans and Condition 17**
-

Trim Record Number: D17/158970

Responsible Officer: Coordinator Statutory Planning

| | |
|-----------------------------|---|
| Proposal: | 166-182 Gertrude Street, Fitzroy – PLN14/0419.02 – S72 Amendment to allow for the sale and consumption of liquor associated with two approved food and drinks premises (Tenancy 1 (Cafe - 120 patrons) & Tenancy 4 (Restaurant - 266 patrons)) between 10AM and 11PM, seven days a week, and subsequent changes to the permit preamble, endorsed plans and Condition 17 |
| Existing use: | Construction site to build in accordance with PLN14/0419 |
| Applicant: | Kalex (Gertrude Street) JV Pty Ltd C/O SJB Planning |
| Zoning / Overlays: | Commercial 1 Zone, Neighbourhood Residential Zone – Schedule 1/ Heritage Overlay – Schedule 334 |
| Date of Application: | 31 May 2017 |
| Application Number: | PLN14/0419.02 |

Planning History

1. Planning permit 1905 was issued on 17 September 1992 for an internally illuminated sign.
2. Planning permit 1907 was issued on 2 October 1992 for advertising signs and a mural.
3. Planning permit PLN14/0886 was issued on 21 November 2014 for partial demolition for buildings and works, construction and display of business identification signage.
4. Planning Permit PLN14/0419 was issued on 3 July 2015 in accordance with the order of the Victorian Civil and Administrative Tribunal (VCAT) for the 'demolition of the existing building to allow for the use and development of the land for a five-storey building (plus two basement car parks) with two ground floor shops, two food and drinks premises with 35 dwellings, reduction in associated car parking requirements and waiver of loading bay requirement in accordance with endorsed plans' – *Sweetnam v Yarra CC (Correction)* [2015] VCAT 1000. On 24 July 2015 the permit was corrected in accordance with the order of VCAT. Plans were endorsed on 12 April 2016.
5. Relevant to this application Planning Permit PLN14/0419 endorsed the use of Tenancy 1 as a Food and Drinks Premises (Café), Tenancy 2 and 3 as Shops and Tenancy 4 as a Food and Drinks Premises (Restaurant). The permit contains no restrictions as to patron numbers and hours of operation.
6. A Section 72 amendment to the permit was issued on 28 June 2016 for the consolidation of dwellings, an increase in the southern boundary wall length, materials and window/balcony changes and internal reconfigurations.
7. A Secondary Consent amendment to the endorsed plans was issued on 9 March 2017 to modify the canopy along Gertrude Street, add several windows and substitute the timber balcony lining with a timber grain fibre cement sheet.

8. Pursuant to Section 71 of the *Planning and Environment Act 1987* the endorsed plans were corrected to show the easternmost ground floor tenancy as a restaurant as it was incorrectly shown as a café on endorsed plan 4 of 19 endorsed via Secondary Consent on 9 March 2017.
9. A Secondary Consent amendment to the endorsed plans was issued on 12 October 2017 for minor internal modifications.

Background

10. The application was received by Council on 31 May 2017. Following the submission of further information, the application was advertised and forty-two (42) objections were received.
11. A consultation meeting was held on 26 September 2017 and attended by the applicant, Council officers and two objectors. During the meeting the applicant agreed to accepting a condition requiring Tenancy 1 (Café) to have no more than 90 patrons, Tenancy 4 (Restaurant) to have no more than 190 patrons and the George Street entrance to be used as a service entrance only (no patron access).

Existing Conditions

Subject Site

12. The subject site is located on the southern side of Gertrude Street, Fitzroy, on the western side of its intersection with George Street with Little George Street to the west. The site has lengths of 36m along Gertrude Street and 25m along George Street.
13. The site is currently under construction in accordance with PLN14/0419 issued for the demolition of the existing building to allow for the development of the land for a five-storey building (plus two basement levels). At the time of writing this report the development had received a permit for subdivision but the Plan of Subdivision had not been certified.

Restrictive Covenants

14. There are no restrictive covenants that affect the subject site.
15. An assessment of the surrounding area indicates that the features have not substantially changed since the time of writing the report for the original application. The following description of the surrounds has been taken from the original recommendation:

Surrounding Land

16. *The Gertrude Street centre has a number of eclectic and innovative retailers as well as heritage buildings which help to give the centre an individual and unique sense of place. Gertrude Street also has an arts focus. This part of Fitzroy (Gore, George, Napier and Gertrude Streets) has long been recognized as having high heritage value. It is one of the oldest parts of Melbourne and also contains some dwellings and shops which pre-date the gold rush.*
17. *Gertrude Street includes a tram line which also runs along Smith Street. Time-based car parking restrictions exist along Gertrude Street from approximately 7am to 6pm, Monday to Saturday.*

North

18. *The northern side of Gertrude St, opposite the subject site, has a vibrant mix of commercial premises with art galleries, homeware stores, a hotel and eclectic clothing shops.*

Constrction is a mixture of single and double storey buildings, mostly with the ground floors being altered. Further to the north along the northern section of George Street are a number of double storey former warehouses (currently occupied by various businesses) as well as single and double storey dwelling of Victorian-era construction.

East

- 19. To the east of the site is George Street and beyond this at the intersection of Gertrude and George Streets is the Melbourne Aboriginal Youth Sports and Recreation Centre and beyond this a string of commercial premises occupying a row of attached, double storey, elaborately decorated Victorian-era terraces with triple storey buildings further along. There is a consistant ground floor verandah/eave line between Nos. 184 and 202 Gertrude Street.*
- 20. Smith Street is approximately 200 metres to the east of the subject site. It contains a broad range of shops, cafes, restaurants and bars. Trams run north and south along Smith Street.*

West

- 21. Directly to the west of the site is Little George Street which is a two-way lane that provides access to the rear of properties along Napier and George Streets as well as being the only access for dwellings further to the south. On the south side of Gertrude Street, across Little George Street are Nos.158-164 Gertrude Street which forms a row of triple storey English Queen Anne Revival-style shops and residences, constructed in 1888. These buildings are currently occupied by a clothing store and rooming house. This building is 21.08m in height from ground level to the top of the chimneys.*
- 22. Directly to the south of this building, fronting onto Little George Street, are a row of attached single storey brick dwellings with a first floor roof top balcony constructed along the street.*
- 23. Beyond these shops further to the west, are double storey buildings that are built boundary to boundary as well as to Napier Street and large public housing tower estates. These buildings are used for various commercial premises such as restaurants and art galleries as well as the Gertrude Hotel and The Everleigh.*
- 24. Brunswick Street is approximately 260 metres to the west of the subject site. It contains a broad range of shops, cafes, restaurants and bars. Trams run north and south along Brunswick Street.*

South

- 25. To the south of the site is the Sisters of Mercy homeless shelter which is housed within double storey building with a ground floor extension at the rear that runs along the entire shared boundary with the subject site. There is a a similarly construced double storey dwelling directly to the south of that, with a three-storey, block of apartments constrcuted circa 1960s-70s at No. 65 George Street. These apartments have a communal car parking area fronting onto Little George Street.*
- 26. Further to the south are residences facing both George and Napier Streets. George and Napier Streets predominately consists of rows of attached double storey Victorian-era terraces.*
- 27. Looking specifically at Little George Street, it has a streetscape similar to that of a laneway. For example, Nos. 37 to 61 George Street and Nos. 34 to 58 Napier Street each have either a single or double storey garage/outbuilding, roller doors or high fences fronting onto it.*

28. *Further to the south along Little George Street, closer to its intersection with Little Victoria Street are a number of double storey, recently constructed dwellings fronting the street at the rear of Nos. 18-32 Napier Street. Opposite these and to the south, is the communal car parking area associated with the three apartment buildings ranging between three and four storeys in height located at Nos. 21 and 31 George Street.*
29. *Victoria Parade is located 226m to the south of the site and includes tram routes running east to west as well as a number of offices, commercial premises, car dealerships, Australian Catholic University, various churches and hospitals.*
30. In addition to the above it is acknowledged that Gertrude Street has a strong restaurant and food focus, with a number of licenced premises in the immediate surrounds. This includes premises with 'café and restaurant' liquor licences such as Mighty Boy Eatery, Ish Restaurant, Trippy Taco, Arcadia Café/Restaurant and Belle's Diner. Other premises also operate under an 'On premises' liquor licence including Ladro Gertude, The Catfish Tavern, Beach Burrito Company and Charcoal Lane. It is noted there are numerous other licensed food and drinks premises and late night venues in the area. A full list is contained within the Noise and Amenity Action Plan prepared by SJB Planning, contained as an attachment to this report.

The Proposal

31. The application seeks to amend planning permit PLN14/0419, Condition 17 and the endorsed plans to allow for the sale and consumption of liquor to patrons of two approved food and drinks premises labelled as Tenancy 1 (Café) and Tenancy 4 (Restaurant).
32. Liquor is proposed to be served to patrons within the following hours within each tenancy:
 - (a) Monday to Sunday: 10am to 11pm.
33. The following patron numbers are proposed to each tenancy:
 - (a) Tenancy 1 (Café) – 120 patrons;
 - (b) Tenancy 4 (Restaurant) – 266 patrons.
34. The licence being sought is a 'restaurant and café licence.' In accordance with the Victorian Commission for Gambling and Liquor Regulation (VCGLR) this licence is for uses where the predominant activity carried out on the premises is the preparation and serving of meals to be consumed on the licensed premises.
35. The red line plan for the liquor licence shows that liquor will be served within the internal areas of each tenancy.
36. Waste will be collected by a private waste contractor in accordance with the endorsed Waste Management Plan.

Legislation Provisions

37. *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.*

38. Planning Permit PLN14/0419 was issued on 3 July 2015 by the Victorian and Civil Administrative Tribunal (VCAT) and was not issued under Division 6 of the Act.
39. Section 73 of the Act states that Sections 47 to 62 of the Act apply to the amendment application. This allows the Responsible Authority to apply the abovementioned sections of the Act to the amendment application as if it was an application for a permit.

Planning Scheme Provisions

Zoning

Commercial 1 Zone

40. Pursuant to the requirements of clause 34.01-1 a planning permit is not required to use the land for a 'Food and Drinks Premises' (nested under 'Retail Premises').
41. There is no planning permit requirement for the sale and consumption of liquor pursuant to the zone.

Neighbourhood Residential Zone – Schedule 1

42. In accordance with the requirements of clause 32.09-2 a planning permit is required to use the land for a 'Food and Drinks Premises.'
43. As set out earlier in the report, the food and drinks premises (restaurant) received approval under the original planning approval of PLN14/0419 by VCAT. It is noted that at the time Council decided on the application the area within the Neighbourhood Residential Zone was proposed to be a Convenience Shop. It was a decision by VCAT to delete the Convenience Shop and have that area absorbed into the restaurant tenancy as shown on 'SK-12 9 dated October 2014,' e.g. Tenancy 4.
44. There is no planning permit requirement for the sale and consumption of liquor pursuant to the zone.

Overlays

Heritage Overlay – Schedule 334

45. The application does not propose any buildings and works and therefore the provisions of this overlay are not triggered.
46. There is no planning permit requirement for the sale and consumption of liquor pursuant to the overlay.

Particular Provisions

Clause 52.27 – Licensed premises

47. The purpose of this clause is:
- (a) *To ensure that licensed premises are situated in appropriate locations.*
 - (b) *To ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.*

48. A permit is required to use land to sell or consume liquor if (relevantly):

(a) *A licence is required under the Liquor Control Reform Act 1998.*

49. Decision guidelines at clause 52.27 include:

- (a) *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- (b) *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.*
- (c) *The impact of the hours of operation on the amenity of the surrounding area.*
- (d) *The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.*

General Provisions

Clause 65 – Decision Guidelines

50. 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.

State Planning Policy Framework (SPPF)

51. Clause 13.04-1 (Noise abatement) objective is:

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

52. Noise abatement issues are measured against relevant State Environmental Protection Policy (SEPP) and other Environmental Protection Authority (EPA) regulations.

Clause 17 – Economic development

Clause 17.01-1 – (Business)

53. The objective of this clause is *‘to encourage development which meet the communities’ needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities’.*

Local Planning Policy Framework (LPPF)

54. *Clause 21.03 Vision* sets out Yarra’s plan for the land use, built form, transport and environmental sustainability in the year 2020. Relevant visions are:

- (a) *The City will accommodate a diverse range of people, including families, the aged, the disabled, and those who are socially or economically disadvantaged*
- (b) *The complex land use mix characteristic of the inner City will provide for a range of activities to meet the needs of the community*
- (c) *Yarra’s exciting retail strip shopping centres will provide for the needs of local residents, and attract people from across Melbourne*

55. The Strategic Framework Plan shows the subject site as being within the Gertrude Street Neighbourhood Activity Centre and between the Smith Street Major Activity Centre and the Brunswick Street Major Activity Centre.

Clause 21.04-2 – Activity Centres

56. The site is located within the Gertrude Street Neighbourhood Activity Centre. The relevant objectives and strategies of this clause are:
- (a) *Objective 4 - To maintain a balance between local convenience and regional retail roles in Yarra's activity centres.*
 - (i) *Strategy 4.1 Increase the range of retail, personal and business services, community facilities, and recreation activities, within individual centres.*
 - (ii) *Strategy 4.3 Support the role of all activity centres, including Neighbourhood Activity Centres, in providing local day-to-day needs of residents of all abilities.*
 - (b) *Objective 5 To maintain the long term viability of activity centres.*
 - (i) *Strategy 5.2. Support land use change and development that contributes to the adaptation, redevelopment and economic growth of existing activity centres.*

Clause 21.04-3 – Industry, office and commercial

57. The objective of this clause is 'Objective 8 - To increase the number and diversity of local employment opportunities'.

Clause 21.08-7 Neighbourhoods (Fitzroy)

58. *Clause 21.08-7 Fitzroy identifies the suburb as "a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/industrial activities."*

Relevant Local Policies

Clause 22.09 – Licenced premises

59. This policy applies to all applications for new licensed premises.
60. The objectives of this clause are:
- (a) *To effectively manage the location, operation and hours of trade of licensed premises, in order to protect the amenity of nearby properties and areas.*
 - (b) *To protect residential and other commercial uses from excess noise, traffic and car parking issues.*
 - (c) *To provide for daytime trade and active street frontages in retail strips, while providing reasonable commercial opportunities for the trading of licensed premises.*
61. This policy outlines a range of guidance at clause 22.09-3 (including location and access and hours of operation).

Other Relevant Documents

Amendment C209

62. Amendment C209 proposes changes to the Licensed Premises Policy contained within clause 22.09 of Council's Local Planning Policy. The proposed changes are intended to improve the way licensed venues are managed in the City of Yarra and make various changes to the current content of the policy.
63. The policy has recently been heard before a planning panel in April of this year. The panel report has been publically released and Council has adopted the amendment resulting in the amendment being a "seriously entertained" document. The amendment will now be submitted to the Minister for Planning for review and final approval.
64. Relevant to this application the policy:
 - (a) Encourages licensed premises with a capacity of 200 persons or more to be located in Core Entertainment Precincts.
 - (b) Licensed premises be located such that there are appropriate opportunities to manage or buffer potential amenity impacts provide a high level of public safety and not result in unreasonable cumulative impacts.
 - (c) Licensed premises in a residential zone (other than a Mixed Use Zone) not provide for the sale and consumption of liquor beyond 8pm, unless the responsibly authority is satisfied that it will not adversely affect the amenity of the area.
 - (d) Appropriate hours for deliveries and the collection of waste have been outlined to accord with Council's Local Law.
 - (e) Policy regarding cumulative impacts is now provided.

Advertising

65. The application was advertised in accordance with Section 52 of the *Planning and Environment Act 1987 [the Act]* by way of 119 letters sent to the surrounding property owners/occupiers and by three signs (one to each of the frontages to Gertrude, George and Little George Streets).
66. Forty-two objections were received to the application, these can be summarised as:
 - (a) Off-site amenity impacts (noise, smells, traffic, anti-social behaviour).
 - (b) Non-compliance with local policy and proposed C209.
 - (c) Concern with the liquor licence regarding the Restaurant:
 - (i) Patron numbers;
 - (ii) Residential zone interface;
 - (iii) Exit routes along George Street;
 - (iv) Music noise.
 - (d) Car parking and traffic.

Referrals

External Referrals

- (a) None.

Internal Referrals

- (b) Social Planning Unit;
- (c) Community Amenity Unit.

67. Referral comments are attachments to this report.

OFFICER ASSESSMENT

68. In assessing this application, the primary planning considerations are:
 - (a) Strategic context;
 - (b) Sale and consumption of liquor;

- (c) Objector concerns;
- (d) Other matters.

Strategic context

- 69. The State and Local Planning Policy Frameworks encourage the sustainability of commercial uses. These policies seek to encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities, provided that a balance is achieved in relation to off-site amenity impacts.
- 70. Specifically, Clauses 13.04-1, 21.04-2 and 22.05 identify that noise and the interface between uses must be managed appropriately, particularly in a municipality such as Yarra where 'almost all residents are within 400m of an activity centre... Abutting uses along the length of the strips are generally residential, creating interface conflicts where some uses are not well managed or inappropriate uses are permitted' (Clause 21.04-2).
- 71. The relevant planning permit triggers in this instance are Clause 52.27, which together with the local policy at Clause 22.09, articulates the decision guidelines relating to cumulative impact, off-site amenity impacts and land use conflict considerations. These issues will be discussed in detail in the balance of this report.
- 72. The location of a licenced café and restaurant is considered to have strategic support given state and local planning policies encourage the concentration of commercial and entertainment uses in Activity Centres, such as Gertrude Street, which are well connected to public transport (clauses 11.03-1, 11.03-2 and 21.04-2).
- 73. The service of alcohol will be in association with food with the proposal being ancillary and complementary to the food focus of the two approved tenancies. The applicant confirmed via email on 5 October 2017 that the licence type being sought for the sale and consumption of liquor is a 'café and restaurant licence.'
- 74. Council's Social Planning Unit was supportive of the licence type sought, commenting that a restaurant and café licence requires the predominant activity, at all times, to be the preparation and serving of meals for consumption on the premises. This reduces the prevalence for adverse off-site amenity impacts, such as alcohol related anti-social behaviour, due to the food focus of the licence type sought as opposed to a licence that encourages 'vertical drinking.'
- 75. The proposal provides people visiting and living in the area with the extra added option of having alcohol with their meal, should they choose. Given the operating hours and nature of a restaurant/café use, the sale and consumption of liquor in associated with the service of food is unlikely to result in additional off-site amenity impacts such as noise and smells beyond what would already be expected.
- 76. The use will contribute to the continued vibrancy and growth of the surrounding precinct as encouraged by the policies outlined above. Significantly, the use of land within the Commercial 1 Zone as a food and drinks premises, inclusive of café and restaurant, does not trigger the need for a planning permit.
- 77. In the review of the application by VCAT the Member assessed the impact of the uses that did require planning permission within the Neighbourhood Residential Zone. The decision of the Tribunal indicates strategic support for the use of the land as a restaurant. The associated sale and consumption of liquor, proposed to support this approved use, is being assessed as part of this amendment application and found to be appropriately located within a Neighbourhood Activity Centre.

Sale and consumption of liquor

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

Clause 22.09-3.1 – Location and access

80. As previously discussed the two approved food and drinks premises have strong strategic support in the subject location. The site is located within the Gertrude Street Neighbourhood Activity Centre; a consolidated urban neighbourhood with good access to services, infrastructure and public transport. The site has a direct abuttal to Gertrude Street and within proximity to Smith Street, Brunswick Street and the major thoroughfares of Victoria Parade and Hoddle Street.
81. It is important to note that Tenancy 1 (café) is located wholly within the Commercial 1 Zone with direct access to Gertrude Street. This tenancy has a direct interface with Commercially 1 Zoned properties to the north, east and west. To the south the tenancy is separated from the residentially zoned properties by the vehicular access to the building that is located off Little George Street. It is important to note a key purpose of the Commercial 1 Zone, seeks to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.
82. Tenancy 4 (Restaurant) is located primarily in the Commercial 1 Zone and partly in the Neighbourhood Residential Zone – Schedule 1 toward the rear. The tenancy provides direct access to Gertrude Street as well as side access to George Street. The side access to George Street is a main area of concern raised in the objections received. The applicant has proposed to restrict the door to being a 'service entry/exit only', therefore influencing dispersal routes from the restaurant to Gertrude Street, and not into the residential areas to the south.
83. This is considered an appropriate outcome and the restriction of the south-east door of Tenancy 4 (Restaurant) as a 'service entry/exit only' can form a condition of permit. This will ensure that upon leaving the premises people are likely to disperse to Gertrude Street to access public transport, taxis or rideshare directly or toward Smith or Brunswick Streets to access other licensed venues within the area that are open until later hours. There is no need for patrons to pass through the residential areas to the south or north across Gertrude Street in order to access these services (other than local residences who may visit the café/restaurant).
84. In addition, given the nature of the use, the dispersal of patrons from the venue is likely to be staggered, with patrons coming and going at various times throughout the day, evening and night. Further to this point it can form a condition of permit that a sign be erected at the exit of the venue to advise patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.
85. It is noted a number of objections raised concern with the sale and consumption of liquor impacting on future residents of the proposal. At the time of writing this report the subject site was in the one ownership and individual titles to future owners had not been issued. Even so, the impact on future residents is a consideration that has been taken into account.

The service of alcohol will be in association with food and therefore the proposal will be ancillary and complementary to the food focus of the two approved tenancies.

86. It is unlikely that the approval of the sale and consumption of liquor would alter the use of the tenancies beyond what has been approved. Additionally, any future occupants would be well aware of the approved commercial tenancies at ground floor and they would be choosing to purchase and/or live in a Neighbourhood Activity Centre with various uses such as licenced venues in the immediate proximity.
87. With a condition requiring the door opening onto George Street not being of use by patrons it is considered issues around the direct interface with residentially zoned land will be mitigated.

Clause 22.09-3.2 – Hours of Operation

88. It is noted the applicants have sought to modify Condition 17 to remove reference to the convenience shop. This is considered appropriate as the convenience shop was required to be deleted and absorbed into the restaurant tenancy as directed by VCAT. The condition remained on the permit as an oversight.
89. For both Tenancy 1 (Café) and Tenancy 4 (Restaurant) the sale and consumption of liquor is proposed to occur between 10am and 11pm. Condition 17 can be modified to regulate the sale and consumption of liquor to these hours associated with the two food and drinks premises. The modification of this condition will also provide greater clarity to the purpose of the permit as there is no longer a convenience shop within the development. It is also noted existing Condition 31 (proposed Condition 39) makes reference to a convenience shop; it would be practical for this condition to be updated also to insert reference to the restaurant instead of the convenience shop use.
90. Both Council's Community Amenity Unit and Social Planning Unit have raised no concern with the proposed hours for the service of alcohol. Council's Social Planning Unit in particular commented that the proposed hours are typical of venues within proximity.
91. Current and proposed licenced premises policy in accordance with clause 22.09 and Council's Draft Licenced Premises Policy (Amendment C209) specify a closing time for the sale and consumption of liquor of 1am and 11pm respectively for venues in the Commercial 1 Zone within 30 metres of residentially zoned land. Tenancy 1 (Café) and the majority of Tenancy 4 (Restaurant) comply with both the existing and proposed policy.
92. With respect to the part of Tenancy 4 (Restaurant) located partly in the Neighbourhood Residential Zone, policy in accordance with clause 22.09 and Council's Draft Licenced Premises Policy (Amendment C209) specify a closing time for the sale and consumption of liquor of 11pm and 8pm respectively for venues in a Residential Zone, unless the responsible authority is satisfied that the use will not adversely affect the amenity of the area.
93. The sale and consumption of liquor past 8pm on all days in association with Tenancy 4 (Restaurant) therefore requires demonstration that the amenity of the area would not be adversely affected against the requirements of the proposed policy (this is also discussed further under the headings of Noise and Noise and Amenity Action Plan).
94. While the proposed policy discourages new licenced premises in Residential Zones trading past 8pm it is considered that the subject site is not a typical residentially zoned property with a commercial operation. The site is split across two zones with the rear portion in the Neighbourhood Residential Zone. Tenancy 4 (Restaurant) is primarily located in the Commercial 1 Zone with the primary frontage oriented to face Gertrude Street. The site is not located in a predominately residential area where earlier closing times would be expected.

95. With regard to the location of the two approved food and drinks premises, the hours are considered appropriate. The site is within the Gertrude Street Neighbourhood Activity Centre and within proximity to the Smith Street Major Activity Centre and Brunswick Street Major Activity Centre. It is considered that the sale and consumption of liquor would have limited opportunity to cause undue detriment to the surrounding properties, with particular regard to the residential properties located to the immediate south, for the following reasons:
- (a) There are no operable windows along the George Street frontage;
 - (b) Activity is wholly contained inside the premises;
 - (c) The nature of the restaurant use associated primarily with the service of food; and
 - (d) The door opening onto George Street can be restricted to staff use.
96. If a permit were to issue Condition 17 is recommended to be updated to reflect the modified hours applied for.

Clause 22.09-3.3 Patron Numbers

97. Tenancy 1 (Café) is proposed to have 120 patrons and 120 seats and Tenancy 4 (Restaurant) is proposed to have 266 patrons and 266 seats. At the consultation forum and in response to the objections received, the applicant has advised that they would be willing to reduce the number of patrons to 90 for Tenancy 1 (Café) and 190 for Tenancy 4 (Restaurant).
98. The sale and consumption of liquor is in association with a café and restaurant use, and as such the focus is on the consumption of food and not alcohol. It is noted that the applicant is proposing for all patrons to be provided with seating (as shown on the submitted plans and Page 8 of the submitted NAAP). This is well in excess of the requirement to provide seating to at least 75% of patrons, which is required for uses operating under a 'Café and Restaurant Liquor Licence'.
99. Council's Social Planning Unit was supportive of the proposed patron numbers as proposed (120 and 266) due to seating provided for 100% of the patrons to be accommodated, even with regard to Council's Draft Licenced Premises Policy (Amendment C209) which directs venues with over 200 patrons to be in Core Entertainment Precincts, of which Gertrude Street is not one. A detailed assessment of this has been provided in the referral attached to this report.
100. With regard to the above and the proposed reduction in patron numbers by the applicant it is considered appropriate for the patron numbers to be reduced as this would ensure compliance with Council's Draft Licenced Premises Policy (Amendment C209). Whilst combined the patrons would be over 200 it is noted that the two food and drinks premises could apply for a liquor licences separately once occupied, as they are separate entities and should not be assessed as one venue but rather two venues of different natures (Café and restaurant) within the same building.
101. Council's Social Planning Unit did note that it is not clear if the design of the internal layout has adequately catered for the proposed internal infrastructure and ease of movement by patrons. It can therefore form a condition of permit that the internal layout, including seating for all patrons, be shown on the plans.
102. Given the nature of the use with a primary food focus and 100% of patrons provided with seating, it is considered that the number of patrons will be manageable on site and not adversely affect the amenity of the surrounding area. If a permit were to issue, a new condition should be included to require the patron numbers to accord with the proposed reduction and to also amend the plan to reference the reduced numbers.

Clause 22.09-3.4 Noise

103. The submission prepared by the applicant outlines that no live entertainment is proposed, nor is a dance floor or stage area. Whilst previously outlined a condition is recommended for the internal layout to be shown (which would in turn regulate the layout as shown on future plans).
104. It is considered a condition may be included on any permit issued to ensure that no live entertainment is undertaken on the premises, such as the following:
- No amplified music may be played, with the exception of background music, to the satisfaction of the Responsible Authority.*
105. A condition such as this will remove any ambiguity from the type and level of music allowed to be played for the two food and drinks premises and provide greater certainty for surrounding residents.
106. It is also noted that existing Condition 18 of the planning permit requires the following:
- The amenity of the area must not be detrimentally affected by the use or development, including through:*
- (a) the transport of materials, goods or commodities to or from land;*
 - (b) the appearance of any buildings, works or materials;*
 - (c) the emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or*
 - (d) the presence of vermin.*
107. This condition is a mechanism to ensure the ongoing amenity of the surrounding area is protected. If verified amenity issues around noise occur then corrective works can be required by the responsible authority to ensure they are resolved and amenity restored. The condition would apply to the use of the two approved food and drinks premises.
108. Condition 20 requires compliance with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1). It is noted that the planning permit does not require the uses to comply with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2). This can be inserted as an additional condition of permit.
109. It is noted that compliance with both SEPP N-1 and SEPP N-2 is required as part of the endorsed Acoustic Report. In accordance with existing Condition 7 the provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority. It is still recommended that a condition be implemented on the permit to ensure compliance with SEPP N-2 to ensure greater transparency with the permit requirements.
110. No specific acoustic report was required as part of this application due to the venues being fully enclosed without any outdoor seating. An acoustic report for the initial application has been submitted and endorsed that makes recommendations regarding noise impacts resulting from the proposed uses and development to the surrounding properties. The use of the ground floor as commercial tenancies has already been considered and approved.
111. With the inclusion of the recommended conditions it is considered that the proposal provides an adequate response to the Commercial 1 Zone and Neighbourhood Residential Zone, adjoining residential land uses and location in a Neighbourhood Activity Centre.

Clause 22.09-3.5 – Car Parking

112. A car parking reduction was considered as part of the original development application that allowed the use and development of the land in accordance with Planning Permit PLN14/0419, presently under construction. The development will continue to provide 1 car parking space to Tenancy 1 (Café) and two car parking spaces to the larger food and drinks premises, Tenancy 4 (Restaurant) in accordance with the VCAT order. These car parking spaces are located on both basement levels and noted as C19, C1 and C2.
113. There are no implications or changes to the as-approved car parking layout. There is no evidence that the sale and consumption of liquor will result in an increased demand for car parking with regard to the service of alcohol being in association with food and the proposal being ancillary and complementary to the food focus of the two approved food and drinks premises.
114. Furthermore, there is convenient access to the site by alternative transport modes, as well as the availability of time restricted on-street parking in the surrounding area. Tram services are easily accessible from Gertrude Street, Brunswick Street and Victoria Parade. Parliament Railway Station is accessible by walking (15 minutes). The site also has good access to shops, supermarkets, businesses, essential facilities and amenities.

Clause 22.09-3.6 Noise and Amenity Action Plan

115. Clause 22.09-3.6 notes that all licenced premises should comply with a detailed Noise and Amenity Action Plan (NAAP). As part of this application a NAAP has been submitted, it is noted Council's Draft Licenced Premises Policy (Amendment C209) states the requirement for a NAAP does not apply to a permit application for a café or restaurant due to the low impact nature of the use. The provision of a NAAP in this instance goes beyond what Amendment C209 recommends and if introduced, requires.
116. A NAAP is considered to be satisfactory in mitigating negative anti-social behaviours associated with the venue. The NAAP, if endorsed, becomes a legal document that can be enforced if the use operates outside of the parameters stated within the NAAP. A NAAP will create certainty with the operation of the venue including key aspects that could impact on the surrounds including complaints handling.
117. Many of the requirements of Clause 22.09-3.6 of the Scheme in relation to the provision of a NAAP are addressed in other sections of this report. The provisions within the submitted NAAP are considered appropriate to manage the operation of the premises without causing undue detriment to the amenity of the surrounding area. Measures to minimise amenity impacts of the proposal as indicated in the NAAP that are not addressed elsewhere in this report include:
 - (a) Complaints associated with the site activities shall be recorded in a Noise Complaint Register which is to be reviewed by management to determine if any consistent complaints are received and to address them. Management will also contact the complainant to advise what actions were undertaken to address the complaint.
 - (b) All front of house staff and duty managers will be required to obtain and maintain a Responsible Service of Alcohol Certificate.
 - (c) The premises will serve liquor between 10am and 11pm daily with seating provided for all patrons during these hours.
118. A Waste Management Plan has been prepared and endorsed in accordance with Condition 8 of the planning permit. It is considered that the existing Waste Management Plan adequately covers the waste management procedures for the two approved food and drinks premises and the sale and consumption of liquor would not significantly alter the document. A condition can be implemented on the permit to ensure the emptying of bottles and cans into bins only occurs between 7am and 10pm on any day.

119. To ensure the venue is managed in accordance with the specifications contained in the NAAP, the NAAP can be endorsed by way of planning permit condition, on any permit issued. There are a number of errors contained within the NAAP that could also be corrected through the implementation of the condition. The following conditions are recommended should an amended permit be issued:

Before the commencement of the sale and consumption of liquor, 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 advertised, but modified to include (or show, or address):

- (d) Include the operating hours consistent with Condition 17.*
- (e) Remove reference to two restaurant tenancies and correctly reference two food and drinks premises: Tenancy 1 (Café) and Tenancy 4 (Restaurant).*
- (f) Floor plan in the appendix consistent with the floor plan required pursuant to Condition 1.*

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.

120. The NAAP may be required by way of condition in which case each tenancy will required to operate in accordance with the NAAP at all times.
121. In addition to these measures, 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.
122. The endorsed and proposed plans currently show a footpath trading area along the Gertrude and George Street frontages. It is noted that this is indicative only and does not form part of the planning approval. The approval of these trading areas is not part of the planning process and governed by Council's Community Amenity Unit.
123. It is noted that Council's Footpath Trading Policy requires a minimum width between the building and trading area be provided to ensure a walkway is clear and free of obstructions for pedestrians. This is the responsibility of Council's Community Amenity Unit to enforce and ensure all footpath trading areas provide the appropriate clearances. Nevertheless, these considerations fall outside of the planning permit process which deals only with liquor licencing within Title boundaries.
124. Council's General Local Law governs matters relating to noise, obstructions and littering of public land and it is considered unreasonable for the subject premises to govern these matters in relation to the footpath trading areas, wider neighbourhood and residential areas.
125. Based on the above, the proposed sale and consumption of liquor from Tenancy 1 (Café) and Tenancy 4 (Restaurant) is considered appropriate without causing unreasonable amenity impacts on the surrounding neighbourhood.

Cumulative impact

126. An assessment criteria contained at clause 52.27 not covered above is the cumulative impact of existing licensed premises and the proposed licensed premises on the amenity of the surrounding area. It is acknowledged that the mix of licensed premises in an area can influence potential cumulative impacts.

127. These cumulative impacts can be both positive and negative. For instance, areas with a range of licensed venues (small bars, large hotels, and restaurants) can create vibrant commercial areas with fewer impacts, whereas areas with many large scale bars and nightclubs within proximity of each other could potentially result in more negative impacts to the immediate neighbourhood accumulatively.
128. 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 use (i.e. premise type, patron numbers and operating hours) the required level of assessment will vary.
129. 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 | Premises Trigger |
|-------------------------|-------------|---|
| Café / Restaurant | 0 | Tenancy 1 (Café) and Tenancy 4 (Restaurant) |
| Bar / Restaurant / Café | 1 | |
| Bar | 3 | |
| Hotel / Tavern | 3 | |
| Night Club | 3 | |
| Place of Assembly | 2 | |
| | | |
| Size of Premise | Risk Factor | Risk Factor |
| 0 – 49 patrons | 0 | |
| 50 – 99 patrons | 1 | |
| 100 – 199 patrons | 2 | Tenancy 1 (Café) |
| 200+ | 3 | Tenancy 4 (Restaurant) |
| | | |
| Closing hours | Risk factor | Risk factor |
| 11pm | 0 | Tenancy 1 (Café) and Tenancy 4 (Restaurant) |
| 12am | 1 | |
| 1am | 2 | |
| 2am | 3 | |
| 3am | 3 | |
| After 3am | 4 | |

130. Applying the matrix of risk to the proposal, a reasonable consideration would suggest a score of 1-3 would be no risk, higher than 3 would be a potential risk.
131. In this instance Tenancy 1 (Café) achieves a maximum score of 2 and Tenancy 4 (Restaurant) achieves a maximum score of 3. Assessed together both tenancies would still achieve a maximum score of 3. Therefore the venues would be considered to be of no risk and as such, a cumulative impact assessment is not warranted.
132. With regard to the reduction in patron numbers as proposed by the applicant it is noted that the score generated from applying the matrix of risk would result in Tenancy 1 (Café) achieving a maximum score of 1 and Tenancy 4 (Restaurant) achieving a maximum score of 2. Assessed together both tenancies would still achieve a maximum score of 3 again being venues of no risk.

Objector Concerns

Off-site amenity impacts (noise, smells, traffic, anti-social behaviour).

133. This concern has been discussed at paragraphs 72 – 75, 92 – 95, 103 – 111 and 115 – 125 of this report.

Non-compliance with local policy and proposed C209.

134. This concern has been discussed throughout the report, where relevant.

Concern with the liquor licence regarding the Restaurant:

135. Patron numbers: (Paragraphs 97 – 102)
136. Residential zone interface: (Paragraphs 80 – 87)
137. Exit routes along George Street: (Paragraphs 82 – 84)
138. Music noise: (Paragraphs 103 – 111)

Car parking and traffic

139. This concern has been discussed at paragraphs 112 - 114 of this report.

Other Matters

140. If an amended permit were to issue, the following it noted:
- (a) The permit preamble would be required to be updated to acknowledge the inclusion of the sale and consumption of liquor (café and restaurant licence).
 - (b) Conditional changes to the plan will be required. As plans to meet the current Condition 1 requirements as shown on Planning Permit PLN14/0419 have been endorsed on 12 April 2015 it is recommended that existing Condition 1 be deleted and replaced with a new Condition 1 that will require the changes to the ground floor plan prior to the commencement.
 - (c) A number of conditions are recommended to be inserted which would require the renumbering of the subsequent permit conditions. It is noted that the overall the existing permit contains 31 conditions; the recommended conditions would result in a total of 39 conditions.

Conclusion

141. The proposal, subject to conditions outlined in the recommendation below, is an acceptable planning outcome that demonstrates compliance with the relevant Council policies. Based on the above report, the proposal complies with the relevant Planning Scheme provisions and planning policy and is therefore supported.

RECOMMENDATION

That a Notice of Decision to Grant an Amended Planning Permit PLN14/0419 be issued to allow for the sale and consumption of liquor associated with two approved food and drinks premises (Tenancy 1 (Cafe - 90 patrons) & Tenancy 4 (Restaurant - 190 patrons)) between 10AM and 11PM, seven days a week, and subsequent changes to the permit preamble, endorsed plans and Condition 17, at 166-182 Gertrude Street, Fitzroy, in accordance with the decision plans and subject to the following conditions:

Preamble (amended)

Demolition of the existing building to allow for the use and development of the land for a five-storey building (plus two basement carpark) with two ground floor shops, two food and drinks premises, including the sale and consumption of liquor (Café and restaurant licence), with 26 dwellings, reduction in associated car parking requirements and waiver of loading bay requirement in accordance with endorsed plans.

Conditions (amended or new conditions in bold)

1. **Before the commencement of the sale and consumption of liquor, an amended Ground Floor Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will 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 decision plans, but modified to show:**
 - (a) **Internal layout of the two food and drinks premises.**
 - (b) **Seating for 100% of patrons within both tenancies and no more than 90 patrons within Tenancy 1 (café) and 190 patrons within Tenancy 4 (Restaurant).**
 - (c) **Notation indicating that the entrance to George Street from the south eastern door of the restaurant is to be used as a service entry only.**
2. **The use and development (including the sale and consumption of liquor) as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.**
3. As part of the ongoing consultant team, JacksonClementsBurrows or an architectural firm to the satisfaction of the Responsible Authority must be engaged to:
 - (a) Oversee design and construction of the development.
 - (b) Ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.
4. Before the development commences, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by SBE and dated 19 June 2014, but modified to include or show:
 - (a) Inclusion of a daylight modelling report that confirms that the proposed dwellings are designed to achieve appropriate daylight outcomes.
 - (b) Confirmation that the development will achieve least 10 per cent or half a star (whichever is greater) above BCA minimum standards.
 - (c) Incorporation where viable, high efficiency gas instantaneous or gas boosted centralised system including a solar preheat collectors with a minimum of 45% contribution to annual energy requirements.
 - (d) Individual water meters installed to apartments.
 - (e) *****DELETED***.**

- (f) Confirmation the air condition system efficiency is to be within one star of the highest available or equivalent COP/EER.
 - (g) Provision of cycling end of trip facilities (shower) within the disabled toilet at ground floor level.
5. The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
6. Before the use and development commences, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:
- (a) Noise impact resulting from the proposed use and development to the surrounding properties.
 - (b) Noise impacts from the surrounding non-residential uses (vehicles, trams, commercial premises and live-music entertainment venues) to the proposed use and development.
- The acoustic report must make recommendations to limit the noise impacts in accordance with the State Environment Protection Policy (Control of noise from industry, commerce and trade) No. N-1 (SEPP N-1), State Environment Protection Policy (Control of music noise from public premises) No. N-2 (SEPP N-2) or any other requirement to the satisfaction of the Responsible Authority.
7. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.
8. Before the development commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Leigh Design and dated 4 June 2014, but modified to include:
- (a) The altered waste collection procedures as shown in the sketch plans submitted on 17 November 2014. In the event that the proposed loading zone is not approved by Council, the Waste Management Plan must be amended to provide an alternative pick-up location to the satisfaction of the Responsible Authority.
9. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
10. Before the development commences, an amended Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Landscape Plan will be endorsed and will form part of this permit. The amended Landscape Plan must be generally in accordance with the Landscape Plan prepared by Urban Commons and dated 21 July 2014, but modified to include (or show):
- (a) Further details regarding the planting adjacent to the corridor windows and the practicality of providing edible plants.

11. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:
 - (a) Implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan.
 - (b) Not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose.
 - (c) Replacing any dead, diseased, dying or damaged plants to the satisfaction of the Responsible Authority.
12. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the basement car park and pedestrian entries must be provided. Lighting must be located, directed, shielded and of limited intensity to the satisfaction of the Responsible Authority.
13. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
14. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
15. Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
16. All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
17. **Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor from Tenancy 1 (Café) and Tenancy 4 (Restaurant) may only occur between 10am and 11pm, seven days per week.**
18. **No more than 90 patrons are permitted within Tenancy 1 (café) and 190 patrons within Tenancy 4 (Restaurant) at any time liquor is being sold or consumed.**
19. **Before the commencement of the sale and consumption of liquor, 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 advertised, but modified to include (or show, or address):**
 - (a) **Include the operating hours consistent with Condition 17.**
 - (b) **Remove reference to two 'restaurant' tenancies and correctly reference two food and drinks premises: Tenancy 1 (Café) and Tenancy 4 (Restaurant).**
 - (c) **Floor plan in the appendix consistent with the floor plan required pursuant to Condition 1.**

- (d) **To include details of deliveries and collections for both premises between 7am and 10pm on any day only.**
- 20. **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.**
- 21. **Before the commencement of the sale and consumption of liquor, the applicant must, to the satisfaction of the Responsible Authority, display a sign at the exit of the licensed premises advising patrons to respect the amenity of adjacent residential areas and to leave in a quiet and orderly manner.**
- 22. The amenity of the area must not be detrimentally affected by the use or development, including through:
 - (a) The transport of materials, goods or commodities to or from land.
 - (b) The appearance of any buildings, works or materials.
 - (c) The emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - (d) The presence of vermin.All to the satisfaction of the Responsible Authority.
- 23. Except with the prior written consent of the Responsible Authority, delivery and collection of goods to and from the land may only be conducted between 9am and 10pm on any day.
- 24. **Emptying of bottles and cans into bins may only occur between 7am and 10pm on any day.**
- 25. The use and development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
- 26. **The use must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).**
- 27. **Except with the prior written consent of the Responsible Authority, speakers external to the building must not be erected or used.**
- 28. **No amplified music may be played, with the exception of background music, to the satisfaction of the Responsible Authority.**
- 29. All pipes, fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
- 30. Car parking allocated at the following rates:
 - (a) Dwellings – 33 car spaces.
 - (b) Residential visitors – 4 car spaces.
 - (c) Food and drink premises – 3 car spaces.
- 31. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the areas set aside on the endorsed plans for the car parking spaces, access lanes, driveways and associated works must be:
 - (a) Constructed and available for use in accordance with the endorsed plans.

- (b) Formed to such levels and drained so that they can be used in accordance with the endorsed plans.
- (c) Treated with an all-weather seal or some other durable surface.
- (d) Line-marked or provided with some adequate means of showing the car parking spaces.

All to the satisfaction of the Responsible Authority.

32. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the new vehicle crossings must be constructed:

- (a) In accordance with any requirements or conditions imposed by Council.
- (b) At the permit holder's cost.

All to the satisfaction of the Responsible Authority.

33. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any redundant vehicular crossing must be demolished and re-instated as standard footpath and kerb and channel at the permit holder's cost and to the satisfaction of the Responsible Authority.
34. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated at the permit holder's cost and to the satisfaction of the Responsible Authority.
35. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
36. Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, ten (10) bike racks must be installed at the permit holder's cost and in a location and manner to the satisfaction of the Responsible Authority.
37. Before the development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:
- (a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure.
 - (b) Works necessary to protect road and other infrastructure.
 - (c) Remediation of any damage to road and other infrastructure.
 - (d) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.
 - (e) Facilities for vehicle washing, which must be located on the land.
 - (f) The location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street.
 - (g) Site security.
 - (h) Management of any environmental hazards including, but not limited to:

- (i) contaminated soil;
 - (ii) materials and waste;
 - (iii) dust;
 - (iv) stormwater contamination from run-off and wash-waters;
 - (v) sediment from the land on roads;
 - (vi) washing of concrete trucks and other vehicles and machinery; and
 - (vii) spillage from refuelling cranes and other vehicles and machinery.
- (i) The construction program.
 - (j) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency.
 - (k) Parking facilities for construction workers.
 - (l) Measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan.
 - (m) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services.
 - (n) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.
 - (o) The provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.
 - (p) A Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
 - (i) using lower noise work practice and equipment;
 - (ii) the suitability of the land for the use of an electric crane;
 - (iii) silencing all mechanical plant by the best practical means using current technology;
 - (iv) fitting pneumatic tools with an effective silencer;
 - (v) other relevant considerations; and

During the construction:

- (q) Any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (r) Stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system;
- (s) Vehicle borne material must not accumulate on the roads abutting the land;

- (t) The cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
 - (u) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.
38. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
- (a) Monday to Friday (excluding public holidays) before 7 am or after 6 pm;
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
39. This permit will expire if:
- (a) the development is not commenced within two years of the date of this permit; or
 - (b) the development is not completed within four years of the date of this permit.
 - (c) **the dwelling and restaurant uses are not commenced within five years of the date of this permit.**
 - (d) **the sale and consumption of liquor is not commenced within five years of the date of this permit.**

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

CONTACT OFFICER: Michelle King
TITLE: Senior Statutory Planner
TEL: 9205 5333

Attachments

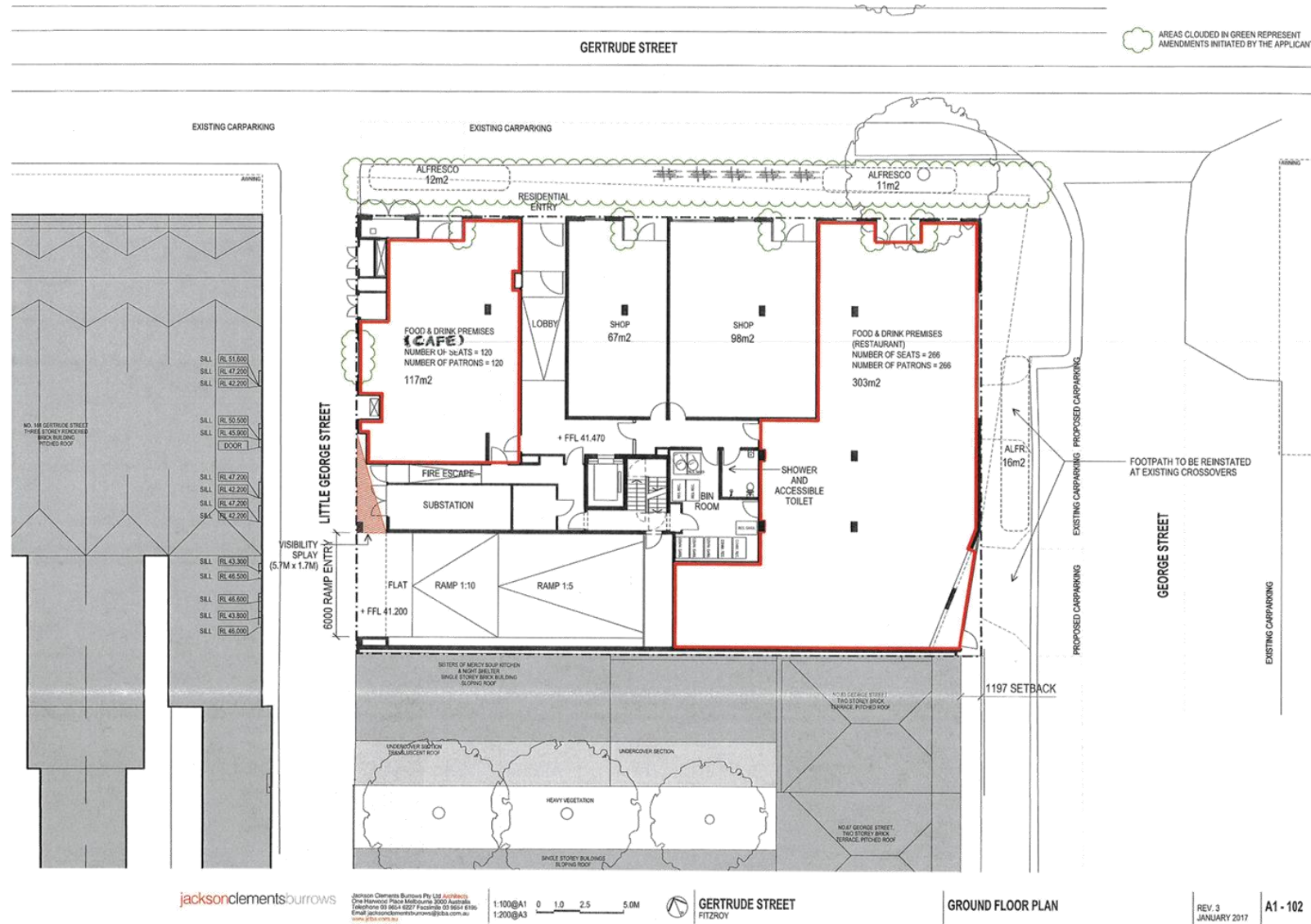
- 1 ATTACHMENT 1 - Site plan 166-182 Gertrude St
- 2 PLN14/0419.02 - 166-182 Gertrude Street Fitzroy - Red Line Plan
- 3 PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan
- 4 PLN14/0419.02 - 166-182 Gertrude Street, Fitzroy - Compliance Referral Response
- 5 PLN14/0419.02 - 166-182 Gertrude Street, Fitzroy - Social Planning Referral Response
- 6 Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

A map of a residential neighborhood with purple and orange shaded lots. A red star marks lot 1666/172. Lot numbers include 153, 157, 161, 163, 165, 167, 169, 173, 177, 179, 181, 183, 89, 150, 158, 160, 164, 70, 64, 62, 69, 67, 184, and 70. Street names GERTRUDE and GEORGE are visible.



Subject Site

Attachment 2 - PLN14/0419.02 - 166-182 Gertrude Street Fitzroy - Red Line Plan



Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

SJB Planning



Noise and Amenity Action Plan

166 - 182 Gertrude Street,
Fitzroy

Prepared on behalf of
Kalex (Gertrude Street) JV Pty Ltd

14 July 2017

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

Table of Contents

| | | |
|-----|--|----|
| | Overview | 3 |
| 1.0 | Existing Licenced Premises | 4 |
| 2.0 | Potential Noise Sources And Their Mitigation | 5 |
| 3.0 | Complaints | 6 |
| 4.0 | Staff | 7 |
| 5.0 | Premises details | 8 |
| 6.0 | Other measures | 9 |
| 7.0 | Summary | 10 |

List of Attachments

Attachment 1: Cumulative Impact Assessment Map

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

Overview

The land known as 166-182 Gertrude Street, Fitzroy is currently being developed for a five storey (plus two basement levels) building which will contain two ground floor shops, two ground floor food and drink premises (two restaurants) and a total of 26 dwellings contained with the upper floors.

A planning permit application (PLN14/0419.02) has been prepared which seeks to provide for the sale and consumption of liquor from the two ground floor food and drink premises. It is intended that liquor will be sold and consumed on these premises between the hours of 10am and 11pm daily.

The purpose of this document is to ensure appropriate management and control of these premises, particularly in relation to the responsible service of alcohol, minimising the risk of alcohol misuse and abuse and to minimise any adverse impact on the amenity of the surrounding area including other residents and businesses within the development.

This document has been prepared in accordance with Clause 22.09 (Licensed Premises) of the Yarra Planning Scheme and in particular the points contained at sub-Clause 22.09-4.3 (Noise and Amenity Action Plan).

This document has also taken into consideration the amendments proposed to Clause 22.09 through Amendment C209 with respect to patron management.

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

1.0 Existing Licenced Premises

A Cumulative Impact Assessment Map is attached at Attachment 1 to this document and details all licenced venues within a 500 metre radius of the application site, the type of licence held, operating hours and maximum patronage capacity.

What is demonstrated by this map is that there a large number of licenced premises within 500 metres of the application site and the predominant licence form is a 'Restaurant and Café Licence' with operating hours typically being between 12pm midday and 12am midnight.

This is unsurprising given the application site is located in the heart of the Gertrude Street Neighbourhood Activity Centre and a Commercial 1 Zone where these uses are as of right and encouraged to locate.

It is considered that the addition of two licenced food and drink premises will contribute to the vibrancy of this Neighbourhood Activity Centre; which the Commercial 1 Zone, within which the site is located, seeks to create.

It is not considered that the proposal will cause a saturation of licenced premises within this Neighbourhood Activity Centre, primarily due to the nature of the proposal. The food and drink premises are approved as café and restaurant where the primary focus is the preparation and serving of meals to be consumed with the service of alcohol being a secondary component. The proposed hours of operation are not 'late night' but instead correspond with 'ordinary trading hours' as defined by the Victorian Commission for Gambling and Liquor Regulation, whilst the patron numbers are not substantial, particularly given each patron is provided with seating.

On balance, therefore, it is anticipated that the proposal will generate more positive cumulative impacts than potential negative cumulative impacts.

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

2.0 Potential Noise Sources And Their Mitigation

The primary noise sources can be broken into three categories being service equipment noise, patron noise and music noise.

Condition 6 of the planning permit required an acoustic report to be submitted detailing noise impacts resulting from the proposed use and development to surrounding properties. Such a report has previously been prepared and endorsed by Council on 28 June 2016.

This endorsed acoustic report contemplates noise from all the above three categories and concludes that appropriate acoustic measurement targets are reached subject to various design recommendations. These design recommendations are required to be implemented and maintained in accordance with Condition 7 of the planning permit.

Whilst, it is proposed to introduce the sale and consumption of liquor from the two food and drink premises, it is important to note that this endorsed acoustic report considered the prospect of these premises being licenced as set out at Section 6.5 of the report.

Accordingly, it is considered that all noise source sources have previously been identified, addressed and deemed acceptable. The requirements of this endorsed acoustic report will be required to be complied with throughout the life of the development.

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

3.0 Complaints

In the event of a complaint by a member of the public, the Victoria Police, an authorised officer of Council or an officer of the Victorian Commission for Gambling and Liquor Regulation, the procedures to be undertaken by staff include the following:

1. Complaints associated with the site activities shall be recorded on a Noise Complaint Register.
2. The Noise Complaint Register should provide the following details:
 - a. The name address of the complainant;
 - b. The time and date the complaint was received
 - c. The nature of the complaint and the time and date the complaint relates to.
 - d. Indicate what operations were occurring on site at the time of the complaint
 - e. Summarise actions taken to investigate the complaint and the results of the investigation.
 - f. Remedial actions undertaken (if required).

The Noise Complaint Register should be reviewed by management periodically to determine whether there are any consistent complaints, and, if so, to address them. In the event of an ongoing complaint which cannot be addressed by management, external advice should be sought.

If requested by the complainant, management should contact the complainant by telephone to advise what actions were taken to address the complaint and to establish a positive working approach between the operators of the premises and surrounding residents.

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

4.0 Staff

Staffing arrangements will be determined by the success of each premises with it reasonably anticipated that staffing levels will fluctuate in line with peak demand periods. Kitchen staff, front of house staff and at least one duty manager can reasonably be expected to be on site at all time each premise is operating. Due to the nature of the tenancies as restaurants, no dedicated security staff will be required or provided.

All front of house staff and duty managers will be required to obtain and maintain a Responsible Service of Alcohol Certificate in accordance with the requirements of the Victorian Commission for Gambling and Liquor Regulation. Signage related to alcohol consumption as also required by the Victorian Commission for Gambling and Liquor Regulation will be provided at prominent locations within both tenancies. Additionally, as part of the induction process, the importance of the responsible service of alcohol will be reinforced on all staff.

In the event of any dispute between a staff member and a patron regarding the service of alcohol, the duty manager is to be immediately informed and in turn will determine and undertake any necessary actions in accordance with their responsible service of alcohol training.

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

5.0 Premises details

The proposed premises will serve liquor between 10am and 11pm, daily. Seating will be available for all patrons during these hours.

At all times the venue is operating, regardless of whether alcohol is being sold/ consumed, appropriate lighting will be provided noting that any external lighting will be required to be designed and baffled so as not to affect the amenity of the neighbourhood in accordance with Conditions 12 and 18 of the planning permit.

From a waste management perspective, a Waste Management Plan has been prepared and endorsed in accordance with Condition 8 of the planning permit. It is considered that any additional waste generated on either premises by the sale and consumption of liquor will be comfortably covered by the existing details and requirements of the endorsed Waste Management Plan.

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

6.0 Other measures

It is noted that under Amendment C209, additional emphasis is placed on patron management, albeit this being primarily directed to tavern style establishments as opposed to restaurants/ cafes. In this respect, it is noted that queuing for entry will not be expected, smokers will be required to exit the premises on to Gertrude Street and any large group bookings will be able to be easily managed as tables will be reserved as necessary.

In terms of management and dispersal of patrons, again considering the proposed operation of the tenancies, this is not considered to be an issue requiring addressing. Nevertheless, upon closing, the duty manager will politely request that any patrons lingering around the premises disperse in the interests of being respectful to nearby residents.

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

7.0 Summary

Due to the nature of the premises, it is considered unlikely that the sale of consumption will lead to any potential negative amenity impacts that have not already been considered and addressed as part of the broader planning permit proposal.

In summary, however, this Noise and Amenity Action Plan recommends:

- The provisions, recommendations and requirements of the Acoustic Report endorsed under Planning Permit PLN14/0419 are to be abided by at all times.
- A Noise Complaint Register as outlined at Section 3.0 is to be maintained.
- All staff are to hold Responsible Service of Alcohol Certificate and be advised of the importance of the responsible service of alcohol as part of their induction.
- The provisions, recommendations and requirements of the Waste Management Plan endorsed under Planning Permit PLN14/0419 are to be abided by at all times.
- The responsible Duty Manager to have final determination as to the service of alcohol, request patron dispersal, if necessary, upon closure of the premises and to be responsible for the keeping of the Noise Complaint Register.

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

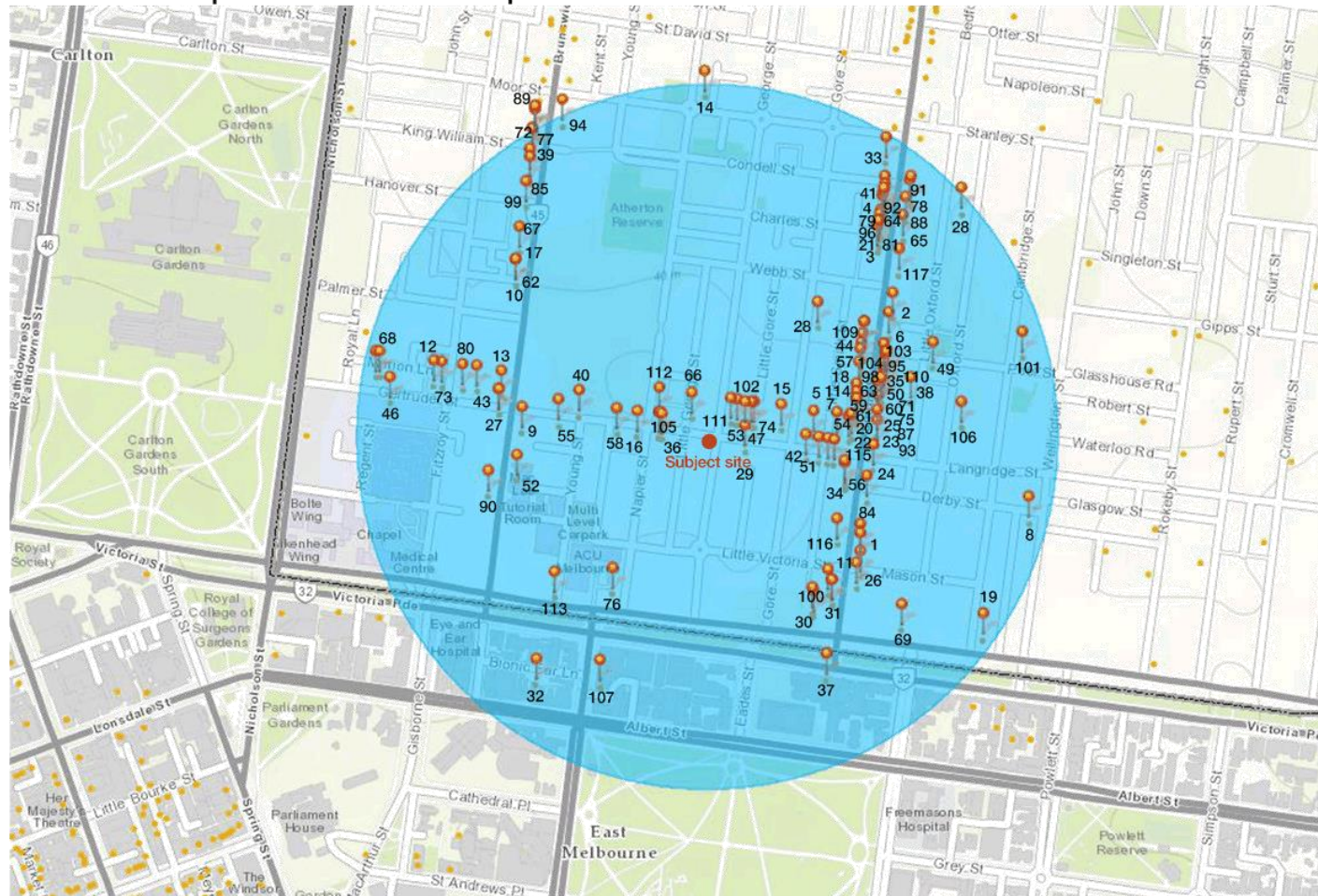
Attachment 1: Cumulative Impact Assessment Map

11/11

Noise and Amenity Action Plan

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

SJB Planning Cumulative Impact Assessment Map



Source: Victorian Commission for Gambling and Liquor Regulation Interactive Map Online



500m radius around
166-182 Gertrude
Street, Fitzroy

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

SJB Planning Cumulative Impact Assessment Map



BYO Permit

| Number | Premise Name | Address | Mon-Wed | Thu-Sat | Sun | Patron Capacity |
|--------|------------------------------------|--------------|---|--|--------------|-----------------|
| 1 | Konjo Ethiopian Restaurant & Craft | 20 Smith St | 12pm-11pm | 12pm-11pm | 12pm-11pm | Not Specified |
| 2 | The Social Studio | 126 Smith St | 12pm-11pm | 12pm-11pm | 12pm-11pm | Not Specified |
| 3 | Coconut Palms Restaurant | 183 Smith St | 12pm-1am | 12pm-1am | 12am-11:30pm | Not Specified |
| 4 | Old Kingdom | 197 Smith St | Closed (Mon) 12pm-3pm 5pm-11:30pm (Tue-Wed) | 12pm-3pm 5pm-11:30pm (Thu-Fri) 5pm-11:30pm (Sat) | 5pm-11:30pm | Not Specified |

General Licence

| Number | Premise Name | Address | Mon-Wed | Thu-Sat | Sun | Patron Capacity |
|--------|-------------------------|---------------------|----------|-------------------------------------|-----------|-----------------|
| 5 | Gertrude Street Eonteca | 229 Gertrude St | 8am-11pm | 8am-1am | 10am-11pm | Not Specified |
| 6 | Grace Darling Hotel | 114 Smith St | 7am-1am | 7am-1am | 10am-11pm | 300 |
| 7 | The Fitzroy Beer Garden | 243-245 Gertrude St | 7am-1am | 7am-1am | 10am-1am | 156 |
| 8 | The Vine Collingwood | 59 Wellington St | 7am-11pm | 7am-11pm | 10am-11pm | 114 |
| 9 | Metropole Hotel | 42-44 Brunswick St | 7am-11pm | 7am-11pm | 10am-11pm | 1964 |
| 10 | The Elysian Whisky Bar | 113 Brunswick St | 10am-1am | 10am-1am | 10am-1am | 40 |
| 11 | The British Crown Hotel | 14-18 Smith St | 7am-12am | 7am-12am (Thu) 7am-1am (Fri-Sat) | 10am-11pm | 449 |
| 12 | Cutler & Co | 51-57 Gertrude St | 7am-12am | 7am-12am | 7am-12am | 225 |
| 13 | The Workers Club | 51 Brunswick St | 7am-1am | 7am-1am | 10am-1am | 340 |
| 14 | Napier Hotel | 210 Napier St | 7am-11pm | 7am-12am (Thu) 7am-1am (Fri-Sat) | 10am-11pm | 140 |
| 15 | Builders Arms Hotel | 211 Gertrude St | 7am-1am | 7am-1am | 10am-11pm | 290 |

| | | | | | | |
|----|--------------------|-----------------|---------|---------|-----------|-----|
| 16 | The Gertrude Hotel | 148 Gertrude St | 7am-1am | 7am-1am | 10am-11pm | 260 |
|----|--------------------|-----------------|---------|---------|-----------|-----|

Late Night (general) Licence

| Number | Premise Name | Address | Mon-Wed | Thu-Sat | Sun | Patron Capacity |
|--------|----------------------|------------------|----------|----------|-----------|-----------------|
| 17 | Ichi Ni Nana Izakaya | 127 Brunswick St | 7am-3am | 7am-3am | 10am-11pm | 478 |
| 18 | Surcuit Bar | 103-105 Smith St | 10am-3am | 10am-3am | 10am-3am | 460 |
| 19 | Baden Powell Hotel | 61 Victoria Pde | 7am-1am | 7am-1am | 10am-11pm | 200 |
| 20 | Yah Yah's | 99 Smith St | 11am-1am | 10am-5am | 10am-5am | 250 |

Late Night (on-premises) Licence

| Number | Premise Name | Address | Mon-Wed | Thu-Sat | Sun | Patron Capacity |
|--------|----------------------------|----------------|----------|------------------------------------|-----------|--------------------------------|
| 21 | The 86 Bar | 185 Smith St | 10am-1am | 10am-3am | 10am-1am | 100 |
| 22 | Greenwood Loft | 83-87 Smith St | 10am-1am | 10am-4am | 10am-4am | 100 |
| 23 | Forester's Beer & Music | 64 Smith St | 12pm-2am | 12pm-4am | 12pm-4am | 300 (Sun-Wed) 400 (Thu-Sat) |
| 24 | Mr Scruffs | 60 Smith St | 7am-1am | 7am-4am | 12pm-1am | 145 |
| 25 | Caz Reitop's Dirty Secrets | 80 Smith St | 7am-1am | 7am-1am (Thu) 7am-3am (Fri-Sat) | 12pm-11pm | 60 |

Limited Licence

| Number | Premise Name | Address | Mon-Wed | Thu-Sat | Sun | Patron Capacity |
|----------|-------------------------|---------------------|-------------|-------------|-------------|-----------------|
| 26 | 12 Smith Street | 12 Smith St | 4pm-11pm | 4pm-11pm | 4pm-11pm | Not specified |
| 27 (97) | Breizoz French Creperie | 49 Brunswick St | 9am-11pm | 9am-11pm | 10am-11pm | Not specified |
| 28 | Two Blind Mice Wines | 132 Gore St | N/A | N/A | N/A | Not specified |
| 29 | Aunt Maggie's Fitzroy | 188-196 Gertrude St | 9am-8pm | 9am-8pm | 10am-6pm | Not specified |
| 30 (70) | Henkell Wines | 203 Victoria Pde | At any time | At any time | At any time | Not specified |
| 31 (108) | 413 Fahrenheit Pizza | 1-3 Smith St | 5pm-11pm | 5pm-11pm | 5pm-11pm | Not specified |

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

| | | | | | | |
|-------------------|----------------------------------|----------------------|---|---------------|--------------|---------------|
| 32 | The Space Agency | 235 Bridge St | 12pm-12am | 12pm-12am | 12pm-12am | Not specified |
| 33 | Sample Brew | 219 Smith St | At any time | At any time | At any time | Not specified |
| 34 | Junior Space | 65 Smith St | 6pm-9pm | 6pm-9pm | 6pm-9pm | Not specified |
| 35 (48/86) | Huxtaburger & Bills Bar | 104-106 Smith St | 11am-11pm | 11am-11pm | 11am-11pm | Not specified |
| 36 (45) | The Everleigh Melbourne | 150-156 Gertrude St | 7am-1am | 7am-1am | 7am-1am | Not specified |
| 37 | Epworth Freemasons | 320 Victoria Pde | 12pm-9pm | 12pm-9pm | 12pm-9pm | Not specified |
| 38 | Halle Aux Vins | 17 Little Oxford St | At any time | At any time | At any time | Not specified |
| 39 (83) | Café Umago | 171-173 Brunswick St | 11:30am-12am | 11:30am-12am | 11:30am-11pm | Not specified |
| 40 | Gertrude Contemporary Arts Space | 200 Gertrude St | Closed (Mon) 5:30pm-8:30pm (Tue-Wed) | 5:30pm-8:30pm | Closed | Not specified |

On-Premises Licence

| Number | Premise Name | Address | Mon-Wed | Thu-Sat | Sun | Patron Capacity |
|-------------------|------------------------------------|---------------------|-------------------------------------|-----------|-----------|-----------------|
| 41 | Kent St | 201 Smith St | 8am-1am | 8am-1am | 10am-1am | 140 |
| 42 | Ladro Gertrude | 224 Gertrude St | 7am-1am | 7am-1am | 10am-11pm | 78 |
| 43 | Radio Bar and Café | 79 Gertrude St | 7am-11pm | 7am-1am | 10am-11pm | 50 |
| 44 | Shimbashi Japanese Soba & Sake Bar | 131-133 Smith St | 9am-11pm | 9am-11pm | 10am-11pm | 65 |
| 45 (36) | The Everleigh Melbourne | 150-156 Gertrude St | 9am-1am | 9am-1am | 10am-1am | 85 |
| 46 | The Catfish Tavern | 30-32 Gertrude St | 7am-1am | 7am-1am | 10am-11pm | 204 |
| 47 | Anada Bar & Restaurant | 197 Gertrude St | 11am-1am | 11am-1am | 11am-11pm | Not specified |
| 48 (35/86) | Huxtaburger & Bills Bar | 104-106 Smith St | 11am-1am | 11am-1am | 11am-1am | 48 |
| 49 | The Umpire Strikes Back | 9-11 Peel St | 7am-12am (Mon) 7am-1am (Tue-Wed) | 7am-1am | 10am-1am | 240 |
| 50 | Wabisabi | 94 Smith St | 11am-11pm | 11am-1am | 11am-11pm | Not specified |
| 51 | Beach Burrito Company | 230-232 Gertrude St | 7am-11pm | 7am-1am | 10am-11pm | 170 |
| 52 | Mondopiero | 28 Brunswick St | 11am-11pm | 11am-11pm | 11am-11pm | 20 |

| | | | | | | |
|----------------|-----------------------|---------------------|------------------------------------|--------------------------------------|-----------|---------------|
| 53 | Archie's All Day | 189 Gertrude St | 7am-1am | 7am-1am | 10am-11pm | 50 |
| 54 (82) | Trippy Taco | 238 Gertrude St | 7am-11pm | 7am-1am (Thu-Fri) 8am-1am (Sat) | 8am-11pm | 33 |
| 55 | Dianne Tazner Gallery | 108-110 Gertrude St | Closed (Mon) 10am-5pm (Tue-Wed) | 10am-5pm (Thu-Fri) 12pm-5pm (Sat) | Closed | 20 |
| 56 | La Niche Café | 67 Smith St | 8am-11pm | 8am-11pm | 10am-11pm | 46 |
| 57 | Grumpy's Green | 125 Smith St | 7am-1am | 7am-1am | 10am-1am | 120 |
| 58 | Charcoal Lane | 136 Gertrude St | 10am-11pm | 10am-11pm | 10am-11pm | Not specified |
| 59 | Pixel Alley | 95 Smith St | 11am-12am | 11am-1am | 11am-11pm | 100 |
| 60 | Bar Sk | 90 Smith St | 8am-1am | 8am-1am | 8am-1am | 70 |
| 61 | Mr Wow's Emporium | 97B Smith St | 7am-1am | 7am-1am | 10am-1am | 197 |

Packaged Liquor Licence

| Number | Premise Name | Address | Mon-Wed | Thu-Sat | Sun | Patron Capacity |
|-----------------|--------------------------------|----------------------|----------|----------|-----------|-----------------|
| 62 | Wine Window | 113-115 Brunswick St | 9am-11pm | 9am-11pm | 10am-11pm | Not specified |
| 63 | Blackhearts & Sparrows | 123 Smith St | 9am-11pm | 9am-11pm | 10am-11pm | Not specified |
| 64 | Smith Street Cellars | 195 Smith St | 9am-11pm | 9am-11pm | 10am-11pm | Not specified |
| 65 | Liquorland | 132-172 Smith St | 9am-11pm | 9am-11pm | 10am-11pm | Not specified |
| 66 | Gertrude Street Bottle Shop | 169 Gertrude St | 9am-11pm | 9am-11pm | 10am-11pm | Not specified |
| 67 | Kimchi Korean Japanese Grocery | 161-163 Brunswick St | 9am-11pm | 9am-11pm | 10am-11pm | Not specified |
| 68 (118) | Casa Ciuccio | 15 Gertrude St | 10am-7pm | 10am-7pm | 10am-7pm | Not specified |
| 69 | Sutherlands Fine Wines | 31 Victoria Pde | 9am-11pm | 9am-11pm | 10am-11pm | Not specified |

Pre-retail Licence

| Number | Premise Name | Address | Mon-Wed | Thu-Sat | Sun | Patron Capacity |
|----------------|---------------|-------------|-------------|-------------|-------------|-----------------|
| 70 (30) | Henkell Wines | PO Box 2160 | At any time | At any time | At any time | Not specified |

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

Restaurant and café licence

| Number | Premise Name | Address | Mon-Wed | Thu-Sat | Sun | Patron Capacity |
|------------|---------------------------|----------------------|--|---|-----------|-----------------|
| 71 | The Meatball & Wine Bar | 98 Smith St | 8am-1am | 8am-1am (Thu) 7:30am-1am (Fri-Sat) | 10am-11pm | 87 |
| 72 | Smith & Daughters | 175 Brunswick St | 7am-1am | 7am-1am | 10am-11pm | 61 |
| 73 | Mighty Boy Eatery | 59-61 Gertrude St | 7am-11pm | 7am-11pm | 10am-11pm | 80 |
| 74 | Ish Restaurant | 199 Gertrude St | 7am-11pm | 7am-11pm | 10am-11pm | 35 |
| 75 | Easy Tiger Smith St | 96 Smith St | 12pm-12am | 12pm-12am | 12pm-12am | 99 |
| 76 | Ecco Hospitality | 115 Victoria Pde | 12pm-11pm | 12pm-11pm (Thu-Fri) Closed (Sat) | Closed | 195 |
| 77 | Akari Japanese Restaurant | 177 Brunswick St | 7am-12am | 7am-12am | 10am-11pm | Not specified |
| 78 | Pabu Grill & Sake | 190 Smith St | 10am-10pm | 10am-10pm (Thu) 10am-12am (Fri) 5pm-12am (Sat) | 5pm-12am | 77 |
| 79 | Peko Peko | 199 Smith St | 8am-11pm | 8am-11pm | Closed | 45 |
| 80 | Sonido! | 69 Gertrude St | Closed (Mon) 8:30am-4pm (Tue-Wed) | 8:30am-10pm (Thu-Fri) 9am-10pm (Sat) | 10am-10pm | 25 |
| 81 | Mr Bulgogi | 189 Smith St | 7am-11pm | 7am-11pm | 10am-11pm | 50 |
| 82 (54) | Trippy Taco | 234 Gertrude St | 9am-11pm | 9am-1am | 10am-10pm | 30 |
| 83 (39) | Café Umago | 171-173 Brunswick St | 7am-1am | 7am-1am | 10am-11pm | 71 |
| 84 | Smithward Bar | 48A Smith St | 9am-11pm | 9am-11pm | 10am-11pm | 17 |
| 85 | Slowpoke Espresso | 157 Brunswick St | 7am-11pm | 7am-11pm | 8am-11pm | 30 |
| 86 (35/48) | Huxtaburger & Bills Bar | 104-106 Smith St | 11am-1am | 11am-1am | 11am-1am | 19 |
| 87 | Ides Restaurant | 92 Smith St | 10am-11pm | 10am-11pm | 10am-11pm | 45 |
| 88 | Hotel Jesus | 174 Smith St | 11:30am-11pm | 11:30am-11pm (Thu) | 10am-11pm | 102 |

| | | | | | | |
|----------|-------------------------------|---------------------|--|---|--------------|---------------|
| | | | | 11:30am-1am (Fri) 8am-1am (Sat) | | |
| 89 | Uptown Jazz Café | 177 Brunswick St | 12pm-12am | 12pm-12am | 12pm-12am | Not specified |
| 90 | Aegean Restaurant | 17-19 Brunswick St | 10am-1am | 10am-1am | 10am-1am | Not specified |
| 91 | Xe Om | 194 Smith St | 10am-1am | 10am-1am | 10am-1am | 50 |
| 92 | Noi Thai | 205 Smith St | 9am-11pm | 9am-11pm | 9am-11pm | 29 |
| 93 | Tokushima Japanese Restaurant | 70 Smith St | 7am-11pm | 7am-11pm | 10am-11pm | Not specified |
| 94 | Blue Chillies | 182 Brunswick St | 10:30am-11pm | 10:30am-11pm | 10:30am-11pm | 100 |
| 95 | Major Tom Collingwood | 108 Smith St | 7am-1am | 7am-1am | 7am-1am | 97 |
| 96 | Café Rosamond | 191A Smith St | 9am-11pm | 9am-11pm | 10am-11pm | 20 |
| 97 (27) | Breizoz French Creperie | 49 Brunswick St | 9am-11pm | 9am-11pm | 10am-11pm | 40 |
| 98 | Biggie Smalls | 86 Smith St | 9am-11pm | 9am-1am | 9am-11pm | 32 |
| 99 | Amarillo Fitzroy | 149 Brunswick St | 7am-11pm | 7am-11pm | 10am-11pm | 35 |
| 100 | Majormajor | 5 Smith St | 7am-11pm | 7am-11pm | 10am-11pm | 40 |
| 101 | Akasiro | 106 Cambridge St | Closed (Mon) 11am-4pm (Tue) 11am-10pm (Wed) | 11am-10pm (Thu) 11am-3pm (Fri) 11am-11pm (Sat) | 10am-4pm | 20 |
| 102 | Arcadia Café/Restaurant | 193 Gertrude St | 7am-11pm | 7am-11pm | 10am-11pm | Not specified |
| 103 | Chalawan | 102 Smith St | 7am-11pm | 7am-11pm | 10am-11pm | 42 |
| 104 | Madras Brothers | 129 Smith St | 7am-1am | 7am-1am | 10am-11pm | 136 |
| 105 | Belle's Diner | 150-156 Gertrude St | 9am-1am | 9am-1am | 10am-11pm | 82 |
| 106 | South of Johnston | 46 Oxford St | 10am-11pm | 10am-11pm | 10am-11pm | 60 |
| 107 | Zio's Restaurant | 14 Lansdowne St | 7am-11pm | 7am-11pm | 10am-11pm | 165 |
| 108 (31) | 413 Fahrenheit Pizza | 1-3 Smith St | Closed (Mon) 5pm-11pm (Tue-Wed) | 5pm-11pm (Thu) 5pm-1am (Fri-Sat) | 5pm-11pm | 14 |

Attachment 3 - PLN14/0419.02 - 166 - 182 Gertrude Street Fitzroy - Noise and Amenity Action Plan

| | | | | | | |
|-----------------|----------------------------|------------------|--|--|-------------------------|---------------|
| 109 | Copacabana International | 135-139 Smith St | 10am-3am | 10am-3am | 10am-3am | Not specified |
| 110 | Bowl Bowl Dumpling | 88-88A Smith St | 12pm-11pm | 12pm-11pm | 12pm-11pm | 61 |
| 111 | De Cieu Specialty Coffee | 187 Gertrude St | 7am-11pm | 7am-11pm (Thu-Fri) 7:30am-11pm (Sat) | 7:30am-11pm | 70 |
| 112 | Soubar | 153 Gertrude St | 11am-1am | 11am-1am | 11am-11pm | 135 |
| 113 | Sherpaz Restaurant | 209 Victoria Pde | 12pm-2:30pm 6pm-11pm | 12pm-2:30pm 6pm-11pm | 12pm-2:30pm 6pm-11pm | 63 |
| 114 | Kinyoubi Izakaya | 117 Smith St | 7am-11pm | 7am-11pm | 10am-11pm | 41 |
| 115 | Neko Neko | 83 Smith St | 9am-11pm | 9am-11pm (Thu) 9am-1am (Fri-Sat) | 9am-11pm | 24 |
| 116 | Chotto | 35 Smith St | Closed (Mon) 8am-11pm (Tue-Wed) | 8am-11pm | 10am-3pm | 20 |
| 117 | Gontran Cherrier Australia | 140 Smith St | 7am-11pm | 7am-11pm | 7am-11pm | 97 |
| 118 (68) | Casa Ciuccio | 15 Gertrude St | 12pm-11pm | 12pm-11pm (Thu) 12am-1am (Fri-Sat) | 12pm-11pm | 70 |

Attachment 4 - PLN14/0419.02 - 166-182 Gertrude Street, Fitzroy - Compliance Referral Response

TO: Michelle King
cc:
FROM: Steve Alexander
DATE: 21/08/17
APPLICATION: PLN 14/0419.02
SUBJECT: Amenity Enforcement Referral

Dear Michelle,

Thank you for your referral dated 16 August 2017 in relation to 166-182 Gertrude St, Fitzroy.

I note this application is for consumption of liquor (restaurant and café licence) associated with two tenancies.

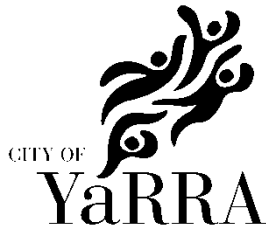
Considering the hours being proposed are between 10am – 11pm seven days a week and the use being café (120 patrons) and restaurant (266 patrons) the Compliance branch does not have any concern with the proposed sale and consumption of liquor.

Should you wish to discuss the application further, please feel free to contact me on 9205-5166.

Regards,

Steve Alexander
Coordinator – Civic Compliance

Attachment 5 - PLN14/0419.02 - 166-182 Gertrude Street, Fitzroy - Social Planning Referral Response



MeMO

TO: Michelle King, Senior Statutory Planner
FROM: Erika Russell, Senior Planner (Community Health and Safety)
DATE: 22 September 2017
ADDRESS: 166-182 Gertrude Street, Fitzroy
APPLICATION NO: PLN14/0419.02
DESCRIPTION: S72 amendment to allow for the sale and consumption of liquor associated with two approved food and drinks premises (tenancy 1 (cafe - 120 patrons) & tenancy 4 (restaurant - 266 patrons)) between 10am and 11pm, seven days a week, and subsequent changes to the permit preamble, endorsed plans and condition 17

Social Policy and Research has been requested to make comments on the proposal from a social planning perspective in regards to the following matters:

- The proposed sale and consumption of alcohol (on site) associated with a restaurant and café use with regard to the number of patrons, location and proposed hours.
- Any foreseeable negative cumulative impacts as a result of this liquor licence.

PROPOSAL

Key aspects of the site and proposal include:

- The site is located partly within the Commercial 1 Zone (C1Z) and partly within the Neighbourhood Residential Zone (NRZ1).
- The tenancies subject to the amendment (1 and 4) are located on the ground floor of a Mixed Use development that is currently under construction as part of a five storey development. The remaining two tenancies at ground floor are identified on endorsed plans as shops, and the development includes 26 dwellings at the upper levels.
- The proposal includes the sale and consumption of alcohol 7 days a week in association with a café with 120 patrons (tenancy 1) and restaurant with 266 patrons (tenancy 4) between 10am and 11pm. Both the café and restaurant propose 100% of seating for all patrons. Access to each is from Gertrude Street, however part of the restaurant is within the NRZ1.
- The café is identified as being 117sqm in size and the restaurant is 303sqm. These areas relate to entire areas to be used (e.g. kitchen, tables), however the layout is not shown on the plans.

Attachment 5 - PLN14/0419.02 - 166-182 Gertrude Street, Fitzroy - Social Planning Referral Response

COMMENTS

- A Restaurants and Café licence requires the predominant activity, at all times, to be the preparation and serving of meals for consumption on the premises. It also requires tables and chairs to be available for at least 75 per cent of patrons attending the premises at any one time. It is clear that both the café and restaurant will meet the seating requirements. However it is not clear whether the proposed number of patrons can be adequately accommodated in each area to ensure appropriate ease of movement by patrons once the supporting infrastructure such as the kitchens and serving areas are in place.
- Having 100% seating for the proposed patrons is an excellent outcome for the site given the large number of patrons proposed, and therefore confirmation should be sought from the applicant that seating for all patrons can be accommodated once the supporting infrastructure is in place. This is important given that the 100% seating offsets potential impacts and also gives justification for the large number of patrons in this area (discussed further below). The 100% seating should also be included as a condition on any amended planning permit issued, and the licence type should also be clearly stated (restaurant and café) to ensure it is clear in the event that they apply for changes in the future (change of licence type is a planning permit trigger).
- The proposed hours are considered acceptable give the location of the site and similar hours of nearby venues.
- In terms of the patron numbers, as indicated above, this is perhaps the most significant consideration (particularly for the restaurant), given the recent (15 August 2017) adoption of Council's revised licensed premises policy (clause 22.09) as part of Amendment C209 to the Yarra Planning Scheme. The adopted policy (meaning it is a seriously entertained document that should be considered where relevant) identifies Core Entertainment Precincts which are identified as the preferred locations for larger venues with over 200 patrons.
- The specification of over 200 patrons is based on Practice Note 61 titled *Licensed premises: Assessing cumulative impact* (June 2015) which states that licensed premises with a patron capacity of over 200 people may pose a greater risk of alcohol-related harm and result in a negative cumulative impact.
- Of note, Gertrude Street is not included as a Core Entertainment Precinct (but was originally proposed). Johnston Street was also removed from being designated as a Core Entertainment Precinct, leaving the five Major Activity Centres only.
- The panel report for Amendment C209 made a strong recommendation to remove Gertrude Street primarily due to its role as a Neighbourhood Activity Centre (NAC). The panel stated that the distinction between the roles of activity centres (in this instance Gertrude Street being a NAC and not a MAC) should be considered and noted the retail and arts focus of Gertrude Street and the potential impact the policy could have on this character.
- The purpose of the Core Entertainment Precincts is to provide guidance for venues with over 200 patrons, based on existing character and capacity to accommodate such uses in the future. The adopted policy provides the following definition for the Core Entertainment Precincts:

Attachment 5 - PLN14/0419.02 - 166-182 Gertrude Street, Fitzroy - Social Planning Referral Response

The Core Entertainment Precincts outlined within the policy provide guidance for where larger venues with a patron capacity exceeded 200 people may be appropriate. These areas are limited to Commercial 1 zoned land and are applicable to properties fronting and with pedestrian access from the main streets listed. These areas have been selected because of their existing character and their capacity to accommodate future larger licensed venues due to infrastructure and services that are typical within activity centres. By concentrating larger venues within these areas their collective impacts can be better managed and assessed.

- The adopted policy also acknowledges that: *Higher risk venues which operate late at night and encourage vertical drinking through having a low proportion of seating and a limited food offering have a greater capacity to cause adverse impacts compared to lower risk venues including restaurants and cafes which have a substantial food focus and a high proportion of seating.*
- Practice Note 61 also notes that *Venues that serve food or meals are shown to be less at risk of excessive alcohol consumption. This does not include venues that only serve basic snacks.* The restaurant will be required to have the predominant activity, at all times, to be the preparation and serving of meals for consumption on the premises.
- Practice Note 61 also notes *Premises that provide little or no seating are associated with excessive alcohol consumption and potential for increased violence. Patrons from these venues are therefore more likely to have an adverse impact on the surrounding area.* The restaurant, as discussed previously, will have seating for all patrons.
- The proposed restaurant (and café) is considered a lower risk venue given the use (food based), licence type, seating ratio, and hours not exceeded 11pm. Furthermore, the use of the tenancies as food and drink premises is already approved (with no restrictions on patron numbers).
- Of note, it would be potentially possible for the restaurant tenancy to be divided to allow for multiple tenancies (potentially resulting in the same or higher patron numbers, a higher risk licence type, and a greater collective impact).
- Like all parts of the revised clause 22.09 policy, the part relating to the Core Entertainment Precincts is discretionary, which essentially means that there may be applications where it is suitable to allow venues with a capacity of over 200 patrons to locate outside the Core Entertainment Precincts. In this case it is considered appropriate for the reasons outlined above. Additionally for these reasons, the proposal is unlikely to result in a negative cumulative impact. Furthermore, the site has excellent access to public transport along Gertrude Street, allowing for appropriate patron dispersal.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P71/2015 & P150/2015
PERMIT APPLICATION NO. PLN14/0419

CATCHWORDS

Correction Order

APPLICANT

Denis Sweetnam & Ors, Louise Elliot (in P71/2015)
Kalex (Gertrude Street) JV Pty Ltd (in P150/2015)

RESPONSIBLE AUTHORITY

Yarra City Council

RESPONDENTS

Kalex (Gertrude Street) JV Pty Ltd (in P71/2015)
Denis Sweetnam & Ors, Louise Elliot (in P150/2015)

SUBJECT LAND

166-182 Gertrude Street, Fitzroy

WHERE HELD

Melbourne

BEFORE

J A Bennett, Presiding Member

HEARING TYPE

No Hearing

DATE OF ORIGINAL ORDER

3 July 2015

DATE OF CORRECTION ORDER

24 July 2015

CITATION

Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

CORRECTION ORDER

1 Pursuant to Section 119 of the *Victorian Civil and Administrative Tribunal Act* 1998, the Tribunal's Order in Applications P71/2015 & P150/2015 dated 3 July 2015 is corrected as follows.

- Conditions 1(v) and 4(e) attached as Appendix A to the Order are deleted and remaining conditions renumbered.
- Condition 1(y) attached as Appendix A to the order is deleted and replaced with the following reworded condition:

Retrieved from AustLII on 12 October 2017 at 08:52:46

[Verify version](#)

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- 1(y) Deletion of the fifth floor plan, and a reduction in the height of the perforated metal sloping hipped roof so that other than projections from building services including the lift over run and stair, no building element must project higher than RL 58.300.

J A Bennett
Presiding Member

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

REASONS

- 1 By order dated 3 July 2015, we directed that a permit be issued for land at 166-182 Gertrude Street, Fitzroy.
- 2 By letter dated 22 July 2015, SJB Planning acting for the permit applicant, requested a minor correction to the conditions included in Appendix A of our order.
- 3 These corrections include deletion of conditions 1(v) and 4(e) and the rewording of condition 1(y) requiring the deletion of the 5th floor (top level).
- 4 Council has provided written agreement to the changes suggested by the permit applicant.
- 5 We agree that Paragraph 71 of our reasons stated that conditions 1(t) and 4(e) in the Notice of Decision should be deleted. (Condition 1(t) became condition 1(v) in our Appendix A).
- 6 We also agree that the wording of condition 1(y) needs to be amended to achieve a workable outcome to reflect the changes explained in our reasons.
- 7 Section 119 of the *Victorian Civil and Administrative Tribunal Act 1998* provides that the Tribunal may correct an order made by it if the order contains:
 - a a clerical mistake;
 - b an error arising from an accidental slip or omission;
 - c a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order; or
 - d a defect of form.
- 8 In this case we are satisfied that a mistake or error has occurred here, comprising a clerical mistake in the case of conditions 1(v) and 4(e) and an error arising from an accidental slip or omission in the drafting of condition 1(y).
- 9 We therefore find it appropriate to authorise a correction of the order.

J A Bennett
Presiding Member

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P71/2015 & P150/2015
PERMIT APPLICATION NO. PLN14/0419

CATCHWORDS

Yarra Planning Scheme; Applications pursuant to Sections 80 and 82 of the *Planning and Environment Act* 1987; Commercial 1 Zone (C1Z); Neighbourhood Residential Zone (NRZ1); Heritage Overlay (HO334); Six storey building; 2 shops; 2 food and drink premises; 1 convenience shop; 37 dwellings; 40 car spaces; Contemporary design; Height; Upper level setbacks; Roof element; Verandah/awning; Corner splay; Parking allocation.

APPLICANTS

Denis Sweetnam & Ors, Louise Elliot (in P71/2015)

Kalex (Gertrude Street) JV Pty Ltd (in P150/2015)

RESPONSIBLE AUTHORITY

Yarra City Council

RESPONDENTS

Kalex (Gertrude Street) JV Pty Ltd (in P71/2015)

Denis Sweetnam & Ors, Louise Elliot (in P150/2015)

SUBJECT LAND

166-182 Gertrude Street, Fitzroy

WHERE HELD

Melbourne

BEFORE

J A Bennett, Presiding Member

Gary Chase, Member

HEARING TYPE

Hearing

DATES OF HEARING

25, 26, 27 and 28 May 2015

DATE OF ORDER

3 July 2015

CITATION

Sweetnam v Yarra CC [2015] VCAT 1000

ORDER

- 1 The decision of the Responsible Authority is varied.
- 2 In permit application PLN14/0419 a permit is granted and directed to be issued for the land at 166-182 Gertrude Street, Fitzroy in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
 - Demolition of the existing building to allow for the use and development of the land for a five-storey building (plus two basement

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

carparks) with two ground floor shops, two food and drinks premises with 35 dwellings, reduction in associated car parking requirements and waiver of loading bay requirement.

J A Bennett
Presiding Member

Gary Chase
Member

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

APPEARANCES

For Denis Sweetnam & Ors,
Louise Elliot

Mr Simon Martyn, Town Planner of Fulcrum for Denis Sweetnam & Ors (Day 1) and Mr Denis Sweetnam.

Ms Louise Elliot. She called evidence from the following witness:

- Mr Ray Tonkin, Heritage Consultant.

We also received a written and oral submission from Sister Eliezer, Community Leader of the Missionaries of Charity.

For Yarra City Council

Ms Mimi Marcus, Solicitor of Maddocks.

For Kalex (Gertrude Street) JV
Pty Ltd

Ms Susan Brennan, SC and Mr Barnaby Chessell, Barrister, instructed by SJB Planning Pty Ltd. They called evidence from the following witnesses:

- Mr Bryce Raworth, Conservation Consultant and Architectural Historian of Bryce Raworth Pty Ltd.
- Ms Charmaine Dunstan, Traffic Engineer of Traffix Group Pty Ltd.
- Ms Catherine Heggen, Town Planner and Urban Designer of Message Consultants Australia Pty Ltd.
- Professor Philip Goad, Architectural Historian and Design Critic, University of Melbourne.

INFORMATION

Description of Proposal

Demolition of an existing single storey building and construction of a six storey mixed use building over two basements of parking.

Nature of Proceedings

Application under Section 82 of the *Planning and Environment Act* 1987 to review the decision to grant a permit (P71/2015).

Application under Section 80 of the *Planning and Environment Act* 1987 to review conditions in the Notice of Decision to Grant a Permit (P150/2015).

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

Zone and Overlays

Neighbourhood Residential Zone - Schedule 1 (NRZ1).

Commercial 1 Zone (C1Z).

Heritage Overlay (HO334).

Permit Requirements

Cl. 32.09-1 (use land for a convenience shop in NRZ1).

Cl. 32.09-5 (construct two or more dwellings on a lot in NRZ1).

Cl. 32.09-7 (construct a building or construct or carry out works for a section 2 use in NRZ1).

Cl. 34.01 (use land for a dwelling in C1Z).

Cl. 34.01-4 (construct a building or construct or carry out works in C1Z).

Cl. 43.01-1 (demolish or remove a building and construct a building or construct or carry out works in HO334).

Cl. 52.06 (reduce on-site parking requirement).

Cl. 52.07 (waive loading bay requirement).

Key Scheme policies and provisions

Clauses 9, 10, 11, 13, 15, 16, 18, 21.02, 21.03, 21.04, 21.05, 21.06, 21.07, 22.01, 22.02, 22.05, 22.07, 22.12, 22.16, 52.06, 52.07, 52.34, 52.43 and 65.

Land Description

The review site is located on the south western corner of Gertrude and George Streets. It has a frontage to Gertrude Street of 36.37 metres, a frontage to George Street of 25.24 metres, a frontage to Little George Street of 25.27 metres and an area of 919 square metres.

It is currently occupied by a modern, flat roofed single storey commercial building over the western part of the site and an open bitumen car park with landscaping strips on the eastern part.

Tribunal Inspection

We undertook an accompanied inspection on part of the third day of hearing.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

REASONS¹

A NEW BUILDING IN AN OLD STREETScape

- 10 Gertrude Street has long been recognised as the earliest commercial strip outside of central Melbourne. Its conservation significance is now well recognised, highly valued and beyond dispute. But that has not always been the case.
- 11 The construction of the visually dominating public housing towers known as Atherton Gardens, and proposals to further demolish what were then thought to be substandard houses, were the catalyst for action by residents, the Fitzroy City Council and other organisations to stop further destruction and removal of original buildings and instead protect the historic building fabric.
- 12 As a consequence of all those actions over many decades, the significance of South Fitzroy has now been recognised in the Planning Scheme through the imposition of heritage controls over the precinct and over individual sites. In addition, individual buildings and the precinct have been included on the Register of the National Estate and individual buildings on the Victorian Heritage Register (e.g. 181-183 Gertrude Street). At the western end of Gertrude Street, the Royal Exhibition Building and Carlton Gardens has a World Heritage listing.
- 13 Ms Elliot provided a detailed submission about the background and conservation importance of Gertrude Street and the South Fitzroy precinct. Although we found her information interesting as it put into context the heritage controls now applying to the area, none of the expert witnesses called to deal with heritage issues have disputed the high conservation values of South Fitzroy, Gertrude Street or the nearby buildings, including the Blackett building immediately west of the review site and the buildings on the other three corners of the intersection. We did not need to be persuaded of the conservation significance of the South Fitzroy precinct, or of Gertrude and George Streets in particular.
- 14 The proposal we are considering involves removal of the at-grade car park and modern single storey commercial building and the construction of a six storey mixed use building. The design is unashamedly contemporary which Mr Raworth describes as *a carefully crafted, sculpted infill within the street*. The building is built to all site boundaries with ground level commercial tenancies facing Gertrude and George Streets. Two levels of basement car parking for 40 vehicles are accessed off Little George Street. Upper levels contain 37 dwellings. The lower four floors (ground, first, second and third) effectively extend to the Gertrude Street and George

¹ We have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. We do not recite or refer to all of the contents of those documents in these reasons.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

Street frontage with the second and third floors slightly set back from the eastern and southern boundaries. Fourth and fifth floors are of an entirely different architectural character and are set back from all boundaries.

- 15 The building design adopts angled parapet lines that reflect but do not replicate the height of adjoining historic buildings to the west and south. Above those angled parapet lines, the façades slope back and effectively create a visual shield to the upper two floors. Cut-out openings in the sloping hipped roof provide natural light to the balconies and windows of the dwellings at these two upper levels. As originally designed, the sloping pitched roof had a rendered sheet finish but Council has included a condition requiring these to be clad in pale grey, perforated metal panels. A verandah extends over the footpath for the whole of the Gertrude Street frontage. At the Gertrude Street and George Street corner, it tapers from full width at Gertrude Street to zero width about two thirds of the way along the George Street frontage. Four commercial tenancies face Gertrude Street. At the south east corner of the proposal, a convenience shop is positioned at the southern end of the building adjacent the terrace at 69 George Street owned by the Missionaries of Charity. The main residential entry is from Gertrude Street with a secondary access point to George Street shared with the commercial tenancies.
- 16 Council has given conditional support for the proposal, but only on the basis of lowering the building by one floor and making seven other conditional changes to the design. These include changes to the verandah, external shading of windows, creating a splay to the ground floor corner of Gertrude and George Streets, adjusting the height of the basement ramp where it intersects with Little George Street, provision of two on-site car spaces for each commercial tenancy and a financial contribution to public improvements at the street intersection.
- 17 Residents in the area do not agree with Council's decision and oppose the construction of the building whether or not one or more storeys are removed. In essence they submit that the proposal disregards and does not integrate into the historic fabric around the site. It is said that the height, scale, bulk, setbacks, roof form, lack of splay at the street corner, materials, verandah treatment along George Street, and lack of visual recessiveness would result in an overwhelmingly dominating and visually jarring built form. They do not agree with Council's assessment of the proposal and consider that the changes required by Council make only marginal differences and that the whole proposal and design philosophy needs to be reconsidered. Concerns were also raised about the notion of locating a convenience shop in George Street and the environmental sustainability of the design.

PRIMARY QUESTIONS FOR OUR CONSIDERATION

- 18 Demolition of the existing building is not controversial given it is a relatively recent addition to this historic streetscape and of no architectural

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

merit. It is single storey, nondescript in its appearance and, in one sense, inoffensive given its scale and impact in the streetscape. The heritage witnesses were agreed on this point including Mr Tonkin, called by Ms Elliot. He stated that:

The heritage significance of the place (the South Fitzroy Heritage Overlay Area (HO334)) will not be detrimentally impacted by the demolition of the existing single storey building on the site. This site has supported architecturally inappropriate structures since 1961 and this is possibly the last opportunity to achieve a sensitive and appropriate development of the site.²

- 19 The key question therefore concerns the design of the replacement building. However in considering the question of design, it is not just an assessment against heritage policy. We also need to take into consideration the whole suite of relevant State and local policies including those concerning urban structure, activity centres, intensification of development, more effective use of infrastructure and services, urban design and so forth.³
- 20 What then are the broader policies which guide our assessment of the proposed development?

WHAT ARE THE KEY DIRECTIONS SET BY STATE AND LOCAL PLANNING POLICIES?

- 21 *Plan Melbourne* provides directions for future planning across Melbourne and Victoria. Five metropolitan sub-regions and eight non-metropolitan regions are identified. There is an emphasis on urban consolidation and the importance of infill housing in meeting anticipated demand for new dwellings. There is acknowledgement that up to two thirds (960,000) of the anticipated 1.57 million new dwellings required by 2051 will be provided within established areas.⁴ It also introduces the concept of the 20-minute neighbourhood.
- 22 State policies in the Planning Scheme also support the intensification of development on well located sites.⁵ They include policies aimed at:
 - Increasing the proportion of housing in Metropolitan Melbourne to be developed within the established urban area.
 - Locating new higher density housing in or close to activity centres and employment corridors that offer good access to services and transport.
 - Reducing the cost of living by increasing housing supply near services and public transport.
 - Facilitating social and affordable housing.

² Witness Statement dated May 2015 – Page 4, Section 5.0 Summary of Views

³ For example, Clauses 11, 15, 16, 17 and 18.

⁴ Page 62.

⁵ For example, Clauses 11.01 and 16.01.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- Creating a city of 20-minute neighbourhoods and encouraging the development of well-designed medium-density housing that respects neighbourhood character, improves housing choice and makes better use of infrastructure.
 - Improving energy efficiency of housing.
 - Melbourne and its suburbs should be protected from inappropriate development.
 - Planning should ensure that all development responds appropriately to its landscape, valued built form and cultural context.
 - There is a need to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.
- 23 Local planning policies, although predating Plan Melbourne and the more recent changes to State Planning policies, largely reiterate these directions. They are set out in some detail in Clauses 21.04 (Land Use) and 21.05 (Built Form).
- 24 In addition, other local policies at Clauses 21.08-7 (Neighbourhoods - Fitzroy), 22.02 (Development Guidelines for Sites Subject to the Heritage Overlay), 22.05 (Interfaces Uses Policy) and 22.07 (Development Abutting Laneways) provide much more specific guidance as to what outcomes Council is trying to achieve.
- 25 Whilst we do not intend to recite all of these various policies, some of most relevance are:
- The valued character of heritage places will be protected by accommodating most new development on strategic redevelopment sites with some population growth accommodated in Mixed Use or Commercial Zones.
 - New residential development in Commercial Zones must minimise negative impacts caused by existing non-residential uses in the vicinity. These include noise, visual impact and appearance, overlooking, smells, loading and unloading of vehicles and light spill.
 - Sites and areas of heritage significance are to be conserved, protected and enhanced and heritage skylines are to be protected.
 - Buildings, streetscapes and precincts of heritage significance are to be protected from visual intrusion of built form within precincts.
 - Preserve the scale and pattern of streetscapes in heritage places.
 - Ensure that additions and new works in heritage places respect the significance of the place.
 - Development within activity centres should generally be not more than 5 or 6 storeys unless specified benefits can be demonstrated.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- New development within activity centres is to respect and not dominate existing built form.
 - The existing scale and character of Gertrude Street should be supported and the existing arts focus should be retained and fostered.
- 26 In addition to these somewhat generic policies, there are also specific heritage policies in Clause 22.02-5 for new development, alteration or additions and for corner sites with dual frontages which we discuss where relevant in the next section of our reasons.
- 27 Based on our assessment of the relevant State and local planning policies, we have formed the opinion that, in principle, a contemporary building of up to 5 or 6 storeys in height would be acceptable on this site within an activity centre with direct access to a tram route and proximity to a wide variety of urban services and facilities.
- 28 However it is clear to us that any such proposal must respond to and be tempered by the largely intact and highly valued heritage attributes of South Fitzroy and Gertrude and George Streets in particular.
- 29 Our concern with the current proposal is that it has not struck an acceptable balance and requires further modification along the lines already supported by Council. We now explain why.

IS THE DESIGN AN ACCEPTABLE RESPONSE TO THE SITE CONTEXT AND RELEVANT PLANNING PROVISIONS?

- 30 Fundamentally, this case is about the approach or design philosophy that should be adopted for a new infill building on this site. Although the submissions did not specifically dismiss a contemporary design approach, detailed criticisms of the irregular parapet height, sloping roof form, lack of corner splay, tapered verandah to George Street, inadequate setbacks, lack of fine detail fenestration, and lack of vertical articulation, all suggest to us that a more traditional building design would be preferred by residents. The favourable reference to the well set back, upper level additions in mid block locations to the east in Gertrude Street is suggestive of a more acceptable outcome.
- 31 The review site is clearly different to other examples of modern infill along Gertrude Street because it is not a mid block location, does not contain any heritage building fabric and is a highly exposed corner location visible from multiple viewing points. Even a more traditionally designed building with a horizontal parapet, traditional roof form, continuous verandahs along both street frontages, splayed corner, upper levels well recessed and more traditional detailing and materials would be highly visible. Compared to the current low scale and open appearance of the site, almost any structure will represent a significant and very noticeable change within this section of the historic Gertrude Street streetscape because of the length of the street frontage and the ability to see it across the George Street intersection. Any new structure will also have the same visual impact from the south in

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

George Street although the views from that direction are partly back-dropped by the very tall public housing towers forming part of Atherton Gardens.

- 32 We accept that there is widespread divergence of opinion about architecture and what constitutes high quality or excellence in design. That divergence of opinion is often acute when a building of a contemporary design is sought to be in-filled or inserted into a setting comprising more traditional or historic buildings. There are numerous examples across the world and within Victoria. Federation Square is perhaps the most well known but other examples include the additions to the Royal Exhibition Building in Carlton, the additions to the Bendigo Art Gallery and the new Bendigo Bank Headquarters in central Bendigo.
- 33 We consider that the philosophy of designing a contemporary building for this highly visible corner site in the South Fitzroy conservation precinct and within the historic Gertrude Street commercial strip is consistent with local heritage policy which seeks to distinguish new fabric from the original historic fabric.
- 34 In the following sections we deal with individual aspects of the design which were the focus of submissions and evidence.

Building height and the façade design – should one or more levels be removed and is the façade design acceptable?

- 35 Aside from the difference in opinion about what represents a respectful design, the major issue in dispute concerns the height and massing of the building. Council has made it clear that it wants the building reduced by one level. The submissions made by Ms Elliot and Mr Martyn were not so precise.
- 36 Ms Elliott, in paragraph 63 of her submission, submitted that the top two floors are unacceptable as they exceed the height that is in keeping with the historic neighbourhood and they conceal important views of the Blackett building to the west. She also submits that the four storey street wall at the Gertrude and George Streets corner is unacceptable and that it should be no higher than the historically and architecturally significant neighbours at the intersection. Later on in her submission in responding to the applicant's request to delete condition 1(x) requiring the deletion of one level, she submitted that at the very least one floor should be deleted and the next level set further back from the façade.
- 37 Mr Martyn's submission on behalf of Denis Sweetnam and others was less specific about the number of levels which should be removed or what would be acceptable. Instead he submits that the whole building is unacceptable, that height alone is not the only problem and that the whole design response including façade heights, massing, setbacks, roof form, lack of corner splay, fenestration and incomplete street canopy needs to be revisited.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- 38 Clause 22.02-5.7.1 for development of sites subject to the Heritage Overlay includes the following general guidance about the design of new development, alterations or additions.

Encourage the design of new development and alterations and additions to a heritage place or a contributory element to a heritage place to:

- Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.
- Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.
- Be visually recessive and not dominate the heritage place.
- Be distinguishable from the original historic fabric.
- Not remove, cover, damage or change original historic fabric.
- Not obscure views of principle façades.
- Consider the architectural integrity and context of the heritage place or contributory element.

Encourage setbacks from the principal street frontage to be similar to those of adjoining contributory buildings; where there are differing adjoining setbacks, the greater setback will apply.

Encourage similar façade heights to the adjoining contributory elements in the street.

Where there are differing façade heights, the design should adopt the lesser height.

- 39 We have already commented that a contemporary design clearly distinguishes the proposed building from the original historic fabric.
- 40 A much more controversial and subjective assessment is involved in deciding whether a contemporary building can be articulated and massed to correspond with the prevailing building form, be visually recessive, not dominate the heritage place, respect the pattern, rhythm, spatial characteristics, fenestration, roof form and materials and heritage character of the surrounding historic streetscape.
- 41 Unless a building is a close copy of the original historic buildings in the heritage place then an interpretative approach needs to be adopted because it is unlikely that a contemporary design can replicate the past.
- 42 In this application the proposed building has the difficult task of needing to respond to different building forms and heights in Gertrude Street and George Street. Although responding to site context is central to any permit application, it has even added importance in this highly valued heritage precinct where surrounding and nearby buildings are of recognised high

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

conservation significance and where policy asks for new development to respect/respond/not dominate the heritage place and historic streetscape.

- 43 The approach taken has been to provide a varied or fluid façade height rather than a traditional horizontal parapet at the top of a vertical façade. It seeks to closely match the height of the parapet of the Blackett building to the west, with the sloping hipped roof appearing to closely match the two storey terrace to the south in George Street. In between these two points the façade rises towards the street intersection but nowhere along Gertrude Street does it exceed the height of the four gable ends on the front of the Blackett building. The hipped roof then slopes down from the corner intersection to the southern end of the building. Although this is very different to a more traditional horizontal parapet or façade line we consider it is an innovative and yet respectful way of responding to the very different façade heights of two neighbouring historic buildings to the west and the south.
- 44 A ground floor zero street setback of the building for the first four levels of the façade reflects the zero setbacks of existing buildings along Gertrude Street. The ground floor setback to George Street tapers from a zero setback at its northern end to 1.197 metres where the site abuts the adjoining terrace. This provides a respectful transition between the harder edged commercial frontage near Gertrude Street and the more recessed character adjoining the residential frontages in George Street. We consider this is a good response to policy at Clause 22.02-5.7.2 for corner sites which asks that new buildings reflect the built form and character of adjoining elements and the setbacks of buildings that occupy other corners of the intersection (all having zero setbacks). This is acceptable.
- 45 In contrast, we do not agree that the overall height of the building is acceptable. We agree with Council, residents and Mr Tonkin that the building is too high and that it will dominate the Blackett building and the heritage place more generally. Although residents suggested two or more floors should be removed, we do not agree with that suggestion. Nor do we agree with Professor Goad that *'the design would have to start again if the top level is taken off'*.
- 46 As presently designed we consider that the top floor, although recessed behind the sloping hipped roof element, will be readily observed and understood as being higher than the adjoining ridge on the Blackett building. We also agree with Ms Elliot that the consideration of height must be based on the heritage place as it exists and that reference to the scale of the four storey Johnston Bros building across George Street, now reduced to two storeys, is of no relevance when assessing how the proposed building does or does not dominate the heritage place. The upper level of the building will be highly visible from the south east in George Street because of the way in which the perforated hipped roof element slopes back from the much lower façade at the southern end of the George Street frontage. Although the height of the Atherton Gardens Estate is in the background

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

from this viewpoint, we are not persuaded that the additional floor to this proposal is justified for merely being able to block views of this higher building in the distance.

- 47 Excluding the lift overrun, the proposed building is 1.65 metres higher than the Blackett building to the west which is the highest and most prominent historic building in this section of Gertrude Street. We understand Mr Raworth's evidence that the proposed six storey building is approximately equivalent to four storeys in Victorian or Edwardian buildings. Although a 1.65 metre difference in height might be considered comparable, the fact remains that the proposed sixth level, although set back a minimum of 3.9 metres from Gertrude Street and 1.2 metres from Little George Street, is still 1.65 metres higher than the highest point of the ridge on the Blackett building. We do not accept that this represents a design that is visually recessive or not dominating of the historic place which is an outcome sought by local policy. Reducing the height by one level will result in the proposed building positioned approximately 1.5 metres lower than the highest point of the ridge on the Blackett building and approximately 3 metres below the chimney tops on that building. It will also greatly improve the appearance and scale of the building when viewed from George Street.
- 48 We discuss the sloping hipped roof treatment in the next section, but we are confident that the architects are of such calibre that the top floor can be removed and adjustments made to the perforated metal sloping hipped roof without any detracting or loss from the overall composition and visual appeal of the building. We do not agree with Professor Goad that removing one level will be so transforming that it necessitates going back to the drawing board and starting afresh.
- 49 We therefore support retention of condition 1(x) requiring removal of the top floor.

Is the sloping roof treatment acceptable or should it be changed?

- 50 Mr Tonkin, who was called to give evidence by Ms Elliot, was highly critical of the roof design and stated in his written evidence:
- The application of the large metal screen 'mansard roof' to both elevations destroys any attempt to address the scale of adjoining buildings. As a consequence the proposal as illustrated takes on a large and unsympathetic form and for that reason alone cannot be supported.
- 51 Although Mr Tonkin identified a number of shortcomings with the proposal, in both his verbal evidence and in answer to questions, it became apparent that the sloping hipped roof, whether rendered sheet or perforated metal, was the major flaw in the design as far as he was concerned.
- 52 None of the other experts called to give evidence agree with his assessment. Mr Raworth refers to the sloping form as serving to reduce the building's apparent bulk. Professor Goad comments that:

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

Above the parapet line on Gertrude Street, the 'roof' of the new building slopes up and away from the northern façade - in the same way that the roof of 164 Gertrude Street (*the Blackett building*) slopes up and away from its northern façade.

- 53 Ms Heggen considers that the roof is a beautifully crafted solution because of its effectiveness in referencing the differing parapet heights and roof forms in three different streets. She also considers that the roof is an interpretative one marrying the pitched roof of the Blackett building, the flat parapet on the corner building and the lower parapets in George Street.
- 54 We do not agree with Mr Tonkin and agree with the other three experts. As a contemporarily designed building the whole building is interpretative but obviously distinguishable from the historic fabric. The sloping hipped roof element forms part of and is integral to the overall design philosophy and is one we support. It reflects and responds to the non-horizontal façade heights along Gertrude and George Streets and provides a screen to the upper levels. It creates a three dimensional and more fluid appearance to the building, and will be visualised quite differently at night when the perforated screen will be back lit. Whilst this is at odds with the more traditional vertical and horizontal building forms, it means that the building is distinguishable from and very different to the original historic fabric.
- 55 Although the design experts had different views about Council's suggestion that the roof element be constructed with perforated metal rather than rendered compressed sheet, the overall consensus was that the perforated metal was preferable. Based on our assessment of the elevation and montages depicting the two treatments, we support the use of perforated metal as required by condition 1(e).

Should the convenience shop be deleted or the entrance to George Street relocated?

- 56 Ms Elliot is strongly opposed to a small convenience shop being part of the proposal and suggests that it instead be converted to a dwelling. The convenience shop is located at the southern end of the development adjacent to the terrace owned by the Missionaries of Charity. A set of revised sketch plans previously submitted to Council in November 2014 (tabled during the hearing and dated October 2014) largely respond to her concerns about amenity impacts by incorporating the convenience shop into an enlarged restaurant (food and drink premises) in the north east corner of the site. As part of the revised layout the circulation corridor is relocated along the southern boundary adjacent the terrace at 69 George Street.
- 57 We consider that removal of the convenience shop and the relocation of commercial activity further away from the residential properties in George Street is a positive benefit in protecting the amenity of residents living in George Street and provides a clearer separation between the commercial activities near the corner of Gertrude and George Streets and the residential environment to the south. However, we do not support a ground floor

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

dwelling in this location because it would be isolated from and have no physical relationship with the other dwellings on this site. Removal of the convenience shop also overcomes a perceived problem with the tapering verandah along George Street since there is no longer any commercial activity at the southern end of the site.

- 58 We will therefore include a condition requiring the ground floor layout to be revised to show the deletion of the convenience shop and its incorporation into the restaurant (food and drink premises). Other consequential changes include the relocation of the circulation corridor.

Are changes required to the verandah/awning treatment to George Street?

- 59 The ground floor awning/overhang to Gertrude Street is similar to typical awnings in other parts of Fitzroy, but the awning from the Gertrude Street/George Street corner is angled. This occurs because the proposed inset car parking space to George Street requires any new awning to be set back a minimum of 750mm from the kerb line, which this is. The angled awning is also acceptable
- 60 We consider that the tapering awning also complements the more free flowing form of the building and the way in which the parapet height and commencement of the sloping roof is lower at the southern end of the site. We therefore do not agree with Council and residents that a more traditional awning/verandah is required along George Street and will amend condition 1(c) accordingly.

Corner splay – or not?

- 61 Council and residents want a corner splay provided at the intersection of Gertrude and George Streets. It is said that a corner splay is reflective of other corner buildings along Gertrude Street and that such a feature would improve the street level appearance of the building. Although Council and residents made submissions supporting a splay, we note that Mr Tonkin did not specifically comment on this matter in his evidence statement and Mr Martyn made passing reference to it being a unifying element along Gertrude Street.
- 62 We can find no reference in the internal referral advice by Council staff that requested a corner splay and it seems to have been included at the Council meeting.
- 63 Whilst we recognise splays are relatively common along Gertrude Street and occur on the buildings at the two northern corners of the Gertrude and George Streets intersection, there are corner buildings where splays do not occur, including the Johnston building on the opposite corner of George Street. We consider a corner splay is not necessary to provide a unifying element for this building or for it to interpret or be reflective of nearby historic fabric. It is not necessary to assist pedestrian movement or provide

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

sightlines around the corner and may be at odds with the contemporary design. We will delete condition 1(y).

Are there unacceptable impacts on the Missionaries of Charity property?

- 64 Although the Missionaries of Charity were not a party to the proceeding, we gave them an opportunity to make a written and oral submission at the hearing. We also took the opportunity to inspect the property owned by them at 69 George Street which adjoins the southern boundary of the review site.
- 65 The building at 69 George Street is a double storey Victorian dwelling now primarily used as a soup kitchen for 60 to 70 men. The property has rear access to Little George Street and it is through a door/gate to that street that the men enter a rear, partly covered courtyard and the internal dining area. The meals are provided in the late afternoon for approximately two hours from about 4.30 pm, although people preparing meals and undertaking other tasks are present earlier in the day. In addition, two men currently reside in the dwelling.
- 66 The Missionaries of Charity are concerned that increased traffic to and from the development will endanger the safety of men using Little George Street and the effect of shadowing on the rear yard.
- 67 Based on the number of anticipated traffic movements and the limited time period that men visit the site, we are not persuaded that their safety will be unreasonably endangered. We accept that the men may be elderly, frail or have physical disabilities but motorists using Little George Street to access the site are unlikely to be travelling at high speeds and could be expected to take normal duty of care driving along a narrow roadway with potential conflict points at laneways, garages, gates and doors. Traffic volumes from 40 car spaces are not expected to be high with peak hour movements estimated by Ms Dunstan of around 12.
- 68 We were also able to assess the amenity of the rear courtyard during our inspection. It is roofed with laser light material which allows daylight penetration to the area. The shadow diagrams submitted with the application show that this space will be almost entirely shadowed until approximately 11 am at the equinox but from then on receives sunlight. At the time the men are attending for meals from 4 pm there will be no change to sunlight into the rear yard.
- 69 Given the use of this space, its existing covered condition and its location along the boundary with a site that has been historically used for commercial purposes (and mostly zoned for that purpose) then we are not persuaded that the proposal should be rejected or modified because of potential impacts on the property to the south. However, we do consider that the removal of one level will slightly reduce the effect of overshadowing to the rear courtyard at 69 George Street.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

Is the internal layout workable and dwelling amenity acceptable?

- 70 We consider that these dwellings have good internal amenity. All bedrooms have access to natural daylight without recourse to borrowed light through living rooms. All have outdoor balconies with only seven that are slightly less than 8 square metres in area. The potential for overlooking has been dealt with by screens between balconies and by use of the sloping roof. Lift access is available from the basement to all levels.
- 71 Access to the upper level dwellings is via a lobby off Gertrude Street positioned between a restaurant (food and drink premises) and shop. Storage areas and bicycle parking is provided in the basement. Toilets for the shops and restaurants (food and drink premises) are located centrally on the ground floor.
- 72 Two conditions asked for external sun shading of north, east and west facing bedroom and habitable room windows. In the case of the west facing windows it was only for the top two levels.
- 73 Whilst we understand the reason for requiring sun shading, we do not support the requirement for external sun shading. Apart from the fact that it would detract from the clean lines of the building, we consider that there are many other means of achieving improved shading/solar protection that do not involve external shading devices. These could include double glazing (with or without inbuilt blinds) or high performance glazing. We therefore support deletion of conditions 1(t) and 4(e).

Is sufficient parking provided on-site?

- 74 The proposal includes two levels of basement parking for 40 vehicles. The statutory parking requirement in Clause 52.06 is for 67 spaces:
- 41 for residents.
 - 7 for residential visitors.
 - 18 for commercial uses.
- 75 The allocation is for 37 resident spaces, 1 to the convenience shop and 2 to the food and drink premises (1 per tenancy). Despite the shortfall of 27 spaces, Council did not object to the reduction in resident, residential visitor of commercial customer parking. Council did ask for 2 on-site spaces for each shop (4 spaces in total) but it is not possible to provide these because access to the basement is required to be through the Neighbourhood Residential Zone at the south end of the site. We are aware of various decisions of the Tribunal including *Marble Swirl Holdings*⁶ that rule out using residentially zoned land to provide access to a commercial development on land that is partly zoned Commercial and partly Residential. For that reason it is not possible to provide on-site parking for

⁶ *Marble Swirl Holdings Pty Ltd v Kingston CC* [2008] VCAT 973.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

the 2 shop tenancies, despite the Notice of Decision including such a requirement. We will therefore delete that condition.

- 76 Ms Dunstan prepared a written evidence statement and attended the hearing. Neither the Council nor any other party sought to ask questions. Although we did not have any questions concerning the number of spaces, access or operation of the basement, we did ask some questions about allocation of spaces if we decided that one or more levels of the building should be removed.
- 77 Our deletion of the top floor and the convenience shop does free up 5 spaces in the basement. We intend to allocate one of these to the larger restaurant (food and drink premises) and 4 to residential visitor parking, as none are provided at present. On her estimates there is likely to be a visitor demand of up to 4 spaces during evenings and weekends. Although Ms Dunstan did not support our suggestion for visitor parking, on-street parking is tight in this location and we consider that there are benefits in providing visitor parking. We will therefore require that 4 visitor spaces be provided on-site.

SHOULD THE NOTICE OF DECISION CONDITIONS BE ALTERED?

- 78 In assessing the conditions on the Notice of Decision to Grant a Permit we have made a number of modifications to incorporate the changes previously referred to in our reasons and others discussed at the hearing. These include a revised ground floor layout deleting the convenience shop and combining it with the restaurant (food and drink premises) in the north east corner of the building.
- 79 We also agree with Ms Brennan that condition 12 requiring a \$10,000 contribution for public improvements at the intersection of Gertrude and George Streets is unlawful and should be deleted. Ms Marcus noted in her submission that the permit applicant offered the contribution to Council and the condition simply records that commitment. Whilst that may be the case we agree that it should be deleted. If the permit applicant is still willing to provide such improvements then they can be negotiated/provided outside of the planning permit conditions.
- 80 For completeness we provide a summary of our response to each of the eight conditions sought to be reviewed by the permit applicant:
- i Condition 1 (c) – reword to delete reference to the George Street façade.
 - ii Condition (t) – delete.
 - iii Condition 1(v) – delete as it repeats condition 1(n).
 - iv Condition 1(x) – reword as follows:
 - (x) Deletion of the top floor and a reduction in the height of the sloping roof by approximately the same dimension to lower the overall height of the building by approximately 3.4 metres.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- v Condition 1(y) - delete.
- vi Condition 1(z) – delete.
- vii Condition 4(e) – delete.
- viii Condition 12 – delete.

- 81 We have also amended the description of the proposal to more clearly describe what is being approved.

CONCLUSION

- 82 Our decision to support Council's decision to approve the proposal will result in a visually dramatic change to the built form on this corner site. We accept that residents have a different opinion about both the design philosophy and the scale of any building which should be constructed on this site.
- 83 As we have stated a number of times throughout our reasons, the South Fitzroy precinct, and Gertrude and George Streets in particular, have long been recognised for the very high conservation significance of both the precinct and individual buildings. Whilst there is a concern by residents that this contemporary building will dominate the heritage place and adversely affect the significance, character and appearance of the heritage place, we consider that the building will become recognised as a well regarded example of a contemporary infill within a highly valued heritage setting.
- 84 We are also mindful that we are required to take into consideration the whole suite of relevant State and local policies and not solely focus on heritage issues, even though that has loomed large in our consideration of the proposal. As required by Clause 10.04 of the Yarra Planning Scheme, we have sought to balance what, at times, appear to be conflicting objectives in order to reach a decision which favours net community benefit and sustainable development for the benefit of present and future generations.

DECISION

- 85 Having regard to all of the above, we will vary Council's decision and order that a permit issue subject to conditions

J A Bennett
Presiding Member

Gary Chase
Member

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

APPENDIX A

| | |
|-------------------------------|--|
| PERMIT APPLICATION NO | PLN14/0419 |
| LAND | 166-182 Gertrude Street, Fitzroy |
| WHAT THE PERMIT ALLOWS | Demolition of the existing building to allow for the use and development of the land for a five-storey building (plus two basement car parks) with two ground floor shops, two food and drinks premises with 35 dwellings, reduction in associated car parking requirements and waiver of loading bay requirement in accordance with endorsed plans. |

CONDITIONS

- 2 Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the decision plans but modified to show:
 - (a) Provision of a plinth to the ground floor Gertrude Street windows as per sketch plans submitted on 17 November 2014.
 - (b) The ground floor along Gertrude and George Streets to be a dark grey colour or an alternative to differentiate the ground floor from the upper levels.
 - (c) A revised ground floor layout as shown on SK-12 9 dated October 2014) deleting the convenience shop and incorporating into the restaurant (food and drink premises) in the north east corner of the building. Other consequential changes include the relocation of the circulation corridor and disabled toilet.
 - (d) The verandah eave to be extended for the full length of the façade of Gertrude Street, with a setback a minimum of 750mm from the kerb.
 - (e) Replacement of the rendered sloping sections of the façade with a powder coated perforated metal to increase transparency (openings are to be 100mm wide) as per sketch plans submitted on 17 November 2014.
 - (f) Provision of additional east-facing windows to Apartments 1.06 and 2.06 as per sketch plans submitted on 17 November 2014.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- (g) The metal screens to the 4th level amended to a darker colour as per sketch plans submitted on 17 November 2014.
- (h) Reconfiguration of Apartments 1.10, 1.11 and 1.12 and the deletion of one apartment to avoid overlooking of property to the west as per sketch plans submitted on 17 November 2014 with the setback of the south-facing balconies on the second floor being increased to allow light and air to the first floor south-facing balconies.
- (i) Provision of screening to the west-facing (Little George Street) and south-facing habitable room windows and balconies in compliance with Standard B22 of Clause 55 or sections showing screening is not required in accordance with the standard.
- (j) The ground floor plan to delete 'restaurant' and to show food and drinks premises (café).
- (k) Screening to the south-facing balconies to limit views to lower level south-facing balconies and in accordance with Standard B23 of Clause 55.
- (l) A minimum of 8 square metres with a minimum width of 1.6 metres for all balconies associated with a two bedroom unit.
- (m) The location of all plant and equipment, with no air-conditioning units to be placed on balconies of less than 8 square metres.
- (n) A visibility splay that is 1.7m wide and 5.7m deep at northern side of the entrance of the basement ramp along Little George Street.
- (o) The finished floor levels at the top of the ramp set 40 mm higher than the bluestone edge of Little George Street.
- (p) Provision of 33 spaces for residents, 4 for residential visitors and 3 for the food and drink premises.
- (q) One storage space per unit, with each space to be a minimum of 3 square metres.
- (r) The corridor windows along the western side to be operable.
- (s) The balconies along Gertrude and George Streets to have black frames similar to the windows.
- (t) A full schedule of materials and finishes including samples.
- (u) Deletion of public realm works shown on the plans.
- (v) Provision of external shading to the north, east and west-facing bedroom windows located along the boundary. For the west-facing windows, this applies to the two uppermost levels only.
- (w) Ground floor plan to show provision of cycling end of trip facilities (shower) within the disabled toilet.
- (x) Any alterations required as a result of conditions 4, 6, 8 and 10.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- (y) Deletion of the fifth floor plan, and a reduction in the height of the perforated metal sloping hipped roof so that other than projections from the lift over run and stair, no building element must project higher than what is described as the fifth floor parapet at FFL 57.800.
- 3 The use and development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
- 4 As part of the ongoing consultant team, JacksonClementsBurrows or an architectural firm to the satisfaction of the Responsible Authority must be engaged to:
 - (a) Oversee design and construction of the development.
 - (b) Ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.
- 5 Before the development commences, an amended Sustainable Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Management Plan will be endorsed and will form part of this permit. The amended Sustainable Management Plan must be generally in accordance with the Sustainable Management Plan prepared by SBE and dated 19 June 2014, but modified to include or show:
 - (a) Inclusion of a daylight modelling report that confirms that the proposed dwellings are designed to achieve appropriate daylight outcomes.
 - (b) Confirmation that the development will achieve least 10 per cent or half a star (whichever is greater) above BCA minimum standards.
 - (c) Incorporation where viable, high efficiency gas instantaneous or gas boosted centralised system including a solar preheat collectors with a minimum of 45% contribution to annual energy requirements.
 - (d) Individual water meters installed to apartments.
 - (e) External shading to be provided to the north, east and west-facing habitable room windows. For the west-facing windows, this only applies to the two uppermost levels only.
 - (f) Confirmation the air condition system efficiency is to be within one star of the highest available or equivalent COP/EER.
 - (g) Provision of cycling end of trip facilities (shower) within the disabled toilet at ground floor level.
- 6 The provisions, recommendations and requirements of the endorsed Sustainable Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- 7 Before the use and development commences, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:

- (a) Noise impact resulting from the proposed use and development to the surrounding properties.
- (b) Noise impacts from the surrounding non-residential uses (vehicles, trams, commercial premises and live-music entertainment venues) to the proposed use and development.

The acoustic report must make recommendations to limit the noise impacts in accordance with the State Environment Protection Policy (Control of noise from industry, commerce and trade) No. N-1 (SEPP N-1), State Environment Protection Policy (Control of music noise from public premises) No. N-2 (SEPP N-2) or any other requirement to the satisfaction of the Responsible Authority.

- 8 The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.
- 9 Before the development commences, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Leigh Design and dated 4 June 2014, but modified to include:
- (a) The altered waste collection procedures as shown in the sketch plans submitted on 17 November 2014. In the event that the proposed loading zone is not approved by Council, the Waste Management Plan must be amended to provide an alternative pick-up location to the satisfaction of the Responsible Authority.
- 10 The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
- 11 Before the development commences, an amended Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Landscape Plan will be endorsed and will form part of this permit. The amended Landscape Plan must be generally in accordance with the Landscape Plan prepared by Urban Commons and dated 21 July 2014, but modified to include (or show):

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- (a) Further details regarding the planting adjacent to the corridor windows and the practicality of providing edible plants.
- 12 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:
 - (a) Implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan.
 - (b) Not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose.
 - (c) Replacing any dead, diseased, dying or damaged plants to the satisfaction of the Responsible Authority.
- 13 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, external lighting capable of illuminating access to the basement car park and pedestrian entries must be provided. Lighting must be located, directed, shielded and of limited intensity to the satisfaction of the Responsible Authority.
- 14 Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
- 15 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.
- 16 Finished floor levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
- 17 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
- 18 Except with the prior written consent of the Responsible Authority, the convenience shop will operate only between 7am and 10pm, seven days per week.
- 19 The amenity of the area must not be detrimentally affected by the use or development, including through:
 - (a) The transport of materials, goods or commodities to or from land.
 - (b) The appearance of any buildings, works or materials.
 - (c) The emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- (d) The presence of vermin.
All to the satisfaction of the Responsible Authority.
- 20 Except with the prior written consent of the Responsible Authority, delivery and collection of goods to and from the land may only be conducted between 9am and 10pm on any day.
- 21 The use and development must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).
- 22 All pipes, fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
- 23 Car parking allocated at the following rates:
 - (a) Dwellings – 33 car spaces.
 - (b) Residential visitors – 4 car spaces.
 - (c) Food and drink premises – 3 car spaces.
- 24 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the areas set aside on the endorsed plans for the car parking spaces, access lanes, driveways and associated works must be:
 - (a) Constructed and available for use in accordance with the endorsed plans.
 - (b) Formed to such levels and drained so that they can be used in accordance with the endorsed plans.
 - (c) Treated with an all-weather seal or some other durable surface.
 - (d) Line-marked or provided with some adequate means of showing the car parking spaces.

All to the satisfaction of the Responsible Authority.
- 25 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the new vehicle crossings must be constructed:
 - (a) In accordance with any requirements or conditions imposed by Council.
 - (b) At the permit holder's cost.

All to the satisfaction of the Responsible Authority.
- 26 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any redundant vehicular crossing must be demolished and re-instated as standard footpath and kerb and channel at the permit holder's cost and to the satisfaction of the Responsible Authority.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- 27 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated at the permit holder's cost and to the satisfaction of the Responsible Authority.
- 28 Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
- 29 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, ten (10) bike racks must be installed at the permit holder's cost and in a location and manner to the satisfaction of the Responsible Authority.
- 30 Before the development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:
 - (a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure.
 - (b) Works necessary to protect road and other infrastructure.
 - (c) Remediation of any damage to road and other infrastructure.
 - (d) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.
 - (e) Facilities for vehicle washing, which must be located on the land.
 - (f) The location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street.
 - (g) Site security.
 - (h) Management of any environmental hazards including, but not limited to:
 - (i) contaminated soil;
 - (ii) materials and waste;
 - (iii) dust;
 - (iv) stormwater contamination from run-off and wash-waters;
 - (v) sediment from the land on roads;
 - (vi) washing of concrete trucks and other vehicles and machinery; and
 - (vii) spillage from refuelling cranes and other vehicles and machinery.
 - (i) The construction program.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- (j) Preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency.
- (k) Parking facilities for construction workers.
- (l) Measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan.
- (m) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services.
- (n) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.
- (o) The provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.
- (p) A Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
 - (i) using lower noise work practice and equipment;
 - (ii) the suitability of the land for the use of an electric crane;
 - (iii) silencing all mechanical plant by the best practical means using current technology;
 - (iv) fitting pneumatic tools with an effective silencer;
 - (v) other relevant considerations; and

During the construction:

- (q) Any stormwater discharged into the stormwater drainage system must be in compliance with Environment Protection Authority guidelines;
- (r) Stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the land enters the stormwater drainage system;
- (s) Vehicle borne material must not accumulate on the roads abutting the land;
- (t) The cleaning of machinery and equipment must take place on the land and not on adjacent footpaths or roads; and
- (u) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly.

Attachment 6 - Sweetnam v Yarra CC (Correction) [2015] VCAT 1000

Signed by AustLII

- 31 Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
- (a) Monday to Friday (excluding public holidays) before 7 am or after 6 pm;
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
- 32 This permit will expire if:
- (a) the development is not commenced within two years of the date of this permit; or
 - (b) the development is not completed within four years of the date of this permit.
 - (c) the dwelling and convenience shop uses are not commenced within five years of the date of this permit.

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

---End of Conditions---

1.2 Floor 1/95-97 Smith Street Fitzroy - Planning Permit Application PL01/1096.02 - Amendment to extend the operating hours of the premises from 1:00am to 3:00am, seven days a week.

Executive Summary

Purpose

1. This report provides Council with an assessment of an application to amend planning permit PL01/1096 and recommends approval subject, to conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 11.03 – Activity Centres.
 - (b) Clause 13.04 – Noise and Air.
 - (c) Clause 17.01 – Commercial.
 - (d) Clause 21.03 – Vision.
 - (e) Clause 21.04 – Land Use.
 - (f) Clause 22.05 – Interface Uses.
 - (g) Clause 22.09 – Licensed Premises.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Strategic justification.
 - (b) Off-site amenity impacts.
 - (c) Cumulative Impacts.
 - (d) Objectors' concerns.

Objector Concerns

4. Ten objections were received to the application, these can be summarised as:
 - (a) Amenity impacts (i.e. noise from patrons, music, staff and emptying of bottles, etc., and anti-social behaviour).
 - (b) Location of bins.
 - (c) Further impacts on on-street parking.

Conclusion

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

CONTACT OFFICER: Nikolas Muhllechner
TITLE: Principal Planner
TEL: 9205 5456

1.2 Floor 1/95-97 Smith Street Fitzroy - Planning Permit Application PL01/1096.02 - Amendment to extend the operating hours of the premises from 1:00am to 3:00am, seven days a week.

Trim Record Number: D17/155299

Responsible Officer: Senior Coordinator Statutory Planning

Proposal: Amendment to planning permit PL01/1096 to extend the operating hours of the premises from 1:00am to 3:00am, seven days a week.

Existing use: Tavern

Applicant: Hansen Partnership Pty Ltd

Zoning / Overlays: Commercial 1 Zone
Heritage Overlay (Schedule 333)

Date of Application: 29 January 2016

Application Number: PL01/1096.02

Planning History

1. 2339
On 19 July 1993, planning permit No. 2399 was issued for a place of assembly. The planning permit allowed 20 patrons at any one time, with operating hours between 10:00am to 1:00am (the following day).
2. 010068
Planning permit application No. 010068 sought approval to use the site as a tavern (bar), liquor license and to waive the car parking requirements. On 4 April 2001, this application was refused by Council on the following grounds:
 - The proposed hours of operation do not comply with Council's policy on Late Night Trading and Licensed Premises.
 - Insufficient car parking is provided to satisfy the demand generated by the proposed change of use.
 - The proposed use would have a detrimental impact on the neighbouring residential amenity.
 - Proposed operating hours are inappropriate within a Business 1 Zone.
3. The applicant appealed Council's refusal. However, the Victorian Civil and Administrative Tribunal upheld Council's decision.
4. PL01/1096
On 27 December 2001, planning permit PL01/1096 was issued for a tavern (bar), liquor licence and a waiver of the car parking requirements. The amendment application currently under consideration seeks to amend this permit.
5. PL01/1096.01
An amendment to planning permit PL01/1096 was lodged on 14 March 2013 and sought approval to increase the patron numbers associated with the existing tavern from 100 to 197, including an associated reduction in the car parking requirement. This amendment was approved on 20 December 2013.
6. PL02/0299
Planning permit application PL02/0299 sought approval for an extension of trading hours to the existing tavern (bar) until 3:00am, including liquor licence. On 13 August 2002, this application was refused by Council on the following grounds:
 - The proposal will result in an unsatisfactory loss of amenity to the area.

- The proposal is inconsistent with the objectives and strategies contained within the Yarra Municipal Strategic Statement.
- The proposal is contrary to the objectives of Element 3 of the MSS that seeks to minimise amenity impacts on surrounding residential areas, particularly from parking demand, noise and late night trading with retail and activity centres.
- The proposal is inconsistent with the Retail Centres Policy of the Yarra Planning Scheme.
- The proposal is inconsistent with Council's proposed Licenced Premises Policy (Amendment C40) to the Yarra Planning Scheme.
- The proposal is contrary to the proper and orderly planning of the area.

7. The applicant did not appeal Council's decision.

PL03/0973

8. Planning permit application PL03/0973 sought approval for an extension of trading hours (to 3:00am on Thursday, Friday and Saturday nights). On 19 January 2004, the application was refused by Council on the following grounds:

- That the application has not complied with the requirements of Section 54 of the Planning and Environment Act 1987.

9. The applicant did not appeal Council's decision.

PL06/0658

10. Planning permit application PL06/0658 related to the northern ground floor tenancy and sought approval for the use of the land as a tavern, including on-premises liquor licence and a reduction in the car parking requirement. This planning permit was issued on 24 October 2006

11. A Section 72 amendment was subsequently lodged seeking the provision of live and amplified music from the venue. This amendment was approved on 30 January 2007.

Background

12. This application to amend Planning Permit PL01/1096 was received by Council on 29 January 2016. Following the submission of further information the application was advertised during July 2016 and ten objections were received.

13. On 18 April 2017, the applicant lodged a Section 57A amendment to the application, making the following changes:

- Updated acoustic report prepared by Arup (dated 15 March 2017) addressing concerns raised by Council's acoustic engineering consultant.
- Include the preparation and serving of pizza as a substantial food offering for patrons within the venue.
- Internal alterations to include a kitchen within the venue to prepare the food offerings. Amended plans form Attachment 2.

14. As the Section 57A amendment results in no additional material detriment to any adjoining properties (i.e. no further increase in trading hours, internal changes only), the amendment received a discretionary exemption from advertising from Council's internal Development Assessment Panel. A consultation meeting was held on 12 September 2017 and attended by Council officers and one objector. No resolution was reached at the meeting.

Existing Conditions

Subject Site

15. The subject site (Attachment 1) is located on the western side of Smith Street, approximately 29 metres north of the intersection with Gertrude Street, in Fitzroy. The site has a frontage of 10.96 metres and a depth of 39.83 metres, yielding an area of 436.5 square metres.
16. The existing building occupies the entire site and contains two separate commercial premises on the ground floor fronting Smith Street, both most recently used as food and drink premises. The first floor, accessible via stairs abutting the northern boundary leading from Smith Street, is currently used as a tavern (bar) and is the subject of this amendment application.
17. The first floor tavern extends approximately 24 metres from the front boundary and contains a patron area with seating, a bocce pitch and pool table, a balcony/courtyard-type area facing Smith Street, a separate room with a table tennis table, a bar with back-of-house storage, a staff room and amenities located along the rear wall of the tavern.
18. Due to the fall of the land, the rear of the first floor is level with and accessible via Little Smith Street, presenting as a single storey building. Two car parking spaces, a loading area and storage areas are located within this rear part of the site and are accessed via the stairwell that connects the ground floor with the first floor tavern. The car parking spaces are associated with the ground floor uses (not the first floor tavern).
19. The existing tavern operates under planning permit PL01/1096 with a maximum capacity of 197 patrons and operating hours between 7:00am and 1:00am the following day, seven days a week. Condition 12 on the planning permit states that no live music or amplified music shall be permitted at any time (other than background music). The existing liquor licence for the premises reflects these conditions, with additional restrictions to the trading hours on Sunday morning, Good Friday and Anzac Day.
20. The subject site is legally described as Lot 1 on Title Plan 222984B and is not affected by any restrictive covenants or easements.

Surrounding Land

21. The site is located within the Smith Street activity centre. Clause 21.08-5 of the Scheme notes the following:

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 six storeys. The subdivision pattern is consistent, and the pattern of the streetscape is generally fine grain. Unlike many other Victorian shopping strips the street is also characterised by the variance in profile and design of buildings. It has a high proportion of individually significant heritage buildings, supported by contributory buildings from the Victorian-era and Edwardian-eras.

The activity centre has developed a strong factory outlet focus including a sports retail focus, at the north of the centre between Johnston Street and Alexandra Parade. Between Johnston Street and Gertrude Street the centre provides much of the convenience retailing for the surrounding neighbourhoods. The area also hosts a variety of restaurants and cafes. The southern precinct, south of Gertrude Street is home to an array of galleries and clothing stores.

22. The Smith Street activity centre is an important business and retailing strip centre within the City of Yarra. The activity centre runs north-south from Alexandra Parade to Victoria Street and provides a range of business types, including offices, manufacturing, local convenience shops, restaurants and bars. It is also interspersed with a number of dwellings.

23. The subject site is located between Gertrude Street and Webb Street. This section of Smith Street has been developed with a diverse mix of architectural styles with predominantly double storey Victorian-era terrace shops. Smith Street itself provides a north-south connection linking the northern suburbs of Yarra with the CBD, intersecting with major arterials Alexandra Parade, Johnston Street and Victoria Parade.
24. The area is well serviced by a number of transport options within a radius of approximately 800 metres around the site. These include the number 86 tram on Smith Street running between RMIT University in Bundoora and the Docklands via the CBD and bus routes 200 (CBD to Bulleen) and 207 (CBD to Doncaster Shopping Town) along Johnston Street, approximately 780 metres to the north. The number 11 tram route is located approximately 550 metres to the west (along Brunswick Street) and some ten bus routes (primarily servicing the eastern suburbs) are located approximately 800 metres to the east (along Hoddle Street).
25. To the immediate north is a two storey Victorian-era building that is currently used as a bar trading as Yah Yah's. The operating hours for this bar are between 12:00pm and 1:00am the following day, Good Friday and Anzac Day, between 11:00am and 1:00am the following day, Monday to Wednesday and between 10:00am and 5:00am the following day, Thursday to Sunday, with a maximum capacity of 250 patrons.
26. Further north is a similar two storey Victorian-era building that is also currently used as a bar, trading as Sircuit Bar. The operating hours for the ground floor of this bar are between 12:00pm and 3:00am the following day on Anzac Day and between 10:00am and 3:00am the following morning on any other day, with a maximum capacity of 300 patrons on the ground floor. The operating hours for the first floor of this bar are between 12:00pm and 1:00am the following day on Anzac Day and between 10:00am and 1:00am the following morning on any other day, with a maximum capacity of 160 patrons on the first floor. The overall capacity of this venue is 460 patrons.
27. To the immediate west of the site is Little Smith Street, a 6 metre wide laneway servicing the commercial properties fronting Smith Street and residential properties facing Gore Street further east. On the western side of Little Smith Street immediately opposite the subject site are former warehouse buildings that have been converted into dwellings. These buildings are constructed hard edged to the laneway with predominantly garage roller doors facing the street at ground floor.
28. More generally, on the western side of Little Smith Street to the west and north-west of the subject site, the land is located within the Neighbourhood Residential Zone (Schedule 1). To the south-west, the land is located within the Commercial 1 Zone.
29. To the south of the subject site is a row of single storey Victorian-era shopfronts located in the Commercial 1 Zone. Their uses include a book store, hairdresser and a take away food premises. Further south, on the north-east corner of Smith Street and Gertrude Street, is a double storey commercial building use for various commercial purposes.
30. To the immediate east of the subject site is Smith Street, which has a width of approximately 20 metres and carries four lanes of traffic, with tram lines sharing the middle two lanes and the two outside lanes accommodating parallel car parking outside of clearway times. On each side of the road is a footpath (approximately 3 metres wide).
31. On the eastern side of Smith Street are predominantly double storey Victoria-era buildings used for various purposes, including restaurants, take away food premises, a nightclub, shops and offices.

The Proposal

32. This application seeks to increase the operating hours of the premises from the current hours of 7:00am to 1:00am, seven days a week to 7:00am to 3:00am, seven days a week. Additionally, the proposal also involves the following:
- Amend condition 8 of the planning permit relating to the hours of operation as outlined above.
 - Include the preparation and serving of pizza as a substantial food offering for patrons within the venue during all hours that alcohol is to be offered on the premises.
 - Alter the floor layout of the venue to include a commercial kitchen in order to prepare the food offerings.

Legislative Provisions

33. 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.*
34. The original planning permit PL01/1096 was issued on 27 December 2001, while a previous Section 72 amendment was issued on 20 December 2013. Neither the original planning permit nor the subsequent amendment were issued at the direction of the Tribunal or under Division 6 of the Act.
35. 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. Accordingly, the relevant sections will be addressed in this report.

Planning Scheme Provisions

Zoning

Commercial 1 Zone

36. The subject site is located within the Commercial 1 Zone. A tavern (nested under retail premises) is a section 1 use within the Commercial 1 Zone pursuant to the table at Clause 34.01-1. The proposed increase in hours for the sale and consumption of liquor on the premises does not trigger a planning permit under the zone provisions.

Overlays

Heritage Overlay (Schedules 333)

37. The subject site is affected by the Heritage Overlay. The proposed increase in hours for the sale and consumption of liquor on the premises does not trigger a planning permit under the overlay provisions.

Particular Provisions

Clause 52.27 – Licensed Premises

38. Pursuant to clause 52.27 (Licenced Premises) of the scheme, a planning permit is required to use land to sell or consume liquor if the hours of trading allowed under a licence are to be extended. The requirement to obtain a planning permit is therefore triggered under Clause 52.27.

General Provisions

Clause 65 – Decision Guidelines

39. 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.

State Planning Policy Framework (SPPF)

40. The following SPPF provisions of the Scheme are relevant:

Clause 11.03 – Activity Centres

41. The relevant objectives of this clause include:
- (a) To build up activity centres as a focus for high-quality development, activity and living for the whole community by developing a network of activity centres.
 - (b) To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres which provide a variety of land uses and are highly accessible to the community.

Clause 11.06 – Metropolitan Melbourne

42. The relevant objectives of this clause include:
- (a) To create a city structure that drives productivity, attracts investment, supports innovation and creates jobs.
 - (b) To create a city of inclusive, vibrant and healthy neighbourhoods that promote strong communities, healthy lifestyles and good access to local services and jobs.

Clause 13.04 – Noise and Air

43. The objective of this clause is:
- (a) To assist the control of noise effects on sensitive land uses.

Clause 17.01 - Commercial

44. The relevant objective of this clause is:
- (a) To encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

Clause 18.01 – Integrated Transport

45. The relevant objective of this clause is:
- (a) To create a safe and sustainable transport system by integrating land-use and transport.

Local Planning Policy Framework (LPPF)

Clause 21 – Municipal Strategic Statement (MSS)

Clause 21.03 – Vision

46. The relevant sections of this clause are:
- (a) Yarra will have increased opportunities for employment.
 - (b) The complex land use mix characteristic of the inner City will provide for a range of activities to meet the needs of the community.
 - (c) Yarra's exciting retail strip shopping centres will provide for the needs of local residents, and attract people from across Melbourne.

Clause 21.04 – Land Use

47. The relevant objectives of this clause are:
- (a) To reduce potential amenity conflicts between residential and other uses.
 - (b) To maintain a balance between local convenience and regional retail roles in Yarra's activity centres.
 - (c) To maintain the long term viability of activity centres.
 - (d) To increase the number and diversity of local employment opportunities.

Clause 21.06 – Transport

48. The relevant objective of this clause is:
- (a) To facilitate public transport usage.

Clause 21.08 – Neighbourhoods

49. Clause 21.08-7 describes Fitzroy in the following way:
- (a) Fitzroy is a mixed commercial and residential neighbourhood notable for the consistency of its Victorian streetscapes. It comprises a dense combination of residential areas, shopping precincts and commercial/ industrial activities.
 - (b) Victoria Parade, an important boulevard with substantial office development and the St. Vincent's Hospital precinct, is on the south side of this neighbourhood. The Brunswick Street and Smith Street major activity centres run north south through the middle, while the Johnston and Gertrude Streets neighbourhood activity centres run east west through the neighbourhood. The Smith Street centre borders on Collingwood and is discussed in Clause 21.08-5.
50. Within Figure 17 of Clause 21.08-7, the subject site is identified as being within the Smith Street major activity centre. Figure 18 of Clause 21.08-7 shows the site as being within a heritage overlay area.

Relevant Local Policies

Clause 22.05 – Interface Uses Policy

51. The objectives of this clause are:
- (a) To enable the development of new residential uses within and close to activity centres, near industrial areas and in mixed use areas while not impeding the growth and operation of these areas as service, economic and employment nodes.
 - (b) 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

52. The objectives of this clause are:
- (a) To effectively manage the location, operation and hours of trade of licensed premises, in order to protect the amenity of nearby properties and areas.

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

Other Documents

Draft Licensed Premises Policy

- 53. Planning Scheme Amendment C209 seeks to update Council's licensed premises policy at Clause 22.09 in order to improve the way licensed venues are managed in the City of Yarra. Amendment C209 was on public exhibition between Monday 14 November and Friday 16 December 2016. A total of 36 submissions have been received.
- 54. At its meeting on 21 February 2017, Council considered submissions received for Amendment C209 and resolved to refer the amendment to an independent planning panel to consider the submissions received. At this meeting, Council also resolved to make a number of changes to the draft licensed premises policy as a result of the submissions received.
- 55. The panel hearing for the amendment was held on 26-27 April 2017. After receiving the panel's report, several changes were made and the revised version was considered at the Council meeting on 15 August 2017.
- 56. In summary, the revised policy includes clearer preferred hours for licenced premises in residential zones, preferred hours for outdoor areas, preferred hours for the commencement of the sale and consumption of liquor, preferred hours for packaged liquor outlets, consideration of smoking areas and management, and preferred hours for deliveries and waste collection. There are also modified application requirements relating to noise and amenity action plans, acoustic reports, cumulative impact assessments and safe design considerations. Specific matters are outlined for consideration in amendment applications.
- 57. Relevantly, Smith Street between Gertrude Street and Alexandra Parade is identified as a core entertainment precinct. The core entertainment precincts outlined within the updated policy provide guidance for where larger venues with a patron capacity exceeding 200 people may be appropriate. These areas are limited to Commercial 1 Zone land and are applicable to properties fronting and with pedestrian access from the main streets listed. These areas have been selected because of their existing character and their capacity to accommodate future larger licensed venues due to infrastructure and services that are typical within activity centres. By concentrating larger venues within these areas their collective impacts can be better managed and assessed.
- 58. The amendment has been sent to the Minister for Planning for final approval.

Late Night Freeze

- 59. In 2008, the Victorian Government introduced a freeze on new post 1:00am liquor licences being issued in the City of Yarra, City of Melbourne (including the Docklands), City of Port Phillip and City of Stonnington. In June 2015 the freeze was extended until 30 June 2019.
- 60. In addition to extending the freeze in June 2015, a number of exemptions were also introduced which are outlined in the gazetted decision making guidelines dated 20 July 2015. In summary, the decision making guidelines enable the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to allow the supply of liquor after 1:00am in a limited number of circumstances, provided that regard is given to the guidelines.

61. The criteria is aimed at allowing low risk venues to supply alcohol past 1:00am. Criteria includes the premises being used for accommodation (with alcohol being ancillary), or a venue that regularly provides live music entertainment, or a venue that provides food at all times when liquor can be supplied. The criteria also includes patron numbers not exceeding 200 people, and Council supporting the application for the exemption.
62. This application to amend the planning permit to increase the hours from 1:00am to 3:00am meets the criteria set out in the guidelines as food will be provided at all times when alcohol is supplied and the patron capacity of the venue will not exceed 200 patrons. The applicant also has to satisfy the Victorian Commission for Gambling and Liquor Regulation that a venue management plan will be put in place, and the economic and social benefit of granting the licence will outweigh the impact of the licence on alcohol misuse and abuse and community amenity.

Advertising

63. The original application was advertised in accordance with Section 52 of the Planning and Environment Act 1987 (the Act) by way of 445 letters sent to the surrounding property owners/occupiers and by two signs on the site, one facing Smith Street and one facing the rear laneway.
64. A total of ten objections were received to the application. The concerns can be summarised as:
 - (a) Amenity impacts (i.e. noise from patrons, music, staff and emptying of bottles, etc., and anti-social behaviour).
 - (b) Location of bins.
 - (c) Further impacts on on-street parking.
65. On 18 April 2017, the applicant lodged a Section 57A amendment to the application, as detailed earlier in this report. The Section 57A amendment received a discretionary exemption from advertising from Council's internal Development Assessment Panel on 22 September 2017 as the assessment results in no additional material detriment to any adjoining properties.
66. A consultation meeting was held on 12 September 2017 and attended by Council officers and one objector. No resolution was reached at the meeting.

Referrals

External Referrals

Victorian Commission for Gambling and Liquor Regulation (VCGLR)

67. The application was referred under Section 55 of the Act to the VCGLR pursuant to Clause 66.03 of the Scheme as the proposal is in association with a hotel, tavern or nightclub that is to operate after 1:00am. The VCGLR have not provided a response.

Victoria Police

68. Notice of the original application was also given to the Victoria Police pursuant to Clause 66.05 of the Scheme as the proposal is in association with a hotel, tavern or nightclub that is to operate after 1:00am. The Victoria Police raised no concerns with the extension of licence, noting that the proposal will be assessed in more detail on receipt of the documentation from the VCGLR when the application to vary the liquor licence is lodged with the VCGLR.

Internal Referrals

Social Policy and Research Unit

69. The original application and subsequent Section 57A amendment were formally referred to Council's social policy and research unit. A full copy of both referral comments can be found in Attachment 4. In summary, the following comments and recommendations were made:
- (a) The NAAP should be amended and a condition on any amended permit issued should state that food must be available at all times during licensed hours.
 - (b) It is important to ensure that the venue provides food from within its own site as opposed to relying on an external venue. Given that the site does not have a kitchen, further clarity around this needs to be sought, including what constitutes the late night menu.
 - (c) Overall, the proposed increase in licensed hours is unlikely to result in a negative cumulative impact, subject to the food related concerns above being clarified.
 - (d) While the maximum patrons is nearing close to 200, the venue offers something different to other typical late night venues in the form of the bocce pitch, pool and table tennis.
 - (e) This represents a diversity of activity on the site which in itself can be beneficial for mitigating on and off-site alcohol-related impacts.
70. The Section 57A amendment was also referred to Council's social policy and research unit and the following comments were made:
- (a) The original proposal was unclear in terms of the food offering and there were inconsistencies between what was outlined in the NAAP and what was outlined in a response to a further information request.
 - (b) The Section 57A amendment application letter states that pizza will be prepared and served on the premises. This is considered to be an appropriate food offering which meets the freeze guidelines and exemptions. This should be confirmed on any planning permit issued via a condition stating that food must be prepared and provided for onsite for all licensed hours. The NAAP should be updated to reflect this and floor plans should also be amended to show the food preparation area.

Civic Compliance Unit

71. The original application was formally referred to Council's civic compliance unit. In summary, the following comments and recommendations were made:
- (a) Planning enforcement has not received any recent amenity concerns in relation to 95-97 Smith Street, Fitzroy.
 - (b) I note that this is an amendment to allow the venue to operate until 3:00am, 7 days a week.
 - (c) I have reviewed the noise and amenity action plan and find it satisfactory.
 - (d) However, the property is next to a residential area.
 - (e) Given the proximity to the residential area and our experience with noise complaints, in particular post 1:00am, the compliance branch does not support the proposed extended hours.

Acoustic Engineering Consultant (SLR Consulting Australia)

72. The original application was formally referred to Council's acoustic engineering consultant. A full copy of the referral comments can be found in Attachment 5. In summary, the following comments and recommendations were made in relation to the original acoustic report submitted with the application:
- (a) Our recommended approach to any acoustic assessment prepared to support an application for an extension of hours is to demonstrate, firstly, that the venue is currently compliant with the relevant legislation and guidelines. This approach has not been undertaken on this project.
 - (b) Instead, Arup have identified the relevant late night noise limits and appear to have used the predictive data developed during their 2013 assessment to assess noise from the venue to the lower noise limits.
 - (c) Our issues with this approach are that it does not take into consideration any changes in equipment or operating conditions that may have occurred during the last three years, and that it misses the opportunity to quantify current noise impacts from the venue.

- (d) Actual impacts can vary from predictions due to unforeseen circumstances, such as unexpected patron movements within a venue, doors left open and the like.
- (e) Nevertheless, on this project, the main noise issue appears to be music noise.
- (f) Patron noise, while not assessed as transparently and with the level of detail we would prefer, does not appear to be significant due to the fact that the rear of the venue is apparently not accessed by patrons during the late night period.
- (g) Music noise is shown to be potentially non-compliant with both the identified late night limits, and with the earlier 1:00am limits.
- (h) On these grounds the report advises that the current music noise monitor must be retained.
- (i) As indicated in our review, information as to the how monitor is to be managed to ensure compliance with SEPP N-2 is not provided in the acoustic report.
- (j) From our perspective there are two approaches to ensuring that the issue of music noise is adequately addressed.
 - (i) The first would be to require the acoustic report to include all the information relative to ensuring compliance, including allowable indoor music levels at a reference location, and advice as to how the limiter is to be set to ensure compliance with SEPP N-2 at all times.
 - (ii) The second approach would be to require a post permit acoustic report demonstrating the limiter has been set to ensure compliance with the policy.
- (k) Both approaches are reasonable from our perspective, although the former would be more transparent and would alert the venue to the fact that allowable music levels may be impractically low.
- (l) We would also recommend that the 1:00am music limits be reviewed for the midweek period if the limiter is proposed to be set for a higher level prior to 1:00am. However, if the noise limiter is set to limit music levels such that the 3:00am night limits are not exceeded at any time, a review of the earlier limits would not be necessary.

73. The updated acoustic report submitted as part of the Section 57A amendment was also referred to Council's acoustic engineering consultant. In summary, the following comments were provided:

- (a) The updated report addresses my concerns on the issue of music from the venue.
- (b) The limiter settings have been tested during the day time with music played at maximum level and measurements taken in the rear of the venue (music was not audible in the laneway near the dwellings).
- (c) Additionally, Arup have conducted measurements on a night that the venue was operating.
- (d) They measured in the residential area, but note that the measured levels were due to noise from other venues.
- (e) Their internal measurements indicate that music levels within the venue were lower than the maximum limiter settings and support their claim that the outdoor levels are not attributable to this premises.

OFFICER ASSESSMENT

74. The primary considerations for this assessment are as follows:

- (a) Strategic justification.
- (b) Amenity impacts.
- (c) Cumulative Impacts.
- (d) Objectors' concerns.

Strategic Justification

75. The subject site is located within the Commercial 1 Zone and within the Smith Street activity centre. The purpose of the Commercial 1 Zone includes creating vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

The ongoing use of the land for the purpose of a tavern is therefore considered to be consistent with the zone provisions and appropriate for the site at 1/95-97 Smith Street, in Fitzroy.

76. More broadly, the State and local planning policy, at Clause 11.03, Clause 17.01-1 and Clause 21.04-2, seeks to encourage the aggregation and sustainability of commercial facilities in activity centres. These policies seek to cluster employment, entertainment and service functions within identified centres that meet the needs of local residents, providing that a balance is achieved in relation to off-site amenity impacts.
77. Clause 13.04-1, Clause 21.04-2 and Clause 22.05 identify that noise and the interface between uses must be managed appropriately, particularly in a municipality such as Yarra where almost all residents are within 400 metres of an activity centre.
78. The MSS, at Clause 21.04-2, identifies that the presence of service, retail and entertainment uses creates active and vibrant activity centres with good access to services and facilities, which is an important attribute of Yarra. Furthermore, the site has excellent access to surrounding tram and bus networks, in accordance with relevant objectives found at Clause 21.06 relating to transport.
79. From a policy context, it is considered that the proposal is generally consistent with relevant provisions of the State and local planning policy frameworks in relation to economic development and, subject to conditions, will not unreasonably impact on the orderly planning or amenity of the surrounding area, as outlined in further detail in the following sections of this report.

Amenity Impacts

80. Clause 22.09 (Licensed Premises Policy) provides the relevant guidance in relation to considerations of the proposed sale and consumption of liquor on the premises on off-site amenity impacts. Clause 22.09 of the Scheme is Council's local policy to guide the assessment of new or extended licensed premises within the municipality. It contains six key elements that will be considered in the following section.

Clause 22.09-3.1 – Location and Access

81. The subject site is located midblock on a main arterial road within an activity centre, with a mix of both commercial and residential uses in close proximity. The location is considered appropriate for the existing use given the major activity centre designation and the close proximity of multiple alternative transport modes. Additionally, the premises has been operating since approximately 2002 and is an established venue.
82. The main and only patron entrance into the venue is from Smith Street, via stairs from the ground floor frontage. Patrons cannot enter or leave the premises through the rear part of the site onto Little Smith Street. This is considered appropriate to minimise potential impacts on the nearby residential properties to the west of Little Smith Street, specifically from patrons arriving and leaving the venue. The 'red line' area is located a minimum of 14 metres from the rear boundary with Little Smith Street and the only outdoor area is the balcony/courtyard-type area located at the front of the venue directly facing Smith Street, further minimising the potential for noise from increased trading hours to impact on nearby residential land.
83. The location of the venue on the first floor with the entrance provided via stairs from the Smith Street frontage limits opportunities for a high level of surveillance of patrons as they enter and leave the venue. However, the noise and amenity action plan states that when the licenced premises is nearing capacity, patrons will be greeted at the ground floor entrance by staff. This provides a suitable level of surveillance of patrons arriving or leaving the venue, when the venue is at or nearing capacity.

84. The location of the venue on the first floor with the entrance provided via stairs from the Smith Street frontage also ensures that the venue, in itself, does not unduly interrupt the continuous active retail frontage in the activity centre if closed during the day, as encouraged by Clause 22.09-3.1. This is an existing condition of the building in any event.
85. Toilet facilities are readily available for patrons within the venue. Additionally, a balcony/courtyard-type area is located on the first floor facing Smith Street and used to accommodate patrons who wish to smoke. Adequate infrastructure for patrons is therefore already provided within the venue.

22.09-3.2 – Hours of Operation

86. The existing planning permit and liquor licence allow the venue to operate until 1:00am, seven days a week. This amendment seeks to increase the trading hours to 3:00am, seven days a week.
87. The proposed hours exceed the recommended operating hours for a licenced premises within a commercial zone as outlined in Clause 22.09-3.2 of the Scheme. However, the assessment of the impact of the increased hours of operation on the amenity of the surrounding area must consider:
 - (a) The proposed use.
 - (b) The zoning of the surrounding land.
 - (c) The location of the premises and the 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.
88. The use has been operating for a number of years, with no complaints on record with Council's Civic Compliance Branch. A distinctive feature of the venue is the indoor bocce pitch, which hosts the Melbourne Bocce League, while pool and table tennis are also offered within the venue. This amendment also incorporates a substantial food offering in the form of pizzas for patrons to order from the venue. The food offerings will be facilitated by the internal changes to the layout that introduce a kitchen to the venue.
89. These alternative activities provided for the patrons of the venue, combined with the substantial food offerings proposed, reduces the opportunities for vertical drinking and the consequential off-site amenity impacts. The noise and amenity action plan does not refer to the substantial food offerings that were introduced to this application as part of the Section 57A amendment. Therefore, a condition contained within the recommendation requires an amended noise and amenity action plan that includes this information.
90. The surrounding land contains a mix of zones, including commercially zoned land to the north, south and east, all with a frontage to Smith Street, and residentially zoned land to the west on the opposite side of Little Smith Street. However, there is no patron entrance in to the venue from Little Smith Street and the 'red line' area of the premises is setback more than 14 metres from the rear boundary with Little Smith Street, providing separation between the venue and the residentially zoned land to the west.
91. The impact on residential areas from patrons arriving or leaving the venue is therefore limited as the only patron entrance is on Smith Street. This will ensure patrons only utilise Smith Street to arrive at or leave the venue. Queuing to the venue occurs occasionally during the peak periods and is contained to the Smith Street frontage. The noise and amenity action plan states that a member of staff will manage the queue when required to ensure the footpath is not obstructed and there is no disruption of access to other activities in the area.
92. The site is also located within an activity centre and the minimal car parking accessed via Little Smith Street provided on-site to the rear of the venue is not allocated to this premises.

On-street car parking is available on Smith Street itself with minimal restrictions during the evening and late night period. For example, Monday to Saturday between 5:00pm and 12:00 midnight, car parking on Smith Street in front of the site is paid parking but not time restricted, while after midnight, car parking is free and unrestricted until 9:00am the following day. Patrons who do choose to drive to the venue would therefore be expected to park their vehicle on Smith Street.

93. However, given the nature of the use as a tavern, the stringent enforcement of drink driving laws would influence patrons to travel responsibly to the venue (e.g. public transport, taxi, private driver service, etc.) if they intend to imbibe alcohol.
94. Moreover, there are existing venues within proximity of the subject site that operate to a similar time to that proposed in this amendment application. Overall, there are six premises located within 100 metres of the subject site that operate after 1:00am, with the following details:

| Address | Licence | Patrons | Hours |
|-------------------------------|--------------------------|---------|--|
| 60 Smith Street, Collingwood | Late night (on-premises) | 120 | <u>Internal:</u> Sunday: 10:00am and 1:00am Good Friday/Anzac Day: 12:00 and 1:00am Monday to Wednesday: 7:00am and 1:00am Thursday to Friday: 7:00am and 4:00am <u>External:</u> Sunday: 10:00am and 1:00am Good Friday/Anzac Day: 12:00 and 1:00am On any other day: 7:00am and 1:00am |
| 64 Smith Street, Collingwood | Late night (on-premises) | 400 | Monday to Wednesday: 12:00 and 2:00am On any other day: 12:00 and 4:00am |
| 80 Smith Street, Collingwood | Late night (on-premises) | 60 | Sunday/Good Friday/Anzac Day: 12:00 and 11:00pm Monday to Thursday: 7:00am and 1:00am Friday to Saturday: 7:00am and 3:00am |
| 99 Smith Street, Fitzroy | Late night (general) | 250 | Good Friday/Anzac Day: 12:00 and 1:00am Monday and Wednesday: 11:00am and 1:00am Thursday to Sunday: 10:00am to 5:00am |
| 103-105 Smith Street, Fitzroy | Late night (general) | 460 | <u>Ground floor:</u> Anzac Day: 12:00 and 3:00am On any other day: 10:00am and 3:00am <u>First Floor:</u> Anzac Day: 12:00 and 1:00am On any other day: 10:00am and 1:00am |
| 135-139 Smith Street, Fitzroy | Restaurant and café | NA | Good Friday/Anzac Day: 12:00 and 3:00am On any other day: 10:00am to 3:00am |

95. Notably, four of the six premises detailed above have trading hours that are restricted on Monday to Wednesday, with trading hours until 1:00am only, and similar interfaces to residentially zoned land to the rear. Sunday hours are also restricted until at the latest 1:00am in two of the six premises listed above. Policy at Clause 22.09-3.2 recommends that licenced premises in a commercial zone should not trade beyond 1:00am, unless the Responsible Authority is satisfied that the use will not adversely affect the amenity of the area.
96. The restrictions placed on similar late night venues nearby limiting trading hours on Sunday to Wednesday is considered an appropriate limitation for this venue given the residential interface to the rear of the commercial properties on Smith Street.

Restricting the hours of operation to 1:00am from Sunday to Wednesday will ensure the venue will not have an adverse effect on the amenity of the area.

97. Furthermore, limiting the hours of operation on Sunday to Wednesday will minimise the potential off-site amenity impacts, particularly in relation to noise that is largely outside the control of venue management, specifically from patrons leaving the premises. The venue has a maximum capacity of 197 patrons which has the potential to cause adverse amenity impacts if large groups were leaving the premises on Sunday to Wednesday after 1:00am.
98. Increasing the hours on Thursday to Saturday has less potential to cause adverse amenity impacts as there are already numerous venues operating after 1:00am in proximity to the site. Any potential impacts as a result of increasing the operating hours on these nights would therefore blend in with the activity that already occurs within Smith Street.
99. Therefore, this report recommends that the increase in trading hours be supported only on Thursday to Saturday. The condition relating to the hours of operation contained within the planning permit should therefore continue to restrict the trading hours on Sunday to Wednesday to the hours currently allowed by the planning permit (i.e. 1:00am closing time).
100. In relation to noise emissions from the site, as will be discussed in further detail later in this report, Council's acoustic consultant is satisfied that the updated acoustic report submitted with the Section 57A amendment now appropriately addresses noise emissions from the venue. This therefore lends support to the application to increase the hours of operation as noise issues from within the venue can be appropriately managed to avoid potential off-site amenity impacts as a result of noise emissions.
101. An additional condition that already forms part of the planning permit requires a prominent notice requesting patrons to take account of the needs of local residents for peace and quiet after 10:00pm on any day, to be displayed at the main exit from the venue. This further measure assists in reducing any potential amenity impacts from patrons leaving the venue.
102. Given the existing site conditions, site context and the measures to be outlined in an amended noise and amenity action plan, it is considered that the recommended conditions would result in no unreasonable off-site amenity impacts on the surrounding area as a result of increasing the trading hours from Thursday to Saturday. The recommended hours of operation are therefore considered acceptable.

22.09-3.3 – Patron Numbers

103. This application to amend the planning permit does not seek to increase the current maximum number of patrons allowed in the venue.

22.09-3.4 – Noise

104. The noise and amenity action plan submitted with the application outlines measures to ensure that the use of the land as a tavern and the sale and consumption of liquor on the premises would not be detrimental to the amenity of the area. The plan includes measures to be undertaken to identify and address sources of noise. The noise and amenity action plan would be endorsed as part of any amended planning permit to be issued and the previous plan superseded.
105. As stated in the noise and amenity action plan, there will be no live music performed at the venue, while recorded music will be limited to background music. No music will be played outside the building. In addition to being referenced in the noise and amenity action plan, these restrictions are also enshrined within conditions 12 and 13 of the current planning permit, respectively. Condition 13 further restricts the playing of music within the balcony/courtyard-type area used for patrons wishing to smoke.

106. Conditions of the current planning permit also require that the noise from the venue comply with EPA requirements, notably SEPP N-2 which controls music from public premises. Condition 10 also requires the installation of a noise limiter, 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. According to the acoustic report, the noise limiter is currently operational when the venue is trading and set to the limit previously established for operation to 1:00am.
107. Given the above, it can be seen that the premises is already tightly regulated in terms of noise emissions from the venue. In terms of the proposed amendment and increasing the hours of operation to 3:00am from a noise perspective, the applicant submitted an acoustic report with the original application. The acoustic report was reviewed by Council's acoustic engineering consultant and concern was raised with the content, as outlined in the referral section of this report.
108. An updated acoustic report (Attachment 3) was subsequently submitted to Council's as part of the Section 57A amendment, in order to address the concerns raised by Council's acoustic engineering consultant. On review of the updated acoustic report, Council's acoustic engineering consultant found the report addressed the concerns previously raised and supported the applicant's claim that the outdoor noise levels are not attributable to this venue. The acoustic report will be endorsed if the application is supported and a condition contained within the recommendation section of this report will ensure compliance with the report.
109. Specifically, the acoustic report explains that noise measurements were undertaken during the day on 10 February 2017. The purpose of these measurements were to characterise the noise from the venue with the sound system on the maximum setting playing typical music and taking into account the existing noise limiter device. The measurement length was at least 3 minutes to capture a typical song length. Music was inaudible over the background noise in Little Smith Street and on this basis no measurement data was provided from Little Smith Street.
110. The acoustic report then predicted the noise level at the nearest residential receiver (western side of Little Smith Street) based on conservative assumed transmission loss of a roller door. The predicted noise level is below measured background noise level and is in agreement with observations that music from the venue was inaudible outside. The predicted noise level complies with the noise limit for the proposed operation to 3:00am and on this basis also complies with the less stringent noise limit for the existing operation to 1:00am.
111. The original acoustic report assessed an increase in hours to 3:00am on Wednesday to Saturday only. However, the update acoustic report refers to the increase in hours for both the weekend and weekdays. Council's acoustic engineering consultant has confirmed that this discrepancy does not affect their review of the acoustic report.
112. Additionally, the existing planning permit only allows the emptying of bottles between 7:00am and 10:00pm. This will continue to be in force if the increased trading hours are supported and further minimises any potential off-site amenity impacts from noise.

Clause 22.09-3.5 – Car Parking

113. As mentioned previously, this application to amend a planning permit does not seek to increase the current maximum number of patrons allowed on the premises. Therefore, there is no increase in the car parking requirement and the provisions of Clause 52.06 (Car Parking) do not apply.

114. However, as noted earlier in this report, on-street car parking is available on Smith Street itself with minimal restrictions during the evening and late night period. For example, between 5:00pm and 12:00 midnight, Monday to Saturday, car parking in front of the premises on Smith Street is paid parking but not time restricted, while after midnight car parking is free and unrestricted until 9:00am the following day. Patrons who do choose to drive to the venue would therefore be expected to park their vehicle on Smith Street.
115. However, given the nature of the use as a tavern, the stringent enforcement of drink driving laws would influence patrons to travel responsibly to the venue (e.g. public transport, taxi, private driver service, etc.) if they intend to imbibe alcohol.
116. Additionally, a trial of 24 hour public transport on Friday and Saturday nights is currently in place across Melbourne and the 86 tram that travels in front of the site is included within the trial. Trams operate every 30 minutes on those tram lines selected as part of the trial. Taxis are also readily available from Smith Street and Uber is providing an alternative choice for patrons in the evening.
117. The combination of factors outlined above result in no unreasonable impacts on the functioning of the local traffic network or car parking availability and will not adversely impact on residential areas by way of on-street parking. Due to the context of the subject site and the lack of patron access from Little Smith Street, patrons will be adequately discouraged from parking in residential streets

Clause 22.09-3.6 – Noise and Amenity

118. As part of this application, a noise and amenity action plan has been submitted outlining the measures to address potential amenity impacts. Measures include the playing of only background music, the presence of a manager on-site at all times to immediately address any amenity issues (if practical) and the training of staff to the relevant industry standards (RSA).
119. Many of the requirements of Clause 22.09-3.6 and Clause 22.09-4.3 of the Scheme, in relation to the provision of a noise and amenity action plan, are addressed in other sections of this report. The measures within the submitted noise and amenity action plan are considered appropriate to manage the extended operation of the premises without causing undue detriment to the amenity of the surrounding area. Measures to minimise amenity impacts of the proposal as indicated in the noise and amenity action plan that are not addressed elsewhere in this report include:
 - (a) Alcohol cannot be taken from the premises or consumed on the footpath.
 - (b) Waste collection is undertaken after 8:00am, while glass and bottles are only emptied between 7:00am and 10:00pm.
 - (c) Bins are not put out for collection after 10:00pm on any day
120. However, there are omissions from the noise and amenity action plan, as outlined throughout this report, including incorrect references to the previous maximum capacity of the venue. As such, a condition contained in the recommendation section of this report requires an amended noise and amenity action plan that includes all measures committed to by the applicant in an updated plan.

Cumulative Impacts

121. The decision guidelines set out in Clause 52.27 of the Yarra Planning Scheme require consideration of the following:
 - (a) The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
 - (b) The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.
 - (c) The impact of the hours of operation on the amenity of the surrounding area.

- (d) The impact of the number of patrons on the amenity of the surrounding area.
- (e) The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.

122. In addition to Clause 52.27 and Council's licensed premises policy (Clause 22.09), it is necessary to give consideration to potential cumulative impacts associated with a proposal for a new or expanded liquor licence. The 'Corner Hotel' decision (Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & Ors) provides a potential assessment methodology for considering applications that may result in cumulative impact. The decision also acknowledges that depending on the nature of the use (i.e. premises type, patron numbers and operating hours), the required level of assessment will vary.
123. Since the 'Corner Hotel' decision, Council has developed an assessment tool to determine the likelihood of cumulative impacts occurring as a result of a proposal based on risk factors associated with the type of premises, size of premises and closing hours of the premises, to help determine what level of assessment is appropriate.
124. It is considered that a cumulative impact assessment is warranted for this application, as the proposal scores an eight on the determinative risk factors. Applying the matrix of risk below, a reasonable consideration would suggest that a score of one to three would be no risk, but that a score higher than three would be a potential risk and require a cumulative impact assessment.

| Type of Premise | Risk Factor |
|-------------------------|-------------|
| Café / Restaurant | 0 |
| Bar / Restaurant / Café | 1 |
| Bar | 3 |
| Hotel / Tavern | 3 |
| Night Club | 3 |
| Place of Assembly | 2 |

| Size of Premise | Risk Factor |
|--------------------------|-------------|
| 0 – 49 patrons | 1 |
| 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 |

125. The subject site operates as an existing licenced premises with additional operating hours sought as part of this application. As discussed above, the site is within a Commercial 1 Zone and in a major activity centre, adjacent to a road in a Road Zone, Category 1 with a tram line. There is no change to the maximum number of patrons on the premises.
126. Additionally, Practice Note 61 – Licensed Premises: Assessing Cumulative Impact provides further guidance on assessing the cumulative impact of a licensed premise. The practice note applies to new or expanded licensed premises that will be licensed after 11:00pm and in an area where there is cluster of licensed premises.

The amendment seeks to increase the trading hours of the premises to 3:00am. The site is also located within a cluster of licensed premises. As such, a cumulative impact assessment is also required under the criteria set by the Practice Note.

127. Practice Note 61 recommends that planning policy context, surrounding land use mix and amenity, the mix of licenced premises, transport and dispersal and impact mitigation should be considered when assessing the cumulative impact of licenced premises. These matters are further discussed below.

Planning Policy and Context

128. In relation to the planning policy and context, the proposal has been assessed against all relevant provisions of the State and Local Planning Policy Framework as discussed throughout this report and is considered to be generally consistent with relevant provisions, subject to conditions outlined in the recommendation section of this report.

Surrounding Land Use Mix and Amenity

129. The Smith Street activity centre contains a wide range of commercial and entertainment uses. As outlined earlier in this report, the subject site adjoins residentially zoned land to the west on the opposite side of Little Smith Street. The nearest sensitive uses to the subject site are the former warehouses built hard edge to the Little Smith Street frontage and converted to dwellings.
130. While there are dwellings located to the immediate west, similar late night venues operate in proximity to the subject site with a similar interface to Little Smith Street and residentially zoned land further west. To the immediate north, as detailed earlier in this report, Yah Yah's operates between 12:00pm and 1:00am the following day, Good Friday and Anzac Day, between 11:00am and 1:00am the following day, Monday to Wednesday and between 10:00am and 5:00am the following day, Thursday to Sunday, with a maximum capacity of 250 patrons.
131. Further north, Sircuit Bar operates between 12:00pm and 3:00am the following day on Anzac Day and between 10:00am and 3:00am the following morning on any other day, with a maximum capacity of 300 patrons on the ground floor. The operating hours for the first floor of this bar are between 12:00pm and 1:00am the following day on Anzac Day and between 10:00am and 1:00am the following morning on any other day, with a maximum capacity of 160 patrons on the first floor. The overall capacity of this venue is 460 patrons.
132. Anecdotal evidence and comments within the objectors' submissions suggest that the amenity of the area is already affected to a certain extent by the existence of the late night venues in the surrounding area. However, as noted in the updated licenced premises policy that forms part of C209, Smith Street between Gertrude Street and Alexandra Parade is identified as a core entertainment precinct.
133. As a result of the above and as detailed earlier in this report, the increase in hours has the potential to generate off-site amenity impacts beyond what is reasonable, specifically on Sunday to Wednesday. However, due to the mix of licenced premises that operate after 1:00am on Thursday to Saturday, the amenity of the surrounding area is already impacted to an extent and the proposed increase in hours of this venue would not unreasonably add to those existing impacts.

The Mix of Licenced Premises

134. A review of the density of licensed premises in the area, the mix and type of licensed premises and existing amenity levels has been undertaken. The precinct contains approximately 102 licensed premises within 500 metres (radius) of the subject site.

The Smith Street precinct contains a high concentration of licensed premises, predominantly comprising late night venues, but also including a high concentration of restaurants and cafes, many of which are only open during daytime trading hours.

135. The mix and type of licensed premises associated with existing commercial uses within a 500 radius from the subject land is as follows:
 - Four BYO licenced premises
 - Eleven general licensed premises
 - Five late night general licenced premises
 - Six late night on-premises licensed premises
 - 23 on-premises licensed premises
 - Seven packaged licensed premises
 - 30 restaurant and café licensed premises
 - Fourteen renewable limited licenced premises.
 - Two pre-retail liquor licences.
136. As mentioned earlier in this report, of the licenced premises operating within a 500 metre radius of the subject site, ten operate after 1:00am. Of these ten premises operating after 1:00am, six are located within 100 metres of the subject site, as detailed in the table earlier in this report.
137. Given the zoning of the land, its location within the Smith Street activity centre and the existing level of activity during both daytime and night time trading hours, particularly on Friday and Saturday nights, the amenity of dwellings within the area cannot reasonably be expected to be of the same level as dwellings located within a residential hinterland. Furthermore, the amenity of these dwellings is already likely to be affected by existing noise sources including traffic and transport services on Smith Street and commercial uses operating along Smith Street.
138. The proposed extension of the trading hours for the existing tavern has the potential to result in off-site amenity impacts. However, given the location of the site adjacent to an arterial roadway with a tram line, its physical separation from residential land uses to the west and the evidence outlined in the acoustic report, these impacts will be minimised to a certain extent.

Transport and Dispersal

139. Notably, the venue has its own sole patron entrance on Smith Street, which will enable the operators of the premises to monitor the use, including patron numbers. The hours of operation proposed for the venue are also similar with the operating hours of existing late night venues within the activity centre.
140. Additionally, all patrons leaving the venue will exit onto Smith Street through the sole entrance point to the venue. Patrons are therefore unlikely to enter the nearby residential area due to the availability of public transport, taxis and public car parking located along Smith Street. It is also relevant that permit car parking applies in some of the nearby residential areas which discourages patrons from entering and parking within residential areas.
141. As discussed earlier in this report, a trial of 24 hour public transport on Friday and Saturday nights is currently in place across Melbourne and the 86 tram that travels in front of the site is included within the trial. Trams operate every 30 minutes on those tram lines selected as part of the trial. Taxis are also readily available from Smith Street and Uber is providing an alternative choice for patrons in the evening.

142. The combination of factors discussed above ensure that the proposed increase in hours to 3:00am on Thursday to Saturday is unlikely to contribute to any problems for patron dispersal and will not reinforce any existing or create any new impacts arising from licenced premises closing times and patron dispersal within the area.

Impact Mitigation

143. Overall, it is anticipated that the venue's potential to contribute to a negative cumulative impact will be limited, provided that the conditions discussed throughout this report aimed at minimising any off-site amenity impacts are applied to any amended planning permit that issues.

Other Matters

144. The condition 1 requirement on the current planning permit PL01/1096 requires amended plans relating to the assessment of the previous Section 72 amendment. As the amended plans were submitted and endorsed, this condition is no longer relevant and can be deleted from the permit.
145. In order to ensure consistency between current endorsed plans and the proposed internal alterations to include a kitchen within the premises, a new condition 1 requirement is included within the recommendation section of this report. The condition seeks amended plans showing the kitchen layout as depicted in the plans submitted as part of the Section 57A amendment.

Objectors' Concerns

146. The majority of the issues which have been raised by the objectors have been addressed within this report, as outlined below:
- (a) Amenity impacts (i.e. noise from patrons, music, staff and emptying of bottles, etc., and anti-social behaviour).
 - (b) Further impacts on on-street parking.
147. Outstanding concerns raised in the objections are discussed below, and relate to:
- (a) *Location of bins.*
Council's Civic Compliance Coordinator has noted that no recent amenity concerns have been received in relation to the premises. Additionally, the bin storage area and the bin collection location are existing conditions that can generally not be altered as part of an amendment that only seeks to amend the operating hours of the venue.

Conclusion

148. The proposed amendment is considered to demonstrate a high level of compliance with the policy objectives contained within the State and Local Planning Policy Framework. Notably, the proposed amendment will not result in unreasonable impacts on the surrounding area through the implementation of the noise and amenity action plan, compliance with the recommendations in the acoustic report and maintaining restrictions on operating hours until 1:00am on Sunday to Wednesday.
149. Based on the above report, the proposed amendment is considered to comply with the relevant Planning Scheme provisions and planning policy and is therefore supported, subject to conditions outlined in the recommendation below.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant an Amended Planning Permit PL01/1096.02 to extend the operating hours of the premises from 1:00am to 3:00am, Thursday to Saturday at 1/95-97 Smith Street, Fitzroy, subject to the following conditions (new or amended conditions highlighted in **bold**, deleted conditions shown ~~dashed~~):

- ~~1. Prior to the commencement of the approved amendment (increase in patron numbers and associated car parking reduction) 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 all dimensions noted and three copies must be provided. The plans must be generally in accordance with the plan submitted to Council on 8 August 2013 but modified to show:

 - ~~a. The location of the food van in the rear courtyard.~~
 - ~~b. Notations on the plan to indicate that the rear roller door will be closed at all times when the food van is operational.~~~~
- 1. Prior to the commencement of the approved amendment PL01/1096.02 (increase in trading hours), 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 all dimensions noted and three copies must be provided. The plans must be generally in accordance with the the plans submitted to Council on 2 August 2017 showing the proposed kitchen, but modified to show:

 - (a) The location of the food van in the rear courtyard and the notation on the plans stating that the courtyard roller door is to be closed at all times while the food truck is operating, in accordance with the plans previously endorsed by Council on 20 March 2014.****
2. The use hereby authorised must accord with the endorsed plans. Any alterations must be approved by the Responsible Authority.
3. They layout of the use hereby authorised, including the position of “table and chairs”, on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 4. This permit will expire if the increased hours hereby authorised under amended planning permit PL01/1096.02 is not commenced within two years from the date of this amended permit. The Responsible Authority may approve extensions to these time limits if requests are made within 3 months of expiry.**
5. Within 5 working days of the commencement of the use hereby authorised, the operator of the use hereby authorised must advise the Responsible Authority in writing of the date of commencement of the use hereby authorised.
- 6. Prior to the commencement of the increased trading hours approved under this amendment (PL01/1096.02), 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 form part of this permit. The amended noise and amenity action plan must generally be in accordance with the noise and amenity action plan prepared by Tract Consultants and dated June 2013, but modified to include (or show, or address):**
 - (a) That food offerings will be available to patrons at all times while the sale and consumption of liquor is taking place.**
 - (b) Details of the substantial food offerings.**

- (c) **The maximum capacity of the premises in accordance with condition 9 of this planning permit.**
- (d) **The hours of operation of the premises in accordance with condition 8 of this planning permit.**

When approved, the noise and amenity action plan will be endorsed and will then form part of the permit. The use must operate in accordance with the endorsed noise and amenity action plan to the satisfaction of the Responsible Authority.

- 7. The use hereby authorised must only operate in accordance with the NAAP approved to the satisfaction of the Responsible Authority.
- 8. **The use may only operate between 7.00am to 1.00am the following day Monday to Wednesday, and 7:00am and 3:00am the following day, Thursday to Saturday.**
- 9. No more than 197 patrons may be permitted on the premises at any one time.
- 10. Prior to the increase in patron numbers, a Noise Limiter must be installed and must be maintained thereafter. It must be set at a level specified by a qualified acoustic engineer, to ensure the escape of amplified music does not exceed the requirements of SEPP N-2.
- 11. The use hereby authorised must at all times comply with State Environment Protection Policy N-1 (Control of Noise from Commercial, Industrial or Trade Premises) and N-2 State Environment Protection Policy (Control of Music Noise from Public Premises) or any other standard recommended by the Environment Protection Authority, or its successors.
- 12. No live music or amplified music shall be permitted at any time (other than background music).
- 13. Music associated with the use hereby authorised is not to be played outside the building or in a courtyard area. There are to be no speakers sited outside the building or in the courtyard area.
- 14. A prominent notice, requesting patrons to take account of the needs of local residents for peace and quiet after 10.00pm on any day, must be displayed at the main exit from the premises.
- 15. No emptying of bottles or cans into bins, or other receptacles, is permitted after 10.00pm on any night, or before 7.00am on any day.
- 16. 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 any authorised officer(s) of the responsible authority for the carrying out of any investigations associated with the sale or consumption of alcohol on the site.
- 17. 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'). The Manager must at all times be authorised by the occupier of the premises to make statements on their behalf to any authorised officer of the Responsible Authority regarding the conduct of the premises for the activity hereby authorised.
- 18. **The provisions, recommendations and requirements of the endorsed acoustic report must be implemented and complied with to the satisfaction of the Responsible Authority.**

NOTE: A monetary contribution may be required in the event of a parking precinct plan for the area being adopted by Council.

NOTE: These premises will be required to comply with the Food Act 1984. No development is to commence until plans are approved by Council's Community Amenity and Health Branch.

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 airconditioning 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.

THIS PERMIT HAS BEEN AMENDED AS FOLLOWS:

| Date of amendment | Brief description of amendment |
|-------------------|--|
| 20 December 2013 | Amendment to increase patron numbers associated with the existing tavern (bar) from 100 to 197, including an associated reduction in the car parking requirements. |
| | <p>Pursuant to section 74 of the <i>Planning and Environment Act (1987)</i> the permit and plans have been amended in the following ways:</p> <ul style="list-style-type: none"> • Delete the previous condition 1 requirement for amended plans and add a new condition 1. • Amend condition 6 to require an updated noise and amenity action plan. • Amend condition 8 to increase the hours from 1:00am to 3:00am on Thursday to Saturday. |

CONTACT OFFICER: **Nikolas Muhllechner**
TITLE: **Principal Planner**
TEL: **9205 5456**

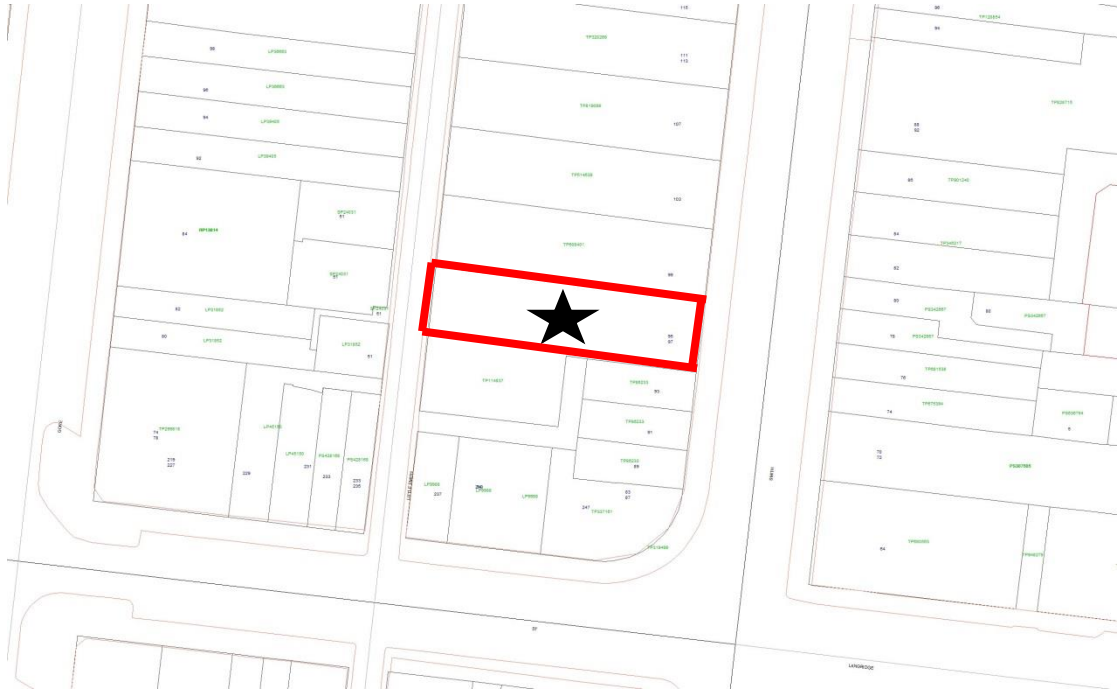
Attachments

- 1 PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Subject Land Map
- 2 PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Section 57A Amended Plans with Kitchen
- 3 PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report
- 4 PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments from Social Research and Policy Unit
- 5 PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments on Original Acoustic Report

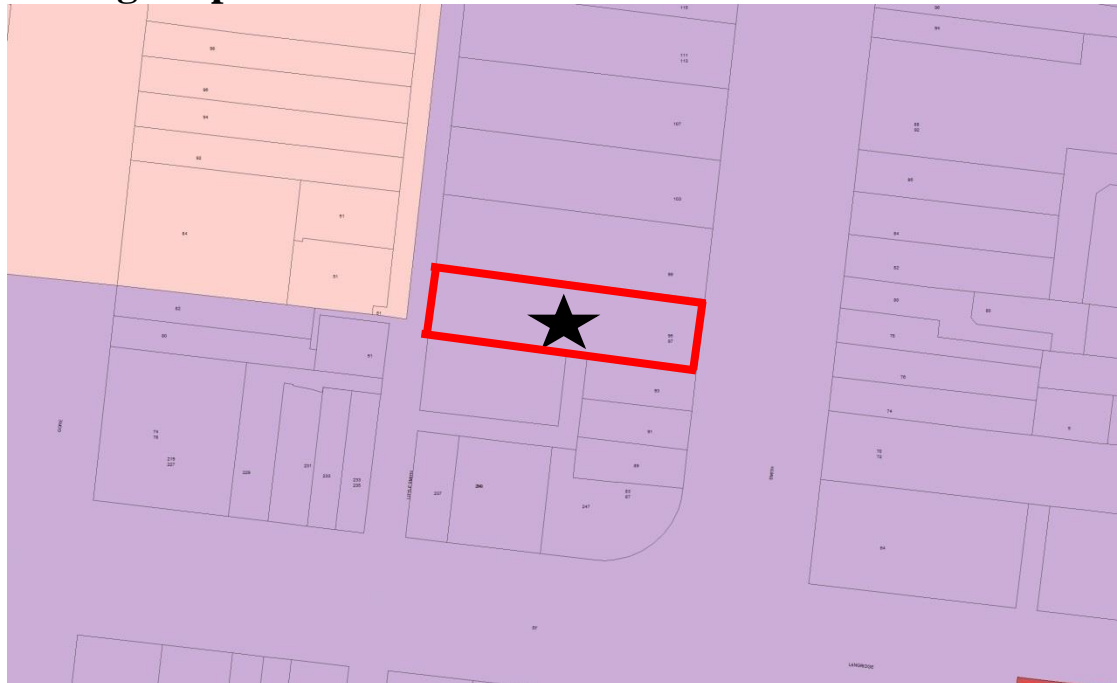
Attachment 1 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Subject Land Map

SUBJECT LAND:

Property Map



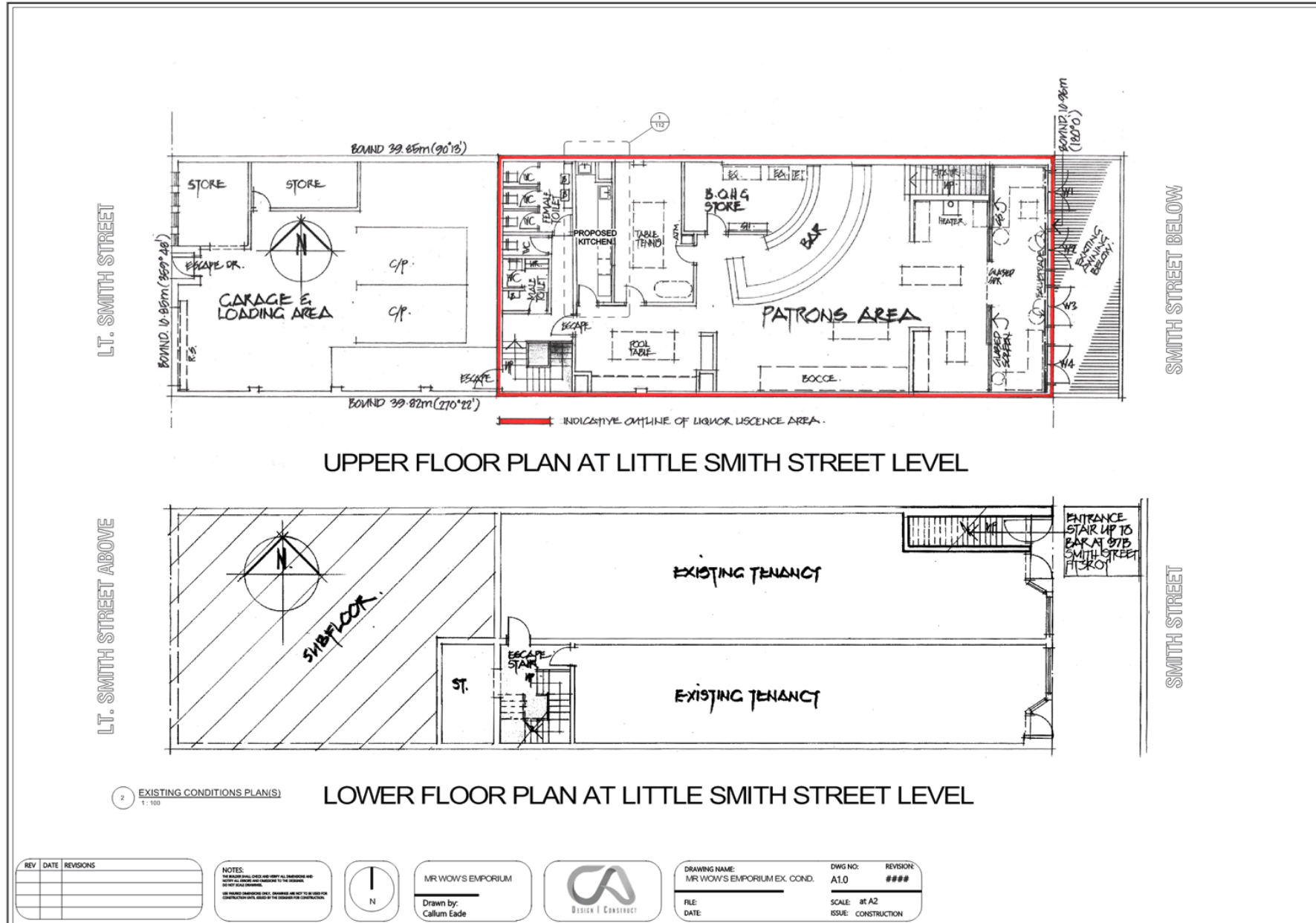
Zoning Map



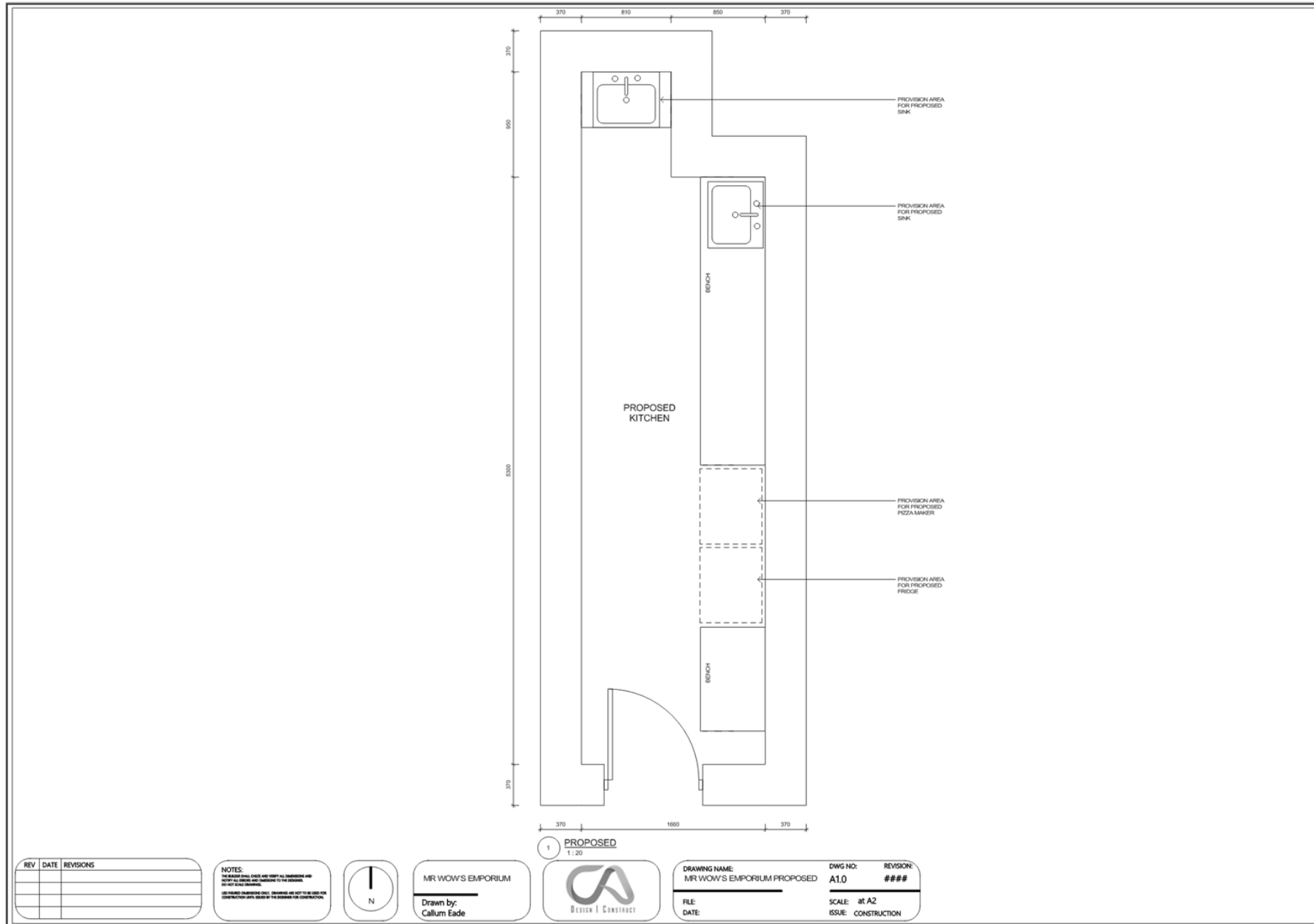
↑ North

★ Subject Site

Attachment 2 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Section 57A Amended Plans with Kitchen



Attachment 2 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Section 57A Amended Plans with Kitchen



Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

Mr Wow's Emporium
Noise Compliance Report

Issue | 15 March 2017

This report takes into account the particular instructions and requirements of our client.

It is not intended for and should not be relied upon by any third party and no responsibility is undertaken to any third party.

Job number

Arup
Arup Pty Ltd ABN 18 000 966 165



Arup
Level 17
1 Nicholson Street
East Melbourne VIC 3002
Australia
www.arup.com

ARUP

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

Document Verification

ARUP

| | | | | | |
|---|-------------|-------------------------|------------------------------|-----------------------|---------------------|
| Job title | | Mr Wow's Emporium | | Job number | |
| Document title | | Noise Compliance Report | | File reference | |
| Document ref | | | | | |
| Revision | Date | Filename | Noise Compliance Report.docx | | |
| Issue | 15 Mar 2017 | Description | Issue | | |
| | | | Prepared by | Checked by | Approved by |
| | | Name | Nick Wedd | Will Gouthro | Will Gouthro |
| | | Signature | <i>NWedd</i> | <i>Will Gouthro</i> | <i>Will Gouthro</i> |
| | | Filename | | | |
| | | Description | | | |
| | | | Prepared by | Checked by | Approved by |
| | | Name | | | |
| | | Signature | | | |
| | | Filename | | | |
| | | Description | | | |
| | | | Prepared by | Checked by | Approved by |
| | | Name | | | |
| | | Signature | | | |
| | | Filename | | | |
| | | Description | | | |
| | | | Prepared by | Checked by | Approved by |
| | | Name | | | |
| | | Signature | | | |
| Issue Document Verification with Document <input checked="" type="checkbox"/> | | | | | |

| Issue | 15 March 2017 | Arup

\\GLOBAL.ARUP.COM\AUSTRALASIA\MEL\PROJECTS\250000\253602.00 MR WOW'S EMPORIUM\WORK\INTERNAL\DOCUMENTS\NOISE COMPLIANCE REPORTA.DOCX

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic ReportMr Wow's Emporium
Noise Compliance Report

Contents

| | Page |
|----------------------------------|-----------|
| 1 Introduction | 2 |
| 2 Site Description | 3 |
| 2.1 General | 3 |
| 2.2 Internal | 3 |
| 3 Noise Criteria | 5 |
| 3.1 SEPP N-1 Noise Legislation | 5 |
| 3.2 SEPP N-2 Noise Legislation | 5 |
| 4 Noise Measurements | 7 |
| 4.1 Internal Music Levels | 7 |
| 4.2 Weeknight Noise Measurements | 8 |
| 4.3 Weekend Noise Measurements | 8 |
| 5 Summary | 10 |

Appendices

Appendix A

Acoustic Terminology

Appendix B

Detailed Measuring Results

1 Introduction

Arup has been engaged to undertake updated noise measurement data, including noise compliance measurements and sound limiter requirements at the licensed premises operating at 97b Smith Street, Fitzroy trading as "Mr Wow's Emporium" (the subject site). Arup has previously undertaken noise impact assessment of the subject site.

The most sensitive (current) operational hours have been considered, that is:

- Tuesday night 0000hrs (12 am) to 0100hrs (1 am), typically less busy night.
- Friday night 0000hrs (12 am) to 0100hrs (1 am), typically busier night.

In addition compliance for existing operations, the proposed operation between 0100 (1 am) to 0300 (3 am) on weekdays and weekends has been considered based on the updated measurements.

Information from previous noise assessments is repeated where appropriate.

A summary of relevant acoustic terminology is provided in Appendix A.

2 Site Description

2.1 General

Mr. Wow's Emporium is located at 97b Smith St, Fitzroy. The subject site is bounded by the following:

- Two (2) two-storey commercial buildings abut the subject site to the north (Yah Yah's bar) and to the south (Pixel Alley/Bookshop) of the site.
- The east of the subject site is bounded by Smith St followed by restaurants and cafes located at 64-80 Smith St, Fitzroy.
- To the west, the subject site is bounded by Little Smith Street, a lane approximately 5m wide with residential dwellings located at 51, 51A Little Smith St, and 223, 225A Gertrude St, Fitzroy.

A site layout is provided in Figure 1.



Figure 1: Site Layout

The nearest potentially affected residential property is understood to be 51 Little Smith St, Fitzroy, directly opposite to the rear of the subject site.

2.2 Internal

The subject site has an area of approximately 400 m² with approximately 150 m² as ground level storage and the licensed premises located as the remaining 250 m²

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

Mr Wow's Emporium
Noise Compliance Report

on the second storey. A site plan has previously been provided by Tract Consultants and is presented in Figure 2.

The building envelope comprises:

- Double brick perimeter walls.
- Glazing along the eastern (Smith Street) façade with operable windows.
- The main patron entry to the licensed premises, via the ground floor doorway along the Smith Street façade.
- A large garage along the western boundary which serves as a buffer between the patron/music noise from the licensed premises and residential receivers on Little Smith St.
- Two access points along the western boundary (at the rear of the premises with access off Little Smith Street) including a roller door used for car parking, loading, storage and a personnel door. There is no provision for patron entry or exit from Little Smith Street, and no window or other opening from the "red-line" area of the licensed premises onto Little Smith Street.
- The subject site currently operates with a music noise limiter, set to the limit previously established for operation until 0100hrs.

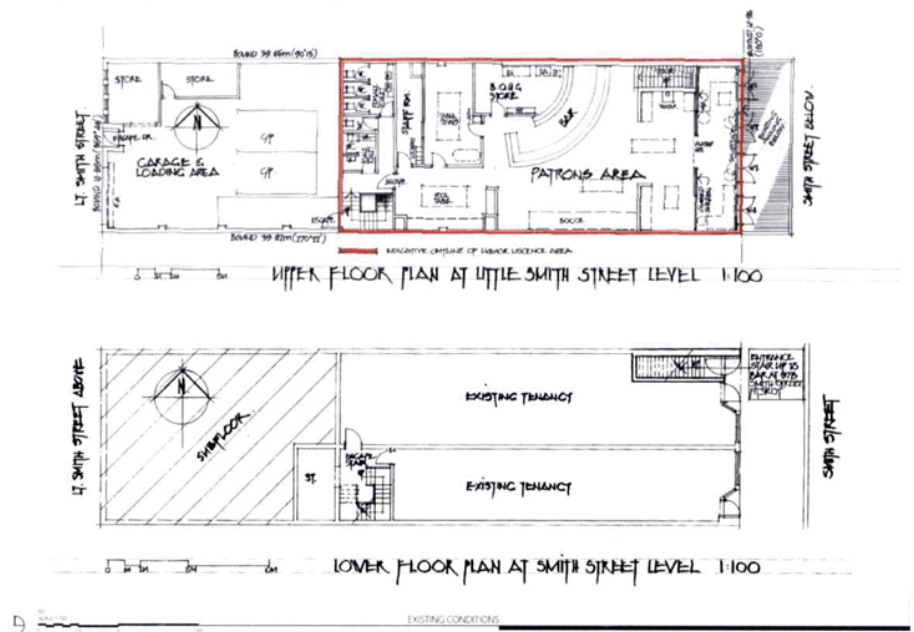


Figure 2: Floor Plan-of 97b Smith St

3 Noise Criteria

3.1 SEPP N-1 Noise Legislation

Within the Melbourne metropolitan area, noise from air-conditioning, ventilation, exhaust and refrigeration equipment and deliveries from commercial premises is governed by *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* (SEPP N-1).

The objective of SEPP N-1 is to protect residential areas from noise generated by commercial, industrial or trade premises.

The calculation of noise limits requires the calculation of a zoning level that is based on land use in the surrounding area. The zoning level is then adjusted appropriately, depending on the measured background noise level. SEPP N-1 separates the day into three different time periods - day, evening and night, the time period as shown in Table 1.

Table 1: SEPP N-1 time periods

| Period | Day of week | Time period |
|---------|-------------------------|--------------|
| Day | Monday – Friday | 0700-1800hrs |
| | Saturday | 0700-1300hrs |
| Evening | Monday – Friday | 1800-2200hrs |
| | Saturday | 1300-2200hrs |
| | Sunday, Public Holidays | 0700-2200hrs |
| Night | Monday – Sunday | 2200-0700hrs |

Table 2 presents the previously established SEPP N-1 noise limits for the subject site.

Table 2: Previously established SEPP N-1 noise limits.

| Period | Zoning Level, Leq dB(A) | Background Level, L90 dB(A) | Noise Limit, Leq dB(A) |
|--------------------------|----------------------------|--------------------------------|---------------------------|
| Evening 1800 to 2200 hrs | 50 | 49 | 52 |
| Night 2200 to 0100 hrs | 45 | 46 | 49 |
| Night 0100 to 0300 hrs | 45 | 38 | 45 |

3.2 SEPP N-2 Noise Legislation

Music noise emissions from venues are controlled in the State of Victoria by *State Environment Protection Policy (Control of Music Noise from Public Premises) N²* (SEPP N-2). Compliance with SEPP N-2 is mandatory in the State of Victoria.

For indoor venues such as Mr Wow's Emporium, SEPP N-2 sets day / evening and night-time noise limits for music noise emission.

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

Mr Wow's Emporium
Noise Compliance Report

SEPP N-2 defines the music noise limit for the:

- day / evening period as the current measured background $L_{A90} + 5$ dB(A).
- night period (after 10pm weekdays, 9pm Sundays) as $L_{OCT90} + 8$ dB(A).

Table 3 presents the previously established SEPP N-2 noise limits for the subject site existing operation 0100hrs and proposed operation to 0300hrs.

Table 3: Previously established SEPP N-2 noise limits.

| Octave Band Centre Frequency (Hz) | 63 | 125 | 250 | 500 | 1k | 2k | 4k |
|--|----|-----|-----|-----|----|----|----|
| Noise limit up to 0100hrs, L_{10} dB | 64 | 58 | 54 | 50 | 48 | 44 | 37 |
| Noise limit 0100 to 0300hrs, L_{10} dB | 50 | 50 | 46 | 42 | 40 | 36 | 27 |

4 Noise Measurements

Attended noise measurements were undertaken on the night of Tuesday (Wednesday morning) 7 February 2017 and Friday (Saturday morning) 10 February 2017.

The measurements were undertaken with a microphone height at 1.5 m above ground level as per AS1055.1¹ measurement procedures.

Attended measurements were also undertaken on Friday 10 February 2017 during the day to characterise internal noise levels and transmission.

All noise measurements were conducted using instrumentation described in Table 4 below. The site calibration of equipment was checked before and after each set of measurements, with no significant drift occurring. Each item of equipment has current NATA² calibration certification.

Table 4: Noise measurement instrumentation.

| Manufacturer | Model | Serial Number |
|--------------|-----------------------------|---------------|
| Brüel & Kjær | Type 2250 Sound Level Meter | 2630367 |
| Brüel & Kjær | 4231 Acoustical Calibrator | 2637409 |

Refer to Appendix B for detailed noise measurement results.

4.1 Internal Music Levels

Noise measurements were undertaken during the day on Friday 10 February 2017. The purpose of these measurements were to characterise the noise from the venue with the sound system on the maximum setting playing typical (pop) music and taking into account the existing sound limiter device.

The measurement length was at least 3 minutes to capture a typical song length.

Table 5: Measured noise level by music limiter with music at maximum level (including sound limiter)

| Location | dB(A) | Sound Pressure Level, dB re 20 µPa Octave Band Centre Frequency, Hz | | | | | | | |
|---|-------|--|-----|-----|-----|----|----|----|----|
| | | 63 | 125 | 250 | 500 | 1k | 2k | 4k | 8k |
| Inside by music limiter, L ₁₀ dB | 93 | 84 | 91 | 80 | 82 | 90 | 87 | 78 | 75 |
| Interior of garage by roller door, L ₁₀ dB | 49 | 63 | 55 | 49 | 45 | 45 | 39 | 32 | 25 |

Music was inaudible over the background in Little Smith Street and on this basis no measurement data is provided.

¹ AS1055.1-1997, *Acoustics- Description and measurement of environmental noise, Part 1: General procedures (5 August 1997)*

² National Association of Testing Authorities

Arup has predicted the noise level at the residential receiver based on conservative assumed transmission loss of a roller door. The predicted exterior noise levels are presented below in Table 6.

Table 6: Comparison of predicted noise levels at receiver and noise limits.

| Description | Sound Pressure Level, dB re 20 µPa Octave Band Centre Frequency, Hz | | | | | | |
|--|--|-----|-----|-----|----|----|----|
| | 63 | 125 | 250 | 500 | 1k | 2k | 4k |
| Predicted noise level outside 51 Little Smith Street, L ₁₀ dB | 46 | 33 | 33 | 24 | 22 | 17 | 19 |
| Music noise limit 0100 to 0300hrs, L ₁₀ dB | 50 | 50 | 46 | 42 | 40 | 36 | 27 |
| Compliance | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

The predicted noise level is below measured background noise level and is in agreement with observations that music from the venue was inaudible outside.

The predicted noise level complies with the noise limit for the proposed operation to 0300hrs and on this basis also complies with the less stringent noise limit for the existing operation to 0100hrs.

4.2 Weeknight Noise Measurements

Noise measurements were undertaken on the night of Tuesday 7 February.

No mechanical services (SEPP N-1) or music noise (SEPP N-2) from the subject site was audible above background noise. As such it is determined that the subject site complies with SEPP N-1 and SEPP N-2 noise limits.

Background noise was primarily controlled by local traffic noise. No specific mechanical noise source could be identified and no music noise was audible.

4.3 Weekend Noise Measurements

Noise measurements were undertaken on Friday 10 February 2017 to represent a typical busier and potentially noisier night.

Noise from the subject site was inaudible over the noise generated by venues to the north and south, Table 7 presents the measured noise levels outside the other venues.

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic ReportMr Wow's Emporium
Noise Compliance Report

Table 7: Measured noise levels at receivers behind venues to the north and south.

| Location | dB(A) | Sound Pressure Level, dB re 20 µPa Octave Band Centre Frequency, Hz | | | | | | | |
|--|-------|--|-----|-----|-----|----|----|----|----|
| | | 63 | 125 | 250 | 500 | 1k | 2k | 4k | 8k |
| Outside residence directly behind venue to the south, L ₁₀ dB | 62 | 83 | 71 | 59 | 57 | 55 | 51 | 46 | 42 |
| Outside residence directly behind venue to the north, L ₁₀ dB | 61 | 78 | 67 | 60 | 60 | 54 | 47 | 39 | 33 |

As the noise in the area was dominated by these other venues it was not possible to determine via measurement whether the subject site currently complies with SEPP N-2 limits.

Noise was also measured internally during typical operation, including patrons and music. These values are presented in Table 8.

Table 8: Operational noise levels by music limiter.

| Location | dB(A) | Sound Pressure Level, dB re 20 µPa Octave Band Centre Frequency, Hz | | | | | | | |
|---|-------|--|-----|-----|-----|----|----|----|----|
| | | 63 | 125 | 250 | 500 | 1k | 2k | 4k | 8k |
| Inside by music limiter, L ₁₀ dB | 88 | 85 | 89 | 76 | 84 | 84 | 81 | 73 | 68 |

The noise measurements for typical operation, including patrons, are comparable or lower than the noise measurements undertaken with maximum setting.

On this basis, it is expected that the external noise level is inaudible and meets SEPP N-2 requirements in line with the assessment provided in Section 4.1.

5 Summary

Arup undertook updated noise surveys to confirm compliance of Mr Wow's Emporium with SEPP N-1 and SEPP N-2 noise limits and confirm noise limiter settings.

Noise surveys were conducted on multiple nights to reflect different operational scenarios.

Music noise from the subject site, including the currently installed sound limiter, was inaudible over noise from other sources and predicted noise levels for existing and proposed operations are compliant with SEPP N-2 requirements.

On this basis, the current sound limiter setting meets the requirements for existing and proposed operation.

As venues to the north and south dominated the noise environment Arup has alternatively predicted the noise levels at the closest residential receiver based on the measured noise levels within the garage with music played at a maximum level. The predicted music noise levels at the residential receivers are below the noise limits. The subject site currently complies with the stricter 0100 – 0300hrs (1 am – 3 am) music noise limits.

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updated Acoustic Report

Appendix A

Acoustic Terminology

A1 Acoustic Terminology

Assessment Background Level (ABL)

A single-number figure used to characterise the background noise levels from a single day of a noise survey. ABL is derived from the measured noise levels for the day, evening or night time period of a single day of background measurements. The ABL is calculated to be the tenth percentile of the background LA90 noise levels – i.e. the measured background noise is above the ABL 90% of the time.

'A'-Weighted Sound Level dB(A)

The unit generally used for measuring environmental, traffic or industrial noise is the A-weighted sound pressure level in decibels, denoted dB(A). An A-weighting network can be built into a sound level measuring instrument such that sound levels in dB(A) can be read directly from a meter. The weighting is based on the frequency response of the human ear and has been found to correlate well with human subjective reactions to various sounds. An increase or decrease of approximately 10 dB corresponds to a subjective doubling or halving of the loudness of a noise. A change of 2 to 3 dB is subjectively barely perceptible.

Decibel (dB)

The ratio of sound pressures which we can hear is a ratio of $10^6:1$ (one million : one). For convenience, therefore, a logarithmic measurement scale is used. The resulting parameter is called the 'sound level' (L) and the associated measurement unit is the decibel (dB). As the decibel is a logarithmic ratio, the laws of logarithmic addition and subtraction apply.

Some typical noise levels are given below:

| Noise Level dB(A) | Example |
|-------------------|---------------------------------------|
| 130 | Threshold of pain |
| 120 | Jet aircraft take-off at 100 m |
| 110 | Chain saw at 1 m |
| 100 | Inside disco |
| 90 | Heavy trucks at 5 m |
| 80 | Kerbside of busy street |
| 70 | Loud radio (in typical domestic room) |
| 60 | Office or restaurant |
| 50 | Domestic fan heater at 1m |
| 40 | Living room |

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

Mr Wow's Emporium
Noise Compliance Report

| Noise Level dB(A) | Example |
|-------------------|-----------------------------------|
| 30 | Theatre |
| 20 | Remote countryside on still night |
| 10 | Sound insulated test chamber |
| 0 | Threshold of hearing |

Equivalent Continuous Sound Level (L_{Aeq})

Another index for assessment for overall noise exposure is the equivalent continuous sound level, L_{eq} . This is a notional steady level, which would, over a given period of time, deliver the same sound energy as the actual time-varying sound over the same period. Hence fluctuating levels can be described in terms of a single figure level.

Frequency

The rate of repetition of a sound wave. The subjective equivalent in music is pitch. The unit of frequency is the Hertz (Hz), which is identical to cycles per second. A thousand hertz is often denoted kilohertz (kHz), eg 2 kHz = 2000 Hz. Human hearing ranges from approximately 20 Hz to 20 kHz. The most commonly used frequency bands are octave bands, in which the mid frequency of each band is twice that of the band below it. For design purposes, the octave bands between 63 Hz to 8 kHz are generally used. For more detailed analysis, each octave band may be split into three one-third octave bands or, in some cases, narrow frequency bands.

Maximum Sound Level, L_{max}

The maximum sound level is the maximum weighted sound pressure level experienced during the measurement period.

Sound Power and Sound Pressure

The sound power level (L_w) of a source is a measure of the total acoustic power radiated by a source. The sound pressure level (L_p) varies as a function of distance from a source. However, the sound power level is an intrinsic characteristic of a source (analogous to its mass), which is not affected by the environment within which the source is located.

Statistical Noise Levels

For levels of noise that vary widely with time, for example road traffic noise, it is necessary to employ an index that allows for this variation. 'A'-weighted statistical noise levels are denoted L_{A10} , dB_{LA90} etc. The reference time period (T) is normally included, eg. dB_{LA10} , 5min or dB_{LA90} , 8hr.

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

Mr Wow's Emporium
Noise Compliance Report

$L_{A90,T}$

Refers to the sound pressure level measured in dB(A), exceeded for 90% of the time interval (T) –i.e. measured noise levels were greater than this value for 90% of the time interval. This is also often referred to the background noise level.

$L_{A10,T}$

Refers to the sound pressure level measured in dB(A), exceeded for 10% of the time interval (T). This is often referred to as the average maximum noise level and is frequently used to describe traffic noise.

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

Appendix B

Detailed Measuring Results

B1 Noise Survey

Arup conducted attended noise measurements at the subject site between 0000hrs and 0100hrs on 8 February 2017. The purpose of the noise survey was to:

- Measure night time noise levels to check compliance with SEPP N-1 and SEPP N-2.

B1.1 Existing ambient environment

The following noise sources are clearly audible at the nearest noise sensitive residences at 0100hrs:

- Road traffic from Gertrude St and Smith St.
- Local traffic movements along Little Smith St.
- Mechanical noise from a venue to the north

B1.2 Methodology

B1.2.1 Measurement locations

Attended noise measurements were conducted at the locations described in Table 9.

Table 9: Description of noise measurement locations

| Measurement location | Description | Reason for measurement |
|----------------------|---|--|
| 1 | Outside 51a Little Smith St. | Assess noise levels at residential receiver. |
| 2 | Outside roller door entrance to 97b Smith St. | Determine noise levels from subject site, inaudible. |

Measurement locations are also identified below in Figure 3.

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

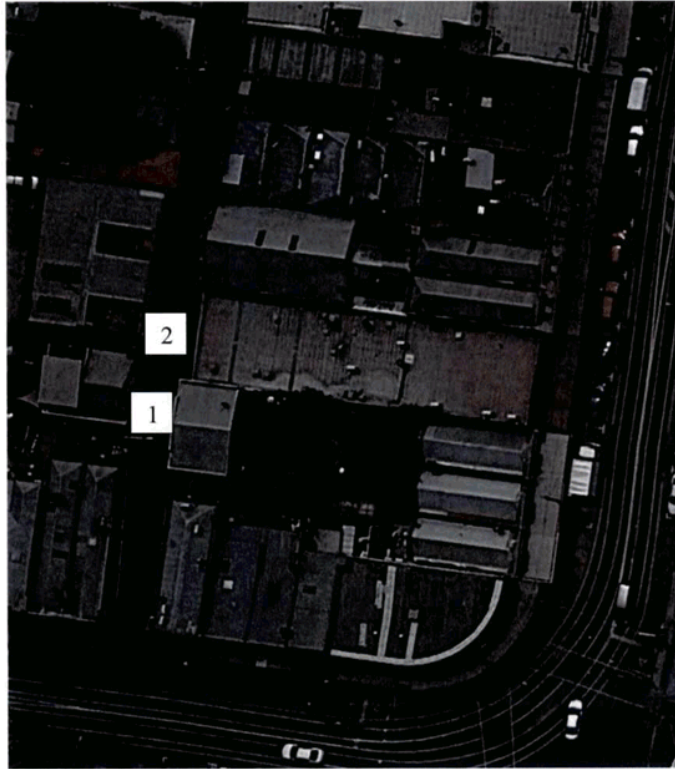
Mr Wow's Emporium
Noise Compliance Report

Figure 3: External noise measurement locations

B1.2.2 Procedure

The sound level meter was held with microphones at 1.5m above ground level and set to fast time response for all measurements. The L_{Aeq} , L_{Amax} , L_{A10} and L_{A90} noise indices were measured in free-field conditions (i.e. away from noise reflecting structures) where possible. Measurements were noted where near reflecting structures.

Weather conditions were noted throughout the measurement periods and there were no adverse weather conditions that could have affected noise measurements.

Noise measurements were performed in general accordance with Australian Standards 1055³ and 2702⁴.

³ AS1055-1997 *Acoustics – Description and measurement of Environmental Noise*, Standards Australia

⁴ AS2702-1984 *Acoustics – Methods for the measurement of Road Traffic Noise*, Standards Australia

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

Mr Wow's Emporium
Noise Compliance Report**B1.2.3 Equipment**

The equipment used to measure the noise levels during attended measurements was a Brüel and Kjær sound level meter (2250 model, serial number 2630367). The equipment was checked for calibration before and after each set of measurements, with no significant drift occurring.

B1.3 Results

The results of the attended noise measurements on Tuesday 7 February 2017 are provided Table 10 below.

Table 10: Noise measurement results

| Location | Time | | Statistical Indices (dB) | | | | Comments |
|----------|---------|---------|--------------------------|-------------------|------------------|------------------|---|
| | Start | End | L _{Aeq} | L _{Amax} | L _{A10} | L _{A90} | |
| 1 | 0010hrs | 0022hrs | 45 | 60 | 47 | 41 | Traffic noise from Gertrude Street, mechanical noise from venue to the north. Mech and music from Mr Wow's inaudible. |
| 1 | 0044hrs | 0055hrs | 45 | 60 | 46 | 42 | Traffic noise from Gertrude Street, mechanical noise from venue to the north. Mech and music from Mr Wow's inaudible. |
| 2 | 0036hrs | 0038hrs | 46 | 54 | 47 | 45 | Music and mechanical services from Mr Wow's inaudible. Traffic noise from Gertrude Street. |

The results of the attended noise measurements on Friday 10 February 2017 are provided below in Table 11

Table 11 Noise measurements from Friday 10 February.

| Location | dB(A) | Sound Pressure Level, dB re 20 µPa Octave Band Centre Frequency, Hz | | | | | | | |
|--|-------|--|-----|-----|-----|----|----|----|----|
| | | 63 | 125 | 250 | 500 | 1k | 2k | 4k | 8k |
| By music limiter, music system set to max L ₁₀ dB | 93 | 84 | 91 | 80 | 82 | 90 | 87 | 78 | 75 |
| Interior of garage by roller door sound system set to 'max', L ₁₀ dB | 49 | 63 | 55 | 49 | 45 | 45 | 39 | 32 | 25 |
| Inside by music limiter with subject site operating, L ₁₀ dB | 88 | 85 | 89 | 76 | 84 | 84 | 81 | 73 | 68 |
| Outside residence directly behind operating venue to the south, L ₁₀ dB | 62 | 83 | 71 | 59 | 57 | 55 | 51 | 46 | 42 |

Attachment 3 - PL01/1096.02 - 95-97 Smith Street Fitzroy - Updayed Acoustic Report

Mr Wow's Emporium
Noise Compliance Report

| Location | dB(A) | Sound Pressure Level, dB re 20 µPa | | | | | | | |
|--|-------|------------------------------------|-----|-----|-----|----|----|----|----|
| | | Octave Band Centre Frequency, Hz | | | | | | | |
| | | 63 | 125 | 250 | 500 | 1k | 2k | 4k | 8k |
| Outside residence directly behind operating venue to the north, L ₁₀ dB | 61 | 78 | 67 | 60 | 60 | 54 | 47 | 39 | 33 |

Attachment 4 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments from Social Research and Policy Unit



MeMO

TO: Nik Muhlechner, Principal Statutory Planner
FROM: Erika Russell, Senior Planner (Community Health and Safety)
DATE: 29 July 2016
ADDRESS: 97 Smith Street, Fitzroy
APPLICATION NO: PL01/1096.02
DESCRIPTION: Section 72 amendment to increase the operating hours of an existing tavern from 7:00am to 1:00am the following day, seven days a week, to 7:00am to 3:00am the following day, seven days a week

Social Policy and Research has been requested to make comments on the proposal in relation to cumulative impacts and any significant social and economic impacts associated with increasing the licensed hours.

PROPOSAL

Key aspects of the site and proposal include:

- The site is located in the Commercial 1 Zone within the Smith Street Activity Centre. The site is surrounded predominately by commercial buildings and uses, however it also has an interface with a residential zone to the west which includes dwellings fronting Little Smith Street.
- The premises currently operates under planning permit PL01/1096 which allows for: *Tavern (bar), Liquor Licence, Waiver car parking requirements*. The planning permit allows a maximum of 197 patrons and licensed hours of 7am to 1am, seven days a week. The licenced area is limited to the internal part of the site, and does not include the rear external area.
- The venue operates under an on-premises liquor licence which also contains the same conditions regarding patrons and hours.
- The proposal seeks to extend licensed hours to 3am seven days a week.

COMMENTS / RECOMMENDATIONS

- The increase in licensed hours constitutes an additional two hours for each day of the week. While this will not necessarily result in a substantial change to existing operations careful consideration must be given to the proposal given that venues operating after 1am are typically considered to be a higher risk for negative cumulative impacts.
- Relevant cumulative impact considerations as outlined in Practice Note 61 include infrastructure capacity problems including limited transport, nuisance including noise and

Attachment 4 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments from Social Research and Policy Unit

anti-social behaviour from intoxicated patrons, violence and perceived threats to safety, and crime including vandalism, trespass and property damage.

- Crime statistics and conversations with Victoria Police and other Council units indicate ongoing concerns relating to alcohol-related issues occurring in Yarra's activity centres after 1am.
- There are numerous other licensed venues within close proximity of the subject site operating with a variety of licences and hours. While the majority of these premises are operating under a Restaurant and Café licence, there are a considerable number of premises within 500m of the subject site with a maximum patron capacity exceeding 200 (twelve venues) with less restrictive licenses. Of the twelve venues with a maximum patron capacity exceeding 200, four of these are licensed past 1am. In addition to a high concentration of drinking venues, there are also a high proportion of fast-food/take-away places where intoxicated patrons commonly congregate.
- Last tram services along Smith Street operate between 12 midnight and 1am most days, except for Friday and Saturday nights as route 86 forms part of the current 24 hour public transport trial. Taxis are also readily available from Smith Street and nearby Gertrude Street. A taxi rank is located approximately 100m to the north of the subject site. Uber is also providing alternative transport choices for patrons in the evening. It is unlikely therefore that the potential dispersal of an additional 197 patrons at 3am within the precinct will be a significant issue, especially given that the majority of venues in the area are not licensed beyond 1am. It is also unlikely that given the type of venue, that all patrons would be leaving at the same time.
- In 2008, the Victorian Government introduced a freeze on new post 1am liquor licences being issued in the City of Yarra, City of Melbourne (including the Docklands), City of Port Phillip and City of Stonnington. In June 2015 the freeze was extended until 30 June 2019. In addition to extending the freeze in June 2015, a number of exemptions were also introduced which are outlined in gazetted decision making guidelines dated 20 July 2015. In summary, the decision making guidelines enable the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to allow the supply of liquor after 1am in a limited number of circumstances, provided that regard is given to the guidelines.
- The criteria is aimed at allowing low risk venues to supply alcohol past 1am. Criteria includes the premises being used for accommodation (with alcohol being ancillary), or a venue that regularly provides live music entertainment, or a venue that provides food at all times when liquor can be supplied. The criteria also includes patron numbers not exceeding 200 people, and Council supporting the application for the exemption.
- In addition to the freeze guidelines, Practice Note 61 notes that venues that serve only snacks do not have the alcohol risk mitigation effect of venues that serve meals. Ensuring that patrons have access to food is a key way to minimise the risk of alcohol-related harm. The previously endorsed plans do not show a food preparation or kitchen area, however the application states (within the Noise and Amenity Action Plan) that patrons can order pizza for delivery from Ladro which is nearby between 6pm to 10:30pm (11pm Friday and Saturdays). It also states that generally two nights a week between 7pm and 10pm that food is available from two food trucks located in the outdoor rear area.
- In a response to a further information request the applicant states *The food truck is to continue with the same operation hours as stipulated in the endorsed NAAP and CIA. The preparation of food will occur inside the venue. The food served will be from a late-night menu' that will be available to customers until close at 3am. The use of an internal kitchen,*

Attachment 4 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments from Social Research and Policy Unit

as opposed to the food truck will ensure any amenity concerns raised by Council have been addressed and the reports remain relevant. Further, the Noise Impact Report provided with the application states Food truck noise is predicted to exceed SEPP N-1 noise limits between 0100 and 0300hrs. On this basis, food trucks should not operate after 0100hrs.

- Clearly there are inconsistencies between Noise and Amenity Action Plan (NAAP) and information provided in response to the further information request. Accordingly, the NAAP should be amended and a condition on any amended permit issued should state that food must be available at all times during licensed hours. It is important to ensure that the venue provides food from within its own site as opposed to relying on an external venue. Given that the site does not have a kitchen, further clarity around this needs to be sought, including what constitutes the late night menu. In order to minimise the risk of alcohol-related harm it is vital that the food provided does not simply include snacks. If the food related concerns cannot be adequately addressed (i.e. if a substantial food offering from within the venue cannot be offered for all licensed hours), consideration should be given to staggering patron dispersal from 1am.
- Overall, the proposed increase in licensed hours is unlikely to result in a negative cumulative impact, subject to the food related concerns above being clarified. It is acknowledged in the freeze guidelines and within Practice Note 61 that smaller (i.e. under 200 patrons), well managed licensed premises generally present a lower risk of contributing to adverse safety and amenity impacts, whereas higher risks are associated with larger licensed premises operating late at night. While the maximum patrons is nearing close to 200, the venue offers something different to other typical late night venues in the form of the bocce pitch, pool and table tennis. This represents a diversity of activity on the site which in itself can be beneficial for mitigating on and off-site alcohol-related impacts. Additionally, the existing NAAP and planning permit conditions provide further measures to ensure that the venue and potential impacts are well managed.

Attachment 4 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments from Social Research and Policy Unit



MeMO

TO: Nik Muhllechner, Principal Statutory Planner
FROM: Erika Russell, Senior Planner (Community Health and Safety)
DATE: 5 May 2017
ADDRESS: 97 Smith Street, Fitzroy
APPLICATION NO: PL01/1096.02
DESCRIPTION: Section 72 amendment to increase the operating hours of an existing tavern from 7:00am to 1:00am the following day, seven days a week, to 7:00am to 3:00am the following day, seven days a week

Social Policy and Research has been requested to make comments on whether the proposed 57A amendment to include the preparation and serving of pizza on the premises is satisfactory in terms of a food offering.

For comments on the original proposal please see the previous referral dated 29 July 2016.

COMMENTS / RECOMMENDATIONS

- The original proposal was unclear in terms of the food offering and there were inconsistencies between what was outlined in the NAAP and what was outlined in a response to a further information request.
- The 57A amendment application letter states that pizza will be prepared and served on the premises. This is considered to be an appropriate food offering which meets the freeze guidelines and exemptions. This should be confirmed on any planning permit issued via a condition stating that food must be prepared and provided for onsite for all licensed hours. The NAAP should be updated to reflect this and floor plans should also be amended to show the food preparation area.

Attachment 5 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments on Original Acoustic Report



31 August 2016

640.10090.02080 97 Smith St 20160831.docx

City of Yarra
PO Box 168
RICHMOND 3121

Attention: Nikolas Muhllechner

Dear Nikolas

95-97 Smith Street, Fitzroy Planning Application Acoustic Report Review PLN01/1096.01

SLR Consulting Pty Ltd (SLR) has been retained by the City of Yarra to provide a review of the acoustic assessment report for the events spaces proposed for 95-97 Smith Street, Fitzroy.

Details of the report are as follows:

- Title: 97b Smith Street Fitzroy, Noise Impact Assessment
- Date: 30 June 2016
- Prepared by: Arup Pty Ltd

A review of the acoustic report is provided below.

1 Overview

The existing bar at 95-97 Smith Street Fitzroy is proposing to extend their operating hours from 1 am to 3 am Wednesday to Saturday nights (ie Thursday to Sunday mornings). The acoustic report has been prepared to support this application. An earlier report, also prepared by Arup, addressed the issue of noise impacts from the venue.

2 Noise sources associated with the site

The reader is directed to the 2013 acoustic report for details of the venue, its operations and the potential sources of noise.

SLR Comment: *Details of the venue operations and sources of noise should be detailed in the current report as there is a chance that any changes that may have taken place over the last three years will be overlooked. In later sections of the report the noise sources are identified as: food trucks; music and patrons.*

Attachment 5 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments on Original Acoustic Report

City of Yarra
95-97 Smith Street, Fitzroy
Planning Application Acoustic Report Review
PLN01/1096.01

31 August 2016
640.10090.02080 97 Smith St 20160831.docx
Page 2

3 Background noise measurements

Background noise measurements have been conducted between 3 am and 4 am on Wednesday 15 June 2016 as a basis for determining SEPP N-1 and SEPP N-2 noise limits. The measurement was conducted at the rear of the subject site.

SLR Comment: *The measurement location and timing are appropriate and the results look reasonable.*

4 Noise Criteria

Music noise is assessed to SEPP N-2. Patron noise is proposed to be assessed to both SEPP N-2 and L_{max} targets of 60 to 65 dBA (Ref: Section 3 of the acoustic report).

SLR Comment: *The L_{max} range of 60 to 65 dBA is based on targets provided in the NSW Road Noise Policy and in our opinion is too high for voice noise, which is typically found to be more intrusive than road traffic. However, patron noise is also proposed to be assessed to SEPP N-2, and compliance with these limits is likely to ensure lower L_{max} noise levels than targeted in the acoustic report.*

5 Noise Limits

SEPP N-1 and SEPP N-2 noise limits have been determined for the 1 am to 3 am period using the background noise levels measured between 3 am and 4 am.

SLR Comment: *The identified limits look reasonable.*

6 Food truck noise assessment

A food truck parks within the venue loading bay and sells food to patrons, who access the loading bay from the rear of the bar. Noise from operation of the food truck is predicted to exceed SEPP N-1 noise limits, and on this basis operation of the trucks is not recommended after 1 am.

The writer notes that noise from other mechanical services associated with the venue was not audible or measurable at the receiver location, and that on those grounds it can be assumed to comply with SEPP N-1

SLR Comment: *Details of the assessment are not provided, and it is unclear whether noise from the truck has been measured or predicted. However, given that operation of the trucks after 1 am is not recommended in the acoustic report, this issue does not need to be addressed in any further detail.*

Regarding noise from mechanical plant, we agree with the statement that noise from the equipment is probably compliant with SEPP, assuming that the observations were made during the late night period. It appears that these observations were made in 2013, and consequently there is some chance that the equipment has changed.

7 Music Noise Assessment

Measurements of music noise have been conducted outside the existing dwellings with the amplification system set to the highest possible gain. Substantial exceedances of SEPP N-2 noise limits for the 1 am to 3 am period were identified, and a moderate exceedance of the 1 am limit was identified in the 63 Hz measurement band. On this basis the consultant advises that a music noise monitor is still required for the venue (a monitor is understood to be installed).

Attachment 5 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments on Original Acoustic Report

City of Yarra
95-97 Smith Street, Fitzroy
Planning Application Acoustic Report Review
PLN01/1096.01

31 August 2016
640.10090.02080 97 Smith St 20160831.docx
Page 3

SLR Comments: *It is unclear whether the measurements undertaken to determine music noise impacts were conducted as part of the 2016 assessment or as part of the 2013 assessment. If the assessment was conducted in 2013, it would be appropriate to repeat the assessment. Changes may have been made to the sound system that would affect music to residential locations.*

Aside from the date of measurements, the assessment approach adopted to determine potential music noise impacts is appropriate and is likely to quantify worst case impacts. Similarly, the advice provided in the report (eg to maintain the music noise monitor) is warranted.

The writer does not provide details of the maximum allowable music levels within the venue, such the music noise monitor can be set. Usually a recommended level, measured at a reference location with the venue, is provided in the acoustic report. This information is also relevant for determining whether substantially reduced music levels within the venue, as proposed in the acoustic report, will be acceptable to the venue or impractically low. If impractically low, noise control works to manage music emissions would be appropriate.

The issue of how the monitor is to be set to ensure compliance with both the 1 am and 3 am SEPP N-2 limits is also not addressed. I am not aware of monitors with more than one setting and it would seem unlikely that the venue would be prepared to reduce music levels at all periods in order to comply with the late night limits. Some further guidance on how the limits are to be met should be provided, either in the current acoustic report or in a follow up report prepared to demonstrate that the noise monitor has been appropriately programmed.

Additional to the above, it would seem likely the SEPP N-2 noise limits identified for the period up to 1 am are on the high side, particularly for mid-week operation.

8 Patron Noise Assessment

Arup reference the patron noise assessment conducted as part of the 2013 acoustic report. In that assessment the maximum level of patron noise was identified as 42 dBA. They note that the maximum level is unlikely to increase during the later opening hours, and as such patron noise will comply with the nominated Lmax criteria.

Patron noise has also been assessed to SEPP N-2 in Section 4.3.2 of the acoustic report.

SLR Comment: *Details of that SEPP N-2 assessment are not provided in the report and it is unclear whether the levels have been calculated or measured. However based on the 2013 assessment it would seem that patron noise from this venue is not a critical issue, and compliance with the nominated limits is likely.*

9 Summary

Our recommended approach to any acoustic assessment prepared to support an application for an extension of hours is to demonstrate, firstly, that the venue is currently compliant with the relevant legislation and guidelines. This approach has not been undertaken on this project.

Instead, Arup have identified the relevant late night noise limits and appear to have used the predictive data developed during their 2013 assessment to assess noise from the venue to the lower noise limits.

Our issues with this approach are that it does not take into consideration any changes in equipment or operating conditions that may have occurred during the last three years, and that it misses the opportunity to quantify current noise impacts from the venue. Actual impacts can vary from predictions due to unforeseen circumstances, such as unexpected patron movements within a venue, doors left open and the like.

Attachment 5 - PL01/1096.02 - 1/95-97 Smith Street Fitzroy - Referral Comments on Original Acoustic Report

City of Yarra
95-97 Smith Street, Fitzroy
Planning Application Acoustic Report Review
PLN01/1096.01

31 August 2016
640.10090.02080 97 Smith St 20160831.docx
Page 4

Nevertheless, on this project, the main noise issue appears to be music noise. Patron noise, while not assessed as transparently and with the level of detail we would prefer, does not appear to be significant due to the fact that the rear of the venue is apparently not accessed by patrons during the late night period.

Music noise is shown to be potentially non-compliant with both the identified late night limits, and with the earlier 1 am limits. On these grounds the report advises that the current music noise monitor must be retained. As indicated in our review, information as to the how monitor is to be managed to ensure compliance with SEPP N-2 is not provided in the acoustic report.

From our perspective there are two approaches to ensuring that the issue of music noise is adequately addressed. The first would be to require the acoustic report to include all the information relative to ensuring compliance, including allowable indoor music levels at a reference location, and advice as to how the limiter is to be set to ensure compliance with SEPP N-2 at all times. The second approach would be to require a post permit acoustic report demonstrating the limiter has been set to ensure compliance with the policy. Both approaches are reasonable from our perspective, although the former would be more transparent and would alert the venue to the fact that allowable music levels may be impractically low.

We would also recommend that the 1 am music limits be reviewed for the midweek period if the limiter is proposed to be set for a higher level prior to 1 am. However, if the noise limiter is set to limit music levels such that the 3 am night limits are not exceeded at any time, a review of the earlier limits would not be necessary.

Yours faithfully
SLR Consulting Australia Pty Ltd



Dianne Williams
Associate – Acoustics

| |
|-------------------------------|
| Checked/ Authorised by: JA |
|-------------------------------|

1.3 283A Burnley Street, Richmond - PLN17/0180 - Development of the land for the construction of two new dwellings, creation of access to a Category 1, Road Zone and a reduction in the car parking requirement.

Executive Summary

Purpose

1. This report provides Council with an assessment of a planning permit application submitted for 283A Burnley Street, Richmond. The report recommends approval of the application, subject to a number of conditions.

Key Planning Considerations

2. Key planning considerations include:
 - (a) Clause 15.01-1 – Urban Design;
 - (b) Clause 21.05 – Built Form;
 - (c) Clause 22.10 – Built Form and Design Policy;
 - (d) Clause 22.13 – Residential Built Form;
 - (e) Clause 32.08 – General Residential Zone (Schedule 4);
 - (f) Clause 52.29 – Land Adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a category 1 road;
 - (g) Clause 55 – Two or more dwellings on a lot (ResCode);
 - (h) Clause 52.06 – Car Parking.

Key Issues

3. The key issues for Council in considering the proposal relate to:
 - (a) Neighbourhood character and built form;
 - (b) On and off-site amenity impacts;
 - (c) Car parking; and,
 - (d) Objector concerns.

Objector Concerns

4. Six objections were received to the application, these can be summarised as:
 - (a) Lack of integration with neighbourhood character;
 - (b) Overdevelopment of the site and excessive height;
 - (c) Loss of one on-street car parking space to Burnley Street due to proposed vehicle crossing;
 - (d) Off-site amenity impacts (overshadowing, loss of daylight, overlooking, noise from roof terrace);
 - (e) Loss of property values to surrounding land.

Conclusion

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

CONTACT OFFICER: Lara Fiscalini
TITLE: Senior Statutory Planner
TEL: 9205 5372

1.3 283A Burnley Street, Richmond - PLN17/0180 - Development of the land for the construction of two new dwellings, creation of access to a Category 1, Road Zone and a reduction in the car parking requirement.

Trim Record Number: D17/154461

Responsible Officer: Principal Statutory Planner

| | |
|-----------------------------|--|
| Proposal: | Development of the land for the construction of two new dwellings, creation of access to a Category 1, Road Zone and a reduction in the car parking requirement. |
| Existing use: | Residential – Single dwelling |
| Applicant: | Luxury Living |
| Zoning / Overlays: | General Residential Zone (Schedule 4) Design and Development Overlay (Schedule 2) |
| Date of Application: | 6 March 2017 |
| Application Number: | PLN17/0180 |

Planning History

1. There is no planning history for this site.

Background

2. The application was lodged on 6 March 2017, with additional information submitted on 19 May 2017. The application was advertised, with 6 objections received.
3. Amended plans were submitted by the Applicant under Section 57A of the *Planning and Environment Act* 1987 (the Act) on 8 August 2017. The following changes were incorporated into the amended plans;
 - (a) Minor alterations to wall setbacks and details of entrance walkway (including dimensions of windows) along the northern elevation;
 - (b) Rearrangement of the ground level of Unit 2, including the removal of the garage and replacement with the living room, kitchen and dining room. A lightcourt incorporated into the northern boundary and a new wall (4m in length and 2.5m in height above natural ground level [NGL]) extending along the southern boundary;
 - (c) Amended setbacks from the southern boundary at first-floor, also associated with Unit 2, with some setbacks decreasing and the setback adjacent to open space within the southern site increasing from 1m to 1.5m;
 - (d) A lightcourt incorporated into the northern boundary at this level;
 - (e) Deletion of the second floor & roof terrace of Unit 2;
 - (f) Subsequent reduction in height of Unit 2 from 9.6m to 7.1m above NGL;
4. The amended application was not re-advertised under the provisions of Section 57B of the Act as the amendments were granted a discretionary exemption at Council's Development Assessment Panel meeting held on 11 August 2017. It was considered that the amendments would not result in any increased detriment to surrounding sites.
5. A Consultation Meeting was held on 12 September 2017, where the key issues raised in the objections were discussed with the Permit Applicant, Objectors and Planning Officers present. The amended plans were circulated to all Objectors with the invitations to this meeting, with these plans forming the decision plans for this application.

6. Additional information in the form of sketch plans was submitted by the Applicant on 19 September 2017. These plans include a site survey plan, detailed elevations and amended shadow diagrams, and were in direct response to requests from objectors. The plans were forwarded to the relevant objectors (directly to the north and south of the site), were sent out with invitations to this meeting and are attached to this report.
7. It is noted that the height of the proposed fence along part of the northern boundary has altered in the sketch plans from 1.8m to 1.7m. Maintaining the height of this fence at 1.8m is preferred, to limit overlooking impacts into the adjacent site. This will be discussed later within this report (B22 – Overlooking).

Existing Conditions

Subject Site

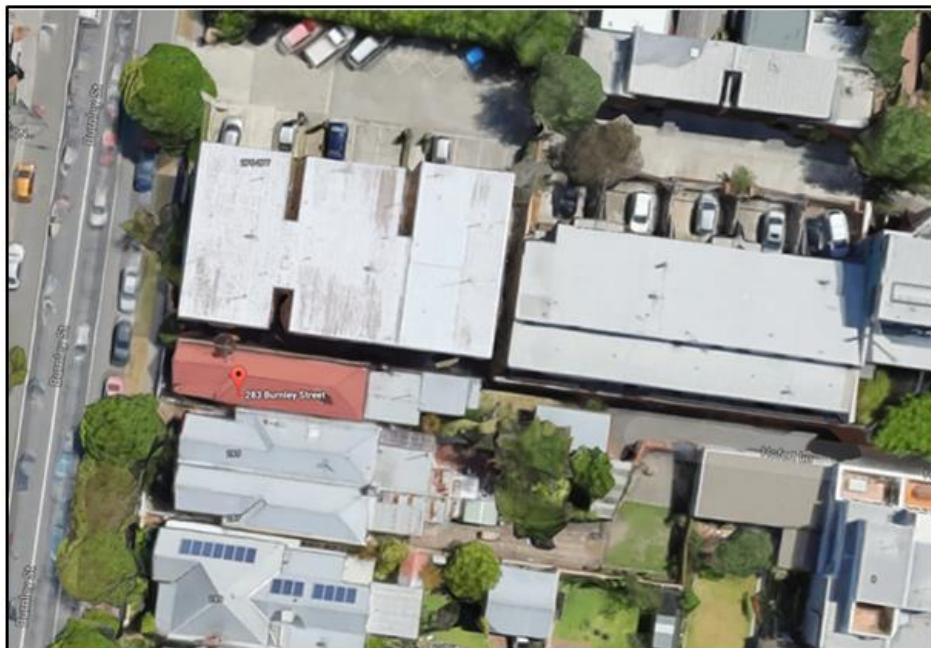
8. The subject site is located on the eastern side of Burnley Street, an equal distance (approximately 400m) between Swan Street and Bridge Road, Richmond. The site is rectangular in shape and has a frontage to Burnley Street of 5.77m, a site depth of 40.23m and an overall area of approximately 236sqm. Secondary access is provided to the site via Hofert Lane; a right-of-way (ROW) that abuts the rear boundary and provides vehicle access to a number of properties to the east.
9. The site is developed with a single-storey, brick dwelling with a pitched roof. The dwelling is set back 2.26m from Burnley Street, with a recessed entrance adjacent to the southern boundary. A 1m high timber picket fence extends along the front boundary. The dwelling is set back 0.9m from the southern boundary and extends along the northern boundary for its entire length. A solid brick wall extends to a height of 4.1m along a significant portion of the northern boundary, with this wall reducing in height to 3.1m where associated with a carport, and then 2m high pickets towards the rear.
10. Secluded private open space (SPOS) is provided to the rear of the dwelling, with a brick garage located within the site's south-east corner. Part of the garage, including the rear wall and metal vehicle gates, extend approximately 2.4m beyond the eastern title boundary of the site, as shown on the certificate of title. These structures are located within a carriageway easement attached to Hofert Lane. The development of the site will restore all built form associated with the site to within its formal title boundaries.



11. The site is not encumbered by any restrictive covenants. As outlined previously, a carriageway easement is located at the rear of the site, with existing built form constructed within the confines of this easement. This built form will be removed as part of the application, with all future works limited to within the title boundaries.

Surrounding Land

12. Burnley Street is predominantly residential; with small pockets of commercial uses interspersed throughout. Built form scale ranges from single to triple-storey in height. A mixture of building designs are found in the street, including traditional, single-storey dwellings and more contemporary double to triple-storey townhouses and apartments. Higher built form, to the scale of five to six-storeys, is emerging closer to Swan Street in the south and Bridge Road to the north.
13. Immediately to the north of the site is No. 275-277 Burnley Street; a triple-storey apartment building constructed c1970. The building is set back 3.2m from Burnley Street, with a 2.6m wide service area extending along the southern side of the building. This area contains bin storage, bicycle parking and areas for clothes drying. A large at-grade car park is located on the northern side of the building, with a crossover providing vehicle access from Burnley Street.
14. A number of windows at all three levels address the subject site in the building's southern wall. The western-most windows are non-habitable and finished with opaque glazing, with the remaining windows all associated with habitable rooms. This site abuts the subject site for a length of 31.4m.
15. Abutting the remainder of the subject site to the north is No. 1 Dove Place. This is a double-storey residential complex, accessed from Type Street to the east. A 4.1m high solid brick wall extends between the sites, with a number of first-floor windows set back 1m from the shared boundary. Horizontal timber slats extend above the boundary wall, screening views from the windows to the south.
16. This residential complex is connected to another double to triple-storey residential complex at No. 86 Type Street.



17. To the south of the site is No. 285 Burnley Street; a single-storey brick dwelling with a pitched, metal roof. This dwelling is set back 4m from the front boundary, with a 1m high timber picket fence extending along this interface. The dwelling is similar in design to the subject dwelling, with a recessed entrance adjacent to its northern boundary. The dwelling abuts the shared boundary for a length of 11.7m, and is then set back 1.4m from the boundary, with an opaque Perspex roof cover above this setback.
18. SPOS is on the eastern side of the site, with a brick garage extending along the rear boundary. Vehicle access is available to this garage from Hofert Lane.
19. Hofert Lane abuts the rear of the subject site, to the east, with this ROW providing access to a number of dwellings addressing Burnley Street and Manton Street, to the south. Hofert Lane is accessed via Type Street, further to the east.
20. To the west is Burnley Street, which is a Category 1 Road. On the opposite side of Burnley Street the built form character is mixed, with a combination of single and double-storey shops, a double-storey church and a double-storey terrace with a high parapet.
21. The subject site is located within proximity to tram and train services, with the Burnley Train Station approximately 480m south-east of the site. The Bridge Road and Swan Street Major Activity Centres are 400m north and south respectively from the site, with trams operating along both of these major roads.

The Proposal

22. The proposal seeks to demolish the existing dwelling, garage and fences on the site and construct two dwellings. Unit 1 will address Burnley Street and will be triple-storey in height, with Unit 2 located to the rear and double-storey in height. Pedestrian access for both dwellings will be provided from Burnley Street.
23. It is highlighted that a number of dimensions specified on the plans are not consistent with the 1:100 scale provided. These inconsistencies are minor, however if a planning permit is to issue, amended plans to the correct scale can be required via a condition. For the purposes of this assessment, the dimensions outlined on all plans have been used. If dimensions have not been provided, the 1:100 scale has been used. The minor inconsistencies between these measurements are not considered to result in any fundamental changes to the following assessment.

Ground level

24. Unit 1 will be set back 5.9m from the front boundary, with a timber clad garage door within the ground level façade. A 0.9m high sliding fence and pedestrian gate will extend along the front boundary. The material and design of this fence is not provided on the elevations. This detail can be confirmed via a permit condition, if a planning permit is to issue.
25. A 3m wide vehicle crossing is proposed to be constructed to Burnley Street; this crossing will provide access for two vehicles to Unit 1. A vehicle turntable, flush with the ground, is proposed within the site's front setback. This will allow vehicles to enter and exit the site to Burnley Street in a forward direction. A shared entrance pathway for both dwellings will extend along the site's northern boundary.
26. Unit 1 will be set back 1.4m and 1.8m from the northern boundary, with an in-built bin storage space (for Unit 2) and the front entrance to Unit 1 within the northern wall. The existing 4.1m high solid brick fence along this boundary will be replaced in part by a 1.8m high fence. As noted earlier, the sketch plans dated 19 September 2017 indicate that this fence will be composed of timber, at a height of 1.7m. A height of 1.8m for this fence is preferred, and will be discussed within Standard B22 (Overlooking) of this report.

27. Unit 1 will abut the southern boundary for a length of 12m and contain a garage and study at this level.
28. The entrance door for Unit 2 will be set back 19.4m from the Burnley Street boundary, adjacent to the northern boundary. This Unit will abut the southern boundary for a total length of 7.6m and the northern boundary for 11.4m, with lightcourts on either side set back 1m from the respective boundary. A bedroom and the main living rooms, including kitchen, will be located at this level.
29. Vehicle access for this dwelling will be provided from Hofert Lane, with a vehicle turntable located within the rear courtyard. A car parking space (above the turntable) will be separated from an area of SPOS by a curved screen.

First-floor

30. Unit 1 will be set back 4.1m from the front boundary and 0.77m from the front section of the southern boundary. This level will abut the northern boundary, with the exception of a central lightcourt, set back 1.37m from this interface. This level will contain three bedrooms, an ensuite and a bathroom.
31. Unit 2 will extend along the northern boundary for a length of 13.3m (with a 1.8m lightcourt midway along this boundary) and the southern boundary for 4m, with the remaining southern wall set back 1m and 1.53m from the southern boundary. The rear wall will be set back 6.5m from the eastern boundary, with a section of this level cantilevering over SPOS below. This level will contain two bedrooms, a study, ensuite and bathroom.

Second floor & terrace

32. Unit 1 at this level will mirror the setbacks provided at first-floor, with a 6sqm balcony addressing Burnley Street. The kitchen, living room and dining area will be located at this level, with access to a roof terrace. The roof terrace will be set back 12.5m from the front boundary, 1.3m from the southern boundary and 0.8m from the northern boundary, with this terrace inset within the pitched roof form of the dwelling.

General

33. The maximum height of Unit 1 will be 10.8m and Unit 2 will be 7.1m above NGL. The site will be excavated to varying degrees, resulting in lower ground levels than both adjacent sites.
34. A significant degree of glazing will be incorporated into the facades of both dwellings. Other materials will include;
 - (a) Walls – Timber cladding and brickwork, with small sections of metal cladding;
 - (b) Roof – colourbond;
 - (c) Garage door – timber slats;
 - (d) Windows – mixture of clear and translucent glazing.

Planning Scheme Provisions

Zoning

General Residential Zone (Schedule 4)

35. Pursuant to clause 32.08-2 of the Yarra Planning Scheme (the Scheme), a planning permit is not required to use the site for dwellings.
36. Pursuant to clause 32.08-6 of the Scheme, a planning permit is required to construct two or more dwellings on a lot.

37. Pursuant to Clause 32.08-9 of the Scheme;
- (a) A building must not be constructed for use as a dwelling that:
 - (i) exceeds the maximum building height specified in a schedule to this zone; or
 - (ii) contains more than the maximum number of storeys specified in a schedule to this zone.
 - (b) If no maximum building height or maximum number of storeys is specified in a schedule to this zone:
 - (i) the building height must not exceed 11 metres; and
 - (ii) the building must contain no more than 3 storeys at any point.
38. Schedule 4 of the Zone states that a building must not be constructed for use as dwellings that exceed 11.5m in height.

Overlays

Design and Development Overlay (Schedule 2 – Main roads and boulevards)

39. Pursuant to clause 43.02-2 of the Scheme, a planning permit is required to construct a building.

Particular Provisions

Clause 52.29 – Land adjacent to a road zone, Category 1, or a public acquisition overlay for a category 1 road zone

40. Pursuant to Clause 52.29, a planning permit is required to create or alter access to a Road Zone Category 1. An application must be referred to the relevant Roads Corporation (in this instance; VicRoads).

Clause 52.06 – Car Parking

41. Clause 52.06-2 requires that before a new use commences, the number of car spaces specified under Clause 52.06-5 must be provided. Clause 52.06-3 states that a permit can be issued to reduce the number of car spaces required under this clause.
42. The Clause 52.06-5 requirements, the proposal provision and the subsequent shortfall are shown below.

| Use | Bedrooms | Rate | No. required | No. proposed |
|--------|-------------------------------|---|--------------|--------------|
| Unit 1 | 4 bedroom dwelling | 2 spaces per 3 or more bedroom dwelling | 2 | 2 |
| Unit 2 | 3 bedroom dwelling plus study | 2 spaces per 3 or more bedroom dwelling | 2 | 1 |
| Total | | | 4 | 3 |

43. With two on-site car parking spaces proposed for Unit 1, the application seeks a car parking reduction of one space for Unit 2.

Clause 55 – Rescode

44. The development must meet the requirements of Clause 55.

General Provisions

Clause 65 – Decision Guidelines

45. 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, amongst other things, the relevant State Planning Policy Frameworks, Local Planning Policy Frameworks and any Local Policy, as well as the purpose of the Zone, Overlay or any other Provision.

State Planning Policy Framework (SPPF)

46. The following SPPF provisions of the Scheme are relevant:

Clause 11 – Settlement

47. *Planning is to recognise the need for, and as far as practicable contribute towards (as relevant);*
- (a) Diversity of choice.*
 - (b) Adaptation in response to changing technology.*
 - (c) Economic viability*
 - (d) A high standard of urban design and amenity.*
 - (e) Energy efficiency.*
 - (f) Accessibility*
 - (g) Land use and transport integration*
48. *Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.*

Clause 11.02 – Urban growth

49. The objective of this clause is: *to ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.*

Clause 11.04-2 – Housing Choice and Affordability

50. The objective of this clause is: *to provide a diversity of housing in defined locations that cater for different households and are close to jobs and services.*

Clause 11.04-4 – Liveable Communities and Neighbourhoods

51. The objective of this clause is: *to create healthy and active neighbourhoods and maintain Melbourne's identity as one of the world's most liveable cities.*

Clause 15 – Built Environment and Heritage

Clause 15.01-1 – Urban design

52. The objective of this clause is: *to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.*

Clause 15.01-2 – Urban Design Principles

53. The objective of this clause is: *to achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.*

Clause 15.01-4 – Design for safety

54. The Objective of this Clause is *'to improve community safety and encourage neighbourhood design that makes people feel safe'*.

Clause 15.01-5 – Cultural identity and neighbourhood character

55. The objective of this clause is *'to recognise and protect cultural identity, neighbourhood character and sense of place'*.

Clause 15.02-1 – Energy and resource efficiency

56. The objective of this clause is *'to encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions'*.

Clause 16 – Housing

Clause 16.01-1 – Integrated housing

57. The objective of this clause is *'to promote a housing market that meets community needs'*.

Clause 18.02-1 - Sustainable personal transport

58. The objective of this clause is *'to promote the use of sustainable personal transport'*.

Local Planning Policy Framework (LPPF)

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

Clause 21 – Municipal Strategic Statement (MSS)

Clause 21.04 – Land use

Clause 21.04-1 – Accommodation and Housing

60. The relevant Objectives and Strategies of this clause are:

- (a) *Objective 1 To accommodate forecast increases in population.*
- (b) *Objective 2 To retain a diverse population and household structure.*

Clause 21.05-2 – Urban design

61. Built form in the municipality is characterised by low-rise urban form with pockets of higher development, which distinguishes Yarra from adjoining municipalities. In managing the City's built form, development that builds upon Yarra's existing sense of place is to be encouraged alongside new development that aspires to high quality architectural design, environmental sustainability and public domain enhancements. This clause incorporates the following objectives to achieve this:

- (a) *Objective 16 - To reinforce the existing urban framework of Yarra;*
- (b) *Objective 18 - To retain, enhance and extend Yarra's fine grain street pattern;*
- (c) *Objective 20 - To ensure that new development contributes positively to Yarra's urban fabric.*

Clause 21.06 – Transport

Clause 21.06-1 – Walking and cycling

62. This clause builds upon the Objectives outlined at Clause 18, promoting cycling, walking and public transport as alternatives to private motor vehicle usage.

Clause 21.07 Environmental Sustainability

63. The relevant objective of this clause is:

(a) *Objective 34 To promote ecologically sustainable development:*

Clause 21.08 Neighbourhoods

64. Clause 21.08-10 – Central Richmond (area between Bridge Road and Swan Street). Figure 24 of this clause identifies this site as ‘Inner Suburban Residential’ with the area described as follows;

(a) *The land use character of this neighbourhood is predominantly residential, with the area closest to Punt Road comprising early to mid-Victorian cottages and terraces, and an increasing amount of Edwardian dwellings towards the east of the neighbourhood.*

Relevant Local Policies

Clause 22.10 – Built Form and Design Policy

65. Relevant objectives within this clause include;

- (a) *Ensure that new development positively responds to the context of the development and respects the scale and form of surrounding development where this is a valued feature of the neighbourhood character.*
- (b) *Ensure that new development makes a positive contribution to the streetscape through high standards in architecture and urban design;*
- (c) *Limit the impact of new development on the amenity of surrounding land, particularly residential land; and*
- (d) *Encourage environmentally sustainable development.*

Clause 22.13 – Residential Built Form Policy

66. The relevant built form character type relating to the subject site is “Inner Suburban Residential”.

67. Clause 22.13-3.2 notes the applicable design responses for development within “Inner Suburban Residential” areas;

- (a) *Maintain the existing pattern of front setbacks.*
- (b) *Landscape the front setback in a style that reinforces the garden character (if any) of the streetscape.*
- (c) *Where the general pattern of development includes gaps between buildings, include a setback on at least one side of the building.*
- (d) *Orient buildings at right angles to the street frontage.*
- (e) *Provide front fencing that is open (unless the building is zero front setback).*
- (f) *On single house sites in areas with generally consistent building heights, limit variations in height to a maximum of one storey compared to the adjacent properties.*

Clause 22.16 – Stormwater Management (Water Sensitive Urban Design)

68. This policy applies to applications for new buildings and recognises that increased development can result in greater hard surface area and changes to the volume, velocity and quality of stormwater drainage into natural waterways.

Clause 22.17 Environmentally Sustainable Development

69. The overarching objective outlined at Clause 22.17-2 is;

(a) *That development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation.*

70. To assess the energy efficiency of the development, a Sustainable Design Assessment is required to be submitted.

Advertising

71. The application was advertised under the provisions of Section 52 of the Act with 55 letters sent to surrounding owners and occupiers and two signs displayed on site.
72. Council received a total of 6 objections to the application. The grounds of objection are summarised as follows;
 - (a) Lack of integration with neighbourhood character;
 - (b) Overdevelopment of the site and excessive height;
 - (c) Loss of one on-street car parking space to Burnley Street due to proposed vehicle crossing;
 - (d) Off-site amenity impacts (overshadowing, loss of daylight, overlooking, noise from roof terrace)
 - (e) Loss of property values to surrounding land.
73. Amended plans were submitted by the Applicant under Section 57A of the Act on 8 August 2017. The changes to the development are outlined within the Background section of this report.
74. The amended application was not re-advertised under the provisions of Section 57B of the Act as the amendments were granted a discretionary exemption at Council's Development Assessment Panel meeting held on 11 August 2017. It was considered that the amendments would not result in any increased detriment to surrounding sites.
75. A Consultation Meeting was held on 12 September 2017, where the key issues raised in the objections were discussed with the Permit Applicant, Objectors and Planning Officers present. The amended plans were circulated to all Objectors with the invitations to this meeting.
76. Additional sketch plans were submitted by the Applicant on 19 September 2017. These plans include a site survey plan and amended shadow diagrams, and were in direct response to requests from Objectors. The plans were forwarded to the relevant objectors and are attached to this report.

Referrals

External Referrals

77. The application was required to be referred to VicRoads under Section 55 of the Act. VicRoads had no objection to the proposal, subject to a number of conditions and a note being included on any planning permit issued by Council. The referral advice is attached to this report.

Internal Referrals

78. The application was referred to Council's Engineering Services and Urban Design Unit, with referral comments attached to this report.
79. Advice was sought from SLR Acoustic Consultants regarding potential noise impacts from the vehicle turntable, given the location of the front turntable adjacent to a bedroom within the southern dwelling. The comments are included as an attachment to this report and will be discussed within Standard B24 (Noise).

OFFICER ASSESSMENT

80. This assessment will be framed around the following:
 - (a) Clause 55 Assessment (incorporating an assessment against relevant local policies);

- (b) Car parking and,
- (c) Objector concerns.

Clause 55 – ResCode

B1 – Neighbourhood character objectives

81. The character surrounding the site is mixed with regards to design, style and scale, with traditional dwellings, mid-century apartment buildings and contemporary townhouses (double to triple-storey in scale) interspersed along Burnley Street. The site is located in an area undergoing change, being within proximity to two Major Activity Centres and largely unencumbered by a heritage overlay. The area surrounding Burnley Street and the subject site is predominantly located within the General Residential Zone (Schedule 4) which allows built form to extend to 11.5m (or triple-storey) in height. The zoning of the land therefore anticipates and encourages higher built form to occur.
82. The location of the subject site provides an appropriate response for the construction of two dwellings, with the siting of the dwellings (with only one addressing Burnley Street) ensuring that the fine-grain pattern of the streetscape and the dimensions of the single dwellings to the south are replicated. Properties along Burnley Street generally have minimal front and side setbacks, with a degree of landscaping a common characteristic along the streetscape. Front fences for single dwelling sites tend to be low and transparent.
83. The design reflects proportions and design elements found in more traditional dwellings, including the angled roof-form, whilst providing a contemporary response within a changing environment.
84. The proposal responds appropriately to the height of the apartment building to the north and provides a raked response from the single-storey scale to the south, with an additional setback from the southern boundary at the two upper levels. This design allows for an appropriate transition in height from the lower built form, and responds effectively to the context of each site. The transition in height along the section of streetscape is demonstrated in the image below.



85. Existing built form will be removed from the rear of the site, allowing for an open area that creates a spine of open space which continues through to Manton Street in the south. Vehicle access will be provided for Unit 2 from this interface, with Hofert Lane primarily used for this reason.

The design response will provide an environment which has a feeling of safety for users of the laneway, whilst providing safe pedestrian and vehicle access, with the proposed vehicle turntable at the rear of the site allowing vehicles to exit the laneway in a forward direction. This is consistent with objectives outlined at Clause 22.07 (Development Abutting Laneways) of the Scheme.

86. Based on the above, the proposed development will adequately respect the existing and emerging neighbourhood character and is in accordance with the objectives and the decision guidelines outlined at Clause 22.13-3.2 (Inner Suburban Residential) and Clause 22.13-3.3 (Urban Residential) of the Scheme.

B2 – Residential policy objectives

87. The subject site is located within 400m of two Major Activity Centres, with the development of the site resulting in efficient use of existing infrastructure and supporting an increase in population in established areas, consistent with Clause 21.04-1 of Council's MSS. The objectives of the Standard are met.

B3 – Dwelling diversity objective

88. This Standard does not apply to developments with less than 10 dwellings.

B4 – Infrastructure objectives

89. The proposal is located within an area with existing utility services and infrastructure, with the site already accommodating one dwelling which is connected to all necessary services. The objectives of the Standard are met.

B5 – Integration with the street objective

90. Unit 1 will be oriented to Burnley Street, with a sliding fence (0.9m high) extending along the front boundary. The image below demonstrates that the fence will be low and permeable, allowing views to the dwelling façade. A condition has required the details of this fence to be included on all relevant drawings. This outcome is supported.



91. A garage door will address the street at ground level, with this door to be finished in dark timber slats, with no visible openings. The entrances to both dwellings are set back within the site to the north, with restricted views to these doors available from Burnley Street. Based on this design, the dwelling has limited integration with the street.

92. Council's Urban Design Unit, whilst not overly supportive of the garage within the ground floor façade, acknowledged that the use of timber slats and the setback from the street reduces the prominence of this feature. The use of timber in particular is supported, along with the different colour of timber, as this references the upper level façade whilst not competing with it.
93. Visibility to the pedestrian entrances would be enhanced if a separate pedestrian gate was constructed in line with the garage door. This gate would provide clear identification for the entrances. The gate should be the same height as the garage door, but permeable, so that views to the pedestrian door of Unit 2 are visible in the distance. A minimum of 50% permeability would allow this to occur. The gate should be composed of timber, to match the garage door. The addition of this gate can be required via a condition, if a permit is to issue.
94. The lack of compliance with the Standard is somewhat alleviated through the use of extensive glazing within the remainder of the façade. To improve the dwelling's integration with the street, Council's Urban Design Unit recommended that the main living areas of Unit 1 should be relocated from the second to the first floor, with the bedrooms swapped to the second floor.
95. On balance however, the relocation of these levels would result in a poor internal amenity outcome for Unit 1, based on the following;
 - (a) The second floor living area benefits greatly from the cathedral ceiling that will provide a spacious and light-filled space; the first-floor floor to ceiling heights of 2.5m would greatly impact this outcome;
 - (b) The living area at second floor allows for a direct connection to the roof top terrace;
 - (c) The living area at second floor provides good views towards the CBD
96. The glazed façade at both levels will allow an adequate degree of interaction with the street, with views from the upper level still clearly available to Burnley Street. The objective of the Standard is met.

B6 – Street setback objective

97. The apartment building to the north of the site is set back 3.2m from Burnley Street, with the southern dwelling set back 4m from this boundary. The Standard notes that if there is an existing building on both the abutting allotments facing the same street, the development should be set back the average distance of the setbacks of these facades. The adjacent setbacks provide an average distance of 3.6m.
98. The ground floor façade is proposed to be set back 5.9m from Burnley Street, with the two upper levels cantilevering above this wall to provide setbacks of 4.1m. These setbacks meet the Standard and are appropriate, given the following;
 - (a) The increased setback of the ground floor façade will reduce the prominence of the proposed garage door;
 - (b) The 4.1m setbacks proposed for the upper levels reference both adjacent setbacks, yet allow the existing buildings to sit forward slightly of the new development and retain their presence in the streetscape. Given the higher built form proposed on the subject site, this outcome is considered appropriate;
 - (c) The triple-storey façade of the apartment building to the north provides a higher reference within the street, with the matching setbacks proposed for the two upper levels of the development replicating this outcome.

B7 – Building height objective

99. Schedule 4 of the Zone states that a building must not be constructed for use as dwellings that exceed 11.5m in height. The maximum heights of the dwellings are 10.8m and 7.1m respectively; thereby meeting this mandatory requirement.

100. Clause 22.13-3.3 (Urban Residential) seeks the following design response in this area:
- (a) *On single house sites in areas with generally consistent building heights, limit variations in height to a maximum of one storey compared to the adjacent properties.*
101. In this instance, while the proposed triple-storey development is located adjacent to a single-storey dwelling to the south, the setback provided from the southern boundary and the angled design of the roof from this interface provide a good degree of articulation that relates the taller building to the scale of its surrounds, and provides an appropriate transition in height from the lower built form. The design is considered to be consistent with the provisions outlined above and the Standard is met.

B8 – Site coverage objective

102. The site coverage of the development will be approximately 64%, thereby exceeding the 60% coverage recommended by the standard. This relatively minor variation is acceptable, given the inner-urban context of the site and the degree of built form coverage demonstrated on surrounding land. Further, the development will reduce the degree of built form at the rear of the site, and allow for the creation of an area of open space, consistent with the layout of sites to the south. This outcome is acceptable and the objective of the Standard is met.

B9 – Permeability objectives

103. The Stormwater Plan submitted with the application indicates that 55sqm, or 23%, of the site will be permeable, thereby meeting the minimum 20% requirement of the Standard. It is highlighted that the areas nominated for the two vehicle turntables will not be permeable and are not included in this equation.
104. This plan nominates where 2 x 2000L rainwater tanks may be located. To ensure consistency, the location of these tanks should be clearly demonstrated on the ground floor plan. A notation should also be added, indicating that the tanks will be connected to toilets and irrigation within the development, consistent with the provisions outlined in the Sustainable Design Assessment (SDA) submitted with the application. This requirement can be facilitated via a condition, should a permit be issued.

B10 – Energy efficiency objectives

105. The proposal will achieve a good level of energy efficiency, with the following features incorporated into the design;
- (a) Daylight will be available to all habitable rooms, with additional skylights and lightcourts to increase daylight opportunities;
 - (b) External shading will be provided by eaves over west-facing windows;
 - (c) Cross-ventilation opportunities are provided at all levels, with the majority of windows to be operable. The operability of these windows is not clear on the plans for all habitable rooms. To ensure that this feature is incorporated into the design, a condition can require these details to be added to the plans if a planning permit is to issue. If screening to windows is required (to be discussed under B22 (Overlooking) of this report) an operable section of window above 1.7m will be required.
106. The SDA submitted with the application included a number of commitments as follows;
- (a) A BESS report with a score of 51% (with 50%+ considered Best Practice);
 - (b) A STORM rating of 120%, consistent with objectives outlined at Clause 22.16 (Stormwater Management), based on the provision of 2 x 2,000L rainwater tanks;
 - (c) External clothes lines;
 - (d) Water and energy efficient fixtures and fittings used throughout;
 - (e) Double-glazing will be provided for all living areas and bedrooms, thereby increasing the thermal efficiency of the dwellings;
 - (f) External lighting will be LED and will be fitted with motion detectors and timers.

- (g) Separate 1.75kW solar PV systems for each dwelling;
- (h) Solar hot water system;
- (i) Wall mounted bicycle racks.

107. These features are not clearly shown on the plans. If a permit is to issue, a condition will require the inclusion of these measures on all relevant drawings.
108. It is not considered that the energy efficiency of the adjacent sites will be unreasonably impacted by the proposed development. Overshadowing to areas of SPOS within sites to the south will be discussed in detail later within this assessment.
109. Subject to the conditions discussed above, the proposed development satisfies the requirements of Clause 22.16 (Stormwater Management), Clause 22.17 (Environmentally Sustainable Development) and accords with the design objectives and guidelines of Clause 22.10-3.5 (Environmental Sustainability) of the Scheme.

B11 – Open space objective

110. This standard does not apply as no public or communal open space is proposed.

B12 – Safety objective

111. A shared pedestrian pathway will provide access to both dwellings, with a condition requiring the introduction of a permeable pedestrian gate in alignment with the garage. This gate will allow for a secure, visible entrance from Burnley Street and ensure that the objective of the Standard will be met.

B13 – Landscaping objectives

112. A degree of landscaping is proposed along both side boundaries, with further vegetation within the site's northern setback. The addition of more vegetation within the front setback is limited by the location of the vehicle turntable. It is unclear what type of vegetation is proposed.
113. A degree of landscaping is a character of the streetscape; therefore the addition of vegetation within the front setback would be welcomed and would soften the appearance of the development. The provision of vegetation within the front setback would be consistent with design objectives at Clause 22.10-3.9 (Landscaping and fencing) of the Scheme, which encourages development that respects the landscaped character of the neighbourhood, whilst ensuring that any landscaped front setbacks make a positive contribution to the public domain.
114. This is also consistent with the recognised built form type of the area (Inner Suburban Residential) which aims to landscape the front setback in a style that reinforces the garden character of the streetscape, as outlined in Clause 22.13-3.2 (Inner Suburban Residential) of the Scheme.
115. Further details of the proposed vegetation were requested by Council's Urban Design team. If a planning permit is to issue, a condition can be added to request details and clarification of landscaping proposed at the front of the site via a landscape plan. On this basis, the objective of the Standard will be met.

B14 – Access objectives

116. This standard seeks to ensure that the number of vehicle crossovers respects the character of the street, whilst maximising the retention of on-street car parking spaces.

The proposed development seeks to rely on a new vehicle crossing from Burnley Street, with vehicle access to Unit 2 provided from the rear laneway. The construction of a vehicle crossing on Burnley Street will result in the loss of one on-street car parking space.

117. The proposal was referred internally to Council Engineers, who raised no objection to the construction of the crossover or the loss of on-street parking. The loss of parking on Burnley Street will be compensated by the addition of on-site car parking spaces; this will be discussed in detail within the car parking section of this report.
118. Crossovers are not a common characteristic to the south of the site, along the eastern streetscape of Burnley Street, however there are a number of single and double vehicle crossovers evident to the north of the site, and along the western streetscape. This immediate section of Burnley Street has a different character to other sections of the street, with a small commercial strip located to the west. Pedestrian and vehicle crossings form a greater part of this character. The addition of a single vehicle crossing is therefore considered to be a reasonable outcome and the objective of the Standard is met.
119. Internal referral advice from Council Engineers confirmed that the swept path diagrams provided with the application indicate that a B99 design vehicle can satisfactorily access the garage and car space for Unit 1 from Burnley Street, with a satisfactory outcome also provided for vehicle access to the rear of the site.
120. Burnley Street is located within a Road Zone, Category 1. VicRoads is therefore the relevant authority for any works within this zone. The proposal was referred to VicRoads, who raised no objection to the construction of the vehicle crossing, subject to conditions. These conditions can be incorporated into the planning permit, should one be issued.

B15 – Parking location objectives

121. The on-site car parking spaces for Unit 1 are in a tandem arrangement, with one space located within a garage and the second above the at-grade turntable within the front setback. The overall length of the tandem space is 11.9m, with a 500mm gap provided between. The car space for Unit 2 is located above the turntable within the site's rear open space.
122. The internal dimensions and design of the proposed car spaces (associated with both dwellings) satisfies *Australian Standard 2890.1:2004*, as confirmed by Council Engineers. The vehicle turntables will allow cars to exit the site in a forward direction, thereby providing safe and efficient vehicle movements onto Burnley Street and into Hofert Lane.
123. The drawings indicate that the pedestrian path to both dwellings crosses a section of the turntable associated with Unit 1. Council Engineers have noted that written permission must be obtained from the manufacturer of this equipment to confirm that the edge and surface of the turntable is adequate for pedestrians to traverse. This will be facilitated via a condition, if a permit is to issue.
124. In addition, a number of dimensions are not clearly annotated on the drawings and will be required via a condition if a permit is issued. These include;
 - (a) The width and height of the garage door for Unit 1;
 - (b) The dimensions of the proposed vehicle entrance off Hofert Lane for Unit 2;
 - (c) The width and location of the Burnley Street crossover;
 - (d) The dimensions of each car space and garage, including the dimensions and critical clearances of the two vehicle turntables.

125. Based on these conditions, the objective of the Standard is met.

B17 – Side and rear setbacks objective

Southern setbacks

126. The setback of Unit 1 from the southern boundary is outlined below.

| Wall location | Wall height | Setback required | Setback provided | Complies? |
|----------------------|-------------|------------------|------------------|-----------|
| First & Second-floor | 7.6m | 2.69m | 0.775m | No |

127. This non-compliant setback is located directly adjacent to a pedestrian pathway within the site to the south, with no part of this wall extending beyond the façade of the adjacent dwelling. Whilst views to the wall will be readily available along Burnley Street, sections will be screened by the wall and pitched roof form of the southern dwelling.

128. As modest setbacks from side boundaries are a consistent characteristic within the streetscape, this outcome is acceptable. Views to side walls are evident within the neighbourhood and are replicated in the triple-storey wall of the apartment building to the north. In addition, there are no windows directly addressing this wall within the southern site, reducing potential impacts to this dwelling. Based on this context, a variation to the Standard is considered acceptable.

129. The setbacks of Unit 2 from the southern boundary are outlined below.

| Wall location | Wall height | Setback required | Setback provided | Complies? |
|----------------------------------|-------------|------------------|------------------|-----------|
| Ground floor - living room | 2.4m | 1m | 1m | Yes |
| Ground and first-floor stairwell | 4.74m | 1.34m | 1.04m | No |
| First-floor study | 4.74m | 1.34m | 1.04m | No |
| First-floor bedroom | 5.16m | 1.46m | 1.53m | Yes |

130. The area of non-compliance is directly adjacent to a small setback within the site to the south. This space is covered with opaque Perspex, which allows filtered sunlight to access this space; however it inhibits clear views to the subject site. A fence, ranging in height from 2.1m to 2.6m, extends along the northern side of this space, with a section of trellis attached to the space between the fence and roof covering, and a section of fence extending above the height of the roof (see photograph on the following page).

131. It is not anticipated that views to the first-floor wall will be readily available from either this covered space or the north-facing windows of this dwelling, which are set back 1.8m from the boundary and a total of 2.78m from the proposed wall. The plans indicate that the fencing and trellis along this boundary will remain. Daylight impacts to the windows will be assessed under Standard B20 (North-facing windows) later within this report, however with regards to potential visual impacts from this non-compliant setback, these are not considered to be unreasonable and a variation to the Standard is supported.



132. The more visible section of Unit 2 is associated with the master bedroom, with views to this wall available from the SPOS to the south. This wall is compliant with the setback requirements and the objective of the Standard is met.

Northern elevation

133. The setbacks of Unit 1 from the northern boundary are outlined below.

| Wall location | Wall height | Setback required | Setback provided | Complies? |
|---------------------------------|-------------|------------------|------------------|-----------|
| Ground-floor entrance & garage | 2.4m | 1m | 1.3m & 1.96m | Yes |
| First & Second-floor lightcourt | 9.4m | 4.49m | 1.37m | No |

134. The non-compliant section of wall associated with the lightcourt is directly opposite a 2.6m wide service area to the north. There are a number of habitable room windows addressing the setback, with the overall separation between the wall and windows being 3.97m. These windows currently address a 4.1m high solid brick wall along the boundary. This wall will be replaced with a timber fence, 1.8m high, with the dwelling setback 1.37m above this fence. This outcome will provide a more articulated visual response, with the ground and first-floor windows no longer addressing a solid boundary wall. The path adjacent to the boundary is used for services, bicycle parking and bin storage, with the context of this area demonstrated in the photographs below. It is not expected that the non-compliant setback will unreasonably impact this space, with a variation to the Standard supported.



135. The setbacks of Unit 2 from the northern boundary are outlined below.

| Wall location | Wall height | Setback required | Setback provided | Complies? |
|---------------------------------|-------------|------------------|------------------|-----------|
| Ground & First-floor lightcourt | 5.8m | 1.66m | 1m | No |

136. As with the setback of the lightcourt outlined above (associated with Unit 1), this non-compliant setback will be opposite the 2.6m wide service area on the adjacent site. Whilst a number of habitable room windows will address this lightcourt, the degree of separation provided by the service space will limit visual impacts to a reasonable degree, with a solid 3.1m high brick wall currently extending along this section of the northern boundary. Daylight to these windows will be discussed in Standard B19 (Daylight to existing windows objective) below, however the objective of this Standard is met.

Eastern elevation

137. Unit 2 will be set back 7.44m at ground level and 6.5m at first-floor from the rear, eastern boundary. With a maximum height of 7.1m from NGL, a setback of 2.19m is required. The Standard is comfortably met.

B18 – Walls on boundaries objective

138. To comply with this standard, any new wall constructed along the southern boundary should not exceed 19m in length. The site's northern boundary abuts two sites (No. 275 Burnley Street and No. 1 Dove Place). To comply with this standard, any new wall constructed along the shared boundary with No. 275 Burnley Street should not exceed 15.4m, with a new wall along the shared boundary with No. 1 Dove Place permitted for the full length (7.44m) with this the length of boundary abutting the subject site.
139. The standard also notes that the average wall height should not exceed 3.2m with no part higher than 3.6m unless abutting a higher existing or simultaneously constructed wall.

Southern boundary

140. A wall will abut the southern boundary at ground level for a combined length (associated with both dwellings) of 20.4m, with part of this wall extending along the boundary at first and second floors for respective lengths of 12.6m and 8.7m. The maximum height of this wall will be 7m above NGL, decreasing to 5.4m and 2.5m in the east.
141. Whilst the length and height of this wall exceeds the Standard, this outcome is considered acceptable, with the higher elements of the wall directly abutting an existing boundary wall and thereby limiting visual impacts to the adjacent site. With regards to length, the degree of non-compliance is minimal, with the majority of the wall also abutting the existing boundary wall associated with the dwelling to the south. Variations to this Standard are a common characteristic of the neighbourhood, being located within a dense, inner-city environment, where boundary walls are a prevalent feature.
142. There is a 1.2m long section of wall associated with bedrooms 2 & 3 of Unit 2, with this wall extending to 5.4m in height and located opposite the covered setback within the site to the south. Whilst the ground floor section of wall is considered appropriate with regards to height and length (being largely located behind the existing fence/trellis along this boundary), the first-floor wall may result in unreasonable amenity impacts to the southern site. This higher wall will be clearly visible from the adjacent dwelling, resulting in unreasonable visual impacts, and will cause compromised solar access to the adjacent north-facing habitable rooms. To limit amenity impacts to this site, the 1.2m length of wall should be taken off the boundary and setback within the subject site.
143. With a wall height of 5.4m, a 1.54m setback is required to meet the Standard. Given the relatively limited length of wall abutting the boundary, a variation to the Standard is considered to provide a balanced outcome, with a 1m setback of the section of boundary wall matching the adjacent setback of the stairway and study, and providing an appropriate degree of separation to the adjacent site. A condition can be added to any permit issued to ensure that the eastern 1.2m length of bedroom 2 be set back 1m from the southern boundary.
144. The remaining 4m section of boundary wall associated with Unit 2 is adjacent to the covered setback within the site to the south. This wall will extend to a height of 2.5m above NGL. The majority of this wall will directly abut a boundary fence, which ranges in height from 2.1m to 2.6m, with a trellis extending along the top part of this fence. Whilst the upper-most section of the wall will be visible through this trellis, it is not anticipated that the extent of visibility will result in unreasonable visual impacts to the adjacent site. The objective of the Standard is met.

Northern boundary

145. A limited section of wall (1.2m in length and 5.1m in height) will abut the boundary associated with No. 1 Dove Place. This wall will abut an existing 4.1m high solid brick wall, with a south-facing window set back 1.5m from this wall within the adjacent site. Timber screening, as demonstrated in the photograph on the following page, extends along the top of this wall, further inhibiting views to the south. The setback of this window will ensure that ample daylight will continue to access the associated room, with the minimal section of on-boundary wall unlikely to result in unreasonable visual impacts to this site.



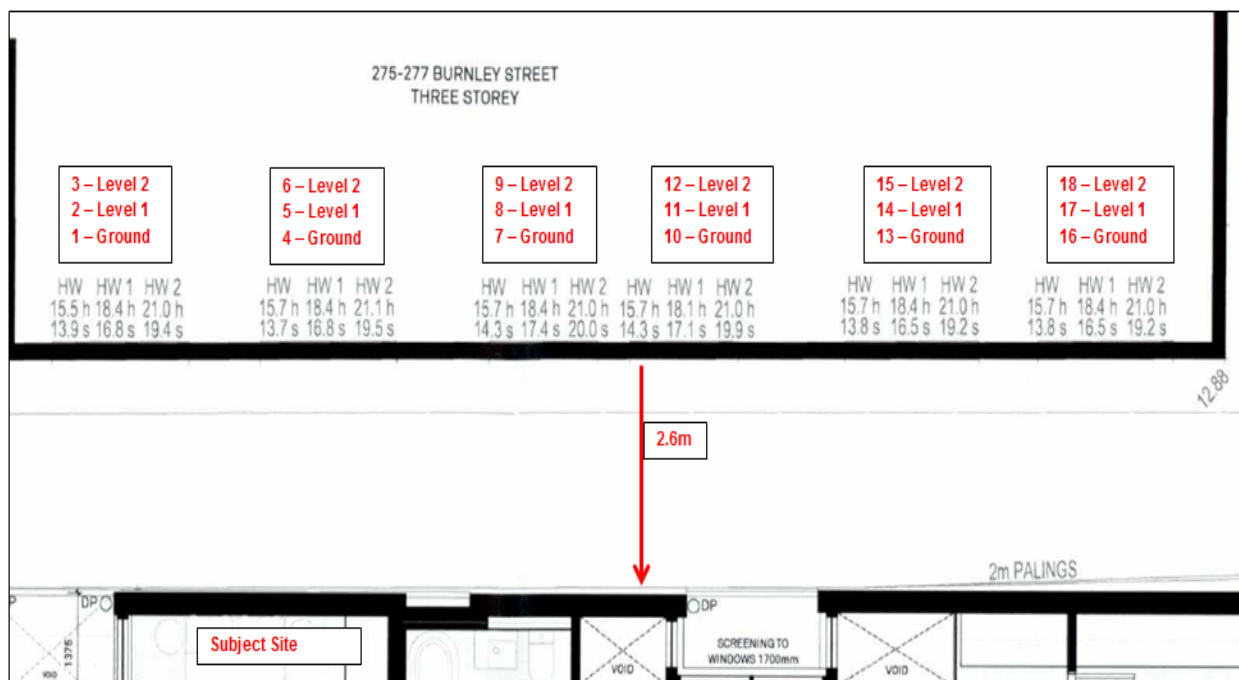
146. A wall will abut the northern boundary (No. 275 Burnley Street) at ground level for a combined length (associated with both dwellings) of 10.9m, with part of this wall extending along the boundary at first and second floors for respective lengths of 24.1m and 12.4m. The maximum height of this wall will be 7.2m, decreasing to 5.1m in the east. Neither the length nor the height of this wall will meet the Standard.
147. A number of south-facing windows are located within the adjacent building, with these windows at all three levels. The decision plans indicate that all of these windows are habitable, however further investigation (in the form of site visits and online real-estate floorplans) indicate that the western-most windows at each level (ground to second-floor) are non-habitable and finished with opaque glazing. These windows are proposed to be located opposite a 7.2m high section of boundary wall and are highlighted in the diagram below.



148. Given the limited views available from these windows and the non-habitable nature of the rooms, the proposed height of this wall is acceptable. Views to this section of wall will be readily available from Burnley Street, however the removal of the existing 4.1m high solid brick wall in the same location, and the provision of a 1.8m high timber fence along this section of the boundary will provide a degree of articulation and openness to this boundary that is currently lacking. As views to high side walls are a characteristic along Burnley Street, this outcome is acceptable.
149. Two sets of three windows are located further to the east, with the three windows replicated at each level (resulting in a total of 18 windows). All of these windows are associated with habitable rooms. The current outlook from these windows is demonstrated in the photograph at paragraph 133 of this report.
150. A variation to the Standard is considered to be an acceptable outcome in this instance, based on the following;
 - (a) The 2.6m wide path within the southern site provides a good degree of separation between the new wall and the adjacent building;
 - (b) The ground floor windows and a number of the first-floor windows currently address a solid 4.1m or 3.1m high wall along this boundary;
 - (c) The removal of the existing wall and replacement with a 1.8m high fence will create articulation for the ground floor windows (to the west), with the higher windows less impacted by the location of the new wall (due to their respective heights from NGL);
 - (d) The character of the area consists of high walls, with the zoning of the surrounding land anticipating triple-storey built form.

B19 – Daylight to existing windows objective

151. Standard B19 requires a light-court to be provided with a minimum area of 3sqm and a minimum dimension of 1m clear to the sky. As highlighted, a number of south-facing windows are located within the apartment building to the north, with 18 of these windows associated with habitable rooms. All of these windows are set back 2.6m from the shared boundary, ensuring that compliance with this Standard is achieved.
152. To achieve the remainder of the Standard, any new wall opposite these windows should be set back from the windows at least half the height of the proposed wall. Where the existing window is above ground floor level, the wall height is measured from the floor level of the room containing the window. In this instance, given the lack of floor plans available for the apartment building, the finished floor level at first-floor will be assessed at 3m, with the floor level at second floor assessed at 6m.
153. The diagram and table on the following page demonstrate whether compliance with the remainder of the Standard is achieved. For ease of reference, the diagram has numbered the windows from west to east, with the table outlining whether the Standard is met.



| Floor level | Window | Height of wall opposite | Setback required to comply | Setback provided | Complies |
|-------------|-----------------------|-------------------------|----------------------------|------------------|----------|
| Ground | 1 | 9.4m | 4.7m | 3.9m | No |
| First | 2 | 6.4m | 3.2m | 3.9m | Yes |
| Second | 3 | 3.4m | 1.7m | 3.9m | Yes |
| Ground | 4 | 7.7m | 3.85m | 2.6m | No |
| First | 5 | 4.7m | 2.35m | 2.6m | Yes |
| Second | 6 | 1.7m | 0.85m | 2.6m | Yes |
| Ground | 7 | 5.6m | 2.8m | 2.6m | No |
| First | 8 | 2.6m | 1.3m | 2.6m | Yes |
| Second | 9 (no wall opposite) | - | - | - | - |
| Ground | 10 | 5.6m | 2.8m | 2.6m | No |
| First | 11 | 2.6m | 1.3m | 2.6m | Yes |
| Second | 12 (no wall opposite) | - | - | - | - |
| Ground | 13 | 5.6m | 2.8m | 2.6m | No |
| First | 14 | 2.6m | 1.3m | 2.6m | Yes |
| Second | 15 (no wall opposite) | - | - | - | - |
| Ground | 16 | 5.6m | 2.8m | 2.6m | No |
| First | 17 | 2.6m | 1.3m | 2.6m | Yes |
| Second | 18 (no wall opposite) | - | - | - | - |

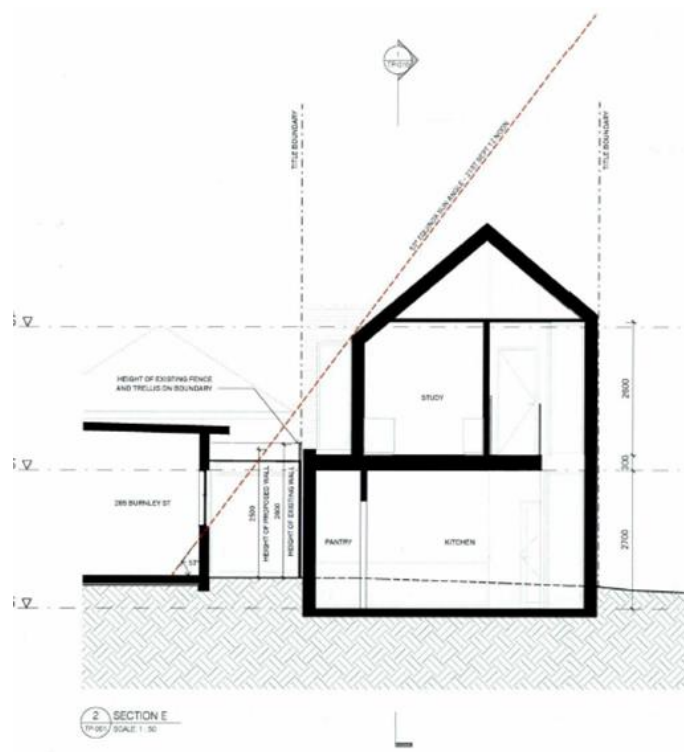
154. As can be seen, the only areas of non-compliance relate to the ground floor windows (Nos. 1, 4, 7, 10, 13 & 16). Of these windows, four are located opposite an existing 4.1m high brick wall. This wall will be replaced by a 1.8m high fence along this boundary, with the wall above this fence to abut the boundary at first and second floor. This will provide a break within the boundary for the ground floor windows. As these windows are south-facing, no direct sunlight will be affected. In addition, the level of non-compliance is relatively minor (0.2m) for all windows, with the exception of windows 1 and 4. The minor degree of non-compliance is unlikely to be perceivable.
155. In relation to adjacent window 1, only part of the window is opposite the non-compliant wall, the remaining section of the window is adjacent the recessed stairwell associated with Unit 1.

The stairwell is set back 1.37m from the boundary and allows for increased daylight to this window (and windows 2 and 3 above). The recessed stairwell will also provide a degree of articulation, thereby assisting in reducing visual impacts to the adjacent rooms. This outcome is considered acceptable. Similarly with window 4, the portion of wall immediately to the east of the window steps down in height from 7.7m to 5.6m, significantly reducing the daylight and visual impacts to the adjacent window 4. This outcome, having regard to the character of the area, is considered acceptable.

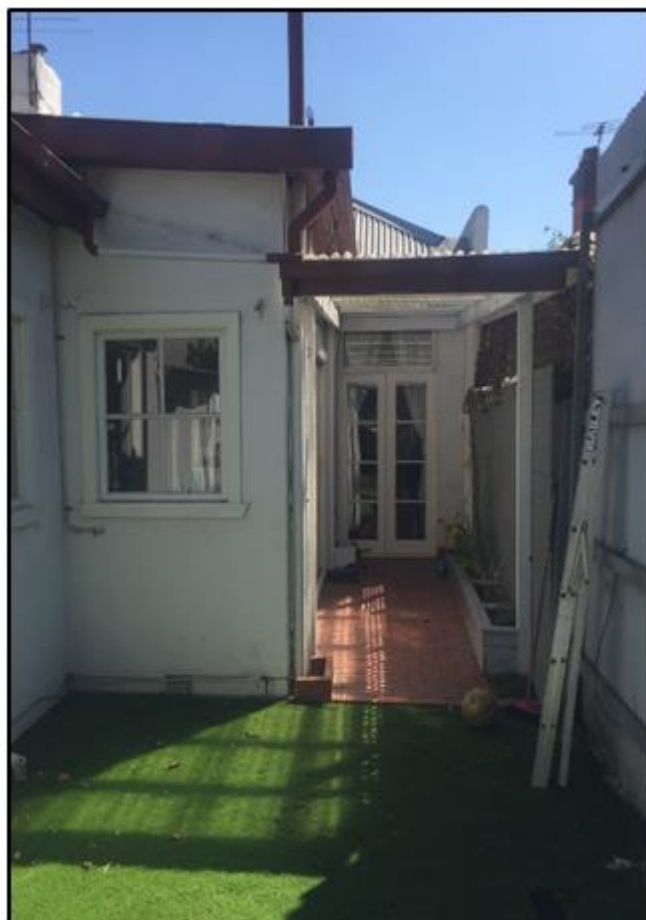
156. A higher section of wall will be raked away from windows 1-6, with this wall 10.4m in height and set back a total of 4.1m from the windows. This wall is associated with the roof terrace of Unit 1. To meet the Standard, a setback of 5.2m from the ground floor windows is required. The non-compliant setback is acceptable, given the raked angle of the wall away from the windows, thereby minimising impacts on daylight to these windows. The raked design will also be concealed by the main wall along this boundary, thereby limiting views from ground level to the top-most section of this wall.
157. The two eastern-most windows are currently located opposite a 3.1m high brick and metal wall. Whilst the setback of these windows (13 & 16) will also not comply, the variation to the Standard is minimal (0.2m). Given these windows are south-facing, with a lightcourt of 2.6m provided, this outcome is acceptable.

B20 – North-facing windows objective

158. There is one north-facing habitable room window and a set of north-facing glass doors within 3m of the site's southern boundary. These windows provide sunlight into an open-plan dining room and kitchen of the adjacent dwelling.
159. The existing context of built form opposite these windows has been outlined previously within this report, with a 2.1m-2.6m high fence and trellis extending along the boundary and a Perspex covering above. A photograph on the following page demonstrates that whilst a degree of solar access penetrates these windows, sunlight is somewhat inhibited by the existing built form along this boundary. This photograph was taken at 3pm on 4 October (within 2 weeks of the September equinox).
160. The development proposes to construct a boundary wall opposite these windows, to a height of 2.5m and 5.4m, with this wall abutting the existing fence/trellis along this boundary. The higher section of wall is associated with bedroom 2 of Unit 2, with a condition requiring this wall to be set back from the boundary (as discussed in Standard B18 – Walls on Boundaries). The remainder of the first-floor would be set back 1m from the windows and extend to a height of 4.74m above NGL. To comply with the setback requirements of this Standard, the ground floor wall should be set back 1m, with the first-floor set back 1.66m. Compliance with this Standard is not achieved.
161. In this instance, a variation to the Standard is considered reasonable, with the current context of the boundary and the compromised sunlight available to this space already restricting the degree of direct solar access to these windows. A diagram has also been provided that demonstrates that sunlight will be available to these windows at midday. This diagram (on the following page) clearly shows that the proposed 1m setback of the first-floor will continue to allow sunlight to access the majority of the north-facing windows at this time. Given the existing context of built form opposite these windows, this outcome is acceptable.



162. Further, an east-facing window provides additional daylight to this room. It is therefore reasonable to expect compliance with the less stringent Standard B19 (Daylight to existing windows), which would allow the 2.5m on-boundary wall and require a first-floor set back of 2.35m between the windows and the wall. With a total setback of 2.8m provided between these elements, compliance with Standard B19 is achieved.



B21 – Overshadowing open space objective

163. The shadow diagrams demonstrate the existing and proposed shadows cast within the SPOS to the south, with the removal of the existing garage at the rear of the subject site resulting in an improved outcome from 9am through to 1pm at the September equinox. The comparison in area to receive direct sunlight throughout the day is outlined in the table below.

| Time | Existing area of SPOS to receive direct sunlight | Proposed area of SPOS to receive direct sunlight | Difference |
|----------|--|--|------------|
| 9am | 38.6sqm | 45.8sqm | + 7.2sqm |
| 10am | 46.1sqm | 52.2sqm | + 6.1sqm |
| 11am | 49.4sqm | 52.9sqm | + 3.5sqm |
| 12midday | 51.4sqm | 53.2sqm | + 1.8sqm |
| 1pm | 52.5sqm | 53.2sqm | + 1sqm |
| 2pm | 51.6sqm | 50sqm | - 1.6sqm |
| 3pm | 50.1sqm | 45.7sqm | - 4.4sqm |

164. As can be seen, the area of SPOS to receive sunlight is relatively constant throughout the day. The only reductions occur from 2pm onwards, with the decrease in sunlight minimal. This outcome is acceptable and the objective of the Standard is met.

B22 – Overlooking objective

165. The standard states that a habitable room window should be located and designed to avoid direct views into the SPOS of an existing dwelling (or a habitable room window) within a horizontal distance of 9m (measured at ground level). Views should be measured within a 45 degree angle from the plane of the window and from a height of 1.7m above floor level. This Standard does not apply to windows associated with non-habitable rooms (i.e. bathroom, staircase).
166. At ground level, a south-facing living room window within Unit 2 will address SPOS to the south, separated by a 1.6m high fence. The east elevation indicates that the reduced ground level within the subject site will allow for appropriate shielding to the adjacent site, with the boundary fence 2.1m high on the subject site. This will appropriately limit views to the adjacent site.
167. The only other south-facing window associated with a habitable room is the first-floor study window of Unit 2. The first-floor plan indicates that this window will be screened to a height of 1.7m, however the design and transparency of the screening is not specified on the plans. The southern elevation notes that this window will be fully screened with solid translucent glazing; however the transparency of this glazing is not specified. To ensure that no unreasonable views are available into the adjacent SPOS, a condition can be added to any permit issued to ensure that this window complies with the objective of Standard B22 (Overlooking). It is noted that this is the only window available to this room; on that basis natural ventilation is also required. The condition can ensure that this window is operable above the 1.7m screening height required (measured from the finished floor level).
168. An east-facing window (bedroom 2) sits perpendicular with this study window, and may allow views into the adjacent SPOS. A similar condition regarding compliance with the objective of Standard B22 and a degree of operability to this window can be required via a condition, if a permit is to issue.
169. Views from the roof terrace of Unit 1 are suitably restricted to the roof of No. 285 Burnley Street, with the 'inset' location of the terrace ensuring that no views are available to the north.
170. There are two ground-floor habitable room windows directly addressing the apartment building to the north; a 1.8m high fence will extend along the boundary in front of these windows, thereby limited views to a reasonable extent.

171. An east-facing bedroom window (bedroom 3) at first-floor of Unit 1 may provide views into habitable room windows to the north, with a small number of windows just falling within the 45 degree angle. A living room window is located directly above this window, also facing east; however the floor plans indicate that a 1.7m high screen will be provided for this window. To ensure that no unreasonable overlooking will be available from either of these windows, a condition can be added to any permit issued to require the provision of screening for both of these windows to comply with the objectives of the Standard.
172. Views from the first-floor, east-facing bedroom window of Unit 2 to windows within No. 1 Dove Place will be suitably restricted through the provision of a 1.7m high opaque screen, however the transparency of the screen is not specified. If a permit is to issue, a condition can ensure that this screen has a maximum transparency of 25% and the Standard will be met.

B23 – Internal views objective

173. The design of the two dwellings ensures that there are no internal overlooking opportunities available between the two dwellings and the Standard is met.

B24 – Noise impacts objective

174. Potential noise impacts may be generated by the vehicle turntables and the garage door of Unit 1. Whilst detailed information on the specifications of the turntable have been provided, it is not clear what noises will be associated with these services. A bedroom is located directly adjacent to the turntable associated with Unit 1 (within the dwelling to the south). To ensure that no unreasonable noise impacts are generated by this mechanical equipment, an Acoustic Report can be required via a condition if a permit is to issue. This Acoustic Report should highlight the potential noise levels of the vehicle turntables and discuss whether attenuation measures are required.
175. Other noise generated by the two dwellings will be residential in nature; it is not considered that the proposed development of the site will generate unreasonable noise impacts on surrounding sites. The Scheme does not include reference to applicable noise control legislation, instead the *Environment Protection (Residential Noise) Regulations 2008* is the relevant legislation regarding residential noise impacts and how they can be controlled.

B25 – Accessibility objective

176. The dwelling entries of the ground floor of both dwellings will be accessible to people with limited mobility. The Standard will be met.

B26 – Dwelling entry objective

177. A degree of shelter and transitional space will be provided around the entrances to each dwelling. Whilst the entrance doors are not clearly visible from Burnley Street, a designated and clearly defined pedestrian pathway will direct occupants and visitors to each entrance, with a condition requiring the provision of a shared entrance gate closer to the front boundary. The objective of the standard is met.

B27 – Daylight to new windows

178. The majority of new habitable room windows will receive adequate daylight in accordance with the Standard, being oriented to face an outdoor space clear to the sky with a minimum area of 3sqm and minimum dimension of 1m. The following windows, whilst not fully complying with the Standard, will have access to the following;

- (a) Unit 1 – ground floor study window – this window will address the pedestrian pathway which provides access to Unit 2, and will be set back beneath the cantilevered first and second-floors. Daylight to this room will be restricted. However, given the limited size of this room, it is unlikely to be used for any other purpose (such as a main living room). Restricted daylight to this room is considered acceptable.
- (b) Unit 2 – ground floor bedroom window – similarly, this window will address the shared pedestrian pathway along the northern setback and will be covered by the levels above. However this room has access to a secondary light source; a 1.8sqm lightcourt adjacent to the southern boundary. Whilst the dimensions of the lightcourt do not meet the Standard, the provision of two light sources for the bedroom allows for an adequate outcome to be achieved.
- (c) Unit 1 – first-floor bedroom windows – bedrooms 2 & 3 of this dwelling will address a lightcourt adjacent to the northern boundary, with the dimensions of the lightcourt approximately 2.3sqm. It is noted that a condition has required the window of bedroom 2 to be screened to a height of 1.7m, to negate potential overlooking impacts. To increase the degree of daylight available to this bedroom, the condition will specifically outline that the screening to this window must be composed of opaque glazing. This will allow for an adequate degree of daylight to access this space. Whilst the dimensions of the lightcourt do not comply with the Standard, a variation is acceptable in this instance as the windows are associated with bedrooms, which are less reliant on natural daylight throughout the day.
- (d) Unit 1 – second floor kitchen window – the kitchen for this dwelling does not have a dedicated light source, with a north-facing window adjacent to the stairway providing a degree of light to this space, along with the large west-facing windows (set back approximately 9m from the kitchen). This outcome is not considered acceptable, with the provision of additional lighting necessary to improve the internal amenity of this room. If a planning permit is to issue, a condition can require the addition of a skylight above this space. When combined with the existing provisions, this outcome is acceptable and the objectives of the Standard are met.

B28 – Private open space objective

179. The dwellings will have the following access to SPOS;

- (a) Unit 1;
 - (i) Second-floor – 6sqm balcony, with a width of 1.2m;
 - (ii) Roof terrace – 7.5sqm.
- (b) Unit 2;
 - (i) Ground-floor – approximately 11.4sqm, with minimum dimensions ranging from 1.8m to 2.5m.

180. The balcony for Unit 1 falls short of the 8sqm referenced in the Scheme; as does the depth of this balcony (less than 1.6m). This outcome is not considered acceptable, with this space being the most convenient to access from the main habitable room. A minimum depth of at least 1.6m should be provided so this space is usable. If a permit is issued, this amendment can be required via a condition, with no alteration to the dwelling's front setback as a result.

181. The SPOS provided for Unit 2 is also quite minimal, particularly for a 3 bedroom dwelling; however in this instance it is acceptable given the minimum depth of 1.8m and the direct connection from the ground floor living room.

Whilst a screen will divide the SPOS from the car space at the rear, it is acknowledged that the at-grade design of the turntable could allow the car space to be used for recreation when not occupied. This offers an alternative area to the dwelling occupants and is a reasonable outcome. The objective of the Standard is met.

B29 – Solar access to open space objective

182. Direct solar access to both dwellings will be somewhat limited, given the orientation of the site and the location of higher built form to the north.

B30 – Storage objective

183. There is one designated internal storage space allocated to Unit 1, however the dimensions of this space are not detailed on the plans. There appears to be no separate storage space allocated for Unit 2. To ensure that this Standard is met, secure storage with minimum dimensions of 6 cubic metres should be provided for each dwelling. This can be facilitated via a permit condition, should one be issued.

B31 – Design detail objective

184. The proposed development is contemporary in design and incorporates modern materials, with the angled roof form referencing the more traditional dwellings along Burnley Street, whilst maintaining a modern response.
185. The use of timber throughout the development references weatherboard dwellings within the area and creates an integrated look, with the different shades and type of timber finishes providing a good degree of articulation to the dwelling façade. The objective of the Standard is met.

B32 – Front fences objective

186. The ground floor plan and the image provided on page 13 of this report indicate that a 0.9m high fence and pedestrian gate will be located along parts of the front boundary, with the southern section of the fence to be a sliding design to facilitate vehicle access from Burnley Street. A condition has required details of this fence to be shown consistently on all plans.
187. The height and transparency of the front fence is supported and corresponds well with adjoining fence heights and designs along Burnley Street. The objective of the Standard is met.

B33 – Common property objective

188. There is no common property proposed as part of the development.

B34 – Site services objectives

189. It is not clear whether separate mail-boxes have been provided for each dwelling; this detail will be required via a condition, if a permit is to issue. Dedicated bin-storage areas with convenient access are provided for each dwelling. Based on the condition, the Standard will be met.

Car Parking

190. The development requires a reduction of one car parking space in conjunction with Unit 2, with 3 on-site car parking spaces provided. The provision of these spaces is considered to adequately cater for the occupants of two, inner-city dwellings. There doesn't appear to be adequate space for on-site car parking associated with the existing dwelling, with the vehicle gates to Hofert Lane extremely narrow and no off-street access to the garage. Therefore the development is anticipated to result in an improvement to the current circumstances.

191. The site is in a good location for a dwelling with one on-site car space, being within walking distance of tram services operating along Swan Street and Bridge Road, and Burnley Railway Station. The site also has very good connectivity to the on-road bicycle network. Pedestrians and cyclists should be able to access the site conveniently. A condition has required the provision of at least one bicycle parking space per dwelling to be shown on the plans, consistent with the SDA submitted with the application.
192. From a traffic engineering perspective, the waiver of one car space for this proposal is considered appropriate in the context of the development and the surrounding area. Engineering Services has no objection to the reduction in the car parking requirement for this site.
193. The provision of a vehicle crossing for Unit 1 would result in the loss of one on-street car parking space on Burnley Street. This section of Burnley Street currently contains no parking restrictions. Previous observations carried out by Council Officers indicate that the on-street parking demand in Burnley Street and in the surrounding streets is moderate to high. Peak parking demand occurs in the evening, which is typically when residents return from work. The nearby Grand Hotel, located on the north-east corner of Burnley Street and Bliss Street may also be contributing the parking demand during the evenings.
194. Given the above, the loss of one on-street car space on Burnley Street should not be detrimental to the existing parking conditions, with Council Engineers raising no objection to the loss of one car space to allow for the construction of a vehicle crossing for this development. The addition of three on-site spaces is considered to off-set this loss to an acceptable degree.

Objector concerns

195. Concerns raised in the objections have either been discussed previously throughout this report, or are addressed below.

(a) Lack of integration with neighbourhood character;

Neighbourhood character has been discussed in paragraphs 81-86 of this report.

(b) Overdevelopment of the site and excessive height;

These aspects have been addressed in paragraphs 99-102 of this report.

(c) Loss of one on-street car parking space to Burnley Street due to proposed vehicle crossing;

Car parking has been discussed in paragraphs 190-194 of this report.

(d) Off-site amenity impacts (overshadowing, loss of daylight, overlooking, noise from roof terrace)

These aspects have been discussed in the paragraphs outlined below;

Overshadowing; 163-164

Loss of daylight to windows; 151-162

Overlooking; 165-172

Noise from roof terrace; 175

(e) Loss of property values to surrounding land.

Property values cannot be assessed as part of the planning process.

Conclusion

196. The proposal, subject to conditions outlined in the recommendation below, is an acceptable planning outcome that demonstrates compliance with the relevant Council policies. Based on the above report, the proposal complies with the relevant Planning Scheme provisions and planning policy and is therefore supported.

RECOMMENDATION

That having considered all objections and relevant planning policies, the Committee resolves to issue a Notice of Decision to Grant a Planning Permit PLN17/0180 for development of the land for the construction of two new dwellings, creation of access to a Category 1, Road Zone and a reduction in the car parking requirement at 283A Burnley Street, Richmond, subject to the following conditions:

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the decision plans prepared by Dean Dyson Architects (TP-001 – TP013) received by Council on 8 August 2017, but modified to show:
 - (a) All boundary setbacks and wall heights to be clearly dimensioned on the plans, with the dimensions and scale (1:100) to be consistent and correct;
 - (b) The location, height and appearance of the front fence on all relevant floor plans and elevations;
 - (c) Clarification of the material of the proposed 1.8m high fence along the northern boundary;
 - (d) A pedestrian gate, in line with the garage of Unit 1, to extend from the northern wall of Unit 1 to the northern boundary. This gate is to be the same height as the garage and composed of the same material, with a minimum of 50% transparency;
 - (e) The living room balcony of Unit 1 to be increased to a minimum depth of 1.6m, without any reduction to the front setback;
 - (f) A skylight above the kitchen of Unit 1;
 - (g) The eastern 1.2m length of bedroom 2 wall to be set back 1m from the southern boundary;
 - (h) The following to demonstrate compliance with the objective of Standard B22 (Overlooking objective) of Clause 55 of the Yarra Planning Scheme. If screening is required, this screening must be fixed to a height of 1.7m above the finished floor level and composed of opaque glazing, with a maximum transparency of 25%:
 - (i) South-facing study window of Unit 2;
 - (ii) East-facing bedroom window of Unit 1;
 - (iii) East-facing living room window of Unit 1;
 - (iv) East-facing bedroom window of Unit 2.
 - (i) Operability of all habitable room windows (above 1.7m where required to be fixed for privacy purposes);
 - (j) Designated storage spaces (minimum 6 cubic metres) for each dwelling;
 - (k) Separate mail-boxes for each dwelling;
 - (l) The following features as outlined in the Sustainable Design Assessment:
 - (i) The 2 x 2000L rainwater tanks on the ground floor plans, with a notation indicating that the tanks will be connected to toilets and irrigation within the development;
 - (ii) External clothes lines;
 - (iii) Separate 1.75kW solar PV systems for each dwelling;
 - (iv) Solar hot water system;
 - (v) Bicycle storage.
 - (m) Confirmation from the manufacturers of the vehicle turntables that the edge and surface of the turntables is adequate for pedestrians to traverse.
 - (n) The width and height of the garage door for Unit 1;
 - (o) The dimensions of the proposed vehicle entrance off Hofert Lane for Unit 2;
 - (p) The width and location of the Burnley Street crossover;

- (q) The dimensions of each car space and garage, including the dimensions and critical clearances of the two vehicle turntables.
- 2. The development as shown on the endorsed plans must not be altered (unless the Yarra Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
- 3. The provisions, recommendations and requirements of the endorsed Sustainable Design Assessment must be implemented and complied with to the satisfaction of the Responsible Authority.
- 4. Before the development commences, a Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Landscape Plan will be endorsed and will form part of this permit. The Landscape Plan must:
 - (a) show the type, location, quantity, size at time of planting, height at maturity and botanical names of all proposed plants; and,
 - (b) indicate the location of all areas to be covered by lawn or other surface materials; to the satisfaction of the Responsible Authority.
- 5. Before the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed Landscape Plan must be maintained by:
 - (a) implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Plan;
 - (b) not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose; and
 - (c) replacing any dead, diseased, dying or damaged plants, to the satisfaction of the Responsible Authority.
- 6. Before the development commences, an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The Acoustic Report must assess the following:
 - (a) Noise levels generated by the vehicles moving on and off the vehicle turntable;
 - (b) The level of structure borne noise from the turntable of Unit 1 to the bedroom of the southern dwelling.

The acoustic report must make recommendations to limit the noise impacts in accordance with the State Environment Protection Policy (Control of noise from industry, commerce and trade) No. N-1 (SEPP N-1), or any other requirement to the satisfaction of the Responsible Authority.
- 7. The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.
- 8. Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
- 9. Before the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, any damage to Council infrastructure resulting from the development must be reinstated:
 - (a) at the permit holder's cost; and
 - (b) to the satisfaction of the Responsible Authority.

10. Before the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, the vehicle turntables must be installed in accordance with the manufacturer's specifications by a suitably qualified person. The vehicle turntables must be maintained thereafter to the satisfaction of the Responsible Authority.
11. Before the development is occupied, or by such later date as approved in writing by the Responsible Authority, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority.
12. Before the buildings are occupied, or by such later date as approved in writing by the Responsible Authority, all new on-boundary walls must be cleaned and finished to the satisfaction of the Responsible Authority.

VicRoads Conditions 13-15

13. The crossover and driveway to Burnley Street Richmond must be constructed to the satisfaction of the Roads Corporation and/or the Responsible Authority and at no cost to the Roads Corporation prior to the construction of the proposed dwellings hereby approved.
14. The vehicle crossing to Burnley Street Richmond and associated works must be provided and available for use and be:
 - (a) Formed to such levels and drained so that they can be used in accordance with the plan.
 - (b) Treated with an all-weather seal or some other durable surface.
15. The vehicle crossing must be maintained in a fit and proper state so as not to compromise the ability of vehicles to enter and exit the site in a safe manner or compromise operational efficiency of the road or public safety.
16. Except with the prior written consent of the Responsible Authority, demolition or construction works must not be carried out:
 - (a) Monday-Friday (excluding public holidays) before 7 am or after 6 pm;
 - (b) Saturdays and public holidays (other than ANZAC Day, Christmas Day and Good Friday) before 9 am or after 3 pm; or
 - (c) Sundays, ANZAC Day, Christmas Day and Good Friday at any time.
17. Before the development commences, a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must provide for:
 - (a) a pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure;
 - (b) works necessary to protect road and other infrastructure;
 - (c) remediation of any damage to road and other infrastructure;
 - (d) containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land,
 - (e) facilities for vehicle washing, which must be located on the land;
 - (f) the location of loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street;
 - (g) site security;
 - (h) management of any environmental hazards including, but not limited to,:
 - (i) contaminated soil;
 - (ii) materials and waste;
 - (iii) dust;
 - (iv) stormwater contamination from run-off and wash-waters;

- (v) sediment from the land on roads;
- (vi) washing of concrete trucks and other vehicles and machinery; and
- (vii) spillage from refuelling cranes and other vehicles and machinery;
- (i) the construction program;
- (j) preferred arrangements for trucks delivering to the land, including delivery and unloading points and expected duration and frequency;
- (k) parking facilities for construction workers;
- (l) measures to ensure that all work on the land will be carried out in accordance with the Construction Management Plan;
- (m) an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
- (n) an emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced;
- (o) the provision of a traffic management plan to comply with provisions of AS 1742.3-2002 Manual of uniform traffic control devices - Part 3: Traffic control devices for works on roads.

18. This permit will expire if:

- (a) the development is not commenced within two years of the date of this permit; or
- (b) the development is not completed within four years of the date of this permit.

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

Notes:

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

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

A vehicle crossing permit is required for the construction of the vehicle crossing. Please contact Council's Construction Management Branch on 9205 5585 for further information.

All future property owners, residents and occupiers residing within the development approved under this permit will not be permitted to obtain resident or visitor parking permits.

VicRoads Note:

The proposed development requires the construction of a crossover. Separate approval under the Road Management Act for this activity may be required from VicRoads (the Roads Corporation). Please contact VicRoads prior to commencing any works.

CONTACT OFFICER: Lara Fiscalini
TITLE: Senior Statutory Planner
TEL: 9205 5372

Attachments

- 1 PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment
- 2 PLN17/0180 - 283A Burnley Street, Richmond - Existing survey plan
- 3 PLN17/0180 - 283A Burnley Street, Richmond - Urban Design Referral Comments
- 4 PLN17/0180 - 283A Burnley Street Richmond - Engineering comments
- 5 PLN17/0180 - 283A Burnley Street, Richmond - SLR Acoustic Referral Comments
- 6 PLN17/0180 - 283A Burnley Street, Richmond - Amended Sketch Plans

Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment

283a BURNLEY STREET, RICHMOND.

The proposed development aims to demolish the existing single storey property at 283a Burnley Street and re-build two design focused high quality town houses.

The development proposes to re-join the site with two highly considered and well design family townhouses. Townhouse one will directly address Burnley Street and create a visual transition between the triple storey apartment block to the North and single storey terrace to the South. The Townhouse at the rear will be a double storey insertion and face Hallet Lane.

Each Townhouse will be filled with natural light throughout the day and have been carefully designed to provide a series of functionally spaces. The proposal aims to be sympathetic of the local context and adjacent properties. The architectural form maintains a traditional pitched character to form a visual connection and aesthetic with the character of the local area.

The design will introduce a contemporary and contextually sensitive piece of architecture to Burnley Street to further enhance the area and streetscape.



| PROJECT DRAWING REGISTER | | |
|--------------------------|-------------------------------|------------------|
| SHEET NUMBER | SHEET NAME | CURRENT REVISION |
| TP-000 | NOTES & DRAWING LIST | |
| TP-001 | SITE PLAN | |
| TP-002 | GROUND FLOOR PLAN | |
| TP-003 | FIRST FLOOR PLAN | |
| TP-004 | SECOND FLOOR PLAN | |
| TP-005 | ROOF PLAN | |
| TP-006 | WEST & EAST ELEVATIONS | |
| TP-007 | NORTH & SOUTH ELEVATIONS | |
| TP-008 | SECTION A-B | |
| TP-009 | SECTION C | |
| TP-010 | SECTION D-E | |
| TP-011 | SECTION F & G TRANSITION VIEW | |
| TP-012 | SECTION H-I | |
| TP-013 | SECTION J-K | |
| TP-014 | SECTION L-M | |
| TP-015 | SECTION N-O | |
| TP-016 | SECTION P-Q | |
| TP-017 | SECTION R-S | |
| TP-018 | SECTION T-U | |



Readers' Comments and queries should be directed to the project manager. Comments should be provided in writing and should be submitted to the project manager. Comments should be submitted to the project manager. Comments should be submitted to the project manager.

Rev. Date. Desc. Issue

TOWN PLANNING

Project: 283a Burnley Street, Richmond

Project No: 170714

283a Burnley Street, Richmond

Title: NOTES & DRAWING LIST

Scale: 1:100

Dwg No: TP-000

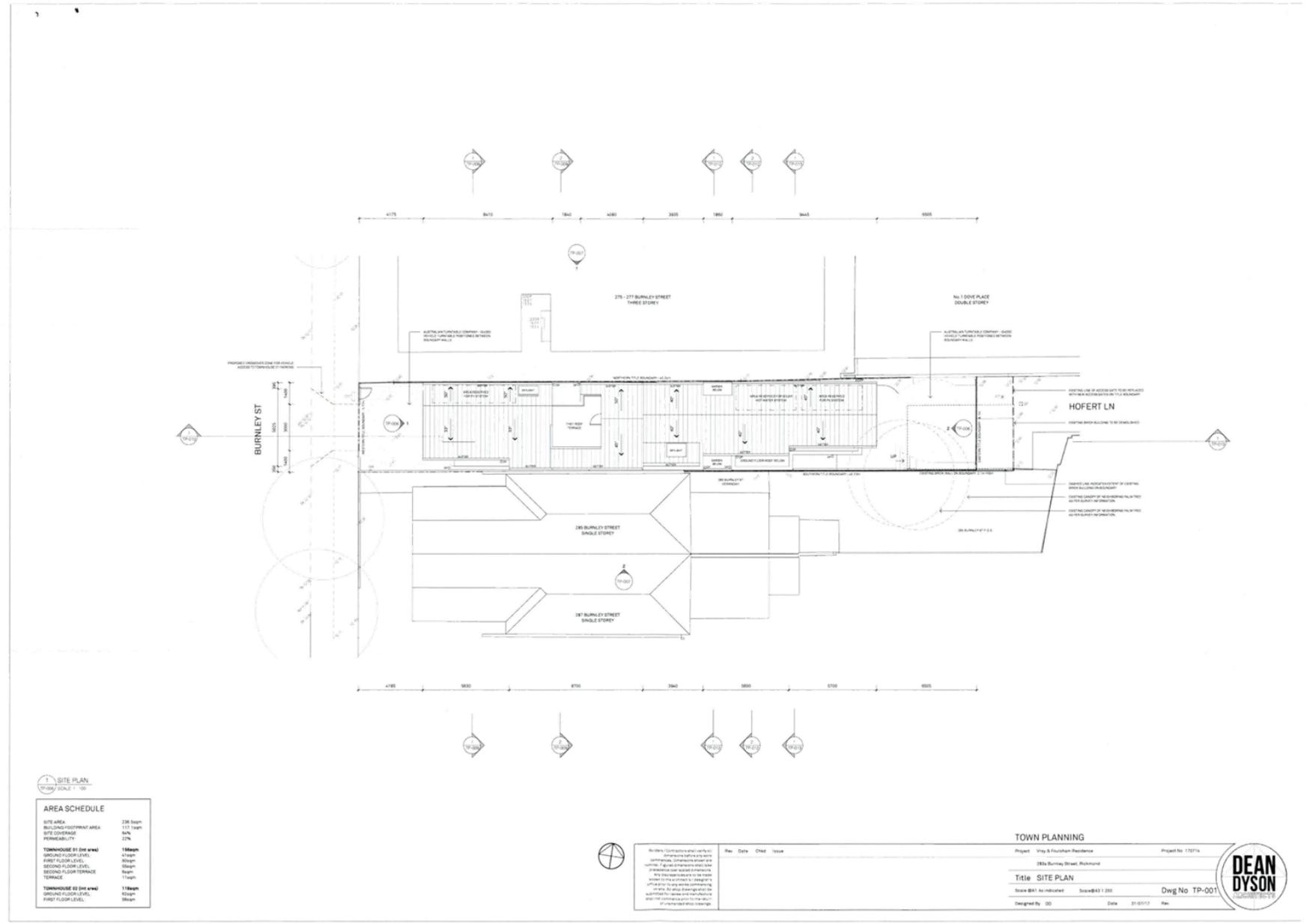
Designed By: 00

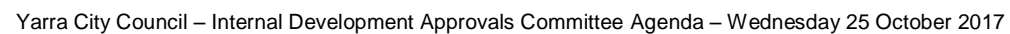
Date: 15/07/17

Rev:

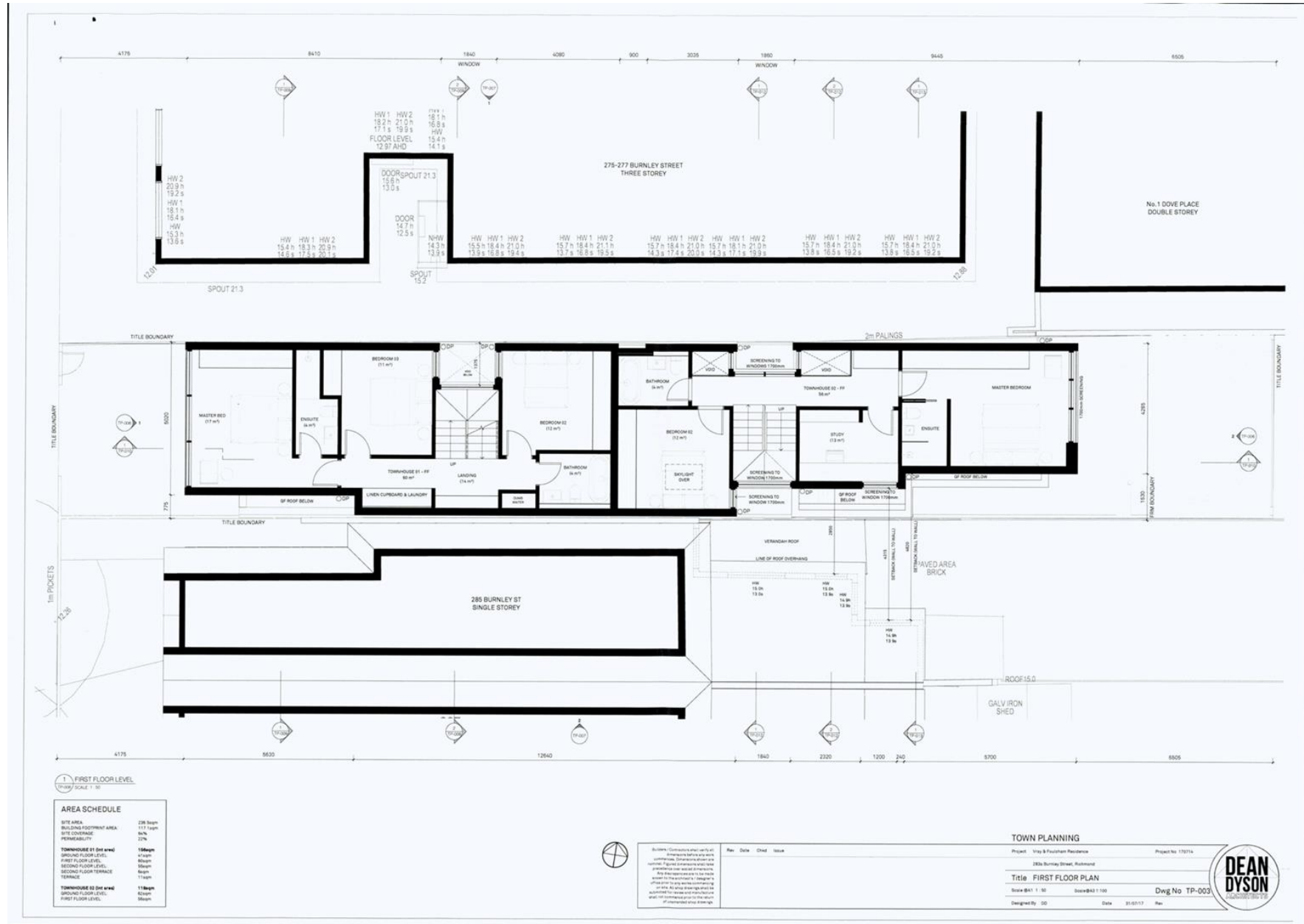


Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment

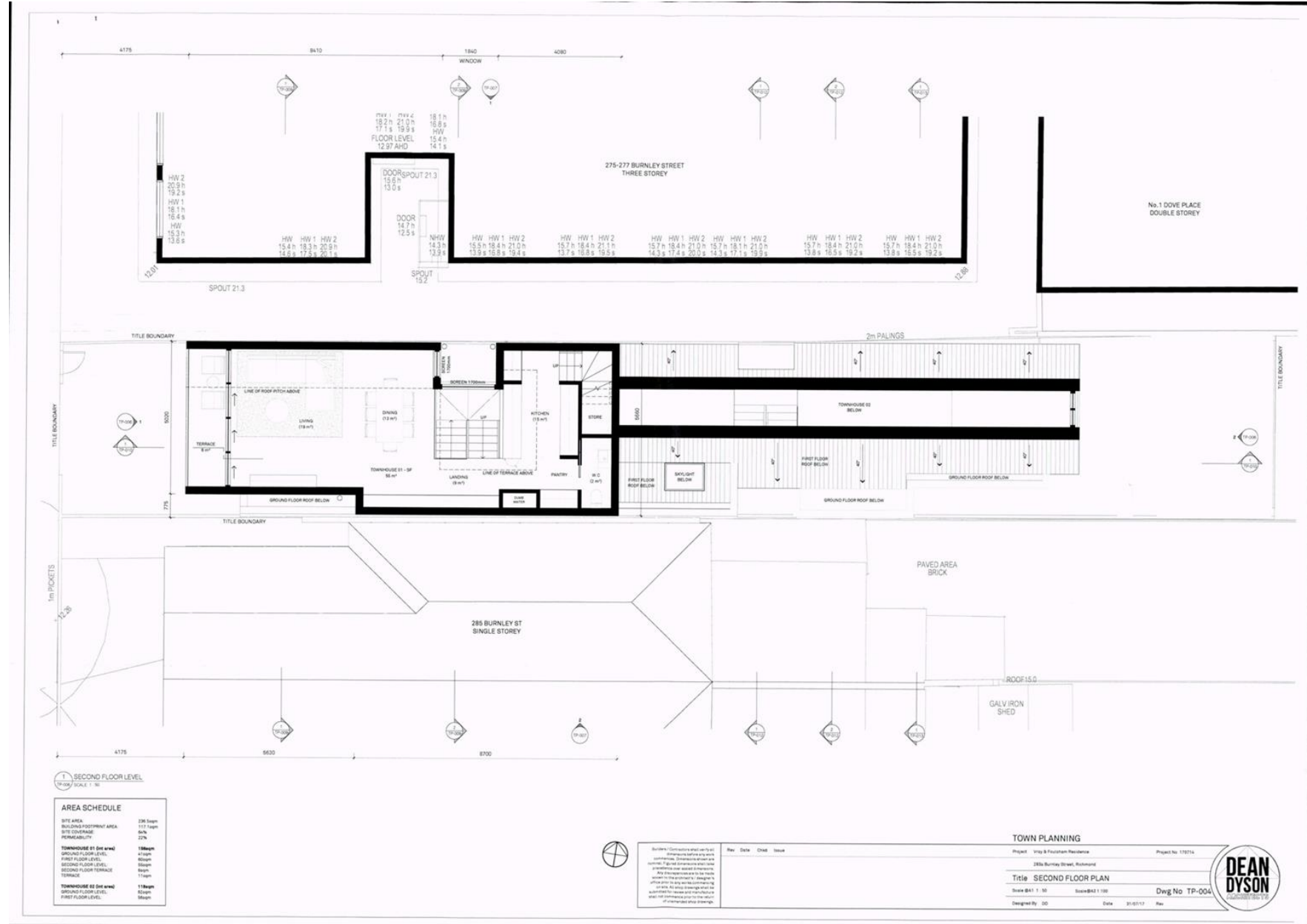




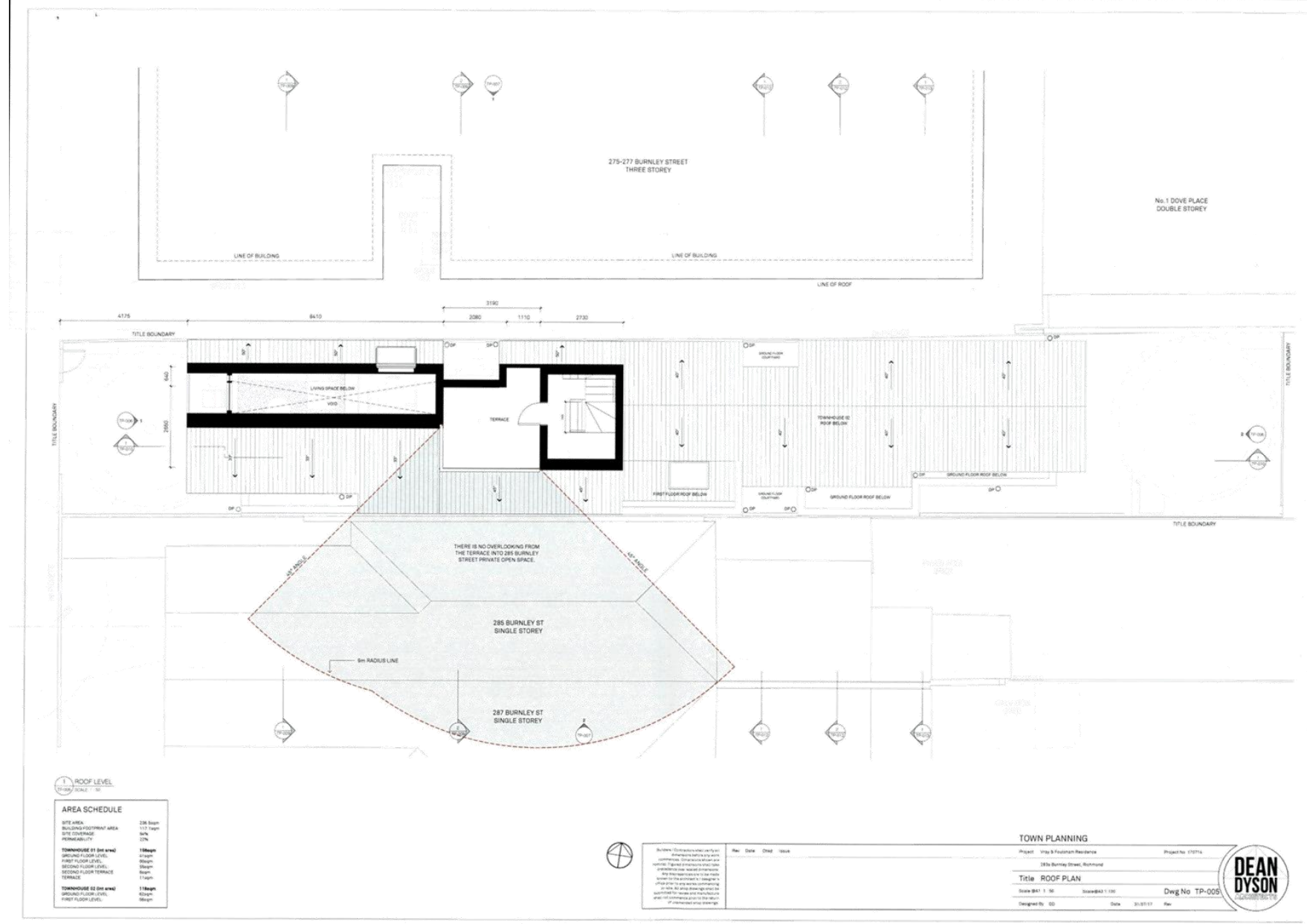
Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment



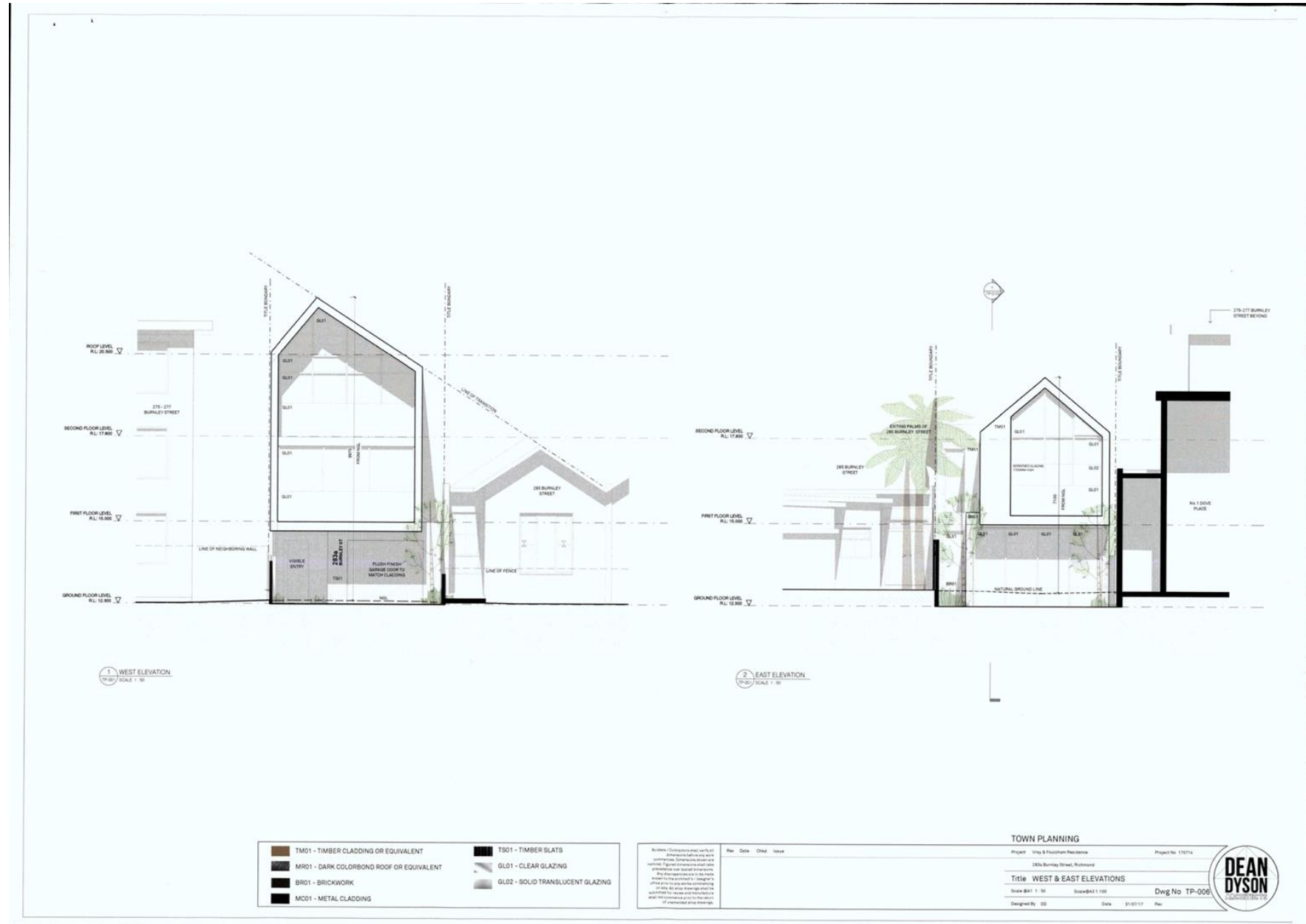
Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment



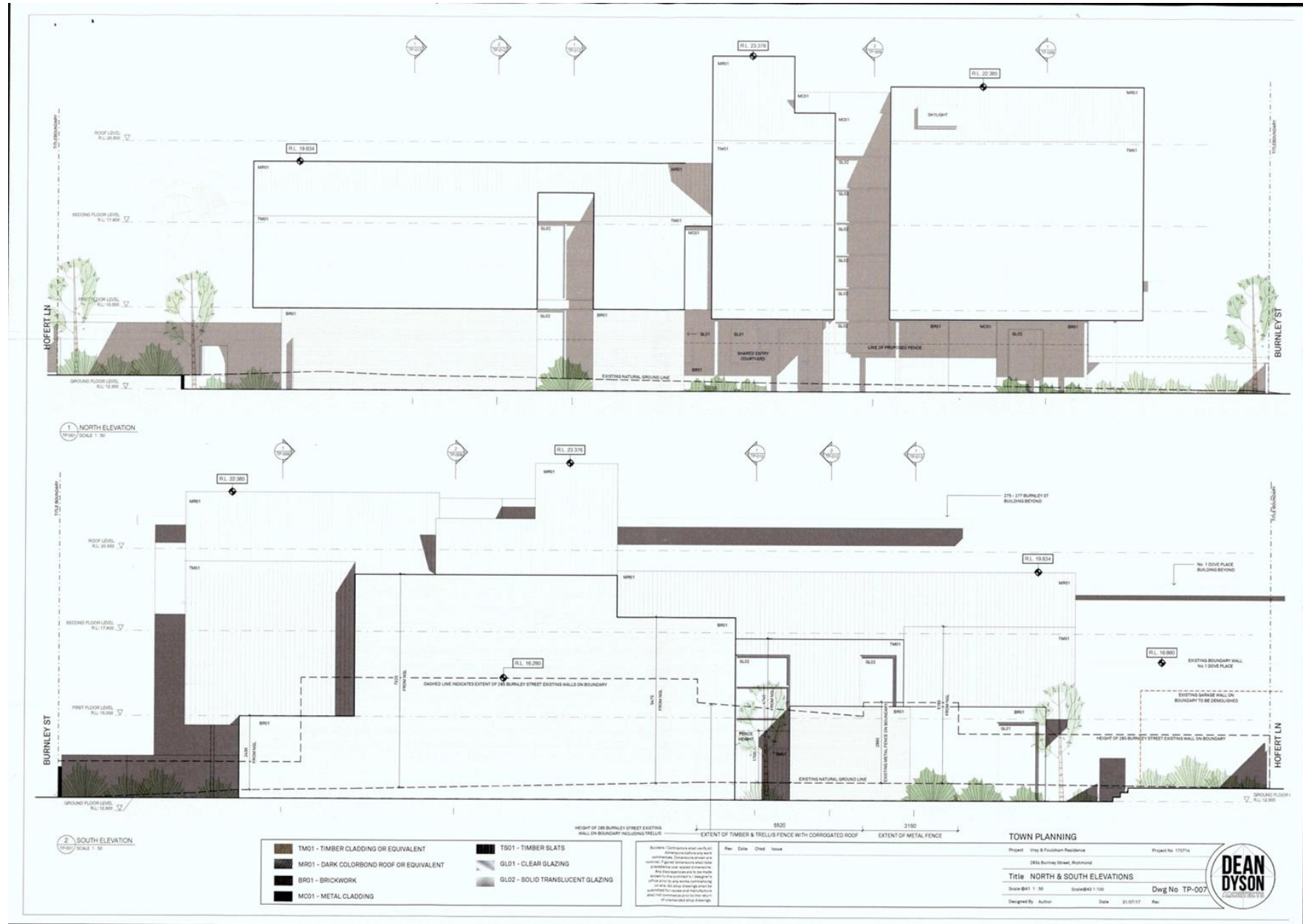
Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment



Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment

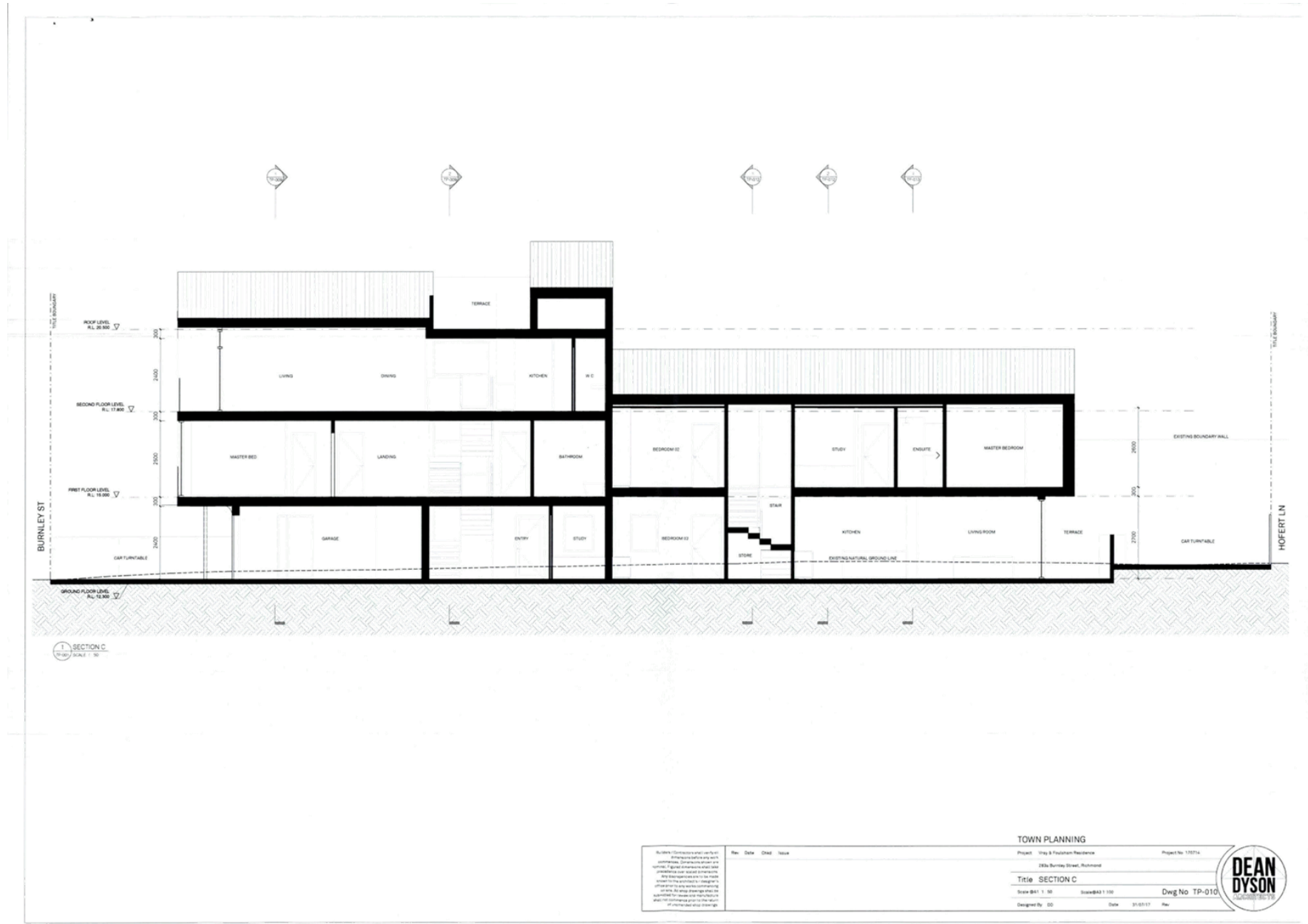


Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment

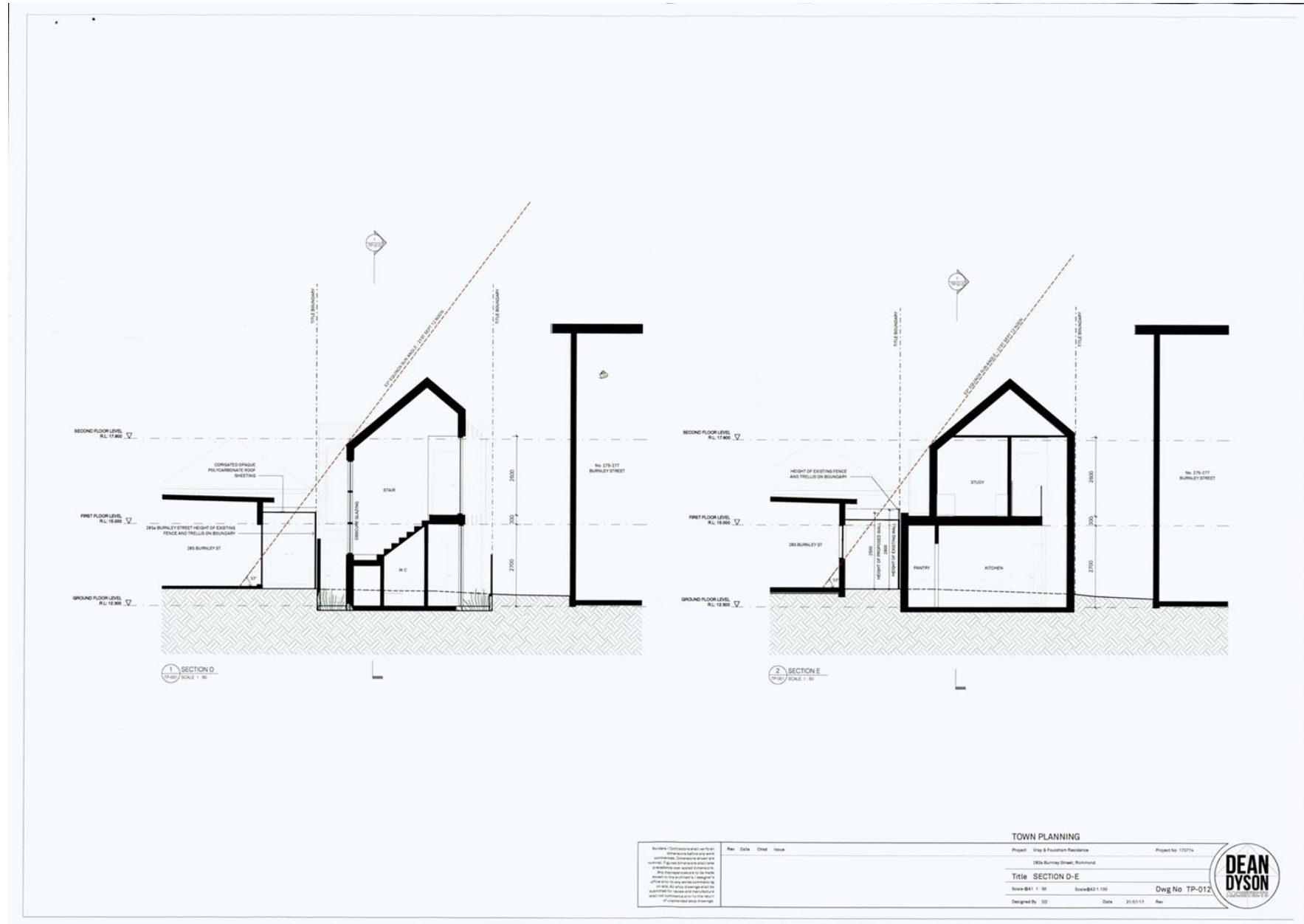




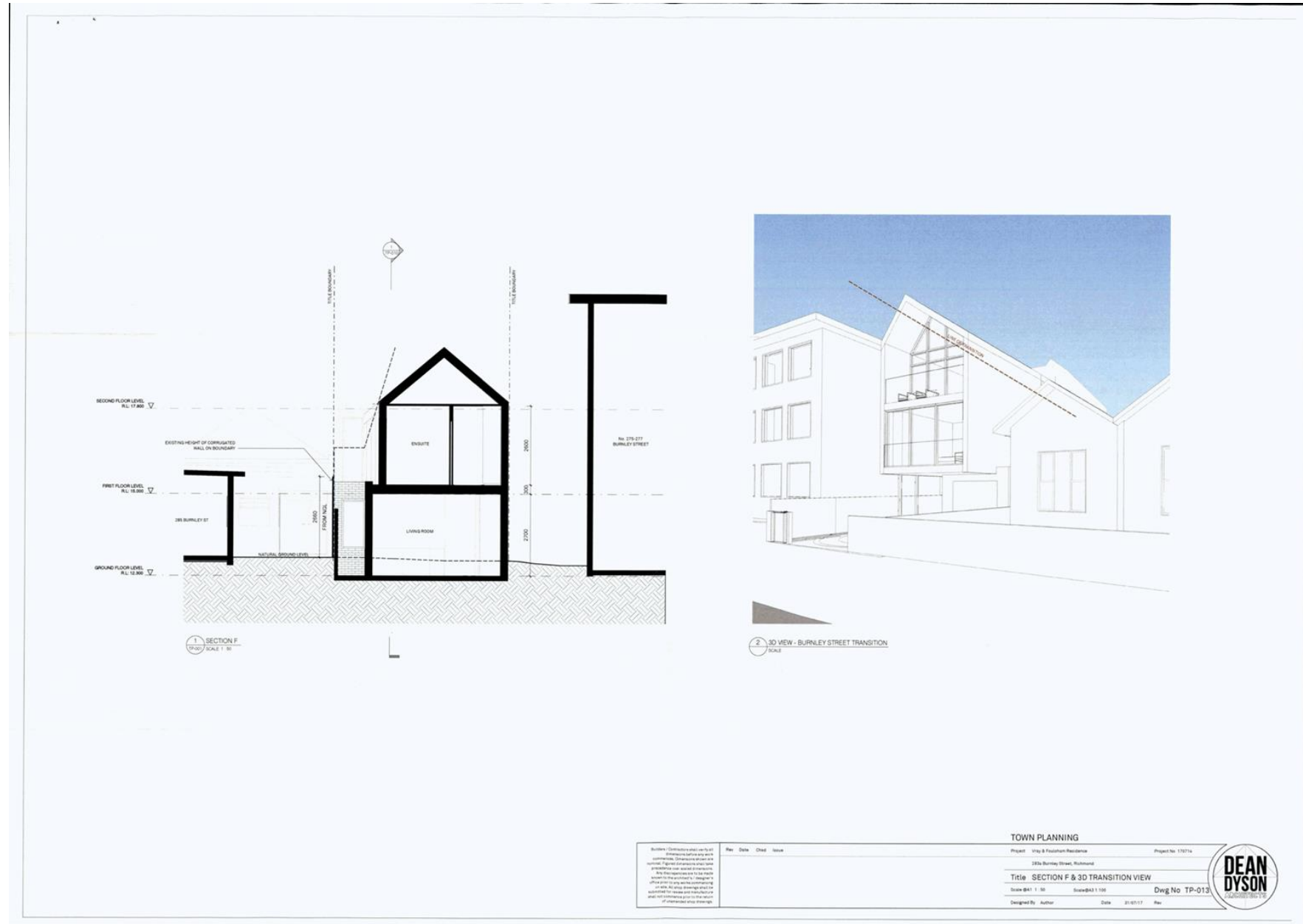
Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment



Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment



Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment

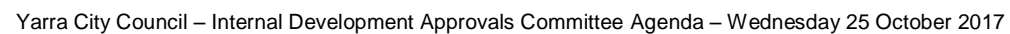


Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment

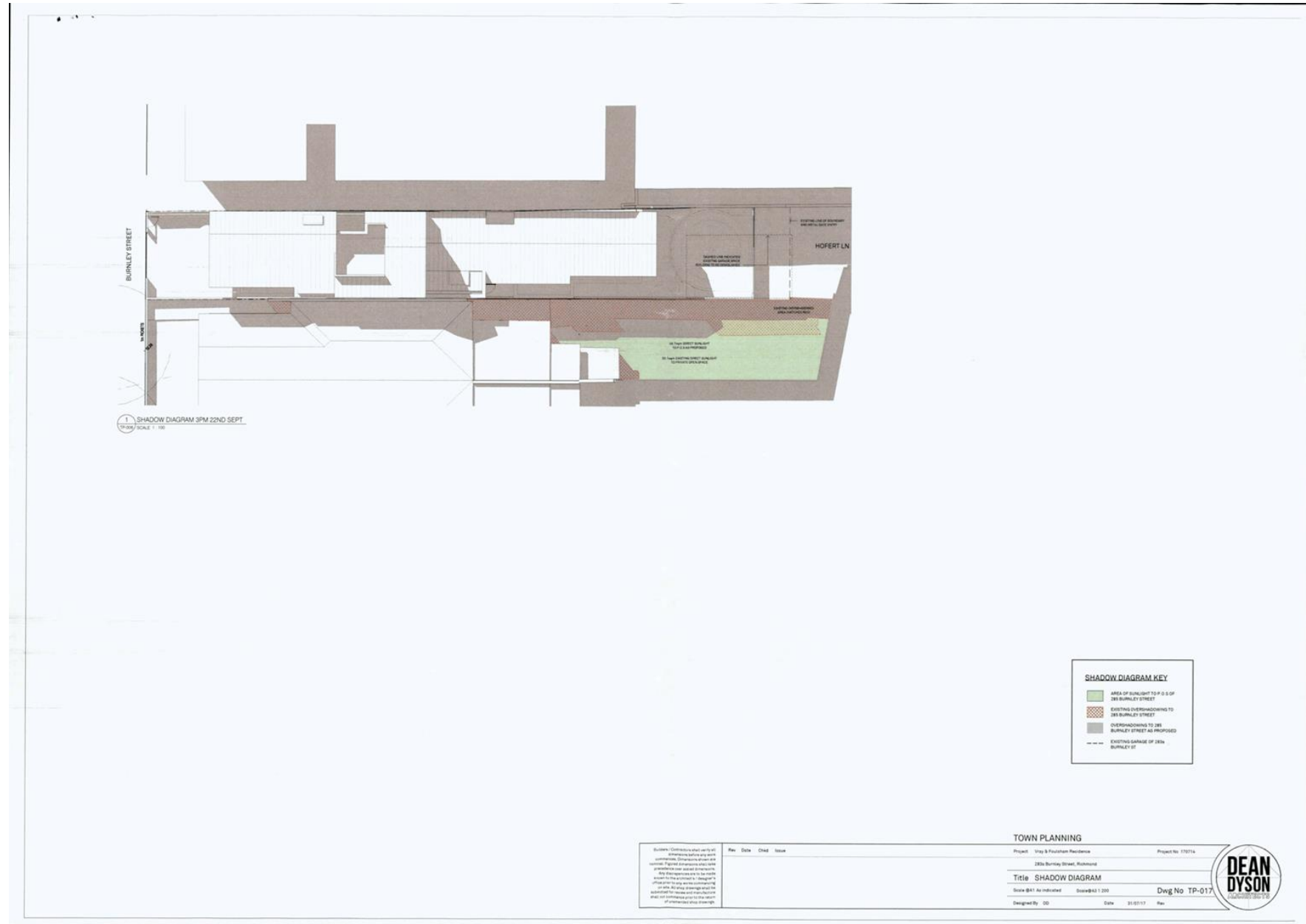


Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment

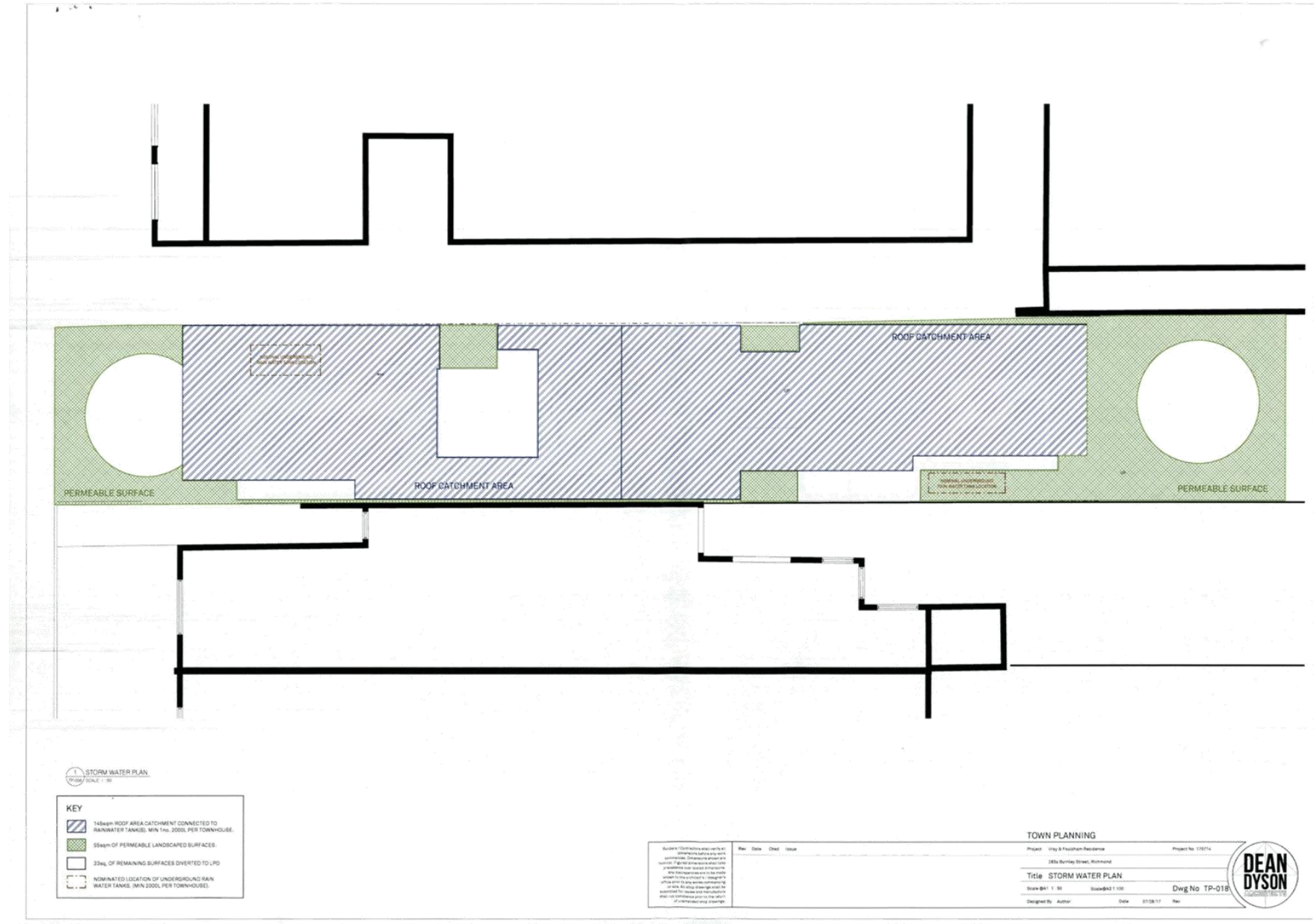




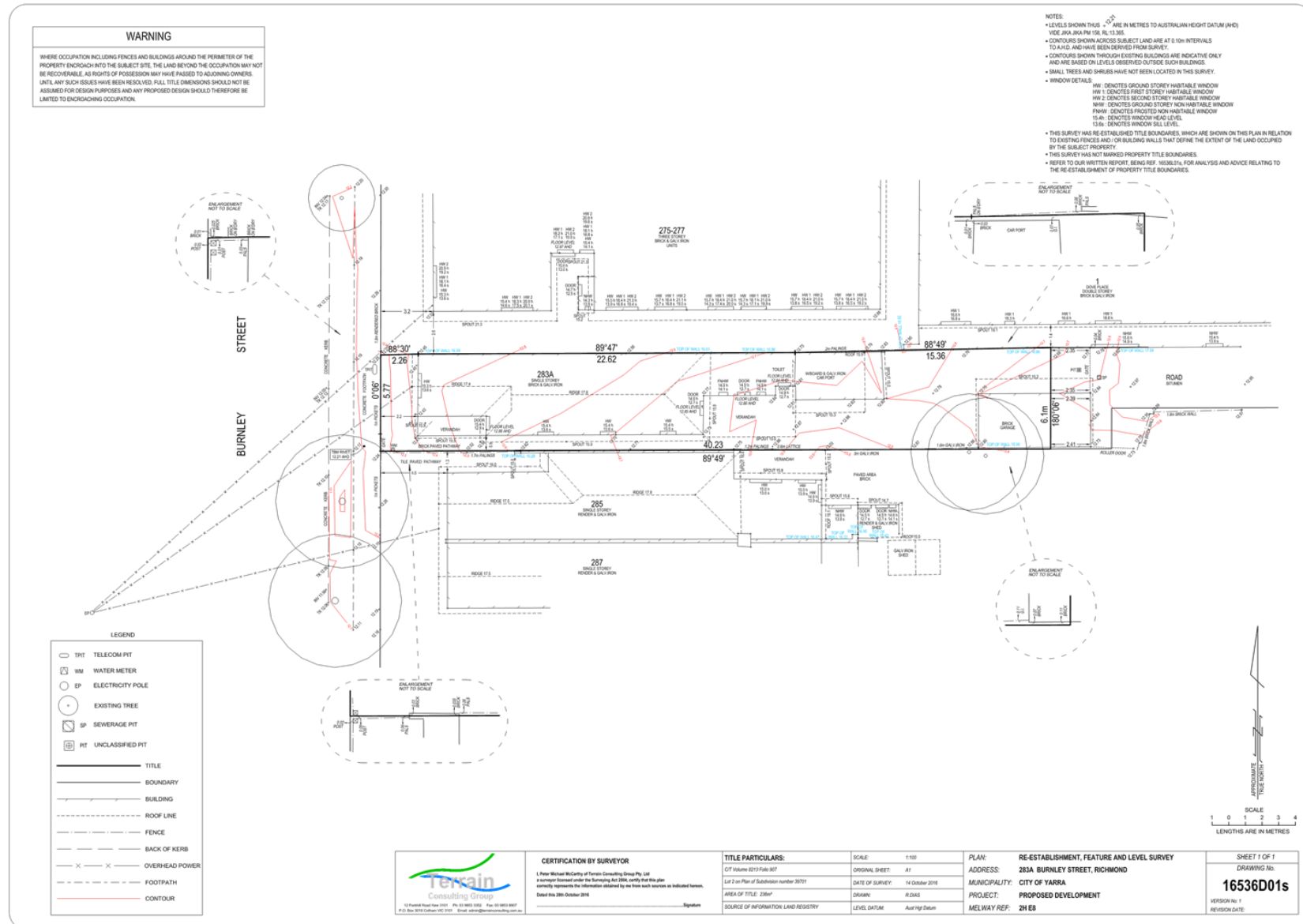
Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment



Attachment 1 - PLN17/0180 - 283A Burnley Street Richmond - Section 57A Amendment



Attachment 2 - PLN17/0180 - 283A Burnley Street, Richmond - Existing survey plan



Attachment 3 - PLN17/0180 - 283A Burnley Street, Richmond - Urban Design Referral Comments



File Note

Date: 11 October 2017

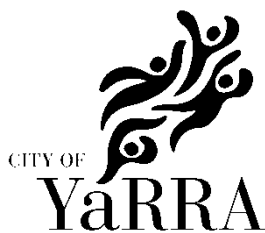
Property Address: 283A Burnley Street, Richmond

Application No: PLN17/0180

Urban Design Comments – Hayley McNicol

COMMENTS:

- The height and transparency of the front fence (as shown on the render) is supported, this may be either timber or metal in material, with the colour to integrate with other materials and finishes to be used as part of the development.
- Whilst the provision of a garage as the ground floor façade is not ideal, the use of timber battens and the setback from the street reduce the prominence of this feature. The use of timber in particular is supported, along with the different colour of timber, as this references the upper level façade whilst not competing with it.
- Visibility to the pedestrian entrances would be enhanced if a separate pedestrian gate was constructed in line with the garage door. This gate will provide clear identification for the entrances. The gate should be the same height as the garage door, but permeable, so that views to the pedestrian door of Unit 2 are visible. The gate should be timber, to match the garage door.
- Landscaping in the front setback should be conditioned.
- To improve the dwelling's integration with the street, the main living areas of Unit 1 should be swapped to the first floor, with bedrooms at the top level. This will allow better passive surveillance with the dwelling, with the first-floor more likely to be illuminated at night – thereby creating a presence in the streetscape.

Attachment 4 - PLN17/0180 - 283A Burnley Street Richmond - Engineering comments

MEMO

To: Lara Fiscalini
From: Artemis Bacani
Date: 22 June 2017
Subject: Application No: PLN17/0180
 Description: Addendum - Construction of Two Triple-Storey Dwellings
 Site Address: 283A Burnley Street, Richmond

I refer to the above Planning Application received on 23 May 2017 and the accompanying Traffic Engineering Assessment report prepared by Ration Consultants in relation to the development at 283A Burnley Street, Richmond.

Further to the comments provided by the Engineering Services unit on 22 June 2017, the Statutory Planning unit have requested for comments in relation to the loss of an on-street car space in Burnley Street as a result of a proposed vehicle crossing for this development. Council's Engineering Services unit provides the following information:

DEVELOPMENT LAYOUT DESIGN

Layout Design Assessment

| Item | Assessment |
|---|--|
| Access Arrangements – Burnley Street | |
| Vehicle Entrance Width | The vehicle entrance on the western boundary of the site has a doorway width of 3.0 metres. |
| Garage Doorway – Townhouse 01 | Not dimensioned on the drawings. |
| Vehicle Crossing | The position and width of the proposed vehicle crossing is not shown on the drawings. |
| Car Parking Modules | |
| Garage – Townhouse 01 | The internal dimension of the garage is 3.2 metres wide by 6.0 metres depth which satisfies AS 2890.1:2004. |
| Swept Path Diagrams | The swept path diagrams provided by Ratio Consultants for the B99 design vehicle satisfactorily demonstrates vehicle entry and exit movements into and out of the garage and car space for Townhouse 01. |

Layout Design Assessment

Attachment 4 - PLN17/0180 - 283A Burnley Street Richmond - Engineering comments

| Item | Assessment |
|--|--|
| Access Arrangements – Hofert Lane | |
| Vehicle Entrance Width | The vehicle entrance on the eastern boundary of the site has a doorway width of 3.6 metres. |
| Garage Doorway – Townhouse 02 | Not dimensioned on the drawings. |
| Car Parking Modules | |
| Garage – Townhouse 02 | The internal dimension of the garage for Townhouse 02 is 3.5 metres wide by 6.0 metres depth which satisfy <i>Design standard 2 – Car parking spaces</i> of Clause 52.06-8. |
| Swept Path Diagrams | The swept path diagrams provided by Ratio Consultants for the B99 design vehicle satisfactorily demonstrates vehicle entry and exit movements into and out of the garage and car space for Townhouse 02. |

Design Items to be Addressed

| Item | Details |
|--------------------------------------|---|
| Garage Doorway | The doorway for each garage must be dimensioned on the drawings. |
| Vehicle Crossing | The designer must show the position of the proposed vehicle crossing. |
| Internal Dimension of Garages | The width and depth of each garage must be shown on the drawings. |
| Vehicle Turntable | The dimensions and critical clearances of the turntable must be shown on the drawings. |
| | The applicant is to obtain written confirmation from the manufacturer that the edge and surface of the turntable is adequate for pedestrians to traverse. |

Capital Works Programme

A check of the Capital Works Programme for 2016/2017 indicates that no infrastructure works have been approved or proposed within the area of the site at this time.

LOSS OF ON-STREET CAR PARKING IN BURNLEY STREET

The provision of a vehicle crossing for this development would result in the loss of one on-street car space along the east side of Burnley Street. This section of Burnley Street currently contains no parking restrictions. Previous observations carried out by Council officers indicate that the on-street parking demand in Burnley Street and in the surrounding streets is moderate to high. Peak parking demand typically occurs in the evenings when residents return home from work. The nearby Grand Hotel, located on the north-east corner of Burnley Street and Bliss Street may also be contributing the parking demand during the evening times.

Attachment 4 - PLN17/0180 - 283A Burnley Street Richmond - Engineering comments

Given the above, the loss of one on-street car space on the east side of Burnley Street is considered satisfactory and should not be detrimental on the existing parking conditions in Burnley Street.

Engineering Services have no objections to the loss of one car space to allow for the construction of a vehicle crossing for this development.

IMPACT ON COUNCIL ROAD ASSETS

The construction of the new building, the provision of underground utilities and construction traffic servicing and transporting materials to the site will impact on Council assets. Trenching and areas of excavation for underground services invariably deteriorates the condition and integrity of footpaths, kerb and channel, laneways and road pavements of the adjacent roads to the site.

It is essential that the developer rehabilitates/restores laneways, footpaths, kerbing and other road related items, as recommended by Council, to ensure that the Council infrastructure surrounding the site has a high level of serviceability for residents and visitors of the site.

ENGINEERING CONDITIONS

The following items are to be included in the Planning Permit for this site:

Civil Works – Burnley Street

- Upon the completion of all building works and connections for underground utility services, the footpath immediately outside the property's Burnley Street road frontage must be stripped and re-sheeted to Council's satisfaction and at the developer's expense.

Civil Works – Hofert Lane

- Any damage in Hofert Lane during the construction works must be repaired to the satisfaction of Council.

Road Asset Protection

- Any damaged roads, footpaths and other road related infrastructure adjacent to the development site as a result of the construction works, including trenching and excavation for utility service connections, must be reconstructed to Council's satisfaction and at the developer's expense.

Impact of Assets on Proposed Development

- Any services poles, structures or pits that interfere with the proposal must be adjusted, removed or relocated at the owner's expense after seeking approval from the relevant authority.
- Areas must be provided inside the property line and adjacent to the footpath to accommodate pits and meters. No private pits, valves or meters on Council property will be accepted.

NON-PLANNING ADVICE FOR THE APPLICANT

Legal Point of Discharge

- The applicant must apply for a Legal Point of Discharge under Regulation 610 – Stormwater Drainage of the *Building Regulations 2006* from Yarra Building Services unit. Any storm water drainage within the property must be provided and be connected to the nearest Council pit of adequate depth and capacity (legal point of discharge), or to Council's satisfaction under Section 200 of the *Local Government Act 1989* and Regulation 610.

Public Lighting

- The developer must ensure that light projected from any existing, new or modified lights does not spill into the windows of any new dwellings or any existing nearby residences. Any light shielding that may be required shall be funded by the Permit Holder.

Attachment 4 - PLN17/0180 - 283A Burnley Street Richmond - Engineering comments

Regards

Artemis Bacani
Roads Engineer
Engineering Services Unit

Attachment 5 - PLN17/0180 - 283A Burnley Street, Richmond - SLR Acoustic Referral Comments



Date: 16 October 2017

Property Address: 283A Burnley Street, Richmond

Application No: PLN17/0180

Referral comments on potential noise impacts

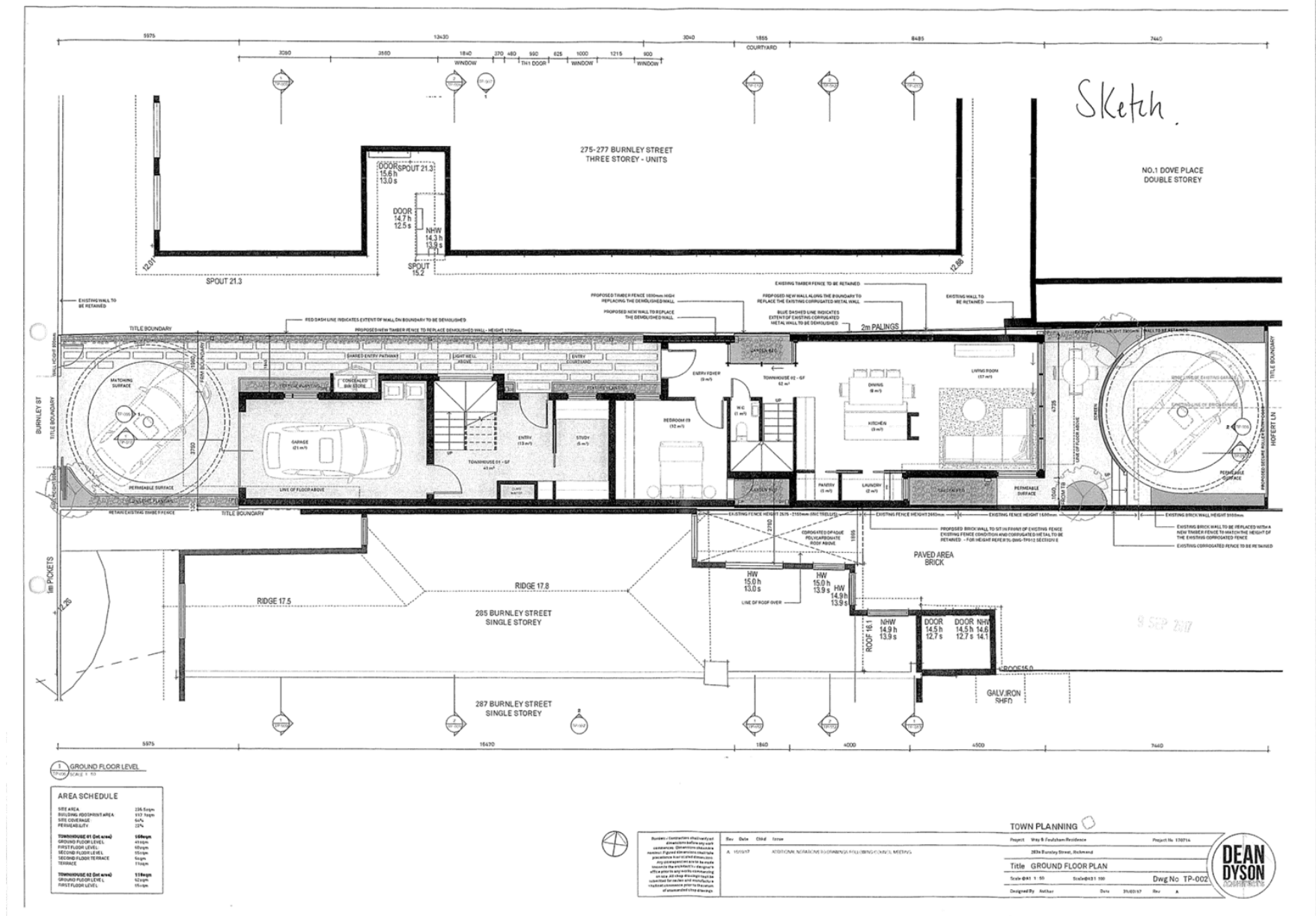
Dianne Williams
SLR Consulting

COMMENTS:

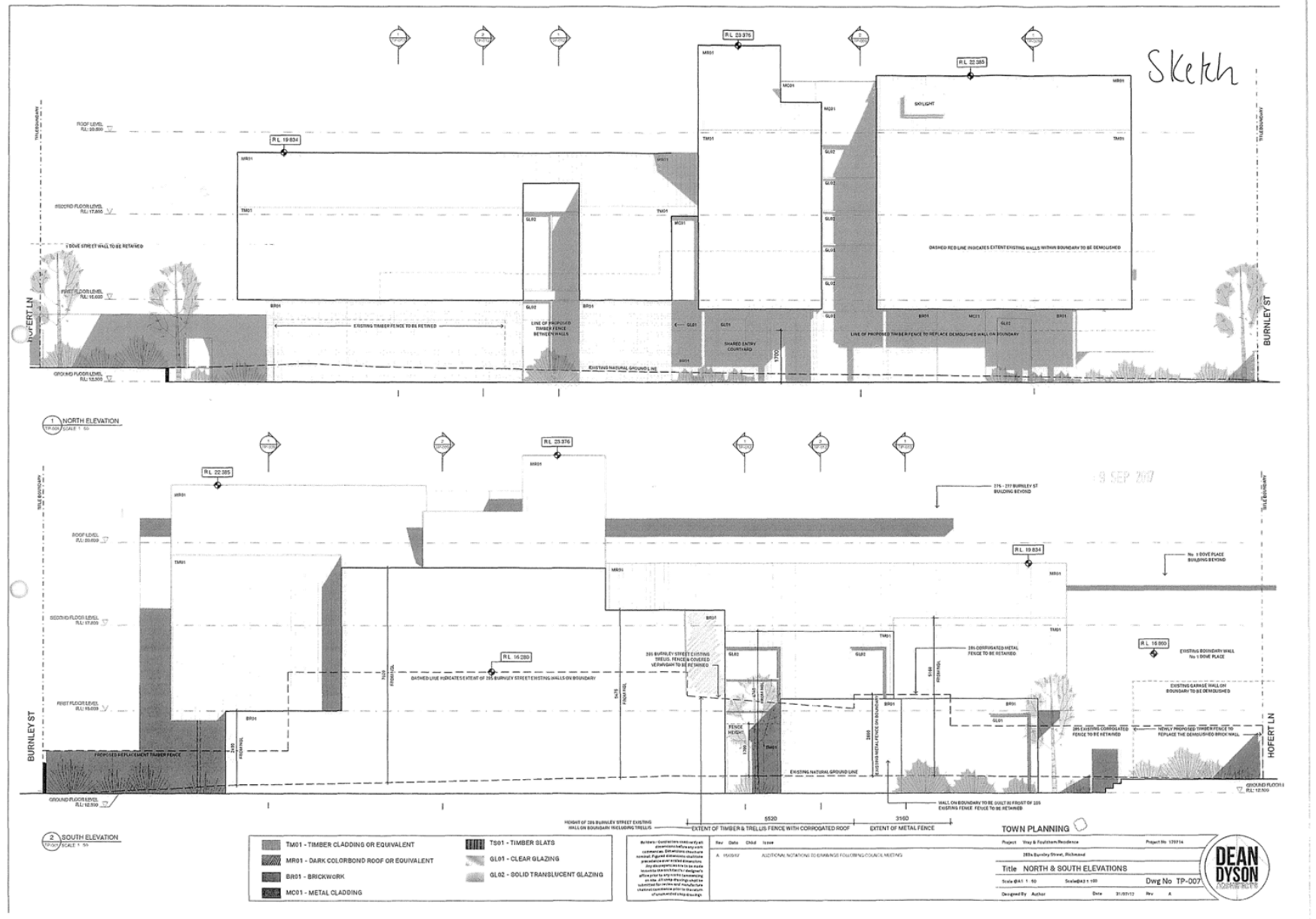
I would mostly be concerned about the noise made by the vehicle getting on and off the turntable (and idling while on it), as this is likely to be louder than the turntable itself. Noise needs to comply with SEPP N-1 and sleep disturbance targets.

Structureborne noise from the turntable to the dwelling is a risk if they are rigidly connected (i.e. part of the same structure), and I would want to see this also addressed if that were the case.

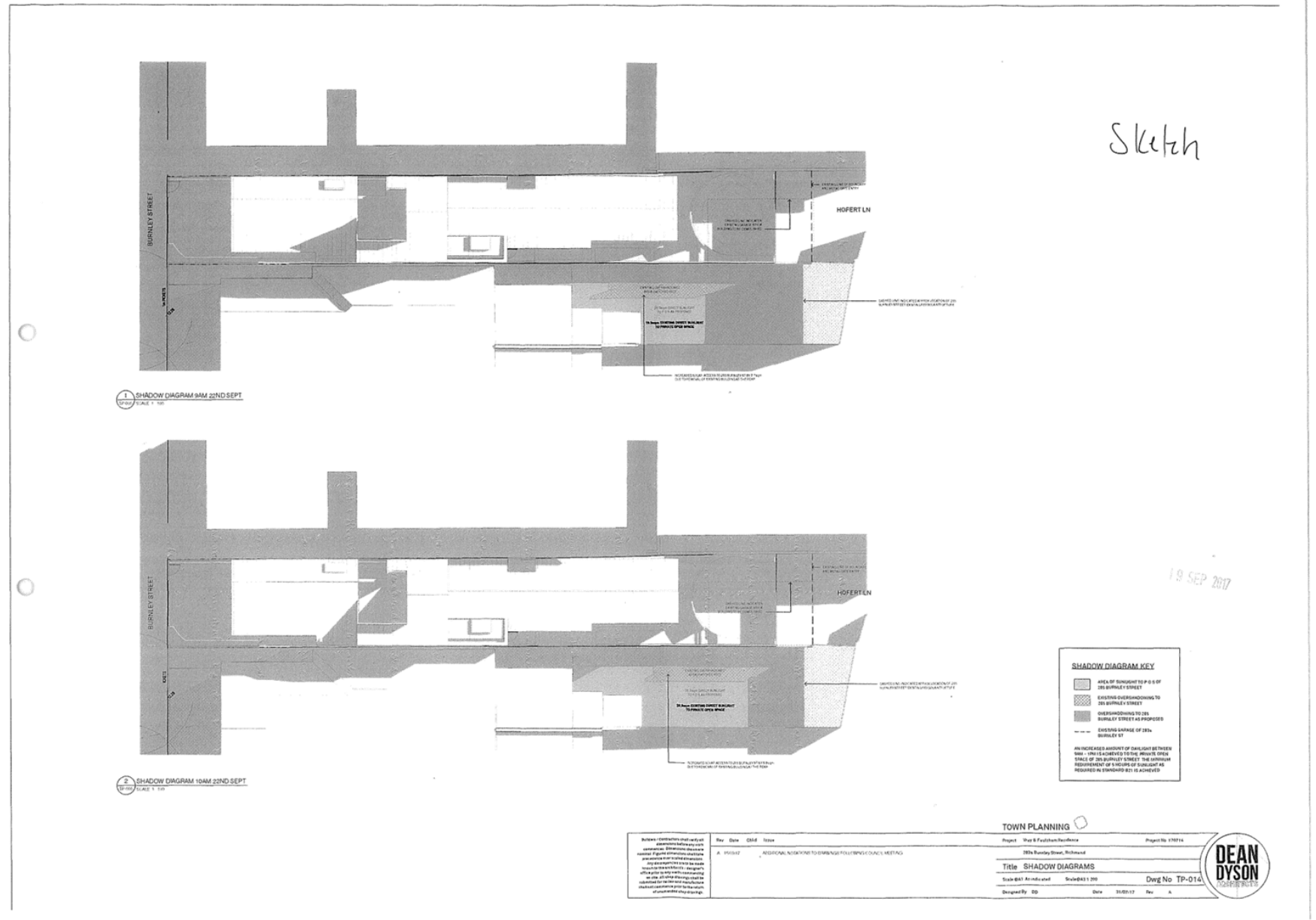
Attachment 6 - PLN17/0180 - 283A Burnley Street, Richmond - Amended Sketch Plans



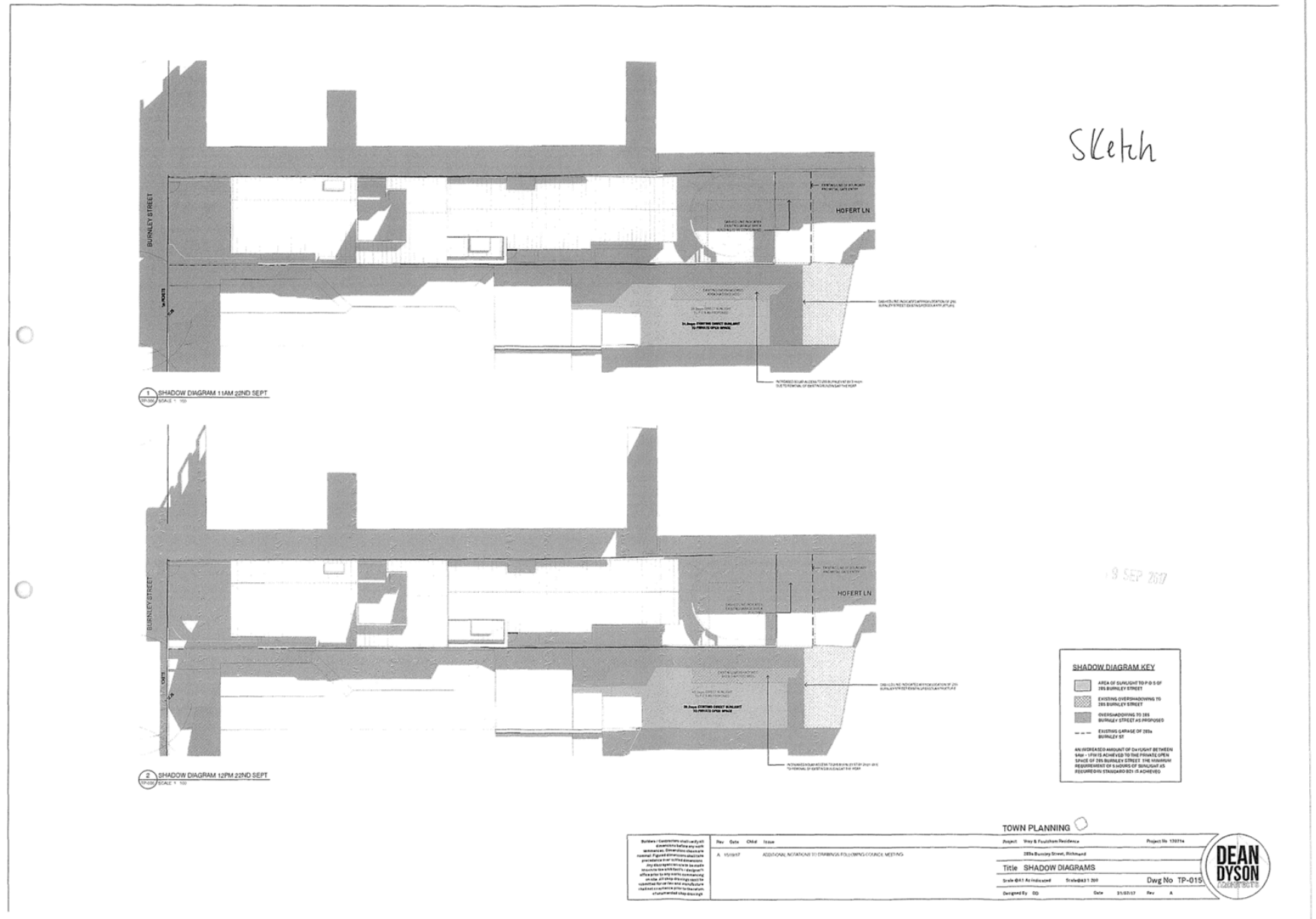
Attachment 6 - PLN17/0180 - 283A Burnley Street, Richmond - Amended Sketch Plans



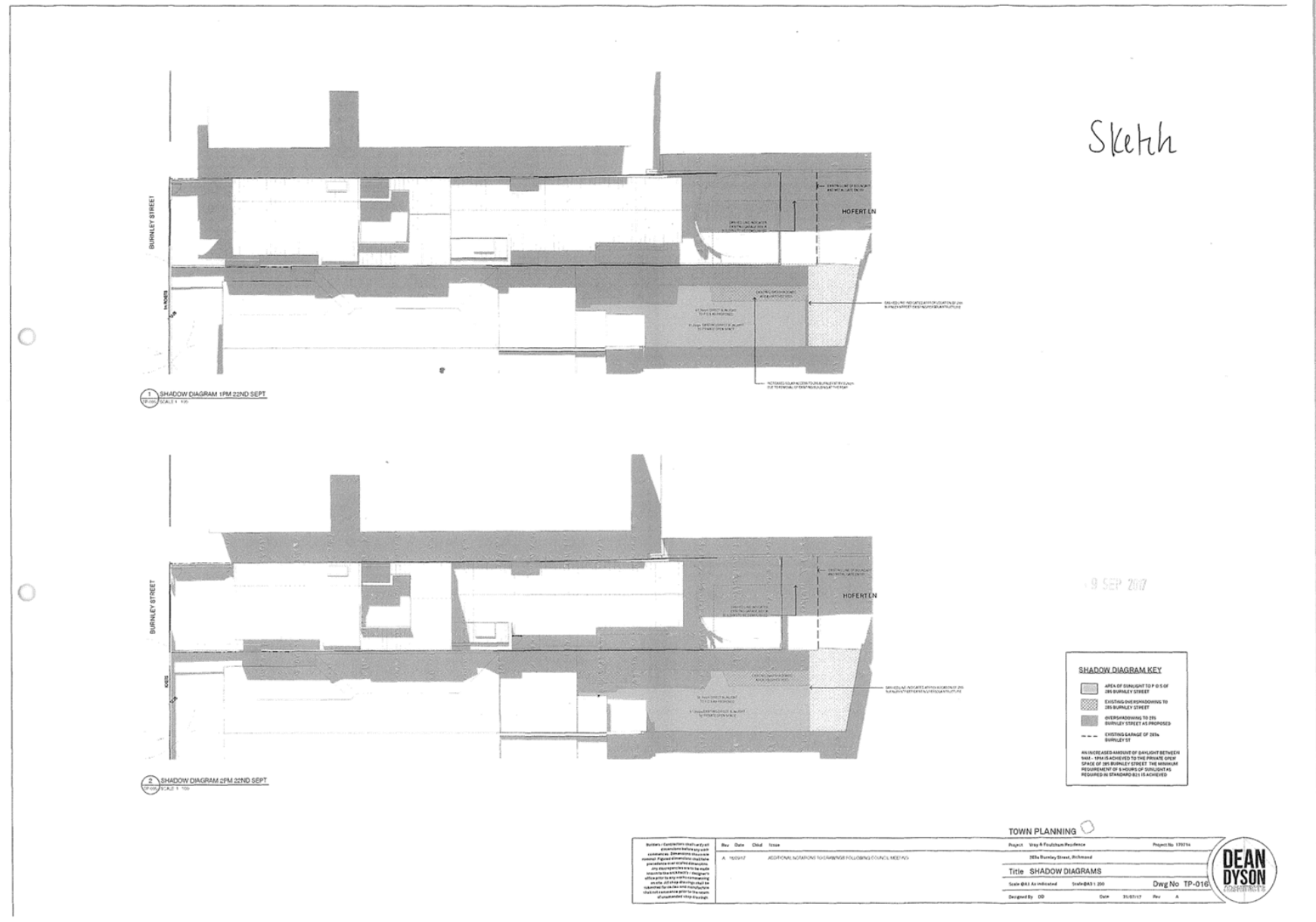
Attachment 6 - PLN17/0180 - 283A Burnley Street, Richmond - Amended Sketch Plans



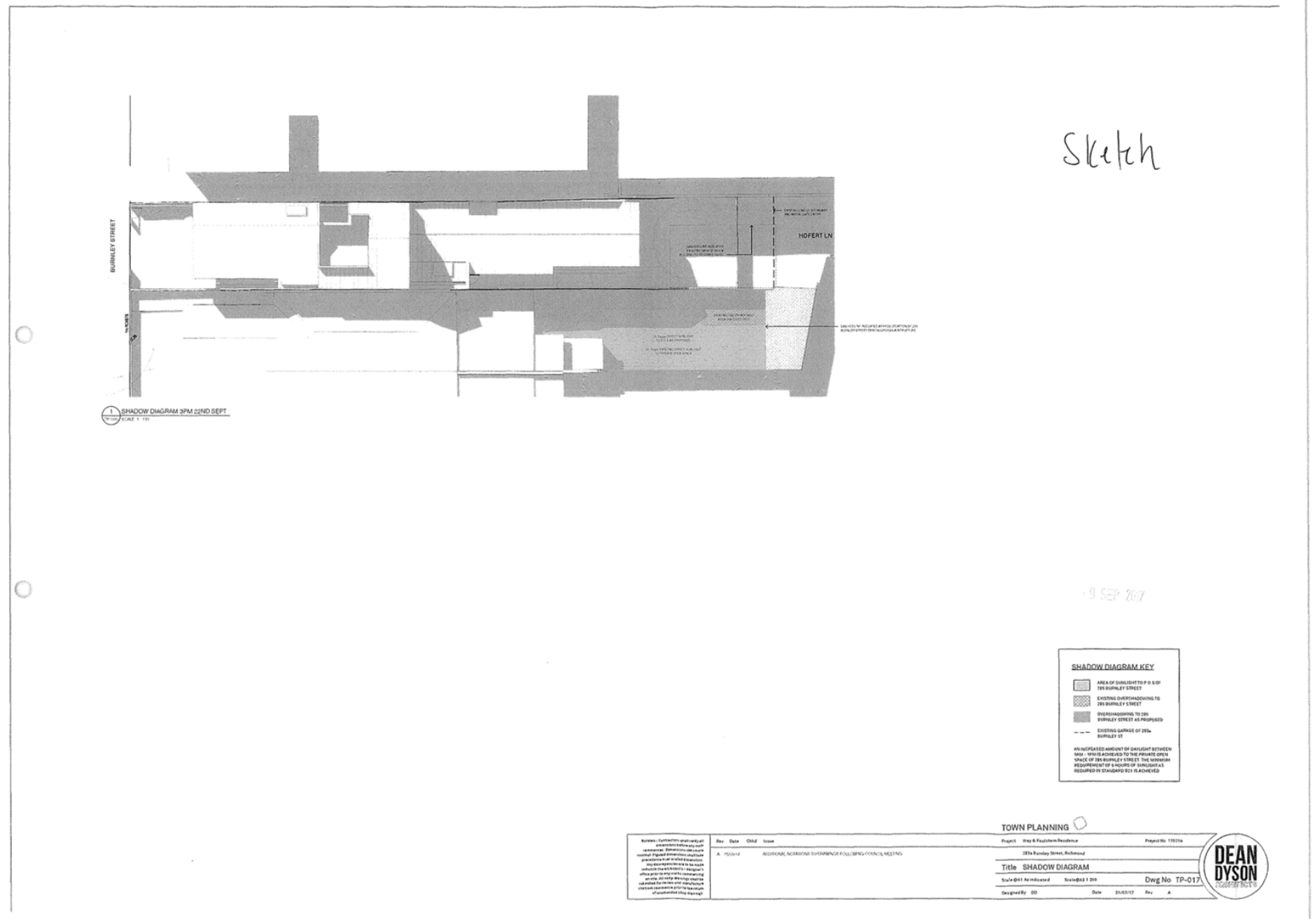
Attachment 6 - PLN17/0180 - 283A Burnley Street, Richmond - Amended Sketch Plans



Attachment 6 - PLN17/0180 - 283A Burnley Street, Richmond - Amended Sketch Plans



Attachment 6 - PLN17/0180 - 283A Burnley Street, Richmond - Amended Sketch Plans



Attachment 6 - PLN17/0180 - 283A Burnley Street, Richmond - Amended Sketch Plans

