



**6.1** **181 ACLAND STREET, ST. KILDA**  
**LOCATION/ADDRESS:** 181 ACLAND STREET, ST. KILDA  
**EXECUTIVE MEMBER:** KYLIE BENNETTS, GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT  
**PHILLIP BEARD, PRINCIPAL PLANNER**  
**PREPARED BY:** DONNA D'ALESSANDRO, MANAGER CITY DEVELOPMENT  
MICHAEL MOWBRAY, PRINCIPAL PLANNER

## 1. PURPOSE

- 1.1 To determine an application for the use of the land for sale and consumption of liquor associated with bar/restaurant, barber and tattoo shop uses (all as of right uses – no permit required). The proposal also includes the minor buildings and works to the rear of the building consisting of a deck and vergola over and new single storey building (toilet/WC/storage).

## 2. EXECUTIVE SUMMARY

<b>WARD:</b>	Lake
<b>TRIGGER FOR DETERMINATION BY COMMITTEE:</b>	More than 16 objections
<b>APPLICATION NO:</b>	655/2020
<b>APPLICANT:</b>	Deathwish Barber p/l
<b>EXISTING USE:</b>	Retail
<b>ABUTTING USES:</b>	Commercial and residential
<b>ZONING:</b>	Commercial 1
<b>OVERLAYS:</b>	Design and Development Overlay (DDO 6-8) Special Building Overlay (SBO 2)
<b>STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL</b>	Expired

- 2.1 It is proposed to use the land for the sale and consumption of liquor together with the construction of minor buildings and works (a deck and vergola over and new toilet building) at the rear of the site. The bar/restaurant, barber and tattoo shop uses are all as of right within in the Commercial 1 Zone meaning that the only permit triggers are for the sale and consumption of liquor and the rear buildings and works.

- 2.2 The proposed operating hours are as follows:

- Barber: 9am to 8pm
- Tattoo shop: 10am to 8pm
- Bar/Restaurant: 11am to 11pm (including alcohol sale)



- 2.3 The application proposes a total of 100 patrons across the internal and external areas of the site. The proposed red line area would measure approximately 82m<sup>2</sup>.
- 2.4 The site forms part of the Acland Street Major Activity Centre and is located with an immediate interface to Acland Street approximately 35m to the north west of the junction with Barkly Street. The land is wholly contained within the Commercial 1 zone and provides for the use of the land as a retail premises, (which includes shop and bar uses) without the need for a planning permit. This section of Acland Street is consistent with the character of the wider Major Activity Centre and accommodates a combination of vibrant commercial uses including retail, food and drink premises and live music venues, many of which currently benefit from permanent liquor licences and footpath trading permits allowing late night trade.
- 2.5 The subject site consists of a single storey commercial building comprising two retail tenancies with zero setback to Acland Street and a rear setback of approximately 13m. This rear portion of the site consists of an open concrete area with a small metal building to the rear boundary. The main building occupies an area of approximately 85m<sup>2</sup> with the rear concrete area occupying approximately 53m<sup>2</sup>. The site has rear access from the rear lane, known as Pumpkin Lane.
- 2.6 The site backs onto land within the General Residential Zone immediately to the rear. This includes an apartment building at 38-40 Chaucer Street and a duplex townhouse development at 34 Chaucer Street to the west. It is noted that 38-40 Chaucer Street features a shared car parking area separating the building from the site boundary by approximately 10m. No. 1 Pumpkin Lane is also located to the south east of the site which is occupied by a 10 – 15 years apartment building approximately 3m from the side boundary of the subject site.
- 2.7 Following notice of the application, 51 objections have been received. Concerns largely relate to the potential clientele at the premises, excessive noise impacts, patron behaviour, proposal considered contrary to planning scheme provisions, poorly defined subject site, no assessment of cultural heritage, lack of submitted elevations of proposed buildings and works, car parking, loading/unloading impacts and potential cumulative impacts.
- 2.8 A consultation meeting was held on 8 July 2021, and was attended by 19 objectors, Ward Councillors, the Applicant and Council Planner. The consultation did not result in any revisions to the proposal, formal outcomes or agreements.
- 2.9 It is considered given the site is located in a Commercial 1 Zone and Major Activity Centre which encourages entertainment and range of uses, subject to modification of the patron numbers and operating hours relating to the sale and consumption of liquor, approval is recommended subject to a reduction in operating hours (10pm closing time to the rear courtyard) and overall maximum of 50 patrons, (20 in the courtyard) due to the interface with the General Residential zone to the rear of the site, plus noise controlled conditions. In relation to the buildings and works relating to the rear of the building and site, no concerns are raised. However, it is recommended that conditions are included requiring details of the proposed elevations.



### 3. RECOMMENDATION

- 3.1 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Grant a Planning Permit.
- 3.2 That a Notice of Decision to Grant a Planning Permit be issued for use of the land for sale and consumption of liquor under a general liquor licence relating to an as-of-right restaurant/bar along with buildings and works to the rear at ground level.
- 3.3 That the decision be issued as follows:

#### **Amended Plans**

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans forming part of the application but modified to show the following:
  - a) Fully dimensioned elevation plans detailing the vergola over the deck area and toilet block structures including materials, colours and finishes.

#### **Layout not altered**

2. The development and/or use as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority

#### **Noise Limiter**

3. Before any live or amplified music is played at the premises, the Permit Operator must install and maintain a Noise Limiter ("the Device"), set at a level by a qualified acoustic engineer, to ensure the escape of amplified music does not exceed the requirements of Division 1 and 4 of Part 5.3 - Noise, of the *Environment Protection Regulations 2021* to the satisfaction of the Responsible Authority.

#### **Noise Report confirming Noise Limiter Function:**

4. Before any live or amplified music is played at the premises, a report prepared by a suitably qualified Acoustic Consultant must be submitted to, approved by and be to the satisfaction of Responsible Authority and must confirm that the Noise Monitor and Limiter noted in the previous condition ("the Device") is operating and has each and every of the following characteristics which are also operating:
  - a) the Device limits internal noise levels so as to ensure compliance with the music noise limits according to Division 1 and 4 of Part 5.3 - Noise, of the *Environment Protection Regulations 2021* to the satisfaction of the Responsible Authority;
  - b) the Device is a limiter suitable for interfacing with a Permanently Installed Sound System which will include any amplification equipment and loudspeakers;
  - c) the Device monitors noise levels at frequencies between 50Hz and 100Hz and is wired so as to ensure that the limiter governs all power points potentially accessible for amplification;
  - d) the Device controls are in a locked metal case that is not accessible by



- personnel other than a qualified acoustic engineer or technician nominated by the owner of the land and notified to the Responsible Authority;
- e) the Device is installed to control all amplification equipment and associated loudspeakers;
  - f) the Device is set in such a way that the power to the amplification equipment is disconnected for 15 seconds if the sound level generated by the amplification equipment exceeds for one second the maximum sound level for which the monitor is set;
  - g) the monitor level component of the Device includes a calibratable frequency discriminating sound analyser with an internal microphone incorporated in its own tamper-proof enclosure (beyond the normal reach of a person). Such a sound analyser will indicate by green, amber and red illuminated halogen lamps the approach and exceeding of the set maximum noise level. The lamps must be in the clear view of the staff and any disc jockey in the room;
  - h) the Device must prevent a relevant noise level referred to in these conditions being exceeded;
  - i) which report demonstrates compliance with Division 1 and 4 of Part 5.3 - Noise, of the *Environment Protection Regulations 2021* to the satisfaction of the Responsible Authority.

Once submitted and approved the noise report will be endorsed to form part of the permit.

#### **Music Only through Noise Limiter**

- 5. Live or amplified music is not permitted to be played other than through the Permanently Installed Sound System and when the Device is installed and operating to ensure compliance with Division 1 and 4 of Part 5.3 - Noise, of the *Environment Protection Regulations 2021* to the satisfaction of the Responsible Authority.

#### **Patron Numbers**

- 6. No more than 50 patrons must occupy the entire premises during operating hours including a maximum of 20 patrons contained within the outdoor courtyard area during operating hours.

#### **Amenity**

- 7. The amenity of the area must not be detrimentally affected by the development or use of the rear courtyard through the:
  - a) Transport of materials, goods or commodities to or from the land
  - b) Appearance of any building, works or materials
  - c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

#### **Operating Hours**

- 8. The licensed premises may operate only between the hours of 11am to 11pm internally and 11am to 10pm externally (courtyard area) on any day.



### **Environment (Noise) Protection Regulations 2021**

9. Noise levels must not exceed the permissible noise levels stipulated in Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) 2021 for Residential Premises, Commercial, Industrial and Trade Premises and Entertainment Venues and Outdoor Entertainment Events to the satisfaction of the Responsible Authority.

#### **No off premises liquor**

10. No liquor is permitted to be sold for consumption away from the licensed premises.

#### **Rear door**

11. The opening in the rear of the building (where leading to the rear courtyard) must be operated in such a way as to contain noise within the building and ensure that relevant Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) requirements are met and the door leading to the rear courtyard area must remain closed after 10pm, other than allowing access to the toilets.

#### **Responsible Serving of Alcohol**

12. The Permit Operator must require that the four employees of the premises engaged in the service of alcohol undertake a "Responsible Serving of Alcohol" course.

#### **Waste Management**

13. An adequate waste management arrangement must be provided for the premises, in accordance with Council's Community Amenity Local Law No.3.

#### **Disposal times**

14. No disposal of bottles or drink containers may take place after 10.00 p.m. or before 8.00 a.m. on any day of the week, unless with the further consent of the Responsible Authority.

#### **Loading/unloading**

15. All loading and unloading to the tenancy must only occur between 8am to 6pm Monday to Friday and 9am to 6pm Saturdays and Sundays.

#### **Time for starting and completion**

16. This permit will expire if the following circumstance applies:
- The permitted use is not started within two years of the date of the permit.
  - The permit buildings and works are not started within two years of the date of this permit.

The Responsible Authority may extend the period referred to if a request is made in writing:

- before or within 6 months after the permit expiry date, where the development allowed by the permit has not yet started; and
- within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires and
- Before or within 6 months of this permit if the permitted use has not started.

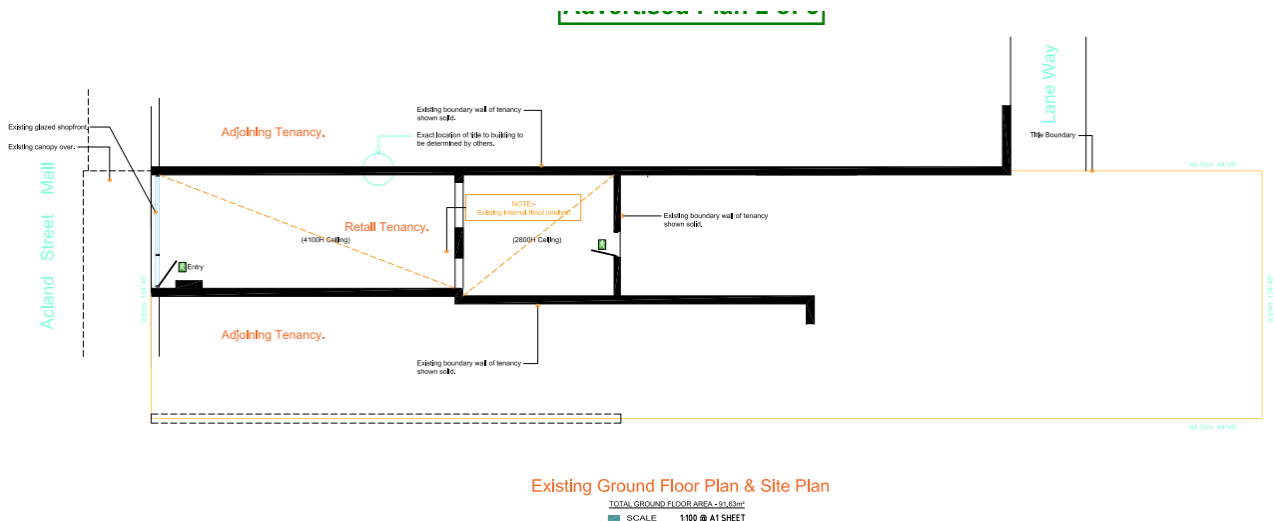
## **4 RELEVANT BACKGROUND**

- 4.1 There is no relevant history or background for this application.

## 5. PROPOSAL

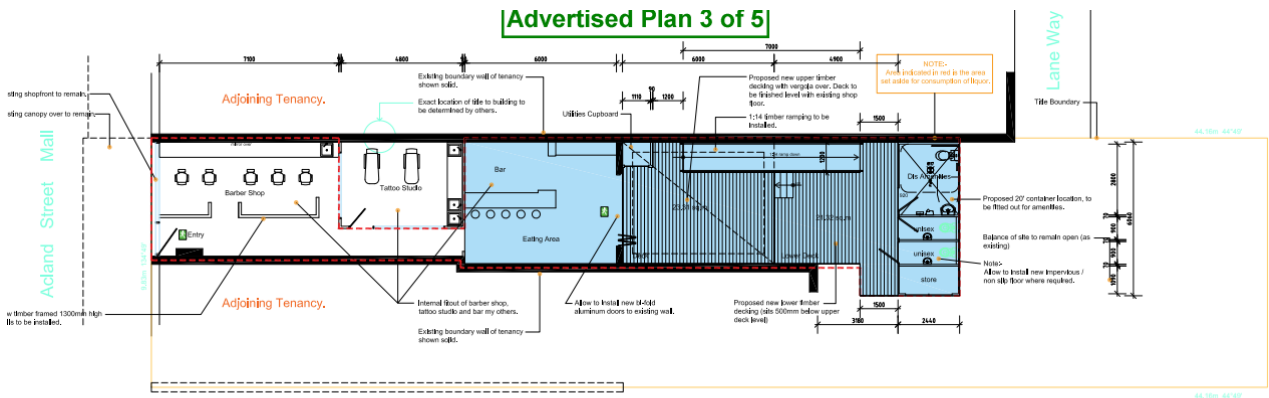
- 5.1 It is proposed to use the existing commercial premises for a mix of shop uses (barber shop and tattoo parlour) and food and drinks premises (bar and restaurant). The bar and restaurant are proposed to operate under a General Liquor Licence allowing up to 100 patrons between the hours of 11am and 11pm seven days a week.
- 5.2 The application also includes buildings and works to the rear of the site as follows;
- installation of new bi-fold doors to the rear elevation leading out onto a new deck area
  - the new deck area would contain two components with a vergola over contained within the rear courtyard attached to the existing building.
  - construction of new single storey toilets/storeroom measuring approximately 2.4m x 6m. No further details are provided and would be subject to further details required. Any ground floor addition is normally contained between 2.8m to 3m high.
- 5.3 The proposed operating hours (noting the as of right situation in relation to the barber and tattoo shop) would be as follows:
- Barber Shop: 9am to 8pm
  - Tattoo Parlour (shop): 10am to 8pm
  - Bar/Restaurant: 11am to 11pm (including alcohol sale)
- 5.3 The proposed red line area would measure approximately 82m<sup>2</sup>. The proposed uses (aside from the sale and consumption of liquor) are all as-of-right in the zone.

### Plan of existing floor and site;





**Proposed site plan and floor plan;**



**6. SUBJECT SITE AND SURROUNDS**

<p><b>Width, length and site area</b></p>	<p>Rectangular shape (The single tenancy in question) Approximately 42m deep, approximately 4.8m to 5m wide with a total are of approximately 200m<sup>2</sup> in area</p> <p>The entire site (both tenancies) = approximately 370m<sup>2</sup>.</p>
<p><b>Slope of land</b></p>	<p>Generally flat.</p>
<p><b>Existing buildings</b></p>	<p>An existing single storey commercial building comprising two retail tenancies exists with zero setback to Acland Street and a rear setback of approximately 13m. This rear portion of the site is occupied by an open concrete area with a small metal building being at the very rear of the site. The existing building (the single subject tenancy only) has an area of approximately 85m<sup>2</sup> with the rear concrete area occupying approximately 53m<sup>2</sup>. The rear concrete area is accessed from the rear lane, known as Pumpkin Lane.</p>
<p><b>Existing vegetation</b></p>	<p>None of note (one tree at the rear).</p>
<p><b>Immediate interfaces</b></p>	<p>To the north-west and south-east are two commercial properties of a similar character to that on the subject land. The building to the north-west is a two storey brick structure with 100% site coverage. The building to the south-east is partly single storey (front) and two storey building at the rear with a rear setback of zero.</p> <p>To the immediate south-west of the site is an open car park area serving the block of flats at 38-40 Chaucer Street. The rear wall of those flats is approximately 10m from the subject site's rear boundary. Habitable room windows in that building (at right angles to the subject site) are approximately 15m to the site's rear boundary at their closest.</p>



	<p>Almost directly west at the rear of the site is the side wall (also at right angles to the subject site) of no. 34 Chaucer Street, with its closest windows being approximately 18m to 20m from the subject site.</p> <p>Slightly south-east of the site's rear boundary is the side wall of the 10 to 15 year old apartment building at 1 Pumpkin Lane with that wall being approximately 3m from the side boundary of the subject site (to its open concrete rear area)</p> <p>Opposite the site are other commercial properties in Acland Street</p>
<b>Scale, height and style of buildings on neighbouring properties</b>	Mixed, with one and two storey in Acland Street and mostly two storey behind in Pumpkin Lane and Chaucer Street.
<b>Proximity to Public Transport, PPTN and any relevant parking controls</b>	The site is located within the Principal Public Transport Network Area and is within the Acland Street Activity centre with trams and buses in very close proximity.

## 7. PERMIT TRIGGERS

The following zone and overlay controls apply to the site, with planning permission required as described.

NOTE: Located within the Commercial 1 Zone, there is no parking reduction permit trigger under Clause 52.06 (Car parking) as the gross floor area of the building would not increase and the equivalent parking reduction would not exceed 10 spaces.

Clause	Why is a permit required?
Clause 34.01 Commercial 1 zone	A permit is required under the provisions of Clause 34.01-2 for the carrying out of the proposed buildings and works, but not for the proposed uses.
Clause 43.02 Design and Development Overlay	A permit is required for the carrying out of the proposed buildings and works.
Clause 44.05 Special Building Overlay	A permit is required for the carrying out of the proposed buildings and works. None of the stated exemptions apply.
Clause 52.27 - Licensed Premises	A permit is required to sell and consume liquor.
Clause 52.34 Bicycle provision	Under the table to Clause 52.34-5, the nearest use to that proposed is restaurant which requires one bicycle space per 100m <sup>2</sup> of public space, or approximately 0.65 (one) space in this instance.

## 8. PLANNING SCHEME PROVISIONS

### 8.1 Planning Policy Frameworks (PPF)

Clause 11.03-1S Activity Centres

Clauses 13 Environmental Risks and Amenity (mainly Clauses 13.05-1S and 13.07-1S)





Clause 17: Economic Development (Mainly Clauses 17.02-1S and 17.04-1S)

**8.2 Local Planning Policy Framework (LPPF)**

- Clause 21.04 Land Use
- Clause 21.06 Neighbourhoods

**8.3 Other relevant provisions**

- Clause 34.01 Commercial 1 Zone
- Clause 43.02 Design & Development Overlay 6-8
- Clause 44.05 Special Building Overlay Schedule 2
- Clause 52.27 Licensed Premises
- Clause 65 Decision Guidelines

**8.4 Relevant Planning Scheme Amendment/s**

None

**9. REFERRALS**

**9.1 Internal referrals**

Internal Department / Officer	Referral comments (summarised)
Development Engineer	No concerns were raised.

**9.2 External referrals**

The application was not required to be externally referred.

**10. PUBLIC NOTIFICATION/OBJECTIONS**

10.1 It was determined that the proposal may result in material detriment therefore Council gave notice of the proposal by ordinary mail to the owners and occupiers of surrounding properties (53 notices sent) and directed that the applicant give notice of the proposal by two notices on the site for an 18 day period in accordance with Section 52 of the Planning and Environment Act 1987.

The application has received 51 objections. The key concerns raised are summarised as follows with an officer response following:

- **Potential poor client character**

This is not a planning matter. What can be assessed are the sale and consumption of alcohol and the construction of the new rear bi fold doors, rear toilet block and rear decking/vergola. The type of clients that the premises may or may not attract is not a matter that can be considered or assessed.

- **Excessive noise (music and patron), poor patron behaviour, poorly sited with the use focussed at the rear of the site instead of the front.**

The matter of excessive noise is a key issue with this proposal, whether patron noise, music noise, patron exit/entry to the site and the overall layout of the proposal. These key issues are discussed at greater length later in this report.



In short, it is considered that the completely open nature of the rear of the subject tenancy coupled with the closeness of residential properties behind would lead to unreasonable noise impacts (both patron and music) should the proposal be supported as submitted. Recommended conditions on permit are recommended to address this issue as outlined below in this report.

- **Contrary to Planning Scheme provisions, namely Clauses 13.05-1S (Noise Abatement), 15.01 (Urban Design), 21.04-8 (Social Impact Assessments) and other local strategies.**

A more detailed assessment follows later in this report, but in summary – subject to the recommended conditions, it is considered that the proposal would suitably align with relevant policy provisions and that there are no further modifications (other than those as recommended) that are needed to achieve suitable compliance. As discussed later in this report, it is considered that the reduction in patron numbers (especially to 20 to the rear courtyard) and operating hours would reduce noise and overall amenity impacts at the rear of the site.

Several objections also assert that the proposal would be contrary to strategies 3.2 and 3.4 of Clause 21.04-2 (Land Use, Activity Centres). The relevant overarching objective and the quoted strategies state the following:

*3. To support cultural tourism in the activity centres that reflects the role and function of individual centres whilst minimising adverse amenity impacts.*

*3.2 Support smaller scale local entertainment uses in the Major and Neighbourhood Activity Centres identified in Table 1, where they do not adversely affect residential amenity, or displace the provision of retail goods and services*

*3.4 Minimise the exposure of residential uses to the negative impacts of tourism activities such as late night noise generated by entertainment and restaurant premises and traffic and parking congestion.*

It is again considered that the proposal as submitted would not sufficiently achieve the overarching objective in that the balance of supporting cultural tourism would be achieved at the expense of amenity impacts. The proposal is considered appropriate in a smaller scale but with a closing time of 11pm for 100 patrons, would not minimise adverse amenity impacts. Similarly, whilst 11pm is not considered late night, it is considered sufficiently deep into the night – when coupled with the very close residential interfaces – that adverse amenity impacts could be caused and as such, the recommended reductions in patron numbers and operating hours are considered appropriate in this instance.

- **Poorly defined subject site**

This objection asserts that the submitted application material does not clearly define the subject site and its abuttal to the general residential zone. Officers consider that the site as a whole does include two tenancies with the south-east of those tenancies being the subject of this application. The subject site would abut the General Residential zone to the rear, including an interface with Pumpkin Lane.

- **No assessment of cultural heritage**

It is agreed with the objection that the site is within such an area of cultural sensitivity. However, the site is clearly one that has been substantially disturbed and is therefore exempt from the requirement to provide a Cultural Heritage Management Plan under



the Aboriginal Heritage Regulations 2018. No assessment of cultural heritage is therefore required.

- **No submitted elevations of the proposed vergola or rear toilet structure.**

It is agreed that this detail was not submitted. In the case of the vergola, it is considered highly unlikely that it would have any built form impacts as its abutments would be purely commercial. Should a permit be issued, recommended condition 1 (a) requires that side elevations of the vergola be submitted.

Similarly, the rear toilet block is very unlikely to have negative built form impacts even though it would have residential abutment. As previously stated, it would not be visible from the public realm and the rear of the nearby sites have a very strong back-of-house or service 'feel' to them. Also, the rear of the residential property behind (38-40 Chaucer Street) comprises an open hard stand car park. Should a permit be granted, recommended condition 1 (a) requires side and rear elevations of this structure to be submitted with notations of colours and materials also noted.

- **No car parking assessment/insufficient car parking**

As stated in the 'note' before the table in section 7 of this report, there is no parking trigger in this instance as the gross floor area of the building would not increase, the site is in a Commercial 1 zone and the resultant car parking shortfall would be less than 10.

By way of information, if the new deck were considered increased floor space, its parking shortfall would be two. Also, by way of information, if the internal floorspace of the existing building as 'bar' (for the sale and consumption of alcohol) were assessed for car parking, it would – at approximately 65m<sup>2</sup> – generate the need for two car spaces or an overall combined shortfall of four spaces, well under the 10 spaces noted in Clause 52.06-3 and sufficiently low in overall quantum so as not to give rise to parking concerns.

- **Excessive amenity impacts from loading/unloading.**

It is agreed that there could be some amenity impacts associated with these activities given that they are most likely to occur at the rear of the site where the residential interface exists. Therefore, recommended condition 14 requires that all loading and unloading to the tenancy only occurs between 8am to 6pm Monday to Friday and 9am to 6pm Saturdays and Sundays. This should ensure acceptable noise amenity impacts related to these activities.

- **No need for new licensed premises, sufficient premises already exist, possible cumulative impacts.**

The economic need for another licensed premises is not a planning consideration. However, the matter of cumulative impacts (amenity consideration) is something that needs to be assessed as outlined later in this report.

10.2 A consultation meeting was held on 8 July, 2021 with 19 objectors, two ward councillors, the applicant and Council planner attending. No agreements or formal outcomes were agreed to.

10.3 It is considered that the objectors do not raise any matters of significant social effect under Section 60 (1B) of the Planning and Environment Act 1987.



- 10.4 The assessment and summary of the objections along with other relevant assessments follows in the following section of this report.

## 11. OFFICER'S ASSESSMENT

### 11.1 Strategic Justification/Assessment

Victorian planning policy generally seeks to have commercial and entertainment uses ideally located within appropriate activity centres. Acland Street is such a centre. There are policy references regarding balancing such uses against potential amenity impacts but essentially, State policy is focussed around having uses that involve sale and consumption of liquor suitably located in activity centres.

In addition, highly accessible locations are typically associated with being capable of accommodating such uses and at the same time, increasing the economic viability of activity centres.

The proposal would be in the heart of such a centre and subject to a reduction in its intensity, it is considered supportable in the context of local and state policy.

In regards to the buildings and works associated with the proposal, the only buildings and works proposed are the timber decking/vergola, new door at the rear of the building and toilet facilities and storage at the rear of the site. It is considered that these aspects of the proposal would comply with local policy. Generally the thrust of policy is that buildings and works would be a 'good fit' within a given context, that they would not diminish any heritage values and would not create unreasonable amenity impacts such as shadowing, overlooking, mass, bulk or overall built form character. The proposal complies.

As outlined, the site is located within the Commercial 1 Zone and as per Clause 21.04-2, the site is located within the Acland Street Major Activity Centre where entertainment and tourism uses are strongly encouraged, provided that amenity impacts can be suitably controlled, which it is considered in particular that recommended conditions 2, 3, 4, 5, 7 and 11 would achieve.

Clauses 13.05-1S and 13.07-1S require the safeguarding of community amenity from off-site effects, such as noise, using techniques such as building design and land use separation. In this instance, there are no substantive buildings and works to which appropriate amenity reducing techniques could be applied.

The recommended conditions are considered to reasonably balance the outcomes that the above clauses are seeking in a broader sense whilst providing adequate 'safeguards' on nearby amenity.

Clause 17.02-1S has one objective which in summary, is to encourage development that meets the community's retail, entertainment, office and commercial service needs. As previously expressed, the extent of development in this application is very minor but even so, it would enhance the site's ability to cater for 'entertainment' needs.

Clause 17.04-1S encourages tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination and Clause 17.04-1R seeks to maintain and develop Metropolitan Melbourne as a desirable tourist destination.

The objectives of Clause 21.01-2 include providing for a broader land use mix within Port Phillip's highly accessible Major Activity Centres, which support economic viability, local access to goods and services, and the social and cultural role of centres; and, to support



a vibrant, well managed local tourism industry that co-exists harmoniously with local residents, businesses, traders and the natural environment.

Aside from ensuring harmonious co-existence with neighbours (which it is considered would be adequately achieved through the recommended conditions), it is considered that there is strong policy alignment for allowing sale and consumption of liquor associated with an as of right bar/restaurant use as outlined above (activity centres most importantly) and that a new use where sale and consumption of alcohol is proposed is supportable largely due to its siting within an activity centre.

Further, Clause 21.04 acknowledges that licensed premises have an important entertainment role within the municipality, however they need to be appropriately sited and managed to ensure that their social impacts on the community are minimised; the clause also seeks to minimise the exposure of residential uses to the negative impacts of tourism activities such as late night noise generated by entertainment and restaurant premises.

The previous assessments are noted in this regard.

Clause 21.06-6 seeks to support the role of Acland Street Major Activity Centre as an entertainment, tourist, and specialty retail precinct, whilst preventing the cumulative impacts of such uses on amenity and community safety. Again, previous assessments in this report are noted in this regard but also noting that cumulative impacts stemming from a new use for sale and consumption of alcohol could become unreasonable as proposed. However, a reduction to 50 patrons and 10pm closing time is considered to result in a use that would be quite moderate such that cumulative impacts both at the rear of the site and into Acland Street itself after closing time, would be reasonable and acceptable.

In summary, subject to reasonable amenity control conditions, it is considered that there is sufficient policy support for the proposal, once its intensity has been reduced (also refer to assessment below).

## **11.2 Other Assessment Matters**

### Impact on Nearby Amenity

As previously noted, the 'bar' use is as of right in the planning scheme, but is a use – when coupled with sale and consumption of alcohol – that can potentially cause unreasonable amenity impacts when compared to a restaurant, for example. Restaurants, which serve alcohol associated with food, tend to attract patrons likely to converse over a meal with background music if any, with or without alcohol, then move off site once their meal is finished. Conversely, bars attract patrons who are more likely to remain at the site for more extended periods of consuming alcohol, thus increasing the levels of intoxication and thereby potentially exacerbating associated social and amenity impacts.

As previously assessed, the use of land for sale and consumption of alcohol is broadly one that would be supported within the heart of the Acland Street Major Activity Centre. However, this is contingent upon appropriately mitigating the impact upon residential amenity. The rear of the site does not directly adjoin any residential buildings but is within very close proximity to several. It is within this context that the proposal must be considered. In addition, it is noted that not only are the surrounding uses residential, they are within a residential zone which is afforded a high degree of amenity protection.





However, the extent of amenity protection must also be viewed in the light of all existing conditions including the subject site contained within a commercial zone and the fact that it has a rear courtyard area is not unusual. The site should be able to operate as sought but the burden of amenity protection falls on the agent of change, which is the operator in this instance.

The rear courtyard would be open to the sky and no acoustic works have previously been undertaken or proposed in this instance. However, it is not considered that such works would be necessary or reasonable in this case. In order to essentially eliminate noise amenity impacts, either the courtyard would not be able to be used at all or, would have to essentially become fully enclosed. Either outcome is not considered balanced. That is, either of these would tend to skew the outcomes in favour of strict amenity protection, which is not reasonable for a site in the heart of an activity centre, especially when recommended conditions would limit the use to a more moderate intensity.

Therefore, a reasonable outcome, given the site context and the size of the rear courtyard area would be to limit the maximum patron numbers in this space to 20. In addition to this, the hours allowable for the sale and consumption of liquor in the rear area should be limited to no later than 10pm.

As well, it is considered reasonable to limit the overall maximum patrons (for example at times when the rear courtyard was not operating) to 50. Given the proposed floor area of the bar space and the anticipated low-intensity of the barber area, this is considered to be an appropriate number for the site.

Hours until 11pm are considered reasonable internally given the location within a Major Activity Centre. Condition 11 also requires the rear door accessing the courtyard to be kept closed after 10pm aside from toilet access.

It is considered that the two noise limiter conditions (3 and 4) are justified given the focus of the proposal's operation at the rear of the site rather than the front. It is the site's rear interface that is most sensitive and even being in a commercial zone, the need for music noise reduction to be kept to a reasonable minimum is considered an effective method by these conditions on permit.

Whilst the proposal does not specifically propose live or amplified music, such could occur under the relevant licence and it would only be at those times of music is played that the noise limiter would be needed.

It is considered that live music would be appropriate for this site, but given the previously detailed interfaces, would only be appropriate with a noise limiter and follow up reports in place, as recommended.

Therefore, it is considered that the recommended requirements to reduce both patron numbers and operating hours across the site would achieve an appropriate amenity result, balancing the site's location in the heart of an activity centre against its close residential interfaces.

#### Cumulative impacts

Planning Practice Note 'Licensed premises: Assessing cumulative impact' is relevant to the assessment criteria of this application. 'Cumulative impact' refers to both positive and negative impacts that can result from clustering a particular land use or type of land use.

The practice note advises that, as a general rule, a cluster would occur where there are three or more licensed premises (including the proposed premises) within a radius of





100 metres from the subject land; or 15 or more licensed premises (including the proposed premises) within a radius of 500 metres from the subject land.

The local area accommodates numerous licensed premises, which are in excess of 3 premises within 100m of the subject site and 15 premises within 500m. The types of licences are mixed, largely comprising limited licences, on-premises licences, general licences and restaurant and café licences.

The practice note sets out the following criteria for assessing the potential cumulative impact:

- Planning policy context
- Surrounding land use mix and amenity
- The mix of licensed premises
- Transport and dispersal
- Impact mitigation

As previously mentioned, the subject site is located within the Commercial 1 Zone, where the use as a bar is 'as of right', along with the Acland Street Major Activity Centre, where entertainment and tourism uses (includes bars) are encouraged. The surrounding land uses are diverse and offer late night uses some of which do not focus on the serving and consumption of alcohol. The proposal would result in a new licensed premises, the site is in close proximity to sensitive land uses and that some increased amenity impact is likely to stem from the proposal. This, however, should be able to be properly controlled via the recommended conditions.

The mix of licensed premises, given the nature of the area, is considered to be appropriate; it is considered unlikely that the proposal would have an undue impact in terms of the mix of uses in the area.

The proposal would result in the focus of the premises being the serving of alcohol. This is again considered likely to increase the potential for amenity impacts. However, the practice note acknowledges that proposals may result in a negative cumulative impact while still being acceptable, the threshold being whether the impact is 'reasonable'. In this instance, the anticipated negative 'cumulative' impact would be reasonable, for the following reasons:

- The direct amenity impacts should be able to be reasonably controlled by the recommended conditions.
- The proposal would offset, to some extent, the negative impacts with positive cumulative impacts, including:
  - Reinforcing the local identity as an entertainment and tourism destination;
  - Enhanced vitality to the area;
  - Added flexibility to the establishment, resulting in economic benefits and increased consumer choice.

#### Design and Development Overlay (DDO)

The proposed buildings and works would be very modest and would be confined to the rear of the site. Given the minor works proposed, it is considered that the proposal would align with the DDO provisions. The new works would be well under the stipulated 10.5m in height, they would not overshadow the Peanut Farm reserve or the open space of nearby residential properties.



In addition, the proposed buildings and works would not affect the vibrant leisure and shopping character, the streetscape/built form character or scale of Acland Street or the surrounding area. The buildings and works would also not affect the flexibility and consequent variety of uses that the site could accommodate and the buildings and works would not result in amenity impacts and their scale would not affect the pedestrian friendly character and active frontages of Acland Street.

## 12. COVENANTS

12.1 There are no restrictive covenants on the relevant titles (lot 1, Title Plan 172505S, Volumes 08777 & 09161, folios 878 & 511) that would prevent assessment of this application.

## 13. OFFICER DIRECT OR INDIRECT INTEREST

13.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

## 14. OPTIONS

14.1 Approve as recommended

14.2 Approve with changed or additional conditions

14.3 Refuse - on key issues

## 15. CONCLUSION

15.1 The site is in a commercial area and the proposed uses aside from the sale and consumption of liquor are as-of-right. The site does, however, have close residential interfaces and it is considered that as proposed, the use would be overly intense. In summary, it is considered that limiting overall patron numbers to 50 (instead of 100) with 20 of those permitted to the rear courtyard whilst also recommending a closing time of 10pm externally in lieu of 11pm when coupled with the recommended installation of a noise limiter would achieve a suitably balanced result. Subject to these modifications, proposal is recommended for approval.

- ATTACHMENTS**
1. Advertised Planning Report  [Download](#)
  2. Advertised Plans  [Download](#)