



6.1 154-156 ACLAND STREET, ST. KILDA
LOCATION/ADDRESS: 154-156 ACLAND STREET, ST. KILDA
EXECUTIVE MEMBER: KYLIE BENNETTS, GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT
PREPARED BY: PHILLIP BEARD, PRINCIPAL PLANNER
DONNA D'ALESSANDRO, MANAGER CITY DEVELOPMENT

1. PURPOSE

- 1.1 To determine an application to amend a planning permit and alter the operating hours Friday night (Saturday morning) to Saturday night (Sunday morning) from 1am to 3am (2 hours) and alter the late night (on-premises) licence to a live venue licence.

2. EXECUTIVE SUMMARY

WARD:	Lake Ward
TRIGGER FOR DETERMINATION BY COMMITTEE:	More than 15 Objections
APPLICATION NO:	830/2015/B
APPLICANT:	Jimmy O'Neil's P/L
EXISTING USE:	Bar/Tavern to 1am
ABUTTING USES:	Commercial and residential
ZONING:	Commercial 1 Zone
OVERLAYS:	DDO 6-8 (no buildings and works proposed)
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired.

- 2.1 Planning Permit 830/2015 was issued on 29 February 2016. The permit approved the partial demolition, buildings and works and works including a rear extension, new shop front, new awnings over the footpath, waiver of the car parking requirements, bicycle facilities and loading bay. The use included the sale and consumption of liquor under a Late Night (on-premises) licence in association with a Tavern/Bar. Condition 1 Plans were endorsed on 1 March 2016.
- 2.2 This current application has been lodged under Section 72 of the Planning and Environment Act 1987 to amend the original permit by proposing to extend the trading hours from Friday and Saturday night closing time from 1am to 3am (2 hours only). It is proposed to alter the hours via condition 9 of the permit.
- 2.3 The premise is currently occupied by Jimmy O'Neils, Whiskey & Alehouse, a bar/tavern that provides food and drink with promotion of live music Friday, Saturday and Sunday. The existing premise includes a condition to limit patron numbers to 100.
- 2.4 The existing late night (on-premises) licence alteration has approval from VGCCC (Victorian Commission for Gambling and Casino Control Commission – formally VCGLR), subject to Council approval. The operation of a late-night licence at the premise is exempt from the current VGCCC 'freeze' on late night licences due to the



premise continuing to operate as a live music venue and being compliant with the conditions of the exemption stipulated by VGCCC.

- 2.5 The site is located within the heart of Acland Street, opposite the termination of the tram stop. It is a small establishment with permission for footpath trading. The rear courtyard is not used for any purposes associated with the bar/tavern other than an outdoor toilet and storage area. The site forms part of the Acland Street Activity Centre and is located between Barkly Street and Belford Street, St Kilda. The land is wholly contained in a Commercial 1 zone.
- 2.6 Following notice of the amendment application, 19 objections have been received. Concerns largely relate to amenity impacts, noise, patron noise and poor behaviour by patrons leaving the premises. A consultation meeting was held in September 2021 but did not result in any mediation or withdrawal of objections.
- 2.7 With respect to loss of amenity due to noise, it is notable that the site is in a major activity centre and key commercial area within the municipality. Whilst there are residences abutting the site to the rear, these residences are primarily located within the Comprehensive Development zone which does not provide the same level of residential amenity provided for a dwelling in a residential zone.
- 2.8 It is considered given the site is located in a Commercial 1 Zone, Major Activity Centre which encourages entertainment and late night music venues, the proposal can be supported for the additional two hours, Friday – Sunday, subject to recommending conditions such as noise attenuation conditions and a management plan. It is noted that the great majority of objections relate to anti-social behaviour of patrons leaving and being outside the site. This is often difficult to control via any condition on permit, however, it is considered that a recommended condition for a strengthened Management Plan together with the other recommended new noise control conditions (and retention of ones on the existing permit) would lead to a balanced outcome that is supportable on planning merits.

3. RECOMMENDATION - NOTICE OF DECISION TO AMEND A PLANNING PERMIT

- 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 Permit.
- 3.2 That a Notice of Decision to Amend a Permit be issued for Partial demolition, buildings and works including rear extension, new shop front, new awnings over footpath; waiver of car parking, bicycle facilities and loading bay; and the sale and consumption of liquor (on-premises licence) in association with a tavern/bar; at 154-156 Acland Street, St Kilda, **with the following changes.**

Amend Permit Preamble

The permit preamble amended to read

Partial demolition, buildings and works including rear extension, new shop front, new awnings over footpath; waiver of car parking, bicycle facilities and loading bay; and the sale and consumption of liquor **in accordance with an existing late night (on premises) licence** in association with a tavern

Amended Conditions

The conditions to be (with new conditions/parts of conditions **bold and underlined** and conditions / parts of conditions to be deleted - ~~striketrough~~



That the conditions of the amended permit be as follows, specifically noting re-worded / renumbered conditions 7, 9, 15, 26, 27, deleted conditions 1, 2 (having been complied with), 19 (no live music requirement deleted), and new conditions 22, 23, 24, 25

Conditions will be renumbered accordingly.

1. Amended Plans Required (Deleted)

~~Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with the plans submitted with the application, but modified to show:~~

- ~~a) A reduction in the dimensions of the verandah/awning fascia to match the fascia of neighbouring shops (e.g. to remain at its current height of 550mm),~~
- ~~b) The proposed 'red line' around the external seating area matching the approved footpath trading zone,~~
- ~~c) Provision of a second (acoustic) door on the ground floor between the rear access to the "disabled wc"/ stair and the "rear yard"~~
- ~~d) Internal furniture to achieve compliance with Condition 10 of this permit,~~
- ~~e) Alterations to the rear of the proposal to include an acoustic ceiling over the stair and walkway to the upstairs public toilets adequate to comply with Condition 4 of this permit,~~
- ~~f) The extent of acoustic ceiling over the access walkway through the rear yard and access stairs, which must be in general accordance with the marked up plan A050/D, and complying with Condition 4 of this permit,~~
- ~~g) The inclusion of an open-style fence or retaining barrier of sufficient height and construction to prevent patron access to the central area indicated as 'Open' on plan A050/D.~~

2. External Finishes (to be Deleted)

~~Before the development starts (other than demolition or works to remediate contaminated land), a full schedule of materials, finishes and paint colours, including colour samples (colour samples in a form that is able to be endorsed and held on file), must be submitted to, be to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit.~~

3. No Alterations

The layout of the site and the size, levels, design and location of buildings and works and area enclosed in the red line area as shown on the endorsed plans, including all external materials, finishes and colours, must not be modified for any reason without the prior written consent of the Responsible Authority, unless the Port Phillip Planning Scheme exempts the need for a permit.

4. Acoustic Rating for Walkway/Stairs

The acoustic ceiling indicated (insulation and perforated ceiling) shall have an acoustic rating of at least NRC0.8.

5. No Alcohol in Rear Courtyard



Alcohol is not to be permitted in the rear yard to be consumed by patrons at any time.

6. No Amplified Music in Rear Courtyard

No amplified music or loudspeakers shall be permitted in the rear yard.

7. Door to remain closed

The doors between the bar and rear yard shall remain closed except temporarily when in use for access to the toilets. The doors must be fitted with self-closers to achieve this result **and their operation must ensure compliance with Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) at all times the use is operating.**

8. No equipment or services

No plant, equipment or domestic services (including any associated screening devices) or architectural features, other than those shown on the endorsed plan are permitted, except where they would not be visible from the primary street frontage (other than a lane) or public park without the written consent of the Responsible Authority.

9. Hours of Operation

The sale and consumption of liquor is permitted only between the following hours:

Internal:

- Sunday: 10am-1am the following day,
 - Fridays and Saturdays: **10am to 3am the following day**
 - Good Friday: 12noon to 3 am the following day,
 - Any other day: 7am-1am the following day.
- Trading hours on ANZAC Day must not commence before 12 noon and must cease no later than the finishing times specified above.

External (footpath):

- Sunday: 10am-1am the following day,
- Good Friday and ANZAC Day: 12noon-1am the following day,
- Any other day: 7am-1am the following day,

10. Number of Patrons

Without the further written consent of the Responsible Authority, no more than 100 patrons must occupy the premises at any one time.

11. Tables and chairs must be available

Tables and chairs must be placed in position on the licensed premises so as to be available for patrons. A minimum of 48 chairs must be provided internally.

12. Storage and Disposal of Garbage

Provision must be made for the storage and disposal of garbage to the satisfaction of the Responsible Authority. All garbage storage areas must be screened from public view.

13. Regulation of Deliveries and Rubbish Collection



Without the further written consent of the Responsible Authority deliveries to and from the site, including rubbish collection, must only take place between 7am to 8pm Monday to Saturday and 10am to 8pm public holidays and Sundays.

14. Doors and windows to be kept closed

Except with the further written consent of the Responsible Authority, all external doors and windows must remain closed between 11pm and 7am and in accordance with Condition 7 of this permit.

15. Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3)

Noise levels must not exceed the permissible noise levels stipulated in **Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) to the satisfaction of the Responsible Authority and must be below such levels in accordance with Clause 53.06 of the Planning Scheme.**

16. Responsible Serving of Alcohol

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

17. Bottle bagging time

Bottles must be bagged during operation times and must not be emptied into the external refuse bins after 10pm or before 8am Monday to Saturday or after 10pm or before 10am on Sunday, except with further written consent of the Responsible Authority.

18. No dancing

No dancing is permitted on the premises.

19. ~~No Live or Amplified Music – (to be Deleted)~~

~~No live or amplified music is permitted on the premises other than background recorded music.~~

20. Exit Signs

Before the use commences signs must be erected near the entrance/exit and in the toilets requesting that patrons leave the building in a quiet and orderly manner so as not to disturb the peace and quiet of the neighbourhood to the satisfaction of the Responsible Authority.

21. Amenity (General)

The amenity of the area must not be detrimentally affected by the development 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.

22 Management Plan

Before the extended operating hours come into effect, a modified Management Plan must be submitted to the Responsible Authority and must continue to include all current referenced matters and arrangements, including reference to the establishment of security guards employed after 9pm when live music is being played at the establishment. These measures should also include patrons exiting the premises within 10m radius from the site to do so in a quiet and orderly manner.



Once approved, the Management Plan will form part of this permit and must be complied with at all times.

23 Noise Limiter

Before any live performed, pre-recorded or amplified music is played inside the premises, (with the exception of clearly background only recorded music), written confirmation must be submitted that a Noise Monitor and Limiter ("the Device") has been installed and is properly operating. If such a device has not been installed, it either must be installed before the permitted use starts or written evidence that the rear acoustic treatment and operation required by condition 10 is resulting in all relevant Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) being met. Should the Device be required, it must continue to be set (or must be set) at a level by a qualified acoustic engineer, to ensure the music does not exceed the requirements of the Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) to the satisfaction of the responsible authority.

24 Noise Report confirming Noise Limiter Function

Before the permitted use starts, a report prepared by a suitably qualified acoustic consultant ("Noise Report") must be submitted to and be to the satisfaction of the Responsible Authority. This Noise report must confirm that the acoustic treatments to the rear door leading from the bar area to the rear courtyard are resulting in the Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) being met or alternatively, must indicate that the Device mentioned in previous condition of this permit is operating and that each and every one of the following requirements are met;

- a) The Device limits internal and external noise levels so as to ensure compliance with music noise limits according to the Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3);
- b) The Device must be a limiter suitable for interfacing with a Permanently Installed Sound System which includes any amplification equipment and loudspeakers and no other amplification or loudspeaker equipment is installed that does not interface with the Device;
- c) The Device must include a microphone incorporated in its own tamper-proof enclosure (beyond the normal reach of a person);
- d) The Device controls must be in a locked case or the device must include a PIN code;
- e) The Device is installed to control all amplification equipment and associated loudspeakers both internal and external on the Subject Land;
- f) The Device is able to continue operating on battery or backup power when mains power is disconnected from the Device;
- g) The Device is able to automatically store records of logged noise levels in 15-minute intervals;



- h) The stored results can be provided to Council on request;**
- i) The Device must be re-calibrated as necessary to maintain Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) compliance at all times, and when any changes are made to the Device sensor position or the venue changes operating conditions, if any buildings and works are undertaken, sound system configurations or anything else that may necessitate re-calibration of the Device (including maintenance and malfunction);**
- j) The report must be prepared by a suitably qualified acoustic engineer and must be provided with 10 days of the date of the installation of the device and must also include the following detail:**
- i. Noise reduction testing carried out between the venue and noise sensitive areas to confirm the Device noise level thresholds which correspond with Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) compliance levels;**
 - ii. The extent of works and installation of the Device and the exact location of the Device microphone sensor installed on the Subject Land;**
 - iii. the noise level thresholds which the Device has been set;**
 - iv. measured dB(A) levels at the Device sensor using a sound level meter while the Device is limiting, which corresponds with the calibrated noise level thresholds set on the Device;**
 - v. measured dB(A) levels at another reference position with music playing, 1.5m above floor level inside the venue, which corresponds with the calibrated noise level thresholds set on the Device;**
 - vi. measured dB(A) levels at relevant noise sensitive premises which correspond with the venue's internal and external noise levels;**
 - vii. measured dB(A) levels at Relevant Noise Sensitive Premises which correspond with Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) compliance levels at all Noise Sensitive Premises;**
 - viii. measured acoustic instruments on the Subject Land proposed during live music operations, their sound levels inside the premises and at Relevant Noise Sensitive Premises, and confirmation of compliance with Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3);**
 - ix. the ambient background noise levels (including date and time) recorded at relevant noise sensitive premises not immediately subject to Barkly Street traffic, commercial or patron noise in the area and corresponding Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) noise limits;**
 - x. the location of the Permanently Installed Sound System**



loudspeakers on the premises:

- xi. the operating configuration in which the Device has been calibrated including whether access doors, windows and the like are required to be closed or can be open;**

The device must comply with each and every requirement of this condition at any and all times that music is audible from outside the building.

The report must also indicate that:

- a) **no other temporary sound system is to be permitted to be brought onto the Subject Land which does not interface with the Device and**
b) **no other loudspeakers or amplification equipment are to be used on the premises which does not interface with the Device, including monitoring foldback and personal amplification**

Once to the satisfaction of the responsible authority, the report is to be submitted for approval and once endorsed, will form part of this Permit.

25 Patron Noise

At any time the premises is operating beyond 11pm, patron noise must not exceed or be more than 5dB above measured background noise levels as identified in the applicant's submitted acoustic report.

26 Storage of Goods

No goods are permitted to be stored or left exposed outside the building so as to be visible from any public area.

27 Time for Starting and Completion

This permit will expire if one of the following circumstances applies:

- a) The extended operating hours are not acted upon within two (2) years of **the date of amendment** to this permit.

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

before or within 6 months after the permit expiry date, where the amendment has not been acted on.

4. RELEVANT BACKGROUND

4.1 The original permit was first approved in February, 2016 and allows:

Partial demolition, buildings and works including rear extension, new shop front, new awnings over footpath; waiver of car parking, bicycle facilities and loading bay; and the sale and consumption of liquor (on-premises licence) in association with a tavern.

4.2 That permit was subject to a suite of both buildings and works and use conditions, most notably (in the case of the latter) a closing time of no later than 1am. A patron maximum of 100 is also stipulated in the permit.

4.3 The permit was amended in May, 2018, but only in terms of allowing footpath trading to 1am. No other changes were permitted at that time.



- 4.4 **Liquor Licence 32363412** dated 24 November 2021 allows the site to operate as a late night (on premises) licence with trading hours;
- Monday to Thursday - Between 7am and 1am the following morning
 - Friday to Sunday - Between 7am and 3am the following morning
 - Good Friday Between 12noon and 3am the following morning
 - Trading hours on ANZAC Day must not commence before 12noon and must cease no later than the finishing times specified above

Maximum Capacity

- 100 Patrons

Special Conditions

- Alcohol is not to be consumed in the rear yard at any time. No amplified music or loudspeakers are permitted in the rear yard.

- 4.5 This licence is conditional of any planning permit approval, thus approval of the current proposal to amend the permit.

5. PROPOSAL

- 5.1 The application seeks approval to amend the permit under Section 72 of the Planning and Environment Act 1987. Ordinarily, a section 72 amendment involves the applicant requesting changes to the physical layout or structure of a building, amendments to the description of the use/development and/or, amendments to existing conditions. In this instance, no such specific requests have been made by the applicant.
- 5.2 That is, the application only involves a request to amend the existing permit by way of allowing the premises to operate under a 'Late night (on-premises) Licence' and from that, allow an extension of operating hours from 1am to 3am Friday to Sunday. If approved, this would involve amending the operating hours of the existing permit. It is noted that no such specific wording has been requested by the applicant, only the broad requests noted above. There are no changes to the layout of the premises and the existing 'red line' plan would not be altered. The patron numbers would remain at 100.

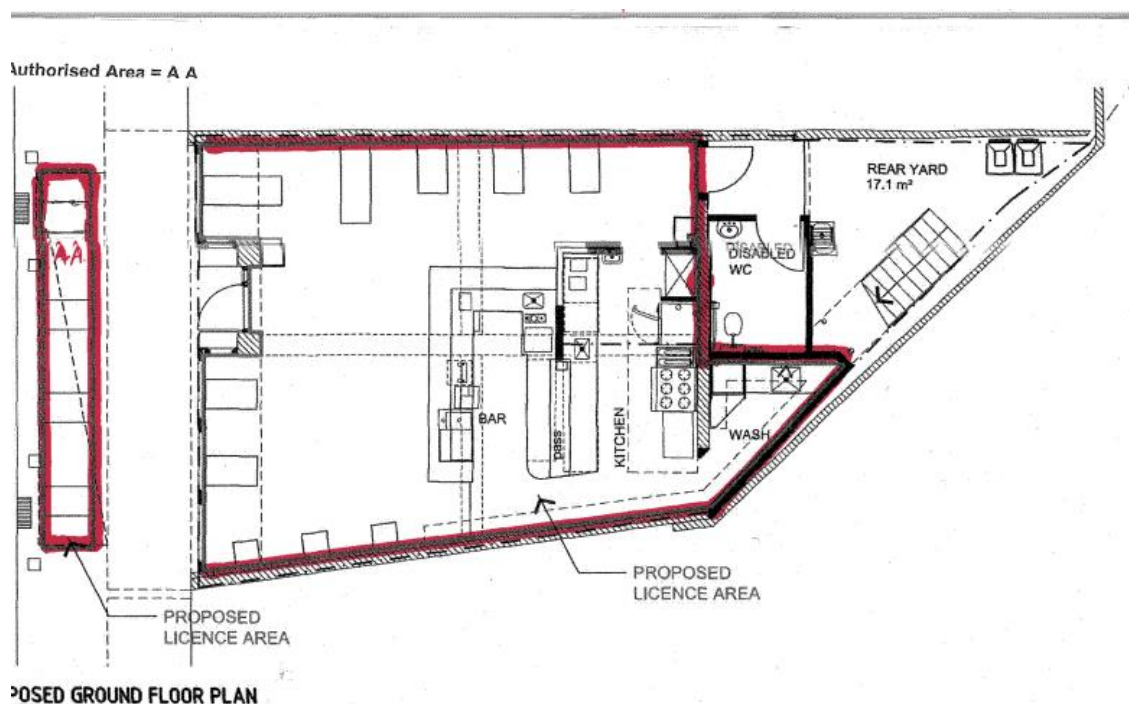
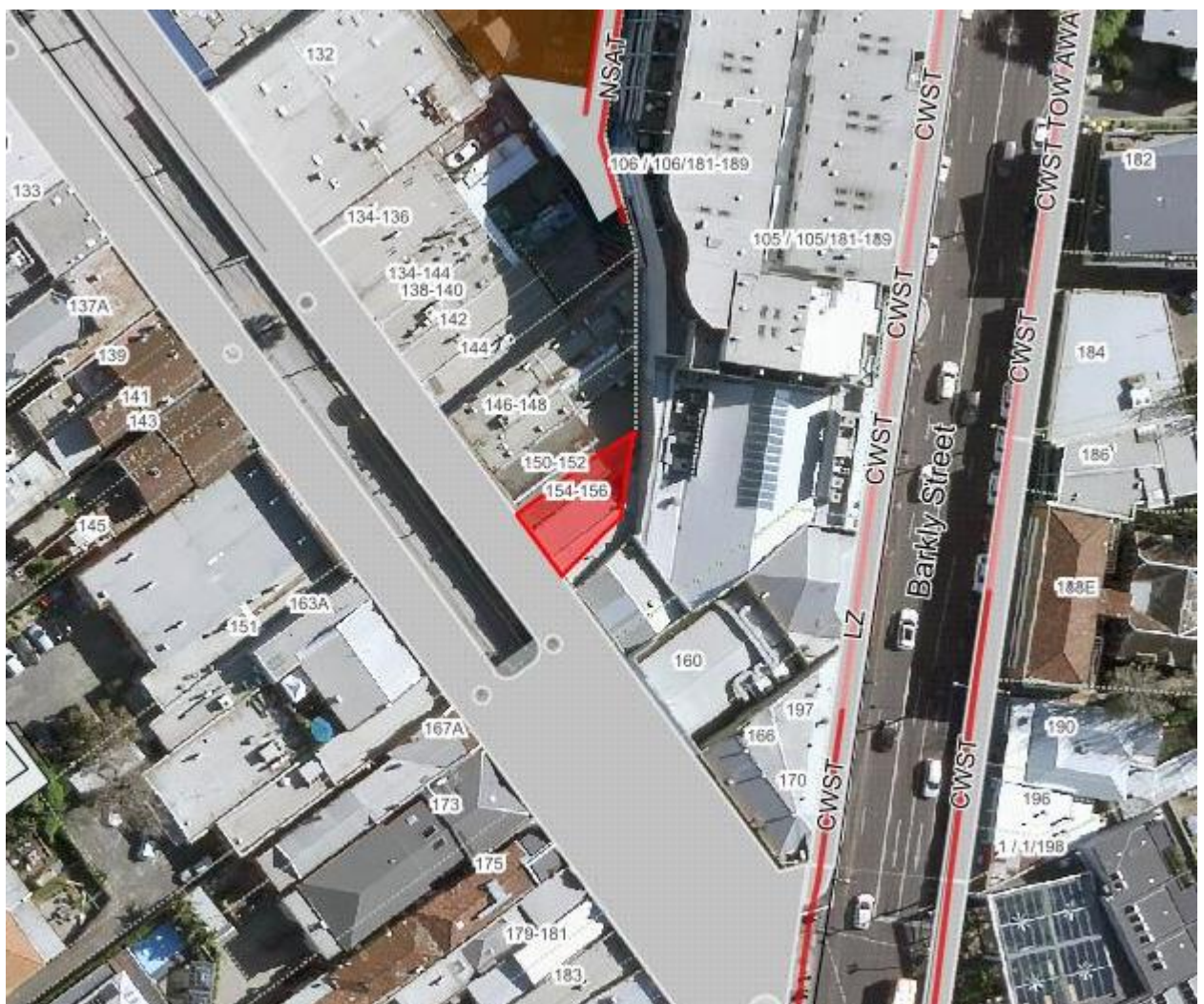


Figure 1: Ground Floor plan outlining existing layout (no change) and red line plan (liquor licence plan)

6. SUBJECT SITE AND SURROUNDS

Description of Site and Surrounds	
Site Area	Approximately 118m ²
Existing buildings	An existing double storey commercial building comprising a single tenancy exists with zero setback to Acland Street along with a small rear triangular shaped courtyard at the rear (see plan above). The existing building not including the rear area/yard has an area of approximately 80m ² .
Immediate interfaces	To the north-west and immediately south-east are various two storey commercial properties of a similar character to that on the subject land. They are used for a mix of commercial and food and drink/bar premises. Also nearby to the south-east is the Acland Street pedestrian entrance to the Acland Court. This development comprises a mix of generally ground and mezzanine internal commercial uses (supermarket and shops) with residences and apartments above and behind. The nearest apartments within this development are approximately 15m to 20m from the rear of the subject site and are elevated three or more levels above.

	Very similar commercial development exists opposite in Acland Street both in terms of built form character and mix of uses.
Scale, height and style of buildings on neighboring properties	Mixed, with one and two storey in Acland Street and four to five storey behind at Acland Court.
Proximity to Public Transport, PPTN and any relevant parking controls	The site is located within the Principal Public Transport Network Area and is within the Acland Street Activity centre with tram stop opposite the site and bus stop in very close proximity in Barkly Street.



Aerial Map with sites marked red. Source : Intramaps 2021

7. PERMIT TRIGGERS

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

Zone or Overlay	Why is a permit required?
Clause 34.01 Commercial 1 Zone	No permit is required for the proposal pursuant to the Commercial 1 Zone.
Clause 43.01 Heritage Overlay Schedule 440	No permit is required for the proposal pursuant to the Heritage Overlay.
Design and Development Overlay Schedule 6-8	No permit is required for the proposal pursuant to the Design and Development Overlay.
Clause 52.27 Licenced Premises	A permit is required for a different licence or category of licence than is currently in force and a permit is required if the hours of trading are to be extended.

8. PLANNING SCHEME PROVISIONS

8.1 Planning Policy Frameworks (PPF)

The following provisions are relevant to this application:

Clause 11: Settlement, including 11.01 Activity Centres, 11.02 Urban Growth, and 11.04 Metropolitan Melbourne

Clause 13: Environmental Risks and Amenity

Clause 17: Economic Development

Clause 17.02-1S Business

8.2 Local Planning Policy Framework (LPPF)

The Municipal Strategic Statement (MSS) contains a number of Clauses which are relevant to this application as follows:

Clause 21.04 Land Use

Clause 21.06 Neighbourhoods including St Kilda

8.3 Other relevant provisions

Clause 52.27 Licensed Premises

Clause 53.06 Live Music Venues

Clause 65 Decision Guidelines

8.4 Relevant Planning Scheme Amendment/s

N/A.

9. REFERRALS

9.1 Internal referrals



The application was not required to be internally referred.

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 (113 notices sent) and directed that the applicant give notice of the proposal by one notice on the site for an 18 day period in accordance with Section 52 of the Planning and Environment Act 1987.
- 10.2 The application received 19 objections, which are summarised and assessed later in this report.
- 10.3 A consultation meeting was held 28 September, 2021. The meeting was attended by the Applicant, Ward Councillors, eight objectors and Planning Officer. No formal agreements were reached or arrangements made, but it was very clearly expressed by the attending objectors that their key concerns were not so much noise from inside the premises, but excessive patron noise and continued poor behaviour of patrons having left the premises.
- 10.4 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.

11. OFFICER'S ASSESSMENT

- 11.1 This amendment application seeks to make two key changes to the existing permit, notably:
- Amend the hours of operation from 1am to 3 am Friday - Sunday (excluding the footpath trading area)
 - Alter the liquor licence to live venue licence
- 11.2 As this is an application to amend an existing planning permit, only the proposed changes can be assessed.

11.3 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 (mostly at local rather than State level) regarding balancing such uses against potential amenity impacts but essentially, State policy is focussed in this sense around having uses that involve sale and consumption of liquor suitably located in activity centres.

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 conditions on any approval, it is considered supportable in the context of State policy.

Clause 13.05-1S relates to noise abatement and it includes one strategy as follows:

Ensure that development is not prejudiced and community amenity and human health is not adversely impacted by noise emissions, using a range of building design, urban



design and land use separation techniques as appropriate to the land use functions and character of the area.

Whilst this is a broad policy statement, it raises the issue that noise emissions should not negatively affect community amenity. As noted previously, it is considered that the proposal would not adversely affect community amenity if approved subject to inclusion of appropriate noise limitation conditions (mainly an electronic noise limiter and consequent noise report) and subject to continued inclusion of existing conditions regarding meeting what were previously the SEPP requirements (now Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3)). These conditions would be retained (Refer to **Condition 15**) and **Condition 7 and 14**) the rear door leading out to the rear courtyard must remain closed at all times. In addition, as outlined in the existing plan, the outdoor courtyard is not used for any late night trade or live music. The existing use is contained within the ground floor – eliminating the ability for noise to escape through the roof – and that it would be carried out at the front of the site would also ensure that noise impacts to the rear and above would not be unreasonable. It is proposed to include a new **Condition 25** requiring patron noise from inside the premises not exceeding background noise by more than 5dB. This would also achieve this result.

Objections received were largely concerned about noise from patrons leaving the premises late at night. Whilst it is difficult to control patron behaviour once they leave such a premise, the applicant has committed that security guards will be used as referred to in their management plan and will try to manage patrons leaving the premises, and guide them up to 10m from the front of the premises. This will form part of a management plan as outlined in a new **Condition 22 – Management Plan**.

Clause 21.04-8 relates to Social Impact Assessments. It has one objective and a series of strategies as follows:

Objective : To ensure major land use and development proposals deliver a positive social benefit to the community.

Strategies:

Consider and address the social impacts of major land use and development proposals, through requiring the preparation of a Social Impact Assessment in association with planning applications which meet one or more of the following criteria:

- N/A

-N/A

-N/A

-Proposals for new Taverns, Nightclubs and Hotels, or where an increase in the patron numbers to such Licensed Venues is proposed.

-N/A

-N/A

-N/A

This is considered only partly relevant because the policy relates to 'major' use and development. Given that the tavern/bar use already exists and that its patron numbers



(100 patrons) are not proposed to be increased, it is considered doubtful that the proposed increase in operating times can be considered 'major'.

In any case, the overarching strategy to achieve that objective is that social impacts need to be considered and addressed. It is considered – through the submitted acoustic report and Management Plan – that in this instance, most social impacts of the proposal would flow from patron behaviour both at the site and once having left the site. From that, as previously noted, it is considered that when balanced against the location of the site in the heart of a key activity centre, that the existing permit conditions coupled with the strengthened new conditions would provide adequate protection against highly unreasonable social impacts.

Again, as previously noted, social impacts from people having left the site are difficult to control through a planning process relating to one specific premise but the provision of security guard responsibilities in the Management Plan are considered sufficient in this specific instance.

Clause 21.04-2 relates to 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.*

Strategies 3.3 and 3.5 respectively relate to (i) discouraging new bar and tavern type uses except where associated with an existing restaurant and café and (ii) discouraging entertainment uses outside designated activity centres.

The table to this clause indicates that two of the primary uses for the Acland Street Activity Centre are 'regional entertainment and tourism (including taverns/nightclubs)' and 'local entertainment (includes restaurants and cafes). Given the site is located within Acland Street Major Activity Centre and the use already exists, the proposal would sufficiently achieve the overarching objective in that the balance of supporting cultural tourism against nearby amenity impacts, subject to any recommending conditions as outlined above. The proposal to extend the hours Friday and Saturday, is considered to be small scale, over two nights of the week, its noise effects could be adequately controlled within the site and supported by various conditions as recommended.

Strategy 6.6.16 of Clause 21.06 (Neighbourhoods) states the following:

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.

It is again considered that this could be achieved through the various conditions as recommended. The matter of cumulative impacts on overall safety and amenity is discussed later in the 'assessment' section of this report regarding the Sale and Consumption of Liquor provisions at Clause 52.27.



Clause 11.03-1S encourages the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community. Whilst the proposal is not generally considered 'major', the site itself would meet with this outcome.

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 proposed buildings and works to which appropriate amenity reducing techniques could be applied. Even so, existing condition 7 regarding operations of the premises' rear door (that it not be kept open except for toilet access) would be retained so as to continue its amenity protection function.

Clauses 17.02-1S and 17.04-1S relate to development, which is not proposed in this instance.

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 suitable policy alignment for allowing the proposed extended operating hours. The sale and consumption of liquor associated with the as of right tavern/bar use also already exists.

The proposal would focus its live music activities at the front of the site abutting Acland Street, due to the layout of the bar/tavern. This would minimise noise impacts and make alignment with the above clauses more able to be achieved. It is also noted that harmonious co-existence with nearby residents in terms of extended operating hours can only generally relate to the subject site itself and not greatly beyond. But, noting that 3am is indeed a late night operation, that co-existence with neighbours for activities beyond the site should be relevantly and reasonably (but not excessively) controlled through the strengthened Management Plan required by recommending **Condition 22**.

Again, it is considered that simply because some additional amenity impacts may be caused, it is not considered reasonable in the heart of Acland Street, to fully reject the proposal for that reason alone. The applicant's acoustic report and the recommended conditions both recognise that some additional amenity impacts are likely, but that they can be appropriately controlled through permit conditions.

Further, Clause 21.04 (*Land Use- Activity Centres*) acknowledges that licensed premises have an important entertainment role within the municipality, but that 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.

In summary, subject to reasonable amenity control conditions, it is considered that there is policy support for the proposal, and noting that late night (on-premises) Licence has been approved til 3am (Friday to Saturday) by Victorian Commission for Gambling and Liquor Regulation (pending planning approval).



Clause 53.06 relates to live music entertainment uses and in summary, requires a live music entertainment venue to be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.

The submitted acoustic report indicates that the previous SEPP requirements (now Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) would be able to be met and that no additional physical noise attenuation measures would be needed to achieve this because the noise source would be inside the premises and highly contained at the front of the building. It is therefore considered that the existing layout of the site (no use of the rear yard in particular) and the advice within the acoustic report are such that no further physical measures are needed. This is further supported by recommended **Conditions 23, 24 and 25** which would ensure formal compliance with all relevant noise emission requirements and thus, Clause 53.06 would be appropriately addressed.

The Decision Guidelines in Clause 52.27 (as relevant to this application) are as follows:

...the responsible authority must consider, as appropriate:

- The Municipal Planning Strategy and the Planning Policy Framework.*
- N/A
- *The impact of the hours of operation on the amenity of the surrounding area.*
- N/A
- The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area*

The assessments in the several previous paragraphs of this report essentially take account of these guidelines to the extent that both the overall and cumulative impacts are considered acceptable in this specific instance.

11.4 Assessment against objections received.

The application has received 19 objections. The key concerns raised are summarised as follows with an officer response below:

- *No consideration for very close residential interfaces/excessive music noise.*

It is acknowledged that the site has very close residential interfaces above and to the rear with the closest balconies and habitable room windows being approximately 15m to 20m from the rear of the site. However, unlike situations where close residential interfaces often result from the border between commercial and residential zones, in this instance, the closest apartments are in a Comprehensive Development zone which in this instance, includes the Acland Court development which itself includes many and varied commercial uses and is in the heart of an activity centre. The residents of that development live in a building that itself includes a wide variety of commercial uses with the south side of that building very closely interfacing one of Port Phillip's key commercial and activity areas whereby uses (and operating hours) such as that proposed are encouraged.

Additionally, the applicant has confirmed that the open rear courtyard at the subject site is not used for outdoor drinking and/or live music and is essentially only used for toilet access and storage. The liquor licence red line plan as outlined in *Figure 1* does not include the outdoor courtyard and it is not proposed to change. Therefore, the



extended operating hours would only relate to the main part of the site/building with any music and similar activities focussed and contained within the front of the site.

The close residential interfaces are clearly acknowledged and noting that the extended operating hours would only involve internal operations and not the rear courtyard, it is considered that some balance can be reached between the proposal and the noted close residential interfaces.

Whilst not representing all objections, those who attended the consultation meeting made it clear that their key concerns relate to noise from poorly behaved patrons having left the site. There was an acknowledgement that patron and music noise within the site could be more easily controlled. To that end, it is considered appropriate that the existing permit conditions be strengthened so as to adequately protect to a reasonable extent (balancing the activity centre location of the site against the location of its closest neighbours) the amenity of those neighbours from the internal operations. Therefore, recommended **Conditions 23 and 24** are included to specifically control music noise within the premises to reasonable levels.

It is noted that there are no specific planning controls available to address patron noise (such as the previous SEPP measures now the Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) but it is reasonable that a commonly used outcome be applied in this instance and therefore, recommended **Condition 25** requires that patron noise at times when no music is playing be no more than 5dB above measured background noise levels as identified in the applicant's acoustic report. This should be readily achievable again noting that the rear courtyard is not used for outdoor activities and further that the permit already contains a condition that the door leading from the premises to the courtyard be kept closed aside from access to toilets. That condition would remain on any amended permit.

The applicant's acoustic report notes detailed assessments of both ambient background noise at various locations, plant noise, patron noise and music noise. The acoustic report concluded that the previous SEPP N1 and N2 (now the Environment Noise Protection Regulations (Divisions 1 & 4, Part 5.3) requirements could be met mostly because (i) the music activities would not take place in the rear courtyard but would be located at the front and of the site and (ii) that where the music is played is located at the ground floor and such, no music noise could escape through the roof of the building.

Officers see no reason to dispute these findings which are again consistent with the views expressed at the consultation meeting that the key concern was not patron or music noise from inside the premises but rather, excessive and increased noise from poorly behaved patrons having left the site.

On balance, given the nature of the existing use and the strong policy and Planning Scheme encouragement (as outlined later in this report) for such uses to be located in Activity Centres, it is considered that the additional conditions as outlined above would adequately take account of the close residential interfaces in this instance and ensure that no excessive or unreasonable noise impacts resulted from within the site.

- *Poor patron behaviour once having left the site/decreased safety from such patrons/loss of 'right' to sleep.*

As previously noted, this would appear to be the key concern with this proposal. It is a difficult issue to fully resolve through the planning process for two main reasons being (i) it is often very difficult to attribute poor patron behaviour (in the specific instance) in



Acland Street to persons having left one specific venue (they may also have come from other venues and (ii) the ability to control patron behaviour and their noise technically only relates to at or within a particular tenancy.

The objections have consistently asserted that patrons from the site roam around Acland Street, smoke in non-smoking areas, are generally poorly behaved and noisy and thus, disturb the ability of the closest residents to properly sleep. It was asserted that this already occurs and that approval of the proposal would only make matters worse.

The applicants have submitted a Management Plan that in summary indicates that two security guards would be at the site after 9pm on any night that live music is played. That plan also stipulates that the security guards (and all other measures of the Management Plan) would relate to the subject site and to the footpath area where a queue rope would be placed.

It is acknowledged that the likelihood of poor patron behaviour in Acland Street could be elevated and greater at 3am as opposed to 1am but the two problems of being able to deal with that through a planning permit remain valid.

However, on balance and given that two security guards would be at the site after 9pm when live music is being played, it is considered reasonable that they have some increased level of responsibility such that they can address poor and noisy patron behaviour from patrons specifically from this site beyond just the outside roped queuing area. Therefore, recommended **Condition 22** requires an updated Management Plan to be submitted indicating that the security staff deal with the above matter within a 10m radius of the front of the site.

It is not considered reasonable that they be requested or are able to deal with poor patron behaviour outside that distance as the nature of their responsibility would become very blurred and the nexus of their work to the subject site could be lost.

It is similarly recognised that poor patron behaviour, especially at or near 3am, could well lead to decreased feelings of safety in Acland Street. However, for the same two reasons noted above, this is not considered to be the responsibility of one premises (and likely not be caused by one premises only) and would ultimately be a Police matter.

- *Excessive litter/congregating patrons*

This matter is difficult to resolve through the planning process for the similar reasons previously noted. It was asserted that much of the litter and patron congregation occurs at or near the tram stop but it is highly problematic to identify whether that litter or congregating people are specifically from the subject site. In short, it is not considered that an adequate link between this concern and the subject site can be established.

- *Inaccurate acoustic report*

It was asserted that the submitted acoustic report was inaccurate in one key respect in that it only measured background noise 1.5m above the ground whilst the nearest habitable room windows are three to four storeys above the ground. In this instance, it is considered that measuring background noise three or four storeys above the ground may give a lower reading than at ground level but could potentially also give a higher reading with noise being picked up from further afield, or potentially plant noise would



also be detected. It is again considered that the submitted acoustic report is proper and accurate as best as can be expected in these circumstances.

- *Undesirable precedent*

The applicants have essentially lodged this request so that they can act on their relatively recently issued liquor licence. That licence was issued due to the live music nature of the premises, which are not overly common. In addition to the fact that every application has to be assessed on its individual merits, the existence of the live music liquor licence makes it unlikely that any permit issued in this instance would serve as an undesirable precedent.

11.3 Other Assessment Matters

Local Amenity Impacts

As previously noted, the 'bar' use is as of right in the planning scheme and already operates at the site, as does live music, both until 1am. The application does not involve increases in patron numbers or the extent of the licensed area. It is only an extension of operating hours Fridays and Saturday being assessed.

As previously assessed, the use of land is existing and not proposed to change and also, late night operations for any tenancy would generally only be encouraged or ultimately supported in the heart of a key activity centre, such as Acland Street.

However, supporting extended hours should only be based on appropriately mitigating the impact upon residential amenity. The rear of the site would not be used for any outdoor commercial (or noise generating purposes) but the site is clearly within very close proximity to several apartments. It is within this context that the proposal must be considered. In addition, it is noted that not only are the nearby apartments very close, but they are not in a commercial zone. They are, however, in a Comprehensive Development zone which itself includes a wide variety of commercial uses and is also in heart of a key activity centre.

But further noting that likely noise impacts from within the site are not the objectors' key concerns and that the tenancy is physically well suited to late night operations (music taking place at the front of the site, no rear courtyard use for that purpose and no noise escape through the building's roof), it is considered somewhat difficult to resolve the main concern of poor behaviour of patrons having left the site. That is, this is considered one instance where the tenancy in question coupled with relatively stringent conditions is one where 3am operations can be supported in terms of controlling impacts from within the site.

Further noting that patron numbers are not proposed to increase, it is concluded that a balanced protection of residential amenity in this specific instance can only reasonably be achieved by way of the recommended conditions regarding on site use and that the strengthened Management Plan as outlined previously in this report.

Cumulative impacts

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



It is noted that no new use as such is being proposed and it is only the positive/negative effects of the 3am closing time from Friday and Saturday night (including the following day) are being assessed in cumulative terms.

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.

There are several premises in the area that already operate to 3am, so the proposal would add one new such premises to the area ('new' being another 3am premises as opposed to a totally new premises). The types of nearby 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 and is within the Acland Street Major Activity Centre, as are the majority of the objectors. The proposal would result in a form of intensification of an existing use and clearly, 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 within the site and is not considered a cumulative impact but rather, a new and direct impact.

The proposal would not change the focus of the premises which is the serving of alcohol (as opposed to a true restaurant). 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 from within the site should be able to be reasonably controlled by the recommended conditions.
- The proposal would offset, to some perhaps moderate 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.

Parking

There are no permit triggers in this instance regarding car parking as neither the use's floor area nor its patron numbers would increase under this proposal.

12. COVENANTS

12.1 There are no restrictive covenants on the titles known as Lot 1 of Title Plan 704339W Volume 06306 Folio 062].



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 in an identified activity centre and the amenity impacts within the site from the proposed extended operating hours can be reasonably controlled. Any off site impacts can be controlled by the proposed Management Plan. This would strike the right balance between protecting the amenity of the surrounding area while supporting the expansion of an existing business that contributes positively to the Acland Street Major Activity centre.

15.2 Approval is recommended subject to the conditions outlined in section 3 of this report.

ATTACHMENTS

1. Redline plan proposed  [↓](#)
2. Liquor Licence  [↓](#)
3. Site Location  [↓](#)