



MEETING OF THE PORT PHILLIP CITY COUNCIL 8 DECEMBER 2021

10.5 **PLANNING REPORT - REAR 285-287 COVENTRY STREET AND 10 HOTHAM STREET SOUTH MELBOURNE (P647/2010/A)**

LOCATION/ADDRESS: REAR 285-287 COVENTRY STREET AND 10 HOTHAM STREET, SOUTH MELBOURNE

EXECUTIVE MEMBER: BRIAN TEE, ACTING GENERAL MANAGER, DEVELOPMENT, TRANSPORT AND CITY AMENITY

PREPARED BY: KATE WOOLLER, SENIOR URBAN PLANNER
SIMON GUTTERIDGE, ACTING MANAGER CITY DEVELOPMENT

1. PURPOSE

- 1.1 To determine an application to amend a planning permit to allow the sale and consumption of liquor (Café and Restaurant Licence), endorse the associated red line plan and alter condition 16 to provide for amended operating hours.

2. EXECUTIVE SUMMARY

WARD:	Gateway
TRIGGER FOR DETERMINATION BY COMMITTEE:	More than 16 objections
APPLICATION NO:	P647/2010/A
APPLICANT:	Paj Liquor Licensing
EXISTING USE:	Existing cafe
ABUTTING USES:	Commercial and residential development
ZONING:	Commercial 1 Zone
OVERLAYS:	Heritage Overlay Schedule 440 Design and Development Overlay Schedule 8
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired

- 2.1 Planning Permit 647/2010 was issued on 9 November 2010. The permit approved the construction of four awnings and a fence, the display of business identification signage and additions and alterations to the building facade. The application also involved consideration of the waiver of parking in association with the use of the land for a convenience restaurant pursuant to Clause 52.06 Car Parking of the Planning Scheme. Condition 1 plans were endorsed on 7 November 2010.
- 2.2 This current application has been lodged under Section 72 of the Planning and Environment Act 1987 to amend that original permit by proposing to use the land for the sale and consumption of liquor (Café and Restaurant licence) as per the submitted red line plan. It is also proposed to amend the hours of operation currently permitted via condition 16 of the permit.



- 2.3 Alcohol would be sold to be consumed in both the indoor and outdoor area of the existing venue. The applicant has stated that the operating conditions of the business would continue to be a boutique venue supplying food for patrons for breakfast, lunch and dinner. It is proposed that liquor be offered as an ancillary service to patrons who attend the premises for a meal, light snack or other refreshment. Whilst take-away food is provided, a Restaurant & Café Licence does not allow the sale of liquor for off-site consumption. A full range of liquor would be offered for on-premises consumption only.
- 2.4 The Victorian planning system recognises that a permit holder's intentions may change over time. Rather than requiring a new permit application to be made every time a change is proposed, Section 72 of the Planning and Environment Act 1987 allows applicants to apply to the responsible authority for an amendment to a permit and associated plans. The assessment of this application is confined to the proposed changes to what has already been approved.
- 2.5 An application to amend a permit under Section 72, including any plans, drawings or other documents approved under a permit, follows the same process as an application for a permit. It has the same requirements for giving notice and referral.
- 2.6 The site is the rear portion of premises known as 285-287 Coventry Street and extends to the east to incorporate 10 Hotham Street in South Melbourne, forming an 'L' shaped property of approximately 350 square metres. The Coventry Street component of the site is a double storey brick building historically used as a warehouse, that has a ground floor café operating within known as Chez Dre. The building is connected to a single storey portion that has a direct frontage to Coventry Street and operates as a separate café known as Bibelot. The entry door to the venue is located on the western side of the building, accessed from the laneway. The Hotham Street component is an outdoor covered dining area connected to the main building via a side door. The outdoor area features a black metal fence with gate inset from Hotham Street that enables the outdoor area to be locked up. This fence and gate formed part of the original approval in the planning permit that this application seeks to amend.
- 2.7 The site forms part of the South Melbourne Central Activity Centre and is located between Cecil Street to the west and Hotham Street to the east and is positioned to the south east of the South Melbourne Market. The land is wholly contained in the Commercial 1 zone that provides for the use of the land as a retail premises (which includes restaurant, hotel, convenience restaurant, bar or take away food premises amongst other things) without the need for a planning permit.
- 2.8 Following notice of the amendment application, 24 objections have been received in total. Concerns raised largely relate to hours of operation, amenity impacts arising from noise to nearby residences, anti-social behaviour outside the venue, safety issues including conflict between patrons and vehicles using the laneway.
- 2.9 With respect to residential amenity considerations, it is notable that the site is located in a key commercial area of the municipality. Operation of the venue to the same hours sought in this application but without liquor would not need planning approval under current planning scheme provisions. While there are residences directly abutting and nearby the site, these residences are primarily located within the Commercial 1 zone which does not provide the same level of residential amenity provided for a house in a suburban area. The applicant did respond to concerns from residential objectors by reducing hours of operation as compared to those outlined in the initial application.



- 2.10 Following the consultation meeting conducted for the application, the applicant responded to residents particularly in Hotham Street, who were the primary attendees at the meeting, by advising that no music will be played in the outdoor area and closing the gate to Hotham Street at the earlier time of 6pm. These changes have been formalised via an amendment to the application pursuant to Section 57A of the Planning and Environment Act 1987 lodged in September 2021
- 2.11 However, further submissions from owners and occupiers of commercial and residential properties in Cecil Street at the other side of the site note that this would exacerbate amenity impacts on their side and question the appropriateness of directing pedestrian flow to an unlit bluestone laneway when proper footpaths and lighting are provided to Hotham Street. Concerns have been raised over the conflict of vehicles and pedestrians in this space. As part of the assessment of the application, consideration has been given to the fact that the property benefits from a right of carriageway over the laneway to the west, enabling patrons and staff of the venue to use the laneway for access purposes.
- 2.12 Balancing all of these considerations, it is recommended that the application is supported. The changes to the proposal as submitted by the applicant in combination with the amenity conditions recommended in this report supports the expansion of the existing business whilst appropriately addressing the amenity and safety issues.

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 construction of four (4) awnings and a fence, the display of business identification signage and additions and alterations to the building façade; at rear 285-287 Coventry Street and 10 Hotham Street, South Melbourne, **with the following changes**.

Amended Permit Preamble

The permit preamble amended to include reference to the sale and consumption of liquor. The permit preamble to be as follows (with changes shown underlined.)

Preamble:

Construction of four (4) awnings and a fence, the display of business identification signage and additions and alterations to the building façade; the sale and consumption of liquor (Café and Restaurant Licence), in accordance with the endorsed plans.

Amended Conditions

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

Amended Plans required

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



- a) ~~The revised provision of bicycle parking facilities which allow the locking of bicycles by their frames;~~ **The approved site plan amended to generally match:**
- **the layout shown on the red line plan including identifying the relocated gate to Hotham Street as per existing conditions and the associated revised bike parking area;**
 - **seating to match the patron numbers identified in condition 23.**
- b) ~~The location and type of security and type of security lighting at the building entrances~~ **of building mounted lighting at the laneway entrance:**
- **Positioned to illuminate both the patron entrance and the area of the laneway where the patron entrance and two car park entrances (rear vehicle access to 291 Coventry Street and 145 Cecil Street) converge;**
 - **Operate from dusk to at least 30 minutes after closing time (or a sufficient amount of time) to allow patrons and employees to safely exit the laneway.**
- c) The awnings in the western elevation to be of manually retractable construction;
- d) The kitchen exhausts extractor ducts detailed and fully dimensioned on the relevant elevations.
- e) **Identification of bin storage facilities on site, consistent with conditions 6 and 9 of the permit.**

No Alterations

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

Satisfactory continuation

3. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Walls on or facing the boundary

4. The walls on or facing the boundary of adjoining properties must be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

Lighting baffled

5. All lighting of external areas must be suitably baffled so as not to cause nuisance or annoyance to nearby residential properties.

Storage and disposal of garbage

6. 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.

No public address system



7. Without the further consent of the Responsible Authority, no form of public address system or sound amplification equipment must be used on the premises so as to be audible outside the premises.

Amenity

8. 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) Emissions of noise, artificial light, vibration, smell, fumes, smoke, steam, soot, ash, dust, waste water, waste products, grit or oil;
 - d) Presence of vermin;
 - e) Change to television and/or radio reception;
 - f) In any other way

Waste Management

9. An adequate waste management arrangement must be provided for the premises, in accordance with ~~Council's Community Amenity Local Law No: 3~~ **Local Law No. 1 (Community Amenity)**

No equipment and services

10. No equipment, services and exhausts other than those shown on the endorsed plan must be erected above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.

No equipment or services

11. No plant, equipment or other 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 a street (other than a lane) or public park without the written consent of the Responsible Authority.

Mechanical exhaust

12. The kitchen(s) mechanical exhaust system must be constructed in accordance with the Australian Standard number 1668 and/or to the satisfaction of the Regulatory Authority

Vertical discharge for mechanical exhaust

13. The kitchen(s) exhaust system must provide for a vertical discharge to the atmosphere at a point and velocity which allows for effective dispersal of fumes so as to not create a nuisance (as defined under the Health Act 1958) to the surrounding amenity.

Treatment of fumes

14. Fumes from any café/restaurant kitchen(s) must be treated within the mechanical exhaust system to ensure that any discharge does not create a nuisance (as defined under the Health Act 1958). Options available include carbon filters, ultra violet ozone producing lamps, electrostatic precipitation, odour neutralising system or other suitable method. The method of treatment must be designed,



installed, operated and maintained to the satisfaction of the Responsible Authority

Air Conditioning Noise

15. Any air conditioning plant must be screened and baffled and/or insulated to minimise noise and vibration to other residences in accordance with Environmental Protection Authority Noise Control Technical Guidelines as follows:
 - a) noise from the plant during the day and evening (7.00am to 10.00pm Monday to Friday, 9.00am to 10.00pm Weekends and Public Holidays) must not exceed the background noise level by more than 5 dB(A) measured at the property boundary
 - b) noise from the plant during the night (10.00pm to 7.00am Monday to Friday, 10.00pm to 9.00am Weekends and Public Holidays) must not be audible within a habitable room of any other residence (regardless of whether any door or window giving access to the room is open).

Hours of operation

16. The use may operate only between the hours of:
~~7am and 7pm, Monday to Friday~~
~~7am and 7pm, Saturday and Sunday~~

Internally

ANZAC Day & Good Friday – 12 noon to 11pm

Any other day - 9am to 11pm

Externally

ANZAC Day & Good Friday – 12 noon to 9pm

On any other day 10am – 9pm

Regulation of deliveries and rubbish collection

17. Deliveries to and from the site, including rubbish collection, must only take place between:
7.00am and 5.00pm - Monday to Friday
7.00am and 5.00pm - Saturday
10.00am and 5.00pm - Sunday

Signs not altered

18. The signs as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

Signs constructed to Council satisfaction

19. All signs must be constructed and maintained to the satisfaction of the Responsible Authority.

Sign lighting to be baffled



20. Any external sign lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.

Time for starting and completion

21. This permit will expire if one of the following circumstances applies:
- The development is not started within two (2) years of the date of this permit.
 - The development is not completed within two (2) years of the date of commencement of works.

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

- 22. The gate to Hotham Street is to be closed at 6pm daily but must remain available as an emergency exit at all times.**

Number of patrons

- 23. Without the further written consent of the Responsible Authority no more than 80 patrons internally, and 64 patrons within the outdoor area, must occupy the premises during operating hours.**

Music

- 24. No music is to be played in the outdoor courtyard area at any time.**

Bottles

- 25. Bottles must be bagged during operation times and must not be emptied into the external refuse bins after 9pm any day, before 8am Monday to Saturday, or before 10am on Sunday, except with further written consent of the Responsible Authority.**

Responsible Serving of Alcohol

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

Noise and Amenity Action Plan

- 27. Prior to the commencement of the use, a Noise and Amenity Action Plan must be prepared and submitted for approval to the Responsible Authority which must contain the following:**
- The identification of all noise sources associated with the licensed premise (including, but not limited to, music noise, entries and exits to the premises and any external area allocated for smokers).**
 - Hours of operation for all parts of the premises, consistent with other relevant conditions of this permit.**
 - Details of music (indoors only) including the frequency and hours of operation.**
 - The identification of noise sensitive areas including residential uses and accommodation in close proximity to the licensed premise.**



- e) Measures to be undertaken to address all noise sources identified, including on and off-site noise attenuation measures, including but not limited to:
 - The measures to be taken by management and staff to ensure patrons depart the premises and the surrounding area in an orderly manner and do not take/consume alcohol outside the premises.
 - Standard procedures to be undertaken by staff in the event of a complaint by a member of the public, the Victoria Police, an authorised officer of the responsible authority or an officer of the liquor licensing authority.
- f) A telephone number provided for residents to contact the premises and linked to the complaints register;
- g) The maintenance of a complaints register, which must, on reasonable request, be made available for inspection by the Responsible Authority.
- h) Details of the waste management plan including storage and hours of collection for general rubbish and bottles, and delivery times associated with the licensed premise, consistent with any other relevant condition(s) of this permit.
- i) Details of any measures to work with neighbours or other residents in the immediate area to address complaints and general operational issues.
- j) Any other measures to be undertaken to ensure minimal amenity impacts from the licensed premise.

4. RELEVANT BACKGROUND

The following relevant applications have previously been considered for the subject site:

Application No.	Proposal	Decision	Date of Decision	Comment
P647/2010	Construction of four (4) awnings and a fence, the display of business identification signage and additions and alterations to the building facade	Approval	9 November 2010	As per section 2 of the report, the original application approval included consent to the waiver of parking in association with a 60 seat food and drink premises, pursuant to Clause 52.06 of the Port Phillip Planning Scheme. As the Planning scheme provided a 'consent' provision for this aspect of the application rather than a planning permit trigger, the planning permit preamble does not include reference to this aspect of the proposal. While the 'use' was not considered per se under the planning controls applicable at the time other than in the context of parking, it is noted that some permit conditions were imposed relating to

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				the use. This included condition (16) to regulate hours of operation from 7am to 7pm daily. Other amenity based conditions were imposed such as condition 17 relating to hours of rubbish collection, no form of public address, storage and disposal of garbage and the like.
P931/2011	Sale and consumption of liquor (restaurant/cafe liquor licence)	Approval	11 November 2011	This permit issued for the subject site lapsed, according to the permit applicant, hence necessitating the application that is the subject of this report. The permit related to 60 patrons at the venue.
P545/2014	Partial demolition and alterations including the construction of a lift	Approval	19 September 2014	Although this permit related to the front part of the building at 285-287 Coventry Street, it approved a lift to enable access from this part of the site to the rear section of the building that is the subject of the application considered in this report, providing access to the food preparation facilities for both tenancies.
P278/2020	Construction of a free standing roof with retractable weather protection	Approval	3 June 2020	The planning report associated with this permit stated that P647/2010 set the floor area of the retail premises land use for the site. The report stated that as the floor area would not be increased in the application, no additional car parking was required pursuant to Clause 52.06 of the Planning Scheme.

5. PROPOSAL

- 5.1 The application seeks approval to provide for the sale and consumption of liquor in association with the existing venue (Café and Restaurant Licence). Approval is sought to endorse the associated red line plan.
- 5.2 The venue would cater for a maximum of 144 patrons consisting of 80 patrons internally and 64 within the outdoor seating area off Hotham Street.
- 5.3 The applicant seeks to amend condition 16 of the planning permit with respect to trading hours.
- 5.4 The hours proposed when the application was first lodged were:
 - Internally**
 - Sunday - Wednesday 10am to 11pm
 - Thursday - Saturday 10am to 1am



ANZAC Day & Good Friday - 12 noon to 11pm

Externally

ANZAC Day & Good Friday – 12 noon to 11pm

On any other day 10am – 11pm

- 5.5 It is noted that the applicant amended the application on 11 March 2021 via section 57A of the Act following the initial advertising period, to respond to concerns raised in objections. The key changes that the applicant sought related to the trading hours, primarily to reduce the closing time. The applicant sought to change the hours to the following:

Internally

ANZAC Day & Good Friday – 12 noon to 11pm

Any other day - 9am to 11pm

Externally

ANZAC Day & Good Friday – 12 noon to 9pm

On any other day 10am – 9pm

- 5.6 The applicant also used the initial 57A amendment to try to clarify music, stating both that there would be no music played in the external area and also that no live or amplified music would be played in the outdoor area. The form also stated that ambient or background music was to be played only.
- 5.7 Following the consultation meeting conducted in May 2021, the applicant sought to further amend the application via a Section 57A amendment in September 2021 to provide for the gate to the outdoor area off Hotham Street to be closed at 6pm, and the outdoor area itself closed to patrons at 9pm.
- 5.8 Final proposed trading hours for the application as submitted in this final amendment to the section 72 application are:

Internally

Sunday to Wednesday 10am to 11pm.

Thursday to Saturday 10am to 1am.

Anzac Day and Good Friday 12 noon to 11pm.

Externally

Anzac Day and Good Friday 12 noon to 9pm.

On any other day 10am to 9pm.

- 5.9 The applicant has also sought to amend the application to provide that the gate to Hotham Street will be closed at 6pm and no music will be played in the external courtyard area.
- 5.10 More recently the applicant has confirmed in writing that the reversion back to a 1am close internally as per the September 2021 57A amendment, was a typographical error and it was intended to be 11pm consistent with the March 57A amendment. This could be addressed via a condition of any approval issued.

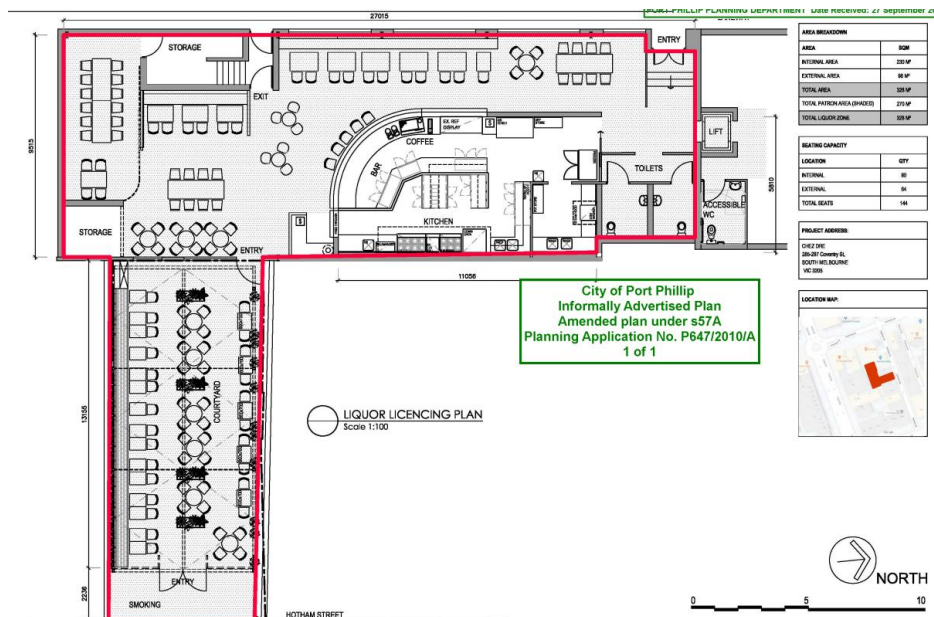


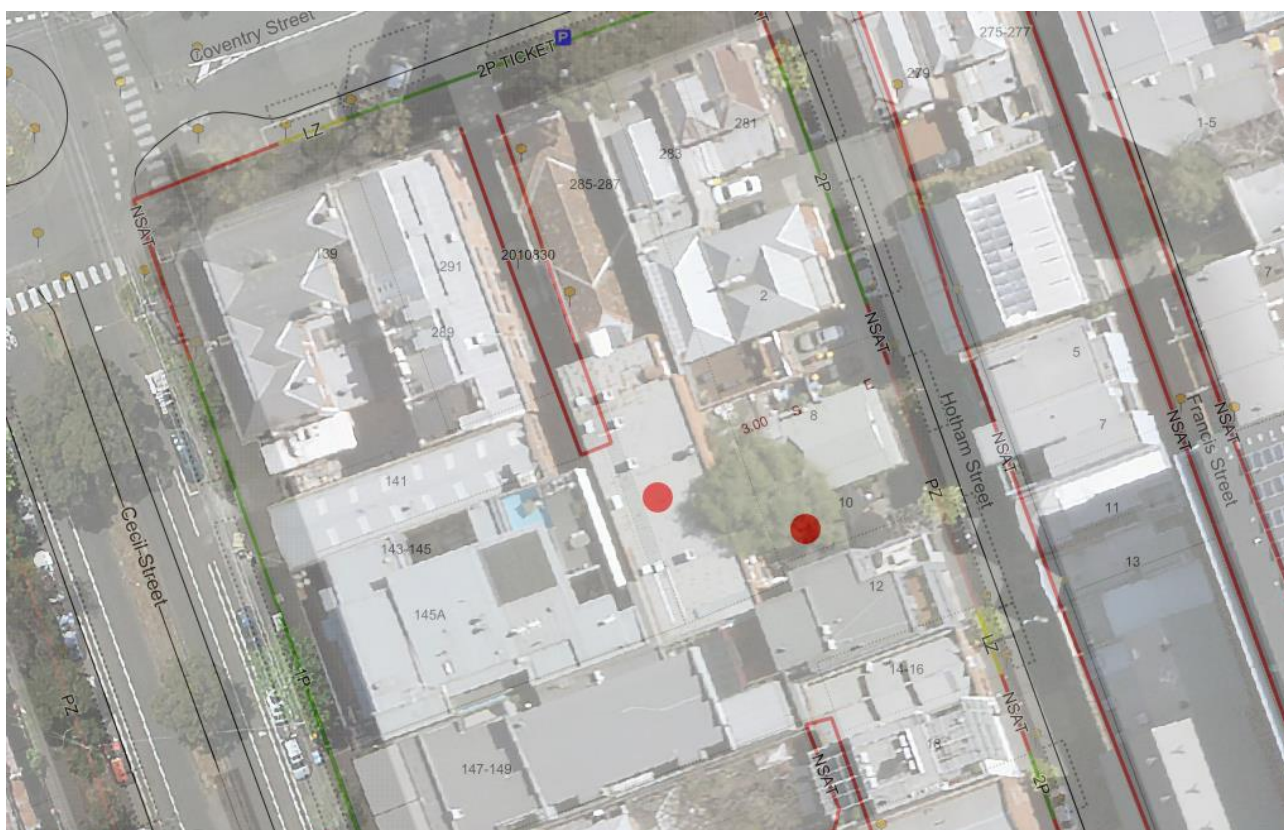
Figure 1: Proposed Red Line Plan

6. SUBJECT SITE AND SURROUNDS

Description of Site and Surrounds	
Site Area	Approximately 350m ²
Existing building & site conditions	<p>The land forms part of the South Melbourne Central Activity Centre and is contained within the Commercial 1 Zone. The land is also affected by the Heritage Overlay (HO440) and Design and Development Overlay (DDO8) which control buildings and works on the land.</p> <p>The subject site is the rear portion of the brick building known as 285-287 Coventry Street located and contained within Lot 2 of Title Plan 442760. The title plan for lot 2 clearly identifies that the property has right of carriageway over the road to the west side. This road is known as R3123 by Council. This building is used as a café at ground floor, known as Chez Dre. This café was established as part of the original application P647/2010 that this application seeks to amend.</p> <p>This part of the building is double storey and has windows and doors to its western and eastern elevations. The main entry to the building is accessed via the laneway to the west side of the site that separates the building from commercial and residential properties facing Coventry Street and Cecil Street (contained within the Commercial 1 zone also.) A covered courtyard area is located towards the south east corner of the building facing Hotham Street. This area is contained on a separate title known as Lot 1 of TP 600992V.</p>



<p>Surrounds/neighbourhood character</p>	<p>Land surrounding the site is contained in the Commercial 1 zone and includes both commercial and residential uses.</p> <p>The front part of the building at 285-287 Coventry Street is a separately run food premises with its own liquor approval (café and restaurant licence), that does not form part of this current application.</p> <p>To the east of the site are properties also contained within the Commercial 1 zone, consisting of both residential and commercial premises. More specifically, to the south of the outdoor dining area of the subject site is 12 Hotham Street South Melbourne, a multi-level dwelling forming part of the redevelopment of 147-149 Cecil Street. The dwelling faces Hotham Street and includes undercroft parking, with first and second floor living and bedroom areas above and including terraces to the north side of the building abutting the outdoor dining area. Behind this dwelling are other apartments approved as part of this redevelopment.</p> <p>To the north of the site is 8 Hotham Street, a single storey weatherboard dwelling with a blank wall to the courtyard.</p> <p>On the western side of the laneway abutting the site, is 141, 143-145 and 145A Cecil Street. No. 141 Cecil Street is a two-storey building with recent external building works approved associated with the intended internal use as a medical centre, connected to the existing ground level medical centre at 145 Cecil Street. Above 145 Cecil Street are two apartments. One includes an outdoor area with pool that abuts the laneway, and a bedroom below that.</p>
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Aerial Map with sites marked with red dot. 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 8	No permit is required for the proposal pursuant to the Design and Development Overlay.
Clause 52.27 Licenced Premises	Pursuant to Clause 52.27, a permit is required to use the land to sell or consume liquor as: <ul style="list-style-type: none"> - A licence is required under the Liquor Control Reform Act 1998.

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
21.06-5 South Melbourne

8.3 Other relevant provisions

Clause 52.27 Licensed Premises

Clause 65 Decision Guidelines

8.4 Relevant Planning Scheme Amendment/s

N/A.

9. REFERRALS

9.1 Internal referrals

The application was referred to the following areas of Council for comment. The comments are discussed in detail in Section 9.

Building

I have reviewed the architectural drawings for the site and I am able to advise that due to the floor area of the existing café and the distance of travel to the nearest exit, it is required that an alternative means of egress in the case of an emergency be maintained. However, it is feasible for the alternative means of egress via Hotham St to remain in place and for patrons to be directed by venue staff to use the entry point on Coventry St to comply with the Planning Permit requirements under normal conditions. The Building Code requirements for egress stipulate that occupiers of the building are considered to have egressed when they have exited onto a road or open space, a laneway would be considered as adequate mean of egress.

Planner Comment:

Whilst the planning permit process is a separate process to any building regulation process, it is relevant to note that the proposal would not appear to breach any relevant regulations with respect to access.

Property and Assets

Hotham Street:



- The public lighting (streetlight type and existing configuration) and street design (road and footpaths on both sides) is appropriate for the movement of vehicles and pedestrians within Hotham Street.
- No changes to the public lighting are required.

Laneway (R3123):

- It would be appropriate for the applicant to ensure the existing building-mounted lights:
 - Are positioned to illuminate both the patron entrance and the area of laneway where the patron entrance and two carpark entrances (rear vehicle access to 291 Coventry and 145 Cecil Street) converge.
 - Operate from dusk to at least 30 minutes after closing time (or a sufficient amount of time) to allow patrons and employees to safely exit the laneway.

Strategic Planning

A review of the above site reveals that it has the following zoning history.

The earliest available zoning information indicates that the site was zoned residentially in 1954 but by 1959 was zoned 'light industrial'. Industrial zoning remained in place until at least 1985.

When the new format planning scheme was introduced in Port Phillip on 9 January 1997, the site was zoned Business 1 (based on the earliest available new format planning scheme zoning map and a review of planning scheme amendments that had occurred until that date). When the new suite of commercial zones was introduced across Victoria under Amendment VC100 on 15 July 2013, the 'Business 1 Zone' was converted to the 'Commercial 1 Zone' (the zone that remains in place today).

In summary, it appears likely that although the site was zoned residentially in the 1950s, by 1959 it was zoned industrially which likely remained until being converted into a business zoning as part of the introduction of the new format planning schemes in 1997. This became the current 'Commercial 1 Zone' under Amendment VC100 in 2013.

Planner Comment:

The early history of the site as a residential zoned area is noted, however evidently the focus of zoning since that time has been of an industrial/commercial focus.

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 (120 letters) and directed that the applicant give notice of the proposal by posting two notice(s) on the site in accordance with Section 52 of the Planning and Environment Act 1987.
- 10.2 The application has received 24 objections. The key concerns raised are summarised below (officer comment will follow in italics where the concern will not be addressed in Section 11):



- Noise impacts from patrons, music, cleaning and bottle sorting, and noise from vehicles associated with patrons being picked up and dropped off, to residential properties abutting and nearby the venue as a result of the increased hours of operation. Walls of courtyard conduct noise to surrounding premises. Walls in laneway also conduct noise.
- Late trading hours would diminish general amenity of surrounding residential properties including adverse impacts on sleep.
- Anti-social behaviour and security issues arising from intoxicated patrons.
- Additional parking pressure for residents.

Planner comment: Car parking cannot be considered in the assessment of the application as the only permit trigger is Clause 52.27 - Licensed Premises. Notably car parking calculations for a food and drink premises (and other hospitality and retail uses) is now based on leasable floor area rather than seat numbers as part of amendment VC148 to the Victorian Planning Schemes in July 2018. Hence the minor relocation of the gate is of no particular consequence as the overall area used by the site is unchanged. The layout is consistent with the plan approved as part of P278/2020.

- Over supply of licensed venues in the area.
- Gate to Hotham Street was relocated to allow more seating and removed car parking spaces.

Planner comment: The gate appears to have been moved as compared to the original plan approved in 647/2010 however the area in front of it was never set aside for car parking. The area was a bike parking area. Adequate space remains available for bike parking. A condition could be imposed to ensure the plans are updated to match existing conditions. The change would be minor and there would be no planning reason not to approve this.

- 1am closure time is more akin to a bar or nightclub than a food service premises.
- Increase of criminal incidents in Port Phillip including increase of 2.5% to 30 June 2020 with one of the top places for incidents including laneways and footpaths. South Melbourne was named one of the top 5 suburbs in the list.
- Existing problems with rubbish and vehicles associated with the café blocking fire escape to Cecil Street properties will be exacerbated by increased hours.

Planner comment: The original application 647/2010 identified bin storage in the outdoor courtyard. Condition 6 of the permit requires that provision must be made for the storage and disposal of garbage to Council's satisfaction and this must be screened from public view. Bin storage is not shown on the red line plan forming part of the amendment application. A condition could be imposed if a permit is issued to require the initially endorsed plans for 647/2010 be amended to identify the layout consistent with the red line plan but identifying an appropriate revised bin storage area if it is no longer proposed to be maintained in the outdoor area. Issues relating to Council's asset, the laneway, being blocked by bins and any other items are matters that could be addressed by Council's Local Laws team.

- Outdoor smoking area would result in a fire hazard given the plastic grass to outdoor area and flammable construction materials of neighbouring dwelling at 8 Hotham Street.



Planner comment: This matter is not a matter that can be considered in the application at hand.

- Most of the residential properties in the area predate the operation of the café and predate zoning changes that now allow more commercial uses.

Planner comment: The history of the establishment of the business currently operating from this site and the history of the zoning of the land is outlined in both the background and referral section of this report.

- Information in application relating to music is contradictory.

Planner comment: This comment followed the initial March 2021 Section 57A amendment where information relating to music was contradictory as the amendment form said that there would be no music played in the outdoor area but also said there would be no live or amplified or live music but ambient or background music. This has been clarified in the later 57A amendment as the applicant has stated there will be no music in the outdoor area.

- Query the inclusion of the cover over the outdoor area as this has funnelled music and why people surrounding the area were not notified.

Planner comment: The planning permit application for the construction of a free standing roof with retractable weather protection cover over the outdoor area (P278/2020) qualified for submission under the VicSmart provisions of the Planning Scheme. VicSmart provisions do not provide notice or third party appeal rights.

- Laneway is unlit, too narrow and has no footpath to support foot traffic particularly at night when it is dangerous to do so. Surface of laneway is not suitable for pedestrians.
- An increase in vehicles to the laneway (vehicles dropping patrons to the laneway entry, increased deliveries) would result in blocking of the laneway and increase number of vehicles reversing back up the laneway which is dangerous and would impact on properties in Cecil Street that rely on access to the parking area accessed off the laneway.

Planner comment: The property has legal rights to use the laneway and this is evidenced in the title for the land. Both pedestrian and vehicular traffic have right of way to pass and repass in the lane. Vehicles are no more entitled to use the laneway than pedestrians. The advantage of the bluestone finish to the lane is that it likely serves as a traffic control mechanism, slowing vehicles down for the benefit of all users.

10.3 A consultation meeting was held on 3 May 2021. The meeting was attended by two Ward Councillors, the permit applicant and business operator, objectors and Planning Officers. Following on from the meeting, the applicant further amended the proposal through lodgement of a section 57a amendment that proposed the key following changes:

- Shutting the courtyard gate to Hotham Street at 6pm; and
- Advising that no music would be permitted in the outdoor area.

10.4 As outlined in section 5 of the report, the hours of operation more generally were also modified.



- 10.5 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:

- To include the use the land for the sale and consumption of alcohol as outlined in an associated red line plan, that includes both the indoor and outdoor area;
- Amend the hours of operation.

- 11.2 As this is an application to amend an existing planning permit, only the proposed changes can be assessed.

The key matters for consideration fall under the following headings:

- Would the amendment application remain consistent with the state and local planning policy framework including the zone and Clause 52.27 Licensed Premises?
- Would there be unreasonable off-site amenity impacts?

11.3 Zoning, State and Local Policy background, Clause 52.27 Licensed Premises

Commercial 1 Zone

The subject site is located within the Commercial 1 Zone. The use of the land for a food and drink premises in the zone is 'as of right'. The objectives of the zone are as follows:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To create vibrant mixed-use commercial centres for retail, office, business, entertainment and community uses.
- To provide for residential uses at densities complementary to the role and scale of the commercial centre.

State and Local Policy

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.

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.

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 Municipal Strategic Statement acknowledges that licensed premises contribute to the vibrancy of the municipality and that well managed licensed premises contribute to the activity, appearance and character of the area, however it is also of note that these



facilities need to be well managed and appropriately located to reduce the potential for unreasonable amenity impacts on the surrounding neighbourhood.

Clause 21.01-2 includes a strategic approach to provide 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. Clause 21.04-2 Activity Centres notes that activity centres are for business, shopping, working and leisure with some centres also important locations for development of different types of housing. Strategy 3.2 seeks 'To support smaller scale local entertainment uses in the Major Activity Centres, where they do not adversely affect residential amenity, or displace the provision of retail goods and services.' Strategy 3.4 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 and traffic and parking congestion.' This clause identifies the South Melbourne Central as a major activity centre, with a number of functions including as a specialty retail goods and services area with a regional catchment, a daily/weekly retail goods and services area with a local catchment, and a local entertainment centre.

Local strategies for this area as listed at Clause 21.06 – Neighbourhoods, of the Port Phillip Planning Scheme include:

1. Promote activity, diversity and vitality by:
 - Ensuring that the South Melbourne Central (SMC) Activity Centre retains its vital local convenience shopping role which serves surrounding residential communities and workers.
 - Promoting the community, leisure and cultural role of South Melbourne Central (SMC).
 - Encouraging the provision of active streetscapes, outdoor living and vibrant "people spaces". In particular, encouraging active ground level frontages within the Activity Centre.
 - Encouraging mixed use developments, including vertical layering of land uses and active street frontages.
 - Encouraging a diversity of housing types, affordability and tenure.
2. Support the local economy by:
 - Facilitating the development of South Melbourne Central (SMC) as a viable and creative business and retail location.
 - Promoting the important role of South Melbourne Central (SMC) Activity Centre as a sub-regional shopping destination that provides quality comparison shopping for the wider community of Kings Way, Docklands, Southbank and beyond.
 - Ensuring that retailing activities, such as supermarkets, locate within the defined SMC Activity Centre.
 - Continuing to support the existing economic base of South Melbourne Central (SMC) in business services and light industry.
 - Expanding the role of SMC as a location for knowledge based and creative industries, exploiting its strategic location adjacent to the Melbourne CAD.
 - Identifying suitable locations for restricted retail premises.



3. Create a great place to live by:

- Ensuring a high level of residential amenity is maintained and enhanced.
- Encouraging moderate intensification of housing, subject to heritage and amenity considerations, in the South Melbourne Central (SMC) Activity Centre.
- Ensuring new residential development is of a consistently high design quality and will enhance the visual and streetscape amenity of the area. Requiring new residential development within or adjacent to the Activity Centre to be sited, designed, and constructed in such a manner as to minimise the impacts of noise from nearby activities.
- Ensuring that intensification of business activity does not result in an undue loss of amenity to nearby residential properties

Clause 52.27 - Licensed Premises

Pursuant to Clause 52.27 Licensed Premises, a planning permit is required to use land to sell or consume liquor on the site given;

- A licence is required under the Liquor Control Reform Act 1998.
4. The purpose of the Clause is;
- *To ensure that licensed premises are situated in appropriate locations.*
 - *To ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.*

These provisions apply to premises licensed, or to be licensed, under the Liquor Control Reform Act 1998.

Clause 52.27 specifies decision guidelines that the responsible authority must consider which are as follows:

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

State Government *Practice Note 61 - Licensed premises: Assessing Cumulative Impact* describes Cumulative impact as referring to both positive and negative impacts that can result from clustering a particular land use or type of land use. The Practice Note states that the potential cumulative impact from a cluster of licensed premises will vary between locations, depending on the mix and number of venues and whether the area is a destination for activities associated with the supply of alcohol. Cumulative impact is considered to be a product of the number and type of venues present, the way they are managed, and the capacity of the local area to accommodate those venues.

The Practice Note states that 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 Practice Note states that clustering of licensed premises may lead to a negative impact even though an individual venue may be managed and run well and cause no detriment. The Practice Note also states that an area might reach a 'saturation point' where an additional licensed premises or a particular type of licensed premises is likely to impact negatively on the surrounding area. Alternatively, the practice note acknowledges that there may be a positive cumulative impact where an additional premises will enhance the character or vibrancy of an area.

The practice note also identifies that premises that provide little or no seating are associated with excessive alcohol consumption. Venues offering food or meals (not just basic snacks) are shown to be less at risk of excessive alcohol consumption. This is consistent with The Design Guidelines for Licensed Venues issued by the Department of Justice. The Design Guidelines state that research shows that vertical drinking environments are less conducive to relaxed behaviour and lead to 'faster' drinking.

The applicant has provided a copy of licenses within the area having regard to the Practice Note criteria. The assessment identifies that there is a cluster within 100m and 500m of the land.

Of the 32 licenses within the vicinity of the site as provided by the applicant (approx. 250m radius), 17 (53%) are restaurant and café licences, four (12%) are general licenses, two (6%) are late night general licenses, two are on-premises licenses and the remaining seven are either BYO, packaged or limited licenses

In assessing the mix of licenses in an area, the Practice Note states that late night trading hours for licensed premises have been associated with increased harm including violence. Licensed premises open after 11pm are considered a greater risk to the surrounding area. The Practice Note states that reduced trading hours may therefore reduce the risks of late-night alcohol related harm. Additionally, the Practice Note states that licensed premises with a patron capacity over 200 may pose a greater risk of alcohol-related harm and result in a negative cumulative impact.

Having regard to the policy background context outlined above, the following sections of the report outline how the proposal is consistent with the relevant provisions and can be supported.

11.4 Would the amendment application remain consistent with the state and local planning policy framework including the zone and Clause 52.27 Licensed Premises?

The proposal is entirely consistent with the strategic vision for the area articulated in the MSS, the objectives of the Commercial Zone and relevant policies as outlined above. Clearly both the zone and policy objectives seek to promote South Melbourne as a prime activity centre within the municipality, with a mix of use types, consisting of retail uses at ground floor, supplemented by housing, offices or entertainment uses above this, combining to positively contribute to the vibrancy of the centre. The proposal meets with the planning policy objectives to support entertainment facilities in key activity centres that are highly accessible to the community. Maintaining the



viability of the existing premises through the inclusion of a greater offering to patrons (i.e. the ability to drink alcohol with a meal) would align with policy objectives.

The application details include impact mitigation measures to reduce a potential negative cumulative impact as the hours of operation would not extend past 11pm, patron numbers are modest and well below the 200 patron threshold above which a greater risk of alcohol harm is expected, and seating is proposed for patrons. Amenity impacts are discussed further below.

11.5 **Would there be unreasonable off-site amenity impacts?**

The premises is located in a commercially zoned area where amenity impacts have to be tempered alongside the context of objectives of state and local policy to encourage and support commercial enterprises.

It is considered that the proposed continued use of the land with the primary function of serving of food and the ancillary sale and consumption of alcohol via a café and restaurant licence, would not result in unreasonable amenity impacts on the amenity of the surrounding area.

The application proposes modest operating hours as compared to other larger general or late night general licensed venues in the area, with hours highly consistent with other café and restaurant licensed uses in the South Melbourne area and metropolitan Melbourne more generally. As noted earlier in the report, the applicant has confirmed that it is intended that the internal area be closed at 11pm not 1am as was accidentally included in the report submitted with the September 2021 57a amendment. **(Refer recommended amended condition 16)**

The important distinction between this proposal and some other licenced venues is that seating is proposed for all patrons rather than a vertical drinking arrangement such as occurs with bars, hence the application for a café and restaurant licence. The red line plan actually illustrates seating beyond the number of internal patrons sought, with a total of 91 seats evident as compared to the 80 internal patrons sought in the description. The courtyard area is shown to accommodate 64 patrons consistent with that sought in the application. A condition of approval could be imposed to ensure the illustration and plan notations match, that is to identify a maximum of 80 patrons internally. **(Refer recommended condition 1a and 23)**

The proposed deletion of music to the outdoor area coupled with the 9pm closure of the external courtyard would clearly meet scheme objectives to balance the use within the activity centre alongside the amenity objectives for nearby properties and residences. The applicant has offered to go beyond what could be deemed reasonable in this commercial setting by also proposing to close the Hotham Street gates at 6pm to minimise impacts to the higher number of residential properties in Hotham Street from patron dispersal. A new permit condition could also be imposed that ensures bottles are not disposed of outside the premises after 9pm to further protect residential amenity. **(Refer recommended condition 22, 24, 25)**

The property has the legal right to use the laneway to the west, and this is evident on the title submitted with the application. As recommended by Council's Property and Assets officer, lighting could be enhanced to the main entry of the building and better directed to improve safety at and around the main entry off the laneway. **(Refer recommended amended condition 1b)**



Another key consideration for assessment of amenity impacts to nearby sites from the proposal is that of patron management. No noise and amenity action plan has been submitted with the application, however the planning report submitted indicates that the applicant is willing to prepare and implement such a document. This document could be used to ensure protocols for staff training for responsible service of alcohol at the venue, and management of entry and departure of patrons and other relevant amenity based considerations. Other key issues that could be addressed in the document would relate to matters including but not limited to establishment of a complaints and liaison register with residents for identification and resolution of complaints including maintaining a compliance document register. Such a document would be consistent with Council policy at Clause 21.04-6 for a Noise and Amenity Action Plan that ensures demonstration of how amenity impacts, including the adverse cumulative impacts, will be prevented, and where necessary, addressed. **(Refer recommended condition 26)**

12. INTEGRATED DECISION MAKING

12.1 Clause 71.02 of the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance the positive and negative environmental, social and economic impacts of the proposal in favour of net community benefit and sustainable development. When considering net community benefit, fair and orderly planning is key; the interests of present and future Victorians must be balanced; and, the test is one of acceptability.

The proposal would result in several positive, neutral and negative impacts, which are outlined below:

Positive

- The proposal would further contribute to the vibrancy of the municipality and the activity, vibrancy and character of the South Melbourne area (economic and social).

Neutral

- The type of liquor licence, modest numbers of patrons and closing time of no later than 11pm would ensure the proposal would not have any unreasonable negative cumulative impact with other existing licenced premises (social).
- Offsite amenity impacts can be appropriately mitigated by way of permit conditions relating to patron numbers, hours of operation (including the earlier closure and no music within the outdoor dining area), responsible serving of alcohol, rubbish controls, and patron management should the proposal be supported. (Environmental, economic and social)

Negative

- The application has received 24 objections (social).

13. COVENANTS

13.1 The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the titles for the subject site known as Lot 2 of Title Plan 442760 [Volume 04469 Folio 748] and Lot 1 on Title Plan 6000992 [Volume 05398 Folio 440].



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14. OFFICER DIRECT OR INDIRECT INTEREST

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

15. OPTIONS


15.1 Approve as recommended

15.2 Approve with changed or additional conditions

15.3 Refuse - on key issues

16. CONCLUSION

16.1 The amendment application is supported. The applicant has responded to community concern and has revised the amendment application to achieve a proposal that appropriately addresses key potential acoustic and other amenity impacts. The type of liquor licence, modest numbers of patrons, closing times of 9pm for the external area and 11pm for the indoor area and proposed conditions to manage the operation of the premises, would ensure that the amenity of the area would be protected. 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 South Melbourne Central Activity centre.

- ATTACHMENTS**
1. Application Material 
 2. Locality Map 