



4.1 10-18 JACKA BOULEVARD ST KILDA

LOCATION/ADDRESS: 10-18 JACKA BOULEVARD ST KILDA

EXECUTIVE MEMBER: LILI ROSIC, GENERAL MANAGER, DEVELOPMENT,
TRANSPORT AND CITY AMENITY

PREPARED BY: PHILLIP BEARD, PRINCIPAL PLANNER

1 PURPOSE

- 1.1 To determine a planning permit application for the consolidation of two, existing on-premises liquor licences at two tenancies (Captain Baxter and Republica) into one, overall, on-premises licence at the Sea Baths complex.

2 EXECUTIVE SUMMARY

- 2.1 This report assesses an application for a planning permit for the consolidation of two, existing liquor licences (no buildings and works) at two existing tenancies in the Sea Baths complex being Captain Baxter and Republica, which are located one above the other.
- 2.2 The application proposes to alter the existing red line licensed area by including three staircases that link the two licensed tenancies in order to create one, on-premises liquor licence. It is proposed to include all the existing restaurant type licence conditions from the Republica liquor licence over both tenancies, noting that the liquor licence for Captain Baxter does not currently have a detailed list of restaurant type conditions. It is also proposed to retain the conditions relating to operating hours from both licences (generally with a closing time of 1am), while keeping the 385 patron limit for Captain Baxter.
- 2.3 The liquor licence for Republica currently has no patron limits and the application now proposes a limit of 750 patrons for that tenancy. The applicant has advised that the proposed patron limit for Republica reflects the maximum number of patrons that has generally been reached at this tenancy over several years.
- 2.4 Therefore, the proposal would not alter any existing limits on hours of operation and thus, the two tenancies (subject to the new patron limit for Republica, which would reflect existing intensity of use) would operate as they are now.

WARD:	Lake
TRIGGER FOR DETERMINATION BY COUNCIL:	No delegation exists for planning matters at the Sea Baths complex
APPLICATION NO:	464/2020
APPLICANT:	Urbis P/L
EXISTING USE:	Restaurant/bar
ABUTTING USES:	Commercial
ZONING:	Special Use
OVERLAYS:	HO 168
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired



3 RECOMMENDATION

- 3.1 That the Responsible Authority grant a Planning Permit.
- 3.2 That a Planning Permit be granted for the increase of the area that liquor is allowed to be consumed by the consolidation of two, existing on-premises liquor licences at two premises (Captain Baxter (being tenancies 10, 11, 11a, 11b, external lots 10 and 12) and Republica (being tenancies 1a to 1d inclusive plus external courtyard) into one overall on-premises licence at the Sea Baths complex at 10-18 Jacka Boulevard, St. Kilda.
- 3.3 That the decision be issued as follows:

General conditions Covering Both tenancies

Amenity & Noise levels

1. The activities at these tenancies must not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which this approval relates during or immediately after the trading hours allowed under this permit. Additionally, noise levels must not exceed the permissible noise levels stipulated in the State and Environment Protection Policy N-1 (Control of Noise from Industry, Commerce and Trade), State and Environment Protection Policy N-2 (Control of Music Noise from Public Premises).

Alcohol service

2. Alcohol must only be served and consumed within the licenced area and must not be served/consumed off-premises.

Time for Starting and Completion

3. This permit will expire if one of the following circumstances applies:
 - (a) The sale and consumption of alcohol allowed by this permit is not started within one year of the date of this permit.The Responsible Authority may extend the period referred to if a request is made in writing before or within 6 months after the permit expiry date, where the use allowed by the permit has not yet started.

Ground Floor (Republica) Conditions

Predominant Activity

- 4 The predominant activity carried on the ground floor must be the preparation and serving of meals for consumption on the premises.

Tables and Chairs

5. Tables and chairs must be placed in position on the premises so as to be available for at least 75% of the patrons attending the premises at any one time.

Background Music Only

- 6 Music must be limited to background levels only, unless the music is part of a function that is held in an area of the premises that is set aside for the exclusive use of persons who have booked a table in that area and their guests, and is attended only by those persons and their guests.

Patron Limits

- 7 Maximum patron numbers at any one time are not to exceed the following:
 - (a) Overall/total Maximum patrons of 750



(b) Maximum patrons 180 internally at any one time

(c) Maximum patrons 700 externally at any one time

Operating hours for Sale and Consumption of Liquor

8. The sale and consumption of liquor may only operate between the hours of:

- Good Friday & Anzac Day: 12 noon and 1 a.m. the following morning.
- Sunday: 10 a.m. and 1 a.m. the following morning.
- On any other day: 7 a.m. and 1 a.m. the following morning

First Floor (Captain Baxter) Conditions

Amplified Music

9. Amplified and live music must only be played through a noise limiter and only after the noise limiter has been installed and operates to ensure compliance with State Environment Protection Policy N-2 (Control of Music Noise from Public Premises) and in compliance with the conditions of this permit

Noise limits (terrace and Retractable Roof)

10. At any time the western terrace is operating with its permitted retractable roof open, patron noise is not to exceed background noise (Lgo) plus 10dB between opening of the premises and 10pm and must not exceed background noise (Lgo plus 5dB) between 10pm and close of the premises, both measured at the nearest dwellings to the subject premises.

No Live Music

11. Without the written consent of the responsible authority, no live music is to be played in the area beneath the retractable roof panels at first floor after 10:00pm at any time the retractable roof panels are open.

Patron Limits

12. No more than 385 patrons are permitted within the licenced area, with a maximum of 229 patrons internal and 156 external.

Operating hours Sale and Consumption of Liquor

13. The sale and consumption of liquor may only operate between the hours of:

- Good Friday & Anzac Day: 12 noon and 1 a.m. the following morning.
- On any other day: 7 a.m. and 1 a.m. the following morning

Marine and Coastal Act Consent conditions

14. The use is to be carried out generally in accordance with:

- The planning permit application titled 'ST KILDA SEA BATHS, NO. 10-18 JACKA BOULEVARD, ST KILDA PLANNING PERMIT APPLICATION' dated 30 July 2020, prepared by Aliza Fischer Webberley, Urbis.
- The plans titled 'RED LINE PLAN – GROUND FLOOR AND LEVEL 1' dated 19 May 2020, prepared by Nathan Deeming.

15. Any modification to the proposed use will require further approval by the Regional Manager, Land and Built Environment Programs, Port Phillip Region, Department of Environment, Land, Water and Planning (DELWP).

16. The proposed liquor licencing changes should not facilitate either the head lessee or subtenant to inhibit free public movement within the facility, as allowable under conditions of the head lease.



4 RELEVANT BACKGROUND

- 4.1 There have been several consent approvals and planning permits issued at the St Kilda Sea Baths complex over many years. Most relevant to this particular proposal is the most recent approval issued under planning permit 39/2018, which allowed some external demolition and construction/installation of a new awning at the Captain Baxter tenancy. Planning permit 39/2018 did not propose any change in operating hours, patron numbers or the extent of the red line/liquor licence area and this permit has been acted on.
- 4.2 Planning permit 891/2014 allowed the sale and consumption of liquor at the Captain Baxter tenancy external terrace, with patron maximums of 229 internal and 195 external (total 424 patrons). It allowed daily operating hours (aside from Good Friday) of 7am to 1am the following day. This permit was not acted on. The current liquor licence for the Captain Baxter tenancy, however, only allows 156 external patrons not 195 and 229 internal patrons (total 385 patrons), with daily operating hours (aside from Good Friday) of 7am to 1am the following day.

5 PROPOSAL

- 5.1 It is proposed to replace the two existing on-premises liquor licences at the Captain Baxter and Republica tenancies with one, overall, on-premises licence that would cover both tenancies.
- 5.2 Currently, Republica (on the ground floor) operates under liquor licence no. 322 64325. There is no planning permit associated with this licence and it has a reasonably detailed suite of restaurant type conditions covering amenity and operational matters. It allows the sale and consumption of liquor as follows:
- Sunday 10am to 1am
 - Good Friday/Anzac Day Midday to 1am
 - Other days 7am to 1am.
- 5.3 Despite the current liquor licence having limitations on its operating hours and a reasonably detailed suite of restaurant type conditions, the licence does not have any patron limits.
- 5.4 It is proposed to maintain all the existing liquor licence conditions for this tenancy including the above operating hours. It is also proposed to impose the exact same liquor licence conditions on the Captain Baxter tenancy, which (as outlined below) does not currently have a suite of restaurant conditions applying to it on its liquor licence.
- 5.5 It is also proposed to impose an overall maximum patron limit of 750 on the Republica tenancy, being no more than 700 externally at any one time and no more than 180 internally at any one time provided that a total of 750 patrons is not exceeded. That is, if the tenancy operates with 700 patrons for example externally, it could only have 50 patrons at that time internally. Similarly, if it operates for example with 180 patrons internally, it could only have 570 patrons externally at that time. As noted previously, the current liquor licence for Republica does not have any patron limits. The proposed 750 patron limit would reflect the maximum patron number that has generally been reached at this tenancy over several years.



- 5.6 The Captain Baxter tenancy (immediately above Republica) currently operates under on-premises liquor licence 322 65355. That licence allows sale and consumption of liquor as follows:
- Good Friday/Anzac Day Midday to 1am
 - Other days 7am to 1am
- 5.7 For the most part, it therefore operates under the same hours as the Republica tenancy.
- 5.8 Unlike the Republica liquor licence, the Captain Baxter licence does not have any restaurant conditions on it. As noted above, the application proposes to include (or 'transpose') the existing Republica liquor licence conditions onto the Captain Baxter tenancy.
- 5.9 The existing Captain Baxter liquor licence (unlike Republica) does have patron limits which are 229 internal and 156 external (385 patrons). The application does not propose any change to the patron limits for the Captain Baxter tenancy.
- 5.10 The application also includes a relatively minor change to the existing red line areas by way of extending them to include three staircases that currently link both tenancies.
- 5.11 No other changes are proposed, and no buildings and works are proposed. From a practical standpoint, both tenancies are intended to operate as they do now regarding sale and consumption of liquor, noting that the Republica tenancy operates with a practical maximum of approximately 750 patrons.
- 5.12 Also, the proposal does not involve any change of use. Both sites operate as licensed premises (albeit without a current planning permit for a license at the Republica tenancy) and operate as restaurant/bars and this is not proposed to change.

6 SUBJECT SITE AND SURROUNDS

Description of Site and Surrounds	
Existing building & site conditions	<p>The Sea Baths complex is located on the foreshore adjacent to Jacka Boulevard, St. Kilda. The building is setback approximately 35 metres from the Jacka Boulevard frontage and has a width of just over 100m. The Captain Baxter tenancy occupies much of the complex's first floor level on the south-east side of the complex. The tenancy currently also uses two outdoor terraces, one at right-angles to and immediately adjacent to the tenancy (generally parallel to the foreshore) at mezzanine level and the other at first floor level directly opposite the tenancy (across the courtyard's airspace). The former of these was the subject of the most recent permit allowing the new retractable awning.</p> <p>Essentially, Captain Baxter 'wraps' around the ground level courtyard below.</p> <p>Access to Captain Baxter is currently from a doorway accessing the ground level walkway on the south-east side of the courtyard located approximately 35m from the foreshore end of the building.</p>



	<p>The Republica tenancy is immediately below. Its existing liquor licence covers the tenancy itself together with the central courtyard and part of an outdoor terrace area (slightly curved) facing the beach. It has direct access to the central courtyard, therefore, and is accessed from a door adjacent to that courtyard.</p>
<p>Surrounds/neighbourhood character</p>	<p>The front of the site, generally facing Jacka Boulevard, contains a car park and landscape areas whilst the building as facing the foreshore generally contains a public promenade with food and drink tenancies adjacent to the beach. Several of these have associated outdoor seating areas. The nearest dwellings, measured from the closest point of the ground level courtyard, are approximately 120m away to the north-east from the front of the building (on the north-west side of Alfred Square).</p> <p>The surrounding area generally comprises a mixture of uses including commercial, recreational, entertainment and residential uses with the commercial uses mostly confined to the beach side of Jacka Boulevard and the residential uses confined to the opposite side.</p>

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 57.27 Liquor Licences	A permit is required for a new or different licence and an increased licenced area. In this instance, the proposed 'red line' changes together with the proposed revised conditions and resultant consolidation of two licences into one is considered to be a 'different' licence.
Clause 36.02 Public Park and recreation zone	The St Kilda Sea Baths complex is not within this zone. The PPRZ borders the site at the Bay Trail immediately to the south-west.
Clause 43.02 Design and Development Overlay, Schedule 10	The sea baths complex is not covered by this DDO. It covers the foreshore area and borders the building's south-west wall.

8 PLANNING SCHEME PROVISIONS

8.1 Planning Policy Framework:

Relevant sections of the Planning Framework are as follows:

Clause 21.04-5, Public Open Space and Foreshore.

Clause 22.09 St. Kilda Foreshore Area Policy.

Clause 52.27 Licensed premises



8.2 Relevant Planning Scheme Clauses

Clause 52.27 Licensed Premises

This clause states that a permit is required for:

- *A different licence or category of licence is required from that which is in force.*
- *The area that liquor is allowed to be consumed or supplied under a license is to be increased.*

As relevant in this case, this provision would not apply:

- *-To a variation that reduces the number of patrons allowed under a licence.*
- *-To a variation that reduces the area within which liquor is allowed to be consumed or supplied under a licence.*

Incorporated Document:

The site has been developed in accordance with the Sea Baths Incorporated Document under the Special Use Zone 1 – St Kilda Sea Baths. The Incorporated Document is in the Port Phillip Planning Scheme and permits a number of land uses as well as sale and consumption of liquor. The Incorporated Document is relevant to land uses, but as previously noted, the proposal does not involve any change in use.

By way of information, the Incorporated Document allowed the following uses:

“..health and fitness centre incorporating heated sea baths as a primary activity: a 25 metre (minimum length) swimming pool, saunas, steam baths, gymnasiums, health and beauty therapy centre, sports medicine centre, multi-purpose activity room which includes the sale and disposal of liquor for consumption in that area, drinking and/or eating areas (including liquor), take-away food facilities, entertainment, tourist, beach and health related retailing, administrative and maintenance facilities, other special events, a car park and landscaping”.

Many of the existing liquor licences operating at the Sea Baths were obtained without the need for a Planning Permit first, relying on the Incorporated Document’s allowance for “*sale and disposal of liquor for consumption in that area*” and the words “*(including liquor)*”. However, the provisions of Clause 52.27 still apply and as the extent of the existing red line areas would slightly increase, a permit is required under that clause.

Clause 37.01 Special Use Zone

The Special Use Zone specifies permit triggers. It states that a permit is required to construct a building or carry out works unless the schedule to the zone specifies otherwise. No buildings and works are proposed.

Clause 43.01 Heritage Overlay

A permit is required for all buildings and works under this overlay. No buildings and works are proposed.



MEETING OF THE PORT PHILLIP CITY COUNCIL 21 OCTOBER 2020

9 REFERRALS

9.1 Internal referrals

None were necessary.

9.2 External referrals

None were necessary although the applicant has sought and obtained consent from DELWP under the Marine and Coastal Act. That Act requires consent for use and development and whilst the restaurant/bar type use would not change, the extent of the red line regarding 'sale and consumption of liquor' would.

Consent has been received and the conditions relating to that consent are included as recommended conditions 14, 15 and 16.

10 PUBLIC NOTIFICATION/OBJECTIONS

It was determined that the proposal would not result in material detriment therefore Council did not direct the application to be publicly notified. The site is not in a residential zone, the nature of the uses would not change, the proposal provide a greater level of control through the imposition of patron limits on Republica and there are no residents within approximately 120m of the subject tenancies.

11 OFFICER'S ASSESSMENT

11.1 State Planning Policy Assessment

The St Kilda Sea Baths is a commercial complex with numerous food and drink tenancies, many of which involve the sale and consumption of liquor. The subject tenancies are two of those.

The proposed change to the existing liquor licences by way of their consolidation into one licence would be associated with existing the Captain Baxter and Republica commercial and licensed premises. The proposal would not extend or expand the uses or activities within the complex and would in fact provide a greater level of control in that regard through the imposition of patron limits on Republica, which currently operates without any patron limits at all.

Clause 17.01-1 seeks to encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

No development is proposed.

11.2 Local Planning Policy Assessment

Clause 21.04-5, Public Open Space and Foreshore.

This clause is considered to be partly relevant in that it refers to the foreshore and outcomes to be achieved. However, its references to 'public open space' are not relevant as the site does not contain any public open space and there are no proposed works. Additionally, the consolidation of two liquor licences into one would not affect the operation of nearby public open space noting that the two subject tenancies would continue to operate as they currently do.



Relevant Objectives under this clause are as follows:

To create a public open space network that caters for a diverse range of users and is accessible to all.

To ensure the retention and optimum provision of high quality public open space.

There would be no impact on the nearby foreshore's open space network nor its ability to be enjoyed. The nearby public open space network would not be negatively affected by the proposal noting again that the two subject tenancies would continue to operate as they currently do. There would be no change in operating hours and the patron limit on the Captain Baxter tenancy would remain unchanged. A new patron limit would be imposed on the Republica tenancy which currently has no patron limit at all (refer to Recommended: Condition 7)

To protect and enhance the physical and cultural heritage values, and environmental attributes of public open space.

This outcome would not be affected. There are no buildings and works being proposed.

To achieve a sustainable balance between preserving public open space, including the foreshore, and meeting the needs of users.

The primary use of the foreshore and nearby public open space assets would not be impacted upon. The use of the Sea Baths complex, as a foreshore asset, would not change given that the two tenancies concerned would continue to operate as they currently do.

Ensure new use and development on the foreshore:

- *maintains and contributes to the continuity of public access to the foreshore,*
- *supports active year round use of the foreshore,*
- *is located in an existing building or in a new building that replaces an existing building,*
- *is sympathetic to the surrounding coastal landscape and built environment and does not disrupt important views and vistas,*
- *does not reduce the net volume of public open space available to the general public on the foreshore,*
- *compliments and enhances the prevailing land uses in the area and does not disadvantage existing foreshore users,*
- *does not increase traffic congestion, parking, pedestrian or cyclist circulation problems,*

These objectives would be achieved. There are no works proposed and the nature of the existing uses would essentially not change, aside from a patron numbers being restricted at the Republica tenancy which currently has no restrictions at all in that regard.

The volume of open space available to the public would not change again in the absence of any buildings and works and the proposal would have no impacts on the built environment or traffic, pedestrian or bicycle movements.

Clause 22.09 St. Kilda Foreshore Policy

There are many and varied overall objectives for this area. Those considered relevant to this proposal are as follows:



- *To reposition St Kilda for the future based on its threefold seaside residential, leisure and entertainment, and marine recreational roles.*
- *To create an equitable balance between local community needs and the regional tourism role of the St Kilda Foreshore area.*
- *To maintain and reinforce the unique cultural heritage of St Kilda Foreshore area embodied in iconic buildings, spaces and attractions.*
- *To enable the viable use and development of buildings, spaces, facilities and services, which benefit the community.*
- N/A
- N/A
- *To enhance the quality and connectivity of the public space network within the Foreshore area, and provide a variety of leisure opportunities and experiences.*
- *To improve the legibility and amenity of pedestrian connections within and to the Foreshore area.*
- N/A
- N/A
- N/A

There are also several General Policies relating to the area which are divided into various sub-headings. The relevant General Policies to this proposal are considered to be the following:

Cultural Heritage and Activity Mix

It is policy to:

- *Encourage new use and development that contributes to the diverse character and builds on the principal role of the St Kilda Foreshore area as a leisure and entertainment precinct.*
- N/A
- *Encourage the co-location of uses within defined activity nodes, and new uses and facilities that complement existing attractions, assets and facilities.*
- *Balance the provision of well-defined visitor attractions with the provision of appropriate services, facilities and spaces for use by the local community.*
- N/A
- *N/A Enhance the function of specific sites by:*
- ...

Foreshore Structure N/A

Built Form N/A

Public Space Network and Connections N/A

It is not considered that the proposal would offend or misalign with any of the above provisions. No buildings and works are proposed, the mix of uses and activities in or near the St. Kilda foreshore area would not change and there would be no impacts on nearby open space networks, viability of buildings/uses, the leisure and entertainment roles of the foreshore area or the balance between local needs and those of visitors noting that no change is proposed to the nature of the existing subject uses.



11.3 Car and Bicycle Parking

No works are proposed and therefore, there is no change in floor space and/or any consequent parking assessment or trigger.

12 COVENANTS

There is no restrictive covenant affecting the site.

13 OFFICER DIRECT OR INDIRECT INTEREST

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 proposal is essentially an administrative one and only relates to Clause 52.27 and what amounts to a change in the extent of a red line area such that two red line areas are combined into one with some minor additions to them covering staircases. No other changes of note are proposed by way of operating parameters other than the inclusion of a patron limit on the Republica tenancy that does not currently have such a limit.
- 15.2 It is concluded that the proposal will not change the intensity of uses and therefore, would not add to or increase detriment or alter the way the sea baths complex or indeed each individual tenancy would operate on a day-to-day basis.
- 15.3 It is therefore recommended that a permit be granted.

TRIM FILE NO: PF20/24057
ATTACHMENTS 1. 464/2020 - Application - Red Line Plans