



6.1 **102 CANTERBURY ROAD, MIDDLE PARK**
LOCATION/ADDRESS: **102 CANTERBURY ROAD, MIDDLE PARK**
EXECUTIVE MEMBER: **KYLIE BENNETTS, GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT**
PREPARED BY: **PHILLIP BEARD, PRINCIPAL PLANNER**
MICHAEL MOWBRAY, PRINCIPAL PLANNER

1. PURPOSE

- 1.1 To determine an application for the partial demolition (external demolition), construction of buildings and works to create a roof top terrace to accommodate an additional 200 patrons, extension to the existing 'red line' area for the sale and consumption of liquor (to the roof top terrace) and waiver of the car parking and bicycle parking requirements at the Middle Park Hotel.

2. EXECUTIVE SUMMARY

WARD:	Lake
TRIGGER FOR DETERMINATION BY COMMITTEE:	More than 16 objections
APPLICATION NO:	PDPL/01390/2021
APPLICANT:	Urbis P/L
EXISTING USE:	Hotel/Pub
ABUTTING USES:	Commercial
ZONING:	Commercial Zone (C1Z)
OVERLAYS:	Heritage Overlay (HO445)
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired

- 2.1 The Middle Park Hotel is an existing three storey building used as a bar / hotel / tavern and licenced premises allowing the sale and consumption of liquor under a Late Night (General) Liquor Licence. The building occupies the entire site and has zero setbacks to all boundaries. The existing ground floor footprint is approximately 800 square metres in area. The site is located within and surrounded by a Commercial Zone (C1Z) and a Neighbourhood Residential Zone is located within 30 to 35 metres to the southeast of the site.
- 2.2 This application involves two key components: the construction of an 'L' shaped and partly enclosed roof deck, approximately 250m² in area occupying much of the north-east corner of the roof of the existing building. The area would include



seating bar space, facilitating an increase in overall patron numbers by 200 (to provide a total of 560 for the entire premises). The sale and consumption of liquor is proposed in this area and therefore the application involves an extension of the existing 'red line area' (where liquor can be served and consumed) of the existing Hotel.

- 2.3 Operating hours would be unchanged from those allowed by the existing liquor licence which are as follows:
- Sunday Between 10 a.m. and 1 a.m. the following morning.
 - Good Friday Between 12 noon and 1 a.m. the following morning.
 - Anzac Day (not being a Sunday) Between 12 noon and 1 a.m. the following morning.
 - On any other day Between 7 a.m. and 1 a.m. the following morning except for Good Friday morning.
- 2.4 On specific occasions, notably New Years Eve, Grand Final Eve, Melbourne Cup Eve and the race days of the 'Race Period' as determined under the Grand Prix Act 1994 as follows Between 7 a.m. and 3 a.m. the follow morning (excluding 7 a.m. to 10 a.m. on Sunday Morning).
- 2.5 The site forms part of the Middle Park Activity Centre, which is a neighbourhood activity commercial area. The site abuts Canterbury Road (Transport Zone 2) and Armstrong Street and is wholly contained within the Commercial 1 Zone.
- 2.6 The Commercial Zone (CZ1) directs that a permit is required to construct or carry out works in a Commercial Zone (CZ1). The site benefits from existing use rights to operate as a bar (Note: The term Tavern formally pre-dates the reference to a Bar within Clause 73.03 and Clause 73.04 of Port Phillip Planning Scheme but terminology has not been amended consistently throughout the planning scheme and these terms are used interchangeably). The use of a bar within this zone does not require a planning permit.
- 2.7 The Heritage Overlay (HO445) directs that a planning permit is required for demolition works (including partial) and to construct and carry out works associated with the rooftop extension. Clause 52.27 (Licensed Premises) directs that a permit is required to increase the number of patrons allowed under a licence and to increase the area that liquor is allowed to be consumed and / or supplied under a licence.
- 2.8 Following notice of the application, 124 objections and two letters of support were received. Concerns raised largely relate to amenity impacts arising from the extended red line area, such as noise associated with the proposed patron numbers, anti-social behaviour outside the venue; noise associated with patrons including while in the venue, dispersing from the venue and seeking travel arrangements; hours of operation; waste/garbage management, insufficient parking, increased traffic volumes and inappropriate built form response to the



heritage building, including the proposed built form being too visible to the host building and possible structural concerns arising as a result.

- 2.9 A consultation meeting was held on 2 May 2022 attended by Ward Councillors, the applicants, approximately 50 objectors and Council officers. The meeting did not lead to any formal changes to the proposal and the advertised application material forms the basis of the assessment set out in this report.
- 2.10 The site's location in a commercial area albeit a neighbourhood one, the proposed use is not a new one and would not displace an existing one. The site does, however, have relatively close residential interfaces and it is considered that as proposed, the expansion of the existing use would be overly intense. In summary, it is considered that limiting overall patron numbers to 150 whilst also recommending that at least 65% of these patrons be accommodated in a seated setting similar to table and chairs in a restaurant and a closing time of 11pm during the week and midnight on weekends (in lieu of 1am all times), when coupled with the recommended installation of a noise limiter, would achieve a outcome which would result in reasonable amenity impacts to the local neighbourhood centres and residential properties in close proximity.
- 2.11 It is recommended that the application be supported subject to conditions included on any permit issued.

3. RECOMMENDATION

- (a) That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Grant a Planning Permit.
- (b) That a Notice of Decision to Grant a Planning Permit be issued for partial demolition (external only), construction of a roof deck/terrace, extension of the existing 'red line' area and reduction of car parking and bicycle facilities at 102 Canterbury Road, Middle Park.

That the decision be issued as follows:

1. Amended Plans required

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

- a) An additional four publicly accessible bicycle hoops located on the nearby footpath to Canterbury Road or Armstrong Street to the technical design specification of Council.
- b) The south-east wall of the roof deck setback an additional 4m from that boundary so as to terminate at the peaks of the existing roof hips below.



- c) The roof deck awning facing Canterbury road indicated as being a lightweight retractable feature.
- d) Floor plans to detail any works required by Condition 6 (Acoustic Report) and Condition 10 (Noise Report) of this permit.
- e) Floor plan notations to reflect the revised patronage required by Condition 15.
- f) A waste management plan in accordance with Condition 5 of this permit.
- g) A Patron and Noise/Amenity Management Plan in accordance with Condition 13 of this permit.

No Layout Change

- 2 The development and extent of demolition as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

External colours and Finishes

- 3 All external materials finishes, and paint colours are to be to the satisfaction of the responsible authority and must not be altered without the written consent of the Responsible Authority.

Equipment and Services Above Roof Level

- 4 No plant, equipment or 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.

Waste Management

- 5 Before the development starts (other than demolition or works to remediate contaminated land), a Waste Management Plan based on the City of Port Phillip's Waste Management Plan Guidelines for Developments must be prepared by a Waste Management Engineer or Waste Management Planner to the satisfaction of the Responsible Authority and endorsed as part of this permit. The Plan must include reference to the following:

- Land use type.
- The estimated garbage and recycling volumes for the whole development.
- Bin quantity, size and colour.
- The garbage and recycling equipment to be used.
- Collection frequency.
- Collection must be after 10am on any day.
- The location and space allocated to the garbage and recycling bin storage area and collection point.
- The waste services collection point for vehicles.
- Waste collection provider.
- Scaled waste management drawings.
- Signage.

Once submitted and approved, the waste management plan must be carried out to the satisfaction of the Responsible Authority.

Acoustic report

- 6 The buildings and works and use must be undertaken and continue to operate in accordance with the endorsed acoustic report prepared by Octave Acoustics Acoustic



Assessment to the satisfaction of the Responsible Authority.

Plant & equipment noise levels

- 7 Any new/additional air conditioning, refrigeration plant and any other heating plans or similar related to the permitted roof deck must be screened and baffled and/or insulated to minimise noise and vibration to ensure compliance with noise limits determined in accordance with Division 1 and 3 of Part 5.3 - Noise, of the *Environment Protection Regulations 2021* to the satisfaction of the Responsible Authority.

Noise Limits

- 8 Noise levels from the roof deck must not exceed the permissible noise levels stipulated in the Environmental Protection Regulations 2021 and EPA Noise Protocol to the satisfaction of the Responsible Authority.

Noise Monitor

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

1.

2. Noise Report

- 10 Before the use commences, a report prepared by a suitably qualified Acoustic Consultant must be submitted to, approved by and be to the satisfaction of the Responsible Authority and must confirm that a Noise Monitor and Limiter ("the Device") is operating and has each and every of the following characteristics which are also operating:
- a) the Device limits internal noise levels so as to ensure compliance with the music noise limits according to Division 1 and 4 of Part 5.3 - Noise, of the Environment Protection Regulations 2021 to the satisfaction of the Responsible Authority;
 - b) the Device is a limiter suitable for interfacing with a Permanently Installed Sound System which will include any amplification equipment and loudspeakers;
 - c) the Device monitors noise levels at frequencies between 50Hz and 100Hz and is wired so as to ensure that the limiter governs all power points potentially accessible for amplification;
 - d) the Device controls are in a locked metal case that is not accessible by personnel other than a qualified acoustic engineer or technician nominated by the owner of the land and notified to the Responsible Authority;
 - e) the Device is installed to control all amplification equipment and associated loudspeakers;
 - f) the Device is set in such a way that the power to the amplification equipment is disconnected for 15 seconds if the sound level generated by the amplification equipment exceeds for one second the maximum sound level for which the monitor is set;



- g) the monitor level component of the Device includes a calibratable frequency discriminating sound analyser with an internal microphone incorporated in its own tamper-proof enclosure (beyond the normal reach of a person). Such a sound analyser will indicate by green, amber and red illuminated halogen lamps the approach and exceeding of the set maximum noise level. The lamps must be in the clear view of the staff and any disc jockey in the room;
 - h) the Device must prevent a relevant noise level referred to in these conditions being exceeded;
 - i) which report demonstrates compliance with Division 1 and 4 of Part 5.3 - Noise, of the Environment Protection Regulations 2021 to the satisfaction of the Responsible Authority.
3. Once submitted and approved the noise report will be endorsed to form part of the permit.

Music only through Limiter

- 11 Amplified music (including background music) on the roof deck is not permitted to be played other than through the Limiting Device installed and operating to ensure compliance with the Environmental Protection Regulations 2021 and EPA Noise Protocol to the satisfaction of the Responsible Authority.

Amenity

- 12 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, wastewater, waste products, grit or oil.

Patron and Noise/Amenity Management Plan

- 13 Before the permitted roof deck is allowed to operate, a Patron and Noise/Amenity Management Plan must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the permit. All activities forming part of the use must comply with the endorsed plan. The plan must include:
- a) The permitted operating hours and patron under conditions 14 and 15 of this permit,
 - b) Seating provided for 65% of patron capacity for the primary purpose of food consumption.
 - c) Day to day venue management practices, particularly relating to complaints and incidents in the venue including:
 - i. Staff being trained in the responsible service of alcohol.
 - ii. The measures to be taken by management and staff to ensure patrons depart the premises and the surrounding area in an orderly manner.
 - iii. The measures to be taken by management and staff to ensure that patrons queue to enter the premises in an orderly manner and maintain satisfactory



- clearance for other pedestrians on the footpath.
- iv. The measures to be taken by management and staff to ensure that patrons do not cause nuisance or annoyance to persons beyond the land.
 - v. Staff communication arrangements.
 - vi. Liaison with Victoria Police, the City of Port Phillip and local residents.
 - vii. A telephone number provided for residents to contact the premises and linked to the complaints register;
 - viii. The maintenance of a complaints register, which must, on reasonable request, be made available for inspection by the Responsible Authority.
 - ix. Encourage smokers to use the designated smoking area within the premises.
 - x. Measures to control noise emissions from the premises.
 - xi. Waste management practices.
- d) Signage to be used to encourage responsible off-site patron behaviour. Signs must be displayed at 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.

Once submitted and approved, the Patron and Noise/Amenity Management Plan must be carried out to the satisfaction of the Responsible Authority.

Operating Hours

- 14 The roof deck including the sale and consumption of liquor may only operate between the hours of:
- Sunday to Thursday: 10am to 11pm
 - Friday and Saturday: 10am to midnight

Patron Numbers

- 15 No more than 150 patrons must occupy the extended red line area to the roof deck hereby approved and seating must be provided for a minimum 65% of these patrons at all times while the roof deck is operating.

Storage and Disposal of Garbage

- 16 Any additional provision for storage and disposal of garbage and waste related to the permitted roof deck must be made to the satisfaction of the Responsible Authority. All new garbage storage areas – if required - must be screened from public view.

Time for starting and completion

- 17 This permit will expire if one of the following circumstances applies:
- a) The development is not started within two years of the date of this permit.
 - b) The development is not completed within two years of the commencement of works hereby approved.
 - c) The sale and consumption of liquor within the roof deck is not started within 2 years of the date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.



4. RELEVANT BACKGROUND

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

Application No	Proposal	Decision	Date of Decision
244/1996	Re-open corner door & render. Paint exterior of building	Delegated permit	9 May 1995
0910/102/P1	Use of the land for the purpose of a temporary outdoor seating area and in accordance with the endorsed plans. Note this permit only related to the hours of 9.00am to 11.00pm from 7 March 7 to 10 March 1996.	Council permit	2 February 1996
113/2001	External alterations to hotel (including new signage, restore and repaint facade, insert new windows and doors, construct new clerestory roof to rear, and construct fold out shade awnings to Armstrong Street)	Delegated permit	24 May 2001
451/2009	Alterations and additions, including replacement of internally illuminated, high wall signage, external painting, new canopy and side fence	Delegated permit	8 July 2009
934/2011	Construction of gable roof over courtyard	Delegated permit	9 November 2011
699/2015	Construction and display of promotional signs	Delegated refusal	15 July 2015
31/2020	Minor building works in a Commercial and Heritage Overlay. Removal of existing staircase and re-opening of prior wall openings. Relocation of the staircase and installation of a new roller door	Delegated permit	10 February 2020
PDPL/00424/2022	Carry out works for an additional roof over the existing plant area of the venue	Current application	To be determined



5. PROPOSAL

Demolition works

- 5.1 The proposal involves partial demolition works comprising a portion of the roof (approximately 7 square metres) to facilitate a lift and the lowering of a chimney located on the southern roof profile of the Canterbury Road roof down to roof ridge level. Works also include the demolition of a small section of wall at first and second floors (facing onto the open area above ground level) to make way for the new lift shaft.
- 5.2 Minor internal demolition works are detailed on the architectural plans but are exempt from requiring a planning permit.

Buildings and works

- 5.3 The primary buildings and works would take place on the roof and would comprise the new roof deck structure. These are generally in the north-east corner of the site and would have an area of just under 260 square metres. It is proposed to accommodate an additional 200 patrons and would include outdoor seating (fixed and movable). There would also be a covered area of approximately 55 square metres beneath which would be facilities including toilets, back of house stores and serving bar.
- 5.4 The seating area would be surrounded by 1.5m high glass balustrades setback 1.5 metres from the street boundaries. The balustrades would match the height of the hotels front corner pediment feature.
- 5.5 The rearmost wall of the seating area and the south wall of the 'stair' room would both be clad in white render to match the existing walls whilst the rear of the toilets/store wall would be clad in steel framed laminated clear glass.
- 5.6 The roof of the covered area would be approximately 4.5 metres above the building's existing ridge line or approximately 23.5 metres above ground.
- 5.7 It is proposed to construct a new lift core generally at the bend in the 'L' shape of the existing building between first floor and the roof level. This would generally measure 2.6 metres x 3 metres and would protrude beyond the wall of the existing building by approximately 3 metres. The lift core would be 8m tall and would be finished in white render to match the existing walls.
- 5.8 No additional car parking is proposed noting that the additional floor space would generate a requirement for nine additional spaces pursuant to Clause 52.06-3. Approval is required for the reduction of nine car parking spaces associated with the additional floor area proposed.

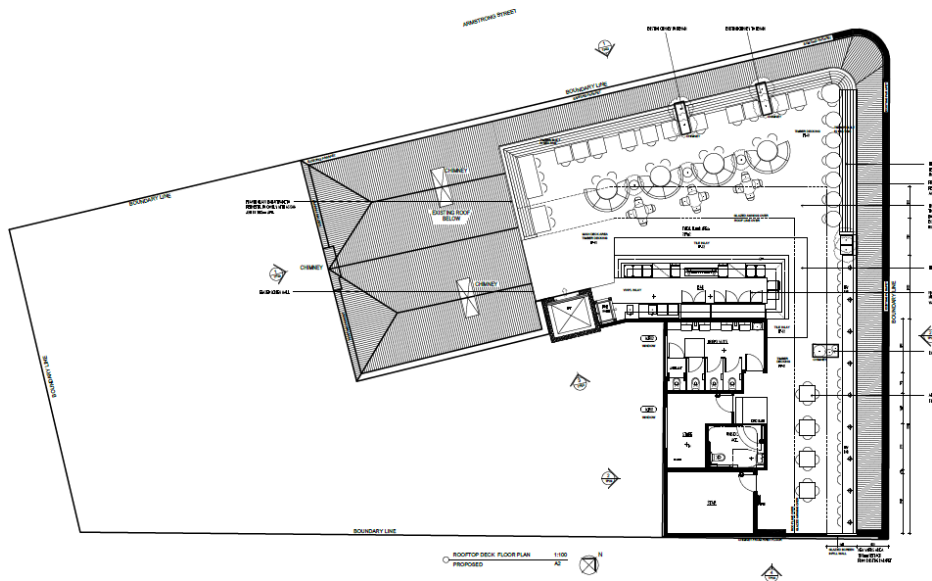


Figure 1 : Proposed Roof Top Terrace

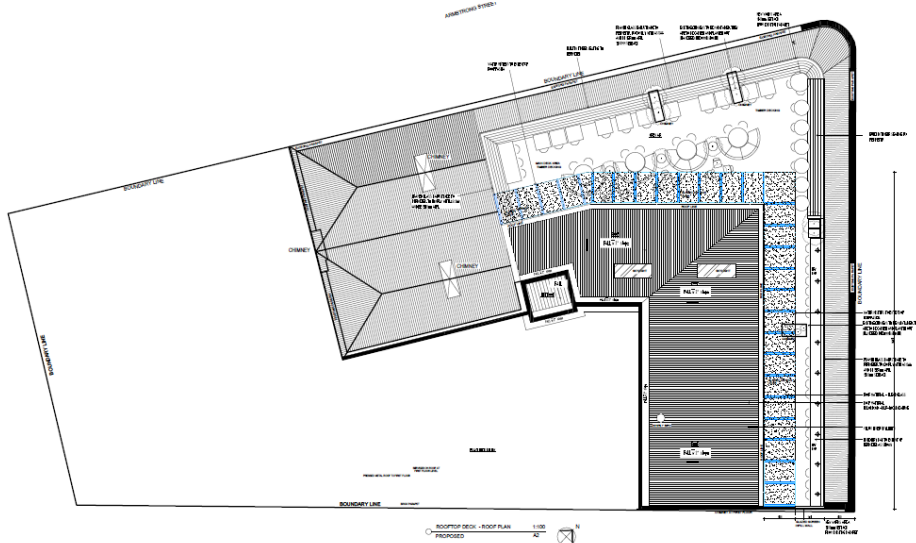


Figure 2 : Proposed Roof Top Terrace – includes roof over.

Use

- 5.9 The rooftop area described above is proposed to be extended to facilitate an increase in overall patron numbers by 200 (to provide a total of 560 for the premises).




- 5.10 The sale and consumption of liquor is proposed in this area and therefore the application involves an extension of the existing 'red line area' (where liquor can be served and consumed). A permit is required to extend the area where liquor is allowed to be consumed or supplied.
- 5.11 The use of the land as a bar/tavern is an established use at the site and no further planning permit is required, noting that the use is 'as-of-right'.
- 5.12 Operating hours would be unchanged from those allowed by the existing liquor licence which are as follows:
 - 5.12.1 Sunday Between 10 a.m. and 1 a.m. the following morning.
 - 5.12.2 Good Friday Between 12 noon and 1 a.m. the following morning.
 - 5.12.3 Anzac Day (not being a Sunday) Between 12 noon and 1 a.m. the following morning.
 - 5.12.4 On any other day Between 7 a.m. and 1 a.m. the following morning except for Good Friday morning.
 - 5.12.5 On specific occasions, notably New Year's Eve, Grand Final Eve, Melbourne Cup Eve and the race days of the 'Race Period' as determined under the Grand Prix Act 1994 as follows between 7 a.m. and 3 a.m. the following morning (excluding 7 a.m. to 10 a.m. on Sunday Morning).

6. SUBJECT SITE & SURROUNDS

Width, length and site area	The subject site has a 25-metre frontage to Canterbury Road and a 43-metre frontage to Armstrong Street with an overall site area of 800 square metres.
Existing building and uses	The site contains a prominent three storey heritage building occupied by an established public house (Hotel). A ground level courtyard is located to the rear of the site and accessed from Armstrong Street with a raised timber deck adjacent to and behind that in the south-east corner of the site. The site benefits from existing use rights to operate as a bar / tavern / hotel and has a licence allowing trading and the sale and consumption of liquor 1am. Whilst not part of the subject site, there is an adjacent kerbside dining area allowing 30 patrons. This is not included in the site's 'red line' licence plan but is covered by a separate 'off premises' licence.



Middle Park Hotel – Canterbury Road
Image taken from application material

	 <p>Middle Park Hotel – Canterbury Road Image taken from application material</p>
<p>Immediate interfaces</p>	<p>To the north-east is Canterbury Road, a busy four lane road beyond which is the Route 96 Tram corridor with Albert Park beyond.</p> <p>To the south-east is 104 Canterbury Road. This site contains a medical centre and a ‘shop-top’ style dwelling. These uses are within a renovated two storey Victorian era building which is at zero setback to Canterbury Road. This building is generally setback 1m from the subject site with one small section of direct abuttal.</p> <p>Diagonally opposite to the south and south-east of the site are the rears of the residential properties fronting Richardson Street. The closest of these would be approximately 35m from the closest corner of the subject site. There are also numerous outbuildings and domestic open space yards within 50m to 80m from the subject site.</p> <p>Further to the south-east is a run of highly modified two storey commercial buildings. This building is approximately 30m from the subject site but it, and its neighbours beyond, are commercially zoned. Further to the southeast is an intact run of Victorian terraces fronting Canterbury Road the nearest being approximately 50m from the subject site. In some instances, they have open rear yards generally between 50m to 80m from the subject site.</p> <p>To the south-west is a relatively ornate early 20th century two storey commercial building which abuts the rear of the subject site with a blank two storey high wall.</p> <p>Further to the south-west, on the other side of Canterbury Place fronting Armstrong Street, are additional early 20th century two storey commercial buildings. These are all commercially zoned. Danks</p>



	<p>Street and the route 12 tram corridor lies further to the south of the commercial area.</p> <p>To the north-west is Armstrong Street, a local road which runs from Canterbury Road in the north to Beaconsfield Parade and the Bay Trail in the south,</p> <p>Opposite the site within Armstrong Street are further commercial properties.</p>
Proximity to Public Transport, PPTN and any relevant parking controls	Trams/light rail exist on the opposite side of Canterbury Road (route 96) and Tram route 12 operates along Danks Street to the south of the local / neighbourhood activity centre.

7. PERMIT TRIGGERS

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

NOTE: No permit is required for the hotel use under any planning scheme provision as the hotel operates under existing use rights.

Zone or Overlay	Permit trigger
Clause 34.01 Commercial 1 zone	<p>Pursuant to Clause 34.01-1 a planning permit is not required to use the land for the purpose of a 'Bar' (Retail premises other than a shop). Pursuant to Clause 34.01-4 a permit is required to construct a building or construct or carry out works.</p> <p>There are no mandatory height controls in the zone or the schedule to the zone.</p>
Clause 43.01 Heritage Overlay	A planning permit is required to <i>Demolish or remove a building; and construct a building or construct or carry out works</i> , pursuant to Clause 43.01-1 of the Port Phillip Planning Scheme. No internal alterations controls apply to the site pursuant to the Schedule. External paint controls apply to the site
Clause 52.06 Car parking.	Under the provisions of Clause 52.06-3 and 52.06-5, a permit is required to waive the car parking requirements. In this instance, nine car spaces are required to be waived, per 3.5 car spaces per 100m ² of additional floor area (roof top terrace area only).
Clause 52.27 Licensed Premises	Under the provisions of Clause 52.27, a permit is required to increase patron numbers and/or the size of the area within which liquor is to be served.



Clause 52.34 Bicycle parking	Under the provisions of Clause 52.34-2 and Clause 52.34-5, a permit is required to waive the bicycle parking requirement. (Six space waiver).
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8. PLANNING SCHEME PROVISIONS

The following provisions apply to the site.

8.1 Planning Policy Frameworks

The application needs to be assessed against the state provisions of the PPF, including:

- Clause 15: Built Environment and Heritage
- Clause 17: Economic Development (Mainly Clauses 17.02-1S and 17.04-1S)
- Clause 21.03 Ecologically Sustainable Development
 - Clause 21.03-1 Environmentally Sustainable Land Use and Development
 - Clause 21.03-2 Sustainable Transport
- Clause 21.04 Land Use
 - Clause 21.04-2 Activity Centres
- Clause 21.05 Built Form
 - Clause 21.05-1 Heritage
 - Clause 21.05-2 Urban Structure and Character
 - Clause 21.05-3 Urban Design and the Public Realm
- Clause 21.06 Neighbourhoods
 - Clause 21.06-3 Albert Park/Middle Park

The application also needs to be assessed against the following clauses of the LPPF:

- Clause 22.04 Heritage Policy
- Clause 22.06 Urban Design Policy for Non-Residential Development

8.2 Other Relevant General or Particular Provisions

- Clause 52.06 Car Parking
- Clause 52.27 Licensed Premises
- Clause 52.34 Bicycle parking
- Clause 71 Operation of the Planning Scheme

8.3 Relevant Planning Scheme Amendment(s)

There are no planning scheme amendments relevant to this application.

9. REFERRALS



9.1 Internal Referrals

The application was referred to the following areas of Council for comment. The responses received are summarised below:

Internal Department/Officer	Referral comments (summarised)
Waste Management	<p>Council's Waste Technical Officer raised no concerns with the proposal.</p> <p>Planning Officer response:</p> <p>The Waste Management Plan submitted with the application could be endorsed should a permit be issued.</p>
Traffic Engineer	<p>In summary, it was commented that visitors/customers to the site would have access to nearby public transport and could also use other non-private methods such as taxi and car-ride services. This was commented as being the most appropriate and safe form of transport and two loading zones near to the site would be satisfactory and several 15-minute parking spaces available within a close vicinity to the site to allow for drop-off and pick-up activities.</p> <p>It was additionally commented that the road network immediately surrounding the site is generally restricted with timed parking which will discourage long-term staff parking. Should this change, it was advised that staff would not be eligible for parking permits and therefore will not impact residential on-street parking.</p> <p>No concerns were raised regarding the bicycle parking shortfall but that additional four public bicycle hoops should be provided should a permit be issued.</p> <p>Planning Officer response:</p> <p>It is agreed that the parking waiver is supportable within the context of the activity centre. Public transport is generally encouraged and indeed likely in this instance whereby taxi/car-share coupled with light rail public transport are likely to be the dominant modes of transport used. Additionally, the Planning Scheme shortfall of nine spaces in this activity centre context is considered low.</p> <p>Should a permit be issued, the additional four bicycle hoops are required via recommended condition 1 (a).</p>
Heritage Advisor	<p>It was commented, following pre-application advice, that the setbacks of the deck from the street boundaries were not</p>



	<p>sufficient and that retention of one chimney in particular (that at the south-east end of the building) should be provided.</p> <p>Additional written and recent verbal comments were received in relation to the advertised plans to the effect that the setbacks and overall visual impact of the proposal was satisfactory, but that the retention of the south-east chimney still needed greater thought as to how it would be achieved.</p> <p>It was also commented that the fixed awning facing Canterbury Road should be a lightweight retractable feature.</p> <p>Planning Officer response:</p> <p>It is considered that the main issue of overall visibility of the additions has been addressed but it is agreed that achieving retention of the south-east chimney is necessary from a heritage impact perspective.</p> <p>The proposed 'south' elevation shows the chimney above the existing parapet line and thus, higher than the two longitudinal roof ridges. The existing south elevation also shows the chimney to be the same height but shows a parapet wall along the building's south-east elevation that is essentially the same height as the two roof ridges beyond.</p> <p>Aerial photos indicate that this is not the case and that there is a far lower parapet wall along this elevation. This means that the proposed south elevation where the floor of the addition is depicted as sitting on top of the two ridges at roughly the same height as the parapet is not true. The parapet would be lower than the floor of the addition.</p> <p>Nonetheless, the rooftop level plan and the Canterbury Road elevation both show the south-east wall of the addition built to that boundary with the plan view showing 'chimney at/from first floor'.</p> <p>In order for the chimney to be retained and for the floor of the addition to sit above/on the roof ridges (and not for some of it to cantilever above the sloping roof hips), the south-east wall of the addition would need to be setback from the boundary approximately 4 metres, being the point where the roof ridges terminate at the top of each respective hip. (refer recommended condition 1 (b)).</p> <p>Recommended condition 1 (c) requires the fixed glass awning facing Canterbury Road to be shown as a lightweight retractable feature.</p> <p>These recommended conditions are considered to address any outstanding heritage issues and would not impact on the overall function of the roof top terrace.</p>
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9.2 External referrals

External Department / Organisation	Referral comments (summarised)
<p>Acoustic Engineer</p>	<p>An external Acoustic Engineer was consulted on the submitted Acoustic Report that accompanied the application. The following comments were subsequently provided:</p> <ol style="list-style-type: none"> 1. Rooftop is closed by 11pm. This is on the basis that the acoustic report only assesses the impacts until 11pm. The assessment also indicates patron noise would exceed the preferred noise targets so there is some risk of adverse impacts to neighbours. 2. A music noise limiter applies to the rooftop and that: <ol style="list-style-type: none"> a. Music is only played through the in-house sound system with noise limiter. b. The limiter is calibrated by a suitably qualified acoustic consultant prior to commencement of use. <p>Planners Comments: The impact of the proposed development and extension of the red line area / increase in patron numbers at the site is discussed in detail below. However, in response to the comments above, conditions have been included within the recommendation requiring the use of noise limiting equipment and the requirement for submission of a report demonstrating that the limiting device would be effective in preventing harmful noise impacts from the site (refer to recommended conditions 6, 7, 8, 9, 10 and 11 above).</p>

10. PUBLIC NOTIFICATION/OBJECTIONS

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 and nearby properties (96 notices posted and sent) and directed that the applicant give notice of the proposal by posting two notices on the site for an 18-day period, in accordance with Section 52 of the *Planning and Environment Act 1987*.

The application has received 124 objections and two letters of support. The key concerns raised are summarised below (officer comment will follow in italics where the concern will not be addressed in Section 11):

Inappropriate Nightclub Activity



It is acknowledged this is the fundamental issue of concern and was raised in the majority of objections. The potential impacts of the above issues are discussed in detail below against the relevant planning policy considerations.

Poor waste/garbage management, will only get worse from current poor situation

Several objections highlighted that the current waste management and overall cleanliness of the site is poor and likely to get even worse as a result of this proposal. It appears that the objections are largely based not on more 'general' waste collection issues (but are to some extent), but on overall external cleanliness such as a lack of cleaning/removing of cigarette butts and the like from the kerbside area and nearby. Some concerns were, however, raised in relation to garbage bags being left unattended and an overall level of unsightliness that was not seen as appropriate.

Given the proposed increase of 200 patrons and the associated potential for a greater extent of waste, the applicants submitted a Waste Management Plan. This was internally referred, and no concerns were raised. Therefore, should a permit be granted, this plan would be endorsed to form part of the permit as required by recommended condition 5. Beyond that, the management and control of waste and the cleanliness of the outside of the site is not a planning matter and subject to investigation and enforcement by Council's Local Laws.

In regard to the concerns raised about the impact on the heritage character of the area it is noted that the site is no longer included in a Heritage Overlay. It is further noted that the amendment application has been referred to Council's Heritage Advisor who has not raised any concerns about the proposal.

Insufficient parking, increased traffic volumes

An assessment of the proposed reduced car parking rate is undertaken in the main assessment section of this report.

Inappropriate heritage response, too visible on host building, possible structural concerns

Structural matters and how the building could be engineered to cater for the additions is not a planning matter. However, overall visibility of the addition is clearly a heritage matter and the streetscape impacts of the addition are one of the key matters to assess in this application. A full assessment of these matters against the relevant planning policy is contained in the assessment section below.

Construction activity disturbance

This is not a planning matter and will be dealt with under Council's Local Laws.

Change in focus and character of area, out of keeping with village nature low key commercial area and quiet residential hinterland, building's use will go from local to non-local

In response to this concern two key local policy provisions being Clauses 21.04 -2 (Activity Centres) and Clause 21.06-3 (Neighbourhoods) which outlines the land use strategies sought for the Armstrong Street Neighbourhood Centre are identified. It is considered that these strategies provide scope for the proposed extension of existing activities at the site sought under this application to be appropriate within this context. This is discussed in greater detail below.



Poor security/patron management getting worse from current poor situation, Possible resident safety concerns due to departing patrons

This is covered from sections 11.4 and 11.5 of this report. In this instance, it is asserted within the objections received that the current overall security management of the site is limited but commentary to some extent relates to the inability of the hotel to control patrons some distance from the site. An updated Patron and Noise/Amenity Management Plan would be required as part of any permit condition should one be issued; however, other planning options are very limited. The same follows for the matter of local resident security which ultimately would be a Police matter.

No wider community benefit, no expressed need for the proposal

There is some validity to this objection in that the proposal could be argued to only benefit the applicants. However, this is considered a somewhat narrow view in that it focusses largely on the economic benefit (profit) that the proposal may lead to. It could be argued in a broader sense that greater activity and patronage in the centre might provide some benefit to the wider centre and may result in patrons attending other businesses after their visit to the site or at other times once they become aware of the centres facilities.

Possible decrease in nearby property values

This is not a planning consideration or matter.

Concerns with 100 additional kerbside patrons

The application makes no reference to any increase or change to kerbside dining capacity

Section 60 (1b) of the Act requires Council to have regard to the number of objections in considering if the proposal raises significant social issues.

Whilst the matter of poor patron behaviour and potential security matters have been raised along with that of the potential change in the 'neighbourhood' focus of the centre, it is not considered that the number of objections raising these concerns constitutes significant social issues. It is considered that the most significant issue raised by the proposal is that of noise, both emanating from the site and from patrons having left the site.

11. ASSESSMENT

11.1 Strategic Justification

Is the proposal consistent with the relevant Planning Policy Framework?

Victorian planning policy generally seeks to locate commercial and entertainment uses, including the sale and consumption of liquor, within activity centres. Such activity centres are generally located in highly accessible locations, capable of accommodating movements and accessibility of movements of people and goods to the area with minimal disruption and supporting the economic viability of activity centres. Armstrong Street being a neighbourhood centre is considered to comply with policy direction to locate such uses. This however needs to respond to policy requirements in balancing any potential for unreasonable amenity impacts.



The proposal would be in such a neighbourhood centre and subject to a reduction in its intensity, it is considered supportable in the context of local and state policy, noting a new use is not proposed but an extension to an existing use being Hotel/bar.

In regard to the buildings and works associated with the proposal, it is considered that the rooftop addition, subject to a reduction in its footprint and a change to some of the proposed awnings, would align with the key aspects of local policy, primarily that the host building would clearly remain as the primary built-form and would not be over-whelmed by the proposed additional built form atop the original heritage fabric. Generally, the buildings and works would be a 'good fit' within its context, that they would not diminish any heritage values and would not create unreasonable amenity impacts such as overshadowing, overlooking opportunities, mass, bulk or overall built form character. The proposal, subject to amendments, would achieve an acceptable level of compliance with the objectives and decision guidelines of policy.

As outlined, the site is located within the Commercial 1 Zone and as per Clause 21.04-2, the site is located within the Armstrong Street Neighbourhood Activity Centre where local entertainment (cafes and restaurants) are encouraged. It is accepted that some of the hotel's customers may not be local, but there is nothing to suggest that some existing and future customers may be local, should the quality of the proposal be such that they are likely to attend. As previously noted, the roof deck would not comprise a nightclub (and a permit would be required to alter the proposal to accommodate this use being a land-use defined under the broader definition of a 'Place of Assembly') and on balance, it is considered that the contemplated 'entertainment' component would be maintained.

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, the layout of the roof deck would be such that it would be orientated generally north-west, pointing away from the residential boundaries. But, as previously noted, it is a consideration that noise impacts to such boundaries may give rise to unreasonable impacts without a reduction in patron numbers and operating hours.

The recommended conditions which also include a requirement for an electronic noise limiter to be installed are considered to reasonably balance the outcomes that the above clauses are seeking in a broader sense whilst providing adequate 'safeguards' on nearby amenity.

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

Clause 17.04-1S encourages tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination and Clause 17.04-1R seeks to maintain and develop Metropolitan Melbourne as a desirable tourist destination. At a broad level, it is considered that the proposal would align with these State policy outcomes.

The objectives of Clause 21.01-2 include supporting a vibrant, well managed local tourism industry that co-exists harmoniously with local residents, businesses, traders and the natural environment.



Clause 21.04 acknowledges that licensed premises have an important entertainment role within the municipality, and 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. This is further assessed in the cumulative impact assessment in section 11.5 of this report.

In response to the requirements of Clause 21.04-2 (Activity Centres) and Clause 21.06-3 (Neighbourhoods) it is considered that the site is well located by being in the Commercial 1 zone whereby the light rail line is very close by and by not having any abuttal to a residential zone. The proposal would not involve a new use that would displace an existing local use and would make use of an existing building and infrastructure.

Whilst being one of Port Phillip's smaller neighbourhood centres, it is considered that this centre is diverse and robust enough that the expansion of the hotel would not overly diminish its distinctiveness. It is considered reasonable for even a neighbourhood centre at times to experience greater levels of activity (which could itself be seen as a positive outcome) with some of that activity not being locally based.

Furthermore, Clause 21.06-3 (Neighbourhoods) outlines the land use strategies being sought for the Armstrong Street Neighbourhood Centre, as follows:

- 6.3.8 Support the daily / weekly retail goods and services role, and local entertainment role of the centre.
- 6.3.9 Require all new development to respect the following elements:
 - The predominant 1 and 2 storey scale of Victorian buildings, with higher development setback from the principal street to minimise its visibility.
 - The regular streetscape pattern created by consistent frontage widths to buildings.
 - Views to Albert Park.

It is also considered that the proposal would respect the local character of one and two storey Victorian Buildings. This outcome, noting that it relates to the entire neighbourhood, is most usually applied to the intact residential heritage streetscapes, however in this instance, once the roof top terrace is reduced in size to respect the existing heritage fabric and the awning modified as required by recommended conditions, it would also respect its immediate commercial building setting.

In summary, subject to reasonable amenity control conditions, it is considered that there is sufficient policy support for the proposal. Clause 22.06 (Clause 22.06 Urban Design Policy for Non Residential Development) contains a wide range of headings under which various built form outcomes should be achieved, but in summary, these are that new development should be a 'good fit' for their local context along with minimising off site physical amenity impacts. Once modified via recommended conditions, the proposal would sit comfortably under this policy's provisions. It would be of a height, form, character and visual appearance that would achieve a 'good fit' for this



section of Armstrong Street and Canterbury Road. Its form as previously assessed would also not negatively affect any views or vistas to neighbouring buildings nor would it diminish any views from nearby vantage points to the existing host building, which would clearly remain the primary element on the site.

11.2 Built Form and Heritage (HO 445 and Local policies)

The purpose of the Heritage Overlay is to conserve and enhance places of natural or cultural significance, to conserve those elements which contribute to the significance of the place and to ensure that development does not adversely affect the significance of heritage places.

This purpose is consistent with the broader heritage conservation objectives of the Planning Policy Framework at Clause 15.03-1S and 21.05-1. Clause 22.04 provides the principal policy guidance in assessing an application within the heritage overlay and builds on the objectives at Clauses 15.03 and 21.05-1.

Much of the proposal's alignment or otherwise with the overall heritage policy provisions has been assessed in section 10 of this report when it was noted that the sight line aspect of this policy almost always relates to intact residential streetscapes. However, the other matters under this policy are assessed below. These are again noted in the context of the Council's Heritage Advisor comments as outlined above.

A key consideration in assessing potential heritage effects are the views of Council's internal heritage advisor. As outlined in section 9 of this report, the advertised plan was assessed as being satisfactory from a heritage/visual impact standpoint aside from two matters regarding the fixed canopy facing Canterbury Road and the retention of the existing chimney at the south-east of the site.

Officers agree that the extent of visual intrusion, whilst perhaps minimal, should be further reduced through the above measures, as required by recommended conditions 1 (b) and 1 (c) should a permit be granted. The applicant has been made aware of these issues and at the time of writing, had not disputed these.

It is also noted that Council's Heritage Policy at Clause 22.04 directs exercising discretion (as opposed to being a set of mandatory requirements). However, when it comes to additions and alterations, that policy ordinarily relates to assessment of such matters in a residential setting whereby additions should be sited, located and massed such that their visual impacts on an intact run of generally single storey heritage buildings should be minimised, or preferably be reduced to complete invisibility.

The proposal here does not involve additions to part of a 'run' of intact single storey heritage dwellings but would sit directly above an existing three storey commercial building therefore its applicability and direction in deciding the appropriateness of the subject additions is diluted.

For example, the policy states that additions should be sited behind the host building's principle façade and that the façade and roof are not changed. That would be achieved in this case, but as the building has two principle facades, the additions would need to be strictly setback behind both. To further help in assessing possible streetscape visibility, the policy refers to a '10-18 degree sight



line' whereby additions should be located within such a line or envelope such their visibility is greatly reduced.

Again, this almost exclusively applies to intact single storey residential settings and is not considered to be especially useful in this specific instance. Illustration 1 in the policy indicates this to be the key outcome that this section of the policy is trying to achieve. Even so, the proposal would not meet that measure but noting the heritage advisor comments, it is considered that the addition would be suitably recessive to its host building with it being very clearly reading as the primary building on the site without its heritage significance being unduly diminished.

The required reduction in the addition's length of approximately 4 metres would not affect the addition's setback to Canterbury Road (and hence, the sight line under the Heritage Policy) but it would further serve to reduce the overall visual extent of the addition, making it even more recessive.

In summary the proposed design response satisfies the policy guidelines of Clause 22.04 (Heritage) and would represent an acceptable built form response and would achieve the purpose of the overlay subject to the recommended reduction to the roof deck's footprint and the change to one of its awnings.

11.3 Built Form and Neighbourhood Character

Sections 3 and 4 of the report describe the existing character of the area, providing context for the development.

Built form and neighbourhood character responses are guided by a number of policy instruments including Clauses 15, 21.05 and 21.06 which generally promote high quality design which is respectful and responsive to its context, and that improves the public realm.

As previously noted, subject to the recommended conditions, it is considered that this would be achieved.

11.4 Zone and Overlay Provisions

Is the proposal consistent with the Commercial 1 zone provisions?

The purposes of the zone are:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *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.*

It is considered that the proposal would align with these stated purposes. It would enhance the vibrancy of the area subject to conditions, would be suitably controlled in terms of operating hours and the number of patrons. It would not displace an existing tenancy allowing the local distinctiveness and function of the centre to be maintained.

Sale and Consumption of Liquor Clause 52.27



The Decision Guidelines that must be taken account of are as follows:

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *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.*

It is noted that noise and amenity impacts are the fundamental issue of concern raised by the majority of objectors. With regard to noise, the application raises two broad issues being 'people' or 'patron noise' and music noise both from within the premises.

The applicant, as outlined later in this section, submitted an acoustic report. This was externally referred to a private consultant largely with a view to establishing whether or not there were any procedural or technical faults or errors with the report. It was indicated that there were not, but it was noted that the need for a noise limiter was critical along with it being noted that the report did not assess potential noise effects beyond 11pm. Both these are noted.

Patron noise at the site.

There are no actual technical measures in relation to this in that there are no EPA techniques or standards that need to be met. A more informal measure that is mostly used is that of sleep disturbance related to night time activities. The applicant's submitted acoustic report followed a similar approach although slightly more detailed and in summary, concluded that patron noise would not be above the established 'trigger points' and would therefore be acceptable.

From experience, Council has assessed several applications regarding various licensed premises and considered that patron noise can be an amenity affecting issue and needs, if possible, to be properly controlled. In this instance whilst the proposed roof deck would be elevated above nearby properties and some dwellings are in close proximity, at a distance of 20m to 30m.

It is generally accepted that the greater the number of patrons drinking liquor and the later the operating hours, the increased chance for patron noise impacts and sleep disturbance. This application seeks an additional 200 patrons in addition to the site's current patron limit (including the separately controlled kerbside area) of 360.

This is considered a relatively large increase, noting that the additional 200 patrons are being sought exclusively for occupation of the proposed roof deck and would not therefore be contained within the building thus the potential for patron noise impacts would increase even further. Discussion and conclusions regarding patron noise controls occurs later in this section.

The other key matter related to any noise impacts, including patron noise, is any premises proposed operating hours. In this instance, it is not proposed to change existing operating hours being 1am and to 3am on particular special occasions.



The control of operating hours is considered to be a more effective tool in the potential protection of nearby amenity than reduction in patron numbers, with both combined even more effective than individually.

The key question in this proposal in relation to noise is whether the proposal is reasonable both in its built form / physical context and its planning control/planning policy context. When those contexts are combined, it is noted that the site is in relatively close proximity to some dwellings, but that the site does not directly abut a residential zone and is within a commercial precinct. Even so, as noted above and in section 3 of this report, there are relatively close residential interfaces and the commercial precinct that the site is within is a neighbourhood centre rather than a major activity centre. The closest 'conventional' dwelling interfaces (as opposed to an apartment development) are the rear-yards of the properties to the south fronting Richardson Street which are approximately 30 metres at the closest point from the location of the proposed roof deck.

Similarly, the planning scheme at Clause 21.04 defines the subject activity centre as a 'Neighbourhood' centre. This indicates that more locally focused functions such as daily/weekly retail goods and local entertainment including restaurants and cafes are those that are preferred.

It is considered relatively clear that this particular Neighbourhood Centre is one where large-scale activities would generally be discouraged. The difficult issue from an assessment criterion in planning policy is that the local policy generally relates to new uses. As already outlined, the use already exists and whilst it is the largest and most intensive use in this particular Neighbourhood Centre and should the proposal be a request to establish afresh, policy and related assessments would facilitate a de novo assessment where all aspects of the operation could be assessed and managed in totality. The question becomes whether the expansion of the existing uses and increased intensity by 200 patrons on an open roof deck under existing operating hours is reasonable.

Music Noise

Unlike patron noise, there are specific controls and standards that need to be met in this instance. The applicant's acoustic report states that music noise would be acceptable subject to installation of an electronic noise limiter. This is considered a very important and helpful technique but would not result in music noise being inaudible. It would simply mean that music noise would have to comply with the most recent noise control standards now known as the EPA noise protocols. Compliance would mean greatly reduced likelihood of music noise impacts, but such compliance if achieved through a noise limiter, still needs to be viewed in the context of the site's proximity to dwellings and its 'neighbourhood' as opposed to 'major' activity centre status.

It is considered that the one overriding measure or test of likely amenity impacts could be met provided that all music be played through an electronic noise limiter which is required by recommended conditions 9-11.

Noise conclusion.

On balance, it is not considered that the expansion of the site's intensity exactly as proposed is reasonable. Even with a noise limiter, it is considered that music noise from the site until 1am each day is likely to cause excessive impacts, as would the noise from 200 patrons also to 1am each day.



However, also as noted earlier, some planning recognition must be given to the fact that the premises is an existing one and has been operating within a commercial area at varying levels of intensity, for over 100 years. It is not a new use starting afresh and it is considered reasonable that the proposal is not supported in its entirety.

As noted earlier, whereby control of operating hours coupled with a reduction in patron numbers is the most effective noise/amenity protection control, it is considered that a reduction from 200 patrons to 150 maximum (reduction of 25%) is reasonable (refer recommended condition 15) as well as a reduction in operating hours to 11pm on Sunday to Thursday and Midnight on Friday and Saturday (Refer recommend condition 14). This is considered to reach an appropriate balance between close residential interfaces, albeit within a commercial area and the need to control amenity versus a well-established commercial use in a local / neighbourhood activity centre wishing to expand its intensity, something that is not uncommon even in the form of a roof deck, front terraces or new rear courtyards for example.

Patron noise outside the site

In many respects this is a social matter with planning considerations primarily limited to the control of patron behaviour and associated noise control within the site boundaries. The applicants have submitted a Patron and Noise and Amenity Action Plan which confirms the above. Notwithstanding this, there is scope for the security officers at the Hotel to attempt to assist with managing patron behaviour within a limited distance of the site (generally along the respective site frontages) but given that the vast majority of objectors noted possible behaviour concerns way beyond that distance, it is considered that there is no planning scope or tool to require the Hotel to have direct control of patrons in the nearby residential streets. This is also controlled further in recommended condition 13 – Patron and Noise Amenity Management Plan.

Type of activity

It is noted that several objections raise concern that the proposal would be akin to a nightclub. There is a planning scheme definition of Nightclub, which is as, *“A building used to provide entertainment and dancing. It may include the provision of food and drink for consumption on the premises. It does not include the sale of packaged liquor, or gaming”*.

The proposal whilst noting amplified music being played clearly through its layout plan makes no reference to dancing and there is no dance area shown on the proposed roof deck plan. Given the proposed layout of the roof top deck, mainly being in L shape, a floor dance is not shown.

The applicants also noted at the consultation meeting that around 65% of patrons would be seated. This further affirms that the proposal is not indicative of a nightclub and more akin to a restaurant where 75% of patrons numbers are required to be seated. Based on the applicant's advice at the consultation meeting, recommended condition 15 would require at least 65% of roof deck patrons to be seated.

As has been previously assessed, it is considered that both the 200 additional patrons but more importantly, the proposed 1am closing time seven days a week would be excessive and could lead to excessive noise impacts to the residential properties within the area. Given the local nature of existing licensed premises in the area, it is not considered that the cumulative impacts of the proposal (once reduced in hours and patrons) would be excessive noting, that the proposal would



not add a new licensed premises, but rather seeks to extend the area in which the existing use operates.

In summary, it is considered that amenity impacts, operating hours and patron numbers as proposed by the application material is not supported as outlined above, subject to conditions on any permit reducing the hours and patron numbers. From this, it is considered that the following cumulative impact assessment is relevant as outlined below;

11.5 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 expanded red line area/floorspace and additional patrons on the rooftop that 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 some licensed premises in the area within 100m or so of the subject site and whilst most of these are allowed to trade to midnight or later, the reality 'on the ground' is that most cease operations at between 10pm to 11pm most of the time. However, for the purposes of this assessment, it is considered reasonable to note that some form of cluster does exist.

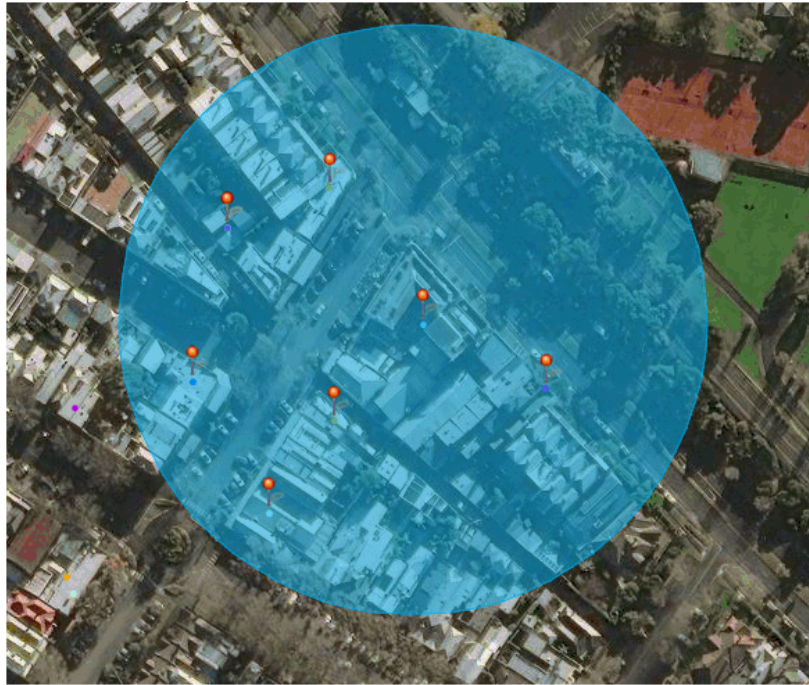


Figure 1: 100m radius of the subject site includes seven (7) active liquor licences

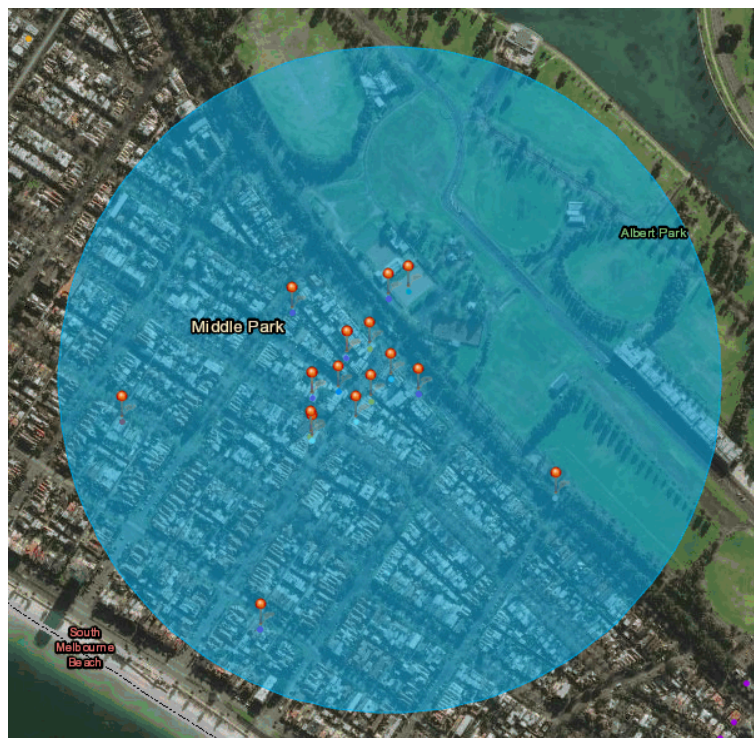


Figure 2: 500m radius of the subject site includes 18 active liquor licences

Type of Liquor Licence	100m radius	500m radius
General	1	1



Late Night General	1 (subject site)	1 (subject site)
Limited Licence	1	6
Restaurant and cafe	3	4
Packaged Liquor	1	2
Full Club		1
Restricted Club		1
Producer's Licence		1
Total	7	18

Table 1: Active liquor licences within 100m and 500m of the subject site.

Based on the proposed operating time after 11pm and the above summary of active liquor licences, the proposal would add to an existing cluster. *Planning Practice Note 61 June 2015 - Licenses premises: Assessing cumulative impact* notes the following matters for consideration:

The following matters should be considered when assessing the cumulative impact of licensed premises:	Response
<p>1. Planning policy context</p> <p>Existing context</p> <ul style="list-style-type: none"> • What are the policy, zoning and other planning controls that are relevant to the surrounding area? • What amenity, land use and other planning outcomes do these controls encourage? <p>Assessment</p> <p>Is the proposal consistent with the planning outcomes encouraged in the policy, zoning and other planning controls for the area?</p>	<p><i>Satisfied.</i></p> <p><i>See discussion under Planning policy context above.</i></p>
<p>2. Surrounding land use mix and amenity</p> <p>Existing context</p> <ul style="list-style-type: none"> • Does the subject land adjoin sensitive uses? • What is the relationship between licensed premises and other uses in the area? • What are the local crime statistics related to licensed premises? 	<p><i>Satisfied.</i></p> <p><i>See discussion under section 'Planning Policy Framework' and objector concerns above.</i></p>



<ul style="list-style-type: none"> • Are there other premises open after 11pm? • What is the existing level of amenity in the area? • What are the reasonable amenity expectations in the area? <p>Assessment</p> <p>Will the proposal significantly increase the number of patrons near sensitive uses at any time?</p> <p>Given the location and planning policy context, will the proposal generate amenity impacts beyond what is reasonable?</p>	
<p>3. The mix of licensed premises</p> <p>Existing context</p> <ul style="list-style-type: none"> • What is the mix of licensed premises in the area? • Do any licensed premises cater for more than 200 patrons? • How many and what type of licensed premises (especially high capacity venues and packaged liquor outlets) operate after 11pm? • Do licensed premises commonly operate at capacity and is queuing outside common? • Do many licensed premises in the area show a high ratio of standing to seating? • Are there any local laws regulating consumption of liquor in public spaces? • Is there any evidence of problems apparent in the area, such as property damage or littering, that may be attributed to alcohol related incidences? • Are complaints (for example, to council or Victoria Police) about licensed premises already being generated in the area? • Are there any known enforcement proceedings against licensed premises in the surrounding area? <p>Assessment</p>	<p><i>Satisfied.</i></p> <p><i>Please refer to Table 2 for a breakdown of liquor licence application types.</i></p> <p><i>As identified in Table 2, the highest proportion of licences are associate Limited Licences (internet vendors, restaurants, cafes, and food vendors that wish to supply liquor in conjunction with the supply of a home-delivered meal or with a meal for takeaway from the premises, off-site caterers etc) with a Restaurant and café being the second most popular licence. Notably, only the subject site features as the only licence type (including and on-premises licences) which is typically associated with pubs etc.</i></p> <p><i>The proposed liquor licence in association with an existing bar considered to support the on-going economic viability of the area, particularly as the extent of the existing liquor licences are concentrated towards established restaurant / cafes or sports club licences, the latter of which generally has significant physical barriers (i.e. the) between their location and proximity of the subject site and are unlikely to be read as a contributing to the density of licensed venues within this area and associated risks identified in Planning Practice Note 61 arising from such clusters.</i></p>



<p>Does the proposal contribute to the diversity of activities and vibrancy in the area?</p> <p>Will the proposal reinforce any existing or create any new impacts arising from the mix of uses in the area?</p>	<p><i>As previously discussed, the extension of the existing liquor component is not considered to unreasonably impact any existing uses within the area.</i></p>
<p>4. Transport and dispersal</p> <p>Existing context</p> <ul style="list-style-type: none"> • Do closing hours between venues coincide closely or is there a spread of closing hours? • Is there a high number of patrons on the streets after 11pm? • What public transport is available to patrons leaving the licensed premises at closing time? • Are taxi ranks conveniently available to patrons le Hours of Operation – Sale and Consumption of Liquor having the licensed premises at closing time? • Is there car parking available and where is it located? • How do people disperse from the area after leaving a licensed premises? • Is the movement of patrons through the area known to be an existing problem? • Are there any identified issues with accessing public transport such as frequency or capacity of services? <p>Assessment</p> <ul style="list-style-type: none"> • Is the proposed licensed premises' location or characteristics such as operating hours likely to contribute to any problems for patron dispersal? • Will the proposal reinforce any existing or create any new impacts arising from licensed premises closing times and patron dispersal within the area? 	<p><i>Satisfied.</i></p> <p><i>Please refer to above discussions.</i></p>
<p>5. Impact mitigation</p> <p>Existing context</p> <ul style="list-style-type: none"> • Are there sufficient public amenities available for patron use, including toilets and rubbish disposal? • Are there any relevant public safety or enforcement initiatives in the area? 	<p><i>Satisfied.</i></p> <p><i>Please refer to above discussions.</i></p>



<ul style="list-style-type: none"> • Has the area been developed according to principles of good urban design and safe design? <p>Assessment</p> <ul style="list-style-type: none"> • Will the proposal provide mitigation measures to address any negative cumulative impacts? • Can any identified negative cumulative impact be satisfactorily reduced by changes to the proposal? 	
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It is widely acknowledged that clusters of venues, hours of operation and venue type are linked to an increased risk of alcohol related harm. Literature indicates a greater risk of harm when a venue is strongly reliant on people standing to drink in usually crowded spaces it is likely that there is some relationship between these risks, with higher risk venue types such as hotels, Bars and nightclubs also being associated with late night trading.

Measures such as the government’s moratorium on new late-night venues have been introduced into this area as a short-term response. However longer-term solutions are likely to lie in the areas of venue design and management, the policing of venue management and public order.

The recommended conditions for proposed Patron and Noise/Amenity Management Plan will include measures, as reasonably practicable, to nominate actions to control operation of the uses on site to be generally satisfactory but require changes / additions including the reference compliance current EPA noise limit requirements at Condition 8.

Patron and Noise/Amenity Management Plan

As previously reported, the subject site is an established licenced premises and the use currently exists, the proposal would not introduce any new use or premises. The existing 1am closing time for the subject site (on most nights) is proposed to remain unchanged.

As previously advised, the subject site is located within the Commercial 1 Zone and is within a Neighbourhood Activity centre. The proposal would result in some intensification of an existing use which has some relatively close residential interfaces, but no direct interfaces. From this, as previously assessed, some increased amenity impact is likely to stem from the proposal. This, however, should be able to be properly controlled within the site mainly via the recommended music noise limiter, reduced operating hours, reduced patron numbers with 65% seated patrons, and from that, any impacts are not considered cumulative but rather, new and direct impacts.

However, the practice note acknowledges that proposals may result in a negative cumulative impact while still being acceptable, the threshold being whether the impact is ‘reasonable’. In this instance, the anticipated negative ‘cumulative’ (or new) 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:
 - Enhanced vitality to the area;



- Added flexibility to the establishment, resulting in economic benefits and increased consumer choice.

11.5 Traffic and Carparking - Clause 52.06

Clause 52.06 requires parking to be provided at a rate of 3.5 spaces per 100m² of additional floor area with just under 260m² of new floor area being proposed. This would require nine car spaces. The application proposes a waiver of this requirement.

As per section 8 of this report, Council's Traffic Engineer has reviewed the application and they consider that the waiver is supportable.

Clause 52.06-7 outlines the considerations the Responsible Authority must have regard to in determining the appropriateness of a car parking reduction or waiver. The following table provides an assessment of the proposal against these considerations.

Clause 52.06-7 Consideration	Assessment
The Car Parking Demand Assessment.	<p>Councils Traffic Engineers have raised no concerns with the applicant's traffic study and its two key conclusions being that there is adequate kerbside parking capacity in the area to cater for the waiver and additionally, that private car use is not likely to be the primary transport mode to the site.</p> <p>Given that the site is within an activity centre, albeit a local one with access to local facilities and public transport, it is considered that the waiver can be catered for.</p>
Any relevant local planning policy or incorporated plan.	<p>In terms of car parking, within Clause 21.03-2 (Sustainable Transport) it is acknowledged that relevant outcomes are to reduce carbon emissions, create a more sustainable transport network and reduce dependency on private cars. It is further acknowledged that the site is well located in terms of occupants' ability to walk, or use public transport in various combinations.</p> <p>Council would normally accept the centre-based approach regarding parking for the additional floor space and given that the waiver in that context would be relatively low, it is again considered supportable in the light of Council policies aimed at reducing private car reliance.</p>
The availability of alternative car parking in the locality of the land.	<p>There is no private land where car parking would be practically available. In terms of kerbside parking, it is noted that this is well utilised but not to the point where it could not cater for the proposed waiver.</p>



On street parking in residential zones in the locality of the land that is intended to be for residential use.	As above.
The practicality of providing car parking on the site, particularly for lots of less than 300 square metres.	<p>The subject site has two road frontages, but the ability to provide car parking on either side is very limited in a practical sense. The rear courtyard facing Armstrong Street does not have crossover access to it and it is not considered reasonable to convert that courtyard to car parking. In any case, only approximately four spaces could be provided in that location.</p> <p>In short, the site has never had any practical ability to provide for any effective customer parking.</p>
Any adverse economic impact a shortfall of parking may have on the economic viability of any nearby activity centre.	The proposed parking waiver will not have an unreasonable economic impact on the centre due mainly to the waiver being low.
The future growth and development of any nearby activity centre.	It is not considered likely that the future growth of this activity centre would be harmed by the shortfall. Future growth is likely to be moderate.
Any car parking deficiency associated with the existing use of the land.	The existing building has a floor area of approximately 780 square metres with no parking provided. The site therefore has an existing credit of approximately 27 car spaces. Based on the survey results from the applicant, this is considered not to result in excessive impacts in the nearby area as it is most likely that ride taxis, ride share and the light rail have been the main modes of customer transport for several years.
Any credit that should be allowed for car parking spaces provided on common land or by a Special Charge Scheme or cash-in-lieu payment.	As above.
Local traffic management in the locality of the land.	Roads in the immediate area, at least in terms of car parking restrictions, are heavily controlled and managed. Council's Traffic Engineers note support for the proposal.
The impact of fewer car parking spaces on local amenity, including pedestrian amenity and the amenity of nearby residential areas.	The waiver of car parking is not considered to lead to unreasonable impacts on local amenity as previously assessed. Amenity impacts are much more likely to flow from patron noise at the site.
The need to create safe, functional and attractive parking areas.	If provided on site, any car parking would potentially alter the proposal's ground level presentation in a negative way to Armstrong Street. The absence of



	car parking access from that street is considered a positive visual characteristic.
Access to or provision of alternative transport modes to and from the land	The site is located within close proximity to light rail in addition to some dedicated cycling infrastructure and car share facilities.
The equity of reducing the car parking requirement having regard to any historic contributions by existing businesses.	None are known of.
The character of the surrounding area and whether reducing the car parking provision would result in a quality/positive urban design outcome.	The parking reduction and alternatively, any increase in parking provision on site, would lead to creation of an open 'gap' at the rear of the site, which is not considered desirable.

The applicant's traffic and parking report and surveys in summary, whilst acknowledging that Covid restrictions made assessing parking in the immediate area potentially non-representative, concluded that there is sufficient capacity within the immediate area, including kerbside parking, to cater for the additional nine cars. Officers note that the surveys in question were taken in 2017 but also note that Covid restrictions have largely ceased since the traffic report was written.

In any case, the surveys identified (in 2017) kerbside parking availability in the afternoon and evening to be either 122 spaces or 162 spaces. Even assuming that trade and overall operations of the entire Middle Park centre have increased by as much as 20% since the report (and since 2017), kerbside parking availability would still be in the region of 80 to 90 spaces at the busiest times.

Based on the Planning Scheme parking rate, it is not considered that the absence of additional car parking would be a fundamental failing of this proposal.

It is also considered that other transport methods (most notably taxi and ride share services etc) would be the most likely forms of patron transport to and from the site as opposed to private vehicle.

The proposal is considered acceptable with respect to the considerations of Clause 52.06-7.

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.



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

Positive

- The proposal is considered to have strong strategic support from the Planning Scheme
- The proposal would support an existing local entertainment use which would in turn maintain and enhance the viability of the Neighbourhood Activity Centre which is consistent with Local Planning Policy.
- Subject to minor variation through permit condition, the proposed roof deck addition would provide a high-quality architectural response that would have a positive impact on the existing heritage features of the building and the surrounding area.

Neutral

- The off-site amenity impacts would be appropriately mitigated by way of permit conditions relating to noise limits, patron behaviour and hours of operation should the proposal be supported.
- The additional generation of waste at the site as a result of the proposed development would be adequately managed through implementation of the submitted Waste Management Plan.
- The proposed reduction of the car parking requirement is considered to be minor and acceptable within this Activity Centre context which encourages the use of conveniently located public transport options. Cycling would also be encouraged as a transport option through the provision of additional bicycle parking infrastructure at the site, required through permit conditions.

Negative

- The application has received 124 objections (social).

13. COVENANTS

- 12.1 There are no restrictive covenants on the relevant titles (lots 1 and 2, title plan 080131V volume 10229, folio 841) that would prevent assessment of this application.

14. 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.



15. OPTIONS

- 14.1 Approve as recommended
- 14.2 Approve with changed or additional conditions
- 14.3 Refuse - on key issues

16. CONCLUSION

- 15.1 The site is in a commercial area albeit a neighbourhood one, the proposed use is not a new one and would not displace an existing one. The site does, however, have relatively close residential interfaces and it is considered that as proposed, the expansion of the existing use would be overly intense. In summary, it is considered that limiting overall patron numbers to 150 whilst also recommending that at least 65% of these patrons be accommodated in a seated setting similar to table and chairs in a restaurant and a closing time of 11pm during the week and midnight on weekends (in lieu of 1am all times), when coupled with the recommended installation of a noise limiter, would achieve an outcome which would result in reasonable amenity impacts to the local neighbourhood centres and residential properties in close proximity.
- 15.2 Subject to some reductions in the size of the roof deck, it is also considered that a suitable heritage and built form outcome would be achieved.
- 15.3 Subject to these modifications, proposal is recommended for approval.

ATTACHMENTS

- 1. Advertised Plans**
- 2. Cumulative Impact Assessment**
- 3. Existing Liquor Licence**
- 4. Noise and Amenity Action Plan**
- 5. Town Planning Report**