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| 8.4 | I BAY STREET, PORT MELBOURNE |
| LOCATION/ADDRESS: | I BAY STREET, PORT MELBOURNE |
| RESPONSIBLE MANAGER: | GEORGE BORG, MANAGER CITY DEVELOPMENT |
| AUTHOR: | KATE WOOLLER, SENIOR URBAN PLANNER |
| TRIM FILE NO.: | PFI6/662967 |
| ATTACHMENTS: | <ol style="list-style-type: none">1. Locality map and objectors2. Existing conditions plans3. Proposed floor and roof plans4. Proposed elevations and shadow plans |
| WARD: | Gateway |
| TRIGGER FOR DETERMINATION BY COUNCIL: | More than 16 objections (24 objections) |
| APPLICATION NO: | P666/2016 |
| APPLICANT: | Urbis P/L |
| EXISTING USE: | Hotel |
| ABUTTING USES: | Residential development with ground floor office |
| ZONING: | Mixed Use Zone (abuts Road Zone Category 1) |
| OVERLAYS: | Heritage Overlay (HO 462) Design and Development Overlay (DDOI – 1B) Development Contributions Plan Overlay (DCPO1) Environmental Audit Overlay |
| STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL | Expired |

PROPOSAL

Part demolition (existing roof, plant and ground floor courtyard), alterations and additions including the construction of a mezzanine, new balcony to Bay street; construction of a third level with external deck; reduction of the standard car and bike parking requirements; increase to the area for the sale and consumption of alcohol (general licence) including an increase in patrons from 270 to 550



I. EXECUTIVE SUMMARY

- 1.1 It is proposed to demolish part of the existing building to accommodate internal alterations to the building at each level including the removal of an existing glass roofed courtyard in the north-west corner of the building and external deck areas above it, and construction of a new mezzanine level to accommodate amenities and storage. The existing roof and plant area would be demolished to accommodate a new second floor dining/bar/lounge with perimeter deck areas. Alterations are proposed to the Bay Street frontage to enable the addition of a small balcony off the first floor level, and a new glass canopy is proposed to the main entrance. A subsequent increase in the area for the sale and consumption of alcohol and an increase in patrons from 270 to 550 is proposed.
- 1.2 The licenced trading hours are proposed to remain as currently approved which is 7am to 3am Monday to Saturday and 10am to 1am Sunday (and 12pm to 3am Good Friday and Anzac Day), with the exception of the rooftop deck which is proposed to be licenced for consumption on the premises to 1am instead of the 3am cessation elsewhere on the site.
- 1.3 The site is located on the north-west corner of Bay Street and Beach Street and is within the Mixed Use Zone, forming part of the Bay Street Activity Centre. The site is also affected by the Design and Development Overlay (DDOI – 1B), Heritage Overlay (HO462), Development Contributions Overlay (DCPO1) and Environmental Audit Overlay. Adjoining land to the west and north, although predominantly used for residential purposes is also contained within the Mixed Use Zone. Bay Street is a Road Zone Category 1 as is Beach Road east of Bay Street, however the section of Beach Street in front of the subject site is not contained within the Road Zone.
- 1.4 Following notice of the application, 24 objections were received with the main issues raised relating to the amenity impacts, particularly noise, from the proposed new third level and external deck areas; and the impact on parking in the area from the proposed increase in patronage.
- 1.5 A permit is required to reduce the number of car spaces associated with the proposed increased patronage. Given the site's location within the Bay Street Activity Centre and the availability of on street parking for patrons attending the site by private transport, a waiver of car parking is considered acceptable in this instance.
- 1.6 Additional consideration relates to the new built form and whether it is an appropriate response for this highly visible corner site within a Heritage Overlay and Design and Development Overlay. Subject to some further refinement, it is considered that the proposal would achieve an appropriate built form outcome.
- 1.7 With respect to amenity considerations, it is important to note that the approval of the building next door known as 40 Beach Street was undertaken with specific construction methods and treatments to protect the amenity of future residents with respect to noise disturbance. An agreement pursuant Section 173 of the Planning and Environment Act, was imposed on 40 Beach Street via permit conditions to ensure that the construction methods were adhered to, with obligations for owners of the dwellings to



maintain elements of their residence in accordance with an approved acoustic report. The agreement also placed an obligation to inform every prospective purchaser or tenant of a dwelling within the building the adjacent Hotel is a significant source of noise, including music noise, requiring that doors and windows be closed to achieve appropriate internal noise levels and acknowledging that there will be elevated noise on external balconies.

- 1.8 The application proposes a number of measures to reduce noise impacts from the Hotel including construction of a 190mm core block wall to the perimeter wall, removal of the glass covered courtyard at ground floor and the external decks at first floor, a new plant area proposed to be positioned with a greater offset further from the adjoining apartments than the existing plant and with relocation of key noise emitting equipment. An acoustic assessment of the impact of the proposed development on adjoining and nearby properties has been submitted as part of the planning application assessing the measures proposed. This acoustic assessment has been supplemented by a peer review commissioned by Council, to assist in the assessment of the application. Subject to some additional measures, it is considered that the proposal can be supported from an amenity basis.
- 1.9 It is recommended that the application be supported subject to conditions included on any permit issued.

2. RELEVANT BACKGROUND

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

| Application No. | Proposal | Decision | Date of Decision |
|-----------------|--|-----------------|----------------------|
| 1210/2000 | <i>Buildings and works comprising alterations to the existing building and ground and first floor additions and the erection of business identification signage.</i> | <i>Approval</i> | <i>10 April 2001</i> |
| 407/2001 | <i>External alterations to courtyard (removable aluminium & glass roof structure)</i> | <i>Approval</i> | <i>22 March 2001</i> |



| Application No. | Proposal | Decision | Date of Decision |
|-----------------|---|---|------------------|
| 299/2002 | Increase liquor licensing trading hours as follows: Sunday Between 10.00am and 3.30am the day following: Good Friday Between 12.00pm and 3.30am the following day: ANZAC Day (not being a Sunday) Between 12.00am and 3.30am; also 12.00pm and 3.30am the following day: Any other day between 7.00am and 3.30am the following day except of the morning of Good Friday | Approval subject to capping of morning hours to 3am . The approval effectively increased trading from a maximum 2am to 3am. Approved hours are Monday to Saturday 7am to 3am and 10am to 1am Sunday. | 7 August 2002 |
| 649/2003 | Install external glass and steel screens to building, alter two existing windows and alterations to the existing signage. | Approved | 6 October 2003 |
| 411/2004 | Buildings and works consisting of the construction of a glazed roof over an existing upper level rear courtyard | Approved | 23 April 2004 |
| 943/2012 | Demolition of the existing roof, alterations and additions to the existing two storey Hotel including the construction of a third level for use as an additional function room with external deck, dispensation from the car parking requirements and removal of a redundant sewerage easement | Refusal. The application was considered to be contrary to orderly planning as although an increase in patronage was proposed, the application did not include a subsequent request to expand the liquor license. | 14 January 2016 |

Relevant background – 40 Beach Street Port Melbourne

- 2.1 In addition to the relevant background of the subject site, it is important to note the history of the development that wraps around the site known as 40 Beach Street/5 Bay Street Port Melbourne.
- 2.2 On February 8th 2011 and as amended by the direction of VCAT on 13 June 2013, Planning Permit 287/2010 was issued for 40 Beach Street Port Melbourne. The permit allowed for the partial demolition of the existing buildings and the construction of a four storey building containing 21 dwellings, retention of the existing office premises facing Bay Street and an associated car parking dispensation. Condition 4 of the permit required that before occupation of any dwelling and before subdivision was granted, the owner must enter into an agreement under Section 173 of the Planning and Environment Act 1987, covenanting that:



a) The development must incorporate the construction methods and treatment of the building to protect future residents from noise disturbance as recommended in the acoustic report prepared by Acoustic Logic Consultancy dated 11 June 2013 to the satisfaction of the Responsible Authority.

b) The owner of each dwelling in the building shall maintain the glazing, carpets, window and door seals in an effective condition and in compliance with the said acoustic report to the satisfaction of the Responsible Authority.

c) The owner must inform every prospective purchaser or tenant of a dwelling in the building, in writing, that the adjacent Hotel is a source of significant noise, including music noise, requiring dwelling windows and doors to be closed to achieve required internal noise levels and that there will be elevated noise levels on external balconies.

2.3 Condition 4a of the permit required that:

Prior to the occupation of the building and after completion of the roof and masking system a suitably qualified person, to the satisfaction of the Responsible Authority, must certify to the satisfaction of the Responsible Authority that the works have been installed and completed as specified in the Acoustic Logic Report dated 11 June 2013. The cost of certification acoustic works is to be met by the Permit Applicant.

2.4 Council records indicate that the applicant submitted the necessary confirmation that works required in condition 4a were completed in accordance with the condition of the permit. It is noted that the condition did not require noise emission levels to be tested.

3. PROPOSAL

The application under consideration includes the following:

3.1 Demolition

- It is proposed to demolish the courtyard area and retractable roof, the first floor deck area above including the glass access doors, the glass window, door and decorative fins at the north east portion of the façade to Bay Street and the outdoor awning above the entry, plus the existing perimeter boundary wall, and a number of internal walls and facilities. The existing glass entry doors would be slightly relocated.
- The existing roof and plant area would be demolished.

3.2 Buildings and Works

- A new 'art deco' style glass canopy would be provided above the Bay Street main entrance.



- Internal alterations are proposed at ground level, as described by the applicant as being designed to allow a more functional venue whilst ensuring patrons entering the site are able to access particular areas of the venue without disturbing other parties or functions. The courtyard to be removed at the north western corner of the site would become a new dining/bar/lounge area, a new service lift would be provided next to the amenities area and a new stairwell and lift would be provided at the north east corner of the site. The plans identify the patron floor area would be 335m² with an amenities and foyer area of 31.5m².
- The first floor bar service and kitchen area would be remodelled and centrally located, with amenities relocated away from this area to the north-west corner of the building. This would enable a more open plan dining/bar/lounge area to be provided at this level. The patron floor area at this level would measure 325m², with a foyer of 55m², amenities of 22m², and a balcony of 16m². The bar service and kitchen area would measure 63m².
- A new mezzanine level would be created above providing for storage, waste facilities, amenities and the new service lift area for use by staff only; with a patron area containing amenities and lift/stair access in the remainder of the mezzanine. There would be 51.2m² of amenities, with storage areas to measure 68m², and with a waste area of 14.5m².
- A new second floor would provide a kitchen, bar service area and outside deck areas with a drink service facility facing both Beach and Bay Street. Access would be via the entry foyer or the lift with glass covered walkway. A water feature with 300mm deep pond would be provided in the Bay Street deck area. This new level would have a patron area of 206m², a foyer of 19.8m², and outside decks of 136m².
- A new plant area would be provided more centrally to the roof area, with an offset of over 10m from both street frontages, and approximately 5.85m from the 40 Beach St apartments to the west and over 6m from the north east portion of the apartments.
- A new 190mm core filled block wall with cavity is proposed to the internal perimeter of the building over all levels to provide an acoustic barrier to the adjoining residential apartments.

3.3 Other

- The liquor licence would be extended in line with the proposed additional floor area. A subsequent increase in patron numbers from 270 to 550 is proposed.
- The proposed licenced trading hours would remain as currently permitted (which is 7am to 3am Monday to Saturday and 10am to 1am Sunday (and 12pm to 3am Good Friday and Anzac Day), with the exception of the rooftop deck which is proposed to have reduced hours. Instead of the 3am licence for on premises consumption elsewhere, it is proposed that the new deck areas would be licenced to 1am.



- Materials would include a frameless glass balustrade to the first and second floor balcony to Bay Street to 1.5m and 2.1m in height respectively, and a glazed finish to the new main entrance canopy. The second floor structure would include timber batten cladding with clear glass panels behind and a timber finish to the posts/fins.
- A maximum overall height of the building would be 13.5m.
- Due to site constraints, there is no on-site loading of waste facilities.

4. SUBJECT SITE AND SURROUNDS

- 4.1 The subject site is located on the north-west corner of Bay Street and Beach Street, Port Melbourne. The site is essentially rectangular in shape with a frontage of 24.77m to Beach Street and 21.57m to Bay Street, with an overall site area of 526m².
- 4.2 The site is developed with a two-storey rendered brick building to a height of 9.38m. A licensed food and drink premise / function rooms occupies the building, known as “The Pier” Hotel. The building is largely built to all boundaries of the site and has no off-street parking.
- 4.3 The Hotel has an active footpath trading permit for Beach Street and also includes a small outdoor eating area along Bay Street. At ground level of the building is the main bar and kitchen, a secondary bar area, three dining/lounge areas and a large courtyard in the north western corner of the building featuring a retractable glass roof.



Pier Hotel as viewed from Bay Street. (Source Google 2017)



Pier Hotel as viewed from Beach Street (Source Google 2017)

- 4.4 The existing first floor includes a smaller kitchen area, three dining/lounge areas, amenities and an open deck area situated above the ground floor courtyard.
- 4.5 Council's Heritage citation 608 states that the Hotel is thought to have been initially constructed in the late 1850s/early 1860s, and describes the Hotel as being of local architectural significance as a good representative example of a nineteenth century Hotel building, remodelled in the 1930s in a Streamlined Moderne style.
- 4.6 The site is located at the southern end of the Bay Street Activity centre. The site sits within a Mixed Use Zone which includes a mix of commercial and residential properties. The Port Melbourne Yacht club is located opposite the site to the south directly abutting the foreshore.
- 4.7 Wrapping around the site to the north and west is 40 Beach Street & 5 Bay Street - a four-storey residential development comprising 21 dwellings and an office facing Bay Street also contained within the Mixed Use Zone. Access to the basement carparking is from Beach Street, directly adjacent to the subject site.
- 4.8 Further south west of the site is Station Pier. Station Pier has two terminal buildings that provide for Spirit of Tasmania ferry services, and for visiting cruise ships, Navy or tall ships.



4.9 Car parking is available along Bay Street and Beach Street, however parking along Beach Street has been recently redesigned as a result of the Beach Street Queuing project, which is currently under construction. The project will remove over 40 angle car spaces and convert the road space into a new traffic lane for vehicles heading to Station Pier along the foreshore side of Beach St, between Bay and Princes Streets.

5. 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? |
|--|---|
| <p>Clause 32.04 Mixed Use Zone</p> | <p>A Hotel is a Section 2 (permit required) use in the zone, however the use has been long established and hence a permit is NOT required for the use. However, pursuant to Clause 32.04-8 A permit is required to construct a building or construct or carry out works for a Section 2 use.</p> |
| <p>Clause 43.01 Heritage Overlay</p> | <p>A planning permit is required to Demolish or remove a building; and construct a building or construct or carry out works, pursuant to Clause 43.01-1 of the Port Phillip Planning Scheme. No internal alterations controls apply to the site pursuant to the Schedule.</p> |
| <p>Clause 43.02 Design and Development Overlay Schedule 1-1B</p> | <p>A planning permit is required to construct a building or construct or carry out works, pursuant to Clause 43.02-2 of the Port Phillip Planning Scheme. The schedule to the DDO specifies requirements relating to height, setbacks, overshadowing, reconstructed or replacement buildings and building design.</p> |
| <p>Clause 45.06 Development Contributions Plan Overlay 1</p> | <p>A permit granted must:</p> <ul style="list-style-type: none"> • Be consistent with the provisions of the relevant development contributions plan; • Include any conditions required to give effect to any contributions or levies imposed, conditions or requirements set out in the relevant schedule to this overlay; <p>The relevant Contribution Plan for this site is the Port Melbourne Mixed Use Area Development Contributions Plan (Streetscape Works) July 1999. This plan requires that a contribution be paid for any development on the site, which will be put towards works as outlined in the 'Port Melbourne Landscape Improvement Study' and will be required in either cash or as works in kind of 100% of all street abutments.</p> <p>Clause 4 of the Schedule states that Exemptions from payment of development contributions apply where there is no substantial increase in demands placed on streetscape infrastructure associated with a development proposal.</p> <p>The proposal does not meet the exemption criteria listed and hence the provisions apply.</p> |
| <p>Clause 52.06 Car Parking</p> | <p>Pursuant to Clause 52.06-2, before the floor area or site area of an existing use is increased, the number of car parking spaces required under Clause 52.06-5 or in a schedule to the Parking Overlay must be provided to the satisfaction of the responsible authority in one or more of the following ways:</p> <ul style="list-style-type: none"> - on the land; or - in accordance with a permit issued under Clause 52.06-3; or - in accordance with a financial contribution requirement specified in a schedule to the Parking Overlay. <p>Pursuant to Clause 52.06-3 a permit is required to:</p> <ul style="list-style-type: none"> - Reduce (including reduce to zero) the number of car parking spaces required under Clause 52.06-5 or in a schedule to the Parking Overlay. <p>A Hotel requires 0.4 spaces per patron. Based on the proposed additional 280 patrons, this would generate a parking requirement of 112 spaces. A planning permit would be required to reduce to zero the car parking requirements given the proposal would not provide any car parking.</p> |



| Zone or Overlay | Why is a permit required? |
|--|---|
| Clause 52.27 Licensed Premises | <p>Pursuant to Clause 52.27 a permit is required to use land to sell or consume liquor as:</p> <ul style="list-style-type: none"> - The number of patrons allowed under a licence is to be increased. - The area that liquor is allowed to be consumed or supplied under a licence is to be increased (that is, the new floor area is proposed to be used for the sale and consumption of liquor). |
| Clause 52.34 Bicycle Facilities | <p>Pursuant to Clause 52.34-1 a new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities and associated signage has been provided on the land.</p> <p>Where the floor area occupied by an existing use is increased, the requirement for bicycle facilities only applies to the increased floor area of the use.</p> <p>A permit may be granted to vary, reduce or waive the required number of bicycle facilities and the design requirements of those spaces.</p> <p>A Hotel requires the following for employees: 1 to each 25 sq m of bar floor area available to the public, plus 1 to each 100 sq m of lounge floor area available to the public.</p> <p>Plus for visitors: 1 to each 25 sq m of bar floor area available to the public, plus 1 to each 100 sq m of lounge floor area available to the public.</p> <p>Based on the provisions of this clause, and combining the new patron area of the proposed second floor of 361.8m², balcony area of 16m² at first floor and 136m² at second floor, and the 51.2m² amenity area to the mezzanine (total 565m²), this would generate a requirement of 5-21 spaces if the area is defined as lounge area and bar respectively.</p> |
| Clause 52.43 Live Music and Entertainment Noise | <p>This clause applies to an application required under any zone of this scheme to use land for, or to construct a building or construct or carry out works associated with:</p> <ul style="list-style-type: none"> - a live music entertainment venue. <p>This clause specifies that a live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.</p> <p>A permit may be granted to reduce or waive these requirements if the responsible authority is satisfied that an alternative measure meets the purpose of this clause.</p> |
| Clause 63 Existing Uses | <p>The site has been used as a Hotel for in excess of 15 years and therefore has existing use rights pursuant to Section 63.01 of the Scheme. Existing use rights were confirmed in planning application P1210/2000 as described in Section 2 of the report above.</p> <p>A Hotel (Food and drink premises) with a leasable floor area of more than 150m² is a Section 2 use in the Mixed Use zone.</p> <p>Pursuant to Clause 63.05, A use in Section 2 or 3 of a zone for which an existing use right is established may continue provided:</p> <ul style="list-style-type: none"> - No building or works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other building or works requirement in this scheme. - Any condition or restriction to which the use was subject continues to be met. This includes any implied restriction on the extent of the land subject to the existing use right or the extent of activities within the use. - The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right. |

6. PLANNING SCHEME PROVISIONS

6.1 State Planning Policy Frameworks (SPPF)

The following State Planning Policies are relevant to this application:

Clause 10.04 Integrated Decision Making

Clause 11.01 Activity Centres

Clause 15.01 Urban Environment

Clause 15.03 Heritage

Clause 17 Economic Development



- Clause 21.03 Ecologically Sustainable Development, including
 - Clause 21.03-1 Environmentally Sustainable Land Use and Development
 - Clause 21.03-2 Sustainable Transport
- Clause 21.04 Land Use, including
 - Clause 21.04-2 Activity Centres
 - Clause 21.04-3 Office and Mixed Activity Areas
 - Clause 21.04-5 Public Open Space and Foreshore
 - Clause 21.04-6 Tourism and the Arts
 - Clause 21.04-8 Social Impact Assessments
- Clause 21.05 Built Form, including
 - 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, including
 - Clause 21.06-4 Port Melbourne and Garden City

6.2 Local Planning Policy Framework (LPPF)

The following local planning policies are relevant to this application:

- Clause 22.04 Heritage Policy
- Clause 22.06 Urban Design Policy for Non Residential Development and Multi Unit Development
- Clause 22.12 Water Sensitive Urban Design
- Clause 22.13 Environmentally Sustainable Design
- Clause 22.14 Bay Street Activity Centre Policy

6.3 Other relevant provisions

The following clauses are relevant to the proposal:

- Clause 32.04 Mixed Use Zone
- Clause 43.01 Heritage Overlay
- Clause 43.02 Design and Development Overlay (1-1b)
- Clause 45.06 Development Contributions Plan Overlay

The following Particular Provisions and General Provisions are relevant to the proposal:

- Clause 52.06 Car Parking
- Clause 52.27 Licensed Premises



Clause 52.29 Land adjacent to a Road Zone Category 1, or a Public Acquisition Overlay for a Category 1 Road

Clause 52.34 Bicycle Facilities

Clause 52.43 Live Music and Entertainment Noise

Clause 63.01 Existing Use rights

Clause 65 Decision Guidelines

7. REFERRALS

7.1 Internal referrals

The application was referred to the following areas of Council for comment. Further discussion of the comments is contained in Section 9 of the report.

- Heritage & Urban Design

Whilst visible from both Bay Street and Beaconsfield Parade/Beach Street, proposal will be recessive and not too dominant.

Moving of the lift shaft is a good outcome. (It is noted that in the initial submitted plans for this application, the lift shaft was proposed further south than the current location).

Moving the balcony across is a good outcome as the central 'tower' element of the façade will remain unobstructed and it also removes the need to create a new opening in the original façade.

The 'Art Deco' glazed entry canopy is appropriate.

The fins have been set in from the edge however they should be deleted as they will only contribute to the sense of visual clutter above the original building.

Question why the glass balustrade needs to be 2.1 m in height – the amended elevations now show it will be much more prominent on the Bay Street side when compared to the original plans. If not a building requirement, would prefer for this to be lowered to the minimum height required to reduce the potential visual impact.

TP13 shows adjacent to the new entry on the Bay Street side 'New location of existing gas meter and door'. As this will involve a change to the original façade detail of this must be provided.

Concern with plant platform as little detail is provided apart from a notation that is to have a 'louvered surround' and it is not specifically dimensioned. Need more certainty about how big this is and how it will look – it is shown in the renders, but appears to be smaller than indicated on plan. This needs to be clarified.



Planner comment: An assessment of the built form is provided at Section 9.2 of the report.

▪ Acoustic Consultant

Based on our understanding of the Application and acoustic reports provided, we recommend that Council can approve the Application under the following conditions:

- 1. All mechanical noise emissions from the Subject Land shall comply with State Environment Protection Policy No. N-1 (SEPP N-1).*
- 2. All music noise emissions from the Subject Land shall comply with State Environment Protection Policy No. N-2 (SEPP N-2) with the following exceptions:*
 - a. Noise levels comply with the internal SEPP N-2 noise limits at 40 Beach Street as stated in Table 1 of the exhibited SLR Report.*
- 3. Music (other than background music) is prohibited outside, including the rooftop deck.*
- 4. Rooftop deck doors facing Beach Street remain closed after 11 pm.*
- 5. Rooftop deck and balcony doors facing Bay Street are swing type doors with automatic closers.*
- 6. All music playback systems to include a limiting device calibrated to the indoor venue levels stipulated in the SLR Report.*

Planner comment: It is noted that in addition to the original advertised Acoustic report prepared by SLR dated 27 September 2016 Version 3 submitted in support of the planning application, a further memorandum dated 27 March 2017 was submitted. This has been considered in the acoustic review and form the basis of the conclusions above. It is recommended that a revised Acoustic report be required via permit condition to ensure one complete document is endorsed as part of any approval which details all of the relevant measures and acoustic assessment. **Refer recommended condition 14)**

▪ Traffic & Parking Management

The proposed development solely relies on public parking to accommodate patron parking needs. Surveys and analysis undertaken by O'Brien Traffic indicate that most of the available car spaces are located along the Beach Street foreshore and adjoining off-street car parks.

Note that the section of Beach Street, between Bay and Princes Streets, form part of Council's Beach Street queuing lane project (<http://www.portphillip.vic.gov.au/queuing-lane.htm>). Detailed construction drawings show the removal of over 40 existing car spaces which will further reduce the availability of public parking in proximity of the site.

Even after reducing the statutory requirement of 112 spaces (for the additional 280 patrons) to a lower empirical demand of 72 spaces (based on O'Brien empirical assessment and other considerations), the proposal will utilise a significant proportion of available public parking in the surrounding area at the detriment of local residents and other businesses.



Accordingly given the above concerns, the proposed development intensity (i.e. 280 patron increase) is not supported and should be revisited.

Conservatively if the 258sqm floor area increase is defined as 'lounge' (in the absence of individually defined floor areas), the development has a minimum bicycle parking requirement of 3 employee plus 3 visitor spaces. Accordingly 3 employee bicycle spaces should be provided on-site and the Applicant should contribute to the cost of installing 2 new bicycle hoops on footpath (visitor parking provision) in the vicinity of the site.

No on-site loading facility is proposed. Query on where and how additional loading activities and waste collections will be undertaken.

The existing crossover on Bay Street is redundant and should be removed / reinstated to Council's satisfaction.

Planner comment: A planning assessment of car parking is provided at Section 9.5 of the report. Given the nature of the use and unlikely utilisation of bike spaces and noting objector concerns regarding the existing congestion of the corner of Bay and Beach Streets, it is recommended that the bike parking requirement be waived in this situation. Council's Waste Management officer has reviewed the Waste Management Plan submitted with the application as noted further below in the report. Council cannot impose a condition relating to removal of a crossover to Bay Street without seeking the consent of VicRoads given Bay Street is a Road Zone Category 1 and a planning permit would be required for this pursuant to Clause 52.29 of the Port Phillip Planning Scheme.

▪ Sustainable Design

The application is not yet of a standard where it could be approved as meeting Council's expectations for environmentally sustainable design. The following points should be addressed for approval of the submitted Sustainable Design Assessment:

- Should achieve in BESS a minimum of 50% overall score.
 - **Thermal Performance:** Need a Section J assessment or information on how energy efficiency requirements at least 10% above NCC is achievable.
 - **Energy/Lighting:** Commit to a maximum illumination power density in at least 90% of the relevant building class, at least 20% lower than required in NCC 2016 BCA Volume 1 Section J.
 - **Photovoltaics:** SDA indicates a 3kW system will be installed. Size of PV array needs to be indicated on the plans.
 - **Water Efficient Fixtures:** Need to commit to providing water efficient dishwashing and washing machines if included in the BESS or amend them to default/unrated in BESS.
 - **Stormwater Assessment:** 74% score achieved. A 100% score is required to meet policy at 22.12.
 - **Design Details:** Additional notes on the plans to indicate size and location of rainwater tanks and connection to toilets and water feature. Provide Maintenance Manual.



Planner Comment:

It is acknowledged that the proposal may not be able to fully comply with all ESD requirements given the existing site constraints, however conditions will be recommended that seek to improve the extent of compliance. **(Refer recommended condition 5)**

▪ Waste Management

No objection to Waste Management Plan.

Planner comment: The submitted Waste Management Plan could be endorsed to form part of any approved plans/documents should a planning permit be issued and will be enforced via condition **(Refer recommended condition 25)**

▪ Community Safety Officer

This application raises concerns with regard to health and safety, particularly alcohol related harm associated with large venues, high patron numbers, broad spread of liquor hours and late night liquor licence.

Increasing patron numbers from 270 to 550 presents a significant increase.

- *This poses potential harm in related to the number of people, under the influence of alcohol that will be dispersed into the streets having a negative impact on local amenity. This venue is not close to a public transport interchange to accommodate such high numbers of patrons.*
- *This venue is located within 500m of several other high patron venues. The cumulative impact of several large venues on the local area and with regard to alcohol related harm is unacceptable given the high alcohol related harm already experienced in the City of Port Phillip.*

The spread of hours opening from 7am to 3am - 20 hours (on Ground, First and Second) have the potential to contribute to alcohol related harm that is unacceptable. The spread of hours opening from 7am to 1am - 18 hours (on Rooftop) also have the potential to contribute to alcohol related harm that is unacceptable.

- *My recommendation would be a spread of hours of 10-1am. Reducing the spread of hours would be in some way compensatory to the additional patron numbers.*
- *There is significant research that provides evidence that opening hours influences alcohol related harms, especially violence. Examples of this research is attached.*

The late night trading hours of 3am pose an unacceptable level of risk to our community.

- *The Victorian Government selected the City of Port Phillip for the restriction on late night liquor licences due to the unacceptably high rate of alcohol related harms in our municipality. Whilst this applicant has an old licence that permits trading to 3am, changing the redline and rebuilding the entire premise is considered a 'variation' and therefore the requirements of the 'freeze' should apply.*
- *Data of alcohol related harm shows that the City of Port Phillip suffers higher levels of harm than other areas in the Southern Region and Inner City.*



The impact of cigarette smoke and other noise and litter on the local amenity is also of concern. The application does not clearly address how the venue will comply with new Smoking Legislation. I question whether the rooftop will be used primarily for this purpose and as such have a great impact on local residential properties.

Planner comment: Patron numbers and hours of operation are important elements of the proposal and is discussed in detail at Section 9 of the report. A reduction in hours proposed for the new level can be justified given the large increase to patronage, however retention of the existing hours of operation for the existing levels can be supported. Smoking rules are governed by the Tobacco Act 1987 and are not subject to the ambit of discretion available in the planning application.

7.2 External referrals

| Referral Authority | Response | Conditions |
|---|------------|------------|
| Chief Commissioner of Police | No comment | N/A |
| Victorian Commission for Gambling and Liquor Regulation | No comment | N/A |

8. PUBLIC NOTIFICATION/OBJECTIONS

8.1 It was determined that the proposal may result in material detriment therefore Council gave notice of the proposal by ordinary mail to the owners and occupiers of surrounding properties (109 letters) and directed that the applicant give notice of the proposal by posting 2 notice(s) on the site for a 14 day period, in accordance with Section 52 of the Planning and Environment Act 1987.

8.2 The application has received 24 objections. The key concerns raised are summarised below (officer comment will follow in italics where the concern will not be addressed in Section 9):

- Inadequate car parking in the area to accommodate the proposed patron increase
- Traffic survey conducted in non-peak period and no detail of number of patrons surveyed
- Anti-Social behaviour from patrons attending and departing the Hotel
- Significant noise impacts to adjoining and nearby residential properties
- Vibration impacts to adjoining buildings
- Intensification of pedestrian traffic issues to already congested street corner and increased inability to enter adjoining residential apartments
- Waste management issues (noise, smells etc.)
- Impacts to heritage significance of the building

These matters are primarily discussed in the officer assessment section of the report, however it is noted that the issue of pedestrian congestion at the corner goes beyond the assessment parameters of the permit application.



- 8.3 A consultation meeting was held on 23 May 2017 which was attended by two Ward Councillors, eleven objectors, the applicant and two planning officers. The primary issues discussed at the meeting were the acoustic impacts of the proposal and car parking. The meeting did not result in any changes being made to the development.
- 8.4 It is not considered that the number of objections raises an issue of significant social effect under Section 60 (1B) of the Planning Environment Act 1987.

9. OFFICER'S ASSESSMENT

9.1 Local Policy

Local Planning Policy at Clause 21.04-2 Activity Centres identifies Bay Street as a Regional Entertainment/Tourism (including tavern/ nightclubs) area, supporting a range of entertainment uses, facilities and festivals. Clause 22.14-03 of the Bay Street Activity Centre Policy reinforces this role and supports:

Established and emerging retail/ business niches, to create and maintain a point of difference in Bay Street's retail offer, including...Hospitality for local and visitor markets, including cafes, local 'pubs' and foreshore restaurants.

In Precinct 4 – Bay Street Southern Gateway, policy encourages:

Active uses which have a leisure/ tourism focus; including indoor leisure and recreation, tourism (Hotel or function centre), cultural uses (such as exhibition or gallery space), and retail (such as cafes/ restaurants and shops).

Generally the proposed development is consistent with the strategic vision articulated in the MSS and the objectives of the Mixed Use Zone and the Bay Street Activity Centre Policy at Clause 22.14.

The proposal is consistent with the regional entertainment/tourism function of the Bay Street Activity Centre.

However the planning scheme also requires that amenity and cumulative impacts of entertainment uses also be considered.

Clause 21.04-2 Activity Centres - seeks to 'support cultural tourism in the activity centres that reflects the role and function of individual centres whilst minimising adverse amenity impacts.' Strategy 3.4 seeks to 'Minimise the exposure of residential uses to the negative impacts of tourism activities such as late night noise generated by entertainment and restaurant premises and traffic and parking congestion.'

Clause 21.04-6 Tourism and the Arts also requires that 'Late night entertainment uses must not be concentrated to the extent that there are significant adverse cumulative impacts on the amenity of the surrounding area.....'

The amenity impacts and cumulative impacts resulting from a concentration of licensed premises are discussed in detail below.



Clause 22.14-09 for Precinct 4 in the Bay Street Structure Plan seeks to:

Reinforce the existing low building scale through new development

Encourage active frontages at ground level, sensitive alterations to heritage places to improve activation, and new development that is respectful of adjacent heritage places.

9.2 Built form and Heritage Considerations

The subject site sits at the corner of Bay Street and Beach Street and as such, is positioned in a prominent location opposite the foreshore. As noted previously, the site is within the HO462, and has an individual citation. The Hotel building itself is of architectural significance providing a good representation of a nineteenth century building remodelled in the 1930's as a 'Streamlined Moderne Style'.

The site is also within the DDO1 – the Port Melbourne Mixed Use Growth Area. A key objective of the DDO1 is to encourage a built form that responds to the area's significant development opportunities at the same time as respecting those elements that make this area special and distinct from other parts of the municipality such as its seaside ambience, open sky views along Bay Street between Rouse and Beach Streets and low rise built form at the street frontage. Height and setback requirements are specified to assist in achieving this objective. Specifically, DDO1-1b requires that where a building is less than 5m from the road boundary, the *preferred* maximum building height is 10.5m. The DDO1-1B states that a building *must not* exceed an overall absolute height of 13.5m.

The application proposes the addition of another level above the existing two-storey building with a setback of 6 metres from both Bay and Beach Street to the majority of the proposed new level. The exceptions would be the proposed bar service area at the western corner of the building which would be setback 1m behind the level below, and the lift at the eastern corner of the building with a proposed zero setback. The maximum proposed overall height would be increased from 9.38m to 13.5m.

The proposed new level as described above does not comply with the DDO1 discretionary requirement of a 10.5m height within 5m of the street. The building height would be compliant to Bay Street with the exception of the lift shaft, however as this is a preferred but not mandatory height and given the narrow width of the lift shaft, this variation can be supported in this instance. Importantly, placement of the lift shaft at the northernmost end of the Bay Street frontage adjacent to the apartment development, would ensure that the visual impact to the main façade of the building would not be compromised. The lift shaft is proposed to be glazed and hence would not present as a visually dominant element.

Along the Beach Street frontage, the glass balustrade and timber fins would exceed the 10.5m discretionary height. However the balustrade would be marginally setback from the street frontage and the fins setback by 800mm. Both would be within the maximum permissible 13.5m height. Whilst Council's Heritage Advisor has queried the need for the balustrade height, the permit applicant has advised that the balustrade would also serve a weather protection function.



Relevant key objectives of Council's Heritage Policy at Clause 22.04 of the Planning scheme include:

- *To retain and conserve all significant and contributory heritage places.*
- *To discourage the demolition of significant and contributory heritage places.*
- *To ensure all new development and redevelopment of significant and contributory places is respectfully and harmoniously integrated with the surrounding character.*
- *To promote design excellence (in terms of building siting, scale, massing, articulation and materials) which clearly and positively supports the heritage significance of all Heritage Overlay areas.*
- *To ensure that new development and any publicly visible additions and/or alterations in or to a heritage place maintains the significance of the heritage place and employs a contextual design approach.*
- *To protect and enhance key views, in particular:*
 - Along Bay Street to Port Phillip Bay, and in particular to maintain an open sky view or "view cone" when looking towards the Bay from Bay Street at its intersection with Rouse Street.*

Principally, the proposal meets with these objectives, with only minor adjustments required to the plans. The applicant has responded to Council officer requests to revise the detail of the proposal since the initial submission. Subject to some minor modifications this has resulted in a proposal that would be respectful of the heritage significance of the building.

The extent of demolition proposed to the building would primarily be limited to the existing plant and roof at the top of the building, the outdoor fabric awning above the entry on the Bay Street frontage, and the eastern portion of the building. [Other internal demolition is proposed, however no planning permit is required for this.] These elements are not of any particular heritage value or significance, with the roof and plant barely visible from the public realm. The Bay Street fabric canopy a later addition to the building, and the eastern section a non-original portion of the building constructed in the early 2000's are similarly not of any particular heritage value or significance and can be supported for demolition. Importantly, all important heritage fabric is proposed to be retained as part of this application.

The proposal would respect the central tower element to the Bay Street façade through the relocation of the balcony and lift shaft. This approach also avoids the need to forge a new opening in the façade to gain access to the balcony. The proposed lightweight material to the art deco canopy to the main entrance (glass), would not detract from the significance of the central tower. Such an element would be far less visually obtrusive than the existing awning proposed to be removed across the Bay Street frontage.

The proposed contemporary finish would ensure the additions would be clearly discernible from the original heritage building. At the top level, this addition would include glazing and timber elements, including timber fins, which are proposed to be set



in from the perimeter by 800mm to Beach Street. Council's Heritage Advisor is concerned that these fins would contribute to visual clutter and should be removed. The permit applicant contends that they are required from a functionality perspective however no detail of this claim has been provided. It is agreed that the fins would contribute to visual clutter. The deletion of the fins is recommended to ensure that these elements do not detract from the significance of the existing heritage building, by drawing focus on the top level of the building. It is therefore recommended to remove these fins via a condition should the proposal be supported. **(Refer recommended condition 1a)**

The plans do not include detail of the screening proposed to the top level plant area. Its location ensures it is setback from the sites street frontages, which will limit the visibility of the plant area. Nevertheless, appropriate screening will ensure the potential visual impact would be further limited. The screening would also provide improved noise attenuation. The plans identify louvre screening and the permit applicant has submitted some further illustrations subsequent to the application. The additional illustrations nominate anodized silver louvres at 200mm wide around the southern and eastern perimeter of the plant. A permit condition is recommended should the proposal be supported, that requires the detail to be submitted and shown on the plans/material schedule. **(Refer recommended condition 1b)**

The proposed built form would not result in any significant adverse amenity impact to the adjoining apartments. The new core filled boundary wall would replace an existing boundary wall. The impact of another level above the existing building needs to be considered with respect to the apartments that would abut the proposed wall. The development at 40 Beach Road includes a lightwell/ventilation void that serves apartments 106, 204 and 302. This area is approximately 2.8m in depth and 6m wide and would abut the proposed new floor/wall area at the northern corner of the proposed additional floor level to the Pier. Where normally consideration should be given to the height of the wall on the boundary for these adjoining apartments and the impact this would have on daylight access, it is noted that the apartment complex was built with a wall on the boundary to three storeys abutting the Pier Hotel and consequently the proposed addition to the Hotel would not extend above that existing wall. Additionally, it is noted that apartment 302/40 Beach Street has a rear roof top terrace to the east which forms the main light and ventilation source for the two bedrooms of this apartment. This terrace would be unaffected by the proposed development. Furthermore, given the 1.7m high screening it has abutting the site and given the orientation of the balcony, Apartment 302/40 Beach Street would not be overshadowed.

Overshadowing

Pursuant to the DDO I;

All buildings and works should be designed to avoid casting shadows beyond:

- The kerbline on the southern side of the road reserve adjoining the Port Phillip Bay foreshore after 10:00 AM on 22 June (the winter solstice).
- The kerbline on the southern-eastern side of Bay Street between the hours of 11:00 AM and 2:00 PM on 22 June (the winter solstice).



The beachfront is a highly valued public space where solar access is a significant contributing element for the area's amenity. Importantly, the public realm opposite the site adjacent to the kerbline is an active area with walking/running, cycling and sitting (particularly along the bluestone wall). The overshadowing diagrams initially submitted were for the September equinox, however the applicant has now submitted the correct winter solstice shadow plans. These plans identify that the proposal would not cast shadows beyond the kerbline on the southern side of the road reserve adjoining the foreshore in the designated times. Similarly the plans identify that at the solstice, the proposal would not cast shadows beyond the kerbline on the south-eastern side of Bay Street, consistent with the DDO1 provisions.

9.3 Amenity impacts

Acoustic Assessment

The Pier Hotel has been in operation since the 1850's. However since that time, land use around the Hotel has altered including the construction of residential apartment complexes such as that directly adjoining the site. Specifically, as described previously in the report, for the residential development at 40 Beach Street, this building was erected with inclusion of certain noise attenuation measures and associated on-going maintenance requirements by owners (as detailed in section 2.2 of the report), consistent with the 'agent of change principles'. Additionally, a section 173 Agreement pursuant to the Planning and Environment Act, is included on the titles of the dwellings in the building that obligates owners and occupiers to be aware that the Hotel is a significant source of noise requiring windows and doors to be closed to achieve required internal noise levels and with elevated noise levels on balconies. In effect, the residential complex was the 'agent of change' given the Hotel existed first.

The key issue at hand is how the proposed changes to the Hotel as identified in the application would impact on the amenity of dwellings at 40 Beach Street, and any other residential development in proximity. Such an assessment requires consideration of the three main noise sources from the venue, i.e. music noise (both indoor and outdoor), patron noise and mechanical plant noise.

As outlined in the Applicant's Acoustic Report prepared by SLR Consulting 640.10576-R2 v3, dated 27 September 2016 (herein referred to as the Acoustic Report) submitted with the permit application, an assessment of the alterations and additions to the Hotel has been conducted.

The submitted Acoustic Report contends that the main acoustically relevant changes proposed are:

- Addition of a new floor with a new outdoor deck, requiring consideration of noise transfer from the roof, front glazing etc;
- A new separate 190mm core-filled concrete block wall structure along the north and west boundaries;
- Elimination of the glass roofed bar area at ground floor and at the outdoor area above it; and



- Relocation of the plant equipment to the new roof level proposed.

The report concludes that noise emissions can be controlled to current levels and that the original intended design goals and intent implemented in the 40 Beach Street development will be met, with the key requirements that would help achieve this summarised below:

Main Building Structure

- The perimeter structure must consist of no less than the nominated 1900mm thick core-filled concrete blocks, which must be mechanically isolated from the 150mm thick concrete panels for 40 Beach Street, with a minimum 30mm gap between the two panels;
- No specific floor treatment is required for the new floors at the north-west corner of the building.

Internal wall linings and treatment

- There are no specific new internal linings required in the Pier Hotel Function areas given the perimeter wall would form the main acoustic upgrade, however the report states that it is preferable to provide insulation panels directly to the concrete block wall rather than lightweight plaster with cavities;
- Bathroom fixtures and mechanical equipment associated with the proposed new amenities, bar and toilet areas should be mounted off a separate stud wall in these areas only, or mechanically isolated from the concrete core filled wall;
- Wall finishes can vary but small cavity plasterboard systems avoided or where a cavity stud system is used it should have a minimum 100mm cavity with 2 layers of fire rated plasterboard and thick acoustic insulation to the cavity.

Second Floor function room and façade

To control airborne noise from the second floor function room, the roof/ceiling must be:

- A metal deck on 2 layers of structural flooring with a minimum 300mm cavity and 200mm thick acoustic insulation;
- No less than two layers of 16mm thick fire rated plasterboard to the ceiling with no direct fixing to the ceiling joists or steel structure;
- The access hatch to include a specified layering and sealing;
- The skylights to be located as shown, with fully sealed laminate glass to a specific thickness depending on the whether the glazing is single or double glazing;
- The doors facing Beach Street must be a certain sized thickness of laminated glazing with air-tight seals.

Plant area

- North and west side of the plant area must have specific height and thickness panels;
- If replacement of the main kitchen exhaust fan is provided it is recommended that it



have a specific noise rating that is quieter than the current, and any other new equipment to adopt the same philosophy;

- Noise resilient mounts required to reduce vibration;
- Ventilation ductwork of a specific construction and lined with acoustic insulation.

Operational recommendations

- Internal music levels to be controlled to those measured previously in the venue. (If any higher music levels are sought upgrades to the glazing and skylights will be required);
- Should two functions occur simultaneously on the first and second floor, there may need to be a reduction in music noise emissions from each room to account for the cumulative impact;
- The western doors of the external deck area to be kept closed for late night music operations on the second floor (after 11pm).

The plans submitted with the application identify the proposed core filled block wall, but do not identify the many other recommended building measures as identified above. It is deemed critical that these significant measures be identified on the plans to ensure that they are constructed, given that they are the basis of the noise emissions assessment. A permit condition will specify this requirement. **(Refer recommended condition 1c).**

Analysis of the key noise assessment derived from these measures, is discussed in the following sections of the report.

Music noise

With respect to music noise assessment, a change to existing noise levels created as a result of the new Hotel level and associated deck would not necessarily result in an unsatisfactory situation.

Although technically the *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2)* applies to the Hotel operation, the Section 173 Agreement between Council and the owners of 40 Beach Street has set the acceptable internal music noise criteria for the dwellings to respond to the existing Hotel environment. Therefore, to determine if the extent of the music noise impact resulting from the proposed changes would be satisfactory, adoption of the same noise criteria as defined in the Section 173 Agreement is considered to be the most appropriate way to assess this. It would be inappropriate to have different criteria for noise emissions for different parts of a building and this would have implications for the existing operation of the Hotel.

The submitted Acoustic Report includes calculations of noise from the proposed new function room to the adjoining apartments. The calculations have taken into consideration noise paths from the function room via the walls, new roof and skylights and front glazing to the nearest apartment via the apartment front windows, including “with an access door to the decking open”. Based on the calculations conducted, the



Acoustic Report states that the music from the new function room would not only achieve SEPP N-2 internal noise limits but it would be no louder than what was allowed for in the development of 40 Beach Street.

If this is the case, principally there would be no reason to not support this component of the application. However, careful consideration needs to be given to the type and operation of doors to the proposed additions. The Acoustic Report specifies not less than 12.76mm laminated glass and an appropriate air tight seal when closed. Based on these conditions, the acoustic engineer advised that satisfactory noise levels would be achieved within the dwellings at 40 Beach Street.

The Acoustic Report states that the western door of the outdoor area facing Beach Street should be kept closed after 11pm if there are loud music functions in the proposed new Level 2, allowing the eastern doors to Bay Street to be open and still achieving a compliant outcome. A Memorandum from the Applicant's Acoustic Engineer submitted after the initial report (dated 27 March 2017) includes details of noise calculations and included calculations for other residential properties in proximity of the site other than 40 Beach Street. Although the assessment notes SEPP N-2 compliance would be achieved to these other properties "via new windows and roof", the report still did not specifically clarify door operations to the new second floor nor is there any reference to the level 1 access door. Later advice from the applicants' acoustic engineer states that *"to be prudent, this eastern door (facing Bay Street) and the other doors along the east façade (Bay Street) should only be opened and closed for patron access after 11pm, and be provided with an automatic mechanism to ensure this is achieved."* The applicants' acoustic engineer advises that this is only necessary when louder type music operations or functions are conducted.

In reality however, the practicality of distinguishing "louder type music operations" from others is impossible and therefore a condition is recommended on any approval which requires that regardless of the type of door, all doors facing Beach Street and Bay Street on the proposed second level should be closed at 11pm. It is also recommended that the plans be amended to reflect the swing type door operation be shown for the new doors to the second level, given at present they are shown as sliding doors. It logically follows that the new door to the balcony on Bay Street at first floor should include the same restrictions. **(Refer recommended condition 1d and 16)**

Consideration of any outdoor music impacts associated with the proposed changes to the Hotel is also an important consideration. The submitted Acoustic Report does not assess live music from the rooftop deck although the Venue Management Plan (herein referred to as the VMP) submitted with the application states that outdoor live music would be provided. This matter was discussed at the consultation meeting and the applicant has since confirmed in writing that the live music referred to in the VMP was to provide flexibility to the function aspect of the site, for example, allowing a band or soloist (guitarist or pianist) to play one or two songs during a wedding ceremony rather than constant music. The applicant has noted that as outlined in the VMP, only background music would be played on the deck after 11pm. Based on the concerns raised by the objectors, the applicant has advised that they would support imposition of a condition to restrict the deck areas to background music only at all times. As such a condition is recommended to be imposed that specifies this requirement and a condition



also requesting an amendment to the VMP to reflect this change to ensure consistency between documents. The VMP would also need to be updated to refer to all other changes recommended as herein described, including any other relevant changes to the operation based on the discussion in this report. **(Refer recommended condition 17)**

Subject to the conditions outlined above, it is considered that music noise can be controlled to a satisfactory level.

Patron Noise

Within Victoria there are no specific regulations relating to patron noise. However adoption of a similar internal criteria as that provided for at 40 Beach Street for music and mechanical plant noise has been recommended in the submitted Acoustic Report. The Acoustic Report nominates that an internal design level similar to that in SEPP N-1 would be appropriate, being 30dBA during the night with windows closed. It is agreed that this is an appropriate way to assess patron noise.

The Acoustic Report includes a calculation of potential patron noise from the new decking on the 2nd level to the adjacent apartments at 40 Beach Street. The assessment draws on previously collected patron noise from a busy beer garden establishment with a reference reverberant level of 82 dBA. Based on this detail and with application to the outside Deck Area 1 (facing Beach Street), the Acoustic Report concludes that a resultant internal noise level would be 25dBA to the nearest apartment, which is well below the SEPP N-1 internal noise limit of 30dBA. Clearly then, patron noise to residences further away from the site than 40 Beach Street would also be well within these parameters.

On the basis of the submitted patron noise assessment which has also been peer reviewed by Council's consultant Acoustic Engineer, it is considered that patron noise would not unreasonably impact on the immediate area around the Hotel.

Mechanical Plant noise

State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1) is the relevant policy for assessment of mechanical noise emissions.

The proposed additions to the Hotel would result in the necessary relocation of the mechanical plant area. The application proposes to move the plant area so that it is further away from the boundaries of the site than the existing conditions, to reduce any impact to 40 Beach Street. In lieu of 3m and 8.9m setbacks as existing, these would be increased to 5.844m and over 6m respectively. In addition, the Acoustic Report states that the noisiest item being the kitchen exhaust fans at the western end and hence closest to 40 Beach Street, would be relocated to a more distant location and may be replaced with a newer quieter model, although this detail is not included on the plans.

The Acoustic Report states that testing of plant equipment at the Hotel was conducted many years ago which confirmed the kitchen exhaust fans were the loudest. The report states that relocation of the kitchen fan to be at least 10m from the nearest boundary



would result in a 6dBA reduction in noise. The Acoustic Report states that if replaced, the exhaust fans should have a noise rating of not more than 60 dBA at 3m as this would result in a 6-8 dBA reduction, and any other new equipment should similarly be replaced with items that are no noisier than current equipment.

The Acoustic Report states that based on the proposed relocated plant area it would be possible for the SEPP N-I provisions to be met in the apartments and that it is anticipated that external noise limits to balconies and terraces would also be achieved, however screening to the perimeters of the plant facing the Beach Street apartments is specified as well as other measures relating to mounting and ductwork.

Subject to recommended permit conditions that require the plans to show the placement of the kitchen exhaust fans, nominate the screen to the perimeter including height and material, and acknowledgment of the other recommendations contained within the Acoustic Report in relation to plant equipment, it is considered that the plant area would not pose an unreasonable amenity impact. **(Refer recommended conditions 1b, 1c and 1e)**

Liquor licence and cumulative impacts, resulting from the proposed patronage increase

As previously stated, at present the Pier Hotel has a Late Night (General) Licence for 270 patrons. Permitted hours of operation for consumption on the licensed premises are as follows:

- Sundays between 10am and 1am the following morning
- Good Friday and Anzac day between 12 noon and 3am the following morning
- On any other day between 7am and 3am the following morning except for the morning of Good Friday

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

- The area that liquor is allowed to be consumed or supplied under a licence is to be increased.
- The number of patrons allowed under a licence is to be increased.

The purpose of the Clause is;

- *To ensure that licensed premises are situated in appropriate locations.*
- *To ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.*

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



The *Bomvic Pty Ltd v Yarra City Council* Tribunal Decision (dated 23 September 2004) contemplated if an amendment to an existing Liquor Licence could provide opportunities to include conditions to address the existing use outside of the extended component. That is, if the patron numbers are proposed to be extended, can the operating hours be limited? The decision is useful for the assessment of the current application which also involves a change to patron numbers and an increase to the red line area to incorporate the proposed new floor area. The Tribunal noted the following within paragraph 19 subsection 2;

...If a new or different licence is required or hours of trading under a licence are to be extended, a permit is required to use the land to sell or consume liquor. No exemption is made for an existing use, and clearly in the case where a different licence is required or there is an extension of trading hours the land will have existing use rights to sell or consume liquor. Therefore it is reasonable to infer that the purpose of clause 52.27 is to consider the whole use of the land to sell or consume liquor not just a limited aspect of the use, for example during the actual hours of extended trading.

In accordance with the *Bomvic Pty Ltd v Yarra City Council* Tribunal Decision it is considered that the whole use of the land for the sale and consumption of liquor can be considered, not just the increase to the red line area. Therefore conditions could be imposed on a permit, should one issue, outside of the specific scope of the red line area. This is of benefit to provide an appropriate balance between the licenced premises and the adjoining and nearby residential land, and to address potential social harm.

Clause 52.27 specifies a number of decision guidelines, with the most relevant guidelines applicable to the application considered to be the following:

Before deciding on an application, the responsible authority must consider:

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

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



states that a 'cluster' would occur where there are: three or more licensed premises (including the proposed premises) within a radius of 100 metres from the subject land; or 15 or more licensed premises (including the proposed premises) within a radius of 500 metres from the subject land. The practice note states that clustering of licensed premises may lead to a negative impact even though an individual venue may be managed and run well and cause no detriment. The practice note also states that an area might reach a 'saturation point' where an additional licensed premises or a particular type of licensed premises is likely to impact negatively on the surrounding area. Alternatively, the practice note acknowledges that there may be a positive cumulative impact where an additional premises will enhance the character or vibrancy of an area.

Three licenced premises are located within 100m of the proposed development, one being an on-premises licence (Tenpin wine bar) another being a full club licence (Port Melbourne Yacht Club) and also a Late Night (General Licence) at The Local Port Melbourne. However there are 30 licenced premises between 100m and 500m of the proposed development, including:

- Two packaged liquor licences (Port Melbourne IGA and Liquor, First Choice)
- 14 restaurant and café licences (Crème, Belvga Port Melbourne, Jack Rabbit Slimz, Bay 101 Café, Golden View Chinese Restaurant, The Runway Scrape, Hanoi Mee, Third Wave Café, Café Lafayette, Bella Cosi, Beyond Basic Mel, Café Grumento, Skewer'd, Ciao Cielo)
- Four On-premises Licences (The Courthouse Port Melbourne, Junior Republic, Seven A.M., Moshi Moshi)
- Six Limited Licences (Hanoi Mee, The Runway Scrape, The Cellar Room, Third Wave Café, Bladnoch Distillery, Melbourne Eco Boat Hire)
- Two Late Night (general) Licences (Exchange Hotel, Mr Lawrence – former London Hotel)
- One Full Club Licence (The Rex); and
- One General Licence (The Graham).

Whilst it is acknowledged that there is a cluster of licenced venues in the area, it is evident from the list above that the majority of venues have restaurant/ café licences. Typically the hours of operation of premises with restaurant/café licences have more limited opening hours, as do premises with On-premise, and Packaged liquor licences.

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



Reviewing the hours and patron numbers permitted in the licenced premises within proximity of the site, the following is noted:

Of the licensed premises within the cluster, six cater to more than 200 patrons including:

- The Courthouse Port Melbourne (300)
- Golden View Chinese Restaurant (221)
- Exchange Hotel (290)
- Mr Lawrence (300 – former London Hotel)
- The Local Port Melbourne (330) and
- The Rex (300).

There are ten venues within 500m of the proposed development that are open beyond 11pm including those listed above (excluding The Courthouse) and 5 others. It is noted that those venues with General or Late Night (General), General licence, or Full Club have later trading hours, typically with operation until 3am except on Sundays and certain days such as public holidays.

Having regard to Cumulative Impact, the State Government Practice Note 61 - Licensed premises: Assessing cumulative impact states that consideration should be given to:

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

In part these matters have been discussed in the preceding assessment sections of the report.

Firstly it is important to re-iterate that Clause 21.04-2 Activity Centres identifies Bay Street as a Regional Entertainment/Tourism (including tavern/ nightclubs) area – supporting a range of entertainment uses, facilities and festivals. Clause 22.14-03 of the Bay Street Activity Centre Policy reinforces this role and supports:

- *Established and emerging retail/ business niches, to create and maintain a point of difference in Bay Street's retail offer, including...Hospitality for local and visitor markets, including cafes, local 'pubs' and foreshore restaurants.*

More specifically, in Precinct 4 – Bay Street Southern Gateway, it encourages:

- *Active uses which have a leisure/ tourism focus; including indoor leisure and recreation, tourism (Hotel or function centre), cultural uses (such as exhibition or gallery space), and retail (such as cafes/ restaurants and shops).*



Nonetheless the site is within a Mixed Use Zone that includes office, retail, recreational and residential uses such as exists immediately abutting the site and nearby and assessment of the amenity impact of the increased patronage and floor area must also be considered as reinforced in Local policy including Clause 21.04-2 Activity Centres – which seeks to *‘support cultural tourism in the activity centres that reflects the role and function of individual centres whilst minimising adverse amenity impacts.’* Strategy 3.4 seeks to *‘Minimise the exposure of residential uses to the negative impacts of tourism activities such as late night noise generated by entertainment and restaurant premises and traffic and parking congestion.’* Clause 21.04-6 Tourism and the Arts also requires that *‘Late night entertainment uses must not be concentrated to the extent that there are significant adverse cumulative impacts on the amenity of the surrounding area.....’*

As detailed at length previously, this directly abutting residential use at 40 Beach Street has been designed with specific acoustic measures and obligations given that the Hotel existed first. A thorough assessment of the noise impact from the proposed new floor areas has been previously provided in the report and includes discussion of music on the outside deck areas and the need to manage access to these deck areas. Although it has been established that noise levels from both patrons and music on the deck area can comply with relevant assessment criteria, it is deemed reasonable in the context of state and local planning policy including the Practice Note outlined in detail above, and having regard to the *Bomvic v City of Yarra* VCAT decision that some adjustments to the proposal be made. As identified in the State Governments’ Practice Note 61, impact mitigation measures to reduce a potential negative cumulative impact could include reducing operating hours of the venue; and limiting outdoor seating and reducing patron numbers after 11pm.

As per the applicant’s submission to Council, the hours of operation for the proposed new licensed outside deck areas is to be capped at 1am, which is less than the current permitted hours for the venue (which is 3am). Internal hours of 3am are proposed for the new level and throughout the other levels of the venue, in line with the existing licence hours. Whilst the proposed reduction in outdoor hours is principally a positive offer from the applicant, given the proposed substantial increase in the size of the venue to double the current capacity, a further reduction to 12 midnight is deemed appropriate for the external deck areas. This would form a logical adjunct to the proposed closing of doors to the deck areas at 11pm as discussed previously. Additionally, it is recommended that a condition be imposed that requires closure of the external bar at 11pm to coincide with the closure of the doors also, as this would likely reduce patron numbers on the deck. A reduction in the internal hours for the proposed new level can be justified given the proposed increase in patronage and it is recommended that a 1am limit be applied which would align with the Victorian standards for Liquor licences within inner Melbourne, and would respond to the referral comments provided by Council’s Community Health and Safety Officer. **(Refer recommended condition 19)** Continuation of the existing hours of operation for the other levels of the premises can be supported. This is deemed reasonable due to the fact that the venue has been operating without complaint for a long period of time and a reduction in hours may result in the loss of a business that forms an important part of the Bay Street Activity centre. Regard must also be had to the improvements proposed to the building that will protect the amenity of neighbouring properties, as outlined in detail previously in the report.



Additional controls can be imposed through patron management as discussed in the following section of the report.

Patron management

Another key consideration for amenity impacts is patron management. Importantly consideration must be given to the fact this venue is primarily focused on the food/meals as distinct from a nightclub or live entertainment venue. The applicant has also submitted that consideration should be given to the fact the current operators have been at the Pier for the past 16 years with no history of complaints to the Police or Council's Planning Compliance department, demonstrating a commitment to protecting the amenity of the surrounding area.

Based on the type of premises The Pier is, the submitted Venue Management Plan identifies that consequently there is no need to develop protocols for patron queuing nor pass out arrangements. However the VMP identifies that all staff trained to serve alcohol at the venue undertake relevant Responsible Service of Alcohol training within a month of employment and follow up refresher training thereafter. Other training opportunities are listed in the VMP. In addition to this, the VMP includes reference to smoking areas, however, in reality this is under the control of Victorian Law, with new controls coming into operation on 1st August 2017. The VMP also includes details of management of entry and departure of patrons. Of key relevance is that in the proposed new layout, a dedicated entry is proposed at the eastern end of the Bay Street frontage for the new second floor and the existing (but revised) first floor area. This entry would be distinctly separate from that provided for the ground floor dining/bar/lounge areas. Additionally, the VMP states that with a possible maximum capacity of 550 people and with the possibility of a significant number of patrons leaving the premises after midnight, control of noise from patrons leaving the premises is a key consideration. Consequently, signage is proposed adjacent to the exits to remind patrons of residential properties within the area and being respectful of these. From 10pm until 30 minutes from close on a Friday or Saturday evening, two staff would be employed to be present outside the premises to monitor behaviour of departing patrons. Other strategies are identified in the VMP to mitigate adverse impacts on the amenity of the area including but not limited to, ensuring the ongoing availability of food at the premises, provision of tables and chairs throughout the licenced areas, establishment of a complaints and liaison register with residents for identification and resolution of complaints including maintaining a compliance document register.

The patron management details outlined in the VMP are considered satisfactory and in conjunction with other measures to control the use and development as previously outlined, would assist in ensuring the proposed increase in patron numbers would not pose an unreasonable amenity impact on the surrounding area. **(Refer recommended Condition 17)**

9.4 Clause 52.43 – Live Music and Entertainment Noise

In September 2014, the Victorian Government released Planning Amendment VC120, which introduced Clause 52.43 Live Music and Entertainment Noise to all Planning Schemes in Victoria. This clause includes requirements to be met for a live music



entertainment venue (including a food and drink premises, nightclub functions centre or residential hotel that includes live music entertainment) to be designed constructed and managed to minimise noise emissions protecting a noise sensitive residential use within 50 metres of a site. It also requires a noise sensitive residential use to be designed and constructed to include noise acoustic attenuation measures that will reduce noise levels from any indoor live music venue to below the noise limited specified in State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N2). For the purpose of assessing whether noise standards of SEPP N2 are met, the noise measurement point is located in a habitable room with windows and doors closed (that is, Schedule B1 of SEPP N2 does not apply).

In effect, the clause puts the responsibility for noise attenuation on the ‘agent of change’, which can be either the live music venue, or a new residential development that is proposed adjacent to an existing venue.

At the time of the development of 40 Beach Street, this building was deemed to be the ‘agent of change’ as the Pier Hotel had been in existence well before it. Whilst the changes to the Pier as proposed in this application might now be considered as the ‘agent of change’ it is important to adhere to the original criteria set at the time of the Beach Street development as otherwise this would have huge implications for the operation of the Hotel particularly noting the 173 Agreement on title at 40 Beach Street. It is not possible to apply different criteria to different parts of a building as it is not possible to distinguish between different noise emissions from different rooms when conducting acoustic testing.

The Section 173 agreement on title for 40 Beach Street (which pre-dates Clause 52.43) includes internal design targets and has resulted in a similar outcome to what Clause 52.43 would have provided.

9.5 Car Parking

The site is located within the Bay Street Major Activity Centre and is a well-established premises operating since the 1850’s to 1860’s with no car parking on site. The current patron limit of 270 has been in effect for a long period of time and it is not known how often, if ever, the current patron limit has been achieved.

As part of the current proposal to enlarge the building, it is proposed to extend the patronage to 550 patrons. Assessment of car parking would therefore need to be undertaken with respect to the proposed increase of 280 patrons rather than the overall total of patrons.

Pursuant to the provisions of Clause 52.06 of the Planning Scheme, 0.4 spaces per patron is required for each patron permitted for a Hotel. This would generate a statutory requirement of 112 spaces for the proposed additional 280 patrons. A permit can be sought to waive this requirement pursuant to Clause 52.06-3 of the Scheme based on a car parking demand assessment. Pursuant to Clause 52.06-7, this assessment must assess the likely car parking demand to be generated by the increased use, including the following relevant matters:



- The likelihood of multi-purpose trips within the locality which are likely to be combined with a trip to the land in connection with the proposed use.
- The variation of car parking demand likely to be generated by the proposed use over time.
- The short-stay and long-stay car parking demand likely to be generated by the proposed use.
- The availability of public transport in the locality of the land.
- The convenience of pedestrian and cyclist access to the land.
- The provision of bicycle parking and end of trip facilities for cyclists in the locality of the land.
- The anticipated car ownership rates of likely or proposed visitors to or occupants (residents or employees) of the land.
- Any empirical assessment or case study.

The applicant has submitted a Traffic Impact Assessment prepared by O'Brien Traffic. The submitted report assesses amongst other things, the availability of public transport in the locality of the land, convenience of pedestrian and cyclist access to the land and provides an empirical assessment of parking demand.

As outlined in the submitted Traffic Impact Assessment, the site is well serviced by public transport including Tram Route 109 which is 500m north west of the site and operates until after midnight, Bus Route 236 which passes the site along Beach Street until 7pm, Bus Route 234 an approximate 350m walk to the north east which operates until midnight 7 days; all of which connect to city services.

With respect to convenience of pedestrian and cyclist access to the land, the submitted report notes that bike lanes and paths are provided throughout the municipality, with Bay Street including bike parking rails. Bay and Beach Streets are acknowledged as providing easy pedestrian access to the site.

The empirical assessment conducted for the application included a survey of patrons entering the Pier, conducted on Friday 15th and Saturday the 16th of April 2016. Patrons were asked to confirm their mode of transport to the venue on that occasion. Although not specified in the report, the applicant has confirmed that 108 patrons were surveyed, being 37 patrons on Friday night and 71 on Saturday night.

The patron survey identified that of those surveyed Friday evening, 43% walked, 24% used Uber/Taxi's, 19% utilised public transport, 8% drove, and 6% were passengers in a shared car. On Saturday evening, 35% walked, 6% used Taxi/Uber, 10% used public transport, 25% drove and 23% were car passengers.

Based on the higher demand of the Saturday survey where 25% of patrons drove, the empirical assessment with the submitted report adopts a 0.25 space per patron parking calculation. With 280 additional patrons, a demand for 70 car spaces would therefore result. The submitted report adopts the same demand for the proposed additional 8 staff members anticipated during peak times, adding 2 additional spaces to this demand.



Hence the total increase in parking demand generated from the proposal would be 72 spaces.

The original submitted traffic report also includes an assessment of parking in the locality, within 400m of the site which represents an approximate 5min walk. The report calculates that the area includes 689 unrestricted car parking spaces after 6pm (including metered parking and excluding Permit Zones), with 293 of these spaces available along the two main roads the site abuts. Based on a survey of utilisation of the spaces on the same nights that the patron survey was conducted, between the hours of 6 and 11pm, the data from the survey shows that parking demand was higher on the Saturday night, nonetheless within the total survey area there were a minimum of 108 spaces available on Saturday night and 128 on Friday. On Bay and Beach Street only, the survey revealed there were a minimum of 91 unrestricted parking spaces available on the Friday and 99 on the Saturday.

A later addendum to the Traffic report was submitted acknowledging the loss of on street parking spaces as a result of the Beach Street queuing lane. The addendum argues that the loss of spaces would not equate to a direct loss of spaces during the survey period. The traffic report addendum states that many of the vehicles that may have parked in the area would not necessarily relocate but would instead no longer drive to this area. The addendum notes that the survey indicated that 73% of spaces that are lost were occupied on the Friday and 60% of spaces lost were occupied on the Saturday night, and hence the loss of available parking is likely to be as low as 31 spaces on a Friday night and 26 on the Saturday night. Additionally, the addendum report emphasised that a conservative rate of 0.25 spaces per patron was used in the initial empirical assessment and that it would be more likely that the demand for parking would fall between the 0.8 to 0.25 spaces per patron figures which would equate to a parking demand of between 22 and 70 spaces.

Clause 52.06-6 of the Planning Scheme states that a number of matters must be considered by the Responsible Authority before issuing a reduction in the number of car parking spaces including any submitted Car Parking Demand Assessment, any relevant local planning policy or incorporated plan, the availability of alternative car parking in the locality of the land, local traffic management in the locality of the land, the impact of fewer car parking spaces on local amenity, including pedestrian amenity and the amenity of nearby residential areas, access to or provision of alternative transport modes to and from the land and other matters.

In this particular application, and having regard to all matters outlined previously in this section of the report, it is considered that a reduction in car parking spaces associated with the proposed patronage increase can be justified.

It is acknowledged that the Traffic Impact Assessment report does not include a survey of the summer period, nor was a lunch time survey period of parking and patrons conducted. It would be reasonable to assume that over the summer period a higher demand for spaces may occur. But conversely, it is acknowledged that over the colder months' patronage would likely drop and this would reduce car parking demand and increase supply. Similarly, it would not be unreasonable to expect that demand and supply for parking during daytime hours would be influenced by factors such as people



undertaking multi-purpose trips to Bay Street, employees within the area attending the premises during a lunch break, and the local residents in this mixed use growth area benefiting from the accessibility of their premises to the Hotel site. Further, during the daytime it could be reasonably expected that there would be a short stay parking demand, with spaces turning over more frequently.

Exceptions to the rule would be when larger functions are conducted at the Hotel premises whether they be private functions such as birthdays, weddings, work conferences etc. Obviously the worst case scenario would occur when the premises is operating at maximum capacity, however it is anticipated this would not be a regular occurrence.

As has been demonstrated in the submitted report, there is availability of parking with the surveyed area at the peak evening time of the operation. Even allowing for the loss of spaces from the Beach Street Queuing Lane project, a surplus of spaces would exist. It is not unreasonable for a portion of those spaces to be usurped by the expansion of the Hotel. Available spaces would exist beyond the survey area and at peak times such as over the summer period, it would not be unreasonable to for patrons to expect to park some distance from the destination, especially along Beaconsfield Parade.

The overarching strategic direction for this southern end of Bay Street is to encourage active uses which have a leisure or tourism focus including Hotel or function centres. This complements the tourism focus of Station Pier. Car parking should not be looked at in isolation of other issues. Various Tribunal decisions have contemplated the “centre based approach” to car parking and this is relevant to the application at hand given the inclusion of the site in the Bay Street Activity Centre. The centre based approach was summarised in the following extract of the Supreme Court’s decision in *Sansmark Pty Ltd v City of Boroondara* (1998) 22 AATR 103, where the court stated:

“The basic approach in these decisions is that in important activity centres car parking considerations should not be determinative, instead the land use mix in a centre should arise from a combination of strategic planning and the economic forces at work in the centre, car parking issues have a part in this but should not dominate. At the level of the individual site where there is a change of use or an extension to an existing building in most circumstances car parking shortfalls should be waived if it is consistent with the strategic plan for the centre, firstly because the most equitable solution is to deal with carparking on a centre wide basis, and secondly because even in saturated car parking conditions a balance will occur between the level of activity and the car parking supply”.

9.6 Clause 63 - Existing uses

It was formally established during the process of Planning Permit P1210/2000 that the venue had existing use rights for a restaurant with a bar component. There is no evidence to show that the use has ceased for a two or more periods of time that would total two years in a period of three years, and hence the existing use rights continue.



9.7 Development Contributions

The Development Contributions Plan Overlay is relevant to the application as the exemption criteria of Schedule 1 does not apply given the substantial increase in the number of persons that would be on the property. The mandatory contribution condition would need to be applied. **(Refer recommended condition 26)**

10. COVENANTS

The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the titles for the subject site known as Lot 1 of Title Plan 194074U [Parent Title Volume 07897 Folio 198].

11. OFFICER DIRECT OR INDIRECT INTEREST

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

12. OPTIONS

- 12.1 Approve as recommended
- 12.2 Approve with changed or additional conditions
- 12.3 Refuse - on key issues

13. CONCLUSION

- 13.1 The proposed demolition is minor in nature and would not impact on the heritage significance of this prominent site. The proposed alterations and additions have been designed to maintain the integrity of the existing building however simplification of the detailing to the proposed new level is considered necessary to ensure the addition would not detract from the overall appearance of the site.
- 13.2 Principally support is given to an expansion of the patronage for the Hotel and careful consideration has been given to the impacts that would result from this with respect to car parking, acoustic and wider cumulative impacts. A number of conditions have been recommended that would limit that impact and strike a good balance between protecting the amenity of the area and supporting a local business that forms an important component of the Bay Street Activity centre, contributes to the overall economic viability of Port Melbourne and provides a focal point for both local residents and tourists alike.



14. RECOMMENDATION - NOTICE OF DECISION

- 14.1** That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Grant a Permit.
- 14.2** That a Notice of Decision to Grant a Permit be issued for Part demolition (existing roof, plant and ground floor courtyard), alterations and additions including the construction of a mezzanine, new balcony to Bay street; construction of a third level with external deck; a reduction in the standard car and bike parking requirements; use of the second floor for the sale and consumption of alcohol (general licence) including an increase in patrons from 270 to 550 at 1 Bay Street, Port Melbourne.
- 14.3** That the decision be issued as follows:

1 Amended Plans Required

Before the use and/or 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 and reports will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and an electronic copy must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:

- a) Deletion of the fin elements to the second floor addition;
- b) Details of the dimensions and material of the plant screening in accordance with the recommendations of the SLR Acoustic Report dated 27 September 2016 (Revision 3) and including a non-reflective material finish;
- c) The acoustic works identified in Section 5 of the SLR Acoustic Report dated 27 September 2016 (Revision 3) relating to the main building structure, internal wall linings and treatment, 2nd floor function room roof and facade treatments and plant area to be identified and notated;
- d) Notations and illustrations clearly identifying the doors opening to the balcony at first floor and the deck at second floor are swing type doors with automatic closers;
- e) All plant, equipment (including air conditioning, heating units, hot water systems etc.) which are to be located externally.

2 No Alterations (Development)

The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority, unless the Port Phillip Planning Scheme exempts the need for a permit.



3 No change to external finishes

All external materials, finishes and colours as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

4 Demolition Method Statement

Before the works permitted by this permit start, including any demolition works, a fully detailed 'demolition method statement' must be submitted to and approved by the Responsible Authority. When approved, the statement will be endorsed and will then form part of the permit. The 'demolition method statement' must:

- a) Fully describe and clearly demonstrate the methods of dismantling of the heritage fabric, restoration and repair and the subsequent reconstruction of the building.
- b) Include reference to the staging of demolition and reconstruction works on the site.
- c) Detail the necessary protection works required during the demolition works to protect those parts of the building to be retained.

Once approved by the Responsible Authority, all buildings and works must be in accordance with the demolition method statement.

5 Sustainable Design Assessment

Before the development starts (other than demolition or works to remediate contaminated land) a revised Sustainable Design Assessment that outlines proposed sustainable design initiatives must be submitted to, be to the satisfaction of and approved by the Responsible Authority. When approved, the Assessment will be endorsed and will then form part of the permit and the project must incorporate the sustainable design initiatives listed.

6 Incorporation of Sustainable Design initiatives

The project must incorporate the sustainable design initiatives listed in the endorsed Sustainable Design Assessment to the satisfaction of the Responsible Authority.

7 Implementation of Sustainable Design Initiatives

Before the occupation of the development approved under this permit, a report from the author of the Sustainable Design Assessment/Sustainable Management Plan approved pursuant to this permit, or similarly qualified person or company, must be submitted to the satisfaction of the Responsible Authority. The report must confirm that all measures and recommendations specified in the Ecologically Sustainable Design report have been implemented and/or incorporated in accordance with the approved report to the satisfaction of the Responsible Authority.



8 No equipment or services

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

9 Incorporation of Water Sensitive Urban Design initiatives

Before the occupation of the development approved under this permit, the project must incorporate the water sensitive urban design initiatives listed in the endorsed Water Sensitive Urban Design Report to the satisfaction of the Responsible Authority, and thereafter maintained to the satisfaction of the Responsible Authority.

10 Maintenance Manual for Water Sensitive Urban Design Initiatives (Stormwater Management)

Before the development starts (other than demolition or works to remediate contaminated land) a Maintenance Manual for Water Sensitive Urban Design Initiatives must be submitted to and approved by the Responsible Authority.

The manual must set out future operational and maintenance arrangements for all WSUD (stormwater management) measures. The program must include, but is not limited to:

- inspection frequency
- cleanout procedures
- as installed design details/diagrams including a sketch of how the system operates

The WSUD Maintenance Manual may form part of a broader Maintenance Program that covers other aspects of maintenance such as a Building User's Guide or a Building Maintenance Guide.

11 Noise Levels

Noise levels must not exceed the permissible noise levels stipulated in State and Environment Protection Policy N-1 (Control of Noise from Industrial Commercial and Trade Premises within the Melbourne Metropolitan Area) to the satisfaction of the Responsible Authority.

12 SEPP N-2

Noise levels must not exceed the permissible noise levels stipulated in State and Environment Protection Policy N-2 (Control of Music Noise from Public Premises) with the following exceptions:



- a. Noise levels must comply with the internal SEPP N-2 noise limits at 40 Beach Street as stated in Table I of the approved SLR Report to the satisfaction of the Responsible Authority.

13 Revised Acoustic report

Prior to the commencement of the development, a revised Acoustic Assessment report must be submitted to the satisfaction of the Responsible Authority. The report must be generally consistent with the Version 3 report prepared by SLR Consulting Australia P/L dated 27 September 2016 but amended to include the Memorandum dated 27 March 2017 also prepared by SLR Consulting Australia P/L, and any other relevant change required by permit conditions contained herein.

14 Acoustic report

The buildings and works and use must be undertaken in accordance with the approved acoustic report prepared by SLR Global Environmental Solutions to the satisfaction of the Responsible Authority.

15 Music

Music (other than background music) is prohibited outside the building, including the rooftop deck.

All music playback systems must include a limiting device calibrated to the indoor venue levels specified in the approved SLR report, to the satisfaction of the Responsible Authority.

16 Balcony door details

Rooftop deck doors and the first floor balcony door must remain closed after 11pm.

The rooftop deck and first floor balcony door must be swing type doors with automatic closers to the satisfaction of the Responsible Authority.

17 Venue Management Plan

Within three months of the date of the issue of this permit, a revised Venue Management Plan must be prepared and submitted for approval to the Responsible Authority which must provide for the following to the satisfaction of the Responsible Authority:

- a) The measures to be taken by management and staff to ensure patrons depart the premises and the surrounding area in an orderly manner.
- b) 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.



- c) The measures to be taken by management and staff to ensure that patrons do not cause nuisance or annoyance to persons beyond the land.
- d) Liaison with Victoria Police, the City of Port Phillip and local residents.
- e) A telephone number provided for residents to contact the premises and linked to the complaints register;
- f) The maintenance of a complaints register, which must, on reasonable request, be made available for inspection by the Responsible Authority.
- g) Staff being trained in the responsible service of alcohol.

Once submitted and approved, the Venue Management Plan must be carried out to the satisfaction of the Responsible Authority.

18 Exit Signs

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

19 Hours of Operation

Without the further written consent of the Responsible Authority the following restrictions apply:

The external bar service must cease operation at 11pm and all of the associated outside deck areas at second floor level must close at 12 midnight;

The outdoor balcony at first floor level must close at 12 midnight.

The internal floor area at second floor level must close at 1am.

20 Number of Patrons

No more than a total of 550 patrons must occupy the premises during operating hours.

21 Mechanical Exhaust

Before the use starts the kitchen(s) mechanical exhaust system must be constructed in accordance with the Australian Standard number 1668 and/or to the satisfaction of the Responsible Authority. A report prepared by a suitably qualified professional demonstrating compliance with the requirements of this condition must be submitted prior to the commencement of the use to the satisfaction of the Responsible Authority.

22 Vertical Discharge for Mechanical Exhaust

The kitchen(s) exhaust system must provide for a vertical discharge to the atmosphere at a point and velocity which allows for effective dispersal of fumes so as to not create a nuisance (as defined under the Public Health and Wellbeing Act 2008) to the



surrounding amenity to the satisfaction of the Responsible Authority.

23 Treatment of Fumes

Fumes from any café/restaurant kitchen(s) must be treated within the mechanical exhaust system to ensure that any discharge does not create a nuisance (as defined under the Public Health and Wellbeing Act 2008). Options available include carbon filters, ultra violet ozone producing lamps, electrostatic precipitation, odour neutralising system or other suitable method. The method of treatment must be designed, installed, operated and maintained to the satisfaction of the Responsible Authority.

24 Storage and Disposal of Garbage

Prior to the completion of the development, provision must be made for the storage and disposal of garbage to the satisfaction of the Responsible Authority. All garbage storage areas must be screened from public view.

25 Waste Management

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.
- 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.



26 Port Melbourne Developer Contribution Levy

- (1) Prior to the commencement of the development hereby permitted the permit holder must either:
- (a) Pay or provide a bank guarantee, insurance bond or similar security to the satisfaction of the Responsible Authority for the full amount of the development levy applying to the land in accordance with the provisions of the Port Melbourne Mixed Use Area Development Contributions Plan (Streetscape Works) July 1999 which is an incorporated plan under the Port Phillip Planning Scheme ('the DCP'); or
 - (b) Elect by notice in writing to Council to carry out the works ('the Works') generally in accordance with plans of the streetscape works provided by the owner and consented to by the Council.
- (2) If the election referred to in (1)(b) is made, the following provisions must apply:
- (a) (i) Prior to the commencement of the Works, plans and specifications of the Works must be submitted to the Council for its approval. Once approved, the Works must be carried out only in accordance with such plans and specifications subject to any amendments that the Council may agree to.
 - (ii) Unless otherwise agreed in writing by the Council, the Works must be completed to the satisfaction of the Council prior to the issue of a Certificate of Occupancy.
 - (b) (i) As security for the carrying out of Works, on approval by the Council of the plans and specifications for the Works, the owner must lodge with the Council a bank guarantee or insurance bond for the value of the Works.
 - (ii) The Councils must be entitled to call upon such security to meet the cost of carrying out or completing the Works as the case may be in the event that the Works have not been completed to its satisfaction by the completion date.
 - (iii) The Bank Guarantee or insurance bond must be returned to the owner immediately upon Council advising the owner in writing that the streetscape works have been completed to its satisfaction.
- (3) If the works are carried out on or behalf of the Owner, the Owner must pay to the Council a supervision fee determined in accordance with the Subdivision Act 1998 for the supervision of the Works.

27 Time for Starting and Completion

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

- a) The development is not started within two (2) years of the date of this permit.
- b) The development is not completed within two (2) years of the date of commencement of works.



- c) The use is not commenced within two (2) years of the completion of the development.

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

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

Permit notes:

- **Building Approval Required**

This permit does not authorise the commencement of any demolition or construction on the land. Before any demolition or construction may commence, the applicant must apply for and obtain appropriate building approval from a Building Surveyor.

- **Building Works to Accord with Planning Permit**

The applicant/owner will provide a copy of this planning permit to any appointed Building Surveyor. It is the responsibility of the applicant/owner and Building Surveyor to ensure that all building development works approved by any building permit is consistent with this planning permit.

- **Drainage Point and Method of Discharge**

The legal point of stormwater discharge for the proposal must be to the satisfaction of the responsible authority. Engineering construction plans for the satisfactory drainage and discharge of stormwater from the site must be submitted to and approved by the Responsible Authority prior to the commencement of any buildings or works.

- **Other Approvals May be Required**

This Planning Permit represents the Planning approval for the use and/or development of the land. This Planning Permit does not represent the approval of other departments of the City of Port Phillip or other statutory authorities. Such approvals may be required and may be assessed on different criteria from that adopted for the approval of this Planning Permit.

- **Environmental Health**

I. The premises must comply with the Food Act 1984 and the Food Standards Code and must be registered with Council's Health Services Unit before the use starts.

- **Asset Protection**

Before the development starts (including demolition) an Asset Protection Permit must be obtained from Council's City Permits Unit.



- **Construction Management**

All construction activities associated with the development must comply with the requirements of Council's Local Law No. 1 (Community Amenity) 2013.

- **Days and Hours of Construction Works**

Developers

Except in the case of an emergency a builder must not carry out building works outside of construction hours:-

- Monday to Friday: 7.00am to 6.00pm; or
- Saturdays: 9.00am to 3.00pm.

An Out of Hours permit cannot be obtained for an appointed public holiday under the Public Holidays Act, 1993.

Owner Builders

An owner builder must not carry out building works outside of construction hours:-

- Monday to Friday: 7.00am to 8.00pm; or
- Saturdays, Sundays and public holidays: 9.00am to 6.00pm.

An Out of Hours permit may be considered pursuant to Local Law No. 1 (Community Amenity) 2013, Clause 31. For further information, contact Council's City Permits unit on Ph: (03) 9209 6216.