



**6.1** **10-18 JACKA BOULEVARD, ST. KILDA**  
**LOCATION/ADDRESS:** **10-18 JACKA BOULEVARD, ST. KILDA**  
**GENERAL MANAGER:** **CLAIRE FERRES MILES, PLACE STRATEGY & DEVELOPMENT**  
**PREPARED BY:** **PHILLIP BEARD, PRINCIPAL PLANNER**

**1. PURPOSE**

**1.1** This report assesses an application for planning permit for retrospective approval for buildings and works comprising a two roofed bar/alcohol service structures, one in the ground level courtyard area associated with the Republica licensed premises and the other in the external terrace associated with Captain Baxter licensed premises in the Sea Baths building.

**2. EXECUTIVE SUMMARY**

**2.1** The application does not propose any change in use or activities and does not propose any new or altered liquor licence. It is solely seeking retrospective approval for the installation of two roofed bar/servery structures ("bars") and as such, is only assessed against any provisions of the Incorporated Document, any Local Planning Policy and any Heritage Overlay provisions relating to buildings and works.

**2.2** The roofed bars are located within each of two currently licensed areas covered by the "red line" of each relevant liquor licence delineating where liquor may be sold and consumed. They are approximately 10m<sup>2</sup> and 15m<sup>2</sup> and are no more than three metres high. They serve the outdoor areas of two existing licensed premises known as Republica and Captain Baxter.

**2.3** The application does not trigger any assessment under the provisions of the Planning Scheme relating to liquor licensing as there is no change of use or to a liquor licence, new use or liquor licence and no expansion of an existing use or liquor licence, being proposed.

**2.4** There would be no change in patron numbers or increase in floor area, therefore there is no assessment of car parking triggered as the existing uses would not intensify.

**2.5** The application was advertised and no objections were received.

**2.6** It is considered that the structures do not offend any planning control. The structures are considered modest, are internal to the building and thus do not negatively impact on the public realm, foreshore or heritage values of the host building, which is commercial in nature and internally, of contemporary design.



### 3. RECOMMENDATION

- 3.1 That the Responsible Authority, having caused the application to be advertised and having received no objections, issue a Planning Permit.
- 3.2 That a Planning Permit be issued for the construction of buildings and the carrying out of works for a roofed external bar at Republica and a roofed external bar at Captain Baxter at 10-18 Jacka Boulevard, St. Kilda (Sea Baths complex).
- 3.3 That the decision be issued as follows:

#### 1. Amended Plans required

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

- (a) Details of the external materials, colours and finishes of the permitted bars.

#### 2. No Alterations

The development allowed by this permit and as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

#### 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. Time for Starting and Completion

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

- (a) The development is not started within three months of the date of this permit.
- (b) The development is not completed within six months of the date of commencement of works.

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

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

### 4. RELEVANT BACKGROUND

- 4.1 The sale and consumption of liquor in the ground level courtyard and the upper level external terrace and the use of those areas for that purpose is permitted by liquor licence numbers 32264325 (Republica) and 32265355 (Captain Baxter). The red lines under each licence cover all of the ground level courtyard and upper level external terrace in which the respective bar areas are located.



- 4.2** Planning Permit 891/2014 was issued on 22 April 2015 “to use the land for the purpose of sale and consumption of alcohol on the external terrace being part of tenancy 12 by the existing licensed tenancy 10 (Captain Baxter) and increased patron numbers by 39 allowing 229 internal and 195 external patrons”. It allowed the sale and consumption of liquor on the external terrace area as now permitted by liquor licence 32265355.
- 4.3** The sale and consumption of liquor in the ground level courtyard pre-dated Council's relatively recent practice of requiring planning permits under Clause 52.27 of the Planning Scheme as opposed to relying on the terms and provisions of the Incorporated Document which appears to allow the sale and consumption of liquor without a planning permit.
- 4.4** The St Kilda Sea Baths has site specific planning controls that are incorporated into the Port Phillip Planning Scheme.

## **5. PROPOSAL**

- 5.1** It is proposed to retrospectively approve the construction two structures used for the purposes of bars, one in the north-west corner of the ground level courtyard and the other in the north-west corner of the mezzanine deck. Their footprints measure just over 16m<sup>2</sup> in area for Republica (4.2m x 4m) and approx. 13 m<sup>2</sup> in area for Captain Baxter (5.1m x 2.5m). They are a maximum height of approximately three metres and have sloping metal roofs and a combination of glass, light coloured metal and folding plastic sides. Their fronts open to allow service of drinks to the external areas of the licensed areas, in conjunction with the bars located within each tenancy.

## **6. SUBJECT SITE AND SURROUNDS**

- 6.1** The Sea Baths complex is located on the foreshore adjacent to Jacka Boulevard, St. Kilda. The building is setback approximately 35 metres from the Jacka Boulevard frontage and has a width of just over 100m. The ground level courtyard is located towards the south-east end of the building and has an area of approximately 420m<sup>2</sup>. The upstairs external terrace area is immediately adjacent to the tenancy known as 'Captain Baxter'. This area is orientated generally parallel to the foreshore and has an area of approximately 100m<sup>2</sup>.
- 6.2** The layout of courtyard for the most part comprises movable tables and chairs (sometimes with umbrellas) and a marquee structure – approximately 90m<sup>2</sup> in area – in the courtyard's north-east corner. The upstairs external terrace comprises a much simpler arrangement of tables and chairs, again sometimes with umbrella coverage.
- 6.3** The remainder of the Sea Baths main building features a variety of uses including recreational, retail, 'eating and drinking' establishments and a function centre.
- 6.4** The front of the site, generally facing Jacka Boulevard, contains a car park and landscape areas whilst the building as facing the foreshore generally contains a public promenade with food and drink tenancies adjacent to the beach. Several of



these have associated outdoor seating areas. The nearest dwellings, measured from the closest point of the ground level courtyard, are approximately 120m away (on the north-west side of Alfred Square).

- 6.5** The surrounding area generally comprises a mixture of uses including commercial, recreational, entertainment and residential uses with the commercial uses mostly confined to the beach side of Jacka Boulevard and the residential uses confined to the opposite side.

**7. PERMIT TRIGGERS**

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

Zone or Overlay	Why is a permit required?
Clause 37.01-4 Special Use Zone	Under the schedule to this clause, a permit is required for buildings and works that are not in accordance with the development plan as approved under the Sea Baths Incorporated Document.
Clause 43.01 Heritage Overlay	A permit is required for buildings and works.

Incorporated Document:

The site has been developed in accordance with the Sea Baths Incorporated Document under the Special Use Zone 1 – St Kilda Sea Baths. The Incorporated Document acts as a Planning Permit but sits in the Planning Scheme. The Incorporated Document is relevant to land uses, but as the buildings and works have been completed, any new buildings and works require a planning permit under the relevant zone and overlay controls.

The Incorporated Document allowed the following uses:

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

Many of the existing liquor licences operating at the Sea Baths were obtained without the need for a Planning Permit first, relying on the Incorporated Document’s allowance for “*sale and disposal of liquor for consumption in that area*” and the words “*(including liquor)*”.

More recently, Council Planners have taken the view that the Incorporated Document cannot override the provisions of Clause 52.27 (Licensed Premises) and has required a planning permit application for any change to or new licence.

The Special Use Zone specifies permit triggers. It states that a permit is required to construct a building or carry out works unless the schedule to the zone specifies otherwise. Relevantly, Section 2 of the schedule to the zone states that a permit is not required to



construct a building or carry out works that are in accordance with the Incorporated Document (which incorporates in turn an approved Development Plan).

Given that the proposed bar structures are not shown on the approved Development Plan forming part of the Incorporated Document, they are not 'in accordance' with the Incorporated Document, and a permit is required under the relevant zone and overlay controls.

## 8. PLANNING SCHEME PROVISIONS

### **LPPF: Local Planning Policy Framework:**

Relevant sections of the Local Planning Framework are as follows:

Clause 21.04-5, Public Open Space and Foreshore.

Clause 21.05-1 Heritage.

Clause 22.04 Heritage Policy.

Clause 22.09 St. Kilda Foreshore Area Policy.

### **Clause 43.01 Heritage Overlay**

A permit is required for all buildings and works under this overlay. Relevant decision guidelines under that overlay are as follows:

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.*
- *Any applicable statement of significance, heritage study and any applicable conservation policy.*
- *Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.*
- *Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.*
- *Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.*
- *Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.*

## 9. REFERRALS

### 9.1 Internal referrals

No internal referrals were considered necessary in this instance.



**9.2 External referrals**

Use and development on the Port Phillip coastal area requires a Coastal Management Act consent. The Department of Environment, Land, Water and Planning issued Coastal Management Act consent 1205279 for the “retrospective approval for a roofed external bar at Republica restaurant and a roofed external bar at Captain Baxter restaurant (internal to the St Kilda Sea Baths site) on 25 July 2017.

**10. PUBLIC NOTIFICATION/OBJECTIONS**

**10.1** It was determined that the proposal may result in material detriment therefore Council gave notice of the proposal by having the applicant place four public notice boards at the perimeter of the site for a 14 day period. No objections were received.

**11. OFFICER’S ASSESSMENT**

**11.1 State Planning Policy Assessment**

The Sea Baths complex is a commercial complex with numerous food and drink tenancies, many of which involve the sale and consumption of liquor.

The bars are associated with existing the commercial and licensed premises. The proposal would not alter the uses or activities within the complex, adding two moderate internal built forms to serve existing patrons in the outdoor areas of each tenancy.

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

It is considered that the structures would achieve this outcome in that the bars would assist the established tenancies in continuing to provide their commercial services. That is, the bars aid in the operation of each well-established licensed premises.

**11.2 Local Planning Policy Assessment**

The Sea Baths complex is a commercial complex with numerous food and drink tenancies, many of which involve the sale and consumption of liquor.

The bars are associated with existing the commercial and licensed premises. The proposal would not alter the uses or activities within the complex, adding two moderate internal built forms to serve existing patrons in the outdoor areas of each tenancy.



Clause 21.04-5, Public Open Space and Foreshore.

This clause is considered to be partly relevant in that it refers to the foreshore and outcomes to be achieved. However, its references to 'public open space' are not relevant as the areas in question are not public open space. They are privately leased areas within a publicly accessible commercial building within a Special Use Zone.

Relevant Objectives under this clause are as follows:

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

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

There would be no impact on the nearby foreshore's open space network nor its ability to be enjoyed. The nearby public open space network would not be negatively affected by the small structures, nor would there be any negative impacts on the public's ability to effectively circulate throughout the complex due to the location of the bars in the respective corners of each terrace/courtyard area.

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

This outcome would not be affected. The bars would not be located on the foreshore itself but within a commercial building within a Special Use Zone.

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

The primary use of the foreshore and nearby public open space assets would not be impacted upon. The use of the Sea Baths complex, as a foreshore asset, would not change as this application has no use component. The bars do not change the mix of eating and drinking uses as already permitted and currently operating. This policy outcome would not be conflicted with.

*Ensure new use and development on the foreshore:*

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



These objectives would be achieved. The structures are very modest in scope and scale and have no negative impacts on the character of the Sea Baths complex. They do not project above the roof line of the building and are located within the complex not visible from outside the building.

The Sea Baths complex is a large establishment that contains a variety of uses, including eating and drinking areas, a function space and retail spaces. The proposal would be directly associated with two existing licensed premises and no change of use or liquor licence condition is proposed and no change in use which would impact on parking or traffic.

The development would complement the existing tenancies and would not disadvantage foreshore users.

#### Clause 21.05-1 Heritage

*To conserve and enhance the architectural and cultural heritage of Port Phillip.*

It is considered that the proposal would not be in conflict with this objective. In particular, the bars do not impact on the existing heritage values of the Sea Baths building. The cultural significance of the complex are also not negatively affected by the bars.

#### Clause 22.04 Heritage Policy Assessment.

*Objectives (as relevant to this proposal):*

- *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.*

The proposal is not considered development 'of' a significant building but more accurately, development 'within' such a building. Additionally, the 'surrounding character' referred to usually refers to nearby streetscapes and neighbouring buildings, which are not present in the usual way in this instance.

- *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.*

Design excellence is not being achieved, but the size and nature of the buildings and their location makes this objective less relevant.

- *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.*

The outcome relating to additions that are 'publicly visible' normally relates to a particular streetscape. The bars would not form part of any streetscape and are not visible from outside the Sea Baths complex. As previously assessed, noting their very small size and footprint (and their clear and very obvious function), they



are not considered to detrimentally impact on the heritage significance of the complex.

*It is general policy that new buildings and works do not adversely change the appearance of a heritage place.*

This outcome would be achieved. The key elements of the host building are the façade treatment and the turret towers. The bars do not affect views to or the significance/setting of either of these features.

Clause 22.09: St. Kilda Foreshore Area Policy

General Policies: (as relevant to this particular proposal)

*Encourage new use and development that contributes to the diverse character and builds on the principal role of the St Kilda Foreshore area as a leisure and entertainment precinct.*

The two bars would enhance the leisure and entertainment role of the sea baths complex.

*Ensure new development improves the attractiveness and supports the viability of existing iconic buildings, spaces, landmarks and attractions, identified in the 'St Kilda Foreshore Urban Design Framework, 2002' as contributing to the cultural heritage of St Kilda.*

The Sea Baths complex is one of several buildings referred to several times in the above document, with one reference in particular being to maintain the simplicity of the foreshore and the relationships between the various larger buildings of which the Sea Baths complex is one. The two bars would impact on that outcome and they would also support the viability of the Sea Baths as one of the iconic buildings through enhancing the use of each respective tenancy. The bars would not negatively affect any other foreshore spaces, landmarks or attractions.

*Built Form*

*It is policy to:*

- *Ensure new development retains the dominant built form typology of the Foreshore, characterised by buildings in space, as described in the 'St Kilda Foreshore Urban Design Framework, 2002'.*
- *Ensure that significant heritage and iconic buildings and places are conserved and that any new development around them respects the existing built form.*

Both these outcomes would be met. The bars do not affect the special relationship between the complex and its surrounds and nor do they disrespect the built form of the host building or any nearby building. They would be isolated and 'self contained' within the complex.

- *Ensure future building heights and forms maintain and enhance the view structure defined in the 'St Kilda Foreshore Urban Design Framework, 2002' including; views from the Upper Esplanade to the horizon, Williamstown, Marine lighthouse, the Stokehouse and Catani Arch; and from South Beach to the entrance of Luna Park.*



The bars would not in affect views to or from any of these buildings nor views from the Upper Esplanade to the horizon due to them being located entirely within the sea baths complex.

- *Ensure future building heights and forms do not detract from the amenity of the public realm by overshadowing or causing wind tunnel effects on public space.*
- *Maintain the low-rise, 1 to 2 storey character of the Foreshore Reserve, excepting the potential for a limited increase in height at the Royal Melbourne Yacht Squadron to create a stronger termination point for the Fitzroy Street vista.*

Both these outcomes would be met. The public realm (the foreshore reserve and nearby footpaths and road reserves) would not be affected, nor would the predominant 1-2 storey scale of the nearby buildings facing the foreshore reserve.

- *Encourage high quality, innovative design of buildings and spaces that:*
  - *respect the cultural values and architectural themes of St Kilda, and*
  - *integrate with and enhance the public realm by incorporating useable community space, ground level activity and maximising solar access.*
  - *Protect the water quality of Port Phillip Bay from adverse environmental impacts of new development through application of the City of Port Phillip Stormwater Management Plan.*

As previously assessed, there is very little scope to seek high quality, innovative design in the traditional understanding of this term. The two bars are modest in their presentation, completely contained within the complex, have no impact on nearby streetscapes and would not justify a design beyond what is proposed.

### 11.3 **CLAUSE 43 Heritage Overlay**

#### *Decision guidelines*

*Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate (and relevant to this particular proposal):*

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.*
- *Any applicable statement of significance, heritage study and any applicable conservation policy.*
- *Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.*
- *Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.*
- *Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.*



The bars would not negatively affect the heritage character of the overall complex or the immediate area. In particular, the two bars sit in areas that have contemporary architecture and architecture that facilitates commercial activities. The bars are of a very modest scale that do not project above or outside the existing building envelope.

The bars are in keeping with the character of the host building. Therefore, there would be no negative impacts on the appearance of the host building when viewed from any part of the public realm and nor would there be any negative impacts when viewed from within the complex. That is, the bar structures appear as very minor internal additions to existing licensed premises with a commercial character.

#### **11.4 Car and Bicycle Parking**

The proposal only involves buildings and works and does not involve any change to patron numbers or increase in floor area, therefore, there is no requirement for or assessment of car parking requirements.

### **12. COVENANTS**

**12.1** There is no restrictive covenant affecting the site.

### **13. OFFICER DIRECT OR INDIRECT INTEREST**

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

### **14. OPTIONS**

**14.1** Approve as recommended

**14.2** Approve with changed or additional conditions

**14.3** Refuse - on key issues

### **15. CONCLUSION**

**15.1** The proposal is to allow retrospective construction of two bars within licensed areas of the Sea Baths complex. The proposal does not involve any change of use as the sale and consumption of liquor and the use of the respective areas as eating and drinking areas are both already permitted and relevant liquor licences exist. There is also no change in the floor area of those uses and therefore, no change in car parking provisions.

**15.2** The only aspects assessed are those relating to the buildings and works.

**15.3** It is considered that the very modest size, height and scope of the buildings in the context of the entire Sea Baths complex is such that there are no planning concerns raised.

**15.4** It is therefore recommended that a permit be granted.

**PLANNING COMMITTEE  
28 FEBRUARY 2018**



<b>WARD:</b>	Lake
<b>TRIGGER FOR DETERMINATION BY COUNCIL:</b>	Development within the St. Kilda Sea Baths Complex
<b>APPLICATION NO:</b>	543/2017
<b>APPLICANT:</b>	Urbis P/L
<b>EXISTING USE:</b>	Sea Baths complex
<b>ABUTTING USES:</b>	Foreshore and residential
<b>ZONING:</b>	Special Use (schedule 1)
<b>OVERLAYS:</b>	HO 168
<b>STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL</b>	Expired

<b>TRIM FILE NO:</b>	<b>P0543/2017</b>
<b>ATTACHMENTS</b>	<ol style="list-style-type: none"><li>1. photo 1 of 6</li><li>2. photo 2 of 6</li><li>3. photo 3 of 6</li><li>4. photo 4 of 6</li><li>5. photo 5 of 6</li><li>6. photo 6 of 6</li><li>7. Building location plan</li><li>8. Submitted plans</li></ol>