



<b>8.5</b>	<b>54 ACLAND STREET, ST. KILDA</b>
<b>LOCATION/ADDRESS:</b>	<b>54 ACLAND STREET, ST. KILDA</b>
<b>RESPONSIBLE MANAGER:</b>	<b>GEORGE BORG, MANAGER CITY DEVELOPMENT</b>
<b>AUTHOR:</b>	<b>PHILLIP BEARD, PRINCIPAL PLANNER</b>
<b>TRIM FILE NO.:</b>	<b>PF16/704351</b>
<b>ATTACHMENTS:</b>	<b>1. Objector map and plan</b>
<b>WARD:</b>	Lake
<b>TRIGGER FOR DETERMINATION BY COUNCIL:</b>	Number of objections
<b>APPLICATION NO:</b>	551/1994/B
<b>APPLICANT:</b>	K. Cagaroska
<b>EXISTING USE:</b>	Restaurant/bar/dwellings
<b>ABUTTING USES:</b>	Residential and commercial (ground level)
<b>ZONING:</b>	General Residential
<b>OVERLAYS:</b>	Heritage Overlay 5, Design and Development Overlay 6-5
<b>STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL</b>	Expired

## **PROPOSAL**

To extend the 'red line' licensed area on the ground floor so as to include the internal toilet area, to increase patron numbers by 50 patrons (from 84 to 134) and for a waiver of car parking for the increased patron numbers.

### **I. EXECUTIVE SUMMARY**

- 1.1 The application proposes increases in patron numbers to the front terrace area and café/bar area immediately behind and an associated waiver of car parking. The respective increases would be 16 to 36 and from 68 to 98. Nineteen objections have been received together with 565 letters of support.
- 1.2 The key amenity issue is that of patron noise. Additional noise from within the premises could be controlled but noise from the front terrace is difficult to control.
- 1.3 It is concluded that the proposed increase in patron numbers is acceptable subject to conditions, which could be included on any permit issued, that would reach an appropriate balance between supporting the ongoing operation of the existing premises and managing noise impact to nearby dwellings.



**KEY ISSUES**

1. Patron/music noise
2. Car parking

**2. PROPOSAL**

- 2.1 It is proposed to increase the patron numbers in the front terrace area from 16 to 36 and from 68 to 98 in the internal café/bar area immediately behind, with an associated waiver of car parking. The total increase in patrons would be 50 patrons (to a total of 134 on site).
- 2.2 There are no buildings and works nor any changes to operating hours being proposed.
- 2.3 It is also proposed to extend the 'red line' licensed area on the ground floor so as to include the internal toilet area.

**3. SUBJECT SITE AND SURROUNDS**

- 3.1 The subject site is located on the north-east side of Acland Street approximately 70m from the intersection of Carlisle/Acland Streets and The Esplanade. It contains a three storey Victorian styled building directly fronting Acland Street. The front ground floor portion of the building has been used as a restaurant/bar for several decades. The remainder of the building behind and above is used for residential purposes.
- 3.2 The site forms the last building in a 'run' or small group of commercial buildings on the subject side of the street, but is one of only two such buildings to the north-west of Fawkner Street. The site is relatively long and narrow measuring approximately 13m x 33m and the subject building occupies the entire site. The site therefore has no on site car parking.
- 3.3 The existing layout comprises the restaurant/bar at ground level with habitable room windows of the dwellings above. The restaurant/bar has what is best described as an internal area (measuring approximately 420m<sup>2</sup>) and an external terrace. This terrace is located completely within the site's title and has an area of approximately 30m<sup>2</sup>. The rear of the ground floor is used for back-of-house purposes.
- 3.4 The front of the ground floor has two, large openable windows with the internal cafe/bar area located immediately behind. The central patron entrance is located between these windows beneath one of the balconies above and an entrance portico. The external terrace area is located either side of the entrance portico.
- 3.5 Immediately to the site's north-west is a 1970s two storey residential building known as 'Acland Apartments'. It interfaces with some windows (appearing to be bathrooms) across an open side setback on this neighbouring site which is approximately 2.5m wide. The subject building has some side windows (on the boundary) which face the neighbour's side setback. The majority of buildings further along to the north-west on the subject side of the street are used for residential purposes.
- 3.6 The building immediately to the south-east is a similarly styled three storey building. It



abuts the subject site with a wall on the boundary and is also used for residential purposes above two ground level licensed bar tenancies. It also has two front terrace areas either side of a mock-Grecian central entrance portico. Further to the south-east are the remainder of the run of well-established commercial buildings although some, including the building known as “The Face” (68 Acland) have residential uses above the commercial tenancies.

- 3.7 The site opposite comprises the open car park to the McDonalds restaurant, while those diagonally opposite in Acland Street mostly comprise residential uses (including the Easy-Stay apartments).
- 3.8 Land uses in nearby Fawkner and Clyde Streets are exclusively residential and are at moderate densities by way of relatively small lot sizes.
- 3.9 There is limited public parking adjacent to the site. It primarily relies on on-street parking.

**4. PERMIT TRIGGERS**

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

<i>Zone or Overlay</i>	<i>Why is a permit required?</i>
<i>Clause 52.27 Licensed Premises</i>	<i>A permit is required to use land for the sale and consumption of liquor where there is an increase in patron numbers and an increase in area where liquor is able to be consumed.</i>
<i>Clause 52.06 Car Parking</i>	<i>A permit is required to waive the customer/patron parking requirement of 0.4 spaces per patron.</i>

**5. PUBLIC NOTIFICATION/OBJECTIONS**

- 5.1 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 (131 notices sent) and directed that the applicant give notice of the proposal by posting one public notice on the site for a 14 day period, in accordance with Section 52 of the Planning and Environment Act 1987.
- 5.2 The application has received 19 objections and 565 letters of support at the time of writing this report. The key concerns raised are summarised below.

**Objectors:**

- Possible poor patron behaviour, greater patron noise impacts, including to approx. 1.00am as has previously been the case.
- Increased rubbish and a general decrease in the ‘quality’ of the area.
- Increased potential for disturbing music noise, including live music, and sleep disturbance.
- Increased ‘overspill’ of patrons onto the footpath.



- Insufficient car parking.
- Inaccurate plans with a suggestion that the proposed total number of patrons cannot be accommodated within the venue.

**Supporters:**

- The premises is iconic and the proposal will entrench it and add to the area's vibrancy.
- The premises has been transformed into a high standard establishment with little noise disturbance being created. The proposal will enhance the premises.
- There have been no noise disturbance issues and the premises is very well run. The proposal will have no adverse impacts.
- Council needs to give its support to live music venues.

These matters are assessed later in this report except as follows:

- Increased rubbish and general decrease in the 'quality' of the area:  
It is often difficult to establish whether a particular concern is being generated by or from a specific premises. However, it is considered that the security management plan required by recommended condition 1 could also require nearby footpaths to be cleaned of rubbish in proximity to the property on a regular basis as necessary.
- Inaccurate plans with regards to the premises' patron capacity.  
The plans are considered sufficiently accurate for the purposes of assessment and the proposed patron numbers would be able to be contained within the various areas.

- 5.3 A consultation was held on 2 February 2017, attended by the three Ward Councillors, Planning Officers, approximately 10 objectors and approximately 20 supporters. The key issue for the objectors was the adverse impact on residential amenity from noise generated by the existing operation. It was submitted that the premises already operates at the "proposed" patron numbers which was confirmed by the applicant.
- 5.4 The supporters spoke in favour of the manner in which the premises is operated, and some supporters who lived close to the premises, to the contrary, claimed never to have been affected by noise. The Council's Planning Compliance Officers have confirmed that the current operation of the premises has been satisfactory.
- 5.5 It has been suggested by the objectors, that both these areas have been used as is currently proposed (i.e. with the additional 50 patrons) for several years by previous management. In this respect the application may be, in effect, retrospective.
- 5.6 No matters were resolved, however the applicant did suggest that he would look at the possibility of providing an air-lock at the front door to prevent noise from music escaping.
- 5.7 It is considered that the objections do not raise any matters of significant social effect under Section 60 (1B) of the Planning Environment Act 1987.



## 6. PLANNING SCHEME PROVISIONS AND POLICY ASSESSMENT

6.1 The table within this clause designates Acland Street as a Major Activity Centre. It is arguable whether the subject tenancy forms part of that centre given that it has a residential zoning. If the zone boundaries are used to define the activity centre, then the site is not within it. However, if the existing nature of uses in this strip are considered, then it is part of the Centre. On balance, given that the use has been operating for so many years and it is immediately adjacent to commercially zoned land, it is considered appropriate to consider the tenancy as being part of the activity centre. Therefore, the following are relevant as intended outcomes:

- specialty retail goods/services,
- daily/weekly retail goods/services,
- regional entertainment/tourism (includes taverns/nightclubs),
- local entertainment (includes restaurants/cafes),
- increased residential use and
- focus for community services/facilities.

6.2 Relevant State Planning Policy Clauses are as follows:

Clause 11.01-2: This Clause seeks to encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres. The proposal would not be at odds with that Statewide strategy.

6.3 LPPF: Local Planning Policy Framework:

Clause 21.04-2 Activity Centres. Relevant objectives and strategies to achieve those objectives are as follows:

*1. To maintain and enhance a network of sustainable and viable activity centres.*

*1.1 Support land uses which contribute to Major and Neighbourhood Activity Centres being self-sufficient in the provision of daily and weekly retail goods and personal services to the local community.*

The proposal would not negatively affect the hierarchy of activity centres within Port Phillip and would not displace a convenience goods outlet as the use of the subject tenancy would not change. The proposal does not seek seating on the footpath nor does it propose any increase or alteration to operating hours.

*2. To reinforce the distinctiveness and diversity of individual activity centres across Port Phillip.*

*2.1 Ensure new uses support the future strategic role and function of each activity centre, as defined in Table 1.*

The proposal is not in conflict with these objectives.

*3. To support cultural tourism in the activity centres that reflects the role and function of individual centres whilst minimising adverse amenity impacts.*



*3.1 Support smaller scale local entertainment uses in the Major and Neighbourhood Activity Centres identified in Table 1, where they do not adversely affect residential amenity, or displace the provision of retail goods and services.*

The subject premises would continue to operate as a restaurant/bar and would use the same footprint. The only change would be the increase in patron numbers. As previously noted, there would be no displacement of local convenience retailing.

The matter of adverse amenity impacts can in this instance, only reasonably be related to the increase in patron numbers given that the use has been operating under its existing permits and liquor licences for over 20 years. That matter is assessed later in this section.

It is also considered that the proposal provides for local entertainment, possibly including live music and would continue to offer live music. The operators could claim that the viability of the premises as a whole (and therefore its ability to cater for live music) is potentially threatened unless patron numbers are increased.

Whether or not this tenancy chooses to offer – for example – live music is not something that should influence an assessment of an increase in patron numbers. The assessment can only consider whether the scale of the proposal would be appropriate (smaller scale local entertainment as noted in the earlier bullet points) and whether amenity impacts could be reasonably controlled.

#### 6.4 Amenity Impacts

It is relevant to note that existing conditions on the relevant planning permit provide controls for protecting residential amenity.

They include condition 1 which requires the “*occupier shall conduct the premises so as to ensure that any escape of noise from the premises does not disturb the peace and quiet of the neighbourhood*”, Condition 2 which requires compliance with State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).

#### 6.5 Music Noise

Music Noise is controlled by SEPP N-2 and it is best to continue to respond to any resident complaint regarding music noise by enforcement of the SEPP N-2 requirements.

#### 6.6 Patron Noise

Noise is the key issue and in this instance, the primary source of potential amenity impacts would result from patron noise.

The premises is currently permitted to operate from 9am to Midnight on Anzac day and Good Friday and from 9am to 1am the following day on any other day.

Ordinarily, it could be argued that any new licensed premises to be located close to residential interfaces should be controlled such that any potential amenity impacts are limited. However, in this instance, that argument is tempered by the fact that the premises has already been operating for a long time under existing permits and licences in a building which includes residential dwellings, and has existing amenity conditions that currently apply to the premises which could be enforced.

The amendment requires Council to consider whether the proposed increase in patron numbers is likely to cause an unacceptable increase in noise affecting residential amenity



beyond the ability of the existing conditions to manage this increase.

In some instances, the most common factor relating to patron noise is the spread of operating hours. Generally, the deeper into the night a premises operates, the greater its chances of creating noise impacts on residential amenity. This can flow from greater time for patrons to become influenced by alcohol combined with quieter background noise levels in the surrounding residential areas.

In this case, no change to operating hours is proposed with the current 1.00am closing time being maintained. Given the above, it could be argued that for that reason alone, there would be a relatively low likelihood of increase in patron noise.

Several objectors have commented that patrons often spill out onto the footpath and therefore, that the proposed new patron limits could not be accommodated on site and that patrons often create substantial disturbance beyond the permitted 1.00am.

Noise can then be further considered with regards to two separate operating areas, being patron noise from inside the premises and noise from the front terrace and from patrons leaving the site.

**6.7 Noise from internal area:**

It is considered that potential for increased patron noise exists by way of increasing from 68 to 98 patrons in the bar. It is considered that internal noise is the easiest to control in the interests of compliance with the conditions of the existing permit.

It would be problematic to estimate what internal patron noise increase there is likely to be or what controls could be put on such noise noting that the relevant State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2) does not control patron noise. It can only be presumed that an internal area with 68 patrons is likely to be somewhat less noisy than one with 98 patrons.

Even though the site has been operating for many years, this is not considered to be a minor increase and if approval is given, it is reasonable that any internal patron noise increases be reasonably controlled to protect the amenity of the residential interfaces.

Noise from the internal bar area can currently easily filter through the openable front windows and the front access door as there appear to be no specific acoustic measures currently in place. Conditions could be placed on any amended permit requiring a form of airlock on the front door and possibly requiring the front windows to close after a certain time. This latter measure could, however, have ventilation and air conditioning implications although the applicants have confirmed that the windows are always closed during music performances.

On balance, it is considered that the potential for internal patron noise impacts is real and likely, but can equally be controlled.

It is therefore recommended that:

- An airlock be constructed at the front door (internal to the premises rather than at the current front door's location, which would have heritage implications and need a separate planning permit) (refer recommended condition 2),



- The front windows be closed at 11pm each night and not re-opened until 9am the following day, the permitted opening time on the existing planning permit (Refer recommended condition 3).

**6.8 Noise from external terrace.**

With regards to external (terrace) noise, it is considered on the one hand that the proposal is less problematic given the terrace's existing operating hours to 1am would not increase and that the total numbers, whilst almost doubling, would still be relatively modest, but on the other hand, the terrace is completely open with very little ability to physically constrain any additional noise impacts.

It is not possible to specifically measure what noise increase would result from changing from 16 to 36 patrons. It can only be estimated. The physical context of the site should be considered, that is, its open nature and close residential interfaces. It is assumed that there would be some increase in patron noise. The question then is whether 36 patrons in that area would be excessive.

It is considered that two separate areas of 18 patrons each, whilst very close to each other, is not excessive and would not lead to significant or discernible increases in patron noise over and above that which occurs currently under existing permits and licences.

From the various submissions, it seems that the largest noise sources are the internal patrons coupled with music noise and patrons spilling onto the footpath. If it is accepted that patron noise from the larger number of people on the terrace would not be significant but that people on the footpath cause concern, it is recommended that the applicant be required to submit a Security Management Plan outlining methods that would use to encourage patrons leaving the premises not to congregate/socialise on the footpath or cause disturbance (refer recommended condition 1). This would apply to operations both during the permitted hours and after closing so that patrons are encouraged to move on from the site.

**6.9 Extension to red line area:**

To extend the 'red line' licensed area on the ground floor so as to include the internal toilet area. No detriment would be caused from this aspect of the proposal.

**6.10 Car Parking**

No car parking can be provided on site.

Whilst the additional patrons would theoretically generate the need for 20 car spaces (based on 0.4 spaces per additional patron), Council has long supported a centre-based approach to car parking. This recognises that existing businesses share custom collectively as a centre rather than individually.

It also recognises that in established commercial strips are not able to physically provide parking but any parking to be provided to premises should be provided collectively through Separate Rate Schemes or the like.

Further it is recognised that persons attending the site are most likely to have arrived and leave by taxi, public transport or be local residents, rather than rely on car based transport.



Council also supports alternative means of transport.

**7. OFFICER DIRECT OR INDIRECT INTEREST**

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

**8. OPTIONS**

- 8.1 Approve as recommended
- 8.2 Approve with changed or additional conditions
- 8.3 Refuse - on key issues

**9. CONCLUSION**

- 9.1 The proposal involves an overall increase in patron numbers from 84 to 134, (an additional 50 patrons). The site has very close residential interfaces but has been operating as a restaurant/bar with live music for over 20 years. The main issue raised by the proposal is the potential for increased patron noise.
- 9.2 On balance, it is considered that the existing permit conditions coupled with the recommended new conditions, would achieve an appropriate outcome.



## **10. RECOMMENDATION - Notice of Decision**

That the Responsible Authority, having caused the application to be advertised and noted the objections and submissions of support, is of the opinion that the proposed amendment to Planning Permit 551/1994 would not cause unreasonable detriment to any person.

It is recommended, in relation to Application No. 551/1994/B, that the Council issues a Notice of Decision to Amend a Planning Permit by way of new conditions and by way of endorsing amended plans allowing an increase in patron numbers and increase in red line area at 54 Acland Street, St. Kilda.

It is recommended that the Council approve the following amendments:

### **Plans**

Amend the endorsed plans to show:

- The 'red line' liquor licence area covering the front terrace, the bar/café area behind and the internal toilets.
- A maximum patron number for the front terrace of 36 and a maximum patron number of 98 for the internal area of the premises.
- An airlock within the front access way along with depicting noise suppression measures at the rear kitchen door.

### **New conditions:**

#### **I. Security Management Plan**

Within three months of the date of the issue of amended planning permit 551/1994/A, a Security 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:

- (i) An attendant or doorman responsible for monitoring the number of patrons on the premises after 11.00pm.
- (ii) The keeping of a register recording the number of patrons on the premises each hour between 11.00pm and closing time.
- (iii) The measures to be taken by management and staff to ensure patrons depart the premises and the surrounding area in an orderly manner and do not use the nearby footpaths at any time for congregating or socialising.
- (iv) 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.
- (v) The measures to be taken by management and staff to ensure that patrons do not cause nuisance or annoyance to persons beyond the land.
- (vi) Liaison with Victoria Police, the City of Port Phillip and local residents.
- (vii) A telephone number provided for residents to contact the premises and linked to the complaints register;
- (viii) The maintenance of a complaints register, which must, on reasonable request, be made available for inspection by the Responsible Authority.



- (ix) Staff being trained in the responsible service of alcohol.
- (x) Measures to be taken by staff to ensure that any rubbish from the premises, should it be located in nearby streets or footpaths, is removed as quickly as practical.

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

## **2. Amended plans**

Before the permitted patron number increase takes place, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans forming part of the application but modified to show the following provision of an internal airlock in the front access door (projecting no less than 1.5m into the premises from the existing front access door).

## **3. Closure of front windows.**

The front windows must be closed when live music is played on the premises, and between 11pm and 9am daily.

## **14. Time Limit**

This permit will expire if the increase in patron numbers and the increase in the area where liquor is able to be consumed is not acted upon within 2 years of the date of this amended permit.

**Renumber existing permit conditions 1 to 10 as 4 to 13.**

### **Replacement Conditions:**

## **8. Patron Numbers**

Without the further written consent of the Responsible Authority, no more than 36 patrons must occupy the front terrace and no more than 98 patrons must occupy the front café/bar area.