



6.2 **47 BLESSINGTON STREET, ST. KILDA**
LOCATION/ADDRESS: **47 BLESSINGTON STREET, ST. KILDA**
EXECUTIVE MEMBER: **LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT**
PREPARED BY: **PHILLIP BEARD, PRINCIPAL PLANNER**

1. PURPOSE

1.1 To consider and determine an application for an amendment to an existing permit granted for an on premises liquor licence (which allows the sale and consumption of liquor between 7am to midnight Mondays to Saturdays and 10am to midnight Sundays) by deleting Condition 16 that prohibits amplified music being played at the premises and replacing it with a condition allowing amplified and live music to be played between 7.30am and 10.30pm Monday to Thursday and between 4.30pm and 10.30pm Friday to Sunday.

2. EXECUTIVE SUMMARY

WARD:	Lake
TRIGGER FOR DETERMINATION BY COMMITTEE:	More than 15 objections.
APPLICATION NO:	847/2008/B
APPLICANT:	WJFA Architects
EXISTING USE:	Licensed Premises (Restaurant - with On Premises Liquor Licence)
ABUTTING USES:	Residential and commercial.
ZONING:	Commercial 1
OVERLAYS:	DDO 6-8
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired

2.1 The only buildings and works proposed is a rear airlock and acoustic fencing designed to constrain noise. The proposal does not involve a change of use or an increase in hours for the liquor licence.

2.2 The application is for an amendment to the planning permit issued in 2009, so as to allow amplified and live music within the already approved operating hours. The



amendment is proposed under Section 72 of the Act which allows for existing permits to be modified or amended.

- 2.3 The applicant's acoustic report concludes that:
- a) Noise 'breakout' could occur and would affect the two closest residential properties at 4 Mitford Street and 51 Blessington Street.
 - b) Either an airlock or an automatic door closing device should be installed at the rear exit from the building.
 - c) A noise limiter should be installed and
 - d) A live music noise management plan should be required.
- 2.4 Subject to these, it was concluded that noise could be adequately managed.
- 2.5 The application received 24 objections mostly relating to concerns about music and patron noise both at the front of the site and at the rear exit to the toilets and the abutting rear courtyard used as the smoking area. Those concerns also include reference to existing poor patron behaviour.
- 2.6 The site is in a commercial zone and the proposal does not seek to operate beyond its currently permitted hours. The latest that amplified and live music would be played is 10.30pm, which is accepted as being a relatively early time to cease live music for premises in a commercial area.
- 2.7 Following a consultation meeting with Ward Councillors, objectors, the Council Planner and the applicants, two key matters were established:
- Closing of the rear door as a noise control mechanism is not a practical solution to the noise issues and
 - Patron noise for persons near the toilets and in the rear smoking area (whether live music is permitted or not) were as much, if not more, of a problem than any live music noise at either the front or the rear of the building.
- 2.8 In response, the applicants have amended the plans to show the installation of an airlock. They have also offered to provide inward angled acoustic fences at the rear boundaries and to cease amplified live music at 7.30pm, with only acoustic live music after that time to 10.30pm.
- 2.9 On balance, it is considered that the application is supportable subject to conditions to manage noise being placed on any approval granted.



3. RECOMMENDATION

- 3.1 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 an Amended Permit.
- 3.2 That a Notice of Decision to Grant an Amended Permit be issued for deletion of Condition 16 and allowing construction of a rear acoustic air lock for the licensed premises at 47 Blessington Street, St. Kilda
- 3.3 That the decision be subject to the following
- 3.4 That the permit pre-amble be amended to read as follows
 - To develop and use the land for the purposes of on premises liquor licence and buildings and works **including a rear acoustic air lock and minor buildings and works at the rear of the site** generally in accordance with the endorsed plans and subject to the following conditions:
- 3.5 That the following existing conditions be re-worded/amended and renumbered as follows

Patron Numbers

~~3~~ A minimum of 37 chairs must be available to patrons of the licensed restaurant at all times

replaced with:

10 Without the written consent of the responsible authority, no more than 25 patrons must attend the licensed premises at any one time.

Time Limits

~~47~~ 23. This permit will expire if one of the following circumstances applies:

~~(a) The development is not started within 2 years of the date of this permit~~

replaced with:

(a) The **performance of live music associated with the serving and consumption of liquor** is not started within one year of the date of this permit.

~~(b) The development is not completed within 2 years from the date of commencement of the works~~

replaced with:



(b) The development is not started within 1 year of the date of this permit

AND

~~(c) The use is not commenced within 2 years.~~

replaced with:

(c) The development is not completed within 6 months of the date of commencement

3.6 That the following new conditions be included on the permit:

Amended Plans

1. Before the development starts and before any live/amplified music is performed at the site, 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 plans forming part of the application but modified to show:
 - a) A notation on the plans that the rearmost airlock door is to remain closed at all times that music is being performed,
 - b) A notation on the plans showing installation of an automatic door closer for the front door facing Blessington Street,
 - c) Acoustic details of the airlock and acoustic fencing
 - d) The acoustic fencing shown as a free standing structure,
 - e) Deletion of the word 'smoking' from the rear courtyard

SEPP N-1 and SEPP N-2:

2. Noise levels must not exceed the permissible noise levels stipulated in the State and Environment Protection Policy N-1 (Control of Noise from Industry, Commerce and Trade) and State and Environment Protection Policy N-2 (Control of Music Noise from Public Premises) at any time to the satisfaction of the responsible authority.

Noise Limiter:

3. Before any music which is audible outside the subject premises is played, a Noise Monitor and Limiter ("the Device") must be installed and maintained. The Device is to be set at a level by a qualified acoustic engineer, to ensure the music does not exceed the requirements of SEPP N-2 to the satisfaction of the responsible authority.

Noise Report confirming Noise Limiter Function:



4. Before any live or program music is played, a report prepared by a suitably qualified acoustic consultant (“Noise report”) must be submitted to and be to the satisfaction of the responsible authority. This Noise report must confirm that the Device is operating and that each and every one of the following requirements are complied with:
 - a) The Device limits internal and external noise levels so as to ensure compliance with music noise limits according to State and Environment Protection Policy N-2 (Control of Music Noise from Public Premises);
 - b) The Device must be a limiter suitable for interfacing with a Permanently Installed Sound System which includes any amplification equipment and loudspeakers and no other amplification or loudspeaker equipment is installed that does not interface with the Device;
 - c) The Device must be a frequency discriminating sound analyser in octave bands between 63Hz and 4kHz that includes a microphone incorporated in its own tamper-proof enclosure (beyond the normal reach of a person);
 - d) The Device controls must be in a locked case or the device must include a PIN code,
 - e) The Device is installed to control all amplification equipment and associated loudspeakers both internal and external on the Subject Land;
 - f) The Device is able to continue operating on battery or backup power when mains power is disconnected from the Device;
 - g) The Device is able to automatically store records of logged noise levels in 15-minute intervals;
 - h) The stored results can be provided to Council on request;
 - i) The Device must be re-calibrated as necessary to maintain SEPP N-2 compliance at all times, and when any changes are made to the Device sensor position or the venue changes operating conditions, if any buildings and works are undertaken, sound system configurations or anything else that may necessitate re-calibration of the Device (including maintenance and malfunction);
 - j) The report must be prepared by a suitably qualified acoustic engineer and must be provided with 10 days of the date of the installation of the device and must also include the following detail:
 - Noise reduction testing carried out between the venue and noise sensitive areas to confirm the Device noise level thresholds which correspond with SEPP N-2 compliance levels;



- The extent of works and installation of the Device and the exact location of the Device microphone sensor installed on the Subject Land;
- the noise level thresholds, in Octave Bands and/or dB(A), which the Device has been set
- measured Octave Band and dB(A) levels at the Device sensor using a sound level meter while the Device is limiting, which corresponds with the calibrated noise level thresholds set on the Device;
- measured Octave Band and dB(A) levels at another reference position with music playing, 1.5m above floor level inside the venue, which corresponds with the calibrated noise level thresholds set on the Device;
- measured Octave Band levels at relevant noise sensitive premises which correspond with the venue's internal and external noise levels
- measured Octave Band and/or dB(A) levels at Relevant Noise Sensitive Premises which correspond with SEPP N-2 compliance levels at all Noise Sensitive Premises;
- measured acoustic instruments on the Subject Land proposed during live music operations, their sound levels inside the premises and at Relevant Noise Sensitive Premises, and confirmation of compliance with SEPP N-2;
- the ambient background noise levels (including date and time) recorded at relevant noise sensitive premises not immediately subject to Barkly Street traffic, commercial or patron noise in the area and corresponding SEPP N-2 noise limits;
- the location of the Permanently Installed Sound System loudspeakers on the premises,
- the operating configuration in which the Device has been calibrated including whether access doors, windows and the like are required to be closed or can be open
- photographs of the Device and microphone location; and
- a printout of the Device monitoring records for the first seven (7) days of operation after installation.

Once to the satisfaction of the responsible authority, the report is to be submitted for approval and once endorsed, will form part of this Permit.

The device must comply with each and every requirement of this condition at any and all times that music is audible from outside the building.



The report must also indicate that only acoustic instruments which are not controlled by the device and are demonstrated to comply with SEPP N-2 shall be permitted during live music operations and further:

- (i) that no other temporary sound system is to be permitted to be brought onto the Subject Land which does not interface with the Device and
- (ii) that no other loudspeakers or amplification equipment are to be used on the premises which does not interface with the Device, including monitoring foldback and personal amplification.

Amplified Music through Sound System:

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

Patron Signs:

6. 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.

Music performance hours

7. Except to comply with condition 9, any amplified live music at the premises must only be played between 7.30am to 7.30pm Monday to Thursday and 4.30pm to 7.30pm Friday to Sunday and any acoustic live music at the premises must only be played between 7.30am to 10.30pm Monday to Thursday and 4.30pm to 10.30pm Friday to Sunday. The rearmost acoustic air lock door is to remain closed during the above times when any amplified live music is being played.

Noise and Amenity Action Plan

8. Before the playing/performance of live or amplified music allowed by this permit, a Noise and Amenity Action plan must be submitted which demonstrates how amenity impacts, including but not restricted to any adverse cumulative impacts associated with live/amplified music will be addressed to the satisfaction of the responsible authority. When satisfactory, such plan will be endorsed and will then form part of this permit and the contents of that report must be acted upon to the satisfaction of the responsible authority whenever live/amplified music is being played.

3.7 That the following existing conditions remain on the permit but be renumbered as follows:



Layout not altered

9. The development and/or use as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority

Hours of operation

11. The licensed restaurant premises may operate only between the hours of:
- a) Monday to Saturday – 7.00 a.m. – midnight
 - b) Sunday - 10.00 a.m. to midnight
 - c) Anzac Day and Good Friday - 12pm to midnight

Predominant activity food preparation

12. The predominant activity on the licensed restaurant premises must be the preparation and serving of meals for consumption on the licensed premises.

Liquor served with meals

13. Liquor may be served only with the provision of meals by the premises to seated patrons for the consumption of both on the subject premises.

No off premises liquor

14. No liquor is permitted to be sold for consumption away from the licensed premises.

Responsible Serving of Alcohol

15. The Permit Operator must require that the four employees of the premises engaged in the service of alcohol undertake a "Responsible Serving of Alcohol" course.

Waste Management

16. An adequate waste management arrangement must be provided for the premises, in accordance with Council's Community Amenity Local Law No.3.

Garbage Disposal

17. Provision must be made for the storage and disposal of garbage to the satisfaction of the Responsible Authority. All garbage areas must be screened from public view.

Disposal times

18. No disposal of bottles or drink containers may take place after 10.00 p.m. or before 8.00 a.m. on any day of the week, unless with the further consent of the Responsible Authority.



Bottle Crusher

19. A bottle crusher located within the premises must be used for the disposal of bottles and waste glass. Disposal of the crushed glass outside of the premises must not occur after 10.00 p.m. or before 10.00 a.m. on Sunday, except with further written consent of the Responsible Authority.

Bottle Bagging

20. Bottles must be bagged during operating times and must not be emptied into external refuse bins after 10pm or before 8am Monday to Saturday or after 10 pm or before 10am on Sunday, except with further written consent of the Responsible Authority.

Amenity Impacts

21. The amenity of the area must not be detrimentally affected by the sale and consumption of liquor through the:
 - a) Transport of materials, goods or commodities to or from the land.
 - b) Appearance of any building, works or materials;
 - c) Emissions of noise, artificial light, vibration, smell, fumes, smoke, steam, soot, ash, dust, waste water, waste products, grit or oil;
 - d) Presence of vermin;
 - e) Change to television and/or radio reception;
 - f) In any other way.

Rear Courtyard Use

22. The use of the covered courtyard at the rear of the site (south) shall be limited to a store area and must not be used for the serving of food or alcohol.

External Lighting

23. All lighting of external areas must be suitably baffled so as not to cause nuisance or annoyance to nearby residential properties.

Permit Notes

- This permit does not authorise the commencement of any building construction works. Before any such development may commence, the applicant must apply for and obtain appropriate building approval.



3.8 That existing condition 16 be deleted from the permit.

4. RELEVANT BACKGROUND

- 4.1 Permit 1165/2004 was issued in late 2004 and allowed a reduction in car parking provision in relation to a (as-of-right) 37 seat restaurant which operated between 9am to 11pm Monday to Sunday.
- 4.2 Permit 847/2008 was issued in January 2009 and allows the sale and consumption of liquor (an on-premises liquor licence) operating between 7am to midnight Monday to Saturday and 10am to midnight on Sundays. It stipulates a maximum of 37 chairs for patrons and the endorsed plans show 37 seats consistent with Planning Permit 1165/2004.
- 4.3 The first application for an amendment to Application 847/2008 (847/2008/A) lapsed and was never finalised.
- 4.4 Whilst the current planning permit allows the sale and consumption of liquor in the restaurant under an on-premises liquor licence, the most recent licence issued by Victorian Commission for Gaming and Liquor Regulation (VCGLR) relevant to the site (No. 32294859) is for a 'Restaurant and Café' licence. The hours of that licence allows trading to midnight, seven days a week which is inconsistent with the planning permit. Further, the licence stipulates a maximum of 25 patrons (rather than 37) and appears to allow amplified background music whilst Condition 16 of Planning Permit 847/2008 allows no amplified music.
- 4.5 The VCGLR has advised that an on-premises licence was originally issued in 2010, but was converted by VCGLR to a restaurant/café licence in 2012 as part of a process at that time to rationalise licences across Melbourne to fit new liquor licence categories. That change was made by VCGLR independently of any planning approval.
- 4.6 The liquor licence as converted by VCGLR does not align with the relevant Planning Permit 847/2008 and thus the operator has inconsistent controls but must comply with each. Nevertheless, the site has validly operated under the permit and liquor licence.
- 4.7 The applicant's supporting documents indicate that should this planning application be successful; the applicant would apply for an on-premises licence which accords with Planning Permit 847/2008 as amended.

5. PROPOSAL

- 5.1 The current use operates pursuant to Planning Permit 847/2008 which does not allow the playing of amplified music. The application seeks to amend the permit to allow the playing of amplified and live music.



- 5.2 Using Section 72 of the Act, it is proposed to replace Condition 16 - which prohibits any amplified music being played at the premises - with a new condition allowing amplified and live music to be played between 7.30am to 10.30pm Monday to Thursday and 4.30pm to 10.30pm Friday to Sunday.
- 5.3 The application does not propose to extend or increase operating hours.
- 5.4 The existing permit specifies a maximum of 37 chairs for patrons and the plans submitted with the current application show 15 seats partly arranged around the perimeter of the premises and partly at small tables and chairs.
- 5.5 The application as assessed has been formally amended to include a rear airlock around the rear exit and accessway to the toilet and courtyard. This aspect has not been the subject of formal re-advertising as it is aimed directly at addressing objector concerns and its associated buildings and works would not be detrimental or visible to the abutting ground level neighbours.
- 5.6 The airlock would enclose the portion of the rear courtyard immediately adjacent to the toilet area. Acoustic roofing would be applied to some open existing framing (2.7m high) and a further section of vertical open frame would be acoustically clad, again 2.7m high, together with a door being installed in that new section of ground level wall.
- 5.7 An adjacent and right-angle section of boundary fence shared with the abutting commercial tenancy (pizza restaurant at No. 45) would also be acoustically clad.
- 5.8 The acoustic air lock would measure 1.3m x 2m and would be 2.7m high.
- 5.9 It is acknowledged by the applicant that any approval would also be subject to a requirement to the install a noise limiter.
- 5.10 The rear of the site comprising the store, bin, toilet and smoking area is not included in the site's licensed area.

6. SUBJECT SITE AND SURROUNDS

Site area	Approx. 50m ² .
Existing site conditions.	<p>The site forms part of a group of eight commercial tenancies fronting Blessington Street. The individual tenancy for this application is approximately 20m north-east of the intersection of Blessington and Barkly Streets. Its frontage is just over 3.5m and its depth is just over 13.7m. All the tenancies are attached and form a single building. Each tenancy is single storey and occupies approximately 85% of each site.</p> <p>The front section of the site is built side boundary to side boundary whilst there is a small open service area at the</p>



	<p>rear currently comprising some open-frame style walls or dividers between a concrete apron immediately adjacent to the toilet and the rear yard.</p> <p>The toilet to which patrons have access is immediately behind the kitchen and accessed from the existing rear door. Behind this area is a very small, open roofed yard used partly for back-of-house and also as a patron smoking area.</p> <p>The subject tenancy operates as a licensed restaurant trading between 7am to midnight Monday to Saturday and 10am to midnight Sundays.</p>
<p>Site Surrounds</p>	<p>The sites immediately to the south-west and north-east are similar to the subject site and are used for commercial purposes.</p> <p>The subject site also has residential interfaces. To the south-east is No. 4 Mitford Street which comprises a single-storey dwelling. The rearmost portion of its north-west wall and a small portion of its rear yard abut the subject site.</p> <p>Almost directly east of the rear of the subject site is No. 51 Blessington Street. This comprises a substantial two-storey block of flats. It has several habitable room windows, including bedrooms, facing the rear of the subject site at a distance of approximately 5m to 6m at their closest, including some looking diagonally down onto the rear courtyard.</p> <p>Directly opposite the front of the subject site is the commercial building at No. 214 Barkly Street (7/11 tenancy) whilst diagonally opposite the front of the site at 26-28 Blessington Street is a two-storey block of flats. This is at a distance of approximately 30m from the subject site.</p>

7. PERMIT TRIGGERS

- 7.1 A permit is required to amend a permit preamble or any condition of a permit. In this instance, it is proposed to replace Condition 16 of the permit under the provisions of Section 72 of the Act.
- 7.2 No change of use is proposed, noting that ‘restaurant’ and ‘tavern’ – nested under ‘retail premises’ in the planning scheme - are both as-of-right uses in the zone.
- 7.3 The rear air-lock represents minor buildings or works but triggers the provisions of the Commercial 1 zone and Design and Development Overlay.



- 7.4 Clause 52.27 (Licensed Premises) is triggered as it is proposed to change an existing Liquor Licence.

8. PLANNING SCHEME PROVISIONS

8.1 State Planning Policy Framework (SPPF)

The following sections of the SPPF are considered relevant:

- Clauses 17 (Economic Development) and 17.03-2 (Tourism in Metropolitan Melbourne)

8.2 Local Planning Policy Framework (LPPF)

The following sections of the LPPF are considered relevant:

- Clause 21.04-2 Activity Centres
- Clause 21.04-6 Tourism and the Arts
- Clause 21.06-6 Neighbourhoods (St. Kilda)

8.3 Other Relevant Clauses

- Clause 34.01 Commercial 1 zone
- Clause 53.06 Live Music and Entertainment Noise

8.4 Relevant Planning Scheme Amendments:

There are no recently gazette or proposed amendments that would directly affect assessment of this proposal.

9. REFERRALS

9.1 External referrals

None Were Required

9.2 Internal referrals.

Council's Planning Compliance Team has been consulted and advised that the applicant's acoustic report had been assessed by Council's independent Acoustic Engineer, who had provided suggested conditions to be included in any permit granted. These, where practical, are included in the recommendation.

10. PUBLIC NOTIFICATION/OBJECTIONS

- 10.1 The proposal was advertised by way of Council giving notice by ordinary mail to the owners and occupiers of surrounding properties (247 notices sent) and by placing one public notice on site for a minimum 14 day period, in accordance with s.52 of the *Planning and Environment Act 1987*.



10.2 There have been 24 objections received with the concerns raised summarised as follows:

- Excessive and increased noise impacts, including from the rear yard.
- Inadequate acknowledgment of the site's residential location and its constraints.
- Potential increase in poor patron behaviour at and beyond the site.

10.3 A consultation meeting took place on 19 July 2018 and was attended by the Ward Councillors, Council planner, applicants, six objectors and three supporters. The applicants indicated a preparedness to address the key concerns raised.

10.4 Undertakings were offered by the applicant and were shared with the objectors following the consultation meeting. The undertakings include the following:

- a) Provision of an airlock to the rear door of the venue.
- b) An automatic door closer to the front access door in addition to the one on the rear door as recommended in the applicant's acoustic report
- c) Acoustic fencing of the rear yard incorporating inward angled upper sections.
- d) An additional condition that would require any of the amplified performances to finish by 7.30pm with only acoustic acts after that time finishing at 10.30pm.

10.4.1 All of these undertakings are either shown on the formally amended plans or can be addressed by permit condition on any approval granted (refer Conditions 1 and 7). Recommended conditions 1(b) and (c) would require the details of the acoustic measures incorporated into the airlock and fencing.

10.5 The undertakings were circulated to all objectors but no additional comment was received.

10.6 The application has also received 143 letters of support, many from people not from the local area but likely to be patrons of the venue. They were largely based on the need to provide venues for local music performance and consequently, to support local performers and the music industry. It was also commented that the proposal would have limited amenity impacts due to its small size (patron numbers) and relatively restricted operating hours.

10.7 It is considered that the objections do not raise any matters of significant social effect under Section 60 (1B) of the Planning and Environment Act 1987.

11. OFFICER'S ASSESSMENT

11.1 Key Issues:

11.1.1 The key issue is the potential impact of music noise on the amenity of neighbouring properties and whether the proposed amendments to the permit conditions are likely to lead to new or increased detriment compared to the



current operation at the site. Only the likely outcomes of the amendments (the requested changes, that is, to allow the playing of amplified live or recorded music within the tenancy) can be assessed.

11.1.2 Interfaces with the subject site have not changed with commercial located to the sides and sensitive residential interfaces located to the rear of the site.

11.1.3 All the sensitivities that existed at the time the original permit was issued still exist. However, as live music at the premises was not anticipated at the time of the original permit, the merits of allowing live music was not considered at that time, and needs to be now considered in the context of the current application.

11.2 Local Planning Policy

Clause 21.04-2 Activity Centres

11.2.1 This clause includes the site as part of the Acland Street Major Activity Centre and includes the following relevant objectives:

1. *To maintain and enhance a network of sustainable and viable activity centres.*
2. *To reinforce the distinctiveness and diversity of individual activity centres across Port Phillip.*
3. *To support cultural tourism in the activity centres that reflects the role and function of individual centres whilst minimising adverse amenity impacts.*
4. *N/A*
5. *To ensure new uses in activity centres do not adversely affect the amenity of adjacent residential areas.*
6. *To ensure the location of community services and facilities are equitable and accessible, and meet community needs.*

11.2.2 No new use is being sought, but the nature of the existing use would change and thus residential amenity must be considered

11.2.3 It is considered that the proposal would otherwise align with the objectives above. The viability of the centre and its diversity could be enhanced by the provision of a live music venue. It is acknowledged that this could be achieved through live music performances and not necessarily amplified music but it is amplified music which is sought.

11.2.4 Clause 21.04-6 Tourism and the Arts

Relevant Objectives:

1. *To promote Port Phillip as a premier tourist destination.*
2. It is considered that these objectives would be strongly aligned with and achieved. Whilst very small in scope, the proposal would nonetheless facilitate the performance of live music which would enhance the tourist appeal of the centre



3. *To minimise the impact of tourism and entertainment uses*

- 11.2.5 This matter forms the crux of the assessment of this proposal and issues relating to amenity protection are assessed further below, but in summary, it is considered that the proposal would achieve an appropriate balance between this premises' request and nearby amenity protection subject to all the recommended conditions.
- 11.2.6 In particular, strategy 3.4 under this objective requires premises that would operate beyond 10pm (10.30pm proposed in this instance) to prepare and have endorsed an Noise and Amenity Action Plan that would outline how local amenity impacts would be prevented and if/where necessary, addressed. Recommended condition 8 requires preparation of such a plan. Even though, as recommended by condition 7, only acoustic music would be played in the half hour after 10pm – a plan is required due to the very close residential interfaces.
- 11.2.7 Clause 21.06-6 Neighbourhoods (St. Kilda)
Acland Street retail strip
- 6.6.16 *Support the role of Acland Street Major Activity Centre as an entertainment, tourist, and specialty retail precinct, whilst preventing the cumulative impacts of such uses on amenity and community safety.*
- 6.6.17 ...N/A
- 6.6.18 *Support the important role of Acland Street as a location for cosmopolitan food outlets that enhances the centre's tourist appeal.*

Neither of these strategies and objectives would be conflicted with.

The proposal would not involve a change of use.

Clause 34.01: Commercial 1 zone (Specifically Clause 34.01-2) Use of Land.

A use must not detrimentally affect the amenity of the neighbourhood, including through the: Transport of materials, goods or commodities to or from the land. Appearance of any building, works or materials. Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

The proposal does not involve any change of use or any new use that would alter the way the premises operates in the context of the above matters.

11.3 Noise controls:

- 11.3.1 The key issue in this application is whether or not permitting amplified music is likely to lead to or increase unreasonable amenity impacts to the closest residential properties. This single issue should be considered in the following sub-categories:
- Patron noise (from front and from rear)



- Music noise (from front and from rear)
 - Patron behaviour off site (congregating at the front of the site)
- 11.3.2 The most relevant Clause of the planning scheme for consideration of potential impact on noise is the following:
- Clause 53.06 Live Music and Entertainment Noise
- 11.3.3 Requirements to be met
- a) *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.*
 - b) *A noise sensitive residential use must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any:*
 - c) *- indoor live music entertainment venue to below the noise limits specified in State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N2).*
 - d) *- outdoor live music entertainment venue to below 45dB(A), assessed as an Leq over 15 minutes.*
 - e) *For the purpose of assessing whether the above noise standards are met, the noise measurement point may be located inside a habitable room of a noise sensitive residential use with windows and doors closed (Schedule B1 of SEPP N2 does not apply).*
 - f) *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.*

11.4 Patron noise

Rear Courtyard:

- 11.4.1 The rear courtyard/smoking area/toilet access is the most sensitive area of the site in relation to potential impact of noise on a residential interface. Objectors put to the consultation meeting that patron noise in that area was the greatest cause of concern regarding noise. The very close proximity of the bedroom windows at No. 51 Blessington Street, especially those above ground level, is particularly noted.
- 11.4.2 The rear courtyard is very small and whilst this limits the number of patrons that can occupy the rear yard to ten or so people at a time, it directly abuts residential properties. Discussion at the consultation meeting indicated that the rear courtyard is currently a source of some noise disturbance. That is, the existing noise source is patron noise rather than music noise.



- 11.4.3 The rear courtyard contains the one and only toilet at the site. Anecdotally, people waiting to use it coupled with smokers entering/leaving the courtyard leads to times when by necessity, the rear door remains open for relatively extended periods. That is, it would appear that an automatic rear door closer (as suggested by the applicant's acoustic engineer) to contain noise within the premises would not be effective due to the frequency of use, notwithstanding the small number of patrons (25) permitted in the premises.
- 11.4.4 The applicant has offered to:
- Install an airlock and
 - Add acoustic boundary fencing with inward-angled upper sections.
- 11.4.5 The applicant has submitted formal amending plans to show the proposed airlock and the acoustic fencing and it now forms part of the application. It is considered that these measures could reasonable resolve the concerns. It is, however, further recommended by condition 1 (d) that the acoustic fencing be a free standing structure separate from the existing fence. This would enable it to be erected without the provision of the Fencing Act coming into play.
- 11.4.6 Further, the requirement for the installation of a noise limiter and the requirement that amplified music be performed no later than 7.30pm with only acoustic live music played between that time and 10.30pm would further control music noise emissions from the premises. (Refer recommended conditions 3 and 7).

Front footpath:

- 11.4.7 The front of the site is much less sensitive than the rear, but nonetheless, residential interfaces exist in Blessington Street, with the front wall of No. 51 being only approximately 10m from the front of the subject premises. However, any new control on patron noise at the front of the site would need to have a clear nexus to the matter being applied for an assessed, being the playing of live and amplified music.
- 11.4.8 It is considered that establishing such a link is far more difficult at the front of the site compared to at the rear. This is principally because the front of the site is part of an active commercial strip and because the front of the site provides for public access to the premises and footpath dining area.
- 11.4.9 Patron noise at the front of the site currently exists. The premises currently operates until midnight, seven days a week. This is considered commensurate with its location in a commercial strip. Patron noise at the front would therefore continue to be present whether or not amplified or live music is permitted.



11.4.10 Nevertheless, it is considered that the applicant's offer to install an automatic door closer at the front could be helpful and should be accepted (refer recommended condition 1 (b)).

11.5 Music noise

Rear courtyard:

11.5.1 An offer of free-standing inward angled acoustic fencing and an acoustic rear air lock has been made. Further it is recommended that there be a requirement that the rearmost airlock door be kept closed during music performances. Any smoking during those times would have to occur at the front of the site. (Refer recommended Conditions 1 (a) and 7).

11.5.2 Also, post-consultation, the applicants offered to restrict acoustic live music to no later than 10.30pm and amplified live music to no later than 7.30pm. (Refer recommended condition 7).

11.5.3 Together these measures are considered adequate to control noise disturbance at the rear:

- a) The installation of a properly calibrated and tested noise limiter,
- b) Requiring amplified live music to cease no later than 7.30pm and requiring acoustic live music to cease no later than 10.30pm,
- c) Requiring the premises to meet with SEPP N2 (refer recommended Condition 2),
- d) A maximum of only 25 patrons are permitted at the site at any one time,
- e) The installation of rear acoustic fencing with inward angled upper sections,
- f) The installation of a rear airlock with its rearmost door remaining closed when music is being performed

Noise from amplified music at front:

11.5.4 It is considered that music noise emanating from the front is likely to be less problematic than at the rear due to the less sensitive interface, but nonetheless, it remains a matter that would need to be appropriately controlled in this instance. It is considered that the measures outlined above coupled with the installation of a front door closer would adequately control music noise.

11.6 Patron behaviour off site (congregating at the front of the site).



- 11.6.1 It is generally accepted that the operators of licensed premises have some responsibility to appropriately manage patrons that are gathering immediately outside their premises or who have left the premises but are still in close proximity. It is sometimes difficult to establish which particular premises patrons have left.
- 11.6.2 If they are congregating immediately at the front of a licensed premises and it is clear that they relate to that establishment, then a planning permit's ability to control poor behaviour is easier.
- 11.6.3 Even so, as with potentially controlling patron noise at the rear of the site, a nexus needs to be established between any poor behaviour off site at the front (the footpath trading area) and what is specifically being applied for (permission to play amplified and live music). That is, a nexus would need to be established between any increased or more frequent poor patron behaviour on the footpath and the ability to play amplified/live music no later than 7.30pm and 10.30pm respectively.
- 11.6.4 It is not considered that any such link could be made. It is not considered that the introduction of amplified and live music is likely to lead to new, increased or different patron behaviour on the footpath at the front of the site.
- 11.6.5 It is therefore not considered necessary or reasonable to impose new and altered conditions relating specifically to addressing poor patron behaviour on the footpath at the front of the site.

12. COVENANTS

- 12.1 There are no restrictive covenants affecting this proposal.

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 This application has been the subject of consultation and discussions with the applicant to achieve a balanced outcome that would allow for live and amplified music whilst protecting residential amenity. In short, it is considered that the rear acoustic air lock



and inward angled acoustic fencing coupled with a properly calibrated noise limiter and what are considered to be quite restrictive operating hours (for music performances) and a suite of amenity conditions would adequately control any impact from the playing of live music.

- 15.2 Based on the officer assessment, it is considered appropriate that a Notice of Decision to grant an amended Planning permit be issued subject to conditions.

<insert text>

TRIM FILE NO: P0847/2008
ATTACHMENTS

1. Section 57a Plans
2. Objector map