

**Report to the Future Melbourne (Planning) Committee**

Agenda item 6.5

**Planning Permit Application: TP-2015-570  
121-131 Collins Street, Melbourne**

5 July 2016

**Presenter:** Jane Birmingham, Practice Leader Statutory Planning

**Purpose and background**

1. The purpose of this report is to advise the Future Melbourne Committee of a planning permit application at 121-131 Collins Street, Melbourne (refer Attachment 2 – Locality Plan). The application seeks approval for part demolition and construction of additions to the existing building and use of part of the building for a nightclub (live music venue) and an associated reduction of bicycle parking and the construction and display of business identification and promotional signs.
2. The applicant is Simon Evans of the Marriner Group and the architect is Brolly Studios.
3. The application was formally advertised in July 2015 and received one objection, from Grand Hotel Management P/L (the Grand Hyatt), the owner of the subject site. This objection was withdrawn on 19 May 2016.
4. The application was presented to Internal Delegation Panel (IDP) on 15 June 2016 with a recommendation for approval subject to conditions. The IDP minutes identify that the application proposes trading until 3am, therefore the matter is being presented at a Future Melbourne Committee meeting.

**Key issues**

5. The key issues to consider are amenity issues associated with the nightclub use, consistency with Clause 22.22 of the Melbourne Planning Scheme (Policy for Licensed Premises that Require a Planning Permit), built form, and appropriateness of signage. The application has been assessed against Melbourne Planning Scheme provisions including Clause 22.22, Design and Development Overlay Schedule 10 (Built Form Controls) and Clause 22.07 (Advertising Signs).
6. The proposed nightclub use, operating until 3 am is considered appropriate in this location, having regard to factors including the following: the established good 'track record' of the management of the Bennetts Lane Jazz Club, which will manage the proposed nightclub; the fact that adjoining land uses are non-residential, the provision of an on-site (non-licensed) area for smokers; a favourable acoustic report and modest patron numbers. The attached delegate's report refers to the development being staged, which was likely to have resulted in the nightclub use commencing prior to construction of the smoking area. The applicant has since advised that works are no longer proposed to be staged. Therefore, the smoking area will be available from the time the nightclub commences operation. In light of this, some changes to conditions, as set out in the delegate's report, are required.
7. The built form will sit comfortably against the background of the Grand Hyatt Hotel and will turn a currently unattractive 'back of house' into an attractive, friendly and active frontage to Flinders Lane. The proposed signage is appropriate to the site context and is generally consistent with relevant provisions of the Melbourne Planning Scheme.
8. Recommended conditions are intended primarily to ensure that potential amenity impacts are minimised.

**Recommendation from management**

9. That the Future Melbourne Committee resolves to issue a Planning Permit to planning application TP-2015-570, subject to conditions included in the delegate's report, other than condition 1e) and the final dot point under condition 16 (Attachment 4).

**Attachments:**

1. Supporting Attachment (page 2 of 28)
2. Locality Plan (page 3 of 28)
3. Selected plans (page 4 of 28)
4. Delegate Report (page 9 of 28)

## Supporting Attachment

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### Legal

1. Division 1 of Part 4 of the *Planning and Environment Act 1987* (Act) sets out the requirements in relation to applications for permits pursuant to the relevant planning scheme.
2. As the only objection received has been withdrawn, a permit may be issued.

### Finance

3. There are no direct financial issues arising from the recommendations contained in this report.

### Conflict of interest

4. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

### Stakeholder consultation

5. Formal notification of the application was carried out in July 2015 by notices to the owners and occupiers of adjoining land and by posting a notice on the site.

### Relation to Council policy

6. Relevant Council policies are discussed in the attached delegate report (refer Attachment 4).

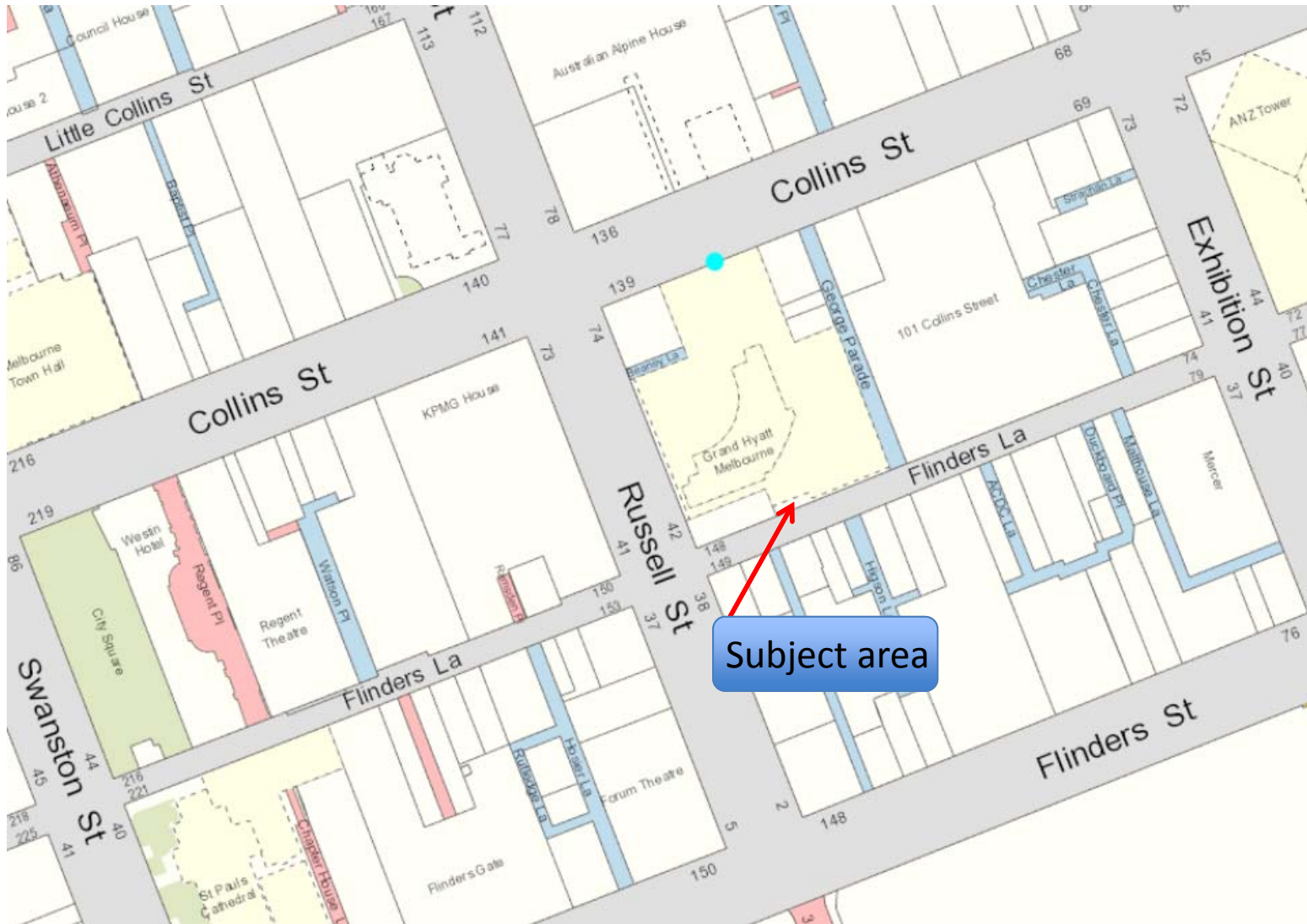
### Environmental sustainability

7. An Environmentally Sustainable Design (ESD) statement has not been provided as Clause 22.19 of the Melbourne Planning Scheme (Energy, Water and Waste Efficiency) does not apply to an application for a place of assembly, which includes a nightclub. A Waste Management Plan has been provided.

# Locality Plan

Attachment 2  
Agenda item 6.5  
Future Melbourne Committee  
5 July 2016

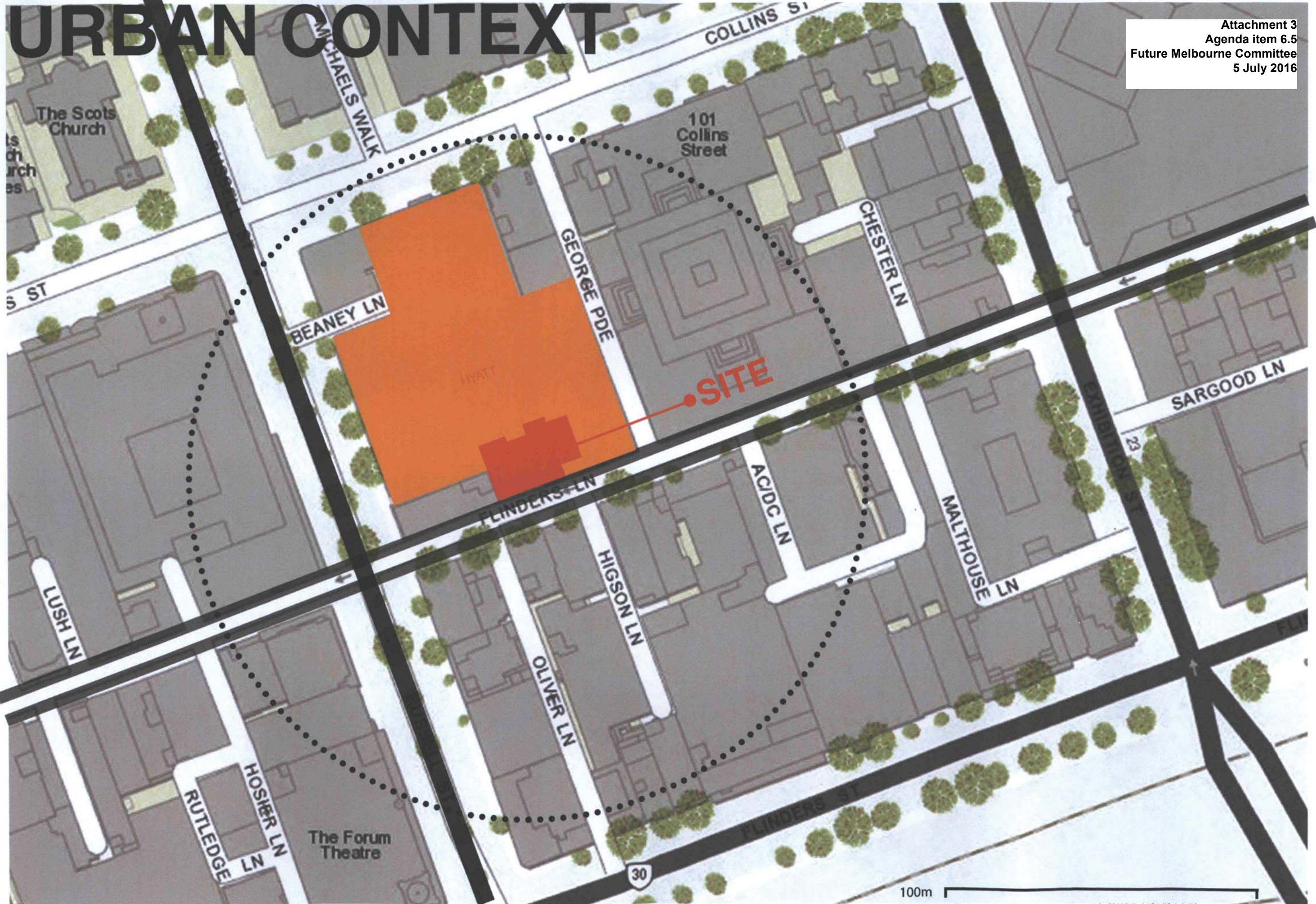
## 121 – 131 Collins Street, Melbourne





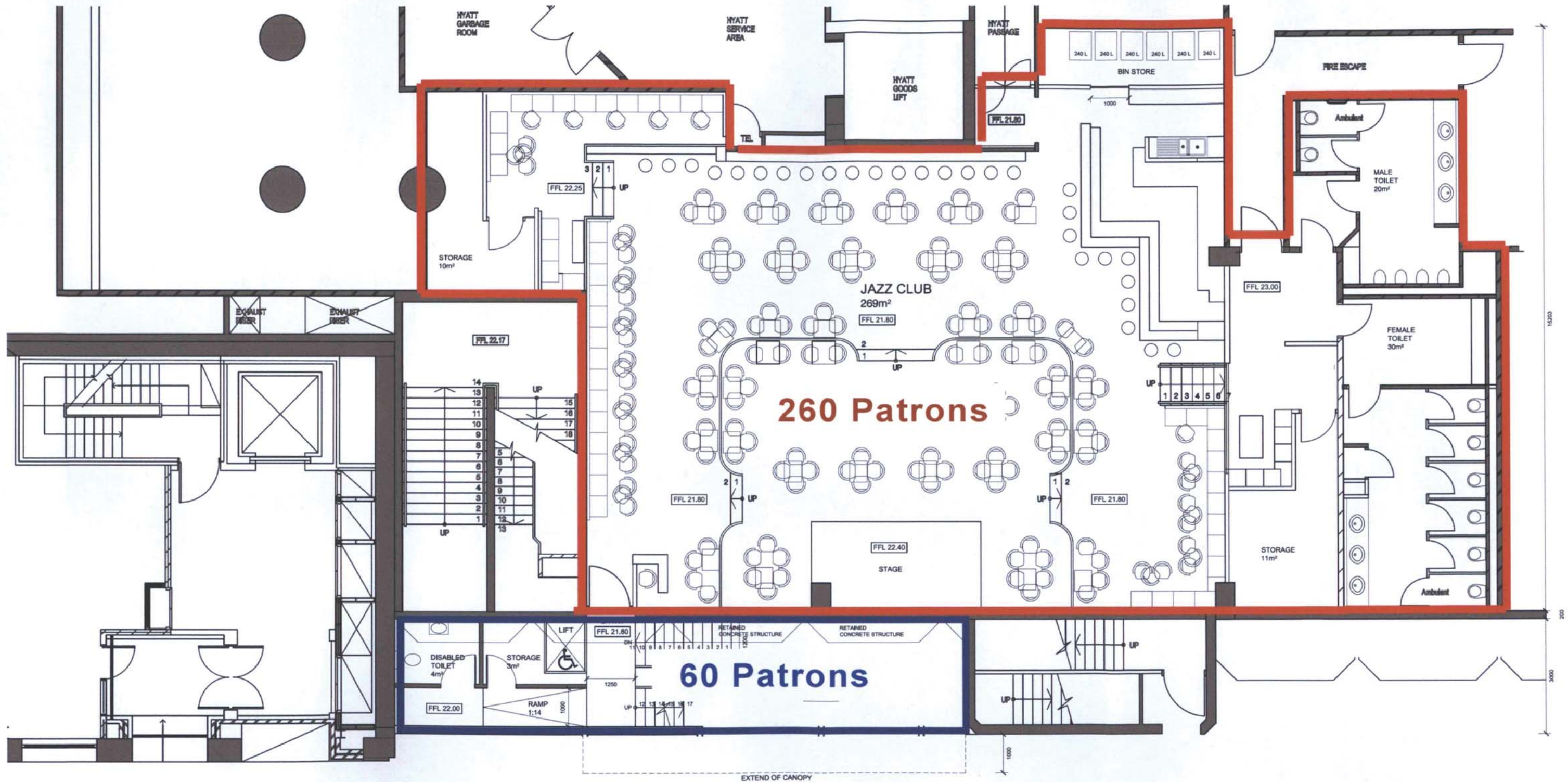
# URBAN CONTEXT

Attachment 3  
Agenda item 6.5  
Future Melbourne Committee  
5 July 2016

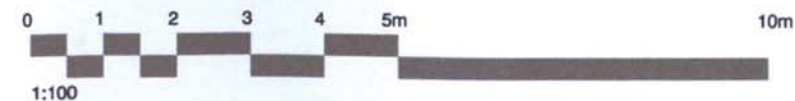




# LIQUOR LICENCE BENNETTS JAZZ CLUB



**Liquor Licensed**  
**Not Licensed**



PLAN LEVEL 01

**CLIENT**  
**MARRINER GROUP**  
PROJECT MANAGER  
SIMON EVANS  
163 Spring Street,  
Melbourne, 3000  
T (03 9299 9963

**PROJECT**  
**BENNETTS JAZZ CLUB**  
Flinderslane,  
Melbourne, 3000

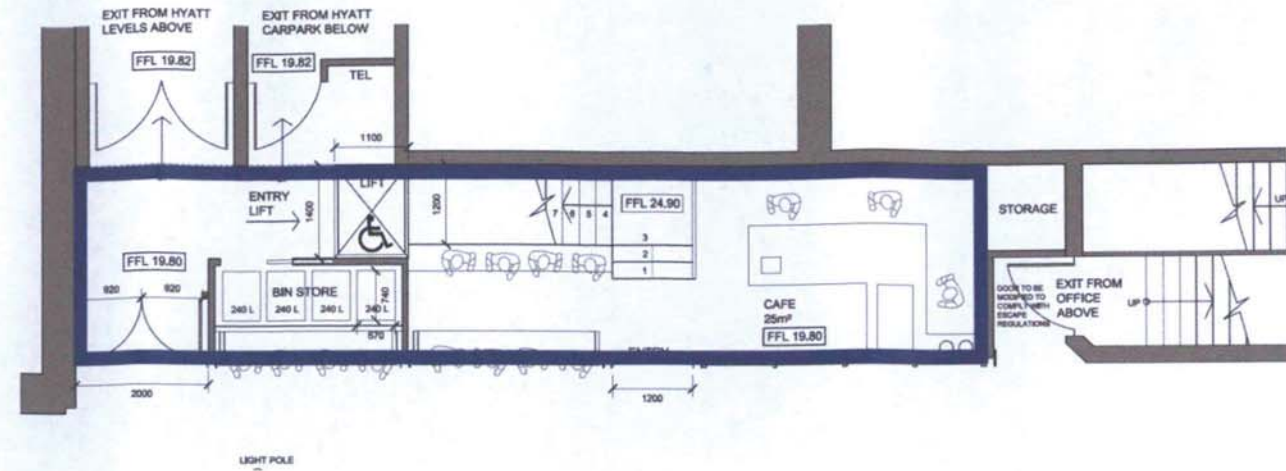
**ISSUED FOR TOWN PLANNING**  
**DRAWING TP 101**  
**SCALE 1:100 @A3**  
**REVISION 3**  
**DATE 25.06.2015**

**Brolly Studios**  
Architecture+Design  
141 La Trobe Street, Melbourne VIC  
Australia 3000  
T 0412 063 570  
info@brollystudios.com  
www.brollystudios.com

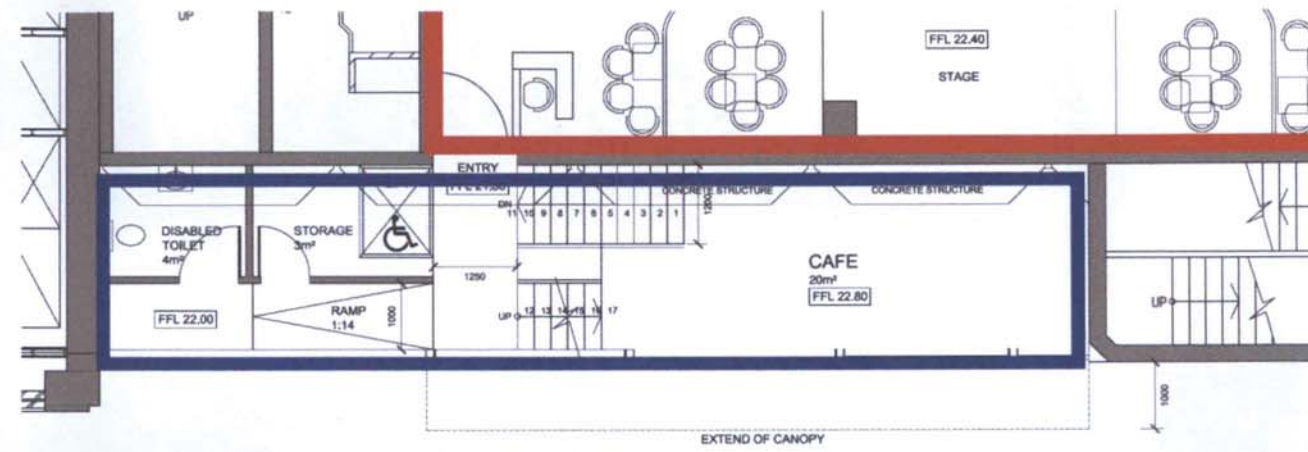


# LIQUOR LICENCE CAFE

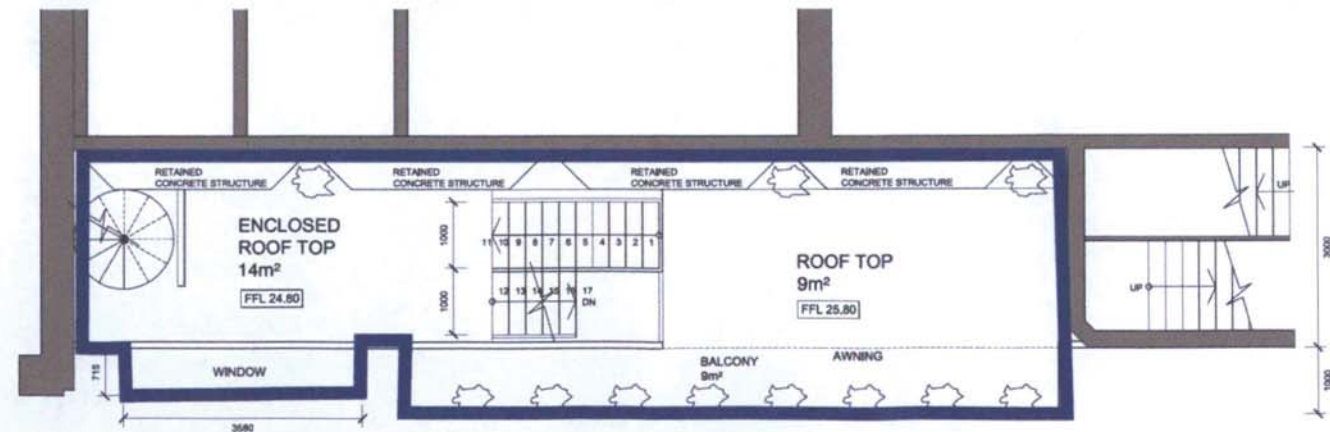
GROUND FLOOR



FIRST FLOOR



SECOND FLOOR



- Liquor Licensed
- Not Licensed




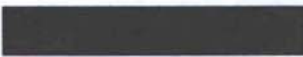


**Brolly Design**  
Architecture+Design

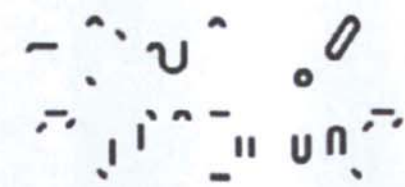
a: 141 La Trobe Street | Melbourne 3000  
e: info@brollystudios.com  
t: +61(0) 3 9639 7259



# PROPOSED ELEVATION



-  Exterior Plywood
-  Painted Steel (Dark Gray)
-  Bluestone Tiles
-  Clear Glass



**Brolly Design**  
Architecture+Design

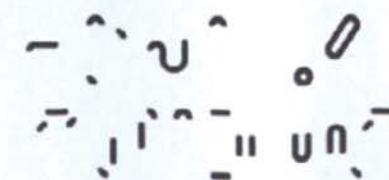
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**DELEGATED PLANNING APPLICATION REPORT**

<b>Application number:</b>	<b>TP-2015-570</b>
<b>Applicant:</b>	<b>The Marriner Group (Simon Evans)</b>
<b>Address:</b>	Grand Hyatt, 121-131 Collins Street, MELBOURNE VIC 3000
<b>Proposal:</b>	Part demolition and construction of additions to the existing building and the use of part of the building for the purposes of a nightclub (live music venue) and an associated reduction of bicycle parking and the construction and display of business identification and promotional signs
<b>Date of application:</b>	29 June 2015.
<b>Responsible officer:</b>	Stephen Vecris

**1 SUBJECT SITE AND SURROUNDS**

An inspection of the site and surrounding area was undertaken on 10 June 2016. The site has a total area of 5776 square metres and is currently developed with the Grand Hyatt Melbourne Hotel. The Grand Hyatt is located on the south side of Collins Street, between Russell and Exhibition Streets. It occupies most of the block bounded by Collins Street, Russell Street, Flinders Lane and George Parade.

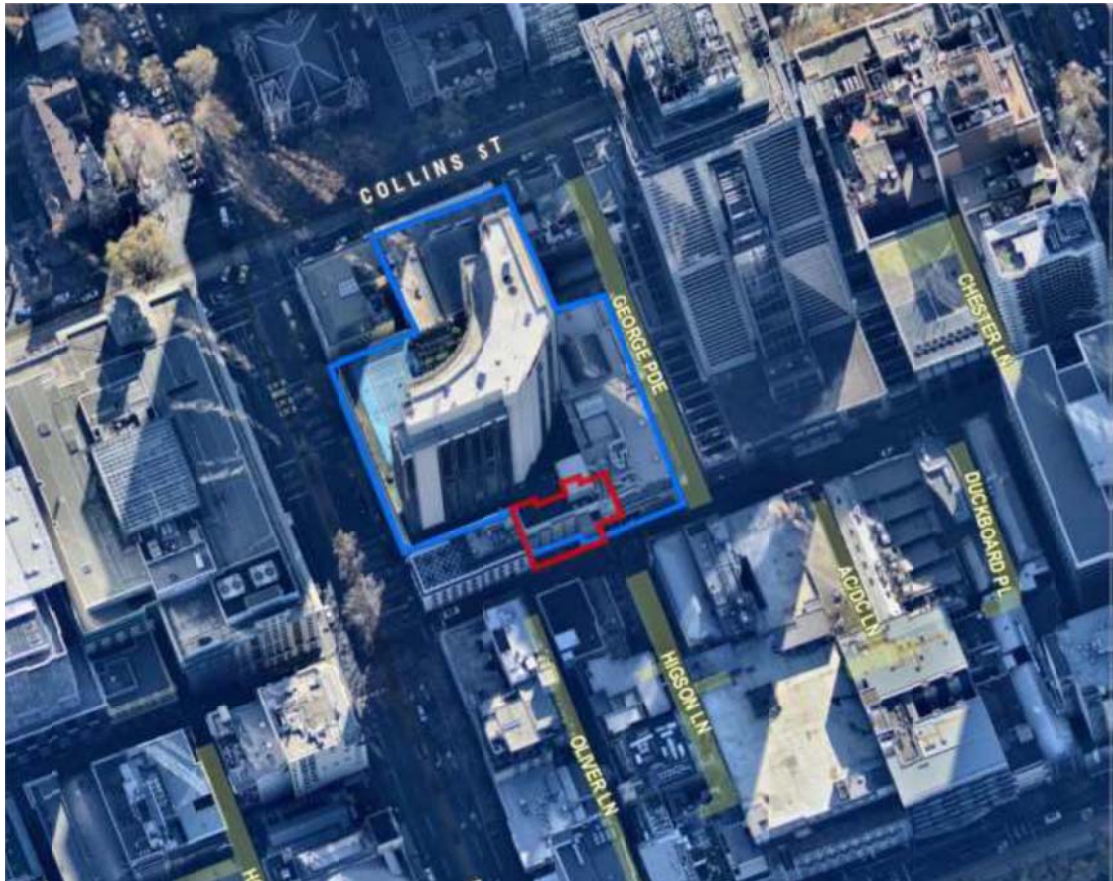
The proposal involves the development of the rear section of the hotel, fronting Flinders Lane. The subject floor area was occupied 'Monsoons Nightclub' some years ago. Access to the site will be from Flinders Lane.

Higson Lane and Oliver Lane are both located diagonally opposite the site on the south side of Flinders Lane.

The area forming the subject of the application includes a currently undeveloped parcel of land that is essentially an alcove providing access into the utility areas associated with the Grand Hyatt. The Grand Hyatt along this section of the subject site is not activated and is unappealing in terms of its presence along this vibrant stretch of Flinders Lane.

The exact location of the proposed works is nominated in the aerial photo below:





**Area of proposed works/subject site outlined in red.**

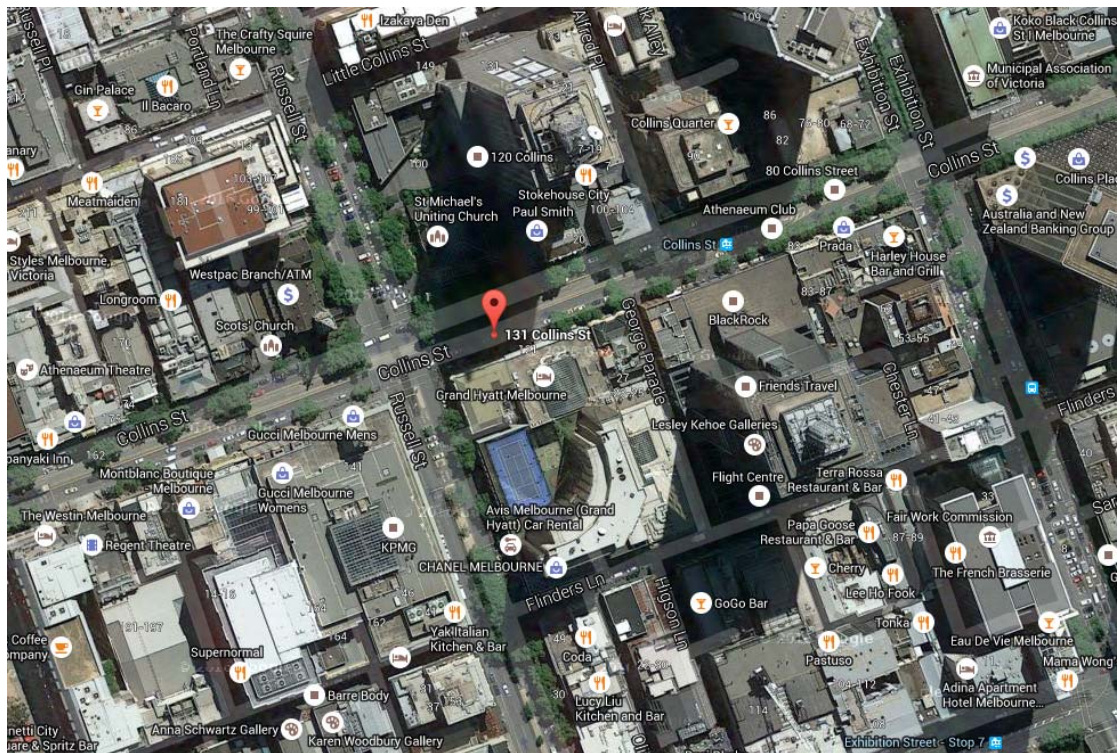
The site is situated in the eastern core of the Melbourne CBD and is located near the Flinders Lane and Russell Street intersection. The site has the following key interfaces:

- The Grand Hyatt immediately adjoins the site's north and east boundaries. A rear section of the Grand Hyatt is located immediately to the east of the site and is built to the south boundary of its site.
- Further east is the underground Grand Hyatt car park providing egress onto Flinders Lane.
- To the south of the site is Flinders Lane which provides one way traffic travelling west past the site. Buildings located on the south side of Flinders Lane (opposite the site) are low-rise and occupied by commercial uses.
- The four level 'Chanel' building is located immediately to the site's west. The Chanel building is a white rendered building comprising a combination of arched and rectangular windows with wrought iron detailing and is located on the corner of Flinders Lane and Russell Street.
- Residential uses nearby include apartments at 30 Russell Street, 27 Russell Street and 30 Oliver Lane.

The area forming the subject of the application is not affected by any easements or restrictive covenants.



## Aerial Photo / Locality Plan



## 2 BACKGROUND AND HISTORY

### 2.1 Pre-application discussions/amendments to current application

A pre-application meeting attended by Council officers and representatives of the applicant was held on 14 May 2015. Matters discussed at the meeting include:

- The Planning Application process.
- Access requirements pursuant to the Disability Discrimination Act.
- Provision for storage of rubbish.
- Provision for smokers.
- Need to address the potential for queuing on Flinders Lane footpath.

The application was lodged on 29 June 2015 with the proposal described as:

'Use and development of a tavern to facilitate the relocation of the existing Bennetts Lane Jazz Club; waiver of car parking requirements; waiver of bicycle facility requirements; signage'.

The address of the land was given as 136 Flinders Lane Melbourne.

On 3 July 2015, a request for further information was sent to the applicant. This letter included a revised description of the application purpose and gave the address of the land as 121-131 Collins Street, Melbourne

The application form was amended on 14 July 2015. The description of the proposal was amended to:

'Use and development of a nightclub (live music venue) to facilitate the relocation of existing Bennetts Lane Jazz Club, waiver of bicycle facility requirements, signage'.



On 16 July 2015, the application form was again amended. The address of the land was changed to 121-131 Flinders Lane.

## 2.2 Relevant Liquor Referral/Planning Application History

Liquor Referral 2015-168 was received on 2 July 2015. This was a referral from the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to Melbourne City Council of an application to VCGLR seeking approval to relocate the existing liquor licence for the Bennetts Lane Jazz Club, at 25 Bennetts Lane Melbourne and the basement level of 143 La Trobe Street to the area forming the subject of the current application. The application to VCGLR also proposed a number of changes to the current conditions of the licence.

On 15 July 2015, Council wrote to the VCGLR in response to the application. The response included the following advice:

- Planning Application TP-2015-570 has been received seeking approval for (inter alia), use of part of the building as a nightclub (live music venue).
- No decision has been made on the application.
- 'Until this assessment is complete it is considered that the transfer of the licence to this venue will cause detriment to the existing amenity of the surrounding area. This objection to the licence transfer can be considered withdrawn should a planning permit be issued for the use of the site as a 'nightclub'. All conditions on any liquor licence issued must match those imposed on any planning permit which may be issued.'

Planning Application TP-2015-1165 for 133-135 Flinders Lane was received on 21 December 2015 and amended on 13 May 2016. The proposal includes the construction of a 5 storey addition to the existing 2 storey building. The addition is to be used for purposes including residential and office. The application has not been determined.

## 3 PROPOSAL

The proposal seeks approval for the use and development of land for the purposes of a Nightclub (live music venue). It is also proposed to use the site for a cafe associated with the nightclub. The application involves the relocation of the existing Bennetts Lane Jazz Club to the subject site.

The key features of the proposal can be summarised as follows:

- The venue will have an overall capacity of 320 patrons with 260 for the nightclub and 60 for the cafe.
- The proposed hours of operation for the venue are as follows:
  - Monday to Saturday: 7am – 3am
  - Sunday: 10am – 1am

It is understood that the proposed hours of operation are consistent with the current operation of the Bennetts Lane venue and existing liquor licence for the Bennetts Lane site. The hours of operation will allow the flexibility to open later during special events and major jazz festivals. Typically however, the times of operation for the Jazz Club will be:

- Monday – Thursday 6pm – 1am, with rehearsals occurring between 2pm – 6pm
- Friday – Saturday 4pm – 3am, with rehearsals occurring between 10am – 4pm

- Sunday / public holidays 5pm – 1am, with rehearsals occurring between 1pm – 5pm

The proposal hours of operation for the cafe will be:

- Monday – Friday 7am – 11pm
- Saturday & Sunday 3pm – 11pm
- The roof top will be open from 3pm to 11pm.

The main jazz room will be licensed and the café and roof top space will remain unlicensed.

The proposed buildings and works are summarised as follows:

The construction of a new three storey façade onto Flinders Lane.

Ground level

- Creation of a café along the Flinders Lane frontage. This will create activity and interest at the ground level during the day and be used as the front of house/ticketing focus in the evenings. The ground level will also include some of the venue's back of house requirements including the bin storage area.
- The ground level the development will also include disabled lift access to allow patrons to access the main jazz club.

First floor

- This will largely comprise the fitout of the former Monsoons nightclub with an upgrade comprising internal works to bring the building into compliance with current regulations and building codes, including DDA.
- The layout will comprise a stage, raised seated area, informal seating and standing areas and use of the existing bar. As this main level does include a mezzanine level with patron amenities, new disabled amenities and a cafe are to be constructed in the Flinders Lane façade.
- No access is retained internally to the Grand Hyatt.

Second floor

- A small roof top deck and balcony are proposed providing both a limited enclosed rooftop space and an open roof top space. The balcony will protrude above the Flinders Lane footpath below to provide weather shelter. This will be available for use by smokers. A projecting window will also be constructed.

Third floor

- A small storage room is proposed on level three, accessed by staff only to provide additional areas for storage and any roof mounted mechanical plant.
- The inclusion of new glazed, prefinished metal and timber elements and architectural features.

It is also proposed to erect advertising signage. Details of the proposed signs are as follows:

- One business identification sign (wall sign)
  - 4.5m wide X 1.8m high located at first floor level (3.6m above ground level). This sign is to be backlit.



- One promotional sign (wall sign)
  - 3.3m wide X 4.2m high sign located above the Bennetts Jazz Club Sign
  - Fixed onto building façade.
  - This sign will be used to promote upcoming events and major festivals at the Jazz Club.

The applicant has advised that the development is to be staged, so that there is not a significant break in the operation of the Bennetts Jazz Club, between the current and new locations. In order to achieve this, temporary works including a lift to take patrons from street level to the first floor jazz club and temporary signage are proposed. It appears that this will result in the nightclub commencing operation before the addition to the building (including the area for smokers) has been built.

#### 4 STATUTORY CONTROLS

The following clauses in the Melbourne Planning Scheme require a planning permit for this proposal:

Clause	Permit Trigger
Clause 37.04 Capital City Zone, Schedule 1 (CCZ1) (Outside the Retail Core)	Pursuant to Clause 1.0 of CCZ2, a Nightclub is a Section 2 – permit required use. Buildings and works also require approval.  A permit is also required to erect advertising signs unless they meet certain conditions outlined in the schedule. The proposed signage does not meet these exemptions.
Clause 43.02 Design and Development Overlay, Schedule 10 (DDO10) (Built form controls)	Pursuant to Clause 43.02-2, a permit is required to construct a building or construct or carry out works.  See discussion below for transitional arrangements.
Clause 45.01 Public Acquisition Overlay Schedule 5.  Melbourne City Council is the acquiring authority	Pursuant to Clause 45.01-1, a permit is required to construct a building or to construct or carry out works.
Clause 45.09 Parking Overlay, Schedule 1 (PO1) (Capital City Zone – Outside the Retail Core)	Clause 45.09 operates in conjunction with Clause 52.06.  Pursuant to Clause 45.09-4, a schedule to this overlay may specify 'maximum and minimum car parking requirements for any use of land'.  Clause 2.0, Permit requirements, of Schedule 1 states that a permit is required to provide car parking spaces in excess of the car parking rates in Clause 3.0 of this schedule.  The proposal does not include any car parking. Therefore, no planning permit is required pursuant to PO1.
Clause 52.05	A permit is required to erect advertising signs.

Advertising signs	
Clause 52.06 Car parking	Pursuant to Clause 52.06-3, a permit is required to provide more than the maximum car parking provision specified in the Schedule to the Parking Overlay.  As noted above, the proposal does not include any car parking.  Therefore, no planning permit is required pursuant to PO1 or Clause 52.06.
Clause 52.27 Licensed premises	Pursuant to Clause 52.27, a permit is required to use land to sell or consume liquor if a licence is required under the Liquor Control Reform Act 1998.  Pursuant to the Schedule to Clause 52.27, no permit is required for all licences required under the Liquor Control Reform Act 1998 for all land in the Capital City Zone.  Therefore, no planning permit is required pursuant to Clause 52.27.
Clause 52.34 Bicycle facilities	Pursuant to Clause 52.34-2, a permit is required to reduce or waive any requirement of Clause 52.34-3 and 52.34-4.

## 5 STRATEGIC FRAMEWORK

### 5.1 State Planning Policy Framework (SPPF)

The relevant provisions of the SPPF are summarised as follows:

- Clause 11.04-1, Delivering jobs and investment, relates to Metropolitan Melbourne and seeks to 'create a city structure that drives productivity, supports investment through certainty and creates more jobs'.
- Clause 13.04-1, Noise abatement, which seeks to 'assist the control of noise effects on sensitive land uses' and refers to the State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 and (Control of Music Noise from Public Premises) No. N-2.
- Clause 17.01-1, Business, which seeks to 'encourage development which meet 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'.

### 5.2 Local Planning Policy Framework (LPPF)

#### 5.2.1 Municipal Strategic Statement (MSS)

The relevant provisions of the MSS are summarised as follows:

- Clause 21.03, Vision, describes the City of Melbourne's strong retail and tourism industry as well as promoting sustainable modes of transport and efficient use of existing infrastructure.
- Clause 21.04, places importance on pedestrian amenity and quality public realm, in particular in the Hoddle Grid.



- Clause 21.08, Economic development, reinforces the importance of retail and Melbourne's Capital City Function, highlighting that the city is the prime location for a variety of uses, employment opportunities and entertainment.
- Clause 21.12, Hoddle Grid, provides further encouragement of a range of complementary uses including entertainment, bars, eating and other evening venues throughout the Hoddle Grid. Pedestrian safety and encouraging new development that enhances the public realm are again highlighted.

### **5.2.2 Local Policies**

The relevant local policies are summarised as follows:

- Clause 22.01 – Urban Design within the Capital City Zone.
- Clause 22.07 – Advertising Signs
- Clause 22.22 – Policy for Licensed Premises that Require a Planning Permit.

These will be discussed in further detail below.

## **6 ZONE**

The subject site is located within the Capital City Zone 1. The purpose of CCZ1 is:

'To provide for a range of financial, legal, administrative, cultural, recreational, tourist, entertainment and other uses that complement the capital city function of the locality.'

Under the provisions of the zone, a permit is required to use the site for a nightclub (live music venue), to construct buildings and works and to erect advertising signage. A permit is not required to use the site for a food and drink premises (cafe).

## **7 OVERLAYS**

The following overlays apply to the area forming the subject of the application:

- DDO10 – Built Form Controls
- PAO5 – Footpath and Road Widening
- PO1 - Parking Overlay.

### **7.1 Design and Development Overlay Schedule 10 – Built Form Controls**

The design objectives of DDO10 include:

- 'To ensure development supports a high quality of pedestrian amenity in relation to human scale and microclimate conditions within the public realm including acceptable levels of sunlight access and wind.
- To ensure that development respects the built form scale and urban structure of the Central City.
- To provide clear parameters to guide appropriate built form outcomes.
- To ensure development is consistent with the function, form and infrastructure capacity of the city, including the capacity of footpaths, roads, public transport and services.
- To encourage a quantum of development that maintains the valued public realm attributes of the Central City while providing equitable development opportunities.

- To ensure that new buildings respect the future development potential of adjacent sites and allow for equitable access to privacy, sunlight, daylight and an outlook from habitable rooms.
- To provide a high level of internal amenity for building occupants.'

It is considered that the proposal demonstrates a high level of compliance with the objectives of this overlay. The proposed building sits lower than the host building to which it is proposed to be incorporated into. It will activate a currently non-activated frontage improving pedestrian amenity and safety and it will not adversely impact upon the microclimate of the public realm.

The proposed height of the building is 11.74 metres which does not exceed the podium height nominated in Table 1 of this schedule.

Whilst the proposal is consistent with the requirements of this overlay, the transitional arrangements outlined in 4.0 of this schedule specify that the requirements of this overlay do not apply to an application received before the commencement of Amendment 262 into the Planning Scheme. As the amendment was gazetted on 4 September 2015 and the application was received before this date, the provisions of this overlay do not apply.

## **8 PARTICULAR PROVISIONS**

### **8.1 Clause 52.05 – Advertising signs**

- Pursuant to Clause 37.04-5 the Capital City Zone is not in a category at Clauses 52.05-7 to Clause 52.05-10. Therefore, a permit is required to erect advertising signs unless a schedule to the zone specifies otherwise.
- The schedule to the zone specifies that a planning permit is required to erect a sign with some exceptions. The proposed signage is not exempt.

### **8.2 Clause 52.34 – Bicycle facilities**

- Pursuant to Clause 52.34 a planning permit is required to reduce or waive bicycle facilities in association with a new use. Pursuant to the table to this clause, a Retail Premises, under which a food and drink premise is nested, requires 1 space per 300 sq m of leasable floor area for staff and 1 to each 500 sq m of leasable floor area for visitors. A Place of Assembly under which a Nightclub is nested, requires 1 to each 1500 sq m of net floor area for staff and 2 plus 1 to each 1500 sq m of net floor area
- It is not proposed to provide any bicycle parking.

## **9 GENERAL PROVISIONS**

The following general provisions apply to the application:

- Clause 65, Decision Guidelines, which includes the matters set out in Section 60 of the Planning and Environment Act 1987.
- Clause 66, Referral and Notice Provisions

## **10 PUBLIC NOTIFICATION**

It was determined that the proposal may result in material detriment. Notice of the proposal was given by ordinary mail to the owners and occupiers of surrounding properties and by posting a notice on the site for a 14 day period, in accordance with Section 52 of the *Planning and Environment Act 1987*.



## **11 OBJECTIONS**

One objection was received from the land owner which was subsequently withdrawn on 19 May 2016.

## **12 REFERRALS**

### **12.1 Internal**

#### **12.1.1 Urban Design**

Council's Urban Designer supports the proposal and regards it as a welcome contribution to the social and economic life of the street. The design is praised as being well considered and beautifully detailed.

#### **12.1.2 Traffic Engineering**

Council's Traffic Engineers considered the proposal and expressed concern about cafe patrons using the Flinders lane footpath, congregating around seating areas and the potential of this to create unsafe conditions when patrons spill out onto the footpath. This may result in pedestrians walking around such groups of people, onto the roadway, where there is no protection from the trafficable lane (i.e. kerbside car parking). The permit applicant responded by clarifying that cafe patrons would not be seated on the footpath but be restricted to inside the cafe. Further, in relation to patrons of the jazz club queuing on the footpath, they referred to the Patron Management Plan submitted with the application which stated that the jazz club will have ticketed seating, so that patrons will not need to queue in order to get the best seats. In addition, early opening of the club before performance times would ensure that patron arrivals would be spread over a period of time rather than having to arrive a short time before performance times. Staff will also be available to direct patrons to public transport, taxi services and other premises after performances. The permit applicant has put provisions in place to ensure that the operation of the footpath will not be unreasonably impacted by the proposal by patrons wishing to enter the nightclub.

#### **12.2 Civil Design**

Council's Civil Design team expressed concerns with encroachment over Flinders Lane and land under the Public Acquisition Overlay which is set aside for footpath/road widening. As the footpath at this point is already wider than the footpath in front of the adjoining building at 42-44 Russell Street, it is considered unlikely that the footpath/road will be widened further until such time as the building next door is demolished, which is unlikely. It is considered appropriate to allow the proposed development subject to conditions on the permit in relation to works over the road.

#### **12.3 Social Planning**

Council's Social Planner also considered that the proposal would provide social activation to the current 'rear' of the hotel building providing good interaction with the street and passive surveillance opportunities. Concerns were raised about where smokers would be directed after the balcony closed at 11pm and the impacts of patrons leaving at the same time late in the evening. It is considered that both of these concerns can be addressed either through conditions of permit or in the implementation of the Management Plan.

#### **12.4 Waste**

A waste management plan (WMP) has been submitted and assessed by Council's Team Leader Urban Services. Advice received in response is that the WMP is

unacceptable in its current form. Additional information is required regarding the bin storage area and the path the bins will take to the Grand Hyatt loading bay.

## **12.5 External**

No external referrals were required.

## **13 ASSESSMENT**

The application seeks to construct buildings and works and erect advertising signage and to use the site for a nightclub. In addition, it is proposed to waive the bicycle requirements of Clause 52.34. The key issues for consideration in the assessment of this application are built form, appropriateness of signage, amenity issues associated with the nightclub use and the sale and consumption of liquor.

### **13.1 Built Form**

The proposed building will sit comfortably against the backdrop of the Grand Hyatt Hotel and will turn a currently unattractive 'back of house' into an attractive, friendly and active frontage to Flinders Lane. The proposed design, colours and materials will not detract from the heritage building at 42-44 Russell Street as it will sit lower than this building and be less imposing. Council's Urban Designer was happy with the design stating that "the design is well considered and beautifully detailed."

Therefore, it is considered from a built form perspective, the proposed design is appropriate.

### **13.2 Advertising signs**

The Local Policy at Clause 22.07 requires the Responsible Authority to assess applications against the following criteria:

- 'Signs should respect the building style and scale and the character of the street.
- Signs should fit within architectural forms and be integrated with the design of the building.
- Signs should not cause visual clutter. Existing signs on a building or site will be taken into account when assessing new proposals.
- Signs should not interrupt important views and vistas along roads leading to and out of the Central City.
- Views of the sign from all angles should be considered and the supporting structure should be designed with this in mind.
- Promotion, panel and sky signs are discouraged.'

It is proposed to erect 2 signs on the building. One sign will advertise the Bennetts Jazz Club and be a total of 8.1m<sup>2</sup>. This sign will sit 3.6m above pavement level. The sign will present as an extension of the first floor window and therefore will be part of the overall design of the building. This sign is considered to reflect a high level of compliance with relevant Melbourne Planning Scheme provisions.

The second sign is proposed to be a promotional sign and will sit above the business identification signage. The sign is to be 13.86m<sup>2</sup>, fixed to the building. The purpose of this sign, as advised by the applicant, is promote current and upcoming musical performers at the club. Whilst this sign is a promotional sign, which is discouraged by the policy, in the context of the use, the sign is considered to be appropriate.

The 2 signs are in scale with the host building and the broader streetscape.



Based on the above assessment, it is considered that the proposed signage is appropriate and is generally consistent with the relevant provisions of the Melbourne Planning Scheme.

### **13.3 Nightclub use**

The proposed Bennetts Jazz Club is to be located in a part of the Grand Hyatt Building which was formerly used for the hotel's Monsoons nightclub. As there are no existing use rights being claimed, a permit is required for the use. This area, due to the former use, is already provided with acoustic treatment and an acoustic report prepared by Burton Acoustic Group was submitted with the application. This report made recommendations in relation to glazing thickness, the provision of an airlock at the level 1 entry. It is recommended that these recommendations be included as conditions on any permit issued.

In relation to the facilities for smokers, a balcony has been provided on the third level of the building which will facilitate those smoking. However, it is proposed that the balcony close at 11 pm. This raises a concern about amenity impacts as a result of patrons smoking within the public realm after 11 pm. This has been discussed with the applicant, who has agreed to this area being available for smokers to use until 3 am.

It is anticipated that the proposed Bennetts Jazz Club will operate in an orderly fashion as the proposed management is the same as the former Bennetts Lane Jazz Club. A review of Pathway records indicates no record of any enforcement matters in relation to the Bennetts lane Jazz Club. The emphasis of the club is on the enjoyment of the music and as such patrons are required to keep silent when music is being played and exhibit respectful behaviour at all times. While a new operator with a different business model could take over the business at some time in the future, should a permit be issued, compliance with an approved patron management and permit conditions will be required. This will ensure that regardless of who operates the business, appropriate standards to minimise amenity impacts will be maintained.

Overall, the proposed nightclub use is consistent with the capital city location of the site and should not significantly impact upon the amenity of the surrounding area.

### **13.4 Liquor Licence**

The proposal to use the site for a nightclub has been assessed against the provisions of Clause 22.22. This policy makes recommendations in relation to noise, patron numbers, hours of operation and the operation of facilities in various zones.

When assessed against these requirements, the proposal exhibits a relatively high level of compliance.

Within the Capital City Zone, it is policy that:

- 'Taverns, hotels and nightclubs which accommodate less than 100 patrons and which have appropriate noise attenuation will be encouraged throughout the Capital City Zone and Docklands Zone.
- Hours of operation of taverns, hotels and nightclubs in the Capital City Zone and Docklands Zone should be limited to 1am
- Outdoor areas, including smoking areas, rooftops and open courtyards, should not be occupied past 1am and in noise sensitive areas alcohol should not be consumed in those areas after 11pm.'

The proposal proposes a higher patron number at 260 for the nightclub and longer hours of operation, proposing a 3am closing time. The application proposes that all

outdoor areas close at 11pm with alcohol only served in the nightclub and not the café or on the rooftop area.

The key issue is the 3am time limit. The permit applicant has indicated that the usual operation of the nightclub venue will finish at 1am except for Fridays and Saturdays when the club is to close at 3am. This is consistent with the operation of the former Bennetts Lane Jazz Club. The applicant has advised that the later finish time is reserved for special events and festivals. In the context of the operation of the site for the proposed jazz club with a high quality reputation, the hours of operation are considered to be acceptable. A Patron Management Plan was submitted with the application and indicates that the applicant wishes to ensure that the nightclub functions in a manner which will minimise potential amenity impacts.

The decision guidelines of this policy require Council to consider:

- 'Zoning and use of the land.'

The zone is suitable for the use, however, the use must be consistent with relevant State and Local policy. It is considered that the proposal exhibits a high level of compliance with the relevant policy directions.

- 'Site characteristics.'

The site is located within a hotel building which accommodates a range of activities over a 24 hour period. The area of Flinders Lane accommodates a mix of uses including, cafes, restaurants offices and shops. There are also residential uses nearby. However, they do not immediately abut the site but are located behind buildings fronting Flinders Lane and on the corner of Russell Street and Flinders Lane. In this context, the proposed use is considered appropriate and subject to being appropriately managed, is expected to have limited off-site impacts.

- 'Nature and use of surrounding land including;
  - Proximity of the site to sensitive uses.
  - Proximity of the site to other licensed premises including details of the nature of licensed premises, their hours of operation and maximum patron numbers.'

Sensitive uses are located within 100 metres of the site but are separated by intervening buildings which will provide a buffer.

- 'The location of doorways, windows and other noise sources on the premises with respect to nearby residential properties.'

An airlock be provided at first floor level will limit the potential for noise to escape the premises.

- 'Location of outdoor areas to be used in association with the licensed premises, including outdoor smoking areas, beer gardens and terraces.'

The application proposes that the outdoor areas associated with the premises be closed 11pm and be unlicensed, restricting the potential for off-site amenity impacts. However, it is proposed that if a permit is issued, the outdoor smoking area be available to patrons at all times when the nightclub is open, subject to conditions which will minimise potential amenity impacts.

- 'Specific nature of the proposed use including details of activities and entertainment to be provided.'

The proposed use is outlined above and is considered to be appropriate in a capital city context.



- 'Proposed hours of operation.'

This is discussed above.

- 'The number of patrons likely to be on the premises at any time.'

The nightclub is to have a capacity of 260 patrons, which is considered to be acceptable in the context of the use and the design of the building. The Patron Management Plan outlines how potential amenity impacts will be minimised. This includes minimising queueing and ensuring appropriate patron behaviour.

- 'Potential effect of the use on the amenity of the surrounding area including the ability to comply with relevant noise standards and whether noise attenuation measures are required.'

The acoustic report demonstrates that subject to compliance with recommendations, the proposed use can comply with the relevant noise standards.

- 'Whether bottles and waste are able to be stored within the premises until 7.00am and the adequacy of removal arrangements.'

Bin storage facilities have been nominated on the plans within the building. This matter will also be addressed by condition.

- 'Availability of sufficient car parking.'

There is no car parking provided with the use and none is required as the site is within the Capital City Zone. The site is close to a variety of transport options including public car parking facilities, public transport and taxi services.

- 'Proximity of or access to public transport and taxis.'

The site is located close to all forms of public transport and taxi services, being located within an entertainment and food and drink precinct.

- 'The cumulative impact of any existing and the proposed liquor licence, the hours of operation and number of patrons, on the amenity of the area.'

The applicant did not provide a cumulative impact assessment, however a plan showing the location of nearby licensed premises has been received. Most of these licences are associated with café/restaurant uses with 5 nearby late night licences. Given that sensitive uses nearby are limited and the measures put in place through the design of the building, Patron Management Plan and conditions of permit, it is considered that the proposal will not unreasonably impact upon the amenity of the area nor cause a cumulative impact which would be unreasonable.

In summary, the proposal is considered to be a positive response to the requirements of this policy.

### **13.5 Conclusion**

It is considered that the proposal is consistent with the relevant sections of the Melbourne Planning Scheme, as discussed above, and that a Planning Permit be issued for the proposal subject to the following conditions:

## **14 RECOMMENDATION**

That a Planning Permit be issued subject to the following conditions:

1. Prior to the commencement of the development on the land, two copies of plans, drawn to scale must be submitted to the Responsible Authority generally in accordance with the plans on the Responsible Authority's file marked 'advertised plans' but amended to show:

- a) Nomination of the thickness of the glazing and the location of the airlock as recommended in the Acoustic Report prepared by Burton Acoustic Group, project no. 787/15.
- b) Any modification to acoustic treatments necessary as a consequence of the requirement in condition 3 to keep the roof top/balcony available to smokers at all times when the nightclub is open.
- c) Any modifications necessary in order to comply with condition 16 (waste management plan).
- d) Details of proposed signs including depth and illumination methods.
- e) Details of the proposed temporary works described in the application report by Urbis.
- f) Details of proposed demolition.

These amended plans must be to the satisfaction of the Responsible Authority and when approved shall be the endorsed plans of this permit.

2. Prior to the commencement of the development a schedule and samples of all external materials, colours and finishes including a colour rendered and notated elevation must be submitted to, and approved by the Responsible Authority.
3. Glazing materials used on all external walls must be of a type that does not reflect more than 15% of visible light, when measured at an angle of 90 degrees to the glass surface, to the satisfaction of the Responsible Authority.
4. Prior to the commencement of the development, a detailed construction and demolition management plan must be submitted to and be approved by the Responsible Authority – Construction Management Group . This construction management plan must be prepared in accordance with the City of Melbourne - Construction Management Plan Guidelines and is to consider the following:
  - public safety, amenity and site security.
  - operating hours, noise and vibration controls.
  - air and dust management.
  - stormwater and sediment control.
  - waste and materials reuse.

#### **Noise, Use and Liquor Licence**

5. The maximum noise level emitted from the premises must not exceed levels specified in the State Environment Protection Policy (Control of Music Noise from Public Premises), No. N-2 and State Environment Protection Policy (Noise from Commerce, Industry and Trade) No. N-1 (SEPP N-1).
6. Automatic music noise limiters must be installed in the in-house music source amplifying equipment. This equipment must be calibrated to ensure that noise levels comply with the requirements of the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2. The noise limiters must be installed in such a manner that the operator may not bypass the equipment.
7. The use must not detrimentally affect the amenity of the area or the amenity of persons living in proximity of the site by reason of the emission of noise. The Responsible Authority, with just cause, may at any time request lodgement of an acoustic report, prepared by a suitably qualified acoustic consultant. The report must be to the satisfaction of the Responsible Authority and identify all potential noise sources and sound attenuation work required to address any noise issues and to comply with State Environmental Protection Policy N1 and N2. The



recommendations of the report must be implemented by the applicant to the satisfaction of the Responsible Authority.

8. All doors windows and shutters must be closed after 11 pm, other than when required to be open to allow patron movement.
9. No external sound amplification equipment or loudspeakers are to be used, to the satisfaction of the Responsible Authority.
10. At all times when the premises are open for business, a designated manager must be in charge of the premises.
11. The designated manager must conduct the nightclub so as to ensure that the operation does not cause any undue detriment to the amenity of the area to arise out of or in connection with the use of the nightclub to the satisfaction of the Responsible Authority. This includes ensuring that patrons do not obstruct the Flinders Lane footpath.
12. A sign must be attached to an internal wall in a prominent position adjacent to the entry/exit point to advise patrons to leave the premises in a quiet and orderly fashion. The sign must be to the satisfaction of the Responsible Authority.
13. Except with the written permission of the Responsible Authority, the nightclub use including the supply and consumption of liquor must operate only between the following hours:
  - Monday to Saturday: 7.00am to 3.00am the following day,
  - Sunday, 10 am to 1 am the following day.

Once constructed, the roof top/balcony must be available to smokers at all times when the nightclub is open for business.

14. Except with the written permission of the Responsible Authority, the number of patrons allowed on the nightclub premises must not exceed 260 at any one time. The number of patrons on the rooftop/balcony must not exceed 20 at any one time.
15. Prior to the commencement of the use, a Waste Management Plan (WMP) shall be prepared and submitted to the City of Melbourne - Engineering Services. The WMP should detail waste storage and collection arrangements and be prepared with reference to the City of Melbourne Guidelines for Preparing a Waste Management Plan. Waste storage and collection arrangements must not be altered without prior consent of the City of Melbourne - Engineering Services. No waste materials may be removed from the site between the hours of 11 pm on any day and 7 am the follow day, except on Sundays, when removal must not occur before 9 am.
16. Prior to the commencement of the use the applicant must submit an updated Patron Management Plan, consistent with the plan forming part of the advertised documents but updated to address the following:
  - Reflect the requirement under condition 3 that the roof top/balcony be available to smokers at all times when the nightclub is open and the advice from Megg Evans dated 9 June 2016 regarding the use of this space.
  - The ways in which staff will be made aware of the conditions attached to this permit.

- Measures designed to ensure the orderly arrival and departure of patrons and appropriate behaviour of patrons within and outside the premises.
- Measures to ensure patrons do not obstruct the Flinders Lane footpath if the nightclub commences operation before the completion of the addition to the building.
- Control of noise by patrons inside and outside the premises.
- How patrons wishing to smoke will be managed if the nightclub commences operation prior to the completion of the roof top/balcony addition.

The management plan must be to the satisfaction of and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of the permit. All activities forming part of the use must comply with the endorsed management plan.

### **Advertising signs**

17. The location, size, material of construction, colours, wording and degree of illumination of the signs shown on the endorsed plans must not be altered or modified without the written consent of the responsible authority.
18. The signs, including their structure and advertising material therein as shown on the endorsed plans, shall at all times be maintained in good order and condition to the satisfaction of the responsible authority.
19. The signs hereby permitted must not be animated or contain any flashing light.
20. The part of the permit that applies to signs expires 15 years from the date of issue, at which time the signs and all supporting structures must be removed and the site made good to the satisfaction of the responsible authority.

The time for the commencement of the erection or display of the advertising signs hereby approved is two years from the date of issue and the time for completion is specified as two years from the date of such commencement.

21. Promotional signage must relate to events being held at the subject site.

### **Civil Design Conditions**

22. The owner of the property must seek a tenure/authorisation under the Land Act 1958 from the Department of Environment and Primary Industries for the building projections over Crown Land. That tenure/authorisation must indemnify Council against any claims regarding the projections. Should the owner of the property seek to commence works prior to the issue of this tenure/authorisation, the owner must enter into a legal agreement under Section 173 of the Planning and Environment Act, 1987, concerning the liability of those parts of the development projecting into airspace or sub-soil of land under the care and management of Council. The owner of the property to be developed must pay all of the City of Melbourne's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.
23. All projections over the street alignment must be drained to a legal point of discharge in accordance with plans and specifications first approved by the Responsible Authority - Engineering Services
24. Prior to the commencement of the development, a stormwater drainage system, incorporating integrated water management design principles, must be submitted to and approved by the Responsible Authority – Engineering Services. This system must be constructed prior to the occupation of the development and

provision made to connect this system to the City of Melbourne's underground stormwater drainage system.

25. All new or altered portions of road in Flinders Lane must be constructed prior to the occupation of the development, in accordance with plans and specifications first approved by the Responsible Authority – Engineering Services.
26. The footpath adjoining the building along Flinders Lane must be reconstructed in sawn bluestone together with associated works including the renewal of kerb and channel and/or services as necessary at the cost of the developer, in accordance with plans and specifications first approved by the Responsible Authority - Engineering Services.
27. Existing street levels in Flinders Lane must not be altered for the purpose of constructing new pedestrian entrances without first obtaining approval from the Responsible Authority - Engineering Services.
28. Existing public street lighting must not be altered without first obtaining the written approval of the Responsible Authority - Engineering Services.
29. The use and development as shown on the endorsed plans must not be altered or modified unless with the prior written consent of the Responsible Authority.
30. This permit will expire if one or more of the following circumstances apply:
  - a) The development is not started within two years of the date of this permit.
  - b) The development is not completed within four years of the date of this permit.
  - c) The use is not started within four years of the date of this permit.

The Responsible Authority may extend the permit if a request is made in writing before the permit expires, or within six months afterwards. The Responsible Authority may extend the time for completion of the permit if a request is made in writing within 12 months after the permit expires and the development started lawfully before the permit expired.

**Notes:**

The permitted development has not been assessed against the Building Regulations 2006, Part 5, Division 2 – Projections. It is the responsibility of the Relevant Building Surveyor to make such an assessment prior to issuing a Building Permit. Matters that do not meet the requirements of the Regulations require the Report and Consent of Council prior to a building permit being issued.

All necessary approvals and permits are to be first obtained from the City of Melbourne and the works performed to the satisfaction of the responsible authority - Manager Engineering Services Branch.

Please note that it is an offence pursuant to the provisions of the Melbourne City Council Activities Local Law 2009 to sell goods and services from the frontage of the building directly to customers standing in a public place unless a Street Trading Permit has been issued for such purpose.

**15 DECISION**

The Lord Mayor, Deputy Lord Mayor and Councillors were notified of the above recommendation on 15 June 2016.



Signature:

**Stephen Vecris**

Senior Planning Officer

Date affirmed:

