

Planning Application: TP-2016-53, 22 White Hart Lane, Melbourne
359-363 Lonsdale 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 Application at 359-363 Lonsdale Street, Melbourne (refer to Attachment 2 – Locality Plan). Melbourne City Council is the Responsible Authority for the application. The application has been advertised and received 25 objections including a petition of 33 signatures and one letter of support.
2. The applicant is Contour Consultants c/o Stephen Johnson, the owner of the land is Bison Superannuation Pty Ltd and the architects are Branov Design.
3. The subject site is located within the Capital City Zone – Schedule 2 and is affected by the Design and Development Overlay Schedule 1 – Active Street frontages and Schedule 10 (DDO10) – Built Form Control and the Parking Overlay Schedule 2.
4. The planning application seeks approval for the use and development of the land as a tavern and a waiver of loading requirements. The tavern is proposed to be constructed with shipping containers at a height of two storeys within an existing at grade car park. The tavern is proposed to be used 7am to 1am, seven days a week.

Key issues

5. Key issues in consideration of this application are the proposed hours of operation, music, noise, patron numbers, access through White Hart Lane, proximity to residential apartments, appropriateness of the built form in relation to DDO10 and urban design considerations.
6. The application proposes noise limiters to all speakers, and conditions will only allow background music after 11pm. Additional conditions will be added to ensure compliance with EPA noise restrictions and Council can ask for an acoustic testing to be undertaken where required.
7. Patrons will be required to leave only via Lonsdale Street after 11pm to protect the amenity of White Hart Lane. Food will also be required to be served at all hours the venue is operating.
8. These conditions are considered to adequately deal with noise protection of the existing residents at Nova Apartments.

Recommendation from management

9. That Future Melbourne Committee resolves to issue a Notice of Decision to grant a permit subject to the conditions included in the Delegate Report (Attachment 4).

Attachments

1. Supporting Attachment (page 2 of 27)
2. Locality Plan (page 3 of 27)
3. Selected Plans (page 4 of 27)
4. Delegate Report (page 7 of 27)

Supporting Attachment

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 objections have been received, sections 64 and 65 of the Act provide that the responsible authority must give the applicant and each objector notice in the prescribed form of its decision to either grant a permit or refuse to grant a permit. The responsible authority must not issue a permit to the applicant until the end of the period in which an objector may apply to the VCAT for a review of the decision or, if an application for review is made, until the application is determined by the VCAT.

Finance

3. There are no direct financial issues arising from the recommendations contained within 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. The application was advertised via a sign and via post to adjoining owners and occupiers in accordance with Section 55 of the Planning and Environment Act.

Relation to Council policy

6. Relevant Council policies are discussed in the attached Delegate Report (refer to Attachment 4).

Environmental sustainability

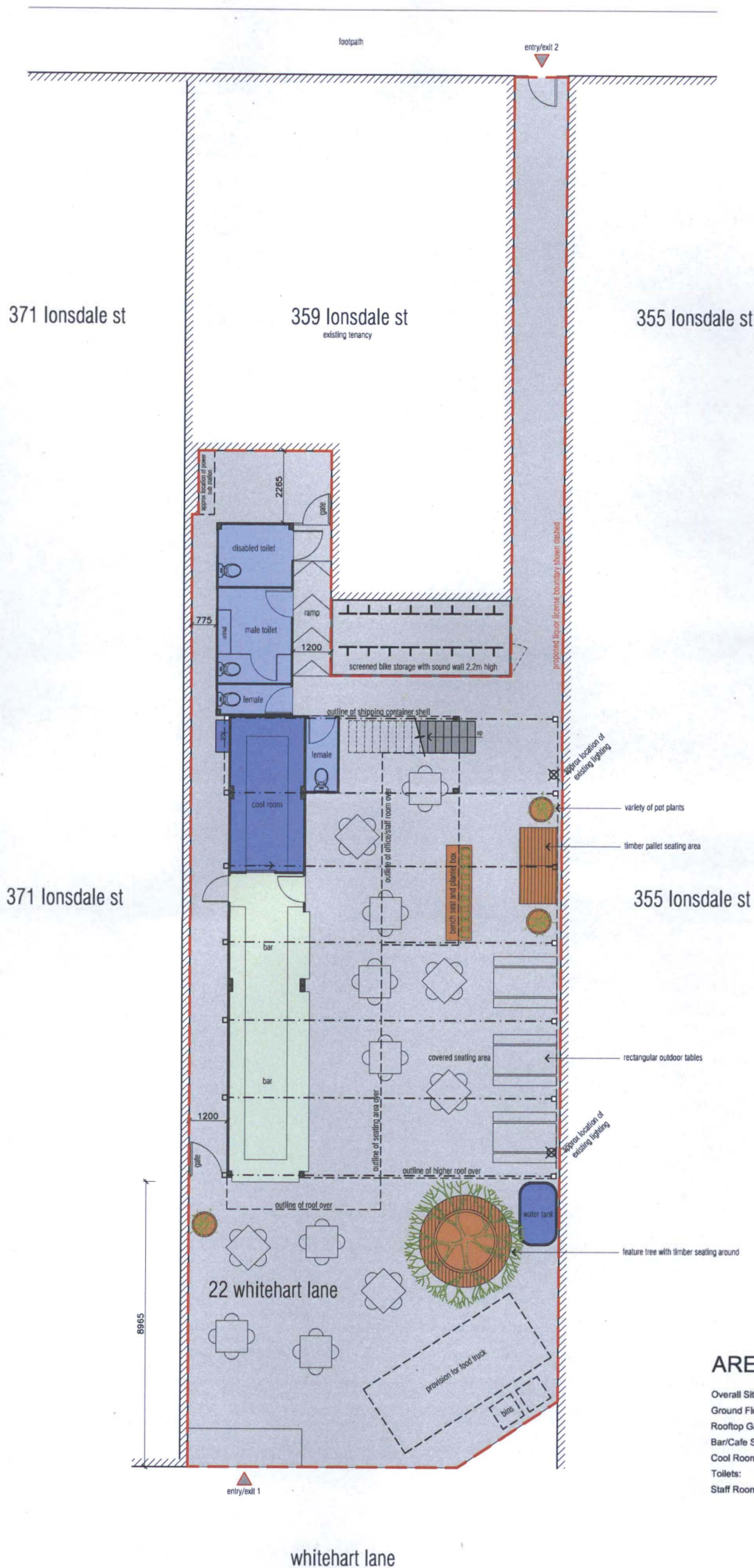
7. Condition 17 proposes an Environmentally Sustainable Design statement to be submitted prior to the commencement of the development.

Locality Plan

Attachment 2
Agenda item 6.7
Future Melbourne Committee
5 July 2016

359-363 Lonsdale Street, Melbourne





AREA ANALYSIS

Overall Site:	350.0m ² approx.
Ground Floor Public Area:	265.8m ²
Rooftop Garden:	69.2m ²
Bar/Cafe Servery:	23.1m ²
Cool Room:	12.1m ²
Toilets:	17.2m ²
Staff Room/Office:	14.6m ²

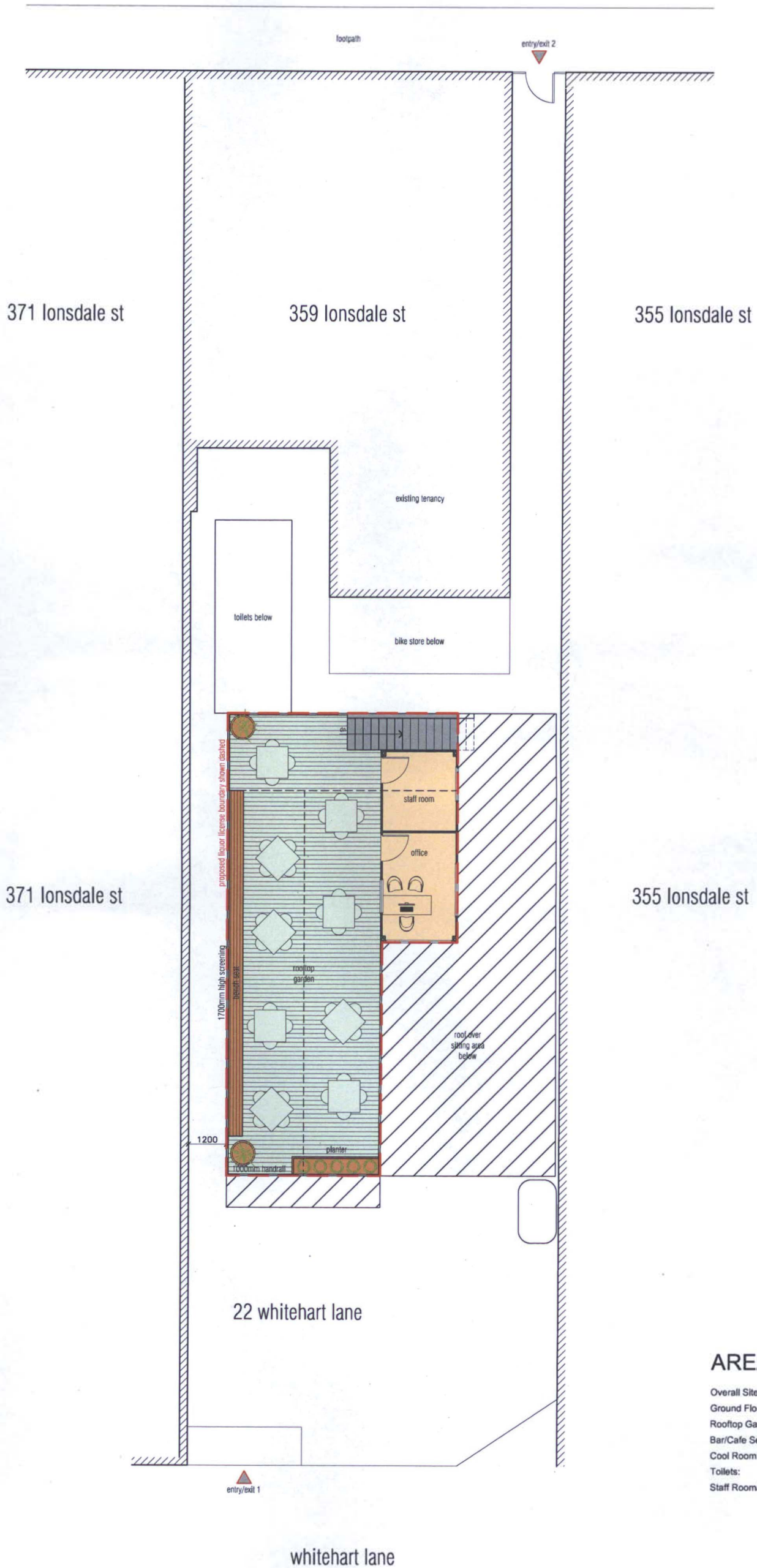
general notes:

Do not scale drawings, use written dimensions only. These drawings are to be read in conjunction with the relevant land survey documentation.
Check and verify all dimensions and details on site prior to the commencement of any works, and report any discrepancies or omissions to the office of Branov Design for clarification.
These drawings are neither authoritative or a substitute for regulations, statutory requirements, building practices or contractual obligations, and unless expressly stated otherwise. These notes are provided only as guidelines. No responsibility is accepted for their use.

proposed ground floor plan

sheet size: a2
scale: 1:100
drawing no. TP-02





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22 whitehart lane
 22 whitehart lane
 22 whitehart lane
 22 whitehart lane
 22 whitehart lane

proposed first floor plan

sheet size: a2
 scale: 1:100
 drawing no. TP-03





south elevation



east elevation

general notes:

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project: proposed shopping centre/retail centre
23/01/2018
drawing no: 2018-01-01
scale: 1:100
sheet size: A2
drawing no: TP-04

proposed elevations

DELEGATED PLANNING APPLICATION REPORT

Application number:	TP-2016-53
Applicant:	Three Bags Full PI
Address:	359-363 Lonsdale Street, MELBOURNE 22 White Hart Lane, MELBOURNE
Proposal:	Use and development of the land as a Tavern and a waiver of loading requirements
Date of application:	2 February 2016
Responsible officer:	Billy Rebakis

1 SUBJECT SITE AND SURROUNDS

The subject site is located on the south side of Lonsdale Street between Elizabeth Street and Hardware Lane. It is a rectangular shaped site with a frontage to Lonsdale Street of approximately 12 metres, a depth of approximately 42 metres and a total area of approximately 508m². The subject site abuts White Hart Lane to the south. The subject tenancy for this application is an existing at grade car park located at the south end of the site with an area of approximately 359m².

Aerial Photo / Locality Plan

Figure One: The site and surrounds showing access via White Hart Lane



Figure Two: Aerial photograph taken 5th Feb 2016

The subject site is developed with a two-storey building with retail at ground floor fronting Lonsdale Street. It has an at-grade car parking area at the rear accessed via White Hart Lane with a pedestrian access point from Lonsdale Street on the north east of the site.

The immediate neighbourhood comprises a mix of retail, commercial and residential uses with a range of building styles and heights.

To the east is a three-storey commercial building at 355-357 Lonsdale Street with a blank wall adjoining the subject site. Further to the east are a series of commercial buildings fronting Elizabeth Street. To the south is a three-storey commercial building fronting at 239 Elizabeth Street. To the west is a three-storey commercial building at 365 Lonsdale Street with a blank wall adjoining the subject site. To the north over Lonsdale Street are a range of building styles and heights. The closest residential use is the apartment tower at 225 Elizabeth Street known as the Nova Apartments.

The applicant has declared that the proposal does not breach any encumbrance such as an easements or restrictive covenants on the subject site.

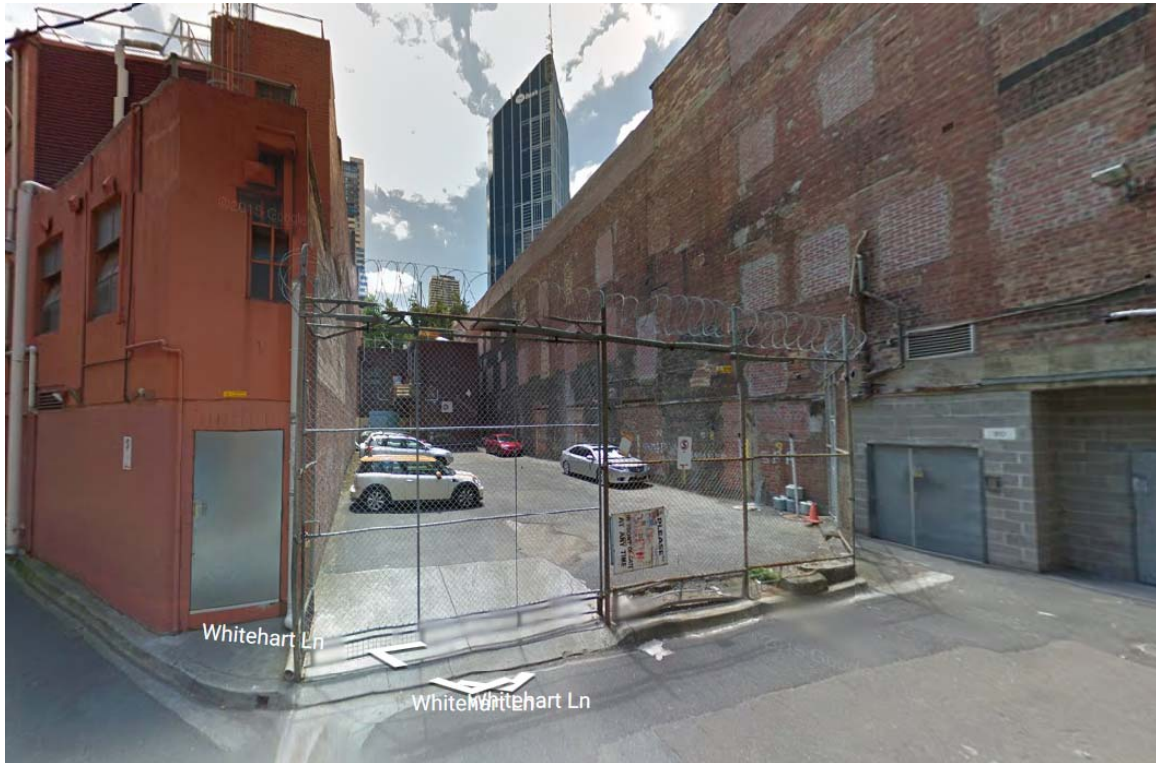


Figure Three: The site from White Hart Lane

2 BACKGROUND AND HISTORY

2.1 Planning Application History

The following applications, listed as considered relevant to the current proposal, have previously been considered for the subject site:

TP number	Description of Proposal	Decision &	Officer Comment
TP-2014-462	Installation of business signage	Permit issued 18 September 2014	The permit relates to the Lonsdale Street frontage.
TP-2012-387	Construction and display of business identification signage	Permit issued 31 July 2012	The permit relates to the Lonsdale Street frontage.

3 PROPOSAL

The proposal seeks the use and development of the land as a tavern and a waiver of loading requirements. It proposes the conversion of the existing at-grade car parking area at the south end of the subject site into a tavern using shipping containers as the predominant built form.

The plans which have been considered in this planning assessment are plans TP-01 dated 25 January 2016 and TP-02 to TP-04 dated 3 March 2016 and prepared by Branov Design.

According to the applicant, the proposal 'involves the offering of food (such as tasting plates, light meals and/or snacks), entertainment in the form of amplified live and recorded music and alcohol for consumption on the premises'.

The details of the proposed buildings and works are summarised as follows:

- construction of a bar, cool room, restrooms and screened bicycle parking (for 16 bicycles) at ground level

- covered seating area partially enclosed with polycarbonate sheeting at ground floor with timber pallet seating, bench seats and tables and chairs
- construction of a rooftop garden partially enclosed with polycarbonate sheeting with tables and chairs at level 1 together with an office and staff room
- landscaping including a feature tree with timber seating
- installation of a water tank

The details of the proposed use are summarised as follows:

- tavern with an on-premises licence for consumption of liquor on the premises
- maximum capacity of 200 patrons
- operating hours of :
 - Monday to Sunday - 7am and 1am the following day
 - Good Friday and Anzac Day - 12 noon and 1am the following day
- entertainment in the form of pre-recorded and live music
- access primarily via White Hart Lane with a secondary access via the pedestrian accessway that runs along the east side of the subject site
- an area in the south-east corner of the subject site dedicated to the accommodation of a mobile food van

The application also includes the following supporting documents:

- *A House Management Plan* (undated but received 15 March 2016) detailing matters including refusal of service, crowd control and creating a safe environment
- *A Preliminary Acoustic Assessment* prepared by Arup and dated 11 December 2015 providing an assessment of potential noise impacts including mechanical, music and patrons
- *A Waste Management Plan* prepared by Leigh Design and dated 9 March 2016

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 2 (CCZ2) (Retail Core)	Pursuant to Clause 1.0 of CCZ2, a tavern is a Section 2 – Permit required use. Pursuant to Clause 37.04-4, a permit is required to construct a building or construct or carry out works unless the schedule to this zone specifies otherwise. Clause 3.0, Buildings and works, of CCZ2 states that a planning permit is required to construct a building or construct or carry out works. Decision guidelines are at 3.0 of CCZ2.
Clause 43.02 Design and Development Overlay, Schedule 1 (DDO1, Area 1 – Retail Core) (Active Street Frontages)	Pursuant to Clause 43.02-2, a permit is required to construct a building or construct or carry out works. Clause 2.0, Requirements, of Schedule 1 states the following for Area 1 – Retail Core: ‘Buildings with ground-level street frontages in the retail core must

	<p>contribute to the appearance and retail function of the area to the satisfaction of the responsible authority, by providing:</p> <ul style="list-style-type: none"> • At least 5 metres or 80% of the street frontage (whichever is the greater) as an entry or display window to a shop and/or a food and drink premises. • Built scale appropriate to the street and pedestrians. • Clear glazing (security grilles must be transparent).'
<p>Clause 43.02 Design and Development Overlay, Schedule 10 (DDO10) (Built Form Controls)</p>	<p>Pursuant to Clause 43.02-2, a permit is required to construct a building or construct or carry out works.</p> <p>Clause 2.0, Buildings and Works, of Schedule 10 states that:</p> <p>'A permit cannot be granted for buildings and works which exceed the requirements specified in Table 1 to this schedule, with the exception of: [..]' A list of exceptions is provided.</p> <p>'Buildings or works should meet the built form outcomes specified in Table 2 to this schedule. A permit cannot be granted for buildings or works which exceed the site plot ratio specified in Table 2 to this schedule unless it can be demonstrated that the buildings and works will achieve the Design Objectives and Built Form Outcomes of this schedule, any local planning policy requirements, and at least one of the following requirements is met: [..]'</p> <p>Clause 4.0, Transitional arrangements, of Schedule 10 states that:</p> <p>'The requirements of this schedule do not apply to: [..]</p> <ul style="list-style-type: none"> • an application made before the commencement of Amendment C262 to this planning scheme. For applications made before the commencement of Amendment C262 the requirements of this scheme, as they were in force immediately before the commencement of Amendment C262, continue to apply.' <p>Planning Scheme Amendment C262 was gazetted into the Melbourne Planning Scheme on 4 September 2015 to provide interim built form controls for 12 months.</p> <p>The application was lodged 1 February 2016 therefore, the requirements of DDO10 apply. However, the proposal does not seek to exceed the requirements of Table 1 or Table 2.</p>
<p>Clause 45.09 Parking Overlay, Schedule 2 (PO2) (Capital City Zone – Retail Core)</p>	<p>Clause 45.09 operates in conjunction with Clause 52.06.</p> <p>Pursuant to Clause 45.09-4, a schedule to this overlay may specify 'maximum and minimum car parking requirements for any use of land'.</p> <p>Clause 2.0, Permit requirements, of Schedule 2 states that:</p> <p>'Except with a permit, car parking must comply with the following:</p> <ul style="list-style-type: none"> • Only short-stay public car parking (up to 4 hours) or parking to serve dwellings or a residential hotel is provided and the responsible authority is satisfied that the number of car parking spaces is required. • The spaces provided for short-stay car parking are not to be accessible to vehicles between the hours of 5.30am and 9.30am Monday to Friday. • No car parking spaces are located at the ground floor level of any building. • Above-ground car parking facilities with a street frontage

	<p>must incorporate retail or other active uses on the street frontage to the satisfaction of the responsible authority.</p> <ul style="list-style-type: none"> • Cars within, or on, a building must not be visible from streets and other pedestrian activity areas.' <p>The proposal does not include any car parking. Therefore, no planning permit is required pursuant to PO2.</p>
<p>Clause 52.06 Car parking</p>	<p>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.</p> <p>As noted above, the proposal does not include any car parking. Therefore, no planning permit is required pursuant to PO2 or Clause 52.06.</p>
<p>Clause 52.07 Loading and unloading of vehicles</p>	<p>Pursuant to Clause 52.07, no building or works may be constructed for the manufacture, servicing, storage or sale of goods or materials unless:</p> <ul style="list-style-type: none"> • 'Space is provided on the land for loading and unloading vehicles as specified in the table below. • The driveway to the loading bay is at least 3.6 metres wide. If a driveway changes direction or intersects another driveway, the internal radius at the change of direction or intersection must be at least 6 metres. • The road that provides access to the loading bay is at least 3.6 metres wide.' <p>A permit may be granted to reduce or waive these requirements if either:</p> <ul style="list-style-type: none"> • The land area is insufficient. • Adequate provision is made for loading and unloading vehicles to the satisfaction of the responsible authority.' <p>For a floor area of 2600 square metres or less in a single occupation, the minimum loading bay dimensions are:</p> <ul style="list-style-type: none"> • Area 27.4 square metres • Length 7.6 metres • Width 3.6 metres • Height clearance 4.0 metres <p>The proposal includes a tavern which does trigger a requirement for the minimum loading bay dimensions. The application does not include a loading bay with these dimensions therefore, a planning permit is required for a waiver of the requirements of Clause 52.07.</p>
<p>Clause 52.27 Licensed premises</p>	<p>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.</p> <p>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.</p>
<p>Clause 52.34 Bicycle facilities</p>	<p>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.</p> <p>Table 1 of Clause 52.34-3 specifies the following relevant rates:</p> <ul style="list-style-type: none"> • Retail premises other than specified in this table – 1 employee space to each 300 square metres of leasable floor

	<p>area and 1 visitor spaces to each 500 square metres of leasable floor area</p> <p>The proposed leasable floor area is approximately 350 square metres. As such, the proposed tavern requires 1 employee space and 1 visitor space. The proposal includes 16 bicycle parking spaces. Therefore, no permit is required pursuant to Clause 52.34.</p>
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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 15.01-1, Urban design principles, which seeks to 'achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties'.
- Clause 15.02-1, Energy and resource efficiency, which seeks to 'encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions'.
- 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'.
- Clause 18.02-1, Sustainable personal transport, which seeks to, 'promote the use of sustainable personal transport'.
- Clause 18.02-2, Cycling, which seeks to 'integrate planning for cycling with land use and development planning and encourage as alternative modes of travel'.

5.2 Local Planning Policy Framework (LPPF)

5.2.1 Municipal Strategic Statement (MSS)

The subject site is located within the Hoddle Grid.

Clause 21.04–1.1 The original city centre – the Hoddle Grid, includes the following statement:

'Central City functions will be located in the Hoddle Grid. This area will be managed to facilitate continued growth where appropriate and limit change or the scale of development in identified locations to preserve valued characteristics. A strong emphasis will be placed on a quality public realm and good pedestrian amenity and connectivity.'

Clause 21.12 also includes the following relevant statements for the Hoddle Grid in terms of Economic Development and Built Environment and Heritage:

- 'Encourage the development of a range of complementary precincts within the Hoddle Grid that offer a diverse range of specialist retail, cultural and entertainment opportunities.
- Support entertainment, bars, eating and other evening uses throughout the Hoddle Grid.
- Support the Retail Core as a compact, high-density retail precinct and facilitate easy pedestrian access.
- Maintain a low rise form and streetscapes in the Retail Core and along key views to ensure an intimate pedestrian scale and views to key buildings are maintained.
- Ensure development fronting streets creates a continuous building edge and integrated streetscape.'

5.2.2 Local Policies

The relevant local policies are summarised as follows:

- Clause 22.01, Urban Design within the Capital City Zone, recognises that 'Melbourne's buildings, streets, open spaces and landscape features combine to give the Central City its unique appearance and feeling'. It includes policy relating to building design, facades and access and safety.
- Clause 22.19, Energy, Water and Waste Efficiency, which includes objectives and policy relating to greenhouse gas reduction and energy efficiency, water consumption and waste management. Clause 22.19-5 sets out relevant performance measures for retail premises up to 2000 square metres gross floor area.
- Clause 22.20, CBD Lanes, identifies White Hart Lane as a Class 3 Lane which is defined as follows:

'Class 3 lanes show sign of two or less of the four core value characteristics. Many of these lanes may benefit from upgrading and enhancement to realise their full potential with regard to pedestrian amenity and urban design. These lanes generally provide vehicular access to the rear of buildings for loading and service requirements or access to car parking areas.'

The policy has three sections relating to General policy, Laneway design and Buildings and works adjoining lanes.

- Clause 22.22, Policy for Licensed Premises that require a Planning Permit, which includes policy relating to noise, patron numbers and hours of operation to minimise adverse impacts on the amenity of the area and encourage well-managed premises that contribute positively to the area.
- Clause 22.23, Stormwater Management (Water Sensitive Urban Design), seeks to promote the use of water sensitive urban design and includes an application requirement for a Water Sensitive Urban Design Response.

6 ZONE

The subject site is located within Capital City Zone, Schedule 2 (CCZ2), which seeks to 'provide for the intensification of retail and other complementary commercial, community and entertainment uses within the established retail core'.

As set out above at Section 4, a permit is required for the proposed use and buildings and works pursuant to CCZ2.

7 OVERLAY(S)

The subject site is also affected by the Design and Development Overlay, Schedule 1 (DDO1, Area 1) (Active Street Frontages) and 10 (DDO10) (Built Form Controls), and Parking Overlay, Schedule 2 (PO2) (Capital City Zone – Retail Core).

As set out above at Section 4, a permit is not required for the proposal pursuant to PO2 but is required pursuant to DDO1 and DDO10.

Clause 1.0 of DDO1 sets out the following relevant design objectives:

- 'To ensure ground floor frontages are pedestrian oriented and add interest and vitality to city streets.
- To ensure ground floor frontages contribute to city safety by providing lighting and activity.'

The relevant requirements for Area 1 (Retail Core) are set about above at Section 4.

Table 1 and Table 2 of DDO10 set out built form requirements and outcomes including podium height, tower setbacks, tower separation and site plot ratio. As noted above at Section 4, whilst DDO10 applies, the proposal comprising a two-storey building does not seek to exceed the requirements of Table 1 or Table 2.

8 PARTICULAR PROVISIONS

The following particular provision applies to the application:

- Clause 52.07, Loading and unloading
- Clause 52.34, Bicycle Facilities
- Clause 52.43, Live Music and Entertainment Noise

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 two notices on the site for a 14 day period, in accordance with Section 52 of the *Planning and Environment Act 1987*.

11 OBJECTIONS

A total of 25 objections (including a petition with 33 signatures from the Body Corporate of 225 Elizabeth Street) were received, and raised the following concerns (summarised):

- Noise impacts from music, patrons inside the venue and patrons queueing and accessing the venue via White Hart Lane
- Submitted acoustic assessment includes no noise testing / attenuation measures
- Duration of operating hours (1am every night)
- Rubbish including urination and vandalism in White Hart Lane

- Safety and security in White Hart Lane resulting from violence and alcohol/drug related offences
- Traffic, loading and waste collection in White Hart Lane
- Main entrance should be via Lonsdale Street with White Hart Lane used only for emergencies
- Immediate area already has enough restaurants and taverns contributing to noise pollution
- Devaluation of property values and rental incomes
- Odours from outdoor toilets in shipping containers
- Odours from cooking exhausts
- Installation of an upgraded electrical supply prior to a permit being issued
- Notification of the application should have included the White Hart Lane address
- Proximity of the tavern to 225 Elizabeth Street is inaccurately reported in the submission

One letter of support was also received from a resident of 225 Elizabeth Street.

12 CONSULTATION

Given the receipt of the above objections, a meeting was arranged between the permit applicant, their planning consultant, acoustic consultant and Council officers. The objections and further acoustic treatment were all discussed.

13 REFERRALS

13.1 Internal

The application including the *Waste Management Plan* (WMP) prepared by Leigh Design and dated 9 March 2016 was referred internally to Council's Engineering Services Group (ESG). ESG provided comments dated 7 April 2016 (civil design), 15 April 2016 (traffic) and 28 April 2016 (waste).

Civil design

- Any building over easements on the title plan TP550220D requires the necessary approval from the relevant authority.
- White Hart Lane has no footpaths. As such proposed pedestrian access via White Hart Lane poses safety concerns for pedestrians.
- The comments also include standard permit conditions relating to drainage and street levels.

Traffic

- ESG cannot and will not guarantee the availability of the existing loading zone in White Hart Lane for this tavern.
- ESG will not amend the existing on street parking restrictions to cater for this tavern.

Waste

- The WMP prepared by Leigh Design and dated 9 March 2016 is acceptable.

- The private waste vehicle should be parked legally in Little Bourke Street while bins are collected from the subject site. This is feasible as there is an existing loading zone in Little Bourke Street opposite White Hart Lane.
- The comments also include a standard permit condition relating to the WMP.

13.2 External

The application was not required to be referred externally pursuant to the relevant statutory controls of Clause 66.

14 ASSESSMENT

The application seeks the use and development of the land as a tavern and a waiver of loading requirements. The key issues for consideration in the assessment of this application are:

- Use
- Built form
- Loading and unloading

These issues are addressed in the following sections:

14.1 Use

A planning permit is required for the use as a tavern pursuant to CCZ2. The use as a tavern is consistent and compatible with the purpose of the CCZ2 to 'provide for the intensification of retail and other complementary commercial, community and entertainment uses within the established retail core'.

As identified above, Council's ESG commented that White Hart Lane does not have footpaths and that using this laneway for pedestrian access 'poses safety concerns for pedestrians'. The use of laneways contributes to the vibrancy of the Hoddle Grid and this is recognised in Council's Laneway Policy at Clause 22.20.

White Hart Lane is recognised as a Class 3 Lane, which display the following general characteristics:

'Many of these lanes may benefit from upgrading and enhancement to realise their full potential with regard to pedestrian amenity and urban design. These lanes generally provide vehicular access to the rear of buildings for loading and service requirements or access to car parking areas.'

Although there is alternative access available via Lonsdale Street it is considered utilising the White Hart Lane frontage will activate the laneway which is encouraged by policy: 'To encourage activity, vitality and interaction between public laneways and adjacent private uses.'

The development fronts on to the laneway and only has a narrow entrance through Lonsdale Street. Allowing access via White Hart Lane is considered to give the tavern a sense of address and place, despite the minor safety concerns.

Due to the potential for noise impacts associated with patrons leaving the venue after 11pm, it is recommended that the laneway entrance not be used after 11pm. A condition will be added to any approval restricting this access point to only be used as an entrance after 11pm. After this time patrons will be required to leave from the Lonsdale Street entrance. It could be a concern if 200 people were to spill out onto White Hart Lane at closing time, thus this condition will assist in alleviating noise concerns from residents of the Nova Apartments.

Apart from the issue regarding access, the key planning consideration for this application is an assessment against Clause 22.22, Policy for Licensed Premises that require a Planning Permit. It provides guidance including objectives and policy

relating to hours of operation, noise, patron numbers and cumulative impact. The following provides an assessment of the proposed tavern against Clause 22.22.

14.1.1 Hours of operation

The proposed hours of operation for the tavern are:

- Monday to Sunday - 7am and 1am the following day
- Good Friday and Anzac Day - 12 noon and 1am the following day

Of relevance to the CCZ2, Clause 22.20 states that:

- '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 closest noise sensitive use is the residential apartment building known as the Nova Apartments at 225 Elizabeth Street. Whilst objections have been received from residents of these apartments, the building does not immediately adjoin the subject site but is located approximately 27 metres to the south along White Hart Lane. Therefore, with reference to the policy above, it is not considered appropriate to define the surrounding area as "noise sensitive". However, the receipt of objections relating to noise does warrant consideration to limit the proposed hours of operation.

By way of comparison, the nearby Francis Hotel/Niagara Hotel at 383 Lonsdale Street has an outdoor area in the form of a rooftop courtyard/beer garden. The applicable Late Night (General) Licence (No. 31905758) restricts the rooftop courtyard/beer garden to 100 patrons and the following operating hours:

- Good Friday between 12 noon and 1am the following morning
- Anzac Day (Sunday to Thursday) between 12 noon and 11pm
- Anzac Day (Friday & Saturday) between 12 noon and 1am the following morning
- Sunday to Thursday between 10am and 11pm
- Friday & Saturday between 10am and 1am the following morning

This similar use in an exposed outdoor setting shows that 1am licenses can be considered on a Friday and Saturday night in the central city context. It is considered that a 1am opening time from Sunday to Thursday is too late as residents will be asleep or in bed on these 'week nights' at this time. The applicant has requested some flexibility for Thursday nights and as such it is considered a midnight closing time is appropriate on this night.

With the proposed conditions restricting only access via White Hart Lane after 11pm and noise attenuation this is considered acceptable and complies with Clause 22.22 in that outdoor areas will not be occupied after 1am.

14.1.2 Noise

The potential noise impacts associated with the proposed tavern include music (pre-recorded and live), patrons, mechanical and waste collection. As noted above, the closest noise sensitive use is the Nova Apartments at 225 Elizabeth Street located approximately 27 metres to the south along White Hart Lane.

With regard to noise, Clause 22.02 states that:

- 'The licensed premises should be operated to ensure that noise emissions from the premises:

- will not have an unreasonable impact on the amenity of the surrounding area;
- comply with the standards as specified in the State Environmental Protection Policies; and
- are regulated and monitored, making use of noise limiters where appropriate.'

The submitted *Preliminary Acoustic Assessment* prepared by Arup and dated 11 December 2015 provides an assessment of potential noise impacts including mechanical, music and patrons but does not include any noise attenuation measures or detailed testing. In addition, it does not refer to waste collection however; this is commonly addressed via a permit condition that would not allow collection during the night.

The submitted assessment states that the noise will not be greater than 59Db when measured from the adjoining building's roof at 355-357 Lonsdale Street. Importantly this measurement assumes that the windows of Nova Apartments will be open and that the venue will be operating at capacity – 200 people. In other words it is a conservative assessment that allows some margin for error.

The assessment concludes that:

'Based on our assessment, noise emissions from the Subject Site will not adversely impact the nearby noise sensitive community. We propose the following noise conditions for consideration by City of Melbourne:

- The venue must comply with the requirement of State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 and State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.
- Commissioning testing must be conducted by a suitably qualified acoustic consultant to ensure compliance with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.'

Music noise and mechanical noise emissions are controlled by the State Environmental Protection Policy (SEPP) No. N-1 and No. N-2. However, these policies do not apply to patron noise, which is a potential noise impact given the proposal only seeks to partially enclose the tavern with polycarbonate sheeting. As noted above, the submitted *Preliminary Acoustic Assessment* considers this noise source and specifies patron noise limits. However, the assessment is contradictory as it refer to music but states that the 'patron noise assessment suggests that based on a maximum of 200 patrons at the Subject Site, patron noise in the absence of music will continuously comply with the proposed patron noise limits'.

Nova Apartments has retail and car parking on levels ground to two (first three floors) and apartments beginning at the fourth floor. Levels three to eleven show a single north facing window on the west of the development (closest to the subject site) with a second north facing window on the eastern side. These windows are inoperable and only allow light in.

Operable windows are found on the west elevation of the development, while there is a single apartment on each level with a balcony on this western elevation. This balcony can be seen in figure four below. As such, compliance with SEPP N-2 will be sufficient to allow for noise to be mitigated to this residential use.

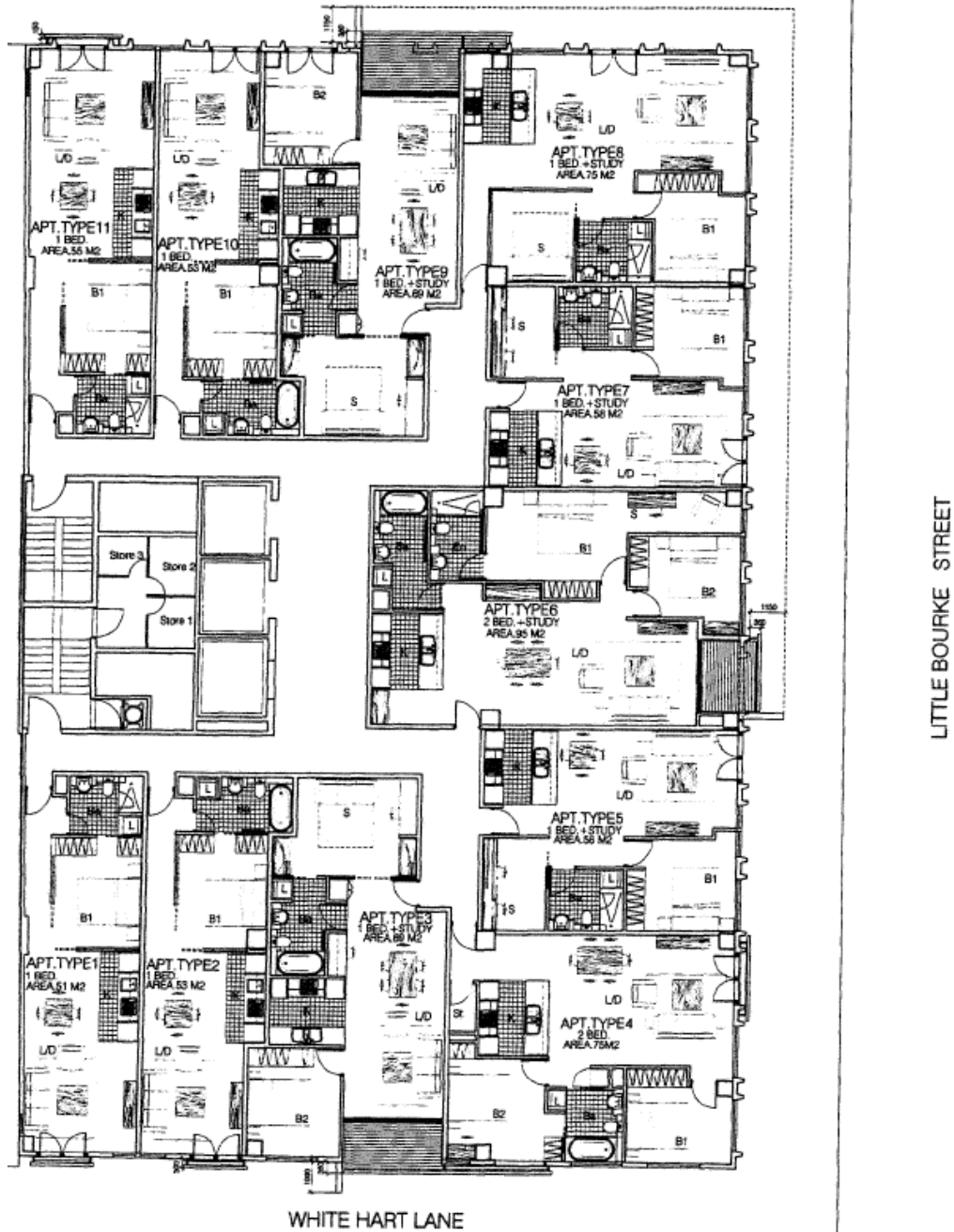


Figure Four: Typical levels 3-11 at Nova Apartments showing operable windows and a single balcony on the White Hart Lane frontage.

On the basis of permit conditions detailing noise attenuation measures to ensure compliance with all noise limits (SEPP No. N-1, SEPP No. N-2 and specified patron noise limits) and requiring acoustic testing prior to the commencement of the use, it is considered that the proposed tavern will be consistent with policy relating to noise at Clause 22.22 and will not have an unreasonable impact on the amenity of the surrounding area.

14.1.3 Patron numbers

The proposed tavern seeks a maximum of 200 patrons. This capacity is supported by the submitted *House Management Plan*, which details patron management measures including refusal of service, crowd control and creating a safe environment.

In terms of patron numbers, Clause 22.20 states that:

‘The maximum number of patrons permitted in a licensed premise should be limited to manage any unreasonable impact on the amenity of the surrounding uses and area and the maximum occupancy capacity of the premises, as determined by the Building Act 1993.’

In addition, with regard to the CCZ2, it states 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’.

Despite the departure from policy with more than 100 patrons, it is considered that the proposed tavern is acceptable as the maximum patron numbers are derived from the maximum occupancy capacity of the premises (according to the submitted *House Management Plan*) and therefore comparable to other venues with a similar floor area. In addition, as outlined above in Section 14.1.2, a permit condition relating to patron noise will be required to manage any unreasonable impact on the amenity of surrounding noise sensitive uses. Finally, the patron management measures outlined in the submitted *House Management Plan* can be ensured via a permit condition.

A condition will also be added to restrict the use of the outdoor, exposed areas to a maximum of 120 people to reduce patron noise.

14.1.4 Cumulative impact

The decision guidelines at Clause 22.20-5 include:

‘The cumulative impact of any existing licences and the proposed liquor license, the hours of operation and number of patrons, on the amenity of the area.’

The submission from Contour Town Planners includes a brief cumulative impact assessment supported by the information on TP-01 identifying surrounding liquor licenses. It identifies 24 existing liquor licences including a range of restaurants, cafes, taverns and nightclubs within the area bound by Lonsdale Street, Elizabeth Street, Bourke Street and Queen Street.

The proposed tavern is not considered to create a negative cumulative impact as follows:

- The existing density of late-night venues is not considered to be of saturation levels as 24 venues within an area bounded by Lonsdale Street, Elizabeth Street, Bourke Street and Queen Street is not unusual in the CCZ2, which is a designated entertainment area.
- The existing density of licensed venues represents a range of uses including restaurants, cafes, bars and clubs and so cannot be characterised as a cluster of entertainment venues such as taverns and clubs.
- The operating hours (as amended) are not anticipated to create any issues in terms of patron dispersal given the range of closing times within the block bounded by Lonsdale Street, Elizabeth Street, Bourke Street and Queen Street and the availability of public transport, taxis and car parking within the immediate area.
- The submitted *House Management Plan* and conditions outlined above in terms of access via Lonsdale Street, operating hours and patron noise will allow for the effective management of patrons.

14.2 Live Music and Entertainment Noise

Clause 52.43 was introduced into the Planning Scheme to protect existing live music venues from the encroachment of new residential uses and to protect existing

residential uses from unreasonable levels of live music. This is known as the 'agent of change' principle and requires the new use to properly attenuate noise.

This clause defines a 'live music entertainment venue' as a food and drink premises (including tavern) that includes live music entertainment. As such, the proposed use meets this definition.

Clause 52.43 states that the requirements to be met include:

'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.'

It is noted that the proposed tavern is located 27m away from Nova Apartments, although the noise source will be located further north inside the venue while openable windows are further south in the apartment block. It is also noted the level of background noise measured by Arup is high (between 54-59dB), which is to be expected in an inner city location.

Although the tavern will occasionally play live music (DJs, acoustic rock) it will primarily operate as a tavern with background music. Although the music source will occur from within the covered ground floor area, there will be some degree of noise spill.

The following conditions are proposed to deal with this additional music noise:

- No speakers to any outdoor areas.
- Background music only after 11pm
- Noise limiters for pre-recorded and live music
- Post commencement Acoustic report ensuring compliance with SEPP N-2.

These conditions will ensure that residential uses in the area are satisfactorily protected from the live music and entertainment noise.

14.3 Built Form

The proposal seeks the conversion of the existing at-grade car parking area into a tavern using shipping containers. With regard to built form, Clause 22.01, Urban Design within the Capital City Zone, Clause 22.20, CBD Lanes, and DDO1 (Active Street Frontages) are relevant to the proposal and include policy relating to active frontages, access and safety and laneways. It is noted that DDO10 (Built Form Controls) also applies to the subject site but the proposal does not seek to exceed the requirements of Table 1 or Table 2.

The proposed tavern will improve the presentation to White Hart Lane. In particular, Area 1 of DDO1 states that ground-level street frontages in the retail core must contribute to the appearance and retail function of the area'. Also of relevance, Clause 22.01, seeks to encourage facades that 'engages the eye of the pedestrian'. Finally, White Hart Lane is identified as a Class 3 Lane at Clause 22.20.

Currently, the site presents as an at-grade car park fronting White Hart Lane. The proposal includes tables and chairs and an area dedicated to the accommodation of a mobile food van. This will enhance interest for the pedestrian and offer an improved level of safety for White Hart Lane through increased surveillance.

A condition of the approval will require a materials schedule to gain a full understanding of the materials proposed in the construction of the tavern.

The remaining key built form consideration is consideration of Clause 22.19, Energy, Water and Waste Efficiency, and Clause 22.23, Stormwater Management (Water

Sensitive Urban Design). As the construction method using shipping containers, it is considered that the proposed tavern should consider ESD and stormwater management considerations. The proposal does include a water tank and vegetation which are considered to partially address Clauses 22.19 and 22.23. These considerations can be required formally via permit conditions.

14.4 Loading and unloading

The proposed tavern does not include a loading bay and therefore, seeks a waiver of loading requirements pursuant to Clause 52.07.

The waiver of loading requirements is not unusual for taverns within the Hoddle Grid where sites are constrained in terms of available area. In this case, ESG does not object to the lack of an on-site loading bay and notes that there is a loading zone in White Hart Lane adjacent to the subject site. On this basis, the proposed waiver of loading requirements is considered to be acceptable.

14.5 Issues raised by the objectors

The majority of the issues raised by the objectors have been addressed in the above sections or the comments from ESG. The following responses are provided in terms of the remaining issues:

- Devaluation of property values and rental incomes – Property values and rental incomes are not a planning consideration.
- Odours from outdoor toilets in shipping containers – The generation of offensive odours and fumes is a consideration under the Melbourne City Council's *Environment Local Law 2009*, which applies to all premises within the City of Melbourne.
- Odours from cooking exhausts – The generation of offensive odours and fumes is a consideration under the Melbourne City Council's *Environment Local Law 2009*, which applies to all premises within the City of Melbourne.
- Installation of an upgraded electrical supply prior to a permit being issued – Installation of upgraded electricity supply is not a planning consideration.
- Notification of the application should have included the White Hart Lane address. The objectors were given an additional 2 weeks to respond to Council with concerns due to the perceived addressing issues.
- Proximity of the tavern to 225 Elizabeth Street is inaccurately reported in the submission – The assessment of the application has considered the actual location of 225 Elizabeth Street

14.6 Conclusion

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

15 RECOMMENDATION

That a Notice of Decision to Grant a 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 plan dated February 2016 but amended to show:
 - a) Annotated elevation plans showing all heights of buildings

- b) A schedule of all external materials, colours and finishes including colour rendered and notated elevations
- c) All speakers and other noise sources within the venue. No speakers must be located in outdoor areas.

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

- 2. The use of any land or building or part thereof and development as shown on the endorsed plan must not be altered or modified without the prior consent of the Responsible Authority.
- 3. Prior to the commencement of the development an amended *House Management Plan* must be submitted to the Responsible Authority generally in accordance with the *House Management Plan* dated February 2016 but amended to outline the following changes:
 - a) The White Hart Lane entrance must be restricted to be used for entry only after 11pm. Patrons must not exit through the White Hart Lane entry after 11pm, with the exception of emergencies.
 - b) Only background music is to be played after 11pm
 - c) Show how patrons leaving the venue will be managed to prevent adverse amenity impacts to neighbouring residents and businesses.
 - d) There must be food available at all times the venue is open.

The amended House Management Plan must be to the satisfaction of the Responsible Authority and when approved will form part of the endorsed plans of this permit.

- 4. The maximum number of patrons on the premises must be no more than 200 at any one time unless with the prior written consent of the Responsible Authority.
- 5. The maximum number of patrons in the outdoor areas (the whole of the mezzanine level and the area to the south on the ground floor) must be no more than 120 at any one time unless with the prior written consent of the Responsible Authority.
- 6. Except with the prior written consent of the Responsible Authority, the premises must only be open for the use between the following hours:
 - Good Friday between 12 noon and 1am the following morning
 - Sunday to Wednesday between 7am and 11pm
 - Thursday between 7am and 12am the following morning
 - Friday and Saturday between 7am to 1am the following morning
 - Anzac Day (Sunday to Wednesday) between 12 noon and 11pm
 - Anzac Day (Friday & Saturday) between 12 noon and 1am the following morning
 - Anzac Day (Thursday) between 12 noon and 12am the following morning
- 7. Prior to the commencement of the use an amended acoustic report prepared by a suitably qualified acoustic consultant must be submitted to and approved by the Responsible Authority. When approved the report will be endorsed and will form part of the permit. The report must identify all potential noise sources

and sound attenuation measures required to ensure that the noise levels generated by the premises do not exceed the levels specified in the:

- State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1
- State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2
- submitted *Preliminary Acoustic Assessment* prepared by Arup and dated 11 December 2015 for patron noise limits

This report must be to the satisfaction of the Responsible Authority. The recommendations of the report must be implemented at no cost to the City of Melbourne prior to commencement of the use.

8. Prior to the commencement of the use an acoustic report prepared by a suitably qualified acoustic consultant must be submitted to and approved by the Responsible Authority. When approved the report will be endorsed and will form part of the permit. The report must include the results of acoustic testing verifying that the maximum noise levels will comply with SEPP No N-1, SEPP N-2 and the patron noise limits in the submitted *Preliminary Acoustic Assessment* prepared by Arup and dated 11 December 2015 as specified in condition 7 are achieved to the satisfaction of the Responsible Authority.

The report must specify that noise limiters are installed for all amplified music to ensure compliance with the noise levels listed above.

The recommendations of the report must be implemented at no cost to the City of Melbourne prior to commencement of the use.

9. Prior to commencement of the use, a noise limiter must be installed on the land. The noise limiter must:
 - be set at a level specified by a qualified acoustic engineer,
 - ensure the emission of noise from amplified music does not exceed the levels specified in the *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2*,
 - be maintained and operated at all times music is played, and
 - be to the satisfaction of the responsible authority.
10. 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 SEPP No N-1, SEPP N-2 and the specified patron noise limits in the submitted *Preliminary Acoustic Assessment* prepared by Arup and dated 11 December 2015. The recommendations of the report must be implemented by the applicant to the satisfaction of the Responsible Authority.
11. Noise emissions from the premises must comply with State Environment Protection Policy (Noise from Commerce Industry and Trade) No. N-1 (SEPP

N-1) and State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2), as applicable.

12. At all times when the premises is open for business, a designated manager must be in charge of the premises.
13. At all times when the premises is open for business, food must be available for purchase by any customers.
14. 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.
15. The waste storage and collection arrangements must be in accordance with the *Waste Management Plan (WMP)* prepared by Leigh Design and dated 9 March 2016 to the satisfaction of the Responsible Authority - Engineering Services. The waste storage and collection arrangements must not be altered or modified without the prior consent of the Responsible Authority – Engineering Services.
16. All garbage and waste material must be stored in an area set aside for such purpose to the satisfaction of the Responsible Authority. No goods, garbage, packing material or similar material shall be left outside the venue on adjoining footpaths or roads.
17. No bottles or other waste material may be removed from the site between the hours of 9.00pm and 7.00am the following morning, seven days a week.
18. Prior to the commencement of the development, an Environmentally Sustainable Design (ESD) Statement shall be prepared by a suitably qualified professional and submitted to the satisfaction of the Responsible Authority. The ESD Statement must demonstrate that the building has the preliminary design potential to achieve the following:
 - 5 points for Wat-1 credit under a current version of the Green Building Council of Australia's Green Star – Retail rating tool or equivalent.
19. The performance outcomes specified in the Environmentally Sustainable Design (ESD) Statement for the development must be implemented prior to occupancy at no cost to the City of Melbourne and be to the satisfaction of the Responsible Authority.

Any change during detailed design, which affects the approach of the endorsed ESD Statement, must be assessed by an accredited professional. The revised statement must be endorsed by the Responsible Authority prior to the commencement of construction.

20. 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 stormwater drainage system.

21. Existing street levels in White Hart Lane and Lonsdale Street must not be altered for the purpose of constructing new vehicle crossings or pedestrian entrances without first obtaining approval from the Responsible Authority – Engineering Services
22. 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 as a tavern 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:

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.

16 DECISION

The Lord Mayor, Deputy Lord Mayor and Councillors were notified of the above recommendation on 22 June 2016.

The signature and date below confirms that the Lord Mayor, Deputy Lord Mayor and Councillors affirmed this recommendation as the Council's decision.

Signature:

Date affirmed:

Billy Rebakis

Acting Senior Planning Officer