

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

**Agenda item 6.1**

**Planning Permit Application: TP-2019-313  
137-143 Elgin Street, Carlton**

**17 September 2019**

**Presenter:** Evan Counsel, Acting Manager Planning and Building

**Purpose and background**

1. The purpose of this report is to advise the Future Melbourne Committee of a planning permit application to use the land at 137-143 Elgin Street, Carlton (refer Attachment 2 – Locality Plan) as a function centre, for the sale and consumption of liquor (General Licence) and for a waiver of car parking.
2. The applicant is Carlin Group Pty Ltd C/- On Tap Liquor Consulting, the owner is Leeokla Pty Ltd and the architect is KDC – Kitchen, Design and Construct.
3. The site is located within the Commercial 1 Zone and is affected by Heritage Overlay (HO1 Carlton Precinct), Design and Development Overlay Schedule 48 (Central Carlton North) and Parking Overlay Schedule 12 (Residential Development in Specific Inner City Areas).
4. The venue will predominantly operate as a ‘market’ and ‘food and drink premises’, which are as-of-right in the Commercial 1 Zone and do not require planning approval. This planning application seeks approval to also use the venue as ‘function centre’ to allow for product launches and events. A general liquor licence is proposed which will allow for the sale and consumption of liquor on and off the premises. The proposed hours are Sunday to Thursday 9am to 11pm, Friday and Saturday 9am to midnight the following day and Good Friday and Anzac Day midday to 11pm. A maximum of 220 patrons and 20 staff is proposed. Live music and entertainment is proposed at background levels.
5. Public notice of the application was undertaken, which resulted in 60 objections and six letters of support.

**Key issues**

6. The key issues relate to balancing the needs and amenity of local residents and the retailing needs of the Elgin Street shopping strip. This includes potential amenity impacts on the surrounding area having regard to the proposed use of the land, sale and consumption of liquor, provision of live music and entertainment, waiver of car parking and waste collection arrangements.
7. Subject to a condition requiring a reduction in trading hours to no later than 11pm, the sale and consumption of liquor in association with the proposed use is considered to add to the vibrancy of the local shopping centre without having an unreasonable impact on the amenity of the surrounding area.
8. The site is well served by public transport and subject to a condition requiring the maximum number of patrons associated with the function centre be reduced from 220 to 100, the waiver of car parking will not have an unreasonable impact on on-street parking.

**Recommendation from management**

9. That the Future Melbourne Committee resolves to issue a Notice of Decision to Grant a Permit subject to the conditions outlined in the delegate report (refer to Attachment 4).

**Attachments:**

1. Supporting Attachment (Page 2 of 21)
2. Locality Plan (Page 3 of 21)
3. Plans (Page 4 of 21)
4. Delegate Report (Page 6 of 21)

## 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. Section 61 of the Act sets out that the Council may decide to grant a permit, grant a permit subject to conditions or refuse to grant a permit on any ground it thinks fit.
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.

### Health and Safety

5. Relevant planning considerations such as traffic and waste management and potential amenity impacts that could impact on health and safety have been considered within the planning permit application and assessment process.

### Stakeholder consultation

6. Public notice of the application was undertaken in accordance with the *Planning and Environment Act 1987* and resulted in 60 objections at the time of writing this report.

### Relation to Council policy

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

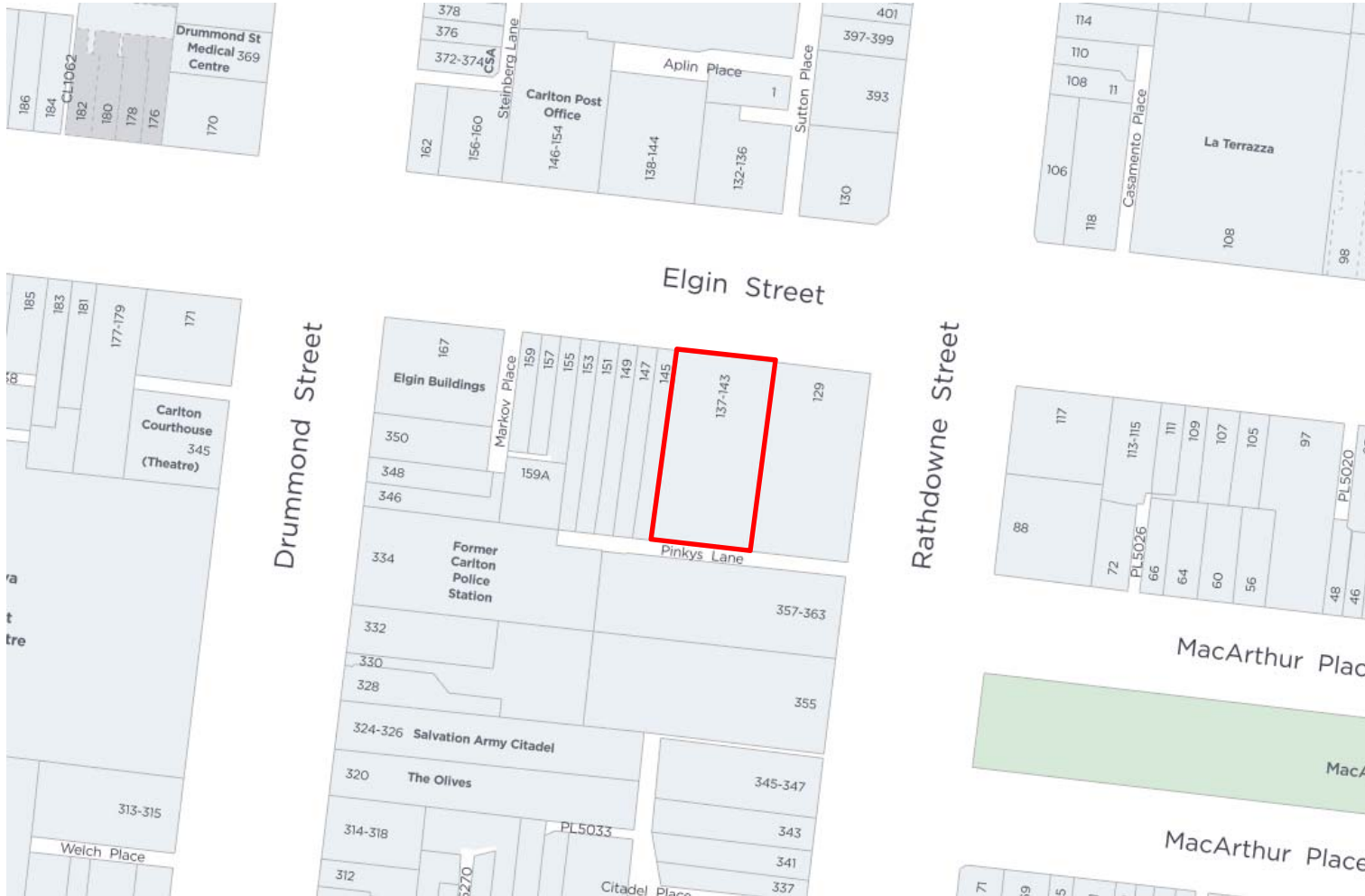
### Environmental sustainability

8. The Waste Management Plan submitted with the application demonstrates that the proposal will achieve the requirements of Clause 22.19 (Energy, Water and Waste Efficiency).

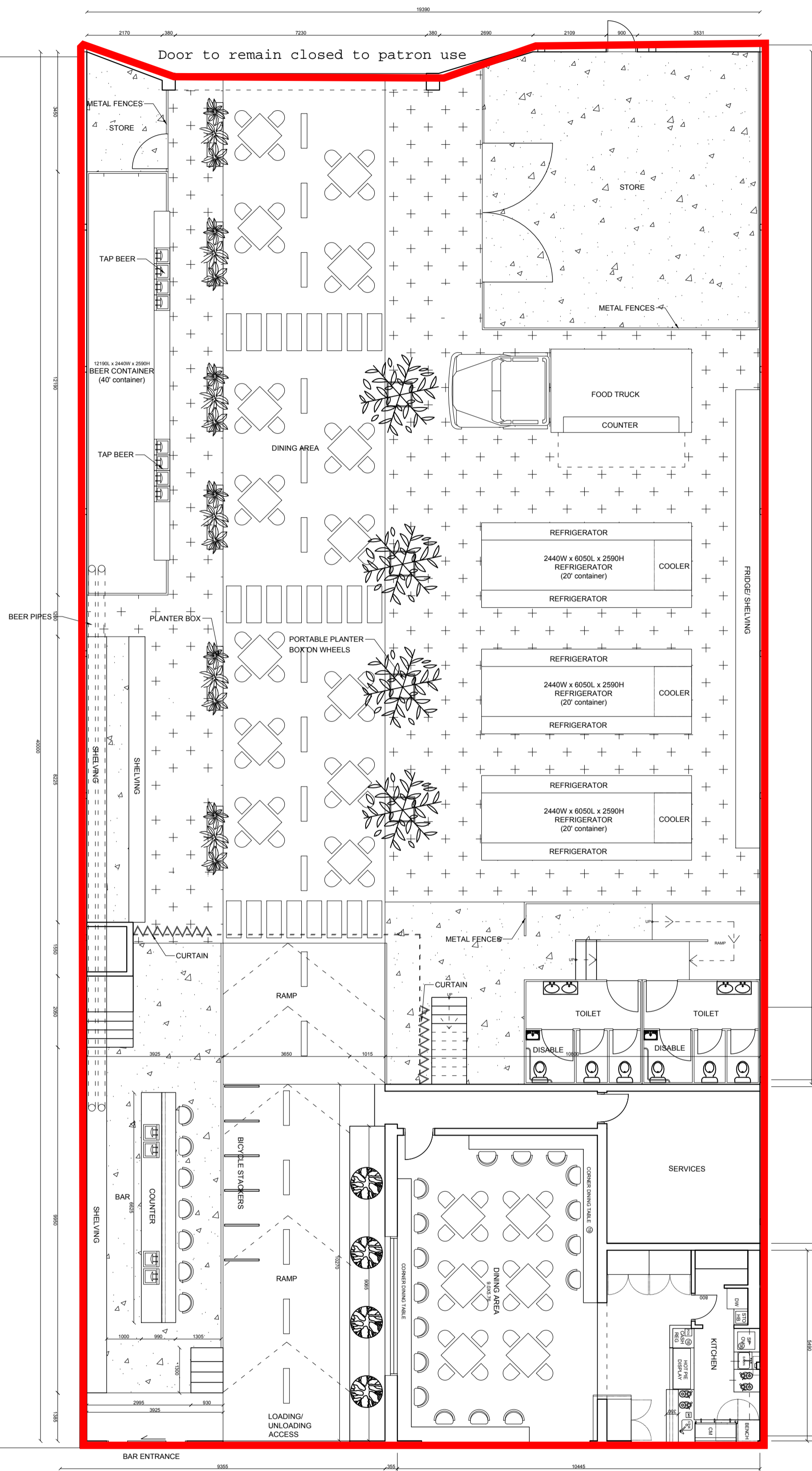
# Locality Plan

Attachment 2  
Agenda item 6.1  
Future Melbourne Committee  
17 September 2019

## 137-143 Elgin Street, Carlton



PINKYS LN



1129-135

145-147

ELGIN STREET

<p><b>Legends</b></p> <ul style="list-style-type: none"> <li> BLACK PAINTED WITH WHITE STRIP</li> <li> SYNTHETIC GRASS</li> <li> EXISTING CONCRETE</li> </ul>	<p><b>Note</b></p>	<p><b>Client</b> JAMES CARLIN</p> <p><b>Project</b> AUSSIE PIE &amp; BEER "TOOBIE"</p> <p><b>Location</b> 137 ELGIN ST, CARLTON, VIC 3053</p>	<p><b>Prepared By</b></p>  <p>Kilchen Design &amp; Construct 3/4 Kirkham Rd, Dandenong South, Victoria 3175 0473 474 502 dms@kilchendc.com.au</p>	<p><b>Area</b></p> <table border="1"> <tr><td>Overall</td><td></td></tr> </table>	Overall		<p><b>Title</b> PROPOSED FLOOR PLAN</p> <table border="1"> <tr> <td>Date</td> <td>14/05/2019</td> <td>Scale</td> <td>1:100</td> </tr> <tr> <td>Drawing No</td> <td>01</td> <td>Paper Size</td> <td>A2</td> </tr> <tr> <td>Approved By</td> <td></td> <td></td> <td></td> </tr> </table>	Date	14/05/2019	Scale	1:100	Drawing No	01	Paper Size	A2	Approved By			
Overall																			
Date	14/05/2019	Scale	1:100																
Drawing No	01	Paper Size	A2																
Approved By																			



# DELEGATE REPORT

## PLANNING APPLICATION

<b>Application number:</b>	TP-2019-313
<b>Applicant / Owner / Architect:</b>	Carlin Group Pty Ltd c/- On Tap Liquor Consulting / Leeokla Pty Ltd / KDC Kitchen Design and Construct
<b>Address:</b>	137-143 Elgin Street, Carlton VIC 3053
<b>Proposal:</b>	Use the land as a function centre, sale and consumption of liquor (General Licence) and waiver of car parking requirements
<b>Date of application:</b>	2 May 2019
<b>Responsible officer:</b>	Rachel Grounds, Acting Senior Urban Planner

### 1 SITE AND SURROUNDS

#### 1.1 Subject Site

Planning Application TP-2019-313 (the application) concerns the land known as:

- 137-143 Elgin Street, Carlton (the subject site)
- Lots 1 and 2 on Plan of Subdivision 034378 (Volume 02009, Folio 619)
- Lot 3 on Plan of Subdivision 034378 (Volume 02495, Folio 885).

The site is bound by Elgin Street to the north and Pinkys Lane to the south. Rectangular in shape, the site comprises an area of approximately 823 square metres with a frontage to Elgin Street of 20.1 metres and a depth of 40 metres. The site is relatively flat.

The land is developed with a two storey brick warehouse. Built in the 1980s, this building features full site coverage with two storey walls on all boundaries and a gabled corrugated iron roof. This building was previously tenanted by 'Elgin Scrap Metals Pty Ltd', a large warehouse selling second hand goods. A café is currently operating in the front portion of the building. Two large roller doors provide vehicle access through the site from Elgin Street to Pinkys Lane.

*Figure 1: Elgin Street Photograph of Subject Site*



*Figure 2: Pinkys Lane Photograph of Subject Site*



## 1.2 Site Surrounds

The subject site is located in an area of Carlton which features a range of uses and built form typologies. With regards to the surrounding streetscape, Elgin Street features a central median, restricted parallel parking on both sides of the street and designated bicycle lanes. A loading zone is located in front of the subject site. The built form is predominately one and two storey heritage buildings, with uses generally being of a commercial or residential nature.

### North

To the north of the site, on the opposite side of Elgin Street is a row of three two storey buildings. These buildings are occupied by shops on the ground floor with residences above. Further north are a variety of residential typologies including single dwellings and apartment buildings.

### East

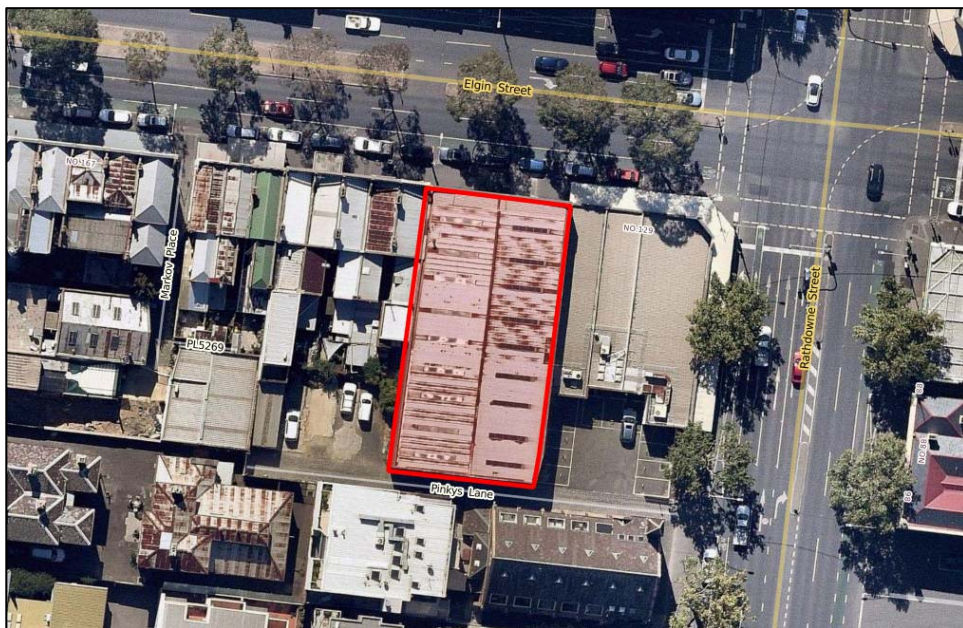
The subject site shares a boundary to the east with 129 Elgin Street. This site is occupied by a single storey commercial building. This building is currently vacant, but has been previously used as a bank and medical office.

### South

To the south of the site is Pinkys Lane, a 3 metre wide laneway that provides vehicle access to the adjoining properties. Beyond Pinkys Lane, at 357-363 Rathdowne Street, is the former Independent Church. This building was refurbished and subdivided into a four storey apartment building with 28 units in 2003. Several units have habitable room windows and outdoor spaces with an outlook towards the subject site.

### West

The subject site shares a boundary to the west with 145 Elgin Street. This site is developed with one two storey shop. 145 Elgin Street is currently occupied by a retail premises selling musical instruments. Further west are a variety of retail premises. The nearest residential property to the west is located on the first floor of 149 Elgin Street.



**Figure 3: Aerial Photograph of Subject Site (dated 11 January 2019)**

The nearest public transport options include the tram lines along Lygon and Nicholson Streets and the bus routes along Rathdowne Street, all within reasonable walking distance.

There are several licensed premises located within the immediate vicinity, as identified in Figure 4 below, including 'The Shaw Davey Slum' at 171-175 Elgin Street to the west of the site which has a maximum capacity of 500 patrons and operates until 1am Monday to Sunday.



Figure 4: Location of Nearby Licenced Premises (highlighted orange)

## 2 BACKGROUND AND HISTORY

### 2.1 Pre-application discussions

The applicant engaged in pre-application discussions with Council Officers on 15 March 2019 prior to lodging the application.

### 2.2 Amendments during the process

Following the submission of the original application on 21 May 2019, a request for further information was sent to the applicant seeking further details on the plans and the provision of a Waste Management Plan.

Further information was received by Council on 22 May 2019.

In addition to the receipt of further information, the application was formally amended on 5 June 2019 under Section 50A of the *Planning and Environment Act 1987* to:

- Amend the hours
- Reduce the patron numbers
- Remove patron access / egress from Pinkys Lane
- Amend the Waste Management Plan.

The key changes between the original application and amended application are summarised in the table below.

Table 1: Key changes between the original submission and amended application		
	Original application	Amended application
Operating hours	Monday to Thursday 7am to 11pm	Sunday to Thursday 9am to 11pm



	Friday and Saturday 7am to 1am Sunday 10am to 11pm	Friday and Saturday 9am to midnight Good Friday and Anzac Day midday to 11pm
Patron numbers	320 patrons	220 patrons
Car parking reduction	96 spaces	66 spaces

A revised Waste Management Plan (WMP) prepared by On Tap Liquor Consulting dated 21 August 2019 was submitted on 21 August 2019 in response to the concerns raised by the objectors and Council's Waste Department. The revised WMP shows waste collection from Elgin Street rather than Pinkys Lane.

### 2.3 Planning Application History

The following applications, considered relevant to the current proposal, have previously been considered for the adjoining sites:

Table 2: Planning Application History			
TP number	Property Address	Description of Proposal	Decision & Date of Decision
TP-2015-266	156-160 Elgin Street, Carlton	Use the premises for the sale and consumption of liquor (restaurant and café licence).	Permit Issued 205/06/2015
TP-2007-400	109 Elgin Street, Carlton	Sale and consumption of liquor in association with existing restaurant (on premises licence).	Permit Issued 03/08/2007
TP-2013-267/C	181 Elgin Street, Carlton	Buildings and works including partial demolition, a reduction in the car parking requirements and to use the land for the sale and consumption of liquor (on premises licence).	Amended Permit Issued 09/08/2013
TP-2008-724	418 Lygon Street, Carlton	Extension of hours of operation of the existing liquor licence (general liquor licence).	Permit Issued 10/11/2008

## 3 PROPOSAL

### 3.1 Plans / Reports considered in assessment

The plans which have been considered in this assessment are identified in Table 3 below:

Table 3: Plans / Reports considered in assessment		
Plan / Report Title	Drawing/ Report No.	Date Stamped
Copy of Title	Vol. 02009, Fol. 619 and Vol. 02495, Fol. 885	29/03/2019
Parking Demand Assessment	AusWide Consulting	May 2019
Planning Report	On Tap Liquor Consulting	04/06/2019
Red Line Plan	Redline Plans Victoria	04/06/2019
Patron Capacity Report	NCC Performance Solutions	06/06/2019
Acoustic Assessment	Waveform Acoustics	12/06/2019
Operational Management Plan	On Tap Liquor Consulting	July 2019
Amended Application Planning Report	On Tap Liquor Consulting	15/07/2019
Letter Response to Objections from Applicant	FROM The Collective	17/07/2019
Green Travel Plan	On Tap Liquor Consulting	19/07/2019

Waste Management Plan	On Tap Liquor Consulting	21/08/2019
Parking Response	On Tap Liquor Consulting	27/08/2019

### 3.2 Summary of proposal

The application seeks planning approval to use the land as a function centre, sale and consumption of liquor (General Licence) and waiver of car parking. A summary of the key features of the proposal include;

#### Use

A summary of the use, as outlined by the applicant, is as follows:

*‘The applicant seeks to create a space where rural produce is introduced into the city and be predominantly retail space, which will at times host events / product launches. The target audience and intended demographic is to be the older, sophisticated and family oriented patrons who are seeking to gain a little bit of country in the city environment’.*

It is proposed to use the venue as a market and food and drink premises and at times, a function centre to host events and product launches. A market and food and drink premises are as-of-right (no permit required) in the Commercial 1 Zone. A permit is required to use the land as a function centre and for the sale and consumption of liquor on the land.

#### Operating Hours

- Sunday to Thursday 9am to 11pm;
- Friday and Saturday 9am to midnight the following day; and
- Good Friday and ANZAC Day Midday to 11pm.

#### Patron and Staff Numbers

- The maximum number of patrons proposed on site at any one time is 220.
- The maximum number of staff proposed on site at any one time is 20.

#### Liquor and Food

- A General Liquor licence is proposed which will allow for the consumption of liquor on and off the premises.
- Food will be available throughout operating hours.

#### Entertainment

- Live music and entertainment is proposed to be played at background level only.

#### Pedestrian Access

- Patrons will enter and exit the venue via entrances on Elgin Street.

#### Layout

- The layout has a kitchen, one food truck, three 24.4m x 6m refrigerator containers, two bar areas, a central dining area, an enclosed dining area, bicycle parking, store rooms and bathrooms. The market, when in operation, will be located in the central open area with capacity for approximately 12 stalls.

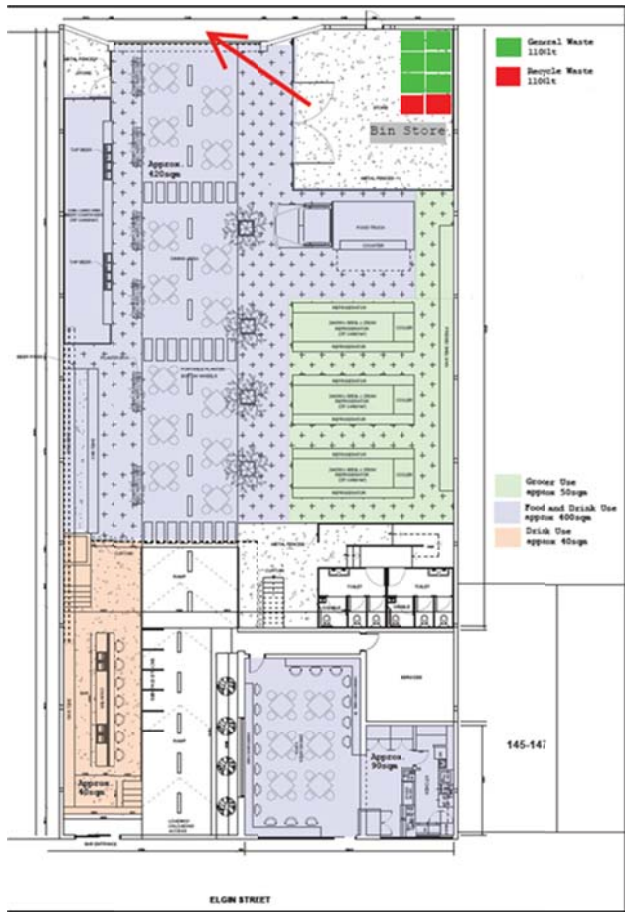


Figure 5: Proposed Floor Layout

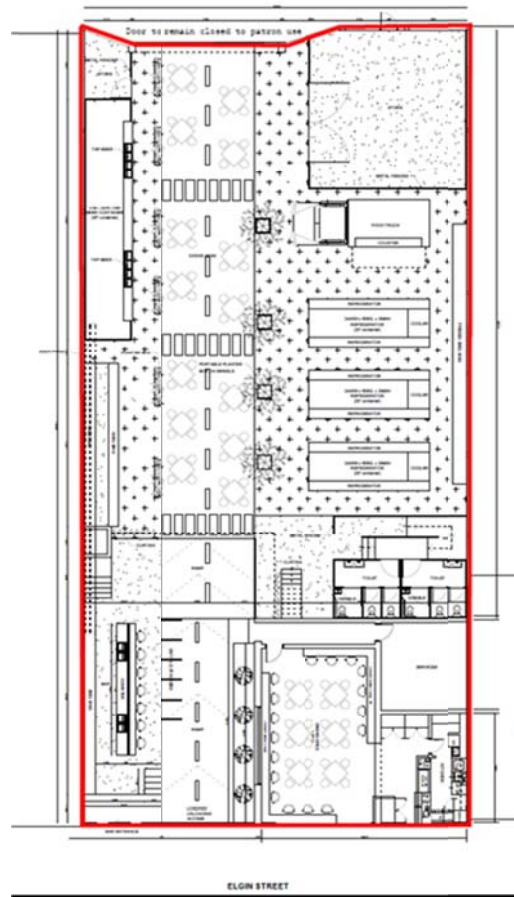


Figure 6: Proposed Red Line Area

#### 4 STATUTORY CONTROLS

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

Table 4: Statutory Controls/ Permit Triggers	
Clause	Permit Trigger
Clause 34.01 Commercial 1 Zone	A permit is required to use the land as a 'place of assembly' (other than carnival, cinema, circus, exhibition centre and place of worship). A 'function centre' is included in the broader term 'place of assembly'. As such, a planning permit is required for this land use.  A permit is not required to use the land for a 'retail premise', which includes 'market' and 'food and drinks premises'.
Clause 43.01 Heritage Overlay Schedule 1 Carlton Precinct	The application does not propose demolition, buildings, works or signage, therefore no permit is required under this provision.
Clause 43.02 Design and Development Overlay Schedule 48 Central Carlton North	The application does not include any buildings, works or signage, therefore no permit is required under this provision.

<p>Clause 45.09 Parking Overlay Schedule 12 Residential Development in Specific Inner City Areas</p>	<p>A permit is required to provide car parking in excess of one space to each dwelling.</p> <p>As the proposal does not include dwellings, no permit is required under this provision.</p>
<p>Clause 52.06 Car Parking</p>	<p>A permit is required to reduce or waive the number of car parking spaces required by this provision.</p> <p>The following rates apply:</p> <ul style="list-style-type: none"> <li>• Food and drinks premises - 3.5 spaces to each 100m<sup>2</sup> of leasable floor area.</li> <li>• Market - 3.5 spaces to each 100m<sup>2</sup> of site area.</li> <li>• Function centre - 0.3 spaces to each patron permitted.</li> </ul> <p>This equates to a statutory requirement of 29 car parking spaces when the venue is used as a market and food and drink premises (823m<sup>2</sup>), and 66 spaces when the venue is used as a function centre with 220 patrons.</p> <p>The proposal does not provide car parking. As such a reduction of 66 spaces is sought, being the higher rate.</p>
<p>Clause 52.27 Licensed Premises</p>	<p>A permit is required to sell and consume liquor.</p>
<p>Clause 52.34 Bicycle Facilities</p>	<p>A permit is required to reduce, vary or waive the number of bicycle spaces required by this clause.</p> <p>The following rates apply:</p> <ul style="list-style-type: none"> <li>• Retail premises - 1 employee space to each 300m<sup>2</sup> of leasable floor area and 1 visitor space to each 500m<sup>2</sup> of leasable floor area.</li> <li>• Place of assembly - 1 employee space to each 1,500m<sup>2</sup> of net floor area and 2 plus 1 visitor space to each 1,500m<sup>2</sup> of net floor area.</li> </ul> <p>This equates to a statutory requirement of 3 spaces for staff and 2 spaces for customers when the venue is used as a retail premises, and 2 spaces for visitors when the venue is used as a function centre.</p> <p>The proposal provides 12 bicycle parking spaces, which exceeds the requirement for a retail premises by 7 and the requirement for a function centre by 10. As such, no permit is required under this clause.</p>
<p>Clause 53.06 Live Music and Entertainment Noise</p>	<p>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. A permit may be granted to reduce or waive these requirements if the responsible authority is satisfied that an alternative measure meets the purpose of this clause.</p> <p>A live music entertainment venue means includes a food and drink premises or function centre that include live music entertainment.</p> <p>The proposed food and drink premises and function centre has been designed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures to protect the noise sensitive residential uses to the south of the subject site. As such, no planning permit is required under this clause.</p>

Clause 65.05 Decision Guidelines	Clause 65 (Decision Guidelines) which includes the matters set out in Section 60 of the <i>Planning and Environment Act 1987</i> . Clause 65.01 requires consideration of the adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.
-------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## 5 STRATEGIC FRAMEWORK

### 5.1 Planning Policy Framework (PPF)

The relevant provisions of the PPF are:

- Clause 11 (Settlement)
- Clause 13.05-1S (Noise Abatement)
- Clause 13.07-1S (Land Use Compatibility)
- Clause 17.02-1S (Business)

### 5.2 Local Planning Policy Framework (LPPF)

The relevant provisions of the LPPF are:

- Clause 21.08 (Economic Development)
- Clause 21.09-4 (Public Transport)
- Clause 21.16-3 (Carlton)
- Clause 22.15 (Lygon and Elgin Street Shopping Centre)
- Clause 22.19 (Energy, Water and Waste Efficiency)
- Clause 22.22 (Policy for Licensed Premises that Require a Planning Permit)

## 6 PUBLIC NOTIFICATION

Notice of the proposal was given by ordinary mail to the owners and occupiers of the surrounding properties on 24 June 2019 and by posting two notices on the Elgin Street and Pinkys Lane frontages for a 14 day period, in accordance with Section 52 of the *Planning and Environment Act 1987*.

A signed statutory declaration confirming that the permit applicant erected the public notices in accordance with Council's requirements was returned on 10 July 2019.

The application was formally amended on 5 June 2019 under Section 50A of the *Planning and Environment Act 1987* to respond to the concerns raised by officers and objectors. Further notice of the amended application was given to all objectors on 5 August 2019 for a two week period.

## 7 OBJECTIONS

A total of 60 objections and six letters of support were received.

The objections raised the following concerns (summarised):

### Amenity Impacts

- Music and patron noise
- Hours of operation

- Patron numbers
- Antisocial behaviour associated with patrons leaving the venue
- Cumulative impacts with surrounding bars and restaurants
- Safety and security concerns regarding intoxicated patrons.

#### Traffic

- Lack of off-street parking and increased demand for on-street parking
- Traffic congestion.

#### Waste

- Noise from bottle disposal and waste collection from Pinkys Lane
- Impact on vehicle access to Pinkys Lane when waste collected.

#### Other

- Cigarette smoke
- Increased vandalism and crime
- Property devaluation.

The letters of support made the following comments (summarised):

- Revitalisation of the shopping strip
- The site is well served by public transport
- The proposal includes bicycle parking.

## **8 CONSULTATION**

In addition to individual consultation with local residents and owners being undertaken by telephone and email, a copy of the objections received in respect of the application at the conclusion of the formal notice period was forwarded to the applicant for their consideration and response.

In response to the concerns raised, the application was formally amended to reduce the patron numbers and hours of operation, and provide a revised waste management plan including waste collection from Elgin Street rather than Pinkys Lane. Further notice of the amended application was given to the objectors to provide an opportunity for further comment.

No objections were withdrawn in response to the amended application.

## **9 REFERRALS**

### **9.1 Internal Referrals**

#### **9.1.1 Traffic**

The application was referred to the Traffic Department who did not object to a waiver of 29 car parking spaces when the venue is used as a retail premises but objected to a waiver of 66 car parking spaces when the venue is used as a function centre for 220 patrons.

The Traffic Department recommended a condition that the number of patrons be limited to 100 when the venue is used as a function centre.

This change would reduce the car parking waiver to a maximum of 30 spaces.

This recommendation was discussed with the applicant, who confirmed in an email received 29 August 2019 that they would accept the condition.

### **9.1.2 Waste**

The revised Waste Management Plan by On Tap Liquor Consulting dated 21 August 2019 received 21 August 2019 was referred to the Waste Department who advised that it was acceptable and noted that given the preference for the bin room to remain at the rear of the property to act as a noise buffer, an allowance has been made for the bin room not being adjacent to Elgin Street from where collection will take place.

## **10 ASSESSMENT**

The application seeks approval to use the land as a function centre, the sale and consumption of liquor (General Licence) and waiver of car parking.

The key issues for consideration in the assessment of this application include:

- Use of the land as function centre and the sale and consumption of liquor, including potential amenity impacts
- Cumulative impact of licensed premises
- Provision of live music and entertainment
- Waiver of car parking
- Waste storage and collection
- Any other issues raised by the objectors.

### **10.1 Change of Use**

The adopted policies recognise Lygon and Elgin Streets as an important local shopping centre that also has a regional tourist role based on the popularity of its restaurants.

The application proposes a retail premises / function centre that showcases regional produce through sales and product launches in association with the sale of liquor for consumption on and off the premises.

The proposal will add to the vibrancy of the local shopping centre and subject to conditions, will not adversely affect the amenity of the local area.

Pedestrian access will be from Elgin Street and the rear roller door will be kept shut during operating hours reducing the potential amenity impact to the residential properties located across Pinkys Lane.

The site does not include any outdoor areas and the use will be wholly contained within the building.

The bin store is located within the building and waste collection will take place from Elgin Street.

To reduce the waiver of car parking, conditions are recommended to reduce the number of patrons from 220 to 100 when the venue is used as a function centre.

Noise, patron numbers and hours of operation are discussed below.

### **10.2 Clause 22.22 – Policy for Licensed Premises that Require a Planning Permit**

Clause 22.22-1 provides the policy basis for licensed premises that require a permit, emphasising the contribution that well-managed licensed premises make to the municipality.

This policy seeks to guide the location and management of licensed premises to minimise impacts on surrounding land uses and ensure that the cumulative impacts of licensed

premises are assessed. Of particular relevance to the consideration of this application are the guidelines relating to noise impacts, patron numbers, hours of operation, potential cumulative impacts and venue management.

### **10.2.1 Noise**

Clause 22.22 states that 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 be regulated and monitored, making use of noise limiters where appropriate.

The application proposes background music including live music and entertainment at background levels.

The Acoustic Report by Waveform Acoustics dated 12 June 2019 concludes that:

- The nearest affected noise sensitive receiver has been identified as the residential apartments to the south at 357-363 Rathdowne Street located approximately 3.5m away over Pinkys Lane.
- Music should be played at background levels only.
- Any speakers installed in the space should be wall mounted on suitable vibration mounts facing north, east and west away from the residences. There should be no speakers facing south.
- The rear roller door must be kept shut when the venue is operating.
- Should music be played at above background levels, the existing corrugated iron roofing should be upgraded.
- Subject to the above recommendations, noise from the venue will not adversely impact nearby residents.

Conditions are recommended to ensure that the noise mitigation identified in the acoustic report is implemented and that the use complies with 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. A condition is also recommended to allow the responsible authority, with just cause, to request an acoustic report and implementation of any necessary sound attenuation.

### **10.2.2 Patron Numbers**

Clause 22.22 states that the maximum number of patrons permitted in licensed premises should be limited to manage any unreasonable impact on the amenity of the surrounding area and the maximum occupancy capacity of the premises, as determined by the Building Act 1993.

The proposed maximum patron capacity is 220 patrons plus 20 staff being present onsite at any one time.

The Patron Capacity Report by NCC Performance Solutions dated 6 June 2019 states that the maximum capacity should be capped at 320 people. The proposal is notably less than the maximum capacity.

The Operational Management Plan by On Tap Liquor Consulting dated July 2019 outlines the ways in which the premises will be managed to ensure it operates in a manner without detriment to nearby residents. These include the provision of a duty manager at all times the venue is open for trade, signage advising patrons to be mindful of noise, external security lighting and CCTV, provision for security staff, control of noise emission and other amenity issues, and procedures for responding to complaints from patrons or neighbours.



It is considered that the number of patrons is appropriate given the location, the size of the building and ability to manage the use and patrons through appropriate management practices. A condition requiring an updated Operational Management Plan is recommended to describe the ways in which staff are to be made aware of the conditions of the permit.

### **10.2.3 Hours of Operation**

Clause 22.22 states that the hours of operation of licensed premises in the business zones should be limited to:

- 11pm if the licensed premises is within 30 metres of a residential zone
- 1am elsewhere.

The closest noise sensitive uses are the dwellings to the south at 357-363 Rathdowne Street. These dwellings are located in a residential zone (General Residential Zone Schedule 1) and are within 30 metres of the subject site.

Given the proximity of the site to the residential zone and the objections received relating to noise associated with the proposed late night trading, it is considered appropriate to restrict the hours of operation to 11pm. Conditions are recommended accordingly.

### **10.3 Cumulative Impact**

Cumulative impact refers to both positive and negative impacts that can result from clustering a particular land use or type of land use. Potential cumulative impact from a cluster of licensed premises will vary between locations, depending on the mix and number of venues and whether the area is a destination for activities associated with the supply of alcohol.

The practice note for 'Licensed Premises: Assessing Cumulative Impact' dated March 2011 is a relevant consideration in the assessment of this application.

The practice note sets out the following guidelines for assessment of the potential cumulative impact of licensed premises:

- Planning policy context
- Surrounding land use mix and amenity
- The mix of licensed premises
- Transport and dispersal
- Impact mitigation

As mentioned previously, the subject site is located on the edge of the Commercial 1 Zone. To the south of the site is the General Residential Zone, which contains a mixture of housing typologies.

The practice note considers a cluster of licensed premises to exist in an area if 15 or more licensed premises (including the proposed premises) are located within a radius of 500 metres from the subject land. As shown in Figure 4 of this report, the local area accommodates numerous existing licensed premises, in excess of 15 licensed premises within a radius of 500 metres from the subject site.

It is important to note that these licensed premises are varied in nature, with a combination of restaurants and cafés, general and on-premises licenses. There are nine general liquor licenses within 500 metres of the subject site. Of those nine premises, only four are within 100 metres.

It is considered that the diversity of the surrounding area aids in the mitigation of potential harms and reduces the potential for unreasonable negative cumulative impact. Given the context of the subject site, there are a range of late night uses that do not focus on the

servicing of alcohol, providing alternative activities for visitors, resulting in better patron behaviour in the area.

Overall, it is considered that the site can be managed in a way that will not cause any unreasonable amenity impacts to surrounding uses. The proposal is generally consistent with the policies and provisions of the Melbourne Planning Scheme, in particular Clause 22.22. Subject to conditions regarding noise, venue and patron management and hours of operation, the proposal is considered to be appropriate.

#### **10.4 Live Music and Entertainment Noise**

Clause 53.06 (Live Music and Entertainment Noise) seeks to ensure that noise sensitive residential uses are satisfactorily protected from unreasonable levels of live music and entertainment noise.

Pursuant to Clause 53.06, 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.

Before deciding on an application, the responsible authority must consider, as appropriate:

- The extent to which the siting, layout, design and construction minimise the potential for noise impacts.
- Whether existing or proposed noise sensitive residential uses will be satisfactorily protected from unreasonable live music and entertainment noise.
- Whether the proposal adversely affects any existing uses.

Planning Practice Note 81 dated May 2016 gives guidance on the operation of Clause 53.06 and provides a list of measures which may be considered to help achieve the requirements of Clause 53.06. These include implementing a venue management plan focused on minimising noise, positioning speakers to increase the distance between the noise source and any noise sensitive residential use, incorporating measures such as acoustic glazing, wall, ceiling and roof construction and using setbacks.

The application documents include an acoustic report and an operational management plan which identify noise mitigation measures to be undertaken during the operation of the business, including live music and entertainment at background levels, the position of the speakers and closure of the rear roller door.

Further, a condition is recommended to reduce the opening hours to 11pm everyday as discussed in section 10.2.3 of this report.

#### **10.5 Car Parking**

It is proposed to use the venue as a market and food and drink premises (retail premises) and at other times as a function centre (place of assembly).

A retail premise generates a statutory parking requirement of 29 spaces; a function centre generates a statutory parking requirement of 66 spaces.

No on site car parking is proposed. As such, a waiver of a maximum of 66 spaces is sought.

The application was referred to the Traffic Department who did not object to a waiver of 29 spaces but objected to a waiver of 66 spaces.

The Traffic Department recommended a condition that the number of patrons be limited to 100 when the venue is used as a function centre.

This change would reduce the car parking waiver to a maximum of 30 spaces.

This recommendation was discussed with the applicant, who confirmed in an email received 29 August 2019 that they would accept the condition.

A waiver of 30 spaces is considered acceptable because:

- The site is well served by public transport.
- Bicycle parking for staff and customers is provided in excess of the statutory requirements.
- Car parking is available at Lygon Court and other nearby commercial car parks.
- The existing warehouse has a car parking credit of 10 spaces.
- It is anticipated that the venue will serve the local community and a number of customers / patrons will walk to the site.

## **10.6 Waste Management**

Clause 22.19-2 encourages applications to provide facilities that will enable building users and occupants to reduce waste sent to landfill, maximise the recycling and reuse of materials and support the municipality's progress towards becoming a resource and material-efficient city.

The objections raised concern regarding the use of Pinkys Lane for waste collection having regard to the width of the lane and reversing movements onto Rathdowne Street. The Waste Management Plan was subsequently amended to have waste collection from Elgin Street at the front of the property.

The revised Waste Management Plan by On Tap Liquor Consulting dated 21 August 2019 was reviewed by Council's Engineering Department who advised that it was acceptable.

## **10.7 Other Objector Concerns**

Where concerns raised in an objection have not been addressed in the above assessment, these matters have been separately considered below.

### **10.7.1 Reduction in Property Values**

The loss of income or devaluation of a property, in association with a proposed development, does not fall within the remit of Council's discretion when assessing a planning application in accordance with the *Planning and Environment Act 1987*.

### **10.7.2 Antisocial Behaviour**

Concern was raised regarding the potential for the new use to increase antisocial behaviour in the local area. This is not anticipated to be an issue having regard to the nature of the use and the operational management plan.

## **11 CONCLUSION**

It is considered that the proposal is generally 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:

## **12 RECOMMENDATION**

1. Prior to the commencement of the use, an electronic copy of the plans, drawn to scale, must be submitted to the Responsible Authority generally in accordance with the plans prepared by Kitchen, Design and Construct dated 14 May 2019, but amended to show:
  - a) Details of the type 12 bicycle parking spaces.
  - b) The location of the speakers and any other changes as required by the revised acoustic report in condition 12.

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 layout and operation of the use as shown on the endorsed plans must not be altered or modified unless with the prior written consent of the Responsible Authority.
3. Except with the prior written consent of the Responsible Authority, the function centre and the sale and consumption of liquor on premises must only be between the following hours:
  - Monday to Sunday 9am to 11pm
  - Good Friday and ANZAC Day Midday to 11pm.
4. The maximum number of patrons on the premises when it is used as a market and food and drink premises must be no more than 220 at any one time unless with the prior written consent of the Responsible Authority.
5. The maximum number of patrons on the premises when it is used as a function centre must be no more than 100 at any one time unless with the prior written consent of the Responsible Authority.
6. Prior to the commencement of the use, the applicant must submit an updated operational management plan, generally in accordance with the Operational Management Plan prepared by On Tap Liquor Consulting dated July 2019 and, but amended to:
  - a) Describe the ways in which staff are to be made aware of the conditions attached to this permit.
  - b) Reference the updated trading hours as required by Condition 3.
  - c) Reference the updated patron numbers as required by Conditions 4 and 5.The management plan must be to the satisfaction of, and be approved by, the Responsible Authority. Once approved, the management plan will form a part of the endorsed documents under this permit.
7. The operation of the use must be carried out in accordance with the operational management plan endorsed in accordance with this permit unless with the prior written consent of the Responsible Authority.
8. 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.
9. The waste storage and collection arrangements must be in accordance with the Waste Management Plan (WMP) by On Tap Liquor Consulting dated 21st August 2019. The submitted WMP must not be altered without prior consent of the City of Melbourne – Engineering Services.
10. 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.
11. The noise generated by the premises must at all times comply with the requirements of the 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, to the satisfaction of the Responsible Authority.
12. Prior to the commencement of the use, the applicant must submit a revised acoustic assessment, generally in accordance with the Acoustic Assessment by Waveform Acoustics dated 12 June 2019 but amended to reflect the opening hours in conditions 3. The acoustic assessment must be to the satisfaction of, and be approved by, the

Responsible Authority. Once approved, the report will form a part of the endorsed documents under this permit.

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

If this acoustic report identifies any non-compliance with the requirements of the State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2, an addendum to the report endorsed in accordance with Condition 12 must be provided that includes recommendations regarding additional noise management and noise attenuating measures, to ensure that noise emanating from the premises associated with music and entertainment complies with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 during the hours of operation.

14. The recommendations included in any addendum to the noise management report provided in accordance with Conditions 12 and 13 of this permit must be implemented and thereafter maintained at no cost to Melbourne City Council by the owner and / or operator of the premises to the satisfaction of the Responsible Authority as soon as practicable.
15. Amplified live music and entertainment may be played at background levels only unless with the prior written consent of the Responsible Authority.
16. Empty bottles from the operation of the premises must be placed into a bag and deposited into recycling bins quietly so as not to cause disturbance to adjoining and nearby residents, to the satisfaction of the Responsible Authority.
17. The rear roller door must remain closed during operating hours.
18. This permit will expire if one of more of the following circumstances apply:
  - a) The use as a place of assembly (function centre) is not started within two 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.

## Notes

- 1) Advertising sign(s) must not be erected, painted or displayed on the land without the permission of the Responsible Authority unless in accordance with the exemption provisions of the Melbourne Planning Scheme.
- 2) This Planning Permit does not represent the approval of other departments of Melbourne City Council or other statutory authorities. Such approvals may be required and may be assessed on different criteria from that adopted for the approval of this Planning Permit.
- 3) The applicant / owner will provide a copy of this planning permit and endorsed plans to any appointed Building Surveyor. It is the responsibility of the applicant / owner and the relevant Building Surveyor to ensure that all building (development) works approved by any building permit are consistent with this planning permit.