

Report to the Future Melbourne (Planning) Committee

Agenda item 6.1

Planning Permit Application: TP-2009-1007/A Shop 6 and Shop 7, 148-178 Albert Street and 412-442 Victoria Parade, East Melbourne VIC 3002 (Tribeca Victoria Brewery Site)

17 November 2020

Presenter: Evan Counsel, Director Planning and Building

Purpose and background

1. The purpose of this report is to advise the Future Melbourne Committee of an application to amend existing planning permit TP-2009-1007 for the land located at Lots 6TV (Shop 6) and 7T (Shop 7) 148-178 Albert Street and 412-442 Victoria Parade, East Melbourne VIC 3002, also known as the Tribeca Victoria Brewery Site (Refer to Attachment 2, Locality Plan).
2. The applicant is Mr Gregory Mark Poynton, and the owner is Ms Robyn Dawn Poynton.
3. The site is located within the Mixed Use Zone (MUZ) and is affected by a Heritage Overlay and Design and Development Overlay Schedule 20. The Particular Provision for Licensed Premises (Clause 52.27) is also relevant to Council's consideration of this application.
4. Existing planning permit TP-2009-1007 allows the use of units 7TV and 6TV for the purposes of a shop, internet café and convenience restaurant; the sale and consumption of liquor in accordance with the on-premises licence; erect business identification signs; and fit external grille and waive the associated bicycle and car parking requirements in accordance with the endorsed plans.
5. This application seeks to amend the existing permit to allow for extended convenience restaurant trading hours to conclude at 11pm in lieu of 9pm; the sale of packaged liquor until 11pm via a General Liquor Licence; and the performance of live background music until 9pm.
6. Public notice of the proposal has been undertaken and a total of 38 objections and nine submissions in support have been received.

Key issues

7. Key issues for consideration are the appropriateness of the proposed changes to the already approved convenience restaurant and associated sale and consumption of liquor; the performance of live background music; and potential amenity impacts.
8. The subject tenancies are located within a mixed-use complex, comprising predominantly of residential dwellings spread across multiple buildings with some office tenancies, food and drink premises and retail uses generally fronting a central arcade of publically accessible common property.
9. Recommended permit conditions will ensure that both the service of alcohol on site and the performance of live background music are appropriately managed and will conclude no later than 9pm. Noise emissions must comply with State Environment Protection Policy (SEPP N-1 and SEPP N-2) with no external sound amplification equipment or loud speakers allowed. Importantly, with just cause, Council may in future require additional acoustic assessments to demonstrate compliance.
10. Subject to recommended permit conditions, the proposal is acceptable having regard to the relevant provisions of the Melbourne Planning Scheme and the context of the subject site and surrounding area. The proposal will continue to deliver on the purpose of the MUZ and the intent of the approved land use, while recommended permit conditions relating to trading hours, the service of liquor and noise emissions will appropriately manage potential amenity impacts.

Recommendation from management

11. That the Future Melbourne Committee resolves to issue a Notice of Decision to Grant an Amended Permit subject to the conditions outlined in the Delegate Report (refer Attachment 4 of the report from management).

Attachments:

1. Supporting Attachment (Page 2 of 26)
2. Locality Plan (Page 3 of 26)
3. Selected Plans (Page 4 of 26)
4. Delegate Report (Page 5 of 26)

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 in this report.

Conflict of interest

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

Health and Safety

5. Relevant planning considerations relating to health and safety have been considered within the planning permit application and assessment process, noting the proposal seeks to amend permit conditions relating to an existing permit and approved land use.

Stakeholder consultation

6. Public notice of the application has been undertaken to surrounding owners and occupiers, pursuant to Section 52 of the Act.

Relation to Council policy

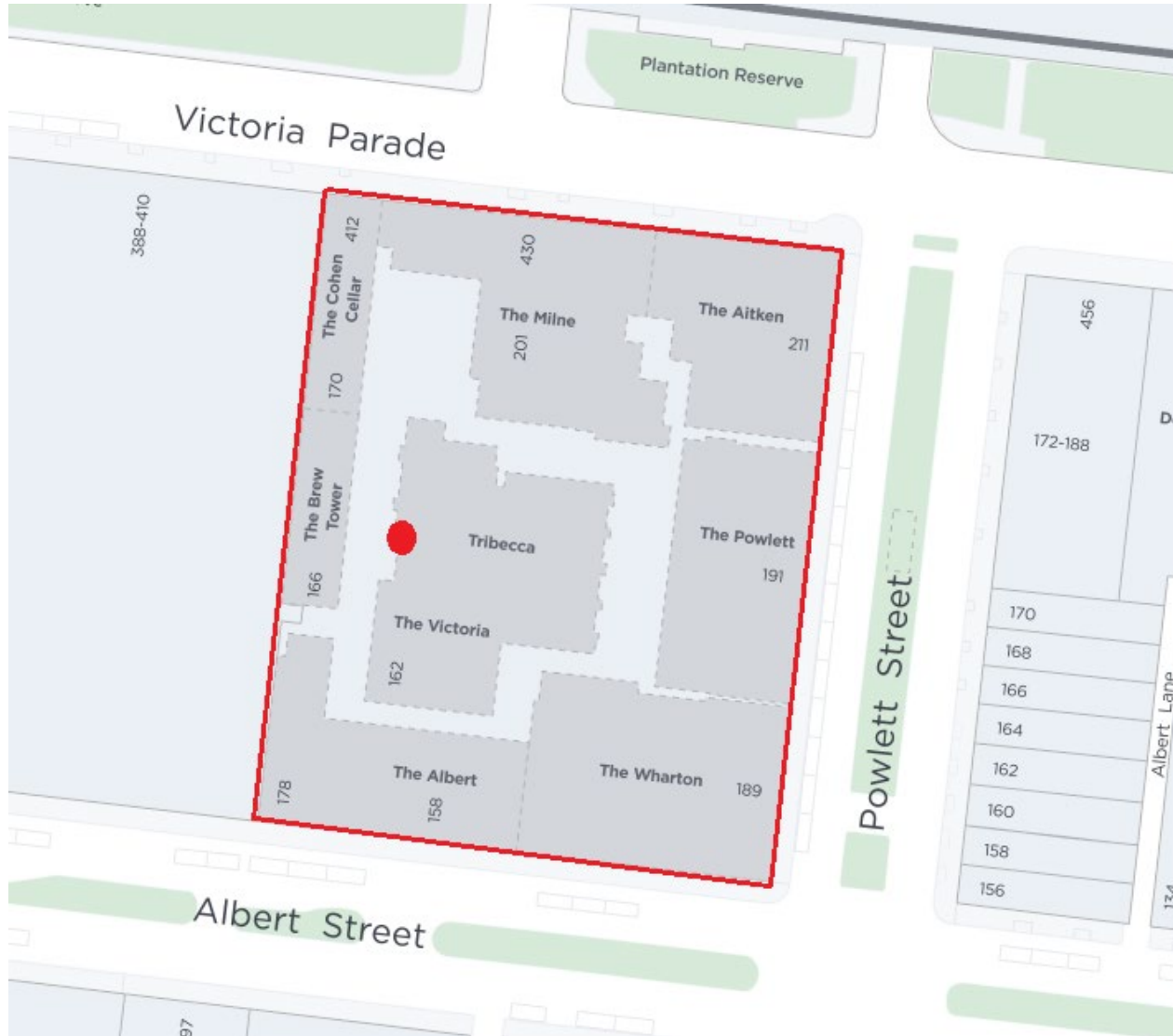
7. Relevant Council policies are discussed in the attached Delegate Report (refer Attachment 4)

Environmental sustainability

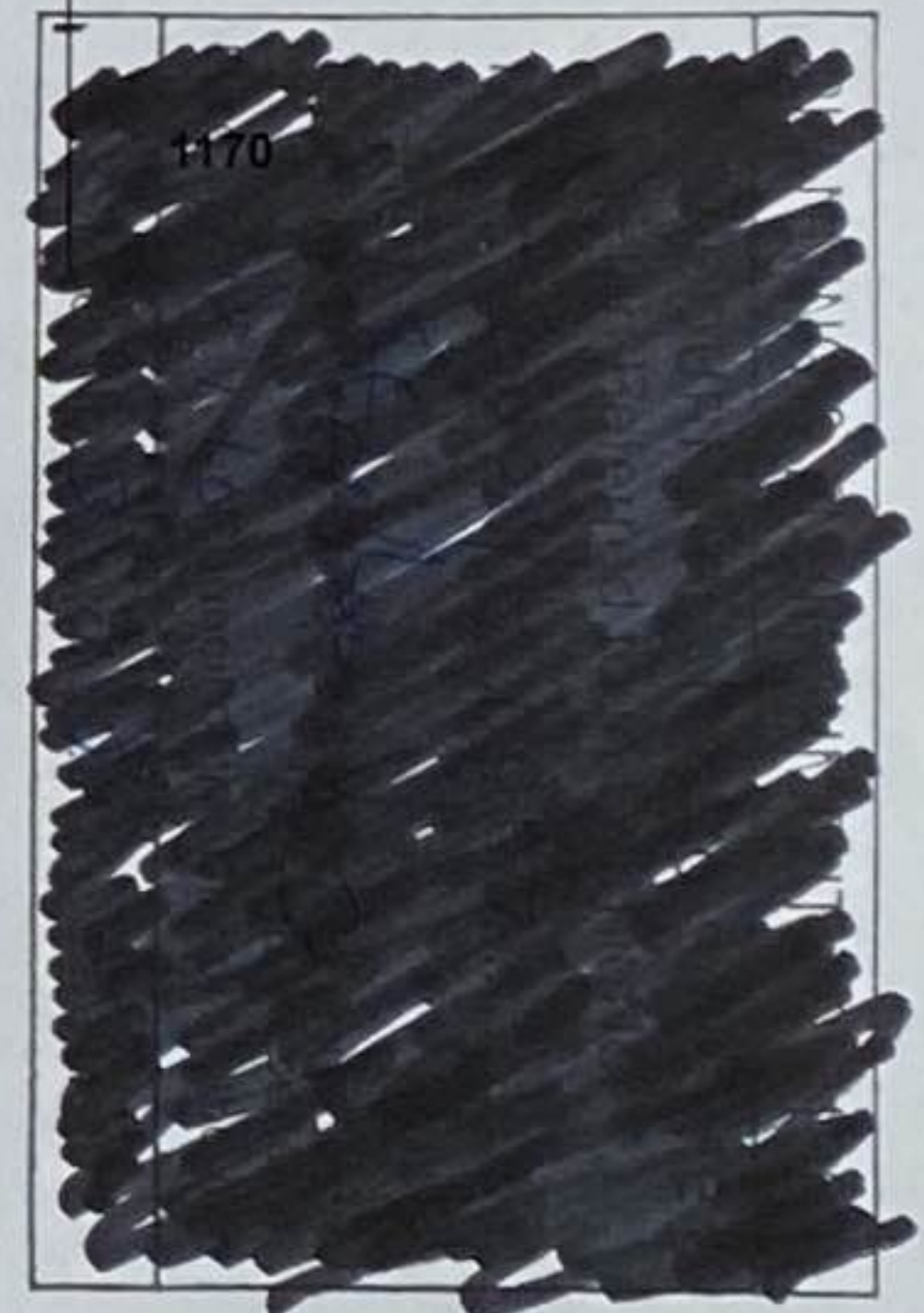
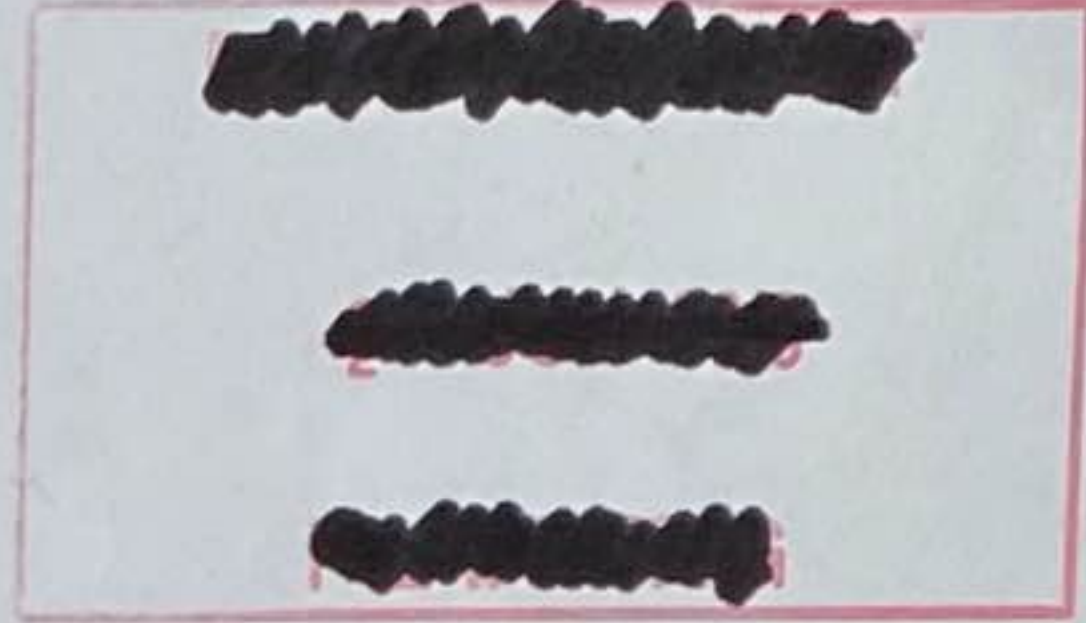
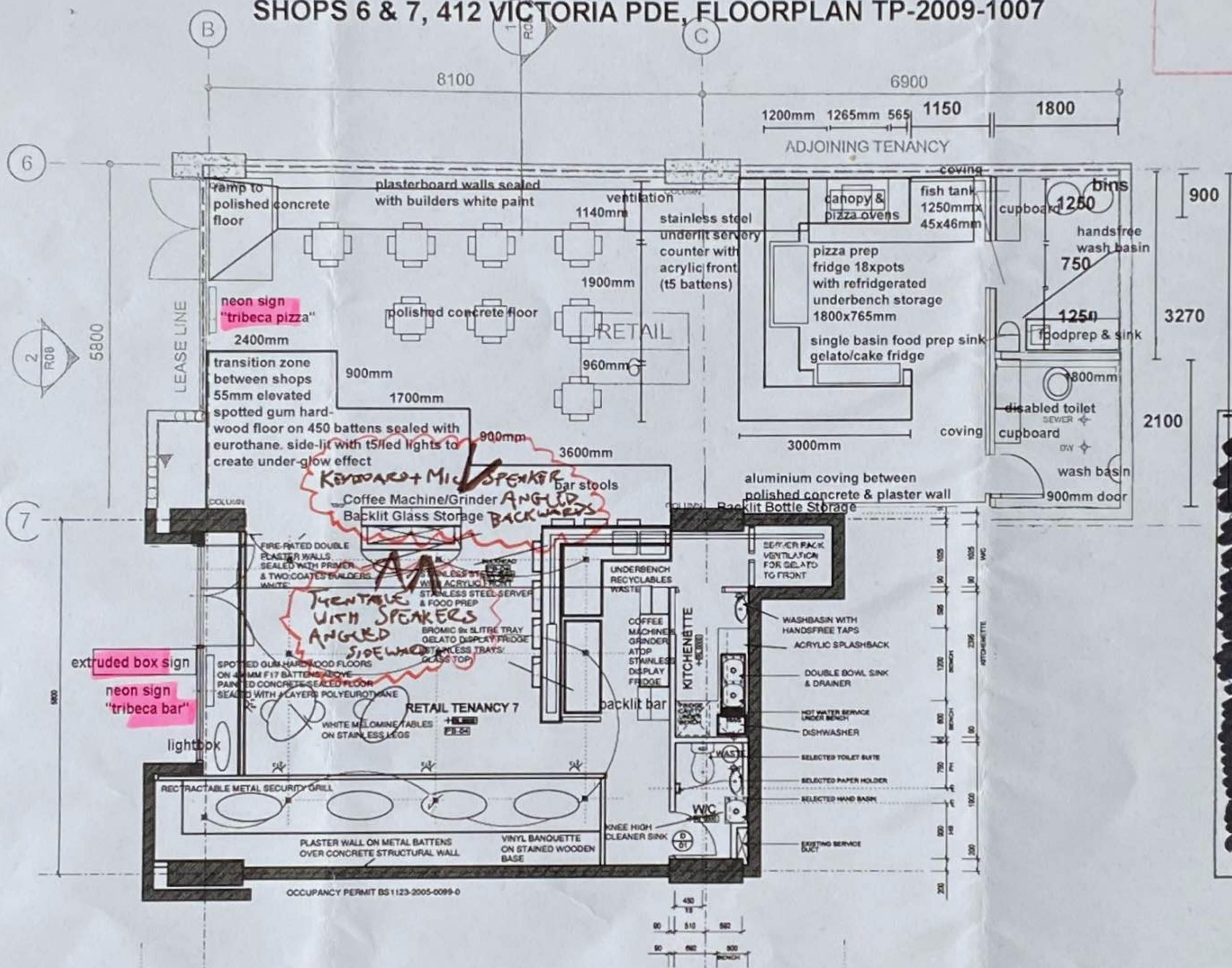
8. Environmental sustainability provisions of the Melbourne Planning Scheme are not relevant to this planning application given the proposal does not relate to the construction of buildings and works, and seeks to amend existing permit conditions and plans relating to a previous land use approval.

Locality Plan

Shops 6 & 7 148-178 Albert Street, East Melbourne (Tribeca Victoria Brewery Site)



SHOPS 6 & 7, 412 VICTORIA PDE, FLOORPLAN TP-2009-1007



Not more than 50 seats will be provided for patrons.

Signs approved by this permit

DELEGATE REPORT

APPLICATION TO AMEND A PLANNING PERMIT

APPLICATION NO:	TP-2009-1007/A
APPLICANT:	Mr Gregory Mark Poynton
OWNER:	Ms Robyn Dawn Poynton
ARCHITECT:	N/A
ADDRESS:	Shop 6 and Shop 7, 148-178 Albert Street and 412-442 Victoria Parade, East Melbourne VIC 3002 (Tribeca Victoria Brewery Site)
PROPOSAL:	Amend the existing permit and endorsed plans pursuant to Section 72 of the Planning and Environment Act 1987
DATE OF APPLICATION:	22 October 2019
RESPONSIBLE OFFICER:	Jack Poulson, Urban Planner

1 SUBJECT SITE AND SURROUNDS

1.1 Subject Site

Formally known as Lots 6TV and 7TV on Plan of Subdivision 501398Y, the subject land is located at ground-floor level of the Tribeca Victoria Brewery Site – specifically within The Victoria building.

The overall site is known by two street addresses (148-178 Albert Street and 412-442 Victoria Parade, East Melbourne), with the redeveloped mixed-use complex listed on the Victorian Heritage Register. The site is bound by Victoria Parade to the north, Powlett Street to the east, and Albert Street to the south.

The mixed-use complex comprises predominantly residential dwellings spread across eight buildings. Part of the former Victoria Brewery building (constructed circa 1882) has been retained within the complex, with the site redeveloped and subdivided in stages from 2004. Some office tenancies, food & drink premises and retail spaces are provided within the development.

The internal net floor area of the combined tenancies is approximately 139 square metres.

The subject tenancies are affected by Restrictive Covenant AD228263X (an agreement relating to the care and maintenance of the heritage place and common property) and Section 173 Agreement T478445H (an agreement associated with TP94/217 restricting the sale and use of car parking lots on site). Neither instrument is relevant to the assessment of the current proposal.

1.2 Surrounds

Adjoining the overall site to the west at No. 388-410 Victoria Parade is a multi-storey residential tower comprising dwellings and car parking spaces.

On the opposite side of Albert Street are two multi-storey residential buildings comprising serviced apartments at Nos. 83 Albert Street and 179 Powlett Street.

The surrounding area is characterised by a highly eclectic mix of multi-storey mixed-use developments, single residential dwellings, commercial buildings, institutional land uses and public open space. The area is well serviced by public transport, and is proximate the Melbourne's Central Business District, approximately 1km to the west.

It is noted that the site's pedestrian entrances from Albert Street and Victoria Parade provide the closest access point for the subject tenancies from the public realm.

Businesses operating at ground-floor arcade of the Tribeca Victoria Brewery site

The central arcade of the mixed-use site comprises several retail and commercial tenancies fronting publically accessible common property.

Upon a site visit conducted in October 2020, officers observed the following business within the arcade:

- Retail florist.
- Hair dresser/beauty salon.
- Licensed takeaway food & drink premises known as 'Kiwi Fish & Chips' (offering casual dine-in seating) operating 11am to 9pm every day. Restaurant and Café Licence 32290839 applies to this site, including trading hours consistent with those advertised on site.
- An office tenancy associated with Tribeca Serviced Apartments.
- An office tenancy associated with a real estate agent.
- Medical centre (dental suite).
- Publically accessible Brew Tower Museum exhibiting the site's history as a brewery.
- A retail tenancy currently undergoing internal buildings & works, exhibiting a sign stating "wine bar, boutique distillery and events coming soon". It is noted that no planning activity relating to this land use was found on file, though existing General Licence 31953191 does appear to be valid for the site. This licence permits the sale of liquor until 11pm, Monday to Friday.
- Medical centre (women's health clinic).
- A licensed IGA supermarket operating 7am to 10.30pm Sunday to Wednesday, and 7am to 11pm Thursday to Saturday. Packaged Liquor Licence 32064806 permits the service of packaged liquor until 11pm, Monday to Friday.
- Licensed food & drink premises (café) known as 'Grocery Bar' operating 7am to 3pm on weekdays, and 8am to 2pm on Saturdays & Sundays. Restaurant & Café Licence 32278811 applies to the site and allows for the sale and consumption of liquor until 11pm for the internal seating areas and 9pm for external seating.
- The subject tenancies used for the purposes of a licensed food & drink premises. Current operating hours are listed as 11.30am to 9pm every day, with the land use regulated by existing planning permit TP-2009-1007.

Existing On-Premises Licence 32288133 applies to the site and sets out trading hours generally consistent with the existing planning permit. Notwithstanding this, however, it is noted General Licence 31958913 was issued by the VCGLR earlier in 2020, with its status noted as 'Pending Planning'. Subject to Council's planning approval, this licence allows liquor to be sold for consumption both on and off the site, and increases liquor trading hours until 11pm every night.

It is noted that impacts relating to Covid-19 may affect the operating hours listed above, with these being indicative of on-site signage and/or online advertising only.

1.3 Locality and Site Photos



Figure 1: The overall subject site and surrounding area, with the approximate location of the ground-floor subject tenancies marked by the red circle (source: CoMPASS 2020)



Figure 2: The Tribeca Victoria Brewery site as viewed from Albert Street. Photo taken by officers.



Figure 3: The Victoria Parade entrance to the Tribeca Victoria Brewery site as viewed from Victoria Street. Photo taken by officers.



Figure 4: The subject tenancies as viewed from the publicly accessible central arcade of the Tribeca Victoria Brewery site. Photo taken by officers.



Figure 5: Looking north along the publically accessible central arcade of the Tribeca Victoria Brewery site. Photo taken by officers.



Figure 6: Looking north towards the publically accessible central arcade of the Tribeca Victoria Brewery site from the Albert Street entrance. Photo taken by officers.

2 BACKGROUND AND HISTORY

2.1 Pre-application discussions

The applicant discussed various elements of the proposal with Council's Planning Enforcement Officers prior to lodging the amendment application. This proposal is, in part, the result of enforcement action (ENF-2019-250) relating to noise complaints and breaches of approved operating hours. The venue operator was found to be in breach of certain permit conditions, and pursuant to enforcement action has subsequently applied to vary multiple conditions relating to the use of the site.

2.2 Planning application history

Planning Permit TP-2009-1007 was issued on 29 June, 2010.

This permit description is as follows:

Use units 7TV and 6TV for the purposes of a shop, internet café and convenience restaurant; sale and consumption of liquor in accordance with the on-premises licence; erect business identification signs; and fit external grille and waive the associated bicycle and car parking requirements in accordance with the endorsed plans.

It is noted the tenancies are operating as a single licensed food & drink premises that offers take-away and dine-in services.

Relevant to previous enforcement action associated with the site, it is noted that performances of live music have been conducted within the food & drink premises. The permit applicant submits that these performances were primarily intended to provide live background music for patrons dining at the site, while some performances also related to the provision of 'music trivia'. Council's Planning Enforcement team has received complaints alleging breaches of permit condition 7 (discussed below), with the applicant having since ceased all live performances on-site.

2.3 Amendments made during the process

Prior to the notification period, the application was amended via Section 50 of the *Planning & Environment Act 1987* on 5 December 2019 as follows:

- Corrected application form submitted;
- Additional amendments to existing permit proposed, including:
 - An increase to maximum patron numbers for internal seating area; and
 - Amended permit preamble to reference the 'held liquor licence' rather than 'on-premises licence'.

It is noted that discussions held with the permit applicant prior to the notification period confirmed some elements of proposal would not be pursued. Prior to giving notice of the application, the permit applicant confirmed which elements of the proposal remained relevant, with a summary table (below) being included with the advertised documents.

3 PROPOSAL

The application seeks planning approval to amend Permit TP-2009-1007 via Section 72 of the *Planning and Environment Act 1987* in the following manner:

Proposed amendment	Current permit condition/restriction
Amend permit preamble to reference: <i>"...sale and consumption of liquor in accordance with the held liquor licence..."</i>	Permit preamble currently states: <i>"...sale and consumption of liquor in accordance with the on-premises licence..."</i>

General Licence 31958913 (status: Pending Planning) was issued by the Victorian Commission for Gambling and Liquor Reform earlier in 2020. The proposed amendment to the existing permit preamble would accommodate this new licence.	
Allow sale of packaged liquor to 11pm in accordance with General Licence 31958913.	Current permit preamble references 'on-premises licence'.
Amend Condition 5 to allow the following operating hours for the trading of food: <ul style="list-style-type: none"> 7am to 11pm, Monday to Sunday. No change proposed to the hours within which liquor can be served (till 9pm)	Condition 5 currently restricts hours of operation from 7am to 9pm, Monday to Sunday.
Amend Condition 7 to allow the performance of live background music until 9pm, in accordance with relevant state Environmental Protection Agency regulations.	Condition 7 currently states: "If music is to be provided in the internal area, it must be background music only and must not be audible from the adjacent dwellings".
Amend plans endorsed as part of the permit to reflect minor internal rearrangements.	Endorsed plans proposed to be amended.
Amend Condition 18 to reference and require compliance with State Environmental Protection Policy No. N-2 (Control of Music Noise from Public Premises).	Condition 18 currently references and requires compliance with State Environmental Protection Policy No. N-1 (Control of Noise from Commerce, Industry and Trade).

In support of the proposed amendments, the permit applicant has submitted an Acoustic Report prepared by Waveform Acoustics (dated December 2019).

This report sets out recommendations on how to achieve compliance with relevant EPA Sepp No. N-2 requirements should Condition 7 be approved as proposed. The report also sets out recommendations on how to achieve compliance with Condition 7 in its existing form.

4 STATUTORY CONTROLS

The Delegated Planning Application Report on file dated 20 May, 2010, lists the relevant permit triggers as at the date of the original Notice of Decision. These statutory controls have not altered significantly since the issuing of Permit TP-2009-1007.

However, given the elapse of time since the initial decision was issued, it is considered appropriate to set out the current planning controls applicable to the site and the amendment application.

The following provisions of the Melbourne Planning Scheme apply:

Clause	Permit Requirement Provision/s (TRIGGER)
Clause 32.04 Mixed Use Zone	<p><u>Land Use</u></p> <p>Pursuant to Clause 32.04-2, a permit is required for the existing land use for the purposes of a food and drink premises with a leasable floor area exceeding 150 square metres.</p> <p>In accordance with the provisions of this clause, a permit is not required for the proposed amendments to permit conditions relating to the approved use.</p>
Clause 43.01 Heritage Overlay (HO187 “Former Victoria Brewery, 388-422 Victoria Parade”)	<p><u>Land Use</u></p> <p>Clause 43.01 is silent on land use requirements. As such, a permit is not required for the proposed amendments to the approved land use.</p> <p>It is noted the subject site is included in the Victorian Heritage Register. Given this, a permit would not be required to develop the heritage place (other than an application to subdivide a heritage place of which all or part is included in the Victorian Heritage Register).</p>
Clause 43.02 Design and Development Overlay Schedule 20 – Area 45 “Victorian Pde and Albert St”	<p><u>Land Use</u></p> <p>Clause 43.02 is silent on land use requirements. As such, a permit is not required for the proposed amendments to the approved land use.</p>
Clause 52.27 Licensed Premises	<p><u>Land Use</u></p> <p>Pursuant to Clause 52.27, a permit is required to use land to sell or consume liquor if any of the following apply:</p> <ul style="list-style-type: none"> • A licence is required under the Liquor Control Reform Act 1998. • A different licence or class of licence is required from that which is in force. • The hours of trading under any licence are to be extended. <p>The application seeks approval to change the type of licence applicable to the site by allowing packaged alcohol to be purchased for consumption off-site. Given this, a permit is required for the proposed amendments to the approved land use.</p> <p>It is noted the application does not seek approval to increase hours within which alcohol can be sold for consumption on-site.</p>
Clause 52.34 Bicycle facilities	<p><u>Land Use</u></p> <p>Pursuant to Clause 52.34-2 a permit is required to reduce or waive the standard bicycle parking requirement.</p> <p>The proposal does not seek to increase patron or staff numbers, nor does it seek to increase the net floor area of the subject tenancies.</p> <p>Given this, a permit is not required, and existing approvals/arrangements associated with TP-2009-1007 can be maintained.</p>

<p>Clause 52.06 Car parking</p>	<p><u>Land Use</u></p> <p>Pursuant to Clause 52.06, a permit is required to reduce or waive the standard car parking requirement.</p> <p>The proposal does not seek to increase patron or staff numbers, nor does it seek to increase the net floor area of the subject tenancies.</p> <p>Given this, a permit is not required, and existing approvals/arrangements associated with TP-2009-1007 can be maintained.</p>
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5 STRATEGIC FRAMEWORK

The Delegated Planning Application Report on file dated 20 May, 2010, lists the relevant strategic policies and general/particular provisions as at the date of the original Notice of Decision.

Since the issue of the original permit, the Strategic Planning Policy Framework has been reconfigured, with some relevant clauses amended and/or renamed.

Given the elapse of time since the initial decision was issued, it is considered appropriate to set out the current provisions applicable to the subject site and the proposal.

The following provisions of the Melbourne Planning Scheme apply to the assessment of the application:

<p>Planning Policy Framework:</p>	<p>Clause 11 - Settlement Clause 15 - Built environment and heritage Clause 17 - Economic development Clause 18 - Transport</p>
<p>Municipal Strategic Statement:</p>	<p>Clause 21.01 – The Municipal Strategic Statement – Introduction Clause 21.02 – Municipal Profile Clause 21.03 – Vision Clause 21.04 - Settlement Clause 21.08 - Economic development</p>
<p>Local Planning Policies:</p>	<p>Clause 22.22 - Policy for Licensed Premises That Require a Planning Permit</p>

Particular Provisions	
<p>Clause 52.27 Licensed Premises</p>	<p>This policy applies to the consideration of all planning permit applications and amendments to permits that involve the sale and consumption of liquor in the municipality. The policy applies where a permit is triggered under Clause 52.27 of the Melbourne Planning Scheme or where a permit for a tavern, hotel or nightclub in the Capital City Zone and Docklands Zone is required.</p>

General Requirements & Performance Standards	
<p>Clause 53.06 Live Music Entertainment Venues</p>	<p>A live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide</p>

	acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.
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General Provisions	
Clause 65 Decision Guidelines	The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause, which include the matters set out in Section 60 of the Planning and Environment Act 1987.

6 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 the site and of surrounding properties and by posting notices on the site for a 14 day period, in accordance with Section 52 of the *Planning and Environment Act 1987*.

7 OBJECTIONS

A total of 38 objections to the application have been received.

It is noted a total of nine letters of support in favour of the proposal have been received.

The following matters have been raised by objectors:

- Noise emissions from extended operating hours;
- Noise emissions from amended Condition 7 allowing the provision of live music performances;
- Inappropriate trading hours for the predominantly residential mixed-use development;
- Safety concerns relating to extended liquor licence and trading hours;
- Non-compliance with existing Condition 7 to be exacerbated by live music performances;
- Concerns regarding previous breaches of permit conditions and future compliance issues;
- Unclear nature of proposal;
- Concerns relating to Body Corporate/Owners Corporation issues;
- Concerns relating to previously proposed awning structure (not included in current proposal) and impact of proposed works on the heritage value of the site;
- Concerns relating to previously proposed increase to patron numbers (not included in current proposal);
- Concerns relating to current management of the premises from a health & safety perspective, including potential fire risk;
- Transformation of the approved use of the site from convenience restaurant to bar/bottle shop;
- Potential for outdoor seating to be left out and used after hours;
- Concerns over permit applicant's alleged lack of concern/respect for the complex and its residents.

8 REFERRALS

8.1 Internal

No internal referrals were required as the Melbourne Planning Scheme contains sufficient guidance for the assessment of the application.

8.2 External

No external referrals were required.

9 ASSESSMENT

The application seeks planning approval to amend permit conditions and endorsed plans associated with TP-2009-1007.

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

- Whether the proposed amended land use is appropriate having regard to the purpose of the Mixed Use Zone and decision guidelines;
- How the proposal responds to Clause 22.22 (Policy for Licensed Premises That Require a Planning Permit);
- How the proposal responds to Clause 53.06 (Live Music Entertainment Venues);
- The impact of the proposed amended land use on the amenity of the surrounding area;
- Matters raised by objectors.

9.1 Mixed Use Zone

The proposal seeks approval to amend endorsed plans and existing permit conditions regulating the use of the subject tenancies as a food & drink premises (convenience restaurant). The amended land use must be considered in relation to the context of the subject site and the purpose of the Mixed Use Zone.

The purpose of the Mixed Use Zone is as follows:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*
- *To provide for housing at higher densities.*
- *To encourage development that responds to the existing or preferred neighbourhood character of the area.*
- *To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.*

Located at ground-floor level of a mixed-used development comprising a high number of residential dwellings and commercial sites, the existing food & drink premises is one of several non-residential land uses fronting the publically accessible central arcade of the overall subject site. An assessment as to the impact of the proposed amendments on the character and amenity of the area (as relevant to the Mixed Use Zone) is provided below.

9.1.1 Operating hours

The application proposes the following amended operating hours for the existing convenience restaurant:

- 7am to 11pm, Monday to Sunday.

These hours are considered appropriate for the area which sees other businesses operate within similar hours.

The existing licensed supermarket at the northern frontage of the overall site (East Melbourne IGA & Liquor) trades to 10.30pm on weeknights and 11pm on weekends, while another licensed food and drink premises (Kiwi Fish & Chips) trades to 9pm every night. Other licensed venues operate within the central arcade of the Tribeca Victoria Brewery site as set out in Section 1.1 of this report.

It is noted that the application does not seek to increase the hours within which alcohol can be served for consumption on site. Only food is proposed to be served on-site between 9pm and 11pm (both take away dine-in). As such, the premises will essentially function as an unlicensed restaurant past 9pm (notwithstanding the delivery of packaged liquor with some takeaway orders), reducing the impact to adjoining properties past the existing venue's current closing time.

The location of the subject site within a mixed-use development comprising several licensed and unlicensed retail tenancies suggests the area is suited to what is proposed. As such, it is not expected that the proposed hours will unduly detract from the amenity of the mixed-use area.

Notwithstanding the above, it is noted the venue operator may require separate approval from the applicable site manager and/or Owners Corporation. The permit applicant is aware of this, and should an amended planning permit ultimately be issued, officers recommend a note to this effect be included on any such decision.

9.1.2 Noise

Noise emissions have been raised as an issue with the existing use, and an assessment against such impacts is triggered by the proposed extension of operating hours (Condition 5) and the prospective provision of live music (Condition 7).

Extended Operating Hours

As discussed previously in this report, the proposed extension of operating hours to 11pm is considered acceptable given the context of the site and the purpose of the Mixed Use Zone.

The service of alcohol for consumption on-site is not proposed to extend beyond the current closing time of 9pm.

Conditions relating to the proper management of the premises will remain on any amended permit that may be issued, with additional permit conditions recommended as discussed elsewhere in this report. It is expected that the impacts of the amended land use can be sufficiently managed through these conditions.

Live Music

The application seeks to amend Condition 7 which currently states:

If music is to be provided in the internal area, it must be background music only and must not be audible from the adjacent dwellings.

The application seeks planning approval to relax this condition in a manner that would allow the performance of amplified background music within the subject tenancies. The permit applicant states these performances would be for the purposes of background dining music and the occasional round of 'music trivia'.

In particular, removal of the phrase '*and must not be audible from the adjacent dwellings*' is sought by the application, as this would allow the provision of amplified live background music.

An Acoustic Report submitted by the Permit Applicant and prepared by Waveform Acoustics (dated December 2019) sets out various recommendations as to how amplified live music could be performed on-site whilst appropriately managing amenity impacts for neighbouring properties.

It is noted that the wording of Condition 7 is unusual, and is not ordinarily adopted in decisions issued today. The nature of the restriction is difficult to enforce and proves onerous on venue operators.

While this element of the proposal is discussed in further detail at Section 9.3 of this report, it is generally considered that the nature of this amendment is consistent with the purpose of the Mixed Use Zone and the nature of the mixed-use development. The proposed

amendment can be approved subject to the inclusion of further permit conditions protecting the amenity of the adjacent dwellings, including the requirement to cease all recorded or live music at 9pm.

As such, it is considered appropriate to amend Condition 7 to state:

If amplified music (recorded or live) is to be provided in the internal area, it must be to background levels only and exclude events involving formal audience participation (trivia, karaoke etc). Music (recorded or live) must:

- a) *Comply with the recommendations set out in the Acoustic Report prepared by Waveform Acoustics (December 2019) as relevant to Environmental Protection Policy No. 2 (SEPP N-2);*
- b) *Comply with Permit Condition 11 [standard requirements relating to State Environmental Protection Policies SEPP N-1 and SEPP N-2];*
- c) *Be limited to the performance of a solo artist;*
- d) *Cease at 9pm, every day*

9.1.3 Car parking & deliveries

The established use is not proposed to be amended in a manner that would impact current arrangements or approvals relating to car parking or delivery provisions.

9.1.4 Bicycle parking

The established use is not proposed to be amended in a manner that would impact current arrangements relating to bicycle parking provisions.

9.1.5 Compatibility with the area

The proposal is considered to demonstrate an acceptable level of compatibility with the surrounding area, which is an established mixed-use development proximate to the central city and other commercial zones. The amended land use would not result in a venue that is out-of-keeping with the prevailing or preferred character of the area, with the extended operating hours considered compliant with the relevant requirements of Clause 22.17 (Policy for Licensed Premises That Require a Planning Permit), which is discussed in further detail later in this report.

The purpose of the Mixed Use Zone reads “*to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*” It is considered the proposed amended land use continues to deliver this for the local area, and does not significantly depart from the existing characteristics of the existing use or the Tribeca Victoria Brewery site.

9.2 Clause 22.22 – Policy for Licensed Premises That Require a Planning Permit

The objectives of Clause 22.22 of the Melbourne Planning Scheme are as follows:

- *To identify appropriate locations and trading hours for licensed premises.*
- *To manage the operation of licensed premises to minimise adverse impacts on the amenity of the area and maintain the positive character, image and function of the city.*
- *To ensure that the cumulative impacts of licensed premises are assessed where venues are clustered in the one location.*

Amendments proposed to existing permit conditions do not seek to alter the hours within which alcohol can be served for consumption on the property. The proposal does, however, seek to increase the general trading hours of the food & drink premises. Via a revision to the permit preamble, the proposal also seeks to allow the sale of packaged liquor for consumption off-premises.

These amendments are assessed below (as relevant to Clause 22.17):

Proposed amendment	Discussion
<p>Amend permit preamble to reference: <i>"...sale and consumption of liquor in accordance with the held liquor licence..."</i></p>	<p>It is noted the existing permit preamble currently states: <i>"...sale and consumption of liquor in accordance with the on-premises licence..."</i></p> <p>By removing reference to the term 'on-premises', the proposed amendment would allow the venue operator to sell packaged liquor for consumption off- premises, in accordance with General Licence 31958913 issued by the VCGLR earlier in 2020 (status: Pending Planning).</p> <p>This element of the proposal is discussed below.</p>
<p>Amend Condition 5 to allow the following operating hours for the trading of food:</p> <ul style="list-style-type: none"> • 7am to 11pm, Monday to Sunday. <p>No change proposed to the hours within which liquor can be served.</p> <p>It is noted Condition 5 currently restricts hours of operation from 7am to 9pm, Monday to Sunday.</p>	<p>Clause 22.22-2 states hours of operation for licensed premises in the Mixed Use Zone should be limited to 11pm.</p> <p>The proposed amendment is compliant with this requirement.</p> <p>Further, it is noted that the proposal does not seek approval to serve liquor for consumption on-premises past 9pm.</p>

The proposal is generally considered appropriate in relation to the context of the subject site and the guidelines of Clause 22.27 given the following:

- The proposed hours of operation are consistent for licensed premises within the Mixed Use Zone;
- Service of alcohol for consumption on-premises will to be limited to 9pm as per existing arrangements, reducing the potential impact of the extended operating hours on the amenity of the surrounding area;
- The existing food & drink premises is located within an established mixed-use development comprising several other licensed venues. While not all venues operate to the full extent of their applicable liquor licenses (as set out in Section 1.1 of this report), the proposal seeks approval for operating hours generally consistent with the liquor licenses of several of these neighbouring venues.
- The service of packaged liquor with some takeaway meals is not expected to affect the nature of the food & drink premises, which will retain the service of food as its primary activity. The permit applicant has stated this request primarily relates to the intention of offering packaged liquor with the sale of take-away meals collected by patrons or by third-party delivery providers. This is considered consistent with the prevailing character of the area and other licensed venues in proximity to the subject site;
- Packaged liquor is currently sold at East Melbourne IGA (also within the Tribeca Victoria Brewery site) to 11pm in accordance with Packaged Liquor Licence 32064806 as set out in Section 1.1 of this report;
- The application does not seek approval to extend the licensed area within which liquor can be served.

When considering applications to extend the operating hours of existing licensed premises, consideration should also be given to:

- *The views of relevant authorities.*
- *Relevant information including complaints and problems with the premises, breach of planning or liquor license permit conditions.*
- *The conditions of the existing liquor license or planning permit controlling noise, security, patron numbers and hours of operation.*

Given the nature of existing food & drink premises, particularly the fact that the service of alcohol remains ancillary to the primary service of food, a referral of the application to external authorities was not considered necessary.

The site has been subject to previous enforcement action, with complaints relating to noise and operating hours having been lodged by third parties. The venue operator has been made aware of existing restrictions and is seeking amendments to some conditions through the submission of the current application.

Conditions included on the existing planning permit can effectively control issues of noise, patron numbers and hours of operation. Should the current amendment application be supported, amended permit conditions will continue to control such matters as discussed throughout this report. Further, this recommendation includes the provision of new permit conditions relating to the findings of an Acoustic Report prepared by Waveform Acoustics (December 2019), with the issue of an amended decision providing Council with an opportunity to strengthen some historical conditions with contemporary revisions that are more enforceable in practice.

Given the above, changes proposed to the licensed aspect of the existing food & drink premises are considered appropriate and are not expected to unduly detract from the amenity of the area.

9.3 Clause 53.06 – Live Music Entertainment Venues

The purpose of Clause 53.06 is as follows:

- *To recognise that live music is an important part of the State's culture and economy. To encourage the retention of existing and the development of new live music entertainment venues.*
- *To protect live music entertainment venues from the encroachment of noise sensitive residential uses.*
- *To ensure that noise sensitive residential uses are satisfactorily protected from unreasonable levels of live music and entertainment noise.*
- *To ensure that the primary responsibility for noise attenuation rests with the agent of change.*

As previously discussed, the application seeks planning approval to amend Condition 7 in order to allow performances of amplified live background music. The applicant has stated their desire to provide occasional live background music at a low level conducive to conversation.

Acoustic Report submitted by Permit Applicant

An Acoustic Report submitted by the Permit Applicant and prepared by Waveform Acoustics (dated December 2019) sets out various recommendations as to how amplified live music could be performed on-site whilst appropriately managing amenity impacts for neighbouring properties. The report investigated ways in which amplified live music could be performed in a manner that complies with Condition 7 in its existing form (i.e. no sound to be audible from adjacent properties), as well as how performances could respond to an amended condition citing applicable State Environmental Policy No. 2 (SEPP N-2 - Control of Music Noise from Public Premises). It is noted the report assumes any live music is to be performed by a solo

artist playing an amplified keyboard through a PA system. Amplified vocals have also been assumed.

The Waveform Acoustics report states that in order to achieve compliance with Condition 7 in its current form, noise-limiting measures would need to be applied to the amplification of a keyboard through the existing PA system, and that vocals could not be amplified in any manner.

To achieve compliance with SEPP N-2 requirements, page 9 of the Waveform Acoustics report sets out specific limits to be placed on the existing sound equipment provided on-site as follows:

- Microphone volume set to 1;
- Amplifier volume set to 3.5; and
- Keyboard volume set to 2.5.

The report sets out further recommendations to achieve compliance with SEPP N-2 at page 10, including:

- *Management are to conduct a noise test outside using an SLM set to a weighting to ensure that the singer and keyboard are within the prescribed limits;*
- *A noise limiter could be installed that shuts the power to the sound system should the prescribed noise limit be reached for more than 20 seconds;*
- *The sound system is to be placed in a locked rack or cupboard such that the levels cannot be tampered with;*
- *Staff to be trained in the noise level that must be maintained within the venue and how to use the sound system such that compliance is ensured.*

Discussion

The above recommendations are considered appropriate measures to manage the potential amenity impacts to adjoining properties and to allow for the limited performance of amplified background music at the subject site. The application of such recommendations is expected to adequately address issues relating to noise emissions, with the resultant live music venue considered appropriately compliant with Clause 53.06 requirements.

The highly limited nature of any live music performance to occur at the subject site is not expected to unduly detract from the amenity of the wider Tribeca Victoria Brewery site and can be considered acceptable. It is noted that the site is not proposed to host full-sized bands with multiple amplified instruments, as only a solo performer has been considered.

Notwithstanding the above, it is noted the proposal will result in the food & drink premises playing the role of the 'agent of change' as set out in Clause 53.06. As such, the onus is on the venue operator to ensure the amenity of the surrounding area is respected. The recommended permit conditions discussed in this section of the report are considered an appropriate method of ensuring this outcome, with the provision of live music being limited in response to the site context.

Should an amended permit ultimately be issued, it is recommended conditions be included that ensure compliance with the Waveform Acoustics report and the applicable SEPP N-1 and SEPP N-2 requirements, and that limit the nature of performances to adequately respond to the context of the site. Further conditions aimed at managing the amenity of the surrounding area and reserving the right for Council to require further acoustic testing (should it be required) are also recommended.

Recommended permit conditions relating to noise emissions are as follows:

- *If amplified music (recorded or live) is to be provided in the internal area, it must be to background levels only and exclude events involving formal audience participation (trivia, karaoke etc). The provision of music (recorded or live) must:*

- a) *Comply with the recommendations set out in the Acoustic Report prepared by Waveform Acoustics (December 2019);*
 - b) *Comply with Permit Condition 11 [requirements relating to State Environmental Protection Policies SEPP N-1 and SEPP N-2];*
 - c) *Be limited to the performance of a solo artist;*
 - d) *Cease at 9pm, every day.*
- *Prior to the commencement of the use, the applicant must submit a statement by a qualified acoustic consultant verifying that the recommendations set out in the endorsed Acoustic Report prepared by Waveform Acoustics (dated December 2019) have been implemented (including the installation of a noise limiter) to the satisfaction of the Responsible Authority.*
 - *The recommendations implemented according to the endorsed Acoustic Report prepared by Waveform Acoustics (dated December 2019) must not be altered without the prior written consent of the Responsibility.*
 - *No external sound amplification equipment or loud speakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose, to the satisfaction of the Responsible Authority.*
 - *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) to the satisfaction of the Responsible Authority.*
 - *The Responsible Authority may, with just cause, request the lodgement of additional reports from suitably qualified Acoustic Engineers demonstrating compliance with the conditions above, and must identify all potential noise sources and sound attenuation work required to address any noise related issues and to 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). The recommendations of the report must be implemented by the applicant to the satisfaction of the Responsible Authority.*

9.4 Matters Raised by Objectors

Matters raised by objectors are addressed below:

Objection	Comment
Noise emissions from premises.	Noise impacts have been assessed as necessary throughout this report, with the recommended permit conditions expected to appropriately address this matter.

Inappropriate increase to trading hours.	The proposed trading hours have been assessed throughout this report and are considered appropriate as discussed.
Inappropriate extension of liquor licence to allow service of packaged liquor.	The proposed arrangements have been assessed as necessary throughout this report and are considered appropriate as discussed, subject to the recommended permit conditions.
Inappropriate use of the site within a predominantly residential complex.	The nature of the existing land use is not expected to be significantly altered by the proposed amendments as assessed in this report.
Transformation of approved land use from convenience restaurant to bar/bottle shop.	<p>The nature of the approved use is not expected to be significantly altered by the proposed amendments as assessed in this report, with the primary activity of the site to remain the preparation and sale of food.</p> <p>The operation of the licensed premises is proposed to be amended in a manner considered appropriate as assessed throughout this report. Recommended permit conditions can effectively regulate this land use.</p>
Inappropriate location for a live music venue.	As discussed in Sections 9.1.2 and 9.3 of this report, the proposal to provide live background music is considered acceptable subject to recommended permit conditions. These conditions limit the nature of performances permitted on site, and are expected to appropriately manage the impacts of noise emissions.
Safety concerns related to increased activity in the central arcade.	The proposed trading hours are consistent with Clause 22.22 guidelines, and are considered appropriate for the subject site. It is noted the service of alcohol for consumption on-site will cease at 9pm as per existing arrangements.
Decrease to property value of tenancies within the Tribeca Victoria Brewery site.	This is not a relevant planning consideration. An assessment as to the impacts of the proposed amendments has been made throughout this report.

<p>Concerns over permit applicant's alleged lack of concern/respect for the complex and its residents.</p>	<p>This is not a relevant planning consideration. The scope of Council's assessment as relevant to the current planning application relates to the amendments proposed to the existing planning permit.</p>
<p>Concerns relating to previous breaches of planning permit conditions and future restrictions.</p>	<p>Previous enforcement activity applicable to the venue and existing permit has been reviewed. The scope of Council's assessment as relevant to the current planning application relates to the amendments proposed. The recommended permit conditions are considered an appropriate response to the proposal, as discussed throughout this report.</p>
<p>Concerns relating to alleged breaches of Owners Corporation requirements.</p>	<p>This is not a relevant planning consideration. The scope of Council's assessment as relevant to the current planning application relates to the amendments proposed to the existing planning permit, with any alleged breaches of Owners Corporation rules considered a separate matter.</p>
<p>Concerns relating to previously proposed awning structure and its impact on the heritage value of the site.</p>	<p>It is noted that the application as assessed throughout this report does not propose the construction of an additional awning structure at the frontage of the subject tenancies. This element of the proposal was not pursued by the permit applicant.</p>
<p>Concerns regarding the potential for outdoor seating to be left out and used after hours by members of the public.</p>	<p>This is not a relevant planning consideration. The scope of Council's assessment as relevant to the current planning application relates to the amendments proposed to the existing planning permit, with external street trading matters considered a separate matter. Temporary Extended Outdoor Dining Permit 1619 has been issued for the premises and is the appropriate mechanism to regulate the use of the outdoor area.</p>
<p>Concerns relating to previously proposed increase to patron numbers.</p>	<p>It is noted that the application as assessed throughout this report does not propose an increase to the maximum numbers of patrons permitted within the internal area of the site. This element of</p>

	the proposal was not pursued by the permit applicant.
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9.5 Other Matters

Amended Floor Plan

It is noted previous enforcement action (ENF-2019-250) required the submission of an amended floor plan. The amended plan submitted with the current amendment application intends to depict the siting of the proposed use (namely through the location of sound equipment associated with live music performances proposed), though it is noted the quality of the plan is not sufficient for endorsement. While it is possible to glean the general location of the sound equipment from this plan, an amended drawing generally in accordance with the existing endorsed plans associated with TP-2009-1007 can be required by permit condition.

Land Use Definition

Further, it is considered appropriate to amend the permit preamble to better reflect the existing and proposed use of the subject tenancies which are no longer used for the purposes of a shop or internet café.

As discussed above, some objectors raised concerns that the nature of the approved use is to be transformed from a convenience restaurant to a bar (or similar) as part of the proposed amendments.

The definition of convenience restaurant is as follows:

Land used to prepare and sell food and drink for immediate consumption, where substantial provision is made for consumption both on and off the premises.

It is considered that the approved use of the site as a licensed food & drink premises (convenience restaurant) remains applicable as per Clause 73.03 (Land Use Terms) of the Melbourne Planning Scheme. Separate planning approval would be required to use the land for the purposes of a bar.

Updated Business Identification Signage

It became apparent through the processing of this application that the business identification signage on-site has been updated compared to what was approved by the original application (TP-2009-1007). The changes appear to relate to the naming and branding of the site, and do not appear to greatly extend beyond the scope of signage that has been approved via previous applications. It is recommended that revised signage plans to Council’s satisfaction be required by condition in order to reflect on-site conditions.

10 CONCLUSION AND RECOMMENDATION

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 an Amended Permit can be issued for the proposal subject to conditions.

It is recommended that the permit preamble be amended, along with a number of permit conditions relating to operating hours, the services of alcohol, and noise emissions.

The recommended amendments are as follows:

Permit Preamble

Use units 7TV & 6TV for the purposes of a food & drink premises (convenience restaurant); the sale of liquor for consumption on and off the premises; erect business identification signs and fit external grille; and waive the associated bicycle and car parking requirements.

Permit Conditions

- Delete existing Condition 1 and replace it with the following:

Prior to the commencement of the development hereby permitted, the applicant must submit to and have approved in writing by the Responsible Authority, plans generally in accordance with those endorsed as part of TP-2009-1007 but amended to show:

- a) The amended floor plan as proposed by TP-2009-1007/A, including the location of live music equipment and associated storage.*
- b) Dimensioned signage plans showing updated business identification signage as evident on-site, to the satisfaction of the Responsible Authority.*

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

- Condition 4 amended to read:

Except with the further permission of the Responsible Authority, the maximum number of patrons permitted on site shall not exceed 50 at any one time.

- Condition 5 amended to read:

Except with the prior written consent of the Responsible Authority, the hours of operation for the use hereby permitted must be as follows:

Monday to Sunday: 7am to 11pm

- Condition 6 amended to read:

The sale of liquor for consumption on-site must only be carried out between the following hours:

- *Monday to Saturday: 9am to 9pm*
- *Sundays: 10am to 9pm.*

- Condition 7 amended to read:

If amplified music (recorded or live) is to be provided in the internal area, it must be to background levels only and exclude events involving formal audience participation (trivia, karaoke etc). The provision of music (recorded or live) must:

- a. Comply with the recommendations set out in the Acoustic Report prepared by Waveform Acoustics (December 2019);*
- b. Comply with Permit Condition 11;*
- c. Be limited to the performance of a solo artist;*
- d. Cease at 9pm, every day.*

- New Condition 8 included:

- *Prior to the commencement of the use, the applicant must submit a statement by a qualified acoustic consultant verifying that the recommendations set out on pages 9 and 10 of the endorsed Acoustic Report prepared by Waveform Acoustics (dated December 2019) have been implemented (including the installation of a noise limiter) to the satisfaction of the Responsible Authority*

- New Condition 9 included:
 - *The recommendations implemented according to the endorsed Acoustic Report prepared by Waveform Acoustics (dated December 2019) must not be altered without the prior written consent of the Responsible Authority.*
- New Condition 10 included:
 - *No external sound amplification equipment or loud speakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose, to the satisfaction of the Responsible Authority.*
- New Condition 11 included:
 - *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) to the satisfaction of the Responsible Authority.*
- New Condition 12 included:
 - *The Responsible Authority may, with just cause, request the lodgement of additional reports from suitably qualified Acoustic Engineers demonstrating compliance with the conditions above, and must identify all potential noise sources and sound attenuation work required to address any noise related issues and to 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). The recommendations of the report must be implemented by the applicant to the satisfaction of the Responsible Authority.*
- Remaining conditions renumbered accordingly.
- New notes added as follows:

Separate approval from the relevant Owners Corporation may be required prior to the commencement of the amended use.