

Report to the Future Melbourne (Planning) Committee

Agenda item 6.2

Planning Permit Application: TP-2020-225
388-390 Bourke Street, Melbourne

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 a planning permit application seeking approval for use of the premises as a bar at Level 8 (roof top), 388-390 Bourke Street, Melbourne (refer Attachment 2 – Locality Plan).
2. The applicant is Plan Urban and the owner is Marchex Nominees Pty Ltd.
3. The land is located within the Capital City Zone Schedule 1 (CCZ1) and is affected by a Heritage Overlay, Design and Development Overlay Schedules 1, 3, 4 and 10 and Parking Overlay Schedule 1.
4. The site has an eight storey building with roof terrace which is occupied by several businesses – one tenancy per floor. The uses on-site are a mix of retail, commercial, education, restricted recreation and place of assembly. The subject premises (roof top) currently operates as a private function space.
5. Public notice of the application was undertaken and 20 objections were received.

Key issues

6. The key issues relate to the appropriateness of the use and associated noise and management of the bar. Other issues include amenity and safety concerns raised by objectors who are either existing tenants of the building or users of these businesses; and a nearby resident.
7. The bar replaces an existing function space at the premises, which caters to the same maximum number of patrons (100) and is generally consistent with the hours of operation.
8. Subject to conditions, the proposed bar will appropriately balance a use encouraged in the Central City with existing amenity of businesses within the host building and surrounding residents.
9. Where relevant the concerns raised by objectors, which largely relate to management of the bar alongside other businesses and users of the host building, have been considered and addressed through the submission of a Venue Management Plan. The Venue Management Plan will be endorsed to form part of any permit granted and the details within the management plan must be adhered to.
10. Noise impacts associated with proposed live and amplified music at the premises would be controlled through conditions. Live and amplified music must cease at 11pm; and an Acoustic Report is required to be submitted, demonstrating that the requirements of Clause 22.22 and Clause 53.06 are met and any recommended sound attenuation measures must be integrated into the building/premises prior to the commencement of the use. These conditions will ensure that the amenity of the area is not unreasonably impacted on, balancing the type of use encouraged in the Central City.
11. Recommended permit conditions provide that, with just cause, Council may in future require additional acoustic assessments from the owner/operator to demonstrate compliance.

Recommendation from management

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

Attachments:

1. Supporting Attachment (Page 2 of 25)
2. Locality Plan (Page 3 of 25)
3. Development Plan (Page 4 of 25)
4. Delegate Report (page 5 of 25)

Supporting Attachment

Legal

1. Division 1 of Part 4 of the *Planning and Environment Act 1987* (the 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, 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 Act.

Relation to Council policy

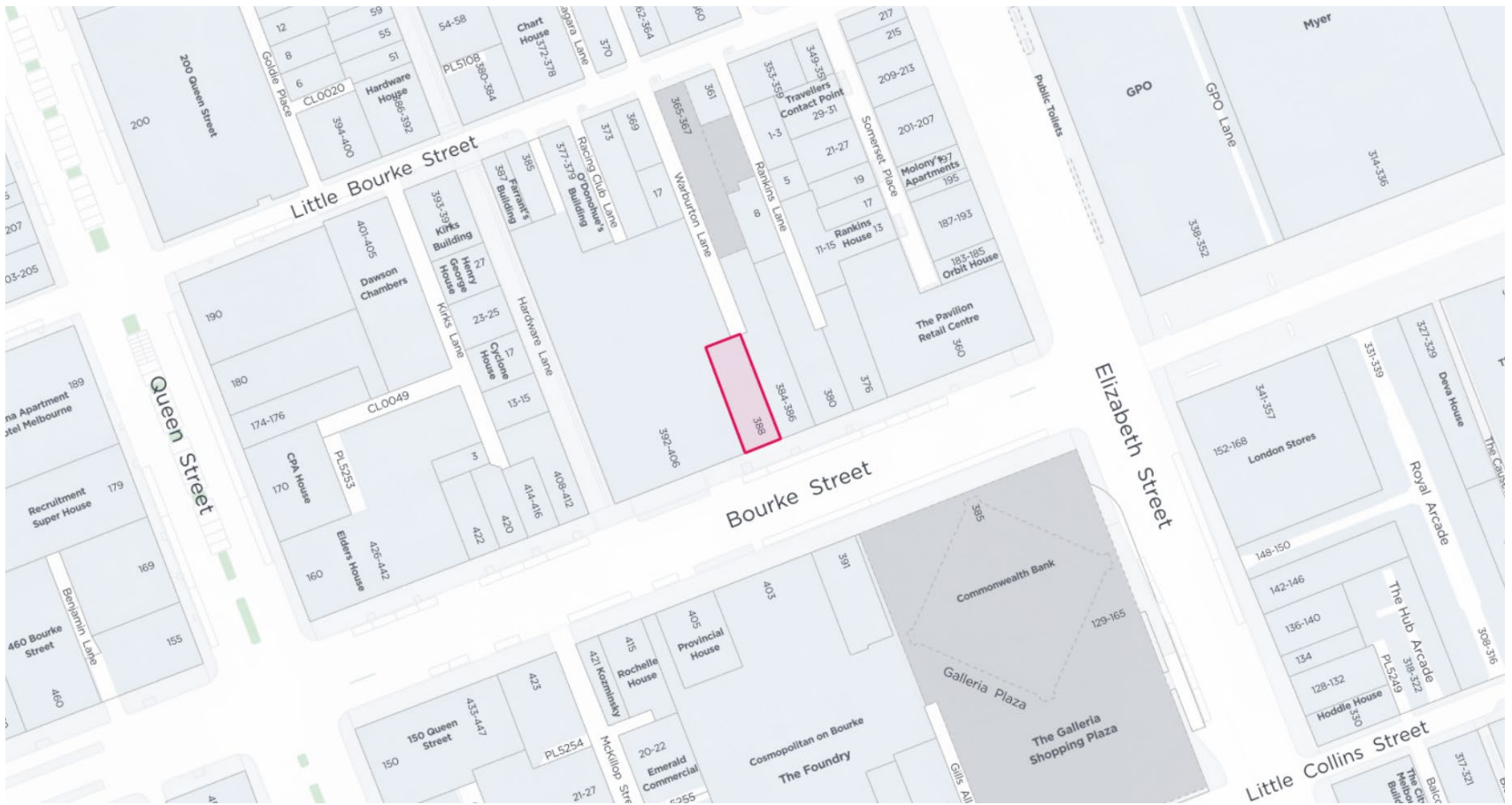
7. Relevant Council policies are discussed in the attached delegate report (refer to Attachment 4).

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

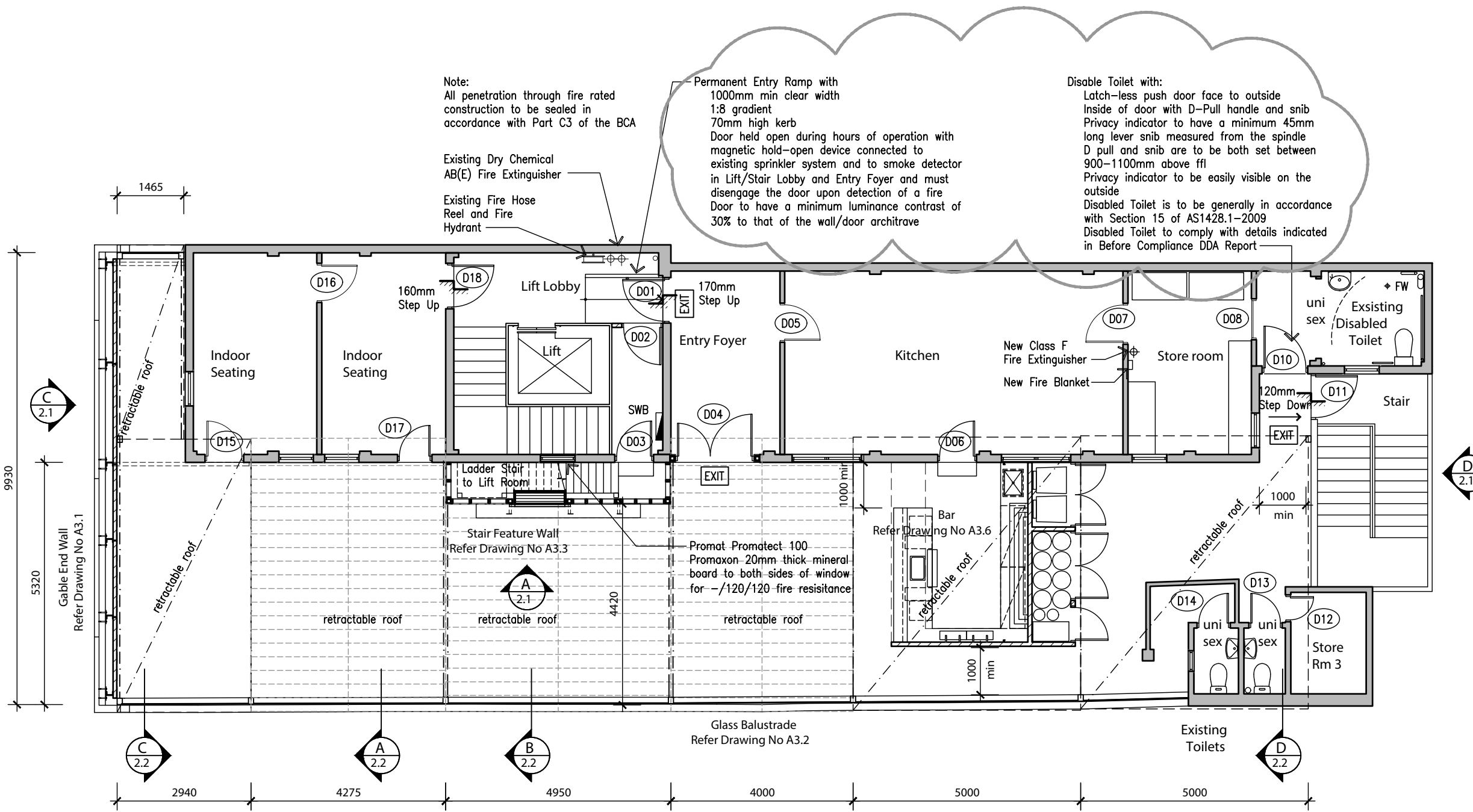
388-390 Bourke Street, Melbourne



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Rev.	Detail	Date
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Rooftop Function Space
 Level 8 / 388 Bourke St
 Melbourne

Title FLOOR PLAN



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Date 27/10/17 Drawn AI

Scale 1:100 Size A3

Drawing Number

A1.1

Sheet 1 of 1 Revision G

01 Layout Plan
 Scale 1:100

Drawing file: C:\DOCUMENT~1\design\LOCALS~1\Temp\AcPublish_4888\A1.1-Layout_Plan.dwg Printed: 27 Oct, 2017 - 10:36am

DELEGATE REPORT

PLANNING PERMIT APPLICATION

Application number:	TP-2020-225
Applicant:	Plan Urban
Owner:	Marchex Nominees Pty Ltd
Architect:	N/A
Address:	Level 8, 388-390 Bourke Street, Melbourne
Proposal:	Use of the premises (roof top) as a Bar
Cost of Works:	N/A
Date of Application:	16 March 2020
Responsible Officer:	Richard Cherry, Senior Urban Planner

1 SUBJECT SITE AND SURROUNDS

The subject site is located on the north side of Bourke Street, between Elizabeth Street to the east and Hardware Lane to the west. Warburton Lane abuts the eastern portion of the site's north boundary.

The site is developed with an eight storey building with roof terrace and is occupied by several businesses, including office, retail and recreation. Specifically:

- Ground: BUPA Optical;
- Level 1: Dynamite Muay Thai;
- Level 2: Australian Institute of Language;
- Level 3: Melbourne Centre for Effective Communication;
- Level 4: The Woman Skin Clinic;
- Level 5: Kenja Melbourne Social Cultural and Sporting Association Inc.;
- Level 6: Australian Institute of Language;
- Level 7: Office space;
- Level 8 (roof terrace): The Stolen Gem (subject premises) currently uses the space for private functions. The terrace includes an open area with a small bar, two internal seating areas and a retractable roof. The business' website (thestolengem.com) states that the space is "*ideal for corporate functions, weddings, engagements, a milestone birthday or product launches.*" The nature of the business relies on a booking system, rather than being in use seven days a week and open to the public. The use as a "Function Centre" (Place of

Assembly) is as-of-right in the Capital City Zone (no planning permit required) and alcohol is served in accordance with a renewable limited licence (also not requiring a planning permit).

The building has two entries off Bourke Street – one for the ground floor tenancy and another for all other floors and businesses.

The adjoining property to the east is developed with a two storey building, used as a retail premises. A Planning Application (TP-2020-179) that affects this site was lodged with Council on 27 February 2020 for buildings and works including part demolition, façade alterations, construction of new additions and plant area for the associated use of the site as Retail Premises (restaurants). A retractable roof is proposed at second floor. At the time of writing of this report, the status of the application was at RFI (awaiting further information from the applicant in order to proceed).

The adjoining property to the west is developed with a three storey commercial car park (open roof) with ground level food and drink premises (McDonalds).

To the rear, buildings along Warburton Lane are occupied by a mix of retail, commercial and residential uses.

The surrounding area is characterised by a diverse range of built form and associated mix of uses, such is the nature of the Central City and Capital City Zone in general. Notable features in the surrounding area includes food and drink premises and bars located along Hardware Lane to the west; and an office and retail development (currently under construction) located on the south side of Bourke Street.

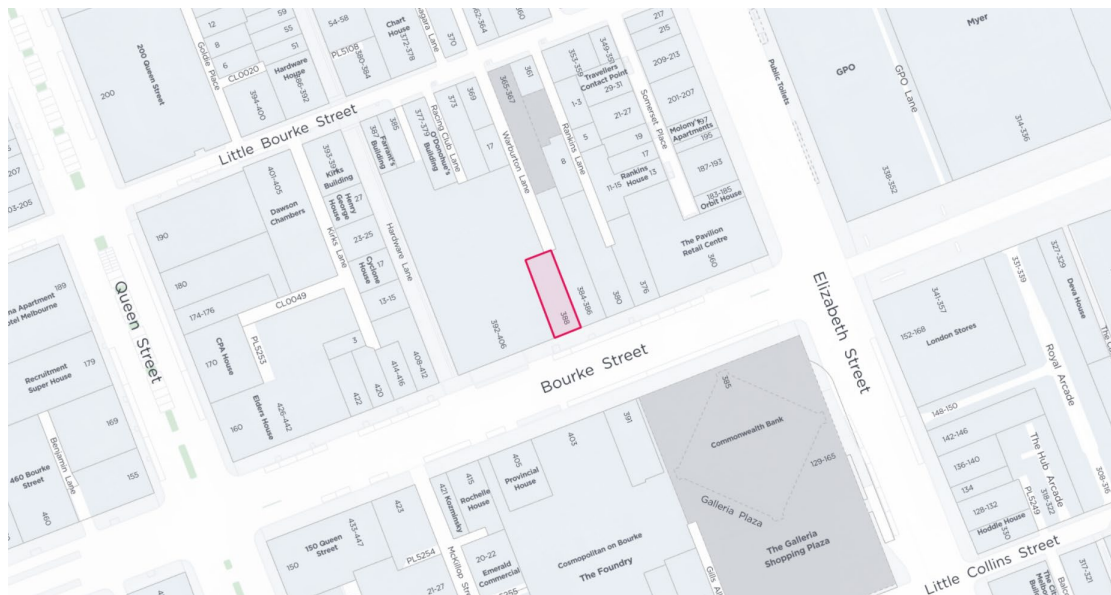


Figure 1: Map of subject site and surrounds



Figure 2: Aerial of subject site and surrounds (source: NearMap 17 February 2020)

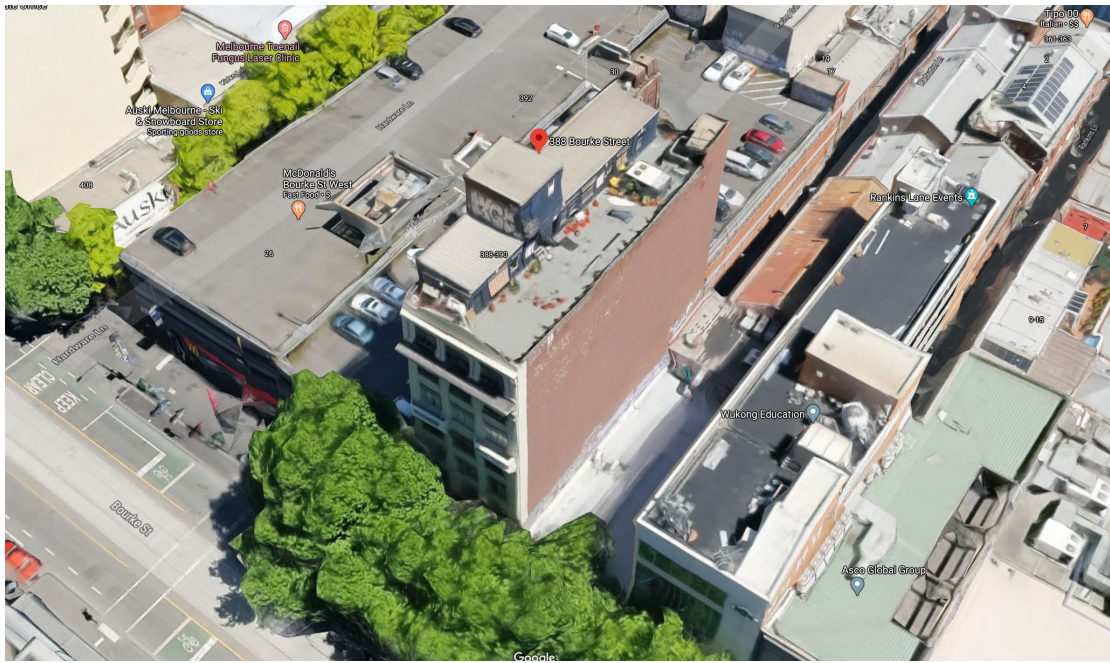


Figure 3: Subject site including host building's roof top (source: Google Global View)



Figure 4: Subject premises looking south



Figure 5: Subject premises looking north

2 BACKGROUND AND HISTORY

2.1 INV-2018-83

Council received a noise complaint on 6 May 2018 in relation to The Stolen Gem. The customer was advised that pursuant to Clause 34.07-1 of the Melbourne Planning Scheme a permit is not required to use land as a Place of Assembly; therefore, the use is not enforceable by Council.

The customer was also made aware that all liquor licences are issued by the Victorian Commission for Gambling and Liquor Regulations (VCGLR) and have an amenity condition on them, which is enforceable by the VCGLR.

The investigation was subsequently closed.

2.2 ENF-2019-487

Council received a noise complaint on 12 December 2019 in relation to The Stolen Gem. As per INV-2018-83, Council took no enforcement action and the investigation was subsequently closed.

3 PROPOSAL

The application proposes:

- Use of Level 8 (rooftop terrace) as a Bar.
- The bar is accessed via existing stairs and a lift through the ground level entry off Bourke Street.
- A maximum of 100 patrons on-site at any one time, including seating for up to 20 patrons within two existing internal rooms.
- A maximum of seven staff on-site at any one time.
- Hours of operation:
 - Monday to Thursday: 9am to 12am;
 - Friday and Saturday: 9am to 1am;
 - Sunday: 10.30am to 12am;
 - ANZAC Day: 12pm to 12am.
- The layout includes a kitchen for food offerings.
- Live and amplified music by DJ's and bands.
- No buildings or works are proposed.

- A liquor licence is not sought or required – refer Section 4 of this report for details.

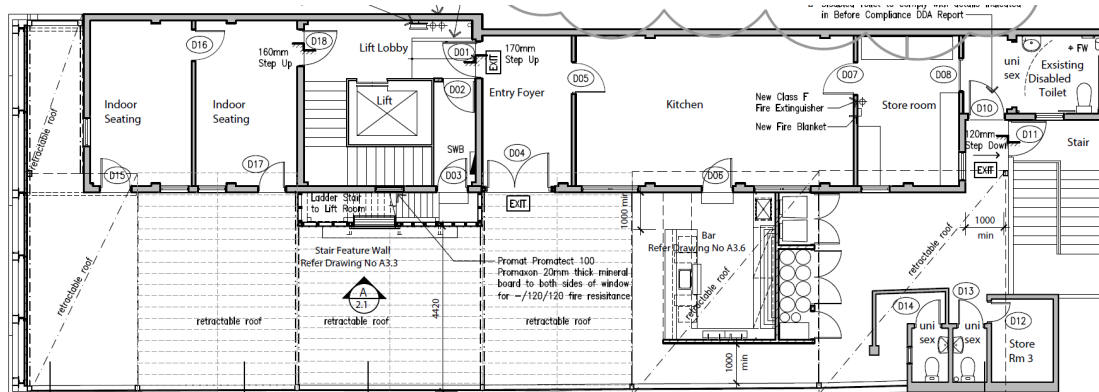


Figure 6: Proposed floor layout plan

4 STATUTORY CONTROLS

Clause	Permit Trigger
Clause 37.04 Capital City Zone Schedule 1	Pursuant to Schedule 1 to Clause 37.04-1, a permit is required to use the land for the purpose of a Bar (Section 2 Use).
Clause 43.01 Heritage Overlay Schedule 1206	The Heritage Overlay applies to development only. There are no buildings and works proposed and therefore a permit is not required pursuant to the Heritage Overlay.
Clause 43.02 Design and Development Overlay Schedules 1-A2, 3, 4, 10	The Design and Development Overlay applies to development only. There are no buildings and works proposed and therefore a permit is not required pursuant to the Design and Development Overlay.
Clause 45.09 Parking Overlay Schedule 1	Pursuant to Schedule 1 to Clause 45.09, a permit is required to provide car parking spaces in excess of the car parking rates identified in Clause 3.0 of the schedule. No on-site car parking is proposed and therefore a permit is not required pursuant to the Parking Overlay.
Clause 52.27 Licensed Premises	Pursuant to Clause 52.27, a permit is not required if the schedule to this clause specifies that a permit is not required to use land to sell or consume liquor under a particular type of licence. The schedule to Clause 52.27 exempts all land within the Capital City Zone and therefore a permit is not required for the sale or consumption of liquor. A licence will be required from the Victorian Commission for Gambling and Liquor Regulation (VCGLR).
Clause 52.34 Bicycle Facilities	Pursuant to Clause 52.34-5, Retail Premises has a statutory requirement to provide one bicycle space to each 300m ² of leasable floor area for employees and one bicycle space to each 500m ² of leasable floor area for visitors. The leasable floor area is less than 300m ² and the bicycle requirements do not apply in this instance.

5 PLANNING POLICY FRAMEWORK

- Clause 21.08 – Economic Development;
- Clause 21.12 – Hoddle Grid;
- Clause 22.22 – Policy for Licensed Premises that require a Planning Permit.

6 ZONE

The subject site is located within the Capital City Zone Schedule 1. The purposes of the Capital City Zone are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To enhance the role of Melbourne's central city as the capital of Victoria and as an area of national and international importance.
- To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone.
- To create through good urban design an attractive, pleasurable, safe and stimulating environment.

The purpose of Schedule 1 to the Capital City Zone is:

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

7 OVERLAYS

The subject site is affected by Heritage Overlay Schedule 1206; Design and Development Overlay Schedules 1-A2, 3, 4 and 10; and Parking Overlay Schedule 1.

The Heritage Overlay and Design and Development Overlay are of no relevance to this application as there is no buildings or works proposed.

The Parking Overlay is of no relevance to this application as no on-site car parking is proposed.

Refer to Section 4 of this report for further details.

8 PARTICULAR PROVISIONS

- Clause 53.06 – Live Music and Entertainment Noise.

9 GENERAL PROVISIONS

- Clause 65 – Decision Guidelines.

10 PUBLIC NOTIFICATION

It was determined that the proposal may result in material detriment. Notice of the proposal was given by ordinary mail to the owners and occupiers of surrounding properties, including other owners and occupiers of the host building; and by posting two notices on the site (one x facing Bourke Street and one x facing Warburton Lane) for a 14 day period, in accordance with Section 52 of the *Planning and Environment Act 1987*.

11 OBJECTIONS

A total of 20 objections were received.

Of the 20 objections, several have been submitted by regular users of the Melbourne Centre for Effective Communication and Kenja Melbourne Social Cultural and Sporting Association – organisations that operate out of Levels 3 and 5 of the host building. In addition, one objection received is signed by the following tenants of the host building:

- Melbourne Centre for Effective Communication – Level 3;
- Kenja Melbourne Social Cultural and Sporting Association Inc. – Level 5;
- Australian Institute of Language – Levels 2 and 6;
- The Woman Skin Clinic – Level 4;
- Dynamite Muay Thai – Level 1.

A further objection received is from a tenant of the building (floor level not provided) who shares the same concerns as those raised by other users / businesses within the host building.

The remaining objection is from a resident of 12 Warburton Lane, located to the north of the subject building. The resident has raised concerns with noise from live music and has accompanied their objection with an image of the host premises, which shows the site's proximity to their residence (refer Figure 7).

Some extracts of the objections received are provided below for a more detailed snapshot of the concerns raised, followed by a summary of all objections.

11.1 Extract One

Throughout the 35 years of our tenancy our business has conducted consulting sessions, classes, workshops and lectures. These events occur during the day and into the evening 7 days a week. Our programs are frequented with professional people, families including many women and children, and our schedule of activities requires considerable movement between the two floors that we occupy, using both the stairwell and small internal lift.

Regarding use of level 8 as a function space:

We decided on some operational agreements to manage this situation which we regarded as potentially very damaging to the pleasant working environment and to our businesses. The following agreements were put into place:

- *We would be notified whenever events were to take place and also we would notify the Level 8 tenant if we had an extra event beyond normal operation taking place*
- *A security guard would be on duty at the front door at all times while an event was in progress*
- *No patrons of the events were to use internal building stairwell at all except in case of an emergency*
- *All event patrons would go directly to and from Level 8 using the lift. Our staff and clientele would wait until the lift was empty before entering*
- *We would communicate if the noise level from Level 8 event was disrupting businesses so they could reduce it*
- *No alcohol consumption or bottles / glasses to be carried into lift or onto Bourke St.*
- *The Level 8 tenant would inform us of the exact time an event was finishing and we would delay our clientele until the event patrons had departed the building*
- *Only registered events space participants were allowed to enter the building for the event and every person would be checked off by a security guard at front door*
- *Post event cleaning to include eliminating any alcohol smells in the lift*

Over the past two years business has been conducted in this way. On a number of occasions we have changed the date / time of an activity in our own calendar to avoid exposing our clients to patrons consuming alcohol. This situation is not ideal but we have made it workable only because the events are not held every day of the week. The events currently occur on a clearly defined and predetermined day / time and they have a definite start / finish. Guests movements are restricted and a guest list at the entrance on Bourke St. is checked off by the security guard at the front door.

- The summary presented here excludes any mention of Melbourne Centre for Effective Communication or Kenja Social Cultural and Sporting Association Inc who occupy Level 3 and Level 5 respectively, and who have been running day, evening and weekend activities in the building for almost 35 years. Their activities include meditation and communication training for a socially and mentally healthy lifestyle which is so imperative in todays society
- This summary fails to mention that the Australian Language School occupying Level 2 and Level 6 run exams outside of business hours, often in the evenings and on weekends. It is also a registered training organisation with the Australian Government and therefore is subject to strict guidelines ensuring a safe and secure environment for the students of which many are young women learning English to pass their IELTS examinations
- It also fails to mention the The Woman Skin Clinic on Level 4 which is run by women for women operating 7 days a week until 7pm
- Dynamite Muay Thai gym on Level 1 operates until 10pm Mon to Wed and 9pm Thur & Friday.

11.2 Extract Two

I would like to register my strong objection to the application for a public bar on level 8/388 Bourke St. I am one of the lessees of level 5/388 Bourke St as part of the Kenja Melbourne Social, Cultural and Sporting Association. We have leased the premises on level 3 and 5 for over 30 years. I have been attending events there for 28 years. Our events are alcohol free and family oriented. We create a place where people can do social and sporting activities such as ballroom dancing, tap dancing, music and ballet. Our activities take place on level 3 and 5 throughout the day and during the evening and weekends. People of all ages including families with young children attend our premises. We also hold concerts and Christmas pantomimes for families. As well as this we do mediation classes on level 5 and 3. It is a thriving centre for physical, social and mental wellbeing with a community focus.

Putting a public bar on level 8 would be highly unsuitable in this building and would severely restrict our ability to run our activities freely in a safe family friendly environment. There is only 1 lift and a stairwell that connect all the floors, so it would be impossible for level 8 to prevent inebriated patrons from sharing the lift or stairs with our guests and social and sporting club members.

The functions that have been run on level 8 until now have had a degree of control and have been at specific times involving limited invited guests. We have had to coordinate the use of the lift and stairs at these times, but as they had a start and finish time this was feasible.

The proposal of a public bar is an entirely different situation which brings serious concerns for the safety and security of the whole building. It is highly inappropriate in a building which has a language school, a martial arts school, a meditation organisation and a social and sporting club amongst others.

It is for these reasons that I strongly object to this proposal.

11.3 Extract Three

The building is a commercial office building with suitable but limited access of a single staircase and single lift.

The top floor, corporate reception area, is a great amenity, of which we have used for our own event, but in the time we have been there currently hosts 1-2 events a fortnight, with the vast majority being outside of working hours.

We are situated on level 7, being directly below the level in question. Our objections are:

- *The current venue operates sporadically and after-hours. When operating the noise and music can be heard in our office. This is currently a lower issue due to the sporadic nature and timing - being after hours - but if this was to take place during the hours of operation put forward - being during the full working week from 9am onwards - this would be a significant distraction and impact to our right to quiet enjoyment.*
- *The current entrance to the building, common areas and amenities are all in-keeping with an office building. We receive corporate clients, Director's of ASX listed businesses, to our premises. If the signage changes to advertise a public bar, with relevant warning signs for intoxication and if we can hear event music in our office, this could have an impact on our branding and also have an impact on our business.*
- *Renting the office space with a corporate event space was touch and go - we would not have decided to rent here if the bar was already setup, therefore we don't support having a bar operate above us.*

In summary our objections are:

- *This could drastically increase noise during business hours and negatively impact quiet enjoyment - we are likely the most impacted given we are the level below*
- *The security of patrons coming out of the venue - there is an accessible lift well next to the elevator that goes straight to our level*
- *The change in appearance of the premises if pub signage, patrons and security are a fixture during business hours.*

Whilst we like the tenants, we have used the corporate events space after hours, and understand the current impact of COVID on all businesses, we believe turning the space into a public pub, with operating hours during business hours, would be quite detrimental to our business.

11.4 Summary of objections

- **Restrict ability to run activities freely in a safe family friendly environment, particularly for women and children who attend classes within the host building.**
- **Only one lift and one stairwell requiring joint use with bar patrons, therefore impossible to prevent sharing of lift with alcohol-affected patrons; and difficulties with increased usage of the single lift.**
- **Less control of management of bar than current function space – safety and security issues.**
- **Inappropriate for children to arrive and leave the building mixing with patrons who are intoxicated and engaging in social activity suited to adults.**

- Noise impacts on other businesses within the host building.
- There is other bar options in the vicinity.
- Issues with deliveries.
- People congregating out the front to smoke.
- Crowd control measures and difficulty and discomfort it creates for other users to enter the building.
- Issue with people using the stairs that might be intoxicated and increase the risk of injury.
- Increase in the number of people on-site.
- Study and exams are held on the site after hours and on weekends.
- While workable solutions were developed for the “events” due to the way they are run and finishing times were scheduled, this was not an ideal situation at all with young students and families also using the premises. There is a noticeable change in the tone of the building when these events are held. The move to have a public bar exacerbates these changes on an ongoing basis.
- Smell of alcohol.
- The building is supposed to be secure from 7pm until 7am.
- Music is heard throughout the building on all floors and the proposal to have live music anytime during the operating hours is unacceptable.
- Bar patrons will be able to access any floor.
- Issues of carrying band equipment to and from the premises.
- Six of the eight floors run businesses that operate outside of normal business hours – i.e. evenings and weekends.
- Overflow of patrons queuing outside the building on the footpath.
- Security presence will destroy the professional credibility of other businesses operating in the building and will undoubtedly result in loss of business.



Figure 7: Location of 12 Warburton Lane residence – Source: Objector (resident)

The concerns raised in the objections received are discussed in greater detail at Section 14 of this report.

12 INTERNAL REFERRALS

12.1 Waste Services

We have reviewed the WMP for this proposal from WasteTech Services dated 14th May 2020 and found it to be unacceptable:

The following items need to be addressed:

- *Whilst it may be current practice to present bins kerbside, this practice no longer complies with our current Guidelines. Bins are to remain within the property boundary at all times, and are only to be presented to the waste vehicle at the time of collection. Upon emptying, they are required to be immediately returned to within the property boundary. For this reason, consideration should be given to using a 660L bin for garbage unless physical limitations of the building don't allow for its use.*
- *Please include the waste vehicle's stopping location.*

Planner's Response

These outstanding items could be addressed by way of condition in any permit granted – **refer recommended Condition 3.**

13 EXTERNAL REFERRALS

The application was not required to refer the application to any external authorities.

14 ASSESSMENT

14.1 Use

As outlined at Section 1 of this report, the roof terrace is currently used as a private function space, operating as *The Stolen Gem*. The space includes an open area with a small bar and a retractable roof. Two smaller rooms are located on the west side of the terrace, which can accommodate up to 20 patrons. The total number of patrons permitted is 100. The space caters for corporate functions, weddings, engagements, birthdays and product launches. The terrace operates on a booking based system; not seven days a week. Its land use as a "Function Centre" (Place of Assembly) is as-of-right in the Capital City Zone (no permit required). Therefore, hours of operation and noise cannot be controlled by the Melbourne Planning Scheme. Rather, VCGLR enforces the requirements of the relevant liquor licence.

The existing function space operates under a Renewable Limited Licence. Relevant licence details are as follows:

- This licence authorises the licensee to supply liquor for consumption at pre-booked functions only. The function must be held in an area of a premises that is set aside for the exclusive use of persons who have booked the function which is attended only by those persons and their guests.
- This licence does not allow the supply or consumption of liquor at public events which are attended by the general public.
- The area set aside for the exclusive use of persons who have booked the function for the supply and/or consumption of liquor must be clearly delineated from any other area.
- Trading hours:
 - Monday to Saturday Between 11am and 1am the following day.
 - Sunday Between 11am and 11pm.

- o Good Friday & ANZAC Day Between 12 noon and 11pm.

The applicant has advised that, while some months are busier than others, the premises would average 2 private events per week and have been doing so for the last two years.

The applicant has also advised that there is no body corporate or Owners Corporation for the building. *Marchex Nominees Pty Ltd* owns every level of the building and leases these out to tenants.

The purpose of Schedule 1 to the Capital City Zone is to provide for a range of financial, legal, administrative, cultural, recreational, tourist, entertainment and other uses that complement the capital city function of the locality. The proposed bar would respond to this purpose as well as policy at Clause 22.22 of the Melbourne Planning Scheme, which actively supports licensed premises (discussed at Section 14.2 of this report).

14.2 Clause 22.22

Clause 22.22 (Policy for Licensed Premises that require a Planning Permit) 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 (bar), hotel or nightclub in the Capital City Zone and Docklands Zone is required. The proposal is assessed against relevant policy as follows:

Policy	Response
Noise	
The licensed premises should be operated to ensure that noise emissions from the premises: <ul style="list-style-type: none"> - will not have an unreasonable impact on the amenity of the surrounding area; - comply with the standards as specified in the State Environmental Protection Policies; and - are regulated and monitored, making use of noise limiters where appropriate. 	The immediate surrounding area is predominantly commercial in nature. However, some residential uses exist within 50m of the premises. Standard conditions would be included in any permit granted, including the requirement for an acoustic report to be submitted to Council's satisfaction. This would also require changes to the plans as necessary, should recommendations be made in the report relating to sound attenuation – refer recommended Conditions 1a and 4. Further details around patron numbers and hours of operation are discussed below.
Where noise attenuation measures are required, ie. Limiters, these should be installed by a suitably qualified person to prevent the attenuation measures being easily tampered with or altered.	As above, an acoustic report would be required to be submitted by way of condition in any permit granted – refer recommended Conditions 1a and 4.
Noise impacts associated with waste management and bottle crushing should be minimised by incorporating measures such as: <ul style="list-style-type: none"> - On site storage of waste; - The use of on-site bottle crushers within noise proof enclosures; and - Limiting waste collection before 7am and after 9pm or earlier when licensed premises 	Waste collection would be in accordance with the approved Waste Management Plan – refer recommended Condition 3. Standard conditions relating to bottle removal could be included in any permit granted – refer recommended Conditions 8 and 9.

are closed.	
Patron Numbers	
The maximum number of patrons permitted in a licensed premise should be limited to manage any unreasonable impact on the amenity of the surrounding uses and area and the maximum occupancy capacity of the premises, as determined by the Building Act 1993.	Proposed patron numbers are 100; consistent with the maximum number permitted on-site during functions. The applicant has submitted a detailed Venue Management Plan (VMP) to ensure the amenity of the surrounding area is not adversely affected. The Venue Management Plan would be endorsed to form part of any permit granted – refer recommended Condition 13.
Hours of Operation	
Applications to extend operating hours beyond the hours otherwise specified for indoor and outdoor areas within this policy will only be supported where the further extension of hours will not unreasonably impact on the amenity of the surrounding area.□	The proposed bar seeks to operate as follows: <ul style="list-style-type: none"> • Monday to Thursday: 9am to 12am; • Friday and Saturday: 9am to 1am; • Sunday: 10.30am to 12am; • ANZAC Day: 12pm to 12am. The site is located within Capital City Zone Schedule 1 whereby its purpose is to provide for a range of financial, legal, administrative, cultural, recreational, tourist, entertainment and other uses that complement the capital city function of the locality. The hours of operation are discussed in greater detail below.
Capital City Zone and Docklands Zone	
Taverns, hotels and nightclubs which accommodate less than 100 patrons and which have appropriate noise attenuation will be encouraged throughout the Capital City Zone and Docklands Zone.	A maximum 100 patrons are proposed. Through recommended conditions relating to acoustic / noise attenuation measures (to Council's satisfaction), the bar and maximum patron numbers would be consistent with policy at Clause 22.22 – refer recommended Conditions 1a and 4.
Hours of operation of taverns, hotels and nightclubs in the Capital City Zone and Docklands Zone should be limited to 1am	The proposed bar seeks to operate as follows: <ul style="list-style-type: none"> • Monday to Thursday: 9am to 12am; • Friday and Saturday: 9am to 1am; • Sunday: 10.30am to 12am; • ANZAC Day: 12pm to 12am. The existing function space operates to 1am Monday to Saturday and 11pm Sunday. The proposed hours on Monday to Saturday are accepted as they do not exceed current licensed hours and with the inclusion of acoustic and management conditions, the hours would balance surrounding residential amenity (discussed below) with the purpose of the CCZ1 (discussed above) and the general policy basis of Clause 22.22, which states: <i>The Municipal Strategic Statement acknowledges that licensed premises contribute to the vibrancy and economic strength of the municipality. The Municipal Strategic Statement (at Clause 21.08-1) also acknowledges that some parts of the municipality (especially the</i>

	<p><i>Central City) are encouraged to develop as a “24 hour” precinct where a range of activities, including licensed premises are supported.</i></p> <p><i>Well managed licensed premises contribute positively to the activity, appearance, character, and image of the area. Small licensed premises are particularly important to the vitality of the Central City as a 24 hour city.</i></p> <p>The extended licensed hours on Sunday (existing close 11pm, proposed 12am) are accepted on the basis of the above and restrictions to live and amplified music discussed below.</p>
<p>Outdoor areas, including smoking areas, rooftops and open courtyards, should not be occupied past 1am and in noise sensitive areas alcohol should not be consumed in those areas after 11pm.</p>	<p>The venue is predominantly outdoors, being at roof top level of the host building. A small indoor area for 20 patrons is located towards the south-west corner of the premises.</p> <p>The surrounding area is predominantly commercial in nature and the proposed hours are generally consistent with the existing licensed hours for the function space that currently occupies the premises.</p> <p>The bar would not be occupied past 1am.</p> <p>Notwithstanding, as there are some residential uses within 50m of the premises, the bar would operate to 1am only on Fridays and Saturdays; and live and amplified music would cease by 11pm seven days a week. These measures would balance policy and amenity impacts on nearby residents.</p>

14.3 Clause 53.06 (Live Music Entertainment Venues)

The application includes the proposal for live music at the premises. Clause 53.06 (Live Music Entertainment Venues) applies to a live music venue. Clause 53.06-3 states that:

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 noise sensitive residential use must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any:

- *Indoor live music entertainment venue to below the noise limits specified in State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N2).*
- *Outdoor live music entertainment venue to below 45dB(A), assessed as an Leq over 15 minutes.*

Residential properties exist within 50m of the host premises along Warburton Lane and Rankins Lane and on the opposite side of Bourke Street.

As discussed at Section 14.2 of this report, an acoustic report would be required to be submitted as part of any permit granted, to Council’s satisfaction. The report must demonstrate that the requirements of Clause 22.22 and 53.06 are met and any

recommended noise attenuation measures must be integrated into the proposed development – **refer recommended Conditions 1a and 4.**

In addition to the above and as has been discussed throughout this report, live and amplified music must cease at 11pm seven days a week in light of the premises outdoor nature – **refer recommended Condition 6.**

14.4 Potential Amenity Impacts

The objector concerns raised are described in detail at Section 11 of this report. The majority of concerns are amenity and management based and have been divided into applicable categories below along with an assessment and recommendations as relevant.

14.4.1 Operational Management

While several concerns raised by other users of the host building fall outside the remit of Planning, discussed at Section 14.4.4 of this report, the operational management of the bar is a relevant planning consideration and the concerns raised are assessed accordingly.

- Bar patron access to any floor;
- Only one lift and one stairwell requiring joint use with bar patrons;
- Difficulty and discomfort for other users entering the building;
- Overflow of patrons queuing outside the building on the footpath;
- Several businesses on-site operate outside of normal business hours;
- Restrict ability to run activities freely in a safe family friendly environment;

The applicant has provided Council with a comprehensive Venue Management Plan (refer updated version provided to Council on 4 September 2020) that addresses the objector concerns relating to shared use of the lift and bar patrons accessing other floors, noting that management of facilities and tenancies within a shared building is the responsibility of the owner. Of relevance, the management plan provides the following details around access restrictions to other floors and managing patron behaviour in the shared facilities:

A crowd controller will be assigned a position at ground level on Bourke Street at the front of the building by 6pm and until at least 15mins after the last person has left the venue upon closure, on any day where TSG (The Stolen Gem) is open to the public or a private event to ensure the following:

- *Patrons entering the building go via the front door in a quiet and orderly manner with the crowd controller entering the front door pin for the patron to enter.*
- *Telling the patrons to enter the venue via the lift and push level 8 in the lift, explaining the internal staircase is not to be used for access.*
- *Once the patrons are in the lift the crowd controller on ground level will then radio to a second crowd controller or staff member on our level 8 with a head count of how many people would be entering the venue from the lift at level 8 so everyone is accounted for. (This will mean our staff and crowd controller will be able to know if anyone is not accounted for and investigate immediately).*
- *When patrons are leaving the venue the lift will be programed to only go from our level 8 TSG rooftop to ground floor and no other floors will be able to be*

stopped on the way down to ground level. On the ground level our crowd controller will be notified by staff in the venue via radio on how many people are leaving the venue in the lift, so every patron is accounted for and leaves the venue in a safe, quite and orderly fashion.

The Venue Management Plan would be endorsed to form part of any permit granted – **refer recommended Condition 13.**

The VMP also includes details around queuing, which would be managed by the ground floor security.

A common feature for buildings within the Central City is the nature of shared usage. The proposed bar would be located on a separate floor to the remaining businesses on-site and it would be reasonable to allow co-existence as with other venues in the City.

- The building is supposed to be secure between 7pm and 7am;
- Less control of management of bar than current function space;

Security and staff will be located on-site after normal business hours (from 7pm). The presence of security after normal business hours would ensure that the building is more secure than it is currently.

- Increase in the number of people on-site.

Patrons numbers would logically increase over the course of a week given the current function space does not operate seven days a week; however, the maximum number of patrons at roof top level would be capped at 100, consistent with the maximum number of patrons allowed at any function.



Figure 8: Building entry (Source: Applicant)

14.4.2 Music and Noise

- Music audible on all floors;
- Noise impacts on other businesses on-site;

Referring to the assessment at Sections 14.2 and 14.3 of this report, an Acoustic Report will be required if a permit is issued, to ensure that music and associated noise is limited to a reasonable level.

In addition, the submitted Venue Management Plan identifies that no live music will be played after 11pm on any night (*except new years*). To consider live music impacts for one-off events such as NYE, reference to this should be removed from the Venue Management Plan and replaced with a written consent provision – **refer recommended Conditions 6 and 13a**.

14.4.3 Miscellaneous

- Smell of alcohol;
- Deliveries;

The submitted Venue Management Plan provides details of maintenance and cleanliness.

The proposed bar is a small-scale operation and it is expected that deliveries can reasonably occur in the surrounding street network.

14.4.4 Outside Remit of Planning

The following concerns, which have been raised by objectors, fall outside the remit of Planning – some of which are matters that would need to be considered and resolved by the owner / management of the host building in consultation with tenants:

- Carrying of band equipment;
- Perceived impacts from security presence;
- Study and exams held on the site after hours and on weekends;
- Change in the tone of the building;
- Increased risk of injury from stair use;
- People congregating out the front to smoke;
- Children mixing with bar patrons;
- Other bar options in the vicinity.

14.5 Traffic Parking

Car Parking

The site is affected by Parking Overlay Schedule 1. Referring to Section 4 of this report, pursuant to Schedule 1 to Clause 45.09, a permit is required to provide car parking spaces in excess of the car parking rates identified in Clause 3.0 of the schedule. As no on-site car parking is proposed, a permit is not required pursuant to the Parking Overlay.

In any event, parking is discouraged in the Central City and the provision for no on-site car spaces is supported.

Bicycle Parking

Referring to Section 4 of this report, pursuant to Clause 52.34-5, Retail Premises (which includes Bar) has a statutory requirement to provide one bicycle space to each 300m² of leasable floor area for employees and one bicycle space to each 500m² of leasable floor area for visitors.

The leasable floor area is less than 300m² and the bicycle requirements do not apply in this instance.

Notwithstanding, as the bar is located at roof top level, it would be impractical to provide on-site bicycle parking. There is sufficient bike parking available in the surrounding street network.

14.6 Waste Management

Referring to Section 12.1 of this report, Council's Waste Services team has identified two outstanding items that are required to be addressed within an updated Waste Management Plan (WMP). These items are minor and could be addressed by way of condition in any permit granted – **refer recommended Condition 3.**

14.7 Conclusion

The proposed use of the premises as a bar is consistent with the Capital City Zone Schedule 1 purpose and local policy.

The bar replaces an existing function space at the premises, which caters to the same maximum number of patrons (100) and is generally consistent with the hours of operation.

The concerns raised by objectors, which largely relate to management of the bar alongside other businesses and users of the host building, have been considered and addressed through the submission of a Venue Management Plan, where relevant. The Venue Management Plan would be endorsed to form part of any permit granted and the details within the management plan must be adhered to.

Noise impacts associated with proposed live and amplified music at the premises would be controlled through conditions. Live and amplified music must cease at 11pm; and an Acoustic Report is required to be submitted, demonstrating that the requirements of Clause 22.22 and 53.06 are met and any recommended sound attenuation measures must be integrated into the premises prior to the commencement of the use. These conditions will ensure that the amenity of the area is not unreasonably impacted on, balancing the type of use encouraged in the Central City.

Based on the above, it is therefore appropriate that a Notice of Decision to Grant a Permit be issued, subject to conditions.

15 RECOMMENDATION

That the Future Melbourne Committee resolves to issue a Notice of Decision to Grant a Permit subject to the following conditions:

Amended Plans Required

1. Prior to the commencement of the use on the land, an electronic copy of plans, drawn to scale must be submitted to the Responsible Authority generally in accordance with the advertised plans, but amended to show:
 - a) Any changes in accordance with the corresponding Acoustic Report condition.

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

Endorsed Plans

2. The use as shown on the endorsed plans must not be altered or modified unless with the prior written consent of the Responsible Authority.

Waste Management Plan

3. Prior to the commencement of the development including demolition, an amended Waste Management Plan (WMP) must be prepared and submitted to the satisfaction of the Responsible Authority. The amended WMP must be generally in accordance with the Waste Management Plan prepared by WasteTech Services, dated 14th May 2020, but modified to address the following items:
 - a) Bins are to remain within the property boundary at all times and are only to be presented to the waste vehicle at the time of collection. Upon emptying, the bins are required to be immediately returned to within the property boundary. For this reason, consideration should be given to using a 660L bin for garbage unless physical limitations of the building don't allow for its use.
 - b) Include the waste vehicle's stopping location.

Waste storage and collection arrangements must not be altered without prior consent of the Responsible Authority. Once approved, the Waste Management Plan will be endorsed to form part of this permit.

Acoustic Report

4. Prior to the commencement of the use, an acoustic report prepared by a suitably qualified acoustic consultant must be submitted to and be approved by the Responsible Authority. When approved the report will be endorsed and will form part of the permit. The report must identify all potential noise sources and sound attenuation work required to ensure that the noise levels generated by the premises do not exceed the levels specified in the *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1* and *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2* to the satisfaction of the Responsible Authority. Where noise attenuation measures are required, these should be installed by a suitably qualified person to prevent the attenuation measures being easily tampered with or altered. The recommendations of the report must consider the requirements of Clause 22.22 (Policy for Licensed Premises that require a Planning Permit) and Clause 53.06 (Live Music Entertainment Venues) of the Melbourne Planning Scheme and must be implemented at no cost to the Melbourne City Council prior to commencement of the use.
5. 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.

Cessation of Music

6. All live and amplified music must cease between 11pm and 5pm the following day, Monday to Sunday, unless with the prior written consent of the Responsible Authority.

Compliance with SEPP No N-1 and SEPP No N-2

7. 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.

Bottle Removal Time

8. No bottles or other waste material may be removed from the site between the hours of 9.00pm and 7.00am the following morning, seven days a week.

Quiet Bottle Removal

9. 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 and occupants, to the satisfaction of the Responsible Authority.

Leave Quietly Sign

10. A sign must be attached to a wall in a prominent position adjacent to the premises 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.

Patron Numbers

11. The maximum number of patrons on the premises must be no more than 100 at any one time, unless with the prior written consent of the Responsible Authority.

Hours of Operation

12. Except with the prior written consent of the Responsible Authority, the premises (Bar) must only be open for the use between the following hours:
 - a) Monday to Thursday: 9am to 12am;
 - b) Friday and Saturday: 9am to 1am (the following day);
 - c) Sunday: 10.30am to 12am;
 - d) ANZAC Day: 12pm to 12am.

Venue Management Plan

13. Prior to the commencement of the use, an amended Venue Management Plan (VMP) must be prepared and submitted to the satisfaction of the Responsible Authority. The amended VMP must be generally in accordance with the Venue Management Plan submitted to Council on 4 September 2020, but modified to address the following items:
 - a) Removal of any reference to live music on New Year's Eve.
 - b) Removal of any reference to private events associated with the use of the land as a Place of Assembly, which does not form part of this Planning Permit.
 - c) Details of the type of liquor licence sought.
 - d) Details of the proposed hours of operation of the premises.
 - e) Details of the maximum number of patrons to be permitted on the premises.

- f) Noise attenuation measures including the recommendations of the Acoustic Report submitted in support of the proposal.

The Venue Management Plan must be to the satisfaction of, and be approved by, the Responsible Authority. Once approved, the management plan will be endorsed to form part of this permit. The operation of the use must be carried out in accordance with the endorsed Venue Management Plan unless with the prior written consent of the Responsible Authority.

Time Limit

- 14. This permit will expire if the use 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

Other Approvals May Be Required

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.