

Report to the Future Melbourne Committee

Agenda item 6.2

**Planning Permit Application: TP-2020-477
355-369 Spencer Street, West Melbourne****16 November 2021****Presenter:** Larry Parsons, Head of Statutory Planning**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 land for the sale and consumption of liquor associated with a bar and restaurant, external alterations and external painting in a Heritage Overlay, a waiver of the car parking requirements of Clause 52.06, and a waiver of the bicycle facilities requirement of Clause 52.34 at 355-369 Spencer Street, West Melbourne (refer Attachment 2 - Locality Plan).
2. The applicant is Schmidt & Pang Architects who is acting on behalf of the owner who is Avari No 18 Pty Ltd. The architect is Schmidt & Pang Architects.
3. The land is located within the Mixed Use Zone (MUZ) and is affected by the Heritage Overlay Schedule 771 and Schedule 1185 (HO771 and HO1185) and Design and Development Overlay Schedule 12 and Schedule 33 (DDO12 and DDO33). This application is also subject to Clause 52.06 (Car Parking), Clause 52.27 (Licensed Premises), and Clause 52.34 (Bicycle Facilities).
4. The application seeks to allow a bar and separate restaurant (café) use to serve liquor for consumption on the premises. Both land uses do not require a planning permit. The service of liquor to the bar is proposed between the hours of 10am and 11pm (Monday to Sunday) for 50 patrons. The restaurant is proposed to operate between the hours of 7am and 6pm (Monday to Friday) for 54 patrons.
5. The application originally sought approval for the bar to operate until 3am. This was formally amended and reduced to 11pm based on the issues raised by objectors.
6. While the proposed uses do not require a planning permit, they require a combined requirement to provide seven car parking spaces and three bicycle parking spaces. The application seeks to waive both requirements.
7. The application also includes minor external alterations to the entrance of the building (refer attachment 3 – Selected Plans). The Site is listed as 'Significant' within the Heritage Places Inventory February 2020 Part A (Amended May 2021).
8. Public notice was given and 50 objections have been received. The reduced hours were circulated to objectors and no objection was withdrawn.

Key issues

9. Key issues for consideration of the application is the appropriateness of the proposed licenced premises in the MUZ, the appropriateness of the car parking and bicycle parking waivers, and the appropriateness of the proposed works to the significant heritage building.
10. Subject to conditions, the proposed licenced premises is considered to be acceptable as the hours, patronage, and potential noise sources comply with relevant policy which seeks to preserve the amenity of the surrounds.
11. The car parking and bicycle parking waivers are accepted in this instance as they are considered minor, the site is well serviced by public transport, and the site is fully developed with a six storey heritage building.
12. The proposed works to the heritage building are acceptable as they will not remove original fabric and will not adversely impact on the significance, character, or appearance of the heritage place.

Recommendation from management

13. That the Future Melbourne Committee resolves to issue a Notice of Decision to Grant a Planning Permit subject to the conditions outlined in the Delegate Report (refer Attachment 4 - Delegate Report).

Attachments:

1. Supporting Attachment (Page 1 of 27)
2. Locality Plan (Page 3 of 27)
3. Selected Plans (Page 4 of 27)
4. Delegate Report (Page 6 of 27)

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.
2. As objections have been received, sections 64 and 65 of the Act provide that the responsible authority must give the applicant and the objectors 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 the objectors 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 material or general conflict of interest in relation to the matter of the report.

Health and Safety

5. Relevant planning considerations 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 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

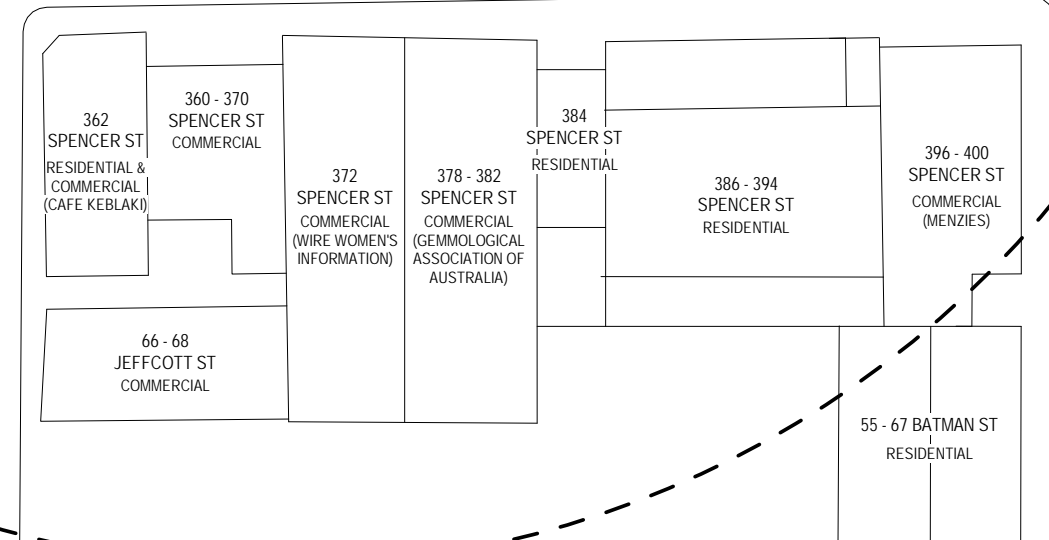
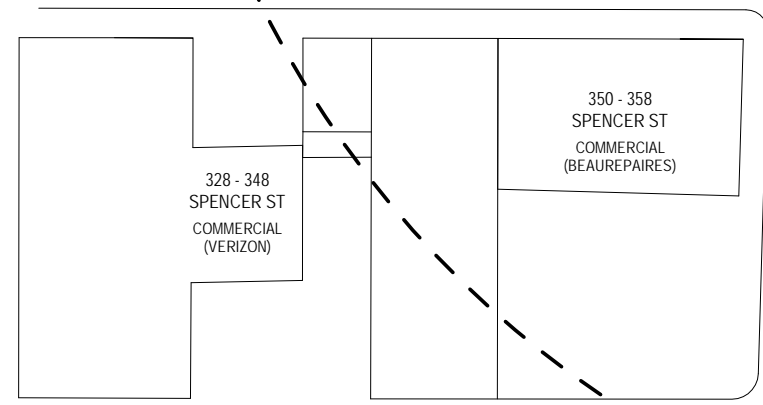
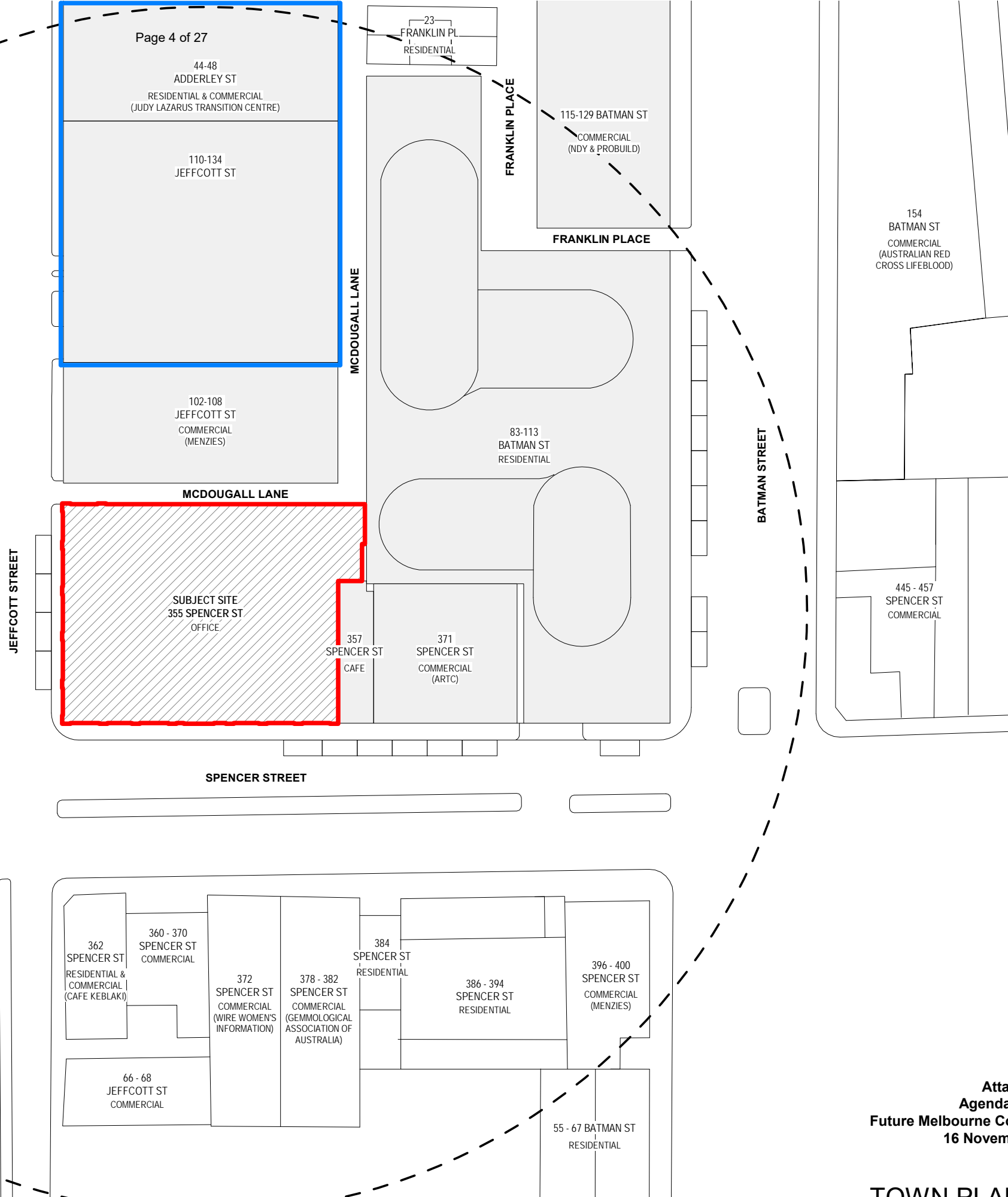
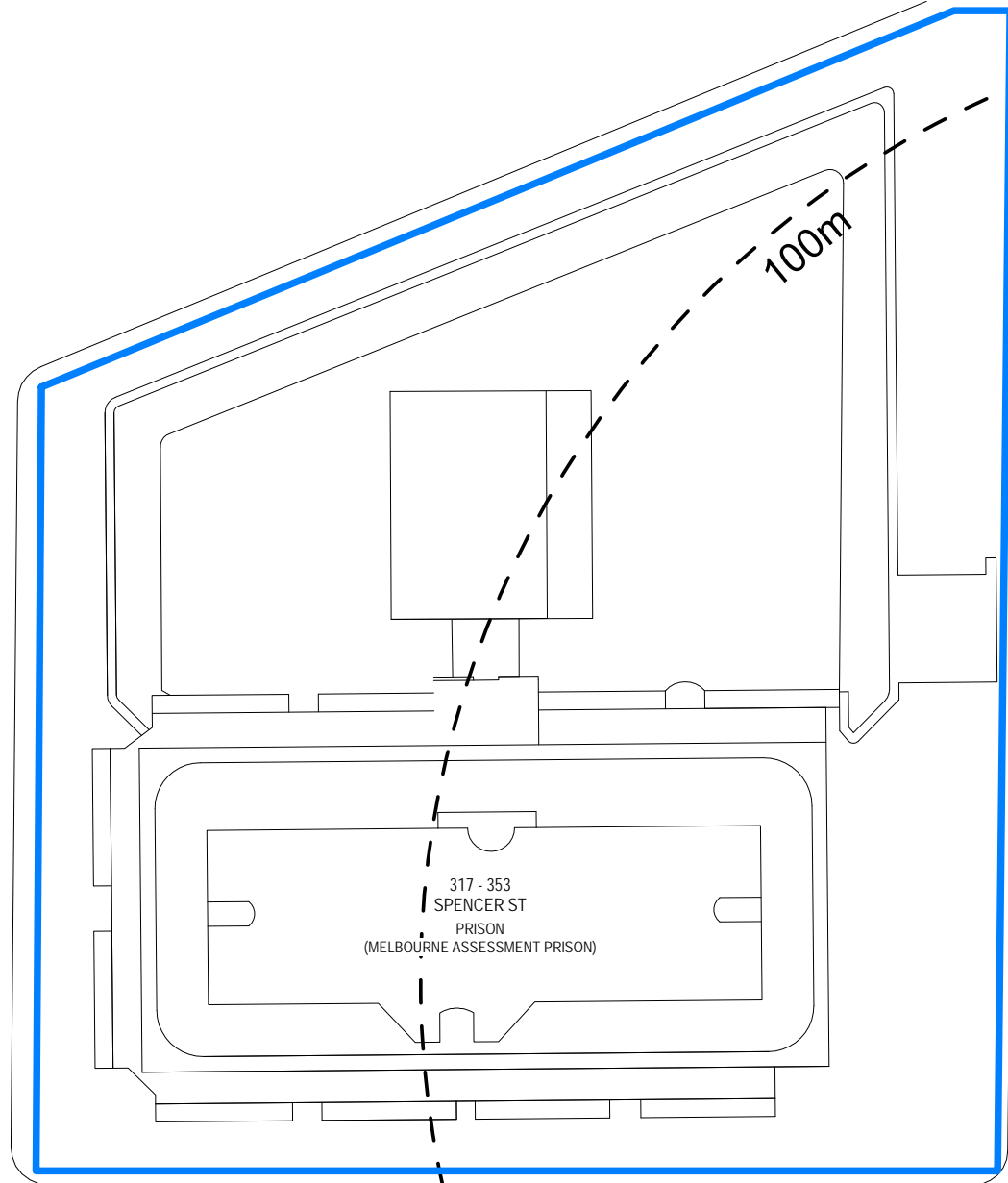
8. The proposal requires planning permission for minor works to the building entrance and the requirements set out in Clause 22.19 (Energy, Water and Waste Efficiency) and Clause 22.23 (Stormwater Management) and Clause 53.18 (Stormwater Management in Urban Development) of the Melbourne Planning Scheme do not apply.

Locality Plan

355-369 Spencer Street, West Melbourne

Attachment 2
Agenda item 6.2
Future Melbourne Committee
16 November 2021



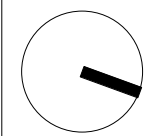


Attachment 3
Agenda item 6.2
Future Melbourne Committee
16 November 2021

TOWN PLANNING

REV.	DATE	CHKD	ISSUE

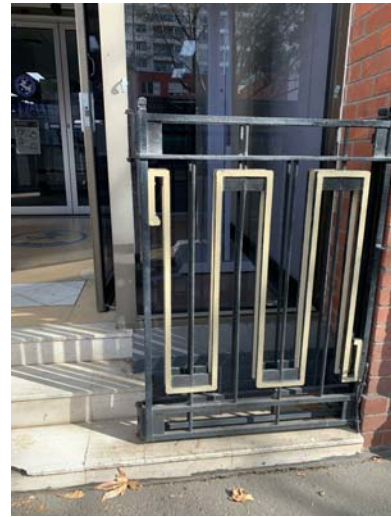
Project Name SANDS & MCDUGALL	Drawing Title LOCATION PLAN
Project Address 355 SPENCER STREET, WEST MELBOURNE VIC 3003	
Client AVARI CAPITAL	

Project No: 2017	Drawing Number TP04
Issued Date NOV 2020	
Status/Revision	

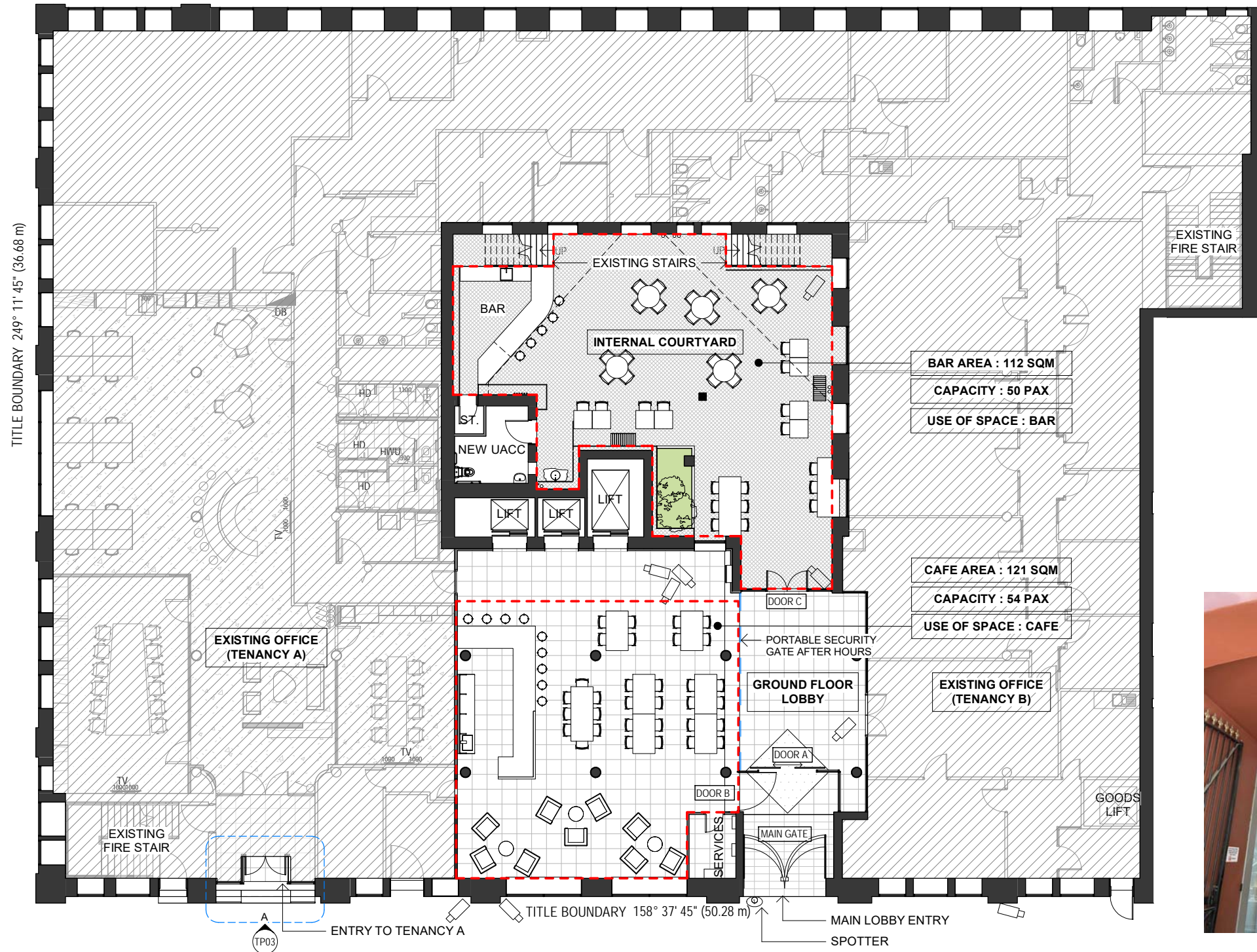
Scale @ A3 1 : 750

LEGEND:

- EXISTING WALL
- LIQUOR LICENCE BOUNDARY
- SECURITY CAMERA
- SECURITY PERSONNEL



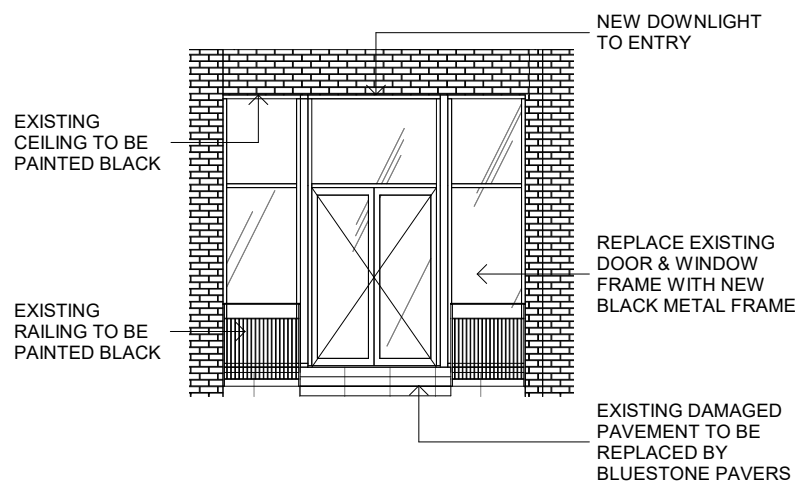
TITLE BOUNDARY 338° 38' 25" (45.80 m)



EXISTING CEILING TO BE PAINTED WHITE & WALL TO BE PAINTED GREY

EXISTING DOOR AND WINDOW FRAME TO BE PAINTED BLACK

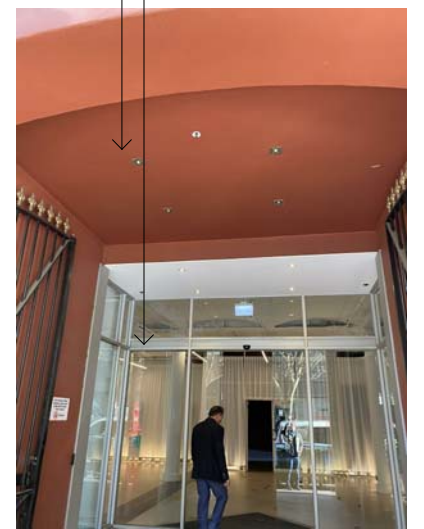
EXISTING PHOTOS TO TENANCY A



A ELEVATION (TENANCY A) 1:100

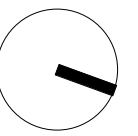
1 PROPOSED GROUND FLOOR PLAN 1:200

PHOTO TO MAIN LOBBY ENTRY



TOWN PLANNING

REV.	DATE	CHKD	ISSUE
A	18.08.2020		RESPONSE TO RFI
B	26.10.2020		RESPONSE TO RFI



DELEGATE REPORT

PLANNING PERMIT APPLICATION

Application number:	TP-2020-477
Applicant:	Schmidt & Pang Architects
Owner:	Avari No. 18 Pty. Ltd
Architect:	Schmidt & Pang Architects
Address:	355-369 Spencer Street, WEST MELBOURNE VIC 3003
Proposal:	Use of the land for the sale and consumption of liquor associated with a bar and restaurant, external alterations and external painting in a Heritage Overlay, a waiver of the car parking requirements of Clause 52.06, and a waiver of the bicycle facilities requirement of Clause 52.34
Cost:	\$80,000
Date of application:	15 July 2020
Responsible officer:	Ryan Cottrell, Acting Principal Urban Planner

1 SUBJECT SITE AND SURROUNDS

1.1 The Site

This permit application relates to the land known as:

- Lot 2 on Plan of Subdivision 744960S (Volume 11577, Folio 994) (the **Site**) and/or;
- 355-369 Spencer Street, West Melbourne (the **Site**).

The Site is located on the north-west corner of the intersection of Spencer Street and Jeffcott Street, West Melbourne (Figure 1).

The Site has a frontage to Spencer Street measuring 50.28 metres, a Jeffcott Street frontage that measures 40.03 metres (inclusive of McDougall Lane), and a total area of approximately 1,844 square metres.

There are no restrictive covenants applied to the Site relevant to this application. A fire access easement affects the Site at its north-west corner.

The Site is presently developed with a six storey brick industrial building that was built in 1885 for the printing company Sands & McDougall (Figure 2).

The building contains retail, office and car parking uses.

Melbourne Planning Scheme Incorporated Document: *Heritage Places Inventory February 2020 (Amended July 2020) Part A* affords the Site a 'Significant' heritage category in a non-categorised streetscape.

Melbourne Planning Scheme Incorporated Document: *West Melbourne Heritage Review 2016: Statements of Significance February 2020* provides the following statement of significance for the Site:

Sands and McDougall complex precinct is significant.

Aesthetically, like many other warehouse or factory buildings of the period and earlier, this complex dominates its residential contemporaries in scale and adopts the Italian Renaissance Revival ornament of commercial designs current since the 1870s but in this case executed in red brick with stucco trim. The main building of 1888-9 is a large and original, prominently sited and competently ornamented 19th century factory building which possesses early use of all iron fire-proofed framing and was designed by the distinguished architectural firm, Thomas Watts and Sons.

It is of State importance as an indicative and surprisingly original example of the fast disappearing large industrial buildings of the late 19th century. The adjacent contributory buildings from the Interwar period use the same architectural language and materials but with a modern interpretation; and

Historically, the complex includes the most of the known surviving and most substantial buildings linked with this most well-known of stationery firms that had a national presence and is one of the most significant industrial complexes in Victoria, with the Goetz factory also representing a specialised area of manufacture that differs from the more typical heavy industry.

This application includes works to the southern building entrance at Spencer Street. This part of the building contains aluminium framed doors and windows as well as signage which is not original (Figure 3).

Figure 1 – Locality map

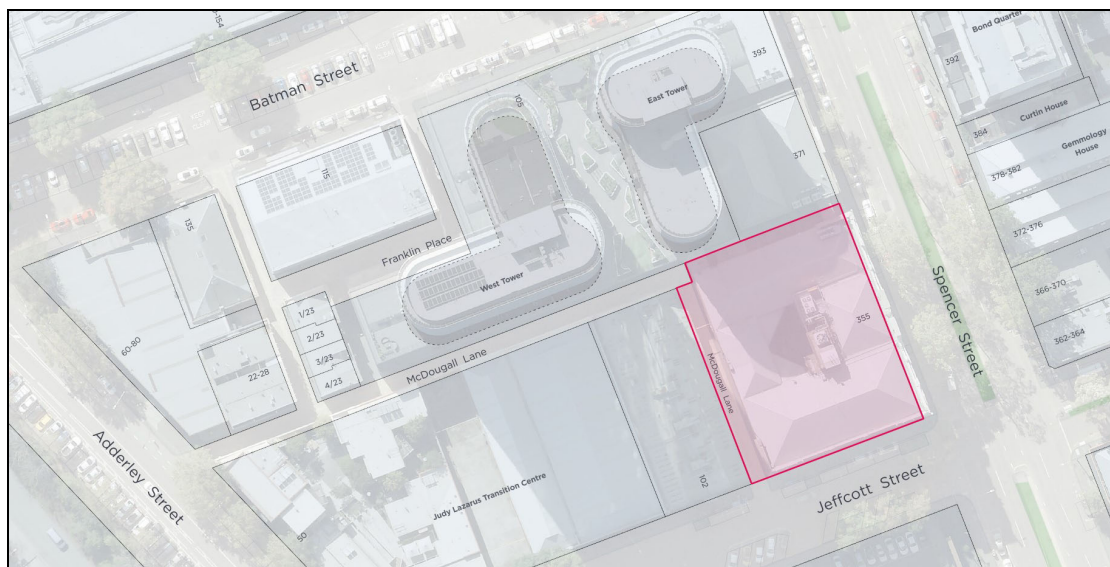
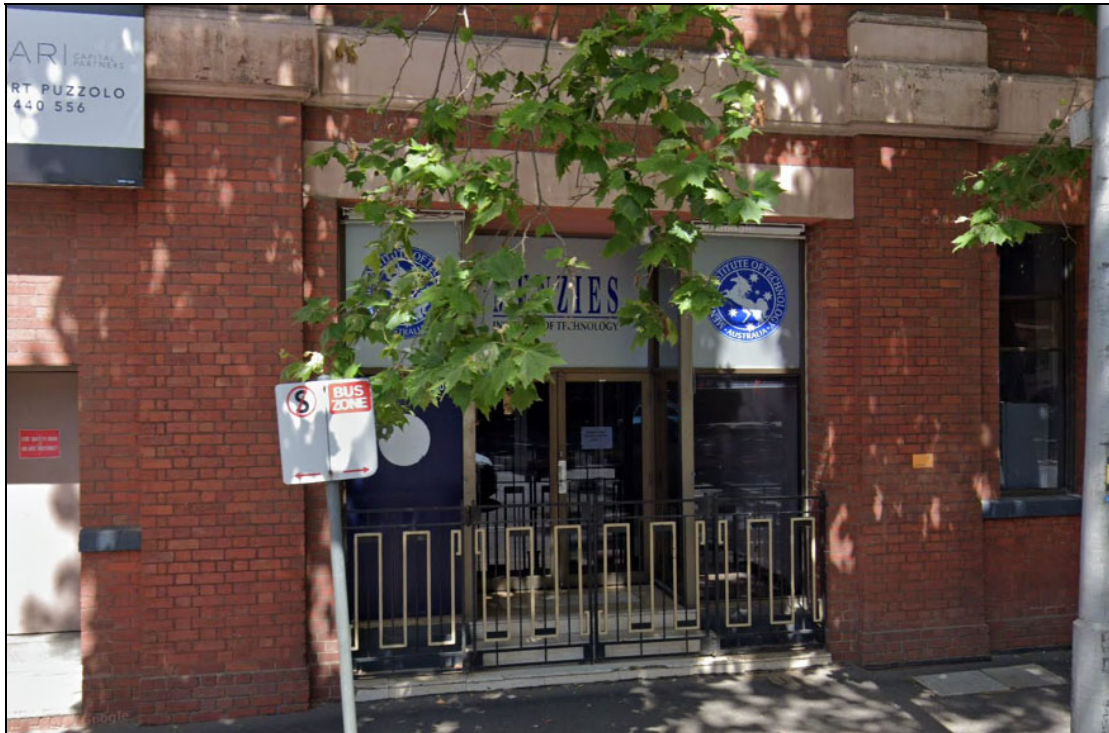


Figure 2 – The Site, street view



Figure 3 – Existing Spencer Street entrance

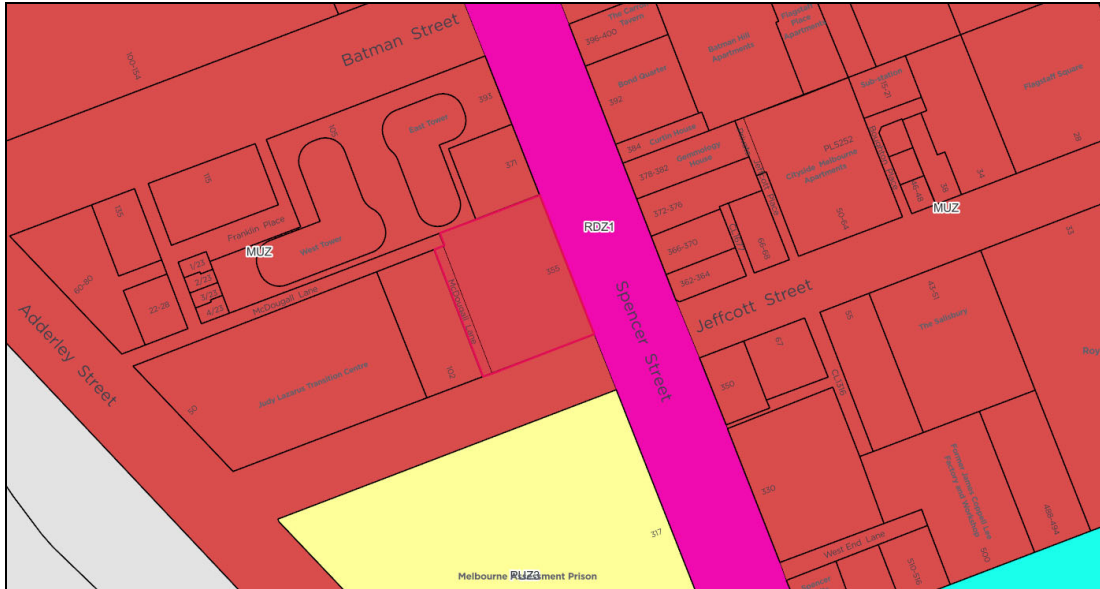


1.2 Surrounds

The immediate surrounds contain a variety of land uses which reflect the Mixed Use Zone. The most common uses in the surrounds include retail, food and drink premises, office, and residential.

The Site, and the land to the north, east and west is located in the Mixed Use Zone. However, the Melbourne Assessment Centre to the south is located in the Public Use Zone, Schedule 3 (PUZ3), and Spencer Street is within the Road Zone, Schedule 1 (RDZ1) (Figure 4).

Figure 4 – The Site, street view



A description of the neighbouring properties is as follows (Table 1):

Table 1 – Description of the immediate surrounds	
Address	Building description
North	
371 Spencer Street, West Melbourne	Three storey building that contains offices.
83-113 Batman Street, West Melbourne	Two towers constructed between January 2018 and late 2019. The East Tower has 21 levels and the West Tower 27 levels. The site consists of apartment dwellings as well as office and retail uses.
115 Batman Street, West Melbourne	Four storey building that contains offices.
Units 1-4, 23 Franklin Place, West Melbourne	Three storey townhouses that contain dwellings.
133-137 Batman Street, West Melbourne	Single storey building uses as a retail premises selling electronics.
60-80 Adderley Street, West Melbourne	Single storey building uses as a retail premises selling electronics.
22-28 Franklin Place, West Melbourne	Three storey building containing five residential properties.

East (across Spencer Street)	
362-364 Spencer Street, West Melbourne	Two storey building with ground level retail and three residential dwellings at the first level, one of which is used as a home-based business.
366-370 Spencer Street, West Melbourne	Single storey building used as an office.
372-376 Spencer Street, West Melbourne	Two storey building used as an office.
378-382 Spencer Street, West Melbourne	Two storey building used as an office.
384 Spencer Street, West Melbourne	Two storey terrace used as a dwelling.
386-394 Spencer Street, West Melbourne	Two storey former factory with a fifteen storey addition. Contains 101 dwellings and a ground level retail premises.
396-400 Spencer Street, West Melbourne	Two storey building used as an office.
South (across Jeffcott Street)	
Melbourne Assessment Prison, 317 Spencer Street, West Melbourne	Four storey government corrections building.
West	
102 Jeffcott Street (across McDougall Lane), West Melbourne	Two storey building used as an office.
44-58 Adderley Street, West Melbourne	Single storey brick building used as a corrective institution.

1.3 Existing liquor licences

1.3.1 Site and surrounds

There is no current liquor licence for the Site.

The City of Melbourne's mapping and records show that there are 9 licences within approximately 100 metres of the Site. These licences and their respective proximities to the Site are listed below (Table 2, Figure 5). A breakdown of the types of licences found within the 100 metre radius is as follows:

- General Licences: 1 (5.55 per cent);
- Restaurant and Café Licences: 5 (27.78 per cent);
- Limited Licences: 4 (22.22 per cent);
- On Premise Licence: 5 (27.78 per cent); and
- Packaged Liquor Licence: 3 (16.67 per cent)

Table 2 - Surrounding Liquor licences				
Address	Distance from the Site (approx.)	Type of Licence	Land use	No of Licences
Spencer Outlet Centre, 163-261 Spencer Street, Docklands	111 metres	<ul style="list-style-type: none"> • Packaged liquor licence x 2 • On Premise Licence x 2 (1 listed Vacant/Historic) • Restaurant and Café License x 4 • Limited License x 1 	Retail and food and drink premises	9
396-400 Spencer Street, West Melbourne	46 metres	General Licence	Office	1
405-417 Spencer Street, West Melbourne	80 metres	Limited Licence	Warehouse/store	1
419 Spencer Street, West Melbourne	109 metres	Restaurant and Café Licence	Restaurant	1
423-435 Spencer Street, West Melbourne	121 metres	Packaged Liquor Licence	Bottle shop	1
437 Spencer Street, West Melbourne	144 metres	On Premise Licence (Vacant/Closed)	Shop	1
50-56 Batman street, West Melbourne	120 metres	On Premise Licence	Current commercial re-development site	1
45-55 Dudley Street, West Melbourne	148 metres	On Premise Licence	Current commercial re-development site	1
55-63 Jeffcott Street, West Melbourne	76 metres	Limited Licence	Convenience store/Milk bar	1
38 Jeffcott Street, West Melbourne	122 metres	Limited Licence	Dwelling	1
Total				18

Figure 5 – Surrounding liquor licences within 100 metres



2 BACKGROUND AND HISTORY

2.1 Amendments to the application

The application originally sought approval for the proposed bar to operate until 3am. Upon the receipt of the objections to the proposal being forwarded to the applicant, a Section 57 amendment to the application was lodged to respond to the issues raised.

The amendment seeks to reduce the operating hours of the proposed bar to operate between 10am and 11pm. The amendment also included a revised Waste Management Plan, prepared by Leigh Design dated 12 July 2021. This was lodged to respond to comments raised by the City of Melbourne’s Waste Services department.

2.2 Planning application history

The following application has previously been considered for the Site (Table 3):

Table 3 – Permits of relevance		
Reference	What the permit allows	Comments
TPM-2019-4 PA1800480-2	Use of the land for a Residential Hotel and Office (other than Medical Centre) staged development of a residential tower and alternations and additions to the existing buildings with associated partial demolition and works, operation of licensed premises, a reduction of the car parking requirement and the alteration of access to a road in a Road Zone, Category 1, in accordance with the endorsed plans.	Ministerial permit for the redevelopment of the subject site and the neighbouring property at 102-108 Jeffcott Street, West Melbourne. The application is currently seeking an amendment primarily regarding the arrangement of the apartments within the residential tower.

3 PROPOSAL

3.1 Plans/reports considered in this assessment

The plans and reports which have been considered in this assessment are identified in Table 4 below:

Table 4 - Plans / Reports considered in assessment		
Plan / Report Title	Drawing/ Report No/ Author.	Date Stamped / dated
Copy of Title	Volume 11577, Folio 994	08/07/2020
Drawing showing the location plan, proposed layout and redline plan prepared by Schmidt & Pang	Drawing number TP03 and TP04	07/2020
Patron Management Plan (VMP)	355 Spencer Street Bar	15/10/2020
Waste Management Plan (WMP)	Prepared by Leigh Design	12/07/2021

3.1 Summary of proposal

3.1.1 Land use

The application seeks planning approval for the use of the land for the sale and consumption of liquor associated with a bar and a separate restaurant, external alterations and external painting in a Heritage Overlay, a waiver of the car parking requirements of Clause 52.06, and a waiver of the bicycle facilities requirement of Clause 52.34.

The specific details are at Table 5.

Table 5 – Proposal details		
Use	Bar	Restaurant
Operating hours	Monday to Sunday: 10am to 11pm.	Monday to Friday: 7am to 6pm.
Floor area	112 square metres (approx).	121 square metres (approx).
Patronage	50 patrons at any one time. There will be seating provided for 42 patrons (84 per cent of patrons).	54 patrons at any one time. There will be seating provided for 50 patrons (93 per cent of patrons).
Nature of the use	Predominately relates to the consumption of liquor on the land. Food will be available.	Predominately relates to the consumption of food and drink. Liquor will be available.

Clause 73.03 provides the following relevant land use definitions:

- Bar:

Land used to sell liquor on the premises. It may include accomodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling.

- Restaurant:

Land used to prepare and sell food and drink, for consumption on the premises. It may include:

- entertainment and dancing; and*
- the supply of liquor other than in association with the serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time.*

It does not include the sale of packaged liquor.

Based on the above, the two separate areas within the Site are appropriately defined as a bar and a restaurant.

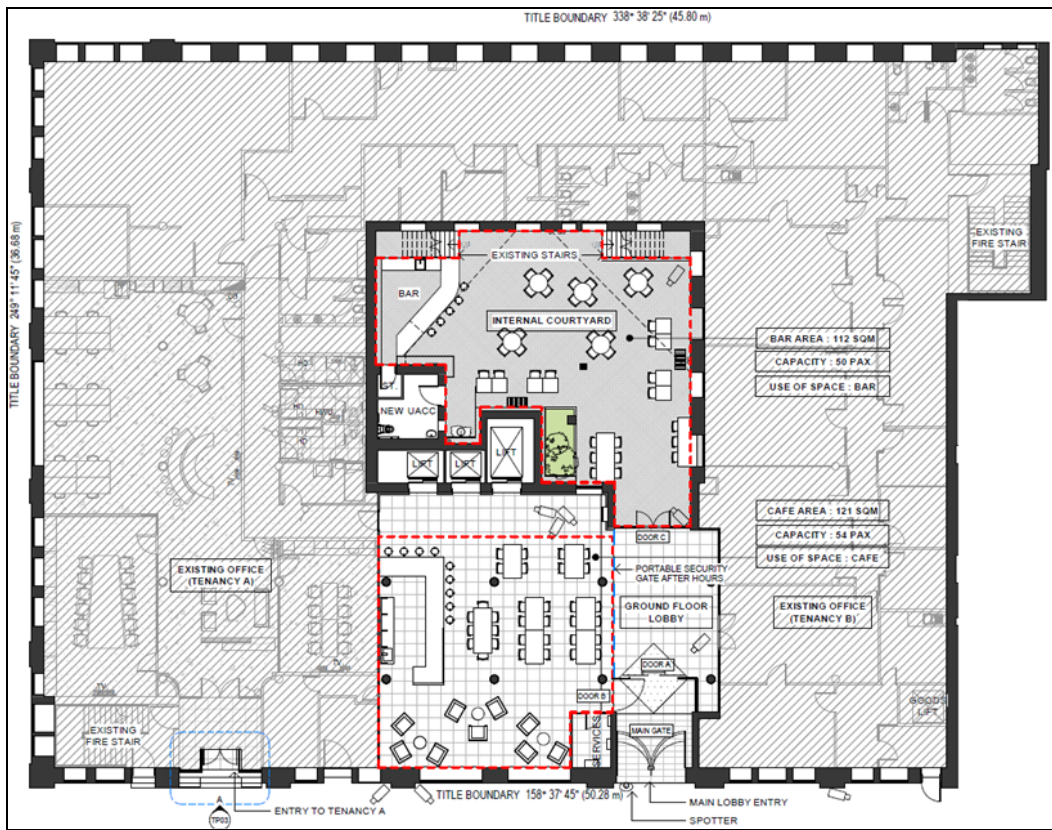
3.1.2 Land use management

The submitted management plan for the bar contains the following relevant information (Table 6):

Table 6 – Management plan details	
Access	Access via the main building lobby entrance from Spencer Street.
Queuing	Queuing is not anticipated. In the event it occurs, it will be managed by the venue manager.
Smoking	The venue is to be a smoke free zone.
Security	A security supervisor is to be employed to manage crowd control of the bar and reports to the venue manager. The venue manager determines whether certain events require additional crowd control staff. If crowd control staff are employed, it is the responsibility of the venue manager to ensure a security register is maintained.
Drugs	The venue has a zero tolerance to drugs and other illegal activity and will call on Victoria Police to assist with these matters.
Noise	Background music only.
Food	Primary use of the bar is the service of alcohol. Some light food may be served with drinks.
Outdoor areas	The entirety of the bar is to be located within the external courtyard area.
Car Parking	Zero Spaces.
Bicycle Parking	Zero Spaces.

Excerpts from the application documents showing the layout of the site and the two uses outlined above is shown at Figure 6.

Figure 6 – Proposed floor plan for the bar and café, including red line plan

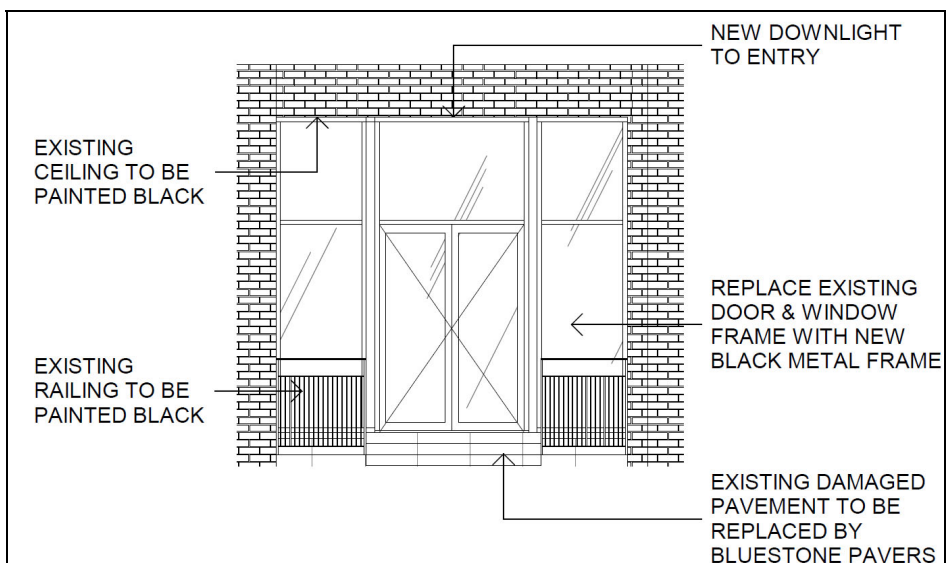


3.1.3 External alterations

The external alterations proposed are solely to the lobby entry on the Spencer Street frontage.

The works consist of the replacement of the existing non-original aluminum entry door and window frames with new black metal framing, replacement of the damaged entry pavers with new bluestone pavers, the installation of a downlight above the entry, and painting of the ceiling and entrance balustrade in black (Figure 7).

Figure 7 – Works to the Spencer Street lobby entry



4 STATUTORY CONTROLS

The relevant statutory controls are at Table 7.

Table 7 – Permit requirements	
Clause	Permit Trigger
Clause 32.04 Mixed Use Zone (MUZ)	<p><u>Use</u> Pursuant to Clause 32.04-2, a permit is not required for the use as a food and drink premises, which includes both a bar and a restaurant, on the condition that the leasable floor area of each use does not exceed 150 square metres.</p> <p>Given the bar and separate restaurant use have a leasable floor area of 112 square metres and 121 square metres respectively, a permit is not required.</p> <p><u>Buildings and works & external painting</u> Pursuant to Clause 32.04-9, a permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.04-2.</p> <p>Given Clause 32.04-2 does not state that a permit is required for buildings and works associated with a Section 1 use, a permit is not required.</p>
Clause 43.01 Heritage Overlay Schedule 771 – Sands & McDougall precinct 83-113, 115, 135 Batman Street, 23 Franklin Place, 102 Jeffcott Street, 355 & 371 Spencer Street, West Melbourne (HO771) Schedule 1185 – Elm (x6) street trees, near 81-141 Jeffcott Street, West Melbourne (HO1185)	<p>Pursuant to Clause 43.01-1, a <u>permit is required</u> to:</p> <ul style="list-style-type: none"> ▪ Externally alter a building; ▪ Carry out works, repairs and routine maintenance which change the appearance of a heritage place or which are not undertaken to the same details, specifications and materials; and ▪ Externally paint a building if the schedule to this overlay specifies the heritage place as one where external paint controls apply. Given Schedule 771 specifies that paint controls apply, a permit is required. <p>Note: Schedule 1185 relates to street trees that line Jeffcott Street. This application will not affect the trees identified in the Schedule as their overlay does not affect the area of works.</p>
Clause 43.02 Design and Development Overlay Schedule 12 – Noise Attenuation Area (DDO12) Schedule 33 – City Fringe (DDO33)	<p>Pursuant to Clause 43.02-2, a permit is required to construct a building or carry out works unless otherwise specified in a schedule to the overlay.</p> <p>Schedule 12 states that a permit is not required for buildings and works other than buildings and works associated with new, refurbished or converted developments for noise sensitive uses. Given the works are not associated with a noise sensitive use of the land, a <u>permit is not required</u>.</p> <p>Given Schedule 33 does not exempt the proposed works from requiring a permit, a <u>permit is required</u>.</p>
Clause 52.06 Car Parking	<p>Pursuant to Clause 52.06-3, a permit is required to reduce (including reduce to zero) the number of car parking spaces required under Clause</p>

	<p>52.06-5.</p> <p>Clause 52.06-5 says that If in calculating the number of car parking spaces the result is not a whole number, the required number of car parking spaces is to be rounded down to the nearest whole number.</p> <p>Table 1 to Clause 52.06-5 states that a bar requires 3.5 car parking spaces to each 100 square metres of leasable floor area.</p> <p>As such the bar requires 3.92 car parking spaces ($3.5 \times [112/100] = 3.92$). This is rounded down to 3 car parking spaces.</p> <p>Table 1 to Clause 52.06-5 states that a restaurant requires 3.5 car parking spaces to each 100 square metres of leasable floor area.</p> <p>As such the restaurant requires 4.235 car parking spaces ($3.5 \times [121/100] = 4.235$). This is rounded down to 4 car parking spaces.</p> <p>In total, the proposal requires 7 car parking spaces.</p> <p>Given the application does not propose any car parking on the Site, a waiver of the requirement is sought and a <u>permit is required</u>.</p>
<p>Clause 52.27 Licensed Premises</p>	<p>Pursuant to Clause 52.27, a permit is required to use land to sell or consume liquor if a licence is required under the Liquor Control Reform Act 1998.</p> <p>This does not apply 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.</p> <p>Given none of the exemptions provided at Clause 52.27 apply a <u>permit is required</u>.</p>
<p>Clause 52.34 Bicycle Facilities</p>	<p>Pursuant to Clause 52.34-1, a new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities and associated signage has been provided on the land.</p> <p>Pursuant to Clause 52.34-2, a permit may be granted to vary, reduce or waive any requirement of Clause 52.34-5 and Clause 52.34-6.</p> <p>If in calculating the number of bicycle facilities the result is not a whole number, the required number of bicycle facilities is the nearest whole number. If the fraction is one-half, the requirement is the next whole number.</p> <p>Pursuant to Table 1 to Clause 52.34-5, a retail premises other than specified in the table (includes bar) requires the following bicycle parking facilities:</p> <ul style="list-style-type: none"> ▪ 1 to each 300 square metres of leasable floor area for employees; and ▪ 1 to each 500 square metres of leasable floor area for patrons. <p>As such, the proposed retail premises requires:</p> <ul style="list-style-type: none"> ▪ Zero bicycle parking spaces for employees ($1 \times [112/300] = 0.37$, rounded down to zero); and ▪ Zero bicycle parking spaces for patrons ($1 \times [112/500] = 0.224$, rounded down to zero). <p>Pursuant to Table 1 to Clause 52.34-5, a restaurant requires the following bicycle parking facilities:</p> <ul style="list-style-type: none"> ▪ 1 to each 100 square metres of leasable floor area for employees; and

	<ul style="list-style-type: none"> ▪ 2 spaces for patrons plus 1 to each 200 square metres of floor area available to the public if the floor area available to the public exceeds 400 square metres. <p>As such, the proposed restaurant requires:</p> <ul style="list-style-type: none"> ▪ 1 bicycle parking spaces for employees ($1 \times [121/100] = 1.21$, rounded down to 1); and ▪ 2 bicycle parking spaces for patrons as the floor area does not exceed 400 square metres. <p>Pursuant to Clause 52.34-6, neither use requires more than 5 bicycle parking spaces; therefore, showers are not required.</p> <p>Pursuant to Clause 52.34-6, no showers are required; therefore, no change rooms are required.</p> <p>In total, the proposal is required to provide 3 bicycle parking spaces.</p> <p>The proposed does not provide any bicycle parking on the land; therefore, a waiver is required; therefore, a permit is required.</p>
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5 STRATEGIC FRAMEWORK

5.1 Planning Policy Framework (PPF)

- Clause 15 – Built Environment and Heritage
- Clause 17 – Economic Development
- Clause 18 – Transport.

5.2 Local Planning Policy Framework (LPPF)

5.2.1 Municipal Strategic Statement (MSS)

- Clause 21 – Municipal Strategic Statement
- Clause 21.02 – Municipal Profile
- Clause 21.06 – Built Environment and Heritage
- Clause 21.08 – Economic Development
- Clause 21.09 – Transport
- Clause 21.16 – Other Local Areas
- Clause 21.16-5 – North and West Melbourne.

5.2.2 Local Policies

- Clause 22.05 – Heritage Places outside the Capital City Zone
- Clause 22.22 – Policy for Licensed Premises that require a Planning Permit.

6 PARTICULAR PROVISIONS

- Clause 52.06 – Car Parking
- Clause 52.27 – Licensed Premises
- Clause 52.34 – Bicycle Facilities.

7 GENERAL PROVISIONS

- Clause 65 – Decision Guidelines
- Clause 66 – Referral and Notice Provisions.

8 OPERATIONAL PROVISIONS

- Clause 73.03 – Land Use Terms.

9 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, in accordance with Section 52 of the *Planning and Environment Act 1987*.

The amended application to reduce the hours of the bar to 11pm was circulated to those who objected in the form of a letter.

10 OBJECTIONS

A total of 50 objections were received, and raised the following concerns with the proposal:

- The use as a bar is inappropriate in the context of the Site given its proximity to residential uses;
- The bar operating until 3am will impact the amenity of the surrounds;
- Noise;
- Safety and security concerns regarding potential anti-social behaviour by patrons, especially along McDougall Lane;
- The use would cause increased traffic;
- Secure parking of residents cars would be impacted;
- The use would result in a loss of privacy to residents;
- Gathering/queuing outside the venue;
- Impact of the use as a bar on residential investment properties within the building;
- Impact of the use on the reputation of the building;
- Waste management, concerns regarding litter and pest control; and
- Potential issues for Registered Training Organisation (RTO) education facility on Level 4 regarding maintaining its status as a suitable education provider.

These matters are addressed at Section 13 of this report.

11 CONSULTATION

Given the receipt of the above objections, the objections were forwarded to the applicant for their consideration. The applicant provided a written response to the objections and submitted a Section 57 amendment to the proposal as outlined at Section 2 of this report.

12 REFERRALS

12.1 Internal

The application was referred internally to the waste team for comment on the Waste Management Plan prepared by Leigh Design dated 11th. Comments are as follows:

*“We have reviewed the WMP by Leigh Design dated 11th November 2020 for this proposed development and found it to be **unacceptable**.”*

The following items need to be addressed:

- *Swept path diagrams for the waste vehicle showing access to/from the nearest main streets are required.*
- *Given the waste vehicle will park in a public space to perform collections, in order to reduce overall collection times, the largest possible bins must be used for garbage and recyclables.”*

Planner’s Response

These comments were provided to the applicant who then revised the WMP to address the above items and submitted it with the Section 57 amendment. At the time of drafting this report the updated WMP had not been assessed.

It is recommended that at any planning permit issued for the proposal contains a permit condition requiring a waste management plan to ensure that waste is appropriately regulated.

12.2 External

Pursuant to Clause 52.27, an application for a licensed premises must be referred and notice of the application must be given in accordance with Clause 66 of the Melbourne Planning Scheme.

Pursuant to Clause 66.03, an application under Clause 52.27 in association with a bar, hotel, or nightclub that is to operate after 1am must be referred to the Victorian Commission for Liquor and Gambling Regulation.

Pursuant to Clause 66.05, notice of an application under Clause 52.27 in association with a bar, hotel, or nightclub that is to operate after 1am must be given to the Chief Commissioner of Victoria Police.

The proposal does not now seek to operate after 1am; therefore, the application is not required to be externally referred or for notice to be given.

13 ASSESSMENT

The application seeks planning approval for the use of the land for the sale and consumption of liquor associated with a bar and restaurant, external alterations and external painting in a Heritage Overlay, a waiver of the car parking requirements of Clause 52.06, and a waiver of the bicycle facilities requirement of Clause 52.34.

The key items for consideration include:

- The policies relating to licenced premises at Clause 52.27 and Clause 22.22;
- The appropriateness of the works to the heritage place;
- The design response to the requirements of Design and Development Overlay Schedule 33 DDO33);
- The appropriateness of the waiver of the car parking requirement considering the decision guidelines at Clause 52.06;
- The appropriateness of the waiver of the bicycle facilities requirement; and
- The matters raised in objections.

13.1 Licensed Premises

The proposal is considered to be an acceptable response to the relevant licensed premises policies at Clause 52.27 and Clause 22.22 based on the following reasons:

- The proposal would not result in a negative cumulative impact that would unreasonably impact the amenity of the surrounds;

- The hours and patronage are limited and considered appropriate;
- The proposal appropriately limits noise impacts; and
- The proposal meets the objectives and performance standards of Clause 22.22.

The decision guidelines at Clause 52.27 are also considered in the assessment of the application. These are as follows:

- *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area;*
- *The impact of the hours of operation on the amenity of the surrounding area;*
- *The impact of the number of patrons on the amenity of the surrounding area;* and
- *The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.*

Section 2 of this report details the number and type of existing liquor licences within the immediate surrounds.

The surrounding area contains various small and intimate licensed premises that contribute to the mixed use nature of this part of West Melbourne. The total number of licences within the surrounds is not considered to be high.

This application seeks to insert two new uses that will have a combined capacity of 104 patrons. The hours of the restaurant are to be limited to 6pm (Monday – Friday) and the hours of the bar limited to 11pm (Monday – Sunday).

It should be acknowledged that the restaurant is not seeking permission to serve liquor beyond 6pm or on the weekend. When the restaurant is not operating, the total patronage will reduce to 50 people until 11pm.

The scale and type of uses proposed are considered to be appropriate for a residential zone as they do not present as high risk regarding amenity impacts or introduce concern relating to a negative cumulative impact. This is confirmed by the Mixed Use Zone not requiring a land use permit for a food and drink premises (includes a bar and a restaurant) when the leasable floor area is less than 150 square metres.

The Site is well serviced by public transport and is accessible to taxis and rideshare vehicles. This will contribute to the reduction of the likelihood of patrons disturbing the surrounds when leaving the venue.

The proposed licensed premises does not present as high risk or introduce concern relating to cumulative impact as it is within the hours recommended at Clause 22.22. The limited patronage of both uses (totalling 104) is considered to be appropriate given the land is located in the Mixed Use Zone.

Furthermore, the presence of light meals and snacks while open will reduce the likelihood of the abuse of liquor and ensure the use aligns with the nearby venues and contribute positively to the surrounds.

The performance standards at Clause 22.22-3 are individually assessed below:

13.1.1 Noise

Clause 22.22 states that licensed premises should be operated to ensure that noise emissions from the premises:

- Will not have an unreasonable impact on the amenity of the surrounding area.

- Comply with the standards as specified in the State Environmental Protection Policies (SEPP).
- Are regulated and monitored, making use of noise limiters where appropriate.

The proposal is acceptable for the following reasons:

- The use will have background music only and does not seek to include amplified live music. Noise limiters are not required in this instance as the proposal is for an intimate venue rather than a discotheque;
- The internal restaurant (café) only seeks to serve liquor to 6pm;
- The bar is located in an open courtyard that is surrounded by a six storey building containing commercial uses;
- The bar will have a limited capacity of 50 patrons which will not likely generate unreasonable noise; and
- Noise impacts relating to the collection of waste have been considered and will be required to occur within the hours set out by the EPA as well as the recommended hours at Clause 22.22. This will ensure noise from waste will not be unreasonable.

It is recommended that standard noise conditions be applied to any permit issued. This will include a condition that will require an acoustic report if the City of Melbourne determines one is required. Noting there is no specific requirement under the Environmental Protection Authority (EPA) for patron noise, the recommended conditions are appropriate.

The submitted patron management plan is considered insufficient as it predominately relates to the duties of the employees rather than providing the specific limitations for each use and how the licensed premises will manage amenity impacts.

It is recommended that a new venue management plan (VMP) is required via a permit condition. The VMP condition is recommended to contain details regarding the management for each use as well as providing for amenity as a whole. This will provide the City of Melbourne with the ability to reasonably regulate the licensed premises.

13.1.2 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.

The combined licensed premises will have a patronage of 104 people until 6pm where it will be reduced to 50 people until 11pm. This is considered to be appropriate for the Mixed Use Zone.

It is recommended a permit condition be applied to any permit issued to restrict the licensed premises to the patronage applied for.

13.1.3 Hours of operation

Clause 22.22 states that application to extend beyond the hours specified for indoor and outdoor area will only be supported where the extended hours will not unreasonably impact on the amenity of the surrounding area.

Clause 22.22 provides the following guidance for the MUZ:

- New licensed premises are discouraged in the Mixed Use Zone where the predominant surrounding land use is residential.

- Hours of operation of licensed premises in the Mixed Use Zone should be limited to 11pm.

The application seeks to comply with the recommended hours for both uses. In this instance there are residential uses within the surrounds; however, there is a strong commercial presence amongst the properties that have a direct interface with the Site which itself contains no residential uses. The hours and licensed premises are reasonably limited to avoid unreasonable adverse amenity impacts.

The external licensed area (courtyard) is acceptable in this instance as it is to be used no later than 11pm and bound by a six storey built form.

13.2 Heritage

The proposed external alterations and painting to the building entry are considered acceptable as these works do not relate to original heritage fabric or elements of the Site that contribute to its significance.

The external alterations are considered minor and will not impact any of the original heritage fabric of the 'Significant' building (Figure 9). The works will be an improvement to the current conditions and will not detract from the character of the host building or the neighbouring heritage buildings within the area.

13.3 DDO33

Design and Development Overlay, Schedule 33 contains the following design objectives:

- To provide a transition between the taller built form of the central city and the lower scale built form of West Melbourne;
- To maintain the heritage characteristics of the area by ensuring new development respects the scale of, and provides a transition to, adjoining heritage buildings; and
- To ensure development limits impact on the amenity and outlook from Flagstaff Gardens.

The control also generally relates to regulating built form in terms of height and amenity.

The proposed works are minor and considered to appropriately respond to the design objectives and built form outcomes of DDO33 as they do not negatively impact on pedestrian amenity or alter the predominate character of the building.

13.4 Waiver of Car Parking Requirement

In this instance the waiver of the required car parking is acceptable for the following reasons:

- The Site is located on the edge of Melbourne's CBD and is well serviced by public transport and highly walkable. This includes the bus stop directly outside the Site (stop 216), tram lines running up and down La Trobe Street within 130 metres of the Site and Southern Cross Station approximately 750m from the Site;
- The proposed car parking waiver is minor and supported by the City of Melbourne's policy to reduce the reliance on private motor vehicles;
- Given both uses include the consumption of liquor, it may not be appropriate to encourage driving for patrons under the influence of liquor; and
- The proposal relates to a heritage site that is fully covered by buildings. There is no practical opportunity to insert new parking at the Site.

13.5 Waiver of the Bicycle facilities requirement

In this instance the waiver of the required bicycle facilities is acceptable for the following reasons:

- The Site is well serviced by public transport and highly walkable;
- The use is one that includes consumption of liquor, it may not be appropriate to encourage cycling for patrons under the influence of liquor;
- The waiver of three bicycle parking spaces is minor and not likely to significantly impact the function of the road network or function of the public realm; and
- The existing building limits the opportunity to provide easily accessible and visible bicycle parking on the land.

13.6 Objections

The matters raised by objectors are individually addressed below (Table 9):

Table 9 - Objections	
Issue	Assessment
The use as a bar is inappropriate in the context of the site given its proximity to residential uses	<p>It is acknowledged there are several residential properties in the immediate surrounds.</p> <p>While the MUZ is a residential zone, it is recognised as a zone where use and development that responds to the existing or preferred neighbourhood character of the area is encouraged.</p> <p>As the surrounding area has a number of existing small licensed premises, the use is considered consistent with the character of the area.</p>
The bar operating until 3am will impact the amenity of the surrounds	The application has been amended and the operating hours are now to be limited to 11pm which is consistent with the policy for licensed premises requiring a permit.
Noise	<p>Noise is to be limited given there is no live music proposed.</p> <p>Conditions are recommended to be included on any permit issued to ensure the amenity of the surrounds is preserved.</p>
Safety and security concerns regarding potential anti-social behaviour by patrons, especially along McDougall Lane.	There is no entry from either premises onto McDougall Lane. Anti-social behaviour by patrons is to be limited by the scale of the proposal and by a venue management plan that must be approved prior to the commencement of the use (if a permit is granted).
The use would cause increased traffic.	Given the walkability of the Site and its close proximity to public transport, the likelihood of patrons driving to the venue is limited. Street parking is available and could be utilised by patrons. The proposed car parking waiver is minor and supported by the City of Melbourne's policy to

	reduce the reliance on private motor vehicles.
Secure parking of residents cars would be impacted.	Both venues are to be primarily accessed via the main lobby and patrons will not have access to the Site's car parking areas.
The use would result in a loss of privacy to residents.	The neighbouring ground level uses within the Site are all commercial (office) tenancies. The ground level bar is unlikely to cause any issues with privacy to the residential uses near the Site.
Gathering/queuing outside the venue.	The patronage associated with this application is not likely to generate unreasonable queuing.
Impact of the use as a bar on residential investment properties within the building.	The building is located within the Mixed Use Zone and there are a number of licensed premises within 100 metres of the site. Property value is not a decision guideline relevant to this application. The use is one that is supported as it is reasonably limited to ensure the attractiveness of this part of West Melbourne is maintained.
Impact of the use on the reputation of the building.	Should there be any anti-social behaviour by patrons or any issues with the management of the venue that cannot be controlled by the complaints management process as described by the operational management plan, enforcement action could be undertaken.
Waste management, concerns regarding litter and pest control.	If a permit is granted, the uses will be required to adhere to an approved waste management plan to reasonably regulate waste.
Potential issues for Registered Training Organisation (RTO) education facility on Level 4 regarding maintaining its status as a suitable education provider.	The land is located in the Mixed Use Zone which encourages a range of uses. The proposal is considered to be of a scale that will not unreasonably impact the existing uses within the building.

14 RECOMMENDATION

It is recommended that a Notice of Decision to Grant a Permit be issued subject to conditions.

15 WHAT WILL THE PERMIT ALLOW?

The preamble for the recommended permit should read:

Use of the land for the sale and consumption of liquor associated with a bar and restaurant, external alterations and external painting in a Heritage Overlay, a waiver of the car parking requirements of Clause 52.06, and a waiver of the bicycle facilities requirement of Clause 52.34 in accordance with the endorsed plans.

16 CONDITIONS

Compliance with Endorsed Plans

1. The use and development as shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.

Patronage

2. The maximum number of patrons on the bar premises must be no more than 50 at any one time unless with the prior written consent of the Responsible Authority.
3. The maximum number of patrons on the restaurant must be no more than 54 at any one time unless with the prior written consent of the Responsible Authority.

Hours of Operation

4. Except with the prior written consent of the Responsible Authority, the sale and consumption of liquor must only occur between the following hours:

Bar	
Monday to Sunday	10am - 11pm
Restaurant	
Monday to Friday	7am - 6pm

Venue Management Plan

5. Prior to the commencement of the use, the applicant must submit a Venue Management Plan (VMP) that provides the information required by Clause 22.22-4 of the Melbourne Planning Scheme. The VMP must provide details for each separate use as well as consider amenity impacts and mitigation methods for the entire licensed premises.

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

Waste Management

6. Prior to the commencement of the use and development, a Waste Management Plan (WMP) shall be prepared, submitted and approved by the Melbourne City Council – Waste and Recycling. The WMP should detail waste storage and collection arrangements and be prepared with reference to the Melbourne City Council Guidelines for Preparing a Waste Management Plan. Waste storage and collection arrangements must not be altered without prior consent of the Melbourne City Council - Waste and Recycling.
7. No garbage bin or waste materials generated by the permitted use may be deposited or stored outside the site and bins must be returned to the garbage storage area as soon as practical after garbage collection, to the satisfaction of the Responsible Authority.

Noise

8. Noise levels emanating from the premises must not exceed noise levels as determined by the EPA Victoria Publication Noise Limit and Assessment Protocol 1826.4, or result in unreasonable and aggravated noise as defined by Part 5.3 of the Environment Protection Regulation 2021, or other equivalent policy to the satisfaction of the Responsible Authority.
9. The Responsible Authority, with just cause, may at any time request lodgement of an acoustic report, prepared by a suitably qualified acoustic consultant. The report must be to the satisfaction of the Responsible Authority and identify all potential noise sources and sound attenuation work required to address any noise issues and to comply with EPA Publication 1826.4 (or subsequently updated publication): Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues. The recommendations of the report must be implemented by the applicant to the satisfaction of the Responsible Authority.
10. A sign must be attached to an internal wall in a prominent position adjacent to the entry / exit point to advise patrons to leave the premises in a quiet and orderly fashion. The sign must be to the satisfaction of the Responsible Authority.
11. No bottles or other waste material may be removed from the site between the hours of 9pm and 7am the following morning, seven days a week.
12. Empty bottles from the operation of the premises must be deposited into recycling bins quietly so as not to cause disturbance to adjoining and nearby residents, to the satisfaction of the Responsible Authority.
13. No amplified live music or entertainment is permitted on the premises without the prior written consent of the Responsible Authority.

Permit Expiry

14. This permit will expire if one of the following circumstances applies:
 - a) The development is not started within two years of the date of this permit.
 - b) The development is not completed within four years of the date of this permit.
 - c) The use is not started within 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. The Responsible Authority may extend the time for completion of the development if a request is made in writing within 12 months after the permit expires and the development started lawfully before the permit expired.

Notes

This planning permit does not constitute Owners Corporation approval for development within common property on the site. The consent of the Owners Corporation of the property must be obtained for any works undertaken within the common property.