

**Report to the Future Melbourne Committee****Agenda item 6.3****Planning Permit Application: TP-2022-112  
392 Little Collins Street, Melbourne****22 November 2022****Presenter:** Marjorie Kennedy, 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 part of the land at 392 Little Collins Street, Melbourne (the Site) for a tavern (refer Attachment 2 – Locality Plan).
2. The applicant is LiquorPlan. The owners are Adele Madi and John Madi. The architect is HCC Fabrication.
3. The land is located in the Capital City Zone Schedule 1 (CCZ1) and is affected by the Heritage Overlay Schedule HO1056, Design and Development Overlay Schedules 1 and 10 (DDO1 and DDO10) and Parking Overlay Schedule 1 (PO1).
4. The application seeks to allow the use of the existing lower ground floor tenancy as an 80 patron tavern. The tavern use requires a planning permit under the Capital City Zone Schedule 1. There is no external area associated with the proposed use (refer Attachment 3 – Selected Plans).
5. Public notice resulted in 52 objections and three letters of support being received.

**Key issues**

6. The key issues for consideration of the application are the appropriateness of the use of the land as a tavern and matters raised via objections.
7. The site is located in the Capital City Zone which policy seeks to provide for a range of financial, legal, administrative, cultural, recreational, tourist, entertainment and other uses. More specifically, Clause 13.07-1L-04 of the Melbourne Planning Scheme encourages licenced venues of less than 100 patrons with appropriate noise attenuation.
8. Concerns raised within the objections related to location of the tenancy at the bottom of a residential building, noise, anti-social behaviour, public health and safety, residential nature of the surrounding area and concerns that patrons may enter the residential building.
9. In response to objections received, the applicant submitted an Acoustic Engineering Report which confirms that due to the indoor nature of the premises and the retention of the existing ceiling, or acoustically equivalent ceiling, and with the entrance door remaining closed except for access and egress, the use will comply with the EPA Noise Protocol. These requirements relating to the retention of the existing ceiling and keeping the entrance door closed will be secured via condition.
10. Noise will be regulated as a result of the indoor nature of the tenancy. Conditions will also be included to restrict noise levels associated with live music to those in accordance with the EPA Noise Protocol, this will also extend to the stage area shown on the plans.
11. Anti-social behaviour and adverse impacts on public health and safety will be limited by the scale of the proposal and the Venue Management Plan which will require the operator to encourage patrons not to loiter around the Site after leaving the premises. The entrance to the residential building is also physically separated from the tavern entrance and the residential entrance is clearly signposted and only accessible via security fob / key.
12. Subject to conditions, the proposed use of the Site as a tavern is considered to be acceptable as the hours, patron numbers and venue management meet relevant planning scheme requirements and policy for the site's central city location.

### **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 of the report from management).

### **Attachments:**

1. Supporting Attachment (Page 3 of 26)
2. Locality Plan (Page 4 of 26)
3. Selected Plans (Page 5 of 26)
4. Delegate Report (Page 6 of 26)

## Supporting Attachment

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### 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).

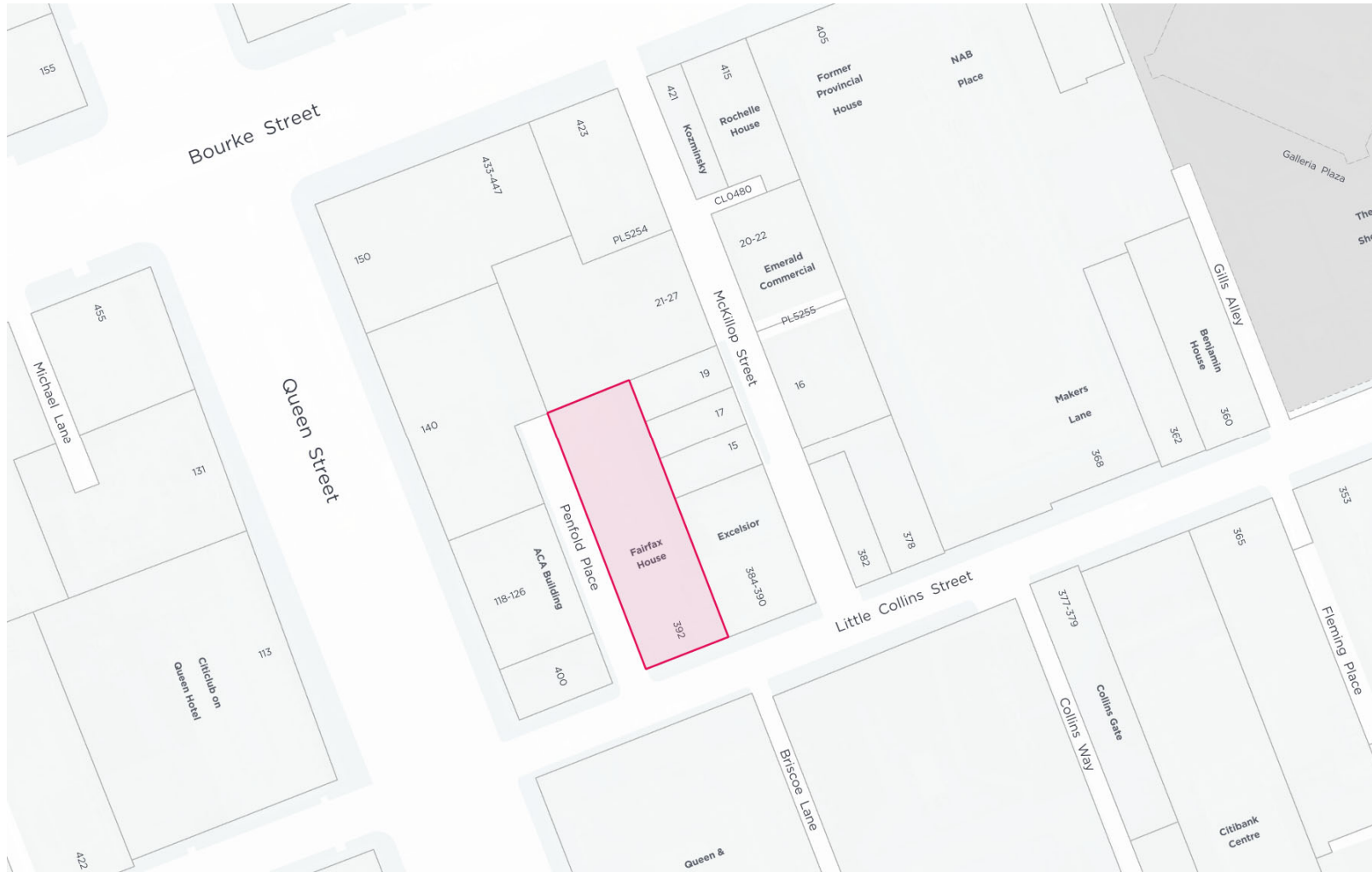
### Environmental sustainability

8. The proposal does not involve any external buildings and works therefore requirements set out in in Clause 15.01-2L-01 (Energy and resource efficiency) and Clause 19.03-3L (Stormwater Management (Water Sensitive Urban Design)) and Clause 53.18 (Stormwater Management in Urban Development) of the Melbourne Planning Scheme do not apply.

# Locality Plan

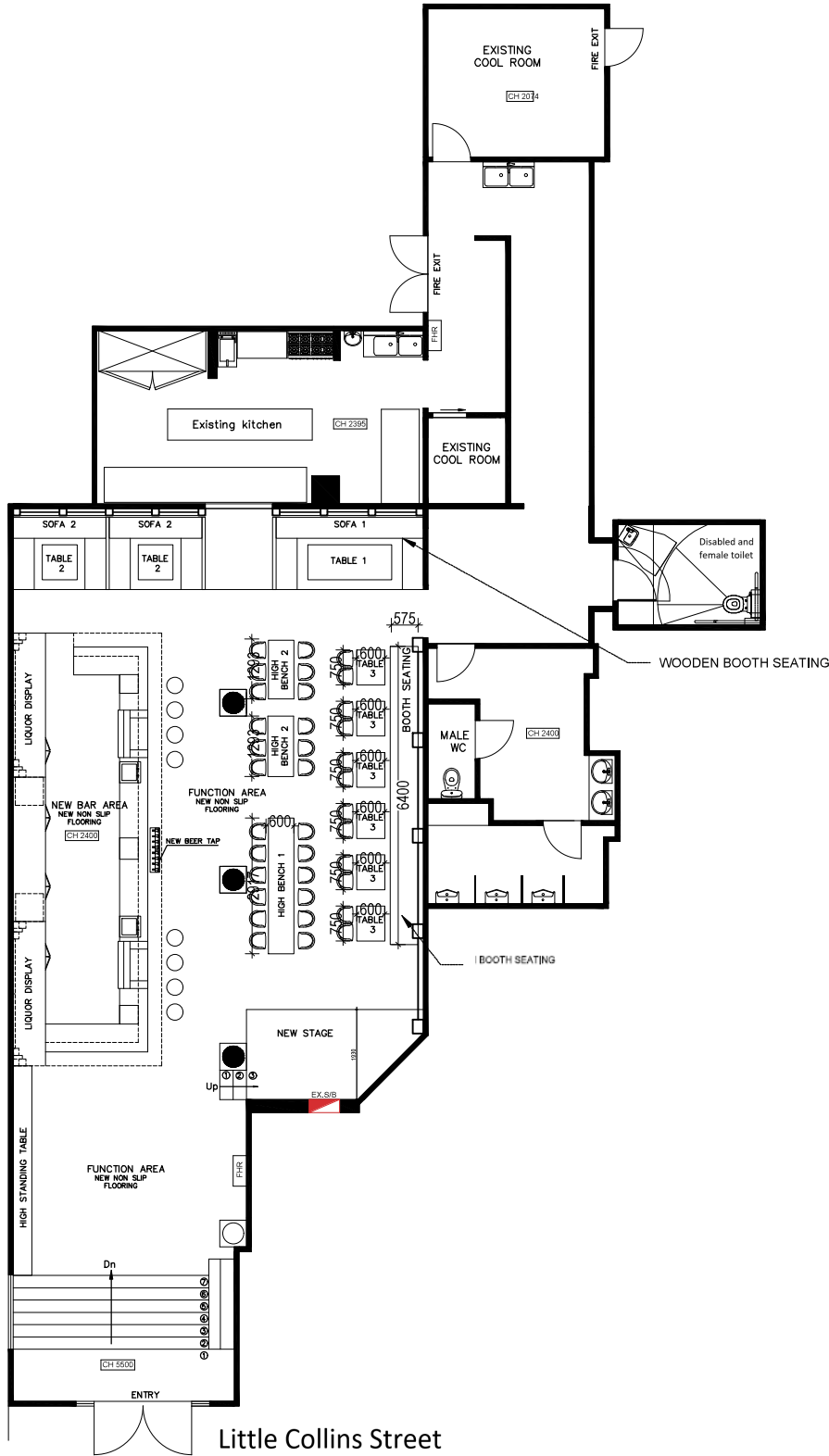
Attachment 2  
Agenda item 6.3  
Future Melbourne Committee  
22 November 2022

## 392 Little Collins Street, Melbourne





Penfold Place



FLOOR PLAN LAYOUT  
 SCALE 1:100

DESCRIPTION

**HCC FABRICATION**<sup>TM</sup>  
 FINANCE | DESIGN | CONSTRUCT  
 4A/178 Duke St, Braybrook VIC  
 www.hospitalityconstruction.com.au  
 03 8608 0279

PROJECT **THAMEL BAR**

ADDRESS 392 LITTLE COLLINS ST, MELBOURNE VIC 3000

NOTE: This drawing is the copyright and property of HOSPITALITY CONSTRUCTION and must not be used without written authorisation. Do not scale this drawing. All dimensions are to be verified on site and any discrepancies reported before commencement of any work.

SHEET TITLE	JOB NUMBER
FLOOR PLAN LAYOUT FURNITURE	KN
CHECKED BY	MR
DRAWN BY	MR
SCALE @ A3	1:100
DRAWING NUMBER	REVISION
A.302	
ISSUE DATE	
20 JAN 2022	

## DELEGATED PLANNING APPLICATION REPORT

<b>Application number:</b>	TP-2022-112
<b>Applicant:</b>	LiquorPlan
<b>Owner:</b>	Adele Madi and John Madi
<b>Address:</b>	392 Little Collins Street, MELBOURNE VIC 3000
<b>Proposal:</b>	Use of part of the land for a tavern
<b>Cost of works:</b>	\$0
<b>Date of application:</b>	9 March 2022
<b>Responsible officer:</b>	Rochelle Fleming

### 1 SUBJECT SITE

The subject site (the Site) is located on Little Collins Street, at the corner of Penfold Place, approximately 25 metres east of Queen Street. The Site comprises an existing building known as Fairfax House, which is a five storey cement rendered brick former warehouse and contains 31 residential units and a commercial tenancy at ground floor.

The existing commercial tenancy has a floor area of approximately 193 square metres and is the subject of this application. The commercial premises is accessed via a pedestrian door fronting Little Collins Street and down a set of steps. It is therefore a more accurate description to describe the majority of the space to be located at lower ground floor level. The entrance area is double height with a large fixed glazing window to the Penfold Place frontage.

Residential properties are located on the upper floors with common property and car parking to the rear accessed via Penfold Place. The pedestrian entrance to Fairfax House is also from Little Collins Street and is separated from the entrance to the commercial premises by a concrete pillar forming part of the principal façade (Figure 1 below). Windows, small balconies and air conditioning condensers associated with Fairfax House front Penfold Place.

Fairfax House at 392-396 Little Collins Street is identified as having a Significant grading in Council's Heritage Inventory March 2022 (Amended October 2022).



Figure 1: Subject site – entrance to commercial premises and residential properties of Fairfax House (Source: Officer's photo October 2022)

## 2 SURROUNDS

The following buildings are located in the surrounding area:

- West – 400 Little Collins Street is located directly to the west over Penfold Place and contains a shop at ground floor and residential properties above. Also to the west with a secondary frontage to Penfold Place is the ACA Building at 118-126 Queen Street, which has a primary frontage to Queen Street. The ACA Building contains commercial and retail uses.
- North and West – to the west and immediate north of the Site is a large re-development site known as 435 Bourke Street being developed under Ministerial Permit ref. PA1800482-2. This re-development site comprises 423 Bourke Street, 140 Queen Street, 150 Queen Street and 21-27 McKillop Street and will contain commercial and retail uses once complete.
- East – immediately to the east, also fronting Little Collins Street is the building known as Excelsior at 384-390 Little Collins Street which contains retail use at ground floor and residential properties above. Also adjoining the Site to the east are the properties at 15-19 McKillop Street which contain a mix of retail uses and some residential properties to upper floors.
- South – over Little Collins Street is 376-390 Collins Street which is known as 'Queen & Collins' which contains retail, office and car parking. Also to the south of the Site is Briscoe Lane which adjoins Collins Wales House which contains a mix of uses and an area of public open space fronting Little Collins Street.



Figure 2: Subject site in foreground – looking east down Little Collins Street (Source: Google Street View)



Figure 3: Subject site in background – looking west up Little Collins Street (Source: Google Street View)



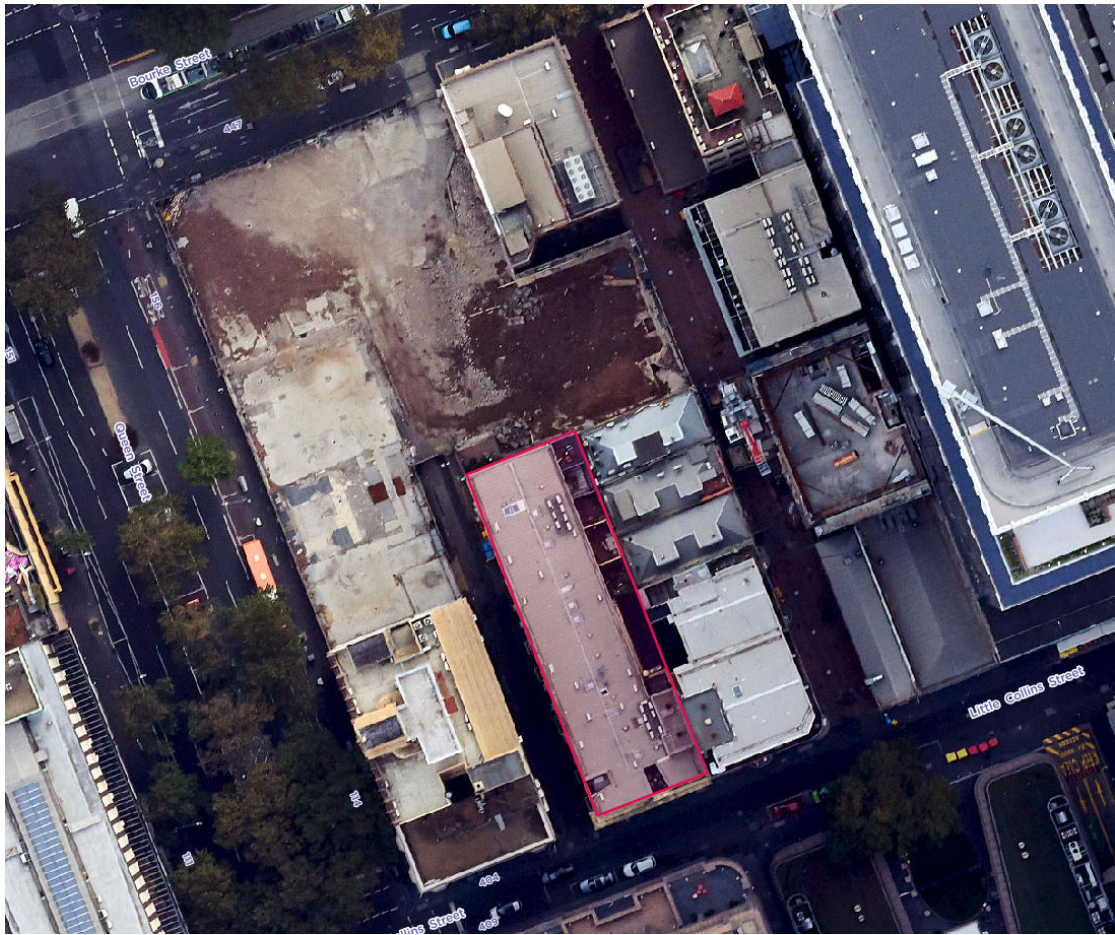


Figure 4: Aerial image of 392 Little Collins Street with subject site shaded red (Source: CoMPASS)



Figure 5: Site location (Source: CoMPASS)

### 3 BACKGROUND AND HISTORY

#### 3.1 Pre-application discussions

No pre-application meeting was held prior to the applicant lodging the application.

#### 3.2 Planning Application History

The following applications have been previously considered for the Site:

TP number	Description of Proposal	Decision & Date of Decision
TP-2019-552	Demolition and buildings and works including new tiling, painting, entry door and windows.	Permit issued 28 January 2020 <b>Note:</b> Extension of time to permit issued but doesn't appear works have commenced. The permitted scheme will introduce a balcony at second floor to the Penfold Place elevation close to the corner of Little Collins Street.
TP-2016-759	Construction and display of business identification signage.	Permit issued 27 September 2016
TP-2007-220	Replace existing sign.	Permit issued 26 April 2007
TP 04/0592	Erection of a business identification sign.	6 September 2004
TP-1997-828	Alterations and additions to existing building (ground floor level) including the erection of a canopy and signage.	Permit issued 25 September 1997
TP-1997-362	Erection of a sign	Permit issued 30 April 1997
TP-1995-772	Subdivision of existing building into 32 residential lots with 7 associated part car park lots, in accordance with the endorsed plans.	Permit issued 9 October 1995
TP-1994-649	Use of the building for twenty-five (25) residential apartments (residential building) in accordance with the endorsed plans.	Permit issued 27 June 1994 <b>Note:</b> Six (6) of the permitted units have since been subdivided.
TP-1994-518	Restoration of façade in accordance with the endorsed plans.	Permit issued 14 June 1994
TP-1993-975	Subdivision of 26 residential lots and 7 car parking lots in accordance with the attached endorsed plans.	Permit issued 7 October 1993
TP-1993-463	The construction of an extra floor and the conversion of the existing building to residential accommodation and car parking provisions generally in accordance with the endorsed plans.	Permit issued 14 May 1993

### 4 PROPOSAL

The application seeks approval for the use of the existing lower ground floor tenancy as a Tavern.

The Melbourne Planning Scheme defines the land use term 'Bar' at Clause 73.03 as *'Land used to sell liquor for consumption on the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling.'* Prior to amendments to the Melbourne Planning Scheme under Amendment VC148, this definition was associated with the land use of 'Tavern'.

As the uses listed in the Schedules to the Capital City Zone were not updated by Amendment VC148, Schedule 1 still lists the relevant land use as a 'Tavern'. As such, this application refers to the proposed use as a 'Tavern'.

The venue will predominately occupy the lower ground floor of the existing building, with the entrance area off Little Collins Street being double height. There is no external area associated with the Tavern use. The layout of the proposed Tavern includes:

- Retained existing pedestrian access from Little Collins Street, with steps down to an open area before leading to a bar and adjoining seating area.
- Three booth seating areas to the back of the venue.
- A small stage.
- Separate female and male WCs.
- Kitchen for service of food and associated cool rooms.

The red line area is to apply to the entirety of the premises as outlined above. The licenced area is therefore to measure 193 square metres.

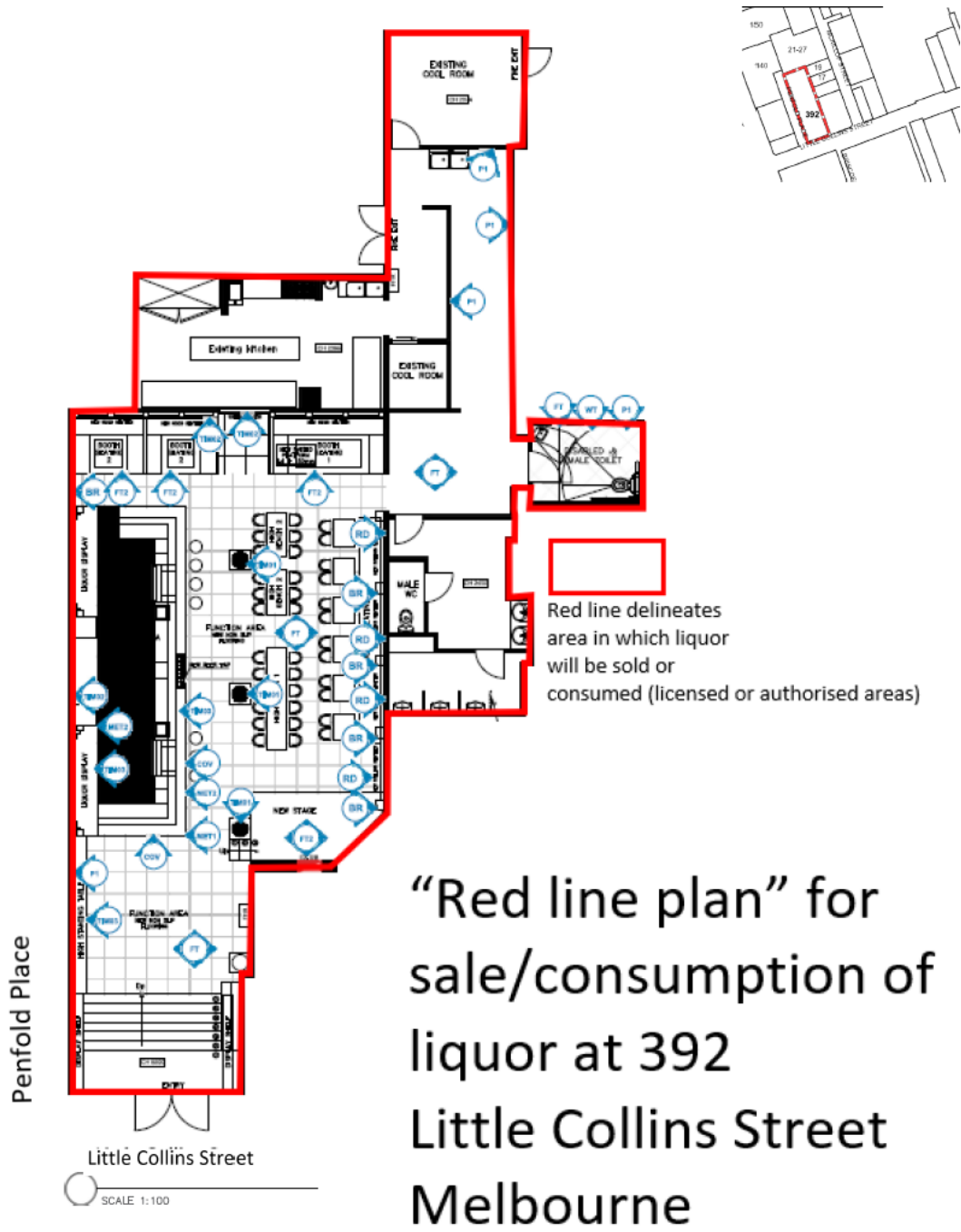


Figure 6: Proposed Red Line Area (Source: Applicant’s submission material)

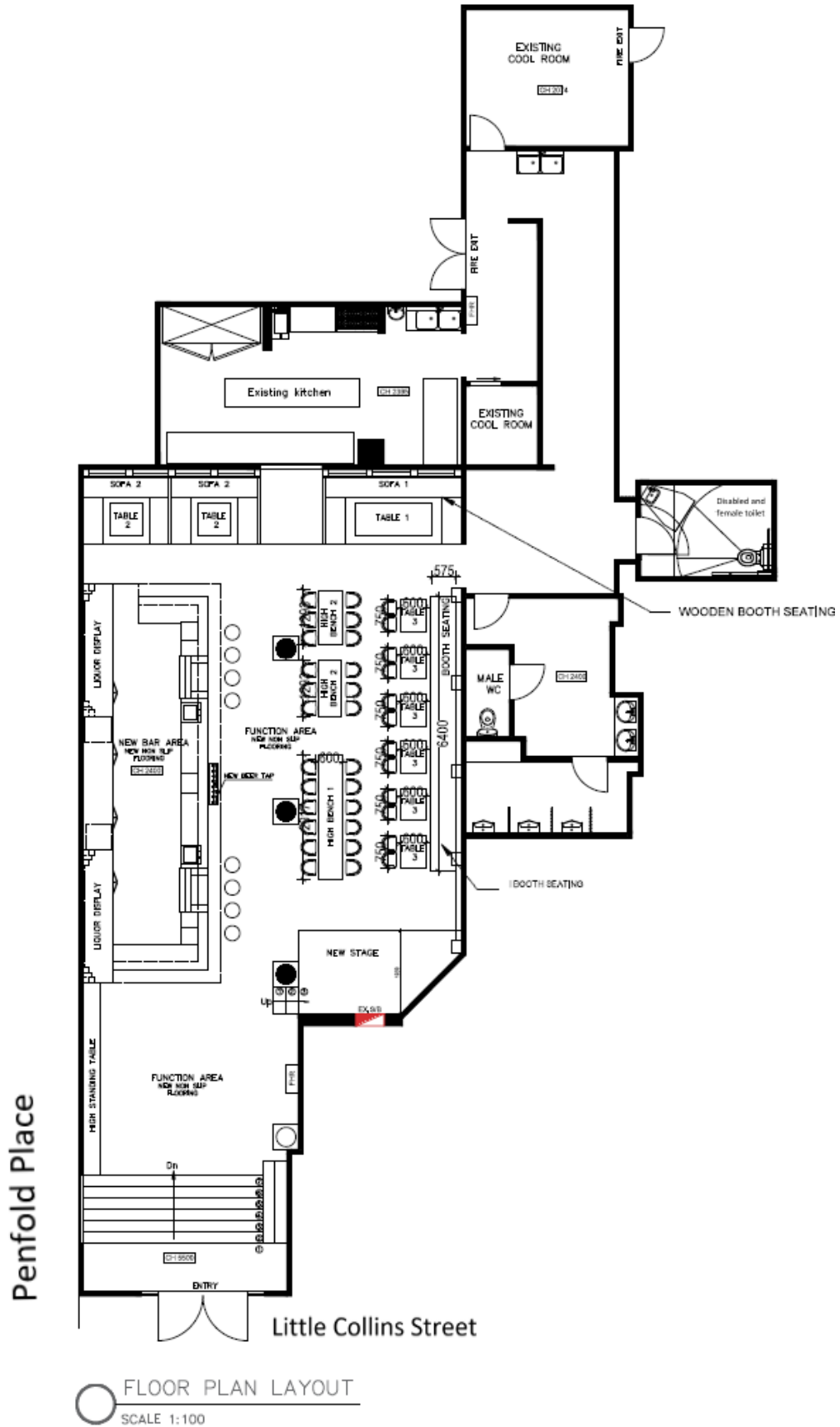


Figure 7: Proposed Floor Layout (Source: Applicant's submission material)

The applicant has indicated they intend to seek an on-premises licence via the VGCCC.

The application proposes a maximum of 80 patrons at any one time and the following hours of operation:

- Monday to Saturday: 9am to midnight.
- Sunday: 10am to 11pm.
- ANZAC Day and Good Friday: 12noon to midnight.

Background music is proposed to be played within the Tavern during business hours. The applicant has advised that may include acoustic or lightly amplified live music entertainment.

In response to objections received the applicant has indicated that they would be willing to accept reduced opening hours with closing times of 11pm Friday and Saturday and 10pm on all other days and no music played after 9pm on any day via conditions. The applicant has not sought to formally amend the application to reflect these changes.

No external alterations are proposed, or internal buildings and works for which a permit would be required.

The Tavern will be non-smoking and is proposed to be operated in accordance with the submitted Patron Management Plan.

## 5 STATUTORY CONTROLS

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

Clause	Permit Trigger
Clause 37.04 Capital City Zone Schedule 1 – Outside the Retail Core (CCZ1)	Pursuant to Clause 37.04-1, a permit is required for any use listed in Section 2 of the schedule to the zone.  Schedule 2 states that <b>a permit is required</b> for the use as a Tavern.
Clause 43.01 Heritage Overlay Schedule 1056 – 392-396 Little Collins Street, Melbourne (HO1056)	Neither Clause 43.01 nor its associated schedule specify that a permit is required for the use of the land as a Tavern. As such, <b>a permit is not required.</b>
Clause 43.02 Design and Development Overlay Schedule 1 – Urban Design in Central Melbourne Schedule 10 – General Development Area Built Form	Neither Clause 43.02 nor its associated schedule specify that a permit is required for the use of the land as a Tavern. As such, <b>a permit is not required.</b>
Clause 45.09 Parking Overlay	Pursuant to Clause 45.09, a schedule to this overlay may vary the requirements of Clause 52.06.

Schedule 1 – Capital City Zone Outside the Retail Core (PO1)	<p>Schedule 1 states that a permit is required to provide car parking spaces in excess of the car parking rates in Clause 3.0 of this schedule.</p> <p>Given no additional parking is proposed for the new use, the proposal does not seek to provide more than the maximum number of spaces and therefore <b>a permit is not required</b> under Clause 52.06. It is noted an existing car parking space attached to the title for the premises is proposed to be retain as existing.</p>
Clause 52.06 Car Parking	<p>A permit is required to provide more than the maximum parking provision specified in a schedule to the Parking Overlay.</p> <p>The proposal does not seek to provide more than the maximum number of spaces and therefore <b>a permit is not required</b> under Clause 52.06.</p>
Clause 52.27 Licenced Premises	<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 <i>Liquor Control Reform Act 1998</i>. A licence is required for an on-premises licence under the <i>Act</i>.</p> <p>However, 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>The schedule to the Clause states that a permit is not required for all licences required under the <i>Liquor Control Reform Act 1998</i> if the land is located within the Capital City Zone or Docklands Zone. Given the land is located in the Capital City Zone, <b>a permit is not required</b> to use the land for the sale and consumption of liquor.</p>
Clause 52.34 Bicycle Facilities	<p>Pursuant to Clause 52.34, a new use must not commence until the required bicycle facilities are proposed. A permit may be granted to reduce these requirements.</p> <p>A retail premises, other than specified in the table at Clause 52.34-5, such as a tavern, generates the requirement for 1 bicycle space for every 300 m<sup>2</sup> of leasable floor area for employees and 1 additional bicycle space for every 500 m<sup>2</sup> of leasable floor area for patrons.</p> <p>Given the total leasable floor area for the use is 193 m<sup>2</sup>, the use does not generate the requirement for any bicycle parking spaces.</p>

## 6 STRATEGIC FRAMEWORK

### 6.1 Planning Policy Framework (PPF)

The relevant provisions of the PPF are summarised as follows:

- Clause 02.03-6 (Economic Development), which confirms that the Hoddle Grid will remain the State's pre-eminent retail centre.
- Clause 11.03-6L-09 (Hoddle Grid), which encourages the retention and enhancement of specialised retail and entertainment precincts, particularly Hardware Lane, Chinatown, Collins Street and Little Collins Street. Entertainment, bars, eating and other evening uses are also supported.
- Clause 13.07-1L-04 (Licenced premises), which applies to the use of land for a bar, hotel or nightclub in the Capital City Zone.

- Clause 15.03-1L-02 (Heritage), which applies to places within a Heritage Overlay and for properties categorised as 'significant', 'contributory' or 'non-contributory'.
- Clause 17.02-1S (Business), which aims to encourage development that meets the community's needs for retail, entertainment, office and other commercial services.

## **7 PARTICULAR PROVISIONS**

There are no relevant particular provisions for this proposal.

## **8 GENERAL PROVISIONS**

The following general provisions apply to the application:

- Clause 65 – Decision Guidelines, which includes the matters set out in Section 60 of the Planning and Environment Act 1987.
- Clause 66 – Referral and Notice Provision.

## **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 and by posting one notice on the site for a 14 day period, in accordance with Section 52 of the *Planning and Environment Act 1987*.

## **10 OBJECTIONS**

A total of 52 objections were received, and raised the following concerns with the proposal:

- Location at the bottom of a residential building.
- Noise of patrons outside the venue.
- Noise from inside the venue and impact on ability for residents to open windows to Penfold Place.
- Reverberation of noise off buildings.
- Potential for patrons to utilise Penfold Place for smoking, urination and congregating.
- Potential for anti-social behaviour.
- Intoxicated patrons in public.
- Tavern use not suitable for residential nature of the area surrounding the Site.
- Health and air quality impacts associated with potential smokers on the street.
- Concerns that patrons may enter residential building.
- Kitchen area will require a flue which does not form part of the proposal.
- A 'karaoke stage' is indicated on the plans.
- Where bins will be stored.

In addition to the above, 3 letters of support were received which cited a lack of similar venues in the area for residents and the added vibrancy such a use would bring to the area.



All issues raised in the objections will be given due consideration in the following assessment.

## **11 CONSULTATION**

All objections were forwarded to the applicant for their consideration. The applicant provided a detailed response to the objections and an Acoustic Report.

The applicant also advised that they would be prepared to reduce the proposed closing times to 11pm Friday and Saturdays and 10pm on other days, as well as having no music after 9pm on any day. However, the applicant did not seek to formally amend the proposal to reflect these changes. Therefore, the proposal considered as part of this assessment is that which was subject to notice with the proposed opening hours as set out in Section 3 above.

## **12 REFERRALS**

The application was referred internally to the following internal departments:

### **12.1 Internal - Waste**

Concerns were raised with the originally submitted Waste Management Plan which has since been amended. The following items were raised to be addressed:

- Waste generation rates for a licenced club (tavern) are based on the premise that all food served on the premises is prepared food / snack food. Given this site will have a kitchen and will be preparing meals, restaurant generation rates are to be used. Generation rates would then align with the amount of waste the owner is predicting on his similar business elsewhere.
- Bins cannot be stored in the public realm. Therefore, Penfold Place is not an acceptable location to store bins. Bins belonging to the previous tenants were stored within the building alongside residential bins. It is suggested that enquires be made with the Building Manager of 392 Little Collins Street with regards to utilising their bin storage area. Should they be amenable to this arrangement, written permission on their company letterhead would need to be provided with the updated WMP.

A revised Waste Management Plan was subsequently submitted, including a letter from the Building Manager allowing bin storage associated with the restaurant on common property. Council's Waste Planning Engineer subsequently raised additional matters to be addressed:

- Given the WMP specifies the use of 3 x 660 L bins, the approval letter needs to specify approval for storage of 3 x 600 L bins, not 2 x 1100 L bins.
- Bins are not to be placed on Penfold Place for collection. Bins are to remain within the property boundary of 392 Little Collins Street at all times unless they are being emptied by the private waste operator. They are to be returned to within the property boundary immediately upon emptying. This is to be specified in the WMP.
- Please show where the private waste vehicle will stop for collections, noting the vehicle needs to be legally parked while undertaking collections.

These comments have been addressed and the Waste Management Plan is considered acceptable.

### **12.2 External**

No external referrals were required.

## 13 ASSESSMENT

The application seeks approval for use of the lower ground / ground floor tenancy as a Tavern. The key issues for consideration in the assessment of this application include:

- Appropriateness of the use given the purpose of the Capital City Zone, Schedule 1.
- The objectives, strategy and policy guidelines of Clause 13.07-1L-04.
- The concerns raised by the objectors to the application.

### 13.1 Capital City Zone – Schedule 1 (Outside the Retail Core)

The Site is located within the Capital City Zone, Schedule 1 – Outside the Retail Core. In addition to implementing the Municipal Planning Strategy and the Planning Policy Framework, the purpose of the zone includes:

- *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 proposed use of the land as a Tavern requires a planning permit under Schedule 1 to the Capital City Zone. The localised purpose of Schedule 1 to the Capital City Zone as stated in the Melbourne Planning Scheme 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 Tavern aligns with the stated purpose of the Capital City Zone Schedule 1, representing a use that will complement the capital city function of the locality, providing recreation and entertainment to meet the needs of residents, workers, students and visitors.

Further support is provided within the Planning Policy Framework for the proposal, with policy aimed at supporting economic development that meets the community’s needs, including for retail, entertainment, office and other commercial services. Clause 11.03-6L-09 identifies the following relevant strategies for economic development within the Hoddle Grid:

- *Encourage the retention and enhancement of specialised retail and entertainment precincts, particularly Hardware Lane, Chinatown, Collins Street and Little Collins Street.*
- *Support entertainment, bars, eating and other evening uses.*

It should be noted for the purpose of this application and planning policy referenced above, that the land use ‘Bar’ (known as ‘Tavern’ within the Capital City Zone) is nested under the ‘retail premises group’ in ‘food and drink premises’ at Clause 73.04-11.

In summary, the proposed land use as a Tavern is consistent with the objectives of the Capital City Zone as it will contribute to a vibrant, mixed use precinct that will support economic development within the Hoddle Grid and the evening economy.

The property is currently vacant and as such, the proposed use will also create new employment opportunities.

## 13.2 Licenced premises

Clause 13.07-1L-04 provides the basis for Melbourne City Council's policy relating to licensed premises that require a permit, emphasising the contribution well-managed licenced premises make to the vitality of the Central City as a 24 hour city, providing music, food and entertainment.

This clause outlines the objectives of Council's policy relating to licenced premises that require a permit, which include:

- *To identify appropriate locations and trading hours for licenced premises.*
- *To minimise adverse impacts from licenced premises on the amenity of the area.*
- *To maintain the positive character, image and function of the City.*
- *To ensure that the cumulative impacts of licenced premises are assessed where venues are clustered.*

The Strategy of the Clause is to *“ensure licenced premises will not have an unreasonable impact on the amenity of the surrounding area, including through noise, patron numbers and hours of operation”*.

The relevant policy guidelines at Clause 13.07-1L-04 are considered in relation to the proposal in the table below.

Policy Guideline
<p><b>Ensuring uses that regulate and monitor their noise, and make use of noise limiters.</b></p> <p>The nearest noise sensitive premises are within the building itself on the floors directly above the proposed Tavern. There are also residential properties surrounding the Site on Little Collins Street and McKillop Street.</p> <p>The proposal is considered acceptable for the following reasons:</p> <ul style="list-style-type: none"> <li>• The use will have background music only, which may include acoustic or lightly amplified music. The applicant has advised that the background music will comply with the definition of “background music level” as defined by Section 9a of the <i>Liquor Control Reform Act 1998</i> which states <i>“means a level that enables patrons to conduct a conversation at a distance of 600mm without having to raise their voices to a substantial degree”</i>. Noise limits for indoor entertainment venues are also controlled via EPA guidelines. A condition will also be included on any permit issued requiring all music to comply with the EPA noise limits for indoor entertainment venues to ensure music does not result in unreasonable noise impacts to nearby residents.</li> <li>• The Tavern is contained entirely within the building which assists in ensuring the use will not generate unreasonable noise. While the building also contains residential uses these are separated from the commercial unit via the ceiling to the first floor above and walls adjoining the residential entrance and lobby.</li> </ul> <p>An Acoustic Engineering Report has been submitted by the applicant in response to objections received which includes the results of noise testing to establish background noise levels at the nearest noise sensitive properties surrounding the Site which are identified as 392 Little Collins Street, 384-390 Little Collins Street and 400 Little Collins Street. Testing was undertaken from Little Collins Street from 9.23am to 9.35am on 22/06/2022 and on Little Collins Street and McKillop Street between 12:09am to 12:29am and 12:40 and to 1:00am respectively, to establish background noise levels.</p> <p>The Report then gave consideration to the façade elements that will reduce the amount of noise escaping the venue, this includes the external walls, ceiling / floor separating the Tavern from the residential units above, external glazing and the pedestrian entrance door. The results concluded that patron noise levels will comply with the Environmental</p>

Protection Authority (EPA) Noise Protocol Part II noise limits for all periods without further treatment provided that the main entry / exit door is kept closed during operating hours except as necessary for patron access and egress. A condition will be included on any permit issued requiring the entrance door to remain closed except as necessary for patron access and egress.

It is recommended that standard noise conditions be applied to any permit issued. This will include a condition that will require a further acoustic report if the City of Melbourne determines one is required as a result of any ongoing noise issues experienced from the Site. Noting there is no specific requirement under the EPA for patron noise, the recommended conditions will ensure there is appropriate management of the use of the premises.

It is also recommended that a Venue Management Plan (VMP) be required via a permit condition. The Applicant has submitted a Patron Management Plan, however it is considered appropriate that this Plan is updated to include the relevant noise mitigation measures set out in the Acoustic Engineering Report including:

- Keep main entry / exit and other external doors closed, except as necessary for patron access and egress; and
- Install acoustic seals to main entry / exit door.

In addition to the above, conditions will also be included to require the premises to retain the existing ceiling or an acoustically equivalent ceiling and installation of acoustic treatment for any service pipes or ducts serving the residential units that are exposed within the premise.

**Minimising noise impacts associated with waste management and bottle crushing by incorporating measures such as:**

- On site storage of waste.
- The use of on-site bottle crushers within noise proof enclosures.
- Avoiding waste collection before 7am and after 9pm or earlier when the licenced premises is closed.

Waste storage and collection will be undertaken in accordance with the submitted Waste Management Plan. Waste will be stored internally within a common area of the building. Waste will be collected via a private waste collector and will only be collected between 7am and 9pm. This will ensure noise from waste storage and collection will not be unreasonable.

**Discouraging licensed premises in the Residential Zones.**

**Discouraging licensed premises in the Mixed Use Zone where the predominant surrounding land use is residential.**

The Site is located in the Capital City Zone.

**Limiting the number of patrons permitted in a licences premises to:**

- Manage any unreasonable impact on the amenity of the surrounding uses.
- The maximum occupancy capacity on the premises, as determined by the *Building Act 1993*.

The application proposes a maximum of 80 patrons at any one time. The maximum occupancy capacity of the premises, as determined by the *Building Act 1993* is 85 patrons. It is recommended a permit condition be applied to any permit issued to restrict the licenced premises to the patronage applied for.

**Encouraging bars, hotels and nightclubs in the Capital City Zone and Docklands Zone that:**

<p><b>- Accommodates less than 100 patrons.</b></p> <p><b>- Have appropriate noise attenuation.</b></p>
<p>As set out above, the Tavern will accommodate less than 100 patrons and noise attenuation will be achieved via the indoor location of the premises. A condition will also be included on any permit issued requiring the pedestrian entrance door to remain closed, except as required for patron access and egress.</p>
<p><b>Limiting hours of operation of bars, hotels and nightclubs in the Capital City Zone and Docklands Zone to 1am.</b></p>
<p>The application proposes the following opening hours:</p> <ul style="list-style-type: none"> <li>Monday to Saturday between 9am and midnight;</li> <li>Sundays between 10am and 11pm; and</li> <li>ANZAC Day and Good Friday between 12noon and midnight.</li> </ul> <p>Following review of the objections lodged, the applicant submitted the hours could be reduced as follows:</p> <ul style="list-style-type: none"> <li><b>Monday to Thursday between 9am and 11pm;</b></li> <li>Friday and Saturday between 9am and midnight;</li> <li>Sundays between 10am and 11pm; and</li> <li>ANZAC Day and Good Friday between 12noon and midnight.</li> </ul> <p>While the applicant has not sought to formally amend the application to change the hours from those advertised, they have advised that they would accept reduced operating hours on any permit to be issued.</p> <p>Once the use has been operating, there is the opportunity for the applicant to lodge a Section 72 amendment to increase the hours and notice provided to those affected. This allows the use to be established and an understanding of the impacts prior to any change to hours. The merits of any future amendment will be assessed at the time of the application.</p>
<p><b>Limiting hour of operation of licenced premises:</b></p> <p><b>- In the General Residential Zone to 9am – 6pm.</b></p> <p><b>- In the Mixed Use Zone to 11pm.</b></p> <p><b>- In the commercial zone to 11pm if the licenced premise is within 30 metres of a residential zone, or 1am elsewhere.</b></p>
<p>The Site is located within the Capital City Zone.</p>
<p><b>In the Capital City Zone and Docklands Zone, limiting the use of outdoor areas (including smoking areas, rooftops and open courtyards) to 1am; and in noise sensitive areas, limiting alcohol consumption in outdoor areas to 11pm.</b></p>
<p>The proposal does not incorporate any outdoor areas.</p>
<p><b>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.</b></p>
<p>N/A</p>

Table 1: Policy Guidelines associated with Clause 13.07-1L-04

### 13.3 Objections

The matters raised by objectors are individually addressed below:

Issue	Assessment
Location at the bottom of a residential building.	<p>The application is supported by an Acoustic Engineering Report which considered the background levels of the nearest noise sensitive properties, the nature of the proposed use and the building fabric. With the retention of the existing ceiling, or acoustically equivalent ceiling and with the entrance door remaining closed except for access and egress the use will comply with EPA Noise Protocol.</p> <p>While the Tavern will be located within a building with residential uses on the upper floors, it will be located entirely inside, with no outdoor areas. Additionally, the entrance is separated from the adjoining residential lobby. Therefore, the amenity impact brought by the proposed use is not considered unreasonable, especially when compared to the previous use of the Site being a restaurant, subject to the conditions recommended within this report to be included in any permit issued. The amenity impact is considered to be commensurate with that expected for the location within the Capital City Zone.</p> <p>The location of the Site is also within the Capital City Zone and an area where bars are encouraged subject to suitable patron numbers and noise attenuation measures.</p>
Noise of patrons outside the venue.	The proposed venue is non-smoking. The proposed tavern use is contained entirely within the building.
Potential for patrons to utilise Penfold Place for smoking, urination and congregating.	The Site is also very well serviced by public transport and is accessible to taxis and rideshare vehicles. This will contribute to the reduction of the likelihood of patrons staying outside the venue and disturbing the surrounds when leaving the venue. A condition will also be included on any permit issued, requiring a commitment from the operator via the revised Venue Management Plan to ensure patrons do not congregate in Penfold Place following their departure from the venue.
Health and air quality impacts associated with potential smokers on the street.	<p>A Notice to patrons will also be displayed when leaving the venue advising patrons to respect neighbours and to minimise noise when leaving the premises.</p>
Noise from inside the venue and impact on ability for residents to open windows to Penfold Place.	The potential for noise impacts is considered in detail at Section 13.2 above. In summary, the use will have background music only, with the potential for acoustic or lightly amplified live music entertainment at times. Noise associated with live music will be controlled via condition to ensure compliance with EPA Noise Protocol.

<p>Reverberation of noise off buildings.</p>	<p>As the bar is contained entirely within the building, the use will not generate unreasonable noise, subject to the recommended conditions.</p> <p>An Acoustic Engineering Report has also been submitted in support of the application with the results indicating that music noise from the venue will have minimal impact on ambient noise levels of the surrounding area and for the nearest noise sensitive uses. This is subject to the pedestrian entrance doors remaining closed except for access and egress.</p> <p>Standard noise conditions will also be applied to any permit issued. This will include a condition that will require any additional acoustic report if the City of Melbourne determines one is required.</p> <p>In response to objectors concerns, the operating hours for the Tavern will also be reduced to 11pm Monday to Thursday.</p>
<p>Potential for anti-social behaviour</p> <p>Intoxicated patrons in public.</p>	<p>Anti-social behaviour by patrons is 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). Any behaviours beyond the control of staff of the venue will be managed by the police.</p>
<p>Tavern use not suitable for residential nature of the area surrounding the Site.</p>	<p>While there are residential uses surrounding the Site, the nature of the area is not considered to be residential. The Site is located within the Capital City Zone Schedule 1 with the purpose <i>“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.”</i></p> <p>Subject to minimising noise impacts, a Tavern use is considered to be an appropriate use for the CCZ.</p>
<p>Concerns that patrons may enter residential building.</p>	<p>The entrance to the Tavern has a separate dedicated pedestrian entrance, separated from the residential entrance by a large concrete pillar. The residential entrance is clearly signposted and is also only accessible via security fob / key, meaning those without security access will not be able to access the residential building.</p>
<p>Kitchen area will require a flue which does not form part of the proposal.</p>	<p>No external alterations are proposed as part of this planning permit application. If a flue is required by the use, and a planning permit is required a planning permit will need to be secured before its installation.</p>
<p>A ‘karaoke stage’ is indicated on the plans.</p>	<p>A stage is shown on the advertised plans, although this is not indicated to be a karaoke stage. Notwithstanding, live music will be controlled via condition to ensure compliance with EPA Noise Protocol.</p>
<p>Where bins will be stored.</p>	<p>Bins will be stored internally within the building, on common property. Bins will not be stored on the street.</p>

## 13.4 Conclusion

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

## 14 RECOMMENDATION

Having considered all relevant provisions of the Melbourne Planning Scheme, in addition to the matters required under Section 60 of the *Planning and Environment Act 1987*, Planning recommends that the Future Melbourne Committee issue:

- A Notice of Decision to Grant a Permit, subject to the conditions set out below.

## 15 CONDITIONS

### 15.1 Preamble

Use of part of the land for a tavern.

### 15.2 Conditions

#### Compliance with Endorsed Plans

1. The use of any land or building or part thereof 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 premises must be no more than 80 at any one time unless with the prior written consent of the Responsible Authority.

#### Hours of Operation

3. Except with the prior written consent of the Responsible Authority, the use of the land as a tavern hereby permitted must only occur between the following hours:

Monday to Thursday	9am – 11pm
Friday to Saturday	9am – midnight
Sundays	10am – 11pm
ANZAC Day and Good Friday	12noon – midnight

#### Use

4. Sexually explicit entertainment must not be provided on the premises at any time. Sexually explicit entertainment is that provided by a person or persons who are nude, display sexual organs or are topless females. Entertainment includes "table-top" dancing, "lap" dancing, topless bar serving staff, live strip tease shows and their equivalent.
5. At all times when the premises is open for business, a designated manager must be in charge of the premises.



### **Venue Management Plan**

6. Prior to the commencement of the use, a Venue Management Plan (VMP) shall be prepared, submitted and approved by the Responsible Authority. The VMP must be prepared on the basis of the approved development; and be generally in accordance with the Patron Management Plan contained within the Town Planning Assessment dated 4 March 2022 but also describing:
  - a) Requirement to keep main entry / exit and other external doors closed, except as necessary for patron access and egress;
  - b) Installation of acoustic seals to main entry / exit door; and
  - c) How patrons will be encouraged to not loiter around the Site after leaving the premise.

Once approved, the VMP 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**

7. The waste storage, processing and collection arrangements must be in accordance with the Waste Management Plan (WMP) prepared by Liquor Plan dated 27<sup>th</sup> September 2022. The submitted WMP must not be altered without prior consent of the City of Melbourne – Waste and Recycling.
8. 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**

9. 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.
10. 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.
11. No external sound amplification equipment or loud speakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose, to the satisfaction of the Responsible Authority.
12. 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.
13. 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.

14. 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.
15. All music must comply with Section (A)(2) of Part II of the EPA Victorian Publication Noise Limit and Assessment Protocol 1826.4.
16. The premises must retain the existing ceiling or an acoustically equivalent ceiling to the satisfaction of the Responsible Authority.
17. All service pipes and / or ducts serving the adjoining residential properties that are exposed within the premises must be acoustically treated to the satisfaction of the Responsible Authority.

#### **Permit Expiry**

18. 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**

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.

The premises must comply with the *Food Act 1984* and the Food Standards Code and must be registered with Council's Health Services Unit prior to the commencement of the use.