

Report to the Future Melbourne (Planning) Committee

Agenda item 6.1

**Application to Amend a Planning Permit: TP-2006-274/G
380-388 Russell Street, Melbourne**

12 November 2019

Presenter: Jane Birmingham, Practice Leader Land Use and Development

Purpose and background

1. The purpose of this report is to advise the Future Melbourne Committee of an application to amend an existing planning permit to allow for live music and entertainment to be performed with the existing ground floor restaurant / tavern (Blue Moon Bar) at 380-388 Russell Street, Melbourne (refer Attachment 2 - Locality Plan).
2. The applicant is Dira Mivora Pty Ltd c/- Planning & Property Partners Pty Ltd; the owner is Dira Mivora Pty Ltd; and the architect is Agart Studios.
3. The land is located within the Mixed Use Zone (MUZ) and is affected by the Heritage Overlay (HO848) and the Parking Overlay Schedule 12 (PO12).
4. Public notice of the application was undertaken and a total of 69 objections have been received.

Key issues

5. The key issue for consideration is the impact of the provision of live music on the amenity of the surrounding area. The existing use of the ground floor restaurant / tavern including the patron numbers, hours and conditions of permit are not proposed to be changed by the application.
6. The existing On-premises Liquor Licence does not restrict live music and entertainment being performed on the premises.
7. The application has demonstrated compliance with the relevant noise standards (SEPP N-2) for karaoke only, and that the provision of karaoke performance within the ground floor restaurant / tavern would not have unreasonable noise impact on surrounding residential properties.
8. The applicant has agreed to restrict live music to karaoke only in the ground floor restaurant / tavern and it is recommended that this restriction be included as a condition of permit.

Recommendation from management

9. That the Future Melbourne Committee resolves that a Notice of Decision to Grant an Amended Planning Permit be issued subject to the conditions set out in the Delegate Report (refer to Attachment 4).

Attachments:

1. Supporting Attachment
2. Locality Plan
3. Application documentation
4. Delegate Report

Supporting Attachment

**Attachment 1
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Legal

1. Division 1 of Part 4 of the *Planning and Environment Act 1987* (Act) sets out the requirements in relation to applications for permits pursuant to the relevant planning scheme. Section 61 of the Act sets out that the Council may decide to grant a permit, grant a permit subject to conditions or refuse to grant a permit on any ground it thinks fit.
2. As objections have been received, sections 64 and 65 of the Act provide that the responsible authority must give the applicant and each objector notice in the prescribed form of its decision to either grant a permit or refuse to grant a permit. The responsible authority must not issue a permit to the applicant until the end of the period in which an objector may apply to the VCAT for a review of the decision or, if an application for review is made, until the application is determined by the VCAT.

Finance

3. There are no direct financial issues arising from the recommendations contained in this report.

Conflict of interest

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

Health and Safety

5. The existing planning permit has a requirement for a Venue Management Plan that has been endorsed to form part of the permit. The endorsed plan outlines measures put in place for the venue that also addresses health and safety concerns.
6. Potential noise impacts arising from the proposal that could impact on health and safety are also dealt with in the planning permit process.

Stakeholder consultation

7. Public notice of the application has been undertaken in accordance with the requirements of the Planning and Environment Act 1987.

Relation to Council policy

8. Relevant Council planning policies are discussed in the Delegate Report (refer Attachment 4).

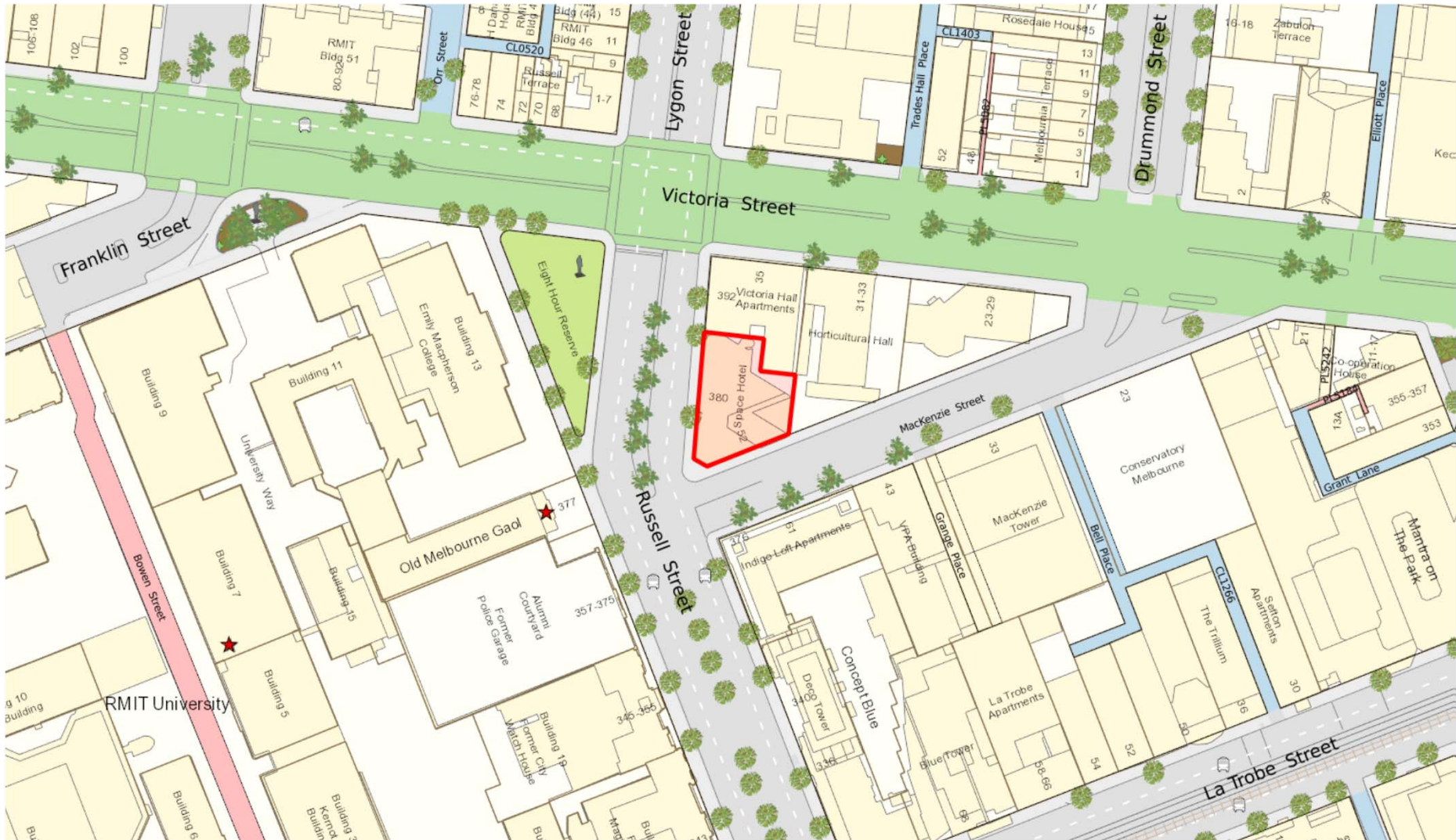
Environmental sustainability

9. Environmental sustainability issues and opportunities are considered not relevant to this proposal.

Locality Plan

Attachment 2
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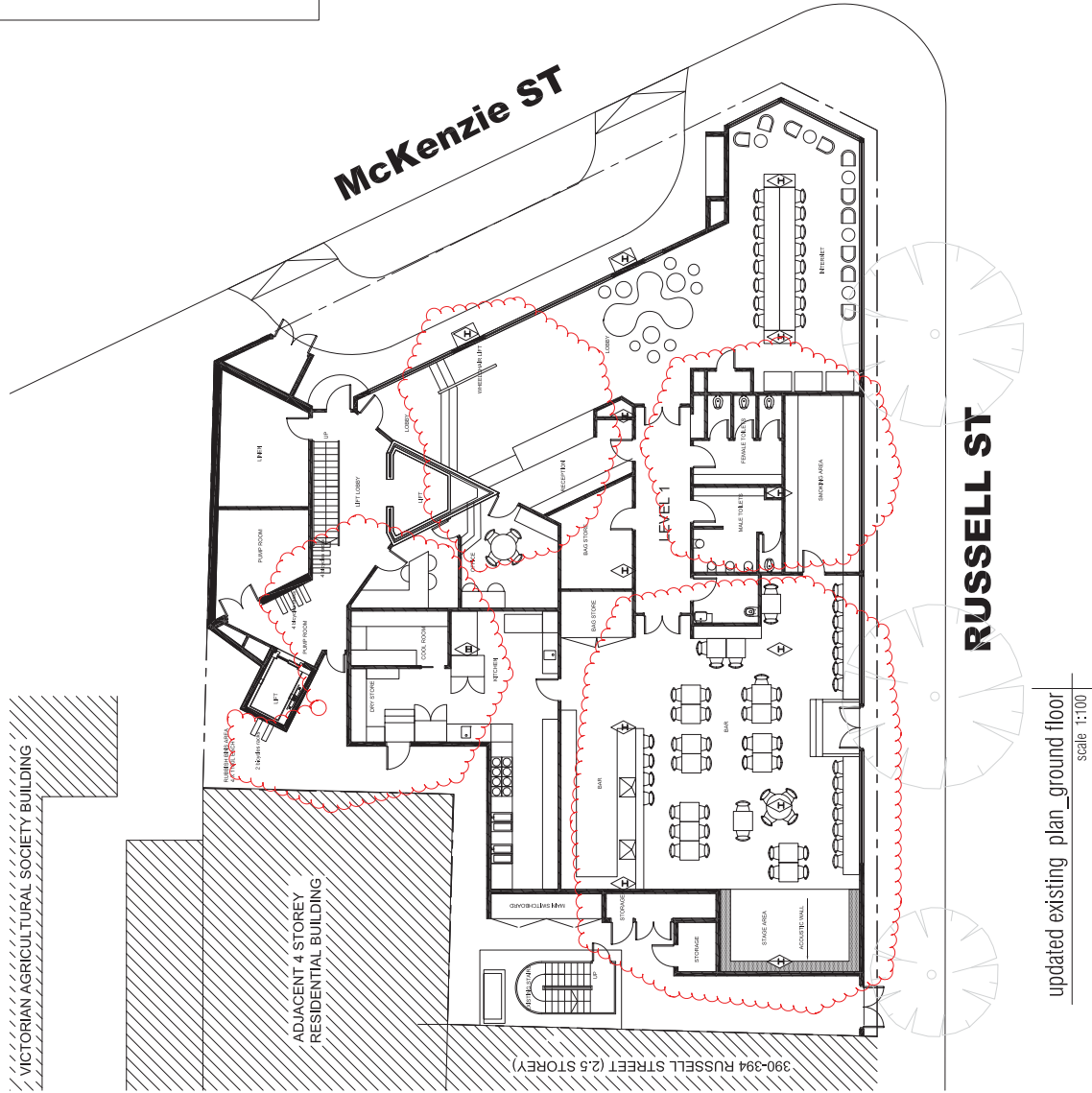
380-388 Russell Street, Melbourne



DEVELOPMENT SUMMARY

Site Area - 745 m²
 Site Coverage - 577 m² (77.4%)
 Area of hard surface - 745 m² (100%)

Level	Nr of rooms/suities
Ground	0
1st floor	23
2nd floor	23
3rd floor	23
4th floor	23
5th floor	6
6th floor	15
7th floor	15
8th floor	0 / total area storage, corridors and toilets



updated existing plan_ground floor
 scale 1:100

**PROPOSED HOTEL REDEVELOPMENT INCLUDING
 ALTERATIONS AND ADDITIONS TO EXISTING BUILDING
 380 RUSSELL STREET, MELBOURNE**

COMPONENT AGART STUDIO
 ARCHITECTURE AND INTERIORS
 3 A BURWAN AVENUE, BRIGHTON EAST, VIC 3187
 TEL: 9553 84 84
 WWW.AGARTSTUDIO.COM.AU

SCALE 1:100
 DATE 12 April 2017
 DRAWN A.W.
 CHECKED E.M.
 DWG.NO.

REVISIONS:
 'A' - 30 January 2018 - respond to letter dated 27 Nov. 2017
 'B' - 30 January 2018 - respond to letter dated 27 Nov. 2017
 'C' - 22 June 2019 - revised floor plan
 'D' - 5 July 2018 - revised floor plan

APPLICATION TO AMEND A PLANNING PERMIT DELEGATE REPORT

APPLICATION NO:	TP-2006-274/G
APPLICANT & OWNER:	Dira Mivora Pty Ltd c/- Planning & Property Partners Pty Ltd
ADDRESS:	380-388 Russell Street, Melbourne
PROPOSAL:	Deletion of Condition 14 to allow amplified live music and entertainment to be held within the existing ground floor restaurant / tavern.
COST OF WORKS	N/A
DATE OF APPLICATION:	31 May 2018
RESPONSIBLE OFFICER:	Adam Birch, Urban Planner

1. SUBJECT SITE

The subject site is located on the north-east corner of Russell Street and MacKenzie Street and is occupied by a residential hotel known as the 'Space Hotel'. An existing restaurant / tavern is located on the ground floor and is known as the 'Blue Moon Bar'.

Figure 1: Map showing the location of the subject site, generated 11 October 2018 (source: City of Melbourne)



1.1 Formal Land Description

The site is irregular in shape with a total area of 751 m².

The formal land description of the site known as Plan of Subdivision PC373942A contains a footway easement at the northern section of the lot that benefits Lot 1 of PS326703.

The land is subject to a Section 173 Agreement (S950080M) on the title relating to an open space contribution which has expired. The Section 173 Agreement is not directly relevant to the current application.

1.2 Built form description

The site contains a nine storey building used as a residential hotel with a ground floor restaurant / tavern. The building was constructed in 1963 and converted from an office to a residential hotel in 1994 and subdivided in 1999. The building was again refurbished in 2011 with the addition of three storeys to the top of the building.

The building is listed as a B-graded building in the Heritage Places Inventory March 2018 and is proposed to be classified as a significant building in Planning Scheme Amendment C258.

According to Council's Land Use and Employment (CLUE) data the building has a gross floor area of 5335 m² and has no onsite car parking or bicycle parking spaces.

Figure 2: Photographs of site





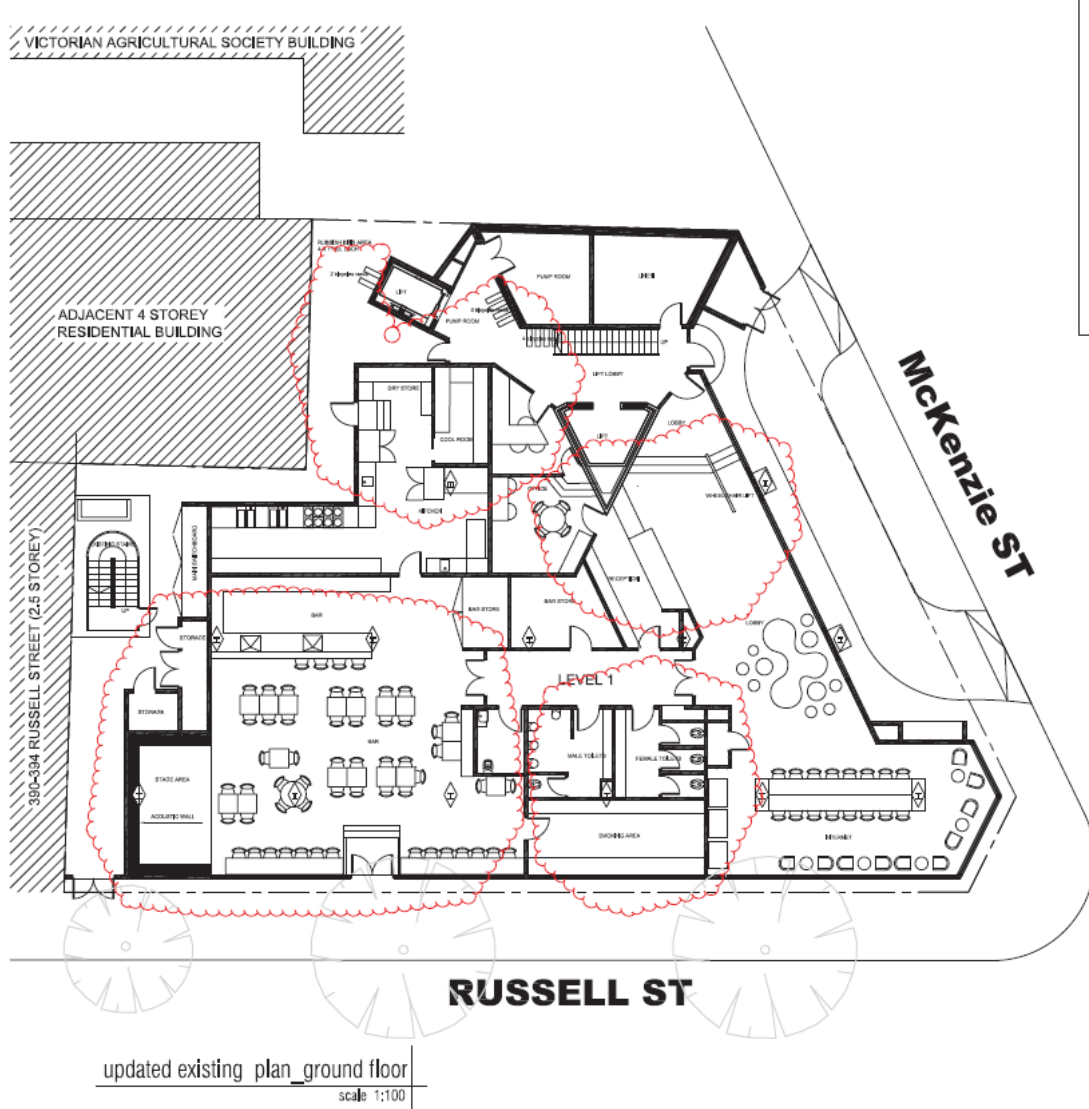
1.3 Land Use Description

The building is occupied by the Space Hotel which contains a mix of shared (dorm-style) and private rooms for accommodation provided for persons away from their usual place of residence. Entry to the hotel is via MacKenzie Street from a portecochere.

On the ground floor of the building is an existing restaurant / tavern known as the 'Blue Moon Bar'. Entry to the tavern is via Russell Street and a hallway from the main lobby.

The layout of the restaurant / tavern includes a bar area, seating, a stage, a smoking area and toilets (see Figure 3). At the rear of the tavern is a kitchen that can be directly accessed from the bar. The glazed windows to Russell Street are operable.

Figure 3: Floor Plans (source Agart Studio, revision 'D' dated 5 July 2018)



The restaurant / tavern has a maximum capacity of 200 patrons. The trading hours for the premises (as allowed by the planning permit) are as follows:

Table 1: Permitted trading hours for the Blue Moon Bar

Day	Planning Permit TP-2006-274/D	
	Internal Area	Smoking Area
Monday to Sunday	11.30am to 1am the following morning	11.30am to midnight

The existing permit includes several conditions which restrict trading hours and patron numbers, prohibit live music and entertainment, require compliance with the relevant noise standards, prohibit the installation or use of external speakers and require a designated manager, waste management and a leave quietly sign.

In addition, Condition 11 requires that the operable windows to the ground level restaurant / tavern (with the exception of the smoking area) must be closed between the hours of 8pm to 7am.

Condition 8 requires a Management Plan. The Venue Management Plan as required was endorsed to form part of the permit on 29 March 2018. A Venue Management Plan covers a broad range of responsibilities, dealing with different scenarios and measures to respond to onsite issues and offsite amenity impacts. The plan also advises that two security guards are employed onsite on Thursdays to Sundays from 9pm to 1.30am the following day.

1.4 Liquor Licence

An On-Premises Licence (Licence No. 32304256) has been issued for the Blue Moon Bar. The Licence allows for 25 patrons in the smoking area and 170 patrons overall at any one time.

The trading hours permitted by the Licence are:

Table 2 Licence Hours for the Blue Moon Bar

Day	Liquor Licence 32304256	
	Internal Area	Smoking Area
Good Friday & Anzac Day	Midday to 11pm	Midday to 11pm
On any other day	11.30am to 1am the following day	11.30am to midnight

The Licence does not restrict the performance of live music and entertainment. The Licence requires that premises comply with the State Environment Protection Policy (Control of Music Noise from Public Premises) No.N-2. Another condition of the Licence requires that, when live or recorded amplified music other than background music is provided, a surveillance system be installed and two crowd controllers be employed onsite.

1.5 Surrounding Properties

The following properties are within 50 metres of the premises:

To the west:

- The Eight Hour Reserve, which is a 904.5 m² public reserve on the south-west corner of Victoria Street and Russell Street.
- The old Melbourne Gaol at 377 Russell Street that is now used as an art gallery and museum.
- The main campus of RMIT University.

To the north:

- At 390-394 Russell Street is a three storey rendered brick building built in 1887 on the south-east corner of Russell Street and Victoria Street. The building was refurbished, subdivided and converted to 24 apartments and one shop in 2001 with the addition of one storey. The building is known as the Victoria Hall Apartments.

To the east:

- Horticultural Hall, at 31-33 Victoria Street that contains a two storey hall that is used as rehearsal space and offices for the Victorian Opera.
- At 23-29 Victoria Street is a petrol station with a convenience store and car wash. Planning Permit TP-2017-461 was issued on 5 April 2018 allowing the

use and development of the land for a 25 storey mixed-use building accommodating retail premises, office and dwellings, alterations to a Road in a Road Zone Category 1, and a reduction in the car parking requirements associated with the retail premises and office.

To the south:

- At 336-376 Russell Street is a residential complex comprising three buildings with a shared communal area. The buildings include:
 - 61 MacKenzie Street is a two storey building now known as the Indigo Loft Apartment that contains 44 dwellings.
 - A 13 storey building known as The Deco Tower at 340 Russell Street that contains 96 dwellings and one café.
 - A 27 storey apartment building known as the Concept Blue Tower at 68 La Trobe Street that contains 259 dwellings.
- At 43 MacKenzie Street is a four storey brick and concrete office building built in 1967.
- At 27-39 MacKenzie Street is the 32 storey building known as the MacKenzie Tower that contains 388 dwellings, a restricted recreation facility (a fitness club), and a convenience store.

2. BACKGROUND AND HISTORY

2.1 Previous Permits

The building that occupies this site was approved under permit MCC-1001 on 11 December 1961.

2.2 Current Permit and Amendments

The following table lists the current planning permit and the subsequent amendments.

Table 3: Amendments to the planning permit

Application No.	Proposal	Status	Decision Date
TP-2006-274	Partial demolition and construction of alterations and additions to the existing building (to nine storeys), ground floor retail tenancy, basement car park and partial waiver of car parking requirement.	Permit issued	27 October 2006
TP-2006-274/A	Allowed for various modifications to the building	Amended permit issued	2 October 2009
TP-2006-274/B	Allowed various modifications, and for the sale and consumption of liquor (on-premises licence)	Amended permit issued	15 July 2010
TP-2006-274/B (corrected)	A correction to the permit fixing various errors	Correction under Section 71 of the Act.	24 August 2010

TP-2006-274/C	Allowed for operable windows to ground level restaurant / tavern with associated condition restricting the hours that windows can be open	Amended permit issued	4 November 2010
TP-2006-274/D	Further corrections to the permit and to amend Condition 12 to allow trading to be extended to 1am the following morning to the internal areas and midnight in the ground floor smoking area	Amended permit issued	23 April 2014
TP-2006-274/E	Amend Condition 12 of the Planning Permit in order to extend the time permitted to serve and consume alcohol on the premises from 1am to 3am	Amendment refused by Council. An application to VCAT by the permit holder was withdrawn.	31 May 2016
TP-2006-274/F	Amendment to the planning permit including partial demolition; alterations and additions to levels 6, 7 and 8; use of level 8 (including roof deck) as a Function Centre with an increase to the red line area, licensed hours (7am-midnight) and patron numbers (200); use of the roof deck for outdoor live music and entertainment; and a reduction of the car parking requirements	Amended permit issued through compulsory conference process at VCAT.	4 June 2019

2.3 Consent for entertainment

Consent under Condition 12 of the permit was granted on 24 April 2018 to provide 'entertainment' in the form of comedy, trivia or similar entertainment to be performed in the internal areas of the ground floor tavern on Tuesday to Sunday evenings for a 12 month trial period ending Sunday 28 April 2019.

The applicant was advised that if entertainment on an ongoing basis is proposed to include live music, that this may be applied for by a formal amendment to the planning permit with an acoustic report provided.

2.4 Complaints History

A number of noise complaints relating to the premises have been made to Council from May 2012 until January 2016. Given that 69 objections were received to the current application, the premises has been investigated by Council's Planning Enforcement Team. The Enforcement Team has undertaken spot checks of the venue at night and has not observed any noticeable problems with excessive noise or patron behaviour. There have been no noise complaints received by Council's Planning Enforcement for the past three years.

2.5 Further Acoustic Testing

In response to concerns raised by Officers, the applicant commissioned a 'Karaoke EPA Policy N-2 Compliance Assessment' prepared by Broner Consulting dated

July 2019. Noise level measurements were conducted in Room 111 of the Space Hotel on the 13 June 2019. This room is immediately above the Blue Moon Bar. Based on the measured noise levels, the report determined that the Karaoke Music noise level complies with the EPA Policy N2 requirements.

3. PROPOSAL

The application seeks approval to amend Permit TP-2006-274/D under Section 72 of the Planning and Environment Act 1987 9 (the Act) by way of seeking to:

- Delete Condition 14 of the planning permit. Condition 14 of the planning permit states that 'no amplified live music or entertainment is permitted on the premises without the written consent of the Responsible Authority.'
- Amend the Venue Management Plan endorsed under Condition 8 to reflect the proposed operation of the site.
- Amend Sheet 1 of 8 of the endorsed plans to show:
 - Removal of access ramp within the lobby.
 - Decrease width of the lobby door.
 - Addition of a dry room and cool store to the kitchen, with consequential alterations to the layout.
 - Reconfiguration of male and female toilets.
 - Addition of a stage to the bar area and consequential alterations to the layout.
 - Replacement of keg storage area with two storage rooms.
 - Incorporation of second office / meeting space with the envelope of the previous office.

The application is seeking to allow for the provision of live music and entertainment in the ground floor restaurant / tavern. No change to the trading hours or patron numbers is proposed. In support of the application, the applicant has provided:

- An updated floor plan, by Agart Studio, revision 'D' dated 5 July 2018
- A Venue Management Plan – Version Two, Prepared June 2018
- An Acoustic Assessment by Broner Consulting dated 25 May 2018 and updated 4 December 2018
- A Karaoke EPA Policy N-2 Compliance Assessment prepared by Broner Consulting dated July 2019.

The acoustic report shows that the loudspeakers are proposed to be located as follows:

- Two loudspeakers located Stage Right and Left
- One fold back speaker on the stage for performers
- One speaker to the bar area

The report advises that the wall behind the stage is 403mm thick and was installed in 2011 to reduce noise, particularly in the bass octave bands being transmitted to nearby residential properties to the north of the site. The report also advises that acoustic foam 'bass' traps are placed in the corner of the room.

The acoustic report makes recommendations for noise levels across eight consecutive octave bands (63hertz to 8000 hertz) from the loudspeakers. The

predicted noise levels for the adjacent Victorian Hall Apartments are noted in the report.

4. STATUTORY CONTROLS

The following planning controls in the Melbourne Planning Scheme apply to the subject land:

Table 4: Permit Requirements

Clause	Permit Requirement
Mixed Use Zone	A permit has been granted for the use and development of the land, which includes approval of the ground floor restaurant / tavern.
Heritage Overlay (HO848)	A permit is not required by the overlay, as no external building and works are proposed.
Parking Overlay Schedule 12	This overlay relates to the provision of car parking associated with dwellings. Therefore, a permit is not required under this overlay
Live Music and Entertainment Noise (53.06)	Pursuant to Clause 53.06-3, a permit may be granted to reduce or waive these requirements if the responsible authority is satisfied that an alternative measure meets the purpose of this clause. The Acoustic Report submitted with the application advises that the proposal would comply with the provision. Therefore, a planning permit is not triggered by the provision.
Licensed Premises (52.27)	The proposal does not seek to vary the existing permit in a manner that would trigger the need for a permit under this provision.

5. STRATEGIC FRAMEWORK

5.1 State Planning Policy Framework (SPPF)

The relevant provisions of the SPPF are summarised as follows:

Clause 13.05-1A Noise Abatement, has the objective 'To assist the control of noise effects on sensitive land uses,' and the strategy of 'ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.'

Planning must consider as relevant the policies which include: State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2.

Clause 19.02-3S Cultural Facilities, has the objective of 'To develop a strong cultural environment and increase access to arts, recreation and other cultural facilities' and strategies that includes 'Encourage a wider range of arts, cultural and entertainment facilities including cinemas, restaurants, nightclubs and live theatres in the Central City and at Metropolitan Activity Centres.

5.2 Local Planning Policy Framework (LPPF)

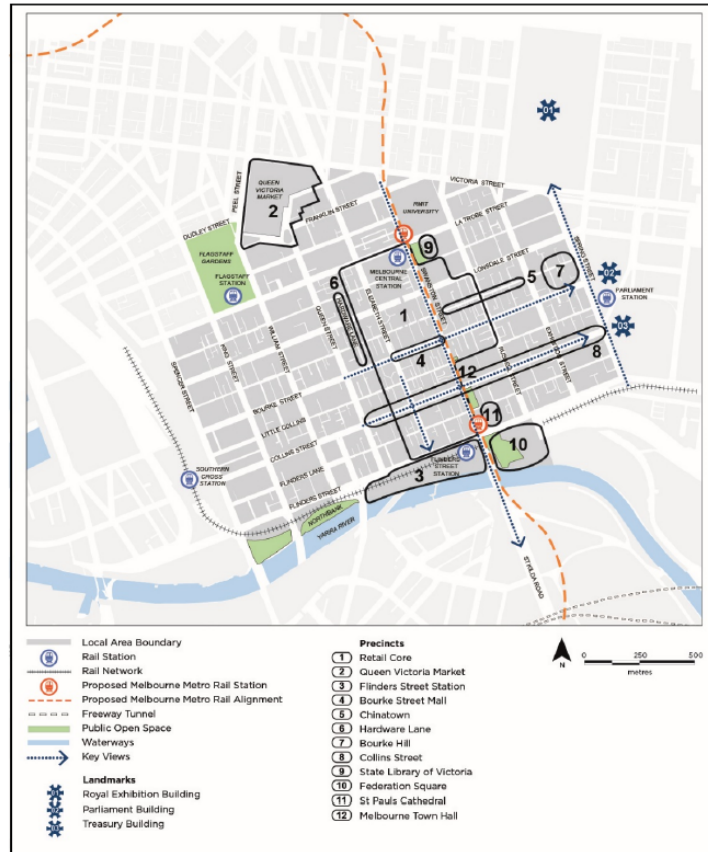
5.2.1 Municipal Strategic Statement (MSS)

The relevant provisions of the MSS are summarised as follows:

Clause 21.12 Hoddle Grid, that includes the policy ‘Support entertainment, bars, eating and other evening uses throughout the Hoddle Grid.’ The site is located within the area of the Hoddle Grid shown in Clause 21.12 (see Figure 4).

Figure 4 (Extract of Map from Clause 21.12)

Figure 6: Hoddle Grid



5.2.2. Local Policies

- Clause 22.22 Policy for Licenced Premises that require a Planning Permit.

5.3 Particular provisions

The following particular provisions apply to the application:

Clause 53.06 Live Music and Entertainment Noise. This provision sets out requirements to be met for live music entertainment venues. The purpose of this provision is:

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

5.4 General Provisions

The following general provision applies to the application:

Clause 65, Decision Guidelines, which includes the matters set out in Section 60 of the Planning and Environment Act 1987.

6. PUBLIC NOTIFICATION

It was determined that the proposal may result in material detriment therefore Council gave notice of the proposal by ordinary mail to the owners and occupiers of surrounding properties and directed that the applicant give notice of the proposal by posting two notices on the site for a 14 day period, in accordance with Section 52 of the Planning and Environment Act 1987.

7. OBJECTIONS

A total of 69 objections were received in response to the application. The objections raised the following concerns (summarised):

- The impact from existing and proposed music and patron noise on the quiet enjoyment of residential apartments including:
 - Inability to relax, work and study
 - Loss of sleep
 - Impact on physical and mental health
 - Impact on underage residents
- Bass noise and vibration issues
- Light spill issues
- The provision of live music to 1am would have an unreasonable impact on residential amenity
- Incompatible with the surrounding land uses and upwards of 700 apartments located in the immediate vicinity
- The possibility of minors being served alcohol
- Potential increased risk of violent crime occurring
- Safety and security concerns
- Potential vandalism and anti-social behaviour from intoxicated patrons
- Obstruction of footpath from loitering patrons and increased foot traffic
- Venue Management Plan not being enforced
- Untrained staff not familiar with noise restrictions
- Not applying 'agent of change' principals to apply appropriate sound attenuation
- Not responding to local community needs
- No improvement to local amenity
- The use would attract party crowds
- The Venue Management's refusal to address existing noise complaints from residents
- The Acoustic Report does not address the impact on all surrounding residential properties

- Inconsistent with the purpose of the Mixed Use Zone
- Inconsistent with the Live Music Provision of the Melbourne Planning Scheme
- Potential increase in vehicle loading and unloading of musical instruments
- The potential for the premises to transform into a night club

7.1 Informal Notification

The 'Karaoke EPA Policy N-2 Compliance Assessment' prepared by Broner Consulting dated July 2019.' was circulated to all objectors by email on 7 October 2019.

Five of the original objector made additional comments in relation to the updated Acoustic Assessment.

8. EXTERNAL REFERRALS

The Melbourne Planning Scheme did not require any referrals to be undertaken.

9. INTERNAL REFERRALS

No internal referrals to other Council departments were required.

10. ASSESSMENT

The key matters for consideration relate to the proposal to provide live music in the ground floor restaurant / tavern. Clause 53.06 (Live Music and Entertainment Noise) identifies the relevant considerations for premises that propose to include live music.

Clause 22.22 (Policy for Licensed Premises that require a Planning Permit) recommends that licensed premises should be operated to ensure that noise emissions from the premises:

- *will not have an unreasonable impact on the amenity of the surrounding area;*
- *comply with the standards as specified in the State Environmental Protection Policies; and*
- *are regulated and monitored, making use of noise limiters where appropriate.*

Clause 53.06 (Live Music and Entertainment Noise) identifies that live music plays an important role in the culture and economy of Victoria. The primary responsibility for noise attenuation rests with the agent of change, which for this application is the venue operator.

Clause 53.06 requires that a live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue. Note, that the policy does not specifically state that a Live Music Entertainment Venue must comply with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N2). It is at the discretion of the Responsible Authority to determine whether a Live Music Premises is acceptable. A permit may be granted to reduce or waive these requirements if the responsible authority is satisfied that an alternative measure meets the purpose of this clause.

Each of the following decision guidelines of Clause 53.06 of the Melbourne Planning Scheme is considered in this report:

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

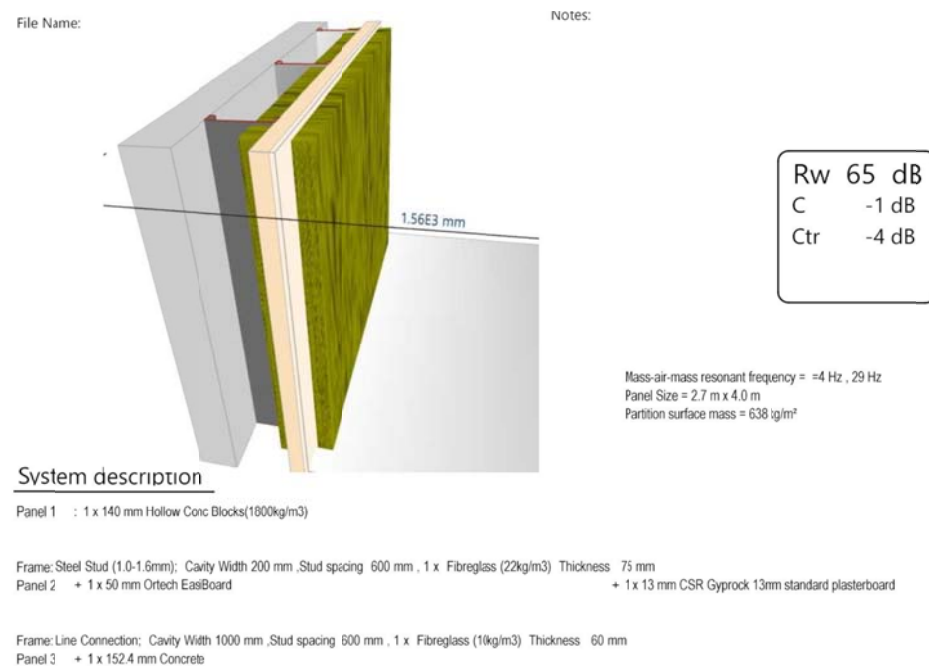
10.1 Noise impacts from the siting layout, design and construction

The site is located within a building used as a residential hotel, in the Mixed Use Zone section of the Hoddle Grid. The area is predominantly characterised by a high-density cluster of existing and proposed residential apartment buildings varying in scale from mid-rise to towers.

The Blue Moon Bar is located on the ground floor and accessed from Russell Street. A service corridor separates the venue from the adjoining building to the north at 390-394 Russell Street, Melbourne.

The layout of the restaurant / tavern includes existing seating, a bar area, kitchen, toilets and a stage. The stage area is lined with an existing 403mm acoustic wall (see an extract in Figure 5).

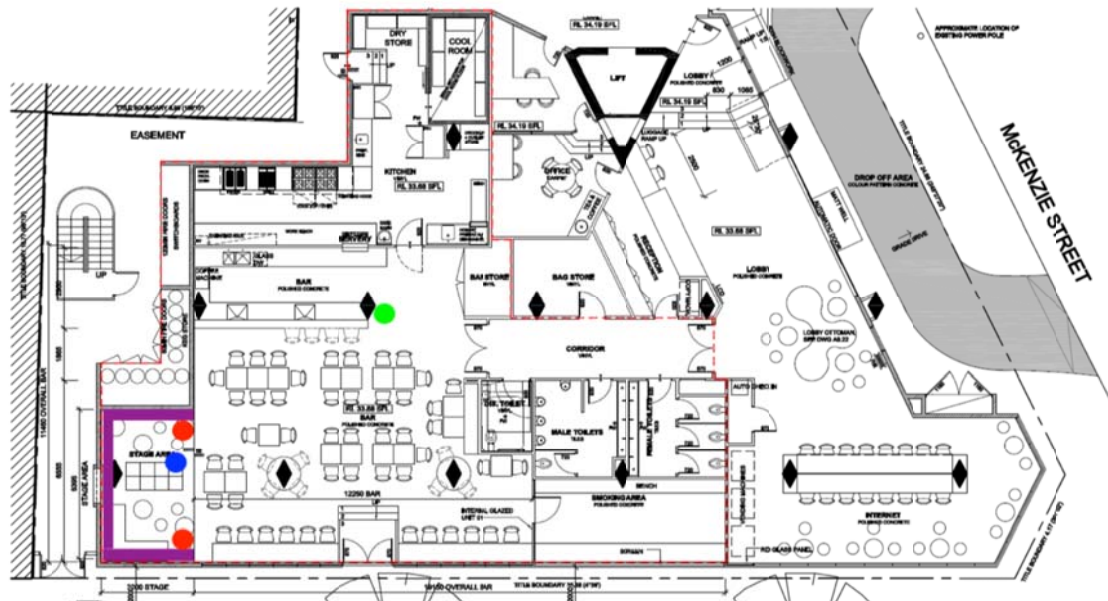
Figure 5: Details of Existing Acoustic Wall



Along Russell Street are operable glazed panels. The existing permit requires that the windows to the restaurant / tavern are shut at 8pm.

Two loudspeakers are proposed to the stage area, with a fold back speaker for performers and a speaker in the bar area (see Figure 6). Noise levels have been recommended in the applicant's acoustic report. However, the acoustic report does not make a recommendation for the installation of noise limiters.

Figure 6: Plan showing the location of loud speakers marked in red, blue and green dots



Clause 53.06 (Live Music and Entertainment Noise), sets out requirements for Live Music Premises that includes:

A live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.

The layout, speaker location and the constructed acoustic wall to the stage have been designed to minimise the potential noise emissions from the premises.

The existing operable windows facing Russell Street are a manageable aspect of the proposal. The closure of these windows should be imposed as a condition of the amended permit, should one issue, to ensure that these windows are always closed when live music is being performed on the premises. It is recommended that Condition 11 be amended to require that the operable windows to the ground level restaurant / tavern (with the exception of the smoking area) must be closed when live music is performed.

The recommended noise levels can also be enforced through the use of noise limiters to ensure the audio equipment cannot be tampered with for louder performances. The loudspeakers should also be restricted to be only those installed in the premises, with no other loudspeakers being permitted to be used on the premises. Such a restriction can be enforced on a permit. It is recommended that the Condition 18 which requires noise limiters to be installed for the function centre space at level 8 be amended to include the ground floor restaurant / tavern.

In addition, Condition 14 of the permit requires an acoustic assessment to be undertaken with just cause. The condition enables the responsible authority to at any time require an acoustic report, prepared by a suitably qualified acoustic engineer. The report must be to the satisfaction of the responsible authority and identify all potential noise sources and noise attenuation work required to address any noise issues to comply with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2. This condition is recommended to be amended to refer also to the ground level restaurant / tavern.

The proposed layout, design, construction and management of the premises, subject to the recommended conditions, would minimise the potential noise impact emanating from the premises. However the potential impact of the proposal on the existing and proposed residential land uses in the vicinity of the site must be further considered.

10.2 Whether existing or proposed noise sensitive residential uses will be satisfactorily protected from unreasonable live music and entertainment noise

The site is located within the Mixed Use Zone. The Mixed Use Zone is a residential zone, which includes the purpose ‘to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.’

The premises is located within the Hoddle Grid, where live music and entertainment venues are supported by State and local policies (Clauses 19.02-3S and 21.12). It is reasonable to consider that live music will be performed in this location and in an existing restaurant / tavern that operates with an on-premises licence.

The area is a high-density setting, predominantly developed with apartment buildings, noting that the site is on the fringe of the Capital City Zone (see Figure 7). Given this context, it is considered reasonable to contemplate that live music premises may be located within this area.

Figure 7: Zoning Map



10.2.1 Impact on existing residential land uses

The following existing residential properties are located within 50 metres of the Blue Moon Bar:

- At 390-394 Russell Street are the Victoria Hall Apartments containing 24 dwellings.
- At 336-376 Russell Street is a residential complex containing the Deco Tower (containing 96 dwellings), the Concept Blue Tower (containing 259 dwellings) and the Indigo Loft Apartments (containing 44 dwellings).
- At 27-39 MacKenzie Street is MacKenzie Tower that contains 388 dwellings.

State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2) provides the noise level criteria for indoor music venues for

different times of the day and night to protect residential amenity and the need for the occupants to sleep without noise disturbance.

Clause 53.06 sets out the following requirement when assessing live music premises and their potential impact on existing dwellings:

For the purpose of assessing whether the above noise standards are met, the noise measurement point may be located inside a habitable room of a noise sensitive residential use with windows and doors closed (Schedule B1 of SEPP N2 does not apply).

An acoustic assessment prepared by Broner Consulting was provided with the application. This Acoustic Assessment conducted testing from the rooftop of the existing building. In December 2018 the report was updated to refer to the impact of the proposal on all noise sensitive uses within 50 metres on the site. Further testing was requested to be carried out from the closest noise sensitive room, being the hotel room immediately above the Blue Moon Bar.

The Karaoke EPA Policy N-2 Compliance Assessment from July 2019 advises that noise level measurement was also conducted in the Blue Moon Bar itself between 10.36 – 10.53pm. Background noise level measurement was conducted in Room 111 later in the night between 11.01 – 11.16pm with the Karaoke music turned off and no other music playing. Based on the measured noise levels the acoustic testing determined that the Karaoke Music noise level complies with the EPA Policy N2 requirements.

The nearest noise sensitive rooms in the adjoining property of the Victoria Hall Apartments are separated from the existing restaurant / bar with a service corridor and an acoustic wall to the back of the stage area.

The applicant has demonstrated that the closest habitable room, that being the hotel room immediately above the Blue Moon Bar would have noise levels that would comply with SEPP -2 for karaoke music only. It is considered reasonable to extrapolate that other noise sensitive rooms located further from the site, but still within 50 metres of the premises would therefore also comply with the SEPP N-2 threshold. The applicant has demonstrated compliance with SEPP N-2 for karaoke music only and not for other types of live music performance. Other live music such as a rock bands could lead to excessive noise to existing noise sensitive uses and have an unreasonable impact on the amenity of existing dwellings.

Therefore, it is recommended that, should an amended permit be issued, the only live music that should be permitted is karaoke performance and the applicant has agreed to this condition.

10.2.2 Impact on proposed residential land uses

A 25 storey mixed-use building is proposed and has a permit issued for its construction at 23-29 Victoria Street. The approved development contains 86 dwellings.

It should also be noted that the planning permit (TP-2017-461) issued for a multi-storey building mixed used building that contains dwellings at 23-29 Victoria Street, under condition 25 of permit requires that an acoustic assessment be provided, certifying that noise levels be not greater than 35dB(A) for bedrooms, assessed as an LAeq, 8h from 10pm to 6am and not greater than 40dB(A) for living areas, assessed as an LAeq, 16h from 6am to 10pm. An acoustic assessment has been endorsed to form part of the permit with noise levels measured on 17 March 2017.

Given that the proposed live music is to the ground floor tenancy only, which is relatively contained, and that the applicant has demonstrated compliance with the relevant noise standards, it is considered that proposed noise-sensitive land uses are reasonably protected from the proposed live music premises for the purposes of karaoke only. It is therefore recommended that Condition 18 of the permit which restricts live music and entertainment on the premises be limited to only karaoke performance in the ground floor restaurant / tavern.

10.3 Whether the proposal adversely affects any existing uses

The assessment of the proposal also needs to consider the amenity impact of the proposal of the primary land use of the site itself, and other surrounding non-residential land uses. These surrounding uses include:

- The Eight Hour Reserve
- RMIT University
- The Old Melbourne Gaol
- Horticultural Hall, which is occupied by the Victorian Opera
- A petrol station
- Office, retail, food and drink and other commercial land uses

It should be noted that SEPP N-2 only sets out standards for noise levels for 'noise sensitive uses'. Noise Sensitive Use are defined in SEPP N-2 as dwellings, residential buildings used for accommodation and hospitals.

10.3.1 Impact on other land uses

The Blue Moon Bar is separated from other existing commercial and non-residential properties. This includes education use at the main campus for RMIT University, a rehearsal space for Victoria Opera at Horticultural Hall and other commercial land uses. There is no evidence to suggest that the provision of live music on the premises would have adverse impact on these other existing commercial land uses. It is considered that the proposal is compatible with these other uses, given the site's Central City location where a mix of land uses in a high density setting co-exist.

10.3.2 Impact on public land

The Eight Hour Reserve that is opposite the site, and predominantly used during the day, is not considered to be directly impacted by the proposal. From the information available, the inclusion of live music on the premises is not considered to directly lead to anti-social behaviour in the park.

10.3.3 Impact on the existing residential hotel

The Blue Moon bar forms part of the Space Hotel, which as a whole is essentially a residential hotel. The definition of a 'residential hotel' in the Melbourne Planning Scheme under Clause 73.03 is:

'Land used to provide Motel accommodation in serviced rooms for persons away from their normal place of residence. If it has at least 20 bedrooms, it may include the sale of liquor for consumption on, or off, the premises, function or conference rooms, entertainment, dancing, amusement machines, and gambling.'

As a residential hotel may include 'entertainment', it is considered reasonable to accept that live music may form part of the use of a residential hotel, provided it can be clearly demonstrated that the primary purpose of providing accommodation is not adversely impacted. The applicant has demonstrated that the closest noise sensitive room immediately above the Blue Moon Bar has noise levels within the acceptable levels set out under SEPP N-2 for karaoke performance. Therefore it is considered that the site itself would not be adversely affected by the karaoke performance within the ground floor restaurant / tavern.

10.4 Other matters raised by objectors

The objections received raise a number of other concerns that are not directly related to the current proposal to provide live music on site. These concerns mainly relate to patron behaviour and the loading / unloading of goods / equipment. These matters are not relevant to the current application. These matters have already been addressed by the existing permit conditions, the endorsed Venue Management Plan and the liquor licence issued for the premises. Any amenity related complaints or suspected breaches of the permit conditions can be made to Council's Planning Enforcement team and investigated at any time.

Condition 8 of the permit requires a Venue Management Plan. An updated Venue Management Plan would be required prior to the commencement of the permitted use.

10.5 Complaints history

The premise has had no recent history of noise complaints in the past three years, with the last of which was recorded in December 2016.

After receiving the current application, Council's Enforcement team investigated the venue, including conducting periodical spot checks at night. It was observed that, when music was being played onsite, this was not audible from the footpath.

From the information available, it appears that the venue has been operating in accordance with the current planning permit. Should any person have reason to suspect this not to be case, this can be further investigated by Council's Planning Enforcement team.

10.6 Other matters

The proposal also includes various minor internal alterations that in themselves do not require a planning permit, and are of no consequence to the relevant planning considerations for the current application.

10.7 Conclusion

It is considered that the proposal is consistent with the relevant policies and clauses of the Melbourne Planning Scheme, as discussed above, and that a

Notice of Decision to Grant an Amended Permit should be issued subject to the changes to the permit as expressed in Section 12 and Appendix of this report.

11. RECOMMENDATION

That a Notice of Decision to Grant an Amended Permit be issued subject to the changes to the permit as expressed in Section 12 and Appendix of the Delegate Report.

12. AMENDMENT TO PERMIT

Details of amendment:

- Addition Condition 1 (g) stating 'changes as shown on the Sheet TP02 'updated existing plan_ground floor' prepared by Agart Studio. Revision 'D' 5 July 2018'
- Amend condition 11 (External Doors) to add the words 'and when karaoke is performed at the end of the sentence.
- Amend Condition 12 to add the words 'the restaurant / tavern'.
- Amend Condition 14 to add the words 'and the ground level restaurant / tavern'.
- Amend Condition 15 (Noise Limiters) to add reference to the ground level restaurant / tavern'.
- Amend Condition 18 to add the words 'and karaoke performance in the ground floor restaurant / tavern the ground floor restaurant / tavern'.
- Amend Condition 20 to add the words 'and those detailed in the Acoustic Assessment by Broner Consulting dated July 2019.'

Appendix

Tracked changed permit conditions (changes in bold text)

The permit allows:

Partial demolition and construction of alterations and additions to the existing building (to nine storeys) for use as a hotel, ground floor restaurant / tavern, function centre, sale and consumption of liquor (on premises license) and waiver of the car parking requirements.

The following conditions apply to this permit:

- 1 Prior to the commencement of any demolition, construction or carrying out of works on the land, the applicant must submit to the Responsible Authority three copies of plans drawn to scale generally in accordance with the plans submitted on 11 July 2018 but further amended to show:
 - (a) Deletion of proposed demolition, alterations and additions to level 6 and the level 7 extension to be limited to match the footprint of the retained level 6 below.
 - (b) The level 8 alterations and additions to align with level 6 and level 7 on the MacKenzie Street interface.
 - (c) The roof plan and elevations amended to reflect the changes to levels 6, 7 and 8.
 - (d) An amended red line plan for the function centre and roof deck.
 - (e) Any changes required by the endorsed acoustic report.
 - (f) Any changes required by the endorsed waste management plan.
 - (g) Changes as shown on the Sheet TP02 'updated existing plan_ground floor' prepared by Agart Studio. Revision 'D' 5 July 2018.**

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

- 2 The development and uses as shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
- 3 Prior to the commencement of the development, including demolition or bulk excavation, a detailed construction and demolition management plan must be submitted to and be approved by the Responsible Authority. This construction management plan is to be prepared in accordance with the City of Melbourne - Construction Management Plan Guidelines and is to consider the following:
 - (a) public safety, amenity and site security
 - (b) operating hours, noise and vibration controls
 - (c) air and dust management

- (d) stormwater and sediment control
 - (e) waste and materials reuse
 - (f) traffic management.
- 4 A revised schedule and samples of all external materials, colours and finishes must be submitted to the satisfaction of the Responsible Authority prior to the commencement of the development. The schedule must show the materials, colours and finishes of all external walls, roof, fascias, window frames, glazing types, doors, balustrades, fences and paving, (including car park surfacing), outbuildings and structures.
- 5 Glazing materials used on all external walls must be of a type that does not reflect more than 15% of visible light when measured at an angle of 90 degrees to the glass surface, to the satisfaction of the Responsible Authority.
- 6 Provision must be made on site for the storage of trade waste, materials for recycling and garbage. The design of this area and the arrangements for collection must be to the satisfaction of Council's Principal Engineer — Environment.
- 7 No advertising signs shall be erected, painted or displayed on the land without the permission of the Responsible Authority unless in accordance with the exemption provisions of the Melbourne Planning Scheme.
- 8 Prior to the commencement of the permitted use, the applicant must submit a management plan, to describe:
- (a) Hours of operation for the tavern, hotel, function centre and roof top terrace use
 - (b) Details of the provision of music
 - (c) Security arrangements including hours of operation and management to minimise queues outside the venue
 - (d) Training of staff in the management of patron behaviour
 - (e) A complaint handling process
 - (f) Management of patrons who are smoking
 - (g) General rubbish storage and removal arrangements, including hours of pick up
 - (h) Bottle storage and removal arrangements, including hours of pick up
 - (i) Noise attenuation measures including the use of noise limiters, if applicable
 - (j) Management of any outdoor areas to minimise impacts on the amenity of nearby properties
 - (k) Electronic security measures to be used including but limited to lighting and surveillance equipment.

The management plan must be to the satisfaction of, and be approved by, the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. All activities forming part of the use must comply with the endorsed Management Plan unless the prior written consent of the Responsible Authority is obtained.

- 9 The licensed premises must operate and be managed in accordance with the conditions and provisions of the approved Management Plan to the satisfaction of the Responsible Authority.
- 10 The noise generated by the premises must at all times comply with the requirements of the State Environment Protection Policy, Control of Noise from Commercial, Industrial or Trade Premises within the Melbourne Metropolitan Area No. N-1, and Control of Music Noise from Public Premises No. N-2, to the satisfaction of the Responsible Authority.
- 11 The operable windows to the ground level restaurant / tavern (with the exception of the smoking area) must be closed between the hours of 8pm to 7am or **when karaoke is performed**.
- 12 The external doors from **the restaurant / tavern**, the level 8 function centre and external roof deck must be closed from 11pm through to close except for access and egress.
- 13 Prior to the commencement of the function centre use a report prepared by a suitably qualified acoustic engineer must be submitted to and approved by the Responsible Authority. The report must be generally in accordance with the recommendations contained within the acoustic assessment by Broner Consulting dated 13 November 2018 but amended to address the permit conditions. The recommendations contained within the approved acoustic report must be implemented and complied with to the satisfaction of the Responsible Authority.
- 14 In relation to the function centre use and the provision of live music on level 8 of the building **and the ground** level restaurant / tavern, the Responsible Authority may with just cause at any time require an acoustic report prepared by a suitably qualified acoustic engineer. The report must identify all potential noise sources and noise attenuation work required to address any noise issue and to comply with the conditions of permit. The recommendations contained within the acoustic assessment must be implemented and complied with to the satisfaction of and at no cost to the Responsible Authority.
- 15 Prior to the commencement of the use of the land for a function centre and **'performance of live music in the ground floor restaurant / tavern'** a noise limiter must be installed within the function centre space at level 8 **and the ground floor restaurant / tavern'**. The noise limiter must:
 - (a) Be set at a level specified by the endorsed acoustic report and relevant conditions of permit;
 - (b) Be maintained and operated at all times that music is played; and

- (c) Be to the satisfaction of the Responsible Authority.
- 16 The premises shall only be used for the service and consumption of alcohol between the following hours:
- (a) Monday to Sunday 11.30am to 1am the following morning for internal areas
 - (b) Monday to Sunday: 11.30am to midnight for external ground floor smoking area and external roof top terrace.
- Except with the prior written consent from the Responsible Authority.
- 17 Except with the further permission of the Responsible Authority, the maximum number of patrons within the licensed premises shall not exceed:
- (a) 200 on the roof top terrace; and
 - (b) 200 in the tavern.
- 18 No amplified live music or entertainment is permitted on the premises, other than within the internal function areas on level 8 of the building **and karaoke performed in the ground floor restaurant / tavern**, without the written consent of the Responsible Authority.
- 19 Background music only is permitted on the Level 8 roof terrace to the satisfaction of the Responsible Authority.
- 20 No loudspeaker, amplifier, relay or other audio equipment must be installed or used outside the building other than on level 8 of the building **and those detailed in the Acoustic Assessment by Broner Consulting dated July 2019.**
- 21 The designated manager must conduct the premises so as to ensure that the operation does not cause or permit any undue detriment to the amenity of the area to arise out of or in connection with the use of the tavern, function rooms or roof top terrace to the satisfaction of the Responsible Authority.
- 22 A clear sign must be attached to an internal wall in a prominent position adjacent to the entry / exit point to advise patrons to leave in a quiet and orderly fashion, to the satisfaction of the Responsible Authority.
- 23 Empty bottles from the operation of the premises must be placed into a bag and deposited into recycling bins quietly so as not to cause disturbance to adjoining and nearby residents, to the satisfaction of the Responsible Authority.
- 24 No bottles or other waste material may be removed from the site between the hours of 9pm on any day and 7am the following morning.
- 25 The rooftop deck must only be available to hotel or function guests and must only be open between the following hours:
- (a) Monday to Sunday 7am to midnight.
- 26 All garbage and waste material must be stored in an area set aside for such purpose to the satisfaction of the Responsible Authority. No goods, garbage,

packing material or similar material shall be left outside the venue on adjoining footpaths or roads.

- 27 No garbage bin or waste materials generated by the permitted use shall be deposited or stored outside the site and bins must be returned to the garbage storage area as soon as practicable after garbage collection.
- 28 All new or altered portions of road (including the provision of footpaths, crossings, public lighting, street trees, pavement marking and signage) in Russell Street and MacKenzie Street must be constructed prior to the occupation of the development, in accordance with plans and specifications first approved by the Responsible Authority — Council's Group Manager Engineering Services.
- 29 Prior to the occupation of the development hereby approved, a storm water drainage system must be constructed for the development and provision made to connect this system to Council's storm water drainage system in accordance with plans and specifications first approved by the Responsible Authority — Council's Group Manager Engineering Services.
- 30 Existing street levels in Russell Street and MacKenzie Street must not be altered for the purpose of constructing new vehicle crossings or pedestrian entrances without first obtaining approval from the Responsible Authority — Council's Group Manager Engineering Services.
- 31 No street tree adjacent to the site may be removed, lopped, pruned or root-pruned without the prior written consent of Council's Manager Parks and Recreation.
- 32 No vehicle may reverse out of the site into MacKenzie Street.
- 33 Any cost associated with the temporary or permanent relocation of the light pole in MacKenzie Street shall be met by the applicant and the location of the light pole must be to the satisfaction of the responsible Authority and the relevant electricity authority.
- 34 Prior to the commencement of the development on the land, the owner of the land must enter into an agreement with the Responsible Authority pursuant to Section 173 of the *Planning and Environment Act 1987*. The agreement must provide that the windows / openings on the boundary must be removed when the adjoining property is further developed in a manner that the Responsible Authority considers would affect these windows / openings.

The owner of the land must pay all of the City of Melbourne's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.

- 35 Prior to the commencement of the use of the function centre, a Waste Management Plan (WMP) shall be prepared, submitted and approved by the Melbourne City Council - Engineering Services. The WMP should detail waste storage and collection arrangements for the approved Function Centre 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 - Engineering Services.

- 36 This permit will expire if one or more of the following circumstances apply:
- (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 four 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 permit if a request is made in writing within 12 months after the permit expires and the development started lawfully before the permit expired.