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Date of meeting: * Tuesday 1 June 2021

Agenda item title: Agenda item 6.2 Planning permit application TP-2020-764 221-229 Faraday St Carlton

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Please write your submission in the space provided below and submit by no later than 10am on the day of the scheduled meeting. Submissions will not be accepted after 10am.

Submission to Future Melbourne Committee

Meeting June 1 2021

Agenda Item: 6.2 Planning Permit Application TP-2020-764 221-229 Faraday Street Carlton

Key points:

- Assessment process for TP-2020-764 221-229
- Resident responses to CoM planning officer decision rationale
- Resident requests for additional permit conditions and/or remedies to be undertaken by applicant to mitigate potential adverse amenity issues

This submission to the Future Melbourne Committee re Permit TP-2020-764 draws on combined substance of resident amenity concerns expressed by a group of Dorrit Street Carlton resident/owners who lodged an objection to the City of Melbourne re the above permit application and are known to the writers who have sought feedback to inform the discussion in the submission.

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Disclaimer: The information in this submission is of a general nature based on what was available to the writers

prior to Future Melbourne Committee meeting June 1 2021. It is not intended as advice for any specific circumstance or replacement for responsible authority or professional legal advice.

This submission to the Future Melbourne Committee relies on plans, policies and guidelines of the City of Melbourne (CoM) and the Victorian Commission for Gambling and Liquor Regulation (VCGLR) and the VCGLR Design Guidelines for Licenced Venues to inform the discussion.

City Of Melbourne planning

The City of Melbourne has an integrated planning framework to ensure its strategies fit together to achieve the vision of growing Melbourne as a bold, inspirational and sustainable city.

The strong theme evident in the elements of the three key City of Melbourne planning strategies is of Melbourne as liveable, safe and community focussed city which cares for the wellbeing of all of its residents by adopting sensitive community focussed planning approaches.

(1) Future Melbourne “is the City of Melbourne 10 year plan to grow Melbourne as a global city and as one of the ten most liveable and sustainable cities in the world.

Goal 2 of the 2026 Future Melbourne Plan is A city for people. It is accessible, affordable, inclusive, safe and engaging. It promotes health and wellbeing, participation and social justice. Family friendly design in city planning puts the community at the forefront.

Priority 2.1 A Great place to be. Melbourne will be a great place to live, work and play at every stage of life. It will be welcoming, accessible, safe, clean and community focussed.

Priority 2.3 Designed for and by people. A set of well–designed precincts or villages that celebrate and draw from their heritage, and where decisions reflect the priorities and views of an inclusive community.

Priority 2.8 A family–friendly city. Melbourne will have neighbourhoods suitable for raising children.

(2) 2017–2021 Council Plan incorporates the Wellbeing Plan views health and safety as vital to a liveable city.

Having an integrated plan drives a focus on health and wellbeing across the organisation and strengthens the mandate for health and wellbeing action. A priority of the plan is to “Partner to create an environment that feels safe and minimises harm, including from alcohol and drug use and violence against women and children.”

(3) Melbourne Planning Scheme (MPS) purpose includes

- express State, regional, local and community expectations for areas and land uses
- encourage a high standard of urban design and amenity
- recognise the need for, and contribute towards health, wellbeing and safety (ref:01,011)

Victorian Commission for Gambling and Liquor Regulation is the independent statutory authority established under the Victorian Commission for Gambling and Liquor Regulation Act 2011, responsible for regulating all forms of liquor licence activities in Victoria. This submission adopts the VCGLR definition that “amenity is defined as the quality that an area has of being pleasant and agreeable.”

VCGLR Design Guidelines for Licenced Venues support operators of licenced premises in creating safer venues

without compromising the elements that make venues unique and attractive. “By ‘designing in’ elements to minimise opportunity for anti-social behaviour and negative amenity impacts the importance of the building and its design features are at the forefront in determining whether a licenced premises is suitable to be placed near a residential area.” “Creating safe licenced venues and surrounds is good for patrons, business and the community.”

Delegated Planning Application Report

1 Subject site and surrounds

1.1 The site

Dorrit Street Carlton is in a Residential 1 Zone.

221–29 Faraday Street Carlton is in Commercial 1 Zone

1.2 Surrounds

Residential Zone

Dorrit Street established as a residential street in the 1860’s, as seen in the largely intact Victorian streetscape on the eastern side, with 25 residences. The western side has 36 residential flats owned by the Women’s Hospital and built in the 1970’s, 27 of which front Dorrit St or Faraday Lane Carlton.

There are over 200 residents living in this mix of privately owned residential properties and in Women’s Hospital owned residences on the west side. There are also a growing number of ‘shoptop’ residents living above Lygon Street businesses that face onto Faraday and Lygon Lanes.

An aerial view of surrounding area shows the close juxtaposition of Dorrit St Residential Zone and Faraday St Commercial Zone and the close proximity of residences to the subject site. (ref P11 Fig 4) Planning Application Report).

There were 24 Dorrit Street owner/resident objectors to the permit application, including the Womens Hospital as the property owner and one of their tenants living directly opposite the rear of the subject site.

Commercial Zone

There are a mixture of planning zones in close proximity of the subject site – Residential 1 (to the south), Mixed Use Zone and Public Use Zone (to the west) – indicating the importance of assessing the impact the business operational functions will have on the surrounding area.

Reference to Figures 1,2,3,4 contained in the above Planning Application Report indicate the location and size of the subject site in relation to the adjacent Residential Zone and other licenced businesses in the Commercial Zone.

The Melbourne Planning Scheme characterises the planning focus attributed to the area as

“Lygon St (north of Grattan St) continues to provide for the convenience retail needs of the local residents and working community while discouraging the encroachment of restaurants and entertainment uses. Lygon Street (south of Grattan Street) is the regional restaurant and entertainment focus.” (ref: MPS 21.06–3, MPS 22.15)

3 Applicant Proposal

The Planning Application submitted to CoM on 4/2/21 by Metropol on behalf of the permit applicant describes the intention of the business Venue Management Plan as:

- “Offering liquor associated with restaurant and cocktail lounge
- Liquor able to be consumed both with and without food.
- Liquor served within the restaurant via table service only.
- Within the cocktail lounge liquor will be sold via bar service.
- Entrance to cocktail lounge via rear laneway(Faraday Lane) “to strengthen the municipalities laneway character and offer an intimate and exclusive space for patrons”
- The proposed patron capacity is 400 with seating provided 410 patrons including the seating capacity of 50 in the proposed cocktail lounge
- Up to six cocktail functions (weddings, birthdays) will be held per year which will allow for occasional larger patron capacity of 500.
- No amplified music played at the venue, with music limited to background music

Operating hours

Food service Liquor service

Monday – Wednesday 6am – 10:30pm Monday– Wednesday 10am – 11pm

Thursday–Saturday 6am – 1am following day Thursday–Saturday 10am– 1am following day

Sunday 6am – 10:30pm Sunday 10am – 11pm

3.1 Plans/reports and residential/commercial interface conditions

Fig 5 Drawing showing the proposed layout and redline plan* Ground Level Liquor licence plan 6/11/2020

Venue Management Plan Restaurant and ancillary bar – 221–229 Faraday St Carlton 2/2/2021

NB Fig 5 Drawing showing the proposed layout and redline plan* was out of date when this Planning Application Report was prepared. This could affect the discussion and decisions made by the CoM planning officer, especially the areas likely to be used by patrons including areas outside the boundaries of the site ie. public spaces and footpaths, as required in MPS 22.22–4.Application Requirements.

A revised Drawing dated 27/3/21 was available, however, the writers don’t know if it was submitted to CoM for assessment.

On the revised Drawing toilets are now located where the cocktail bar in Fig 5 is shown and plumbing works for this toilet block are already in place.

Steel works for a planned mezzanine floor space that will house the cocktail bar are also in place. Works for a planned mezzanine floor require the roof to be raised. As the building has heritage significance a CoM Permit application is required. The mezzanine floor could have implications for increasing patron size and cocktail bar activity resulting in resident amenity being affected.

The revised Drawing indicates a staircase leading to the mezzanine floor located on the ground floor at the rear of the building adjacent to the rear door leading onto Faraday Lane.

The planned increase in internal size of the building plus the expressed intention of the business to apply for a permit to use the footpath in Faraday Street is of concern for Dorrit Street residents.

Residential/Commercial interface

Number 70 Dorrit Street is situated 4 metres across Faraday Lane opposite the (south) rear boundary of subject site. On the side of the house facing onto Faraday Lane there are two windows with three more windows at the front (4 of which are bedroom windows).

There are five glazed windows on the (south) rear border of the subject site facing onto 70 Dorrit St across Faraday Lane. They are original windows and are intended to be retained. These windows were not acknowledged as existing and so were not able to be considered as a potential resident amenity problem in the assessment process.

There are several references throughout the Planning Application Report that refer to there being no windows or openings on the south rear border of the subject site and facing onto Faraday Lane, which have been used to inform various recommendations and decisions of the CoM planning officer when referencing noise impacts from the site. Refer P1 (10) P17, 18, 19

"P17 notes "The site does not have any openings ...that have direct interface with a sensitive area, The lack of windows ...at the south, east and west boundaries of the site will mitigate unreasonable noise travelling to the residential windows to the south of the site."

Referencing that the site does not have any openings on the south border is perplexing. Apart from the 5 windows there are also two doors – 1 single door, proposed to be used for patron access the Cocktail Lounge off Faraday Lane, and 1 double door leading to the kitchen area. All 24 Dorrit Street residents who submitted objections were opposed to the single door, and Faraday Lane, being used by patrons and there is significant discussion in the Report on this topic.

Six Women's Hospital residential flats are situated 20 metres from the south boundary of the site on the west side of Dorrit Street, each with bedroom and living room windows and open balconies facing onto Faraday Lane. Three private flats at 75 Dorrit Street on the corner of Faraday Street are also 20 metres from the subject site. In addition to these ten residences there are another five residences all within 30 metres of the subject site which is a key deciding factor in determining limits on trading hours after 11 pm for licenced premises.

Melbourne Planning Scheme Clause 22.22.3 Commercial Zone specifies "Hours of operation of licenced premises in the Commercial Zones should be limited to: 11 pm if the licenced premise is within 30 metres of a residential zone;

I am elsewhere.

Reference to Figures 1,2,3,4 contained in the above Planning Application Report provide graphic examples indicating the location and size of the subject site in relation to surrounding businesses and residences.

The subject site is a large building approximately equivalent in area of the three adjacent restaurants/shops in Lygon Street. It is also approximately equivalent in area of the five adjacent Dorrit St properties at the south border.

Reference to Figures 1,2,3,4 contained in the above Planning Application Report indicates the location and size of the subject site in relation to surrounding businesses and residences.

3.2 Summary of proposed use of the site

“The CoM planning officer cites “The most appropriate characterisation of the proposed use of the site is as a restaurant, regardless of any cocktail lounge or bar. MPS Clause 73.03 provides the following definition of a restaurant: “Land used to prepare and sell food and drink, for consumption on the premises. It may include:

a) entertainment and dancing; and

b) the supply of liquor other than in association of the serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time.”

There is no characterisation for a cocktail lounge/bar or cocktail special event in the MPS that residents were able to find.

There is no assessment of the adequacy of available space needed to set out seating for 75% of the 500 proposed patrons for private events as Fig 5 seating layout discussed above is not applicable.

11. Consultation

The CoM planning officer notes that there were 24 objections to permit TP-2020-764 and that many of the objectors took specific issue with the use for patron entry of Faraday Lane via the rear door.” “The applicant was advised that the rear door to Faraday Lane adjoins the Residential 1 Zone and the use of the door for patrons would not be appropriate”.

“The objectors were contacted by the officer and informed that the applicant had accepted the change to the rear door being used for patron access and that a permit condition to restrict the use of the door was being considered.

The objectors were asked if this would address their concern and if they would be willing to withdraw their objection.” “One objector withdrew.”

It should be noted that the applicant also contacted objectors by letter boxing objectors re the use of the laneway and also asking them to withdraw their objection. Further contact came via email from a Carlton Residents Association member also asked objectors to withdraw their objections.

13. Assessment

The CoM planning officer assessed the applicant request for planning approval to ‘use the land to sell and consume liquor’. The key assessment items for consideration include:

- Policies relating to licenced premises
- The objections received

13.1 Licenced premises

Melbourne Planning Scheme Clause 22.22 POLICY FOR LICENCED PREMISES THAT REQUIRE A PLANNING PERMIT applies to the consideration of all planning permit applications that involve the sale and consumption of liquor in the municipality. This policy applies where a permit is triggered under Clause 52.27 LICENCED PREMISES applies when a permit is required to use land to sell or consume liquor under the Liquor Control Reform Act 1998.

CoM planning officer decision:

“The proposal is an acceptable response to Clause 52.27 and Clause 22.22 (above) for the following reasons: (for easier referencing these have been numbered)

1. “The proposal reasonably limits the opportunity for adverse impacts resulting from the sale and consumption of liquor. The licence is proposed to relate to a restaurant where the presence of food will ensure liquor is reasonably consumed.”
2. “The site does not have any openings or outdoor areas that have a direct interface with a sensitive use. The lack of windows and outdoor areas at the south, east and west boundaries of the Site will mitigate unreasonable noise travelling to the residential windows to the south of the Site.”
3. “The applicant has been advised that the use of the rear doors by the patrons to Faraday Lane is not supported as this may create potential amenity relating to noise that would impact the residential uses to the south.”
→ It is recommended that a permit condition requiring the door not to be used be applied to any permit issued to preserve the amenity of the surrounds.”
4. “The proposal relates to a restaurant which is a lower risk venue when considering cumulative impacts for liquor consumption. While there are several licenced restaurants within 100 mtrs, many of these licences relate to restaurants. The addition of one more licence for a restaurant use is not likely to introduce a negative cumulative impact as the primary land use relates to the consumption of food.”
5. “The proposal responds to the purpose of the Commercial 1 Zone which seeks to provide a vibrant mix of uses. The lack of outdoor areas and low risk use (restaurant) ensure that this can be achieved without compromising the amenity of the nearby residential uses.”
6. The site is well serviced by public transport and easily accessed by taxis/ride share options which ensures that people can safely leave the premises.”

Resident response re the above

1. This is basically saying that Dorrit Street residents will not have any amenity effects because the patrons have been in the presence of food and they will have consumed it reasonably. But this doesn't account for patrons using the cocktail bar where

- Liquor able to be consumed both with and without food.
- Liquor served within the restaurant via table service only.
- Within the cocktail lounge liquor will be sold via bar service

It's not the consumption of liquor that residents are concerned about as this is a function of many businesses

nearby, it's more the late night use where food is not served and alcohol is served via bar service.

2. This the issue discussed earlier re there being no windows and doors onto Faraday Lane.

3. The issue here is whether the permit condition ensures the door will not be used. The residents have requested noise and security measures to assist in stopping its use (refer permit conditions)

4. Basically this says one more restaurant wont be noticed as there are already so many nearby- but there are no late bars or event businesses with such large patron size (up to 500) that abut the residential zone, again with precedent setting potential.

5. This point combines the lack of outdoor areas and the restaurant argument. And its not really a vibrant mix of uses if it means people making noise as they leave the premises, possibly accessing their cars are in Dorrit Street.

6. They may also be leaving to walk to public transport but will they do it quietly?

The reason for looking at the 6 assessment points above is because they are a recurring theme of all other decisions relating to potential resident amenity issues.

It is also important to examine the reasons relied on by the CoM planning officer to assess that:

“The proposal reasonably responds to the policy requirements of Clause 22.22–3 relating to – noise, hours, and patronage.”

The performance standards at Clause 22.22–3 are:

13.1.1 Noise

Clause 22.22 states licenced 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 Environment Protection Policies (SEPP)
- are regulated and monitored, making use of noise limiters where appropriate.

The CoM officer states that with regard to noise the proposal is acceptable for the reasons

1) The use will have background music only and does not seek to include amplified music. Noise limiters are not required as proposal is for a food based use rather than a night club.

2) The Site does not have any openings or outdoor areas that have a direct interface with a sensitive use. The lack of windows at the south, east and west boundaries will mitigate unreasonable noise travelling to residential windows adjacent to the site. (this statement is completely untrue as there are 5 windows and two doors that are not mentioned)

3) The applicant has been advised that the use of the rear doors by patrons to Faraday Lane is not supported as this may create potential amenity impacts relating to noise that would impact the residential uses to the south.

4) Noise impacts relating to the collection of waste have been considered and will be required to occur within the recommended EPA as well as the recommended hours at and MPS 22.22 (before 7am and after 9pm). This will ensure noise from waste will not be unreasonable.

Resident response

There is no mention of strategies to reduce noise such as crowd control, acoustic treatments of windows or baffling for equipment. Not to mention the really big problem bottles being dumped into bins stored in the in the laneway. Refer (2) above: It has been noted earlier there are 2 doors from the subject site leading onto Faraday Lane and 4 metres opposite a residence with bedroom windows facing the doors – 1 door (near the toilet block) and 1 door (leading to the kitchen area). There will definitely be noise travel via these two doors and plus from the 5 windows. Given the location of the windows and doors near noisy interior spaces, noise will travel into nearby residential windows via Faraday Lane (plus noise echoes into Lygon Lane as well) and will reach the side of the residence 4 metres on the other side of the lane, and across Dorrit Street to the Womens Hospital residences.

VCGLR Design Guidelines for Licenced Venues “noise impacts on adjacent properties can have a negative impact on the health and wellbeing of neighbours” and “Noise complaints about venues generally relate to noise emissions – where noise escapes the venue and is audible from the street or adjacent properties” via air gaps where walls and ceilings meet, around window frames, windows without acoustic sealing, air conditioning and mechanical exhaust system and doors.(ref: Element 3)

13.1.2 Patron Numbers

MPS Clause 13.1.2 “The maximum number of patrons permitted in a licenced premises should be limited to manage any unreasonable impact on the amenity of the surrounding uses and area and maximum occupancy capacity of the premises, as determined by the Building Act 1993”

COM planning officer:

The applicant has stated they are willing to accept a reduction in patron numbers which to reduce patronage from 500 to 350. This reduction is on the proviso that a maximum number of 500 patrons is permitted up to 6 times a year to allow for special events such as weddings and birthdays.

This is a reasonable suggestion to reduce likelihood of adverse amenity impacts relating to patron noise.

While the proposed licence is for a restaurant, proposed patron reduction will reduce likelihood of noise and is supported. It is recommended a permit condition be applied to any permit issued restricting the use to 350 patrons with exception of up to six special events per calendar year.

Resident response

This submission proposes that 200 should be the maximum number of patrons permitted at the premises at any time.

The applicant accepting a reduction in numbers to 350 (which is still too high) down from 500 (which is unreasonable given the proximity to a residential zone) but still proposes 500 patrons for special events with people arriving and leaving as groups of people do for weddings and birthdays.

Residents do not agree with the assertion that the licence is for a restaurant only and it is the other two business operational functions in any case – a late night cocktail bar and large private 500 patron functions that are more likely to cause adverse residential outcomes.

Patron limit at 200 is in line with similar licenced businesses nearby.

Venue Capacity limit

Johnny's Green Room 200 stand up capacity (serve food?)

Jimmy Watson's Max 200

Lagoon Dining Max 100

University Cafe Max 162 indoors and 72 footpath

Of the above licenced businesses the first three have a focus on serving liquor, however, they have designed the areas within their space so that it splits up functions and patron groups and they still serve food in conjunction with alcohol. Johnny's Green Room is designed so patrons enter via a private corridor off Lygon Street well away from any residential areas and Jimmy Watsons has several small intimate spaces for patron groups. They don't have large groups of 500 patrons.

The more patrons the more people noise as they leave and move into residential spaces regardless whether from a restaurant or after a special event such as a wedding. Patrons attending events are more inclined to leave at the same time once the event is over so the potential for a mass of 500 people moving into public spaces, including Dorrit Street, at 1am has huge potential to cause amenity problems, more so than leaving a restaurant at different times in small groups at around 10:30 pm.

This creates potential for personal safety and anti-social issues to arise. The large number of patrons increases the noise from the venue.

The VCGLR Design Guidelines for Licenced venues acknowledges that 'patron use of public spaces can result in conflict with other patrons and passers-by, general loitering and antisocial behaviour' with 'impacts on adjacent space or private property, include littering (bottles, cigarette butts), damage to property, theft or assault and road safety issues associated with intoxicated patrons' ... linked to when patrons leave a venue for the night". (ref: Element 1)

For permanent late night liquor licences, in the inner city municipalities of Melbourne... the VCGLR will only consider applications to grant, relocate or vary conditions if licensees meet certain conditions. This includes, but is not limited to, a proviso that the patron capacity does not exceed 200 persons." (ref: VCGLR Design Guidelines Element 1)

Hours of operation

It is recorded that food service will close at 10:30pm while the cocktail lounge will continue operating to 11pm/1am serving liquor via bar service. In essence the cocktail lounge then becomes a stand-alone enterprise and during that time it is operating independent of the preparation and serving of meals. The predominate activity is therefore serving of liquor in this instance.

The proposal to host/offer six private cocktail events per year for 500 patrons also highlights the focus on serving of alcohol rather than the preparation and service of meals. It also raises resident concerns that it is operating as event destination for large private functions which could expand in the future.

22.22-3 Melbourne Planning Scheme cites "Hours of operation of licenced premises in the Commercial 1 zone should be limited to:

- 11pm if the licenced premise is within 30 metres of a Residential Zone; 1am elsewhere

Applications to extend operating hours beyond the hours otherwise specified for indoor and outdoor areas within the policy will only be supported where the further extension of hours will not unreasonably impact on the amenity of the surrounding area."

"The site is within 30 metres of a residential zone and the application seeks to vary the recommended hours of Clause 22.22 by operating until 1am from Thursday to Saturday; the application seeks to operate until 11pm on all other days"

"In this instance the variation is supported for the following reasons

1. The site does not contain outdoor areas or openings that share an interface with a residential zone. The Site does not have any openings that have a direct interface with a sensitive use.
2. The applicant has been advised that the use of the rear doors by patrons to Faraday Lane is not supported as this may create potential safety amenity impacts relating to noise that would impact the residential uses to the south.
3. The restriction of the rear doors to Faraday Lane by patrons means patrons can only exit into Faraday Street. Directing people away from the residential zone.
4. The proposed licenced premises relates to a restaurant which does not contain the same risk of noise or disturbance associated with a bar or night club.
5. The proposal seeks only to allow background music and will not contain live music or entertainment."

Resident response:

There is good reason to limit a licenced business from staying open until 1am within 30 metres of a residential zone as reflected in the intent of the 22.22-3.

Permitting the business to operate to 1am is not justified especially when it could likely trigger residential amenity issues including anti-social behaviour.

- There are 10 residences within 30 metres of the site, one 4 metres from the rear boundary to the south which refutes the above statement there is no interface with a residential zone.

- there are 5 windows 2 doors on the south boundary of subject site that interface with residences within 30 metres that will be affected
- all Dorrit St residences will be affected when patrons are in the area past 1am, many of whom will enter Dorrit Street to access cars, share rides, public transport, walk home etc. And these patrons haven't been at a restaurant until 1am they have been at a cocktail lounge offering bar service without food.
- Background music should not be heard outside venue unless it is not background music which would trigger CofM complaint for violating permit conditions.

People entering and leaving a drinks only style cocktail lounge especially in the early morning hours, and milling in laneways or footpaths outside residences, have significant nuisance potential.

To access Faraday Lane entry must be via Dorrit Street – if people come in off Faraday Street – they pass by the fronts of at least 10 residences and if off Grattan Street the fronts of every residence (that's if they are on foot). If in cars they must pass or stop in front of all 40 residences as Dorrit Street is one way for traffic as is Faraday Lane. Permitted trading hours are excessive in comparison with other businesses trading on Lygon St and in surrounding area (examples below).

Other licenced businesses in the area.

Venue Trading hours Conditions

Jimmy Watson 11pm –

King and Godfree Rooftop 11pm Sun–Thur and midnight (Fri and Sat) –

Lagoon Dining 1am predominant activity must be preparation/serving of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

Papa Ginos 1am predominant activity must be preparation/serving of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

University Cafe 12am (11pm Sun)

predominant activity must be preparation/serving of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

Crinitis 12am (11pm Sun and all times on footpath) predominant activity must be preparation/serving of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

Docs (Drummond St) 12am (11pm Sun and all times on footpath) predominant activity must be preparation/serving

of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

RECOMMENDATION

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

What will the Permit allow?

The preamble for the recommended amended permit should read:

Use of the land to sell and consume liquor in accordance with the endorsed plans.

Conditions

The following conditions are recommended to be included in the permit

Compliance with Endorsed Plans

The use as shown on the endorsed plans must not be altered or modified without the prior written consent of the responsible authority

Patronage

The maximum number of patrons on the premises must be no more than 350 at any one time with the exception of special events where 500 patrons are permitted up to six times per calendar year or with prior written consent of the responsible authority.

Resident response:

The proposed patron capacity is 350–500 is excessive and sets a new precedent for late night venues in the area.

Proposed resident amendments

- Patron limit of 200 in line with surrounding similar businesses
- Install tamper proof counting devices to measure the number of patrons entering the premises (this will also assist to control overcrowding).

Access

The southern door(s) to Faraday Lane must not be used by patrons on any day (or night) to the satisfaction of the responsible authority. This does not apply in the event of an emergency.

Resident response

- Single door at south boundary to Faraday Lane must be a dedicated emergency exit
- Door to remain closed at all times, not to be used for patrons, deliveries or staff exit.

Proposed resident amendments:

- Install self-closing solid core doors comprising continuous block, slide and rail, mineral composition and particle board on all doors that open onto Faraday Lane

- Install tamper proof emergency exit measures with alarm activated if opened
- Install security cameras in Faraday Lane to monitor any use of door

“Surveillance cameras for entry and exit and to record patrons arriving and leaving; as a crime deterrent; for enhancing community safety (the visible presence of surveillance cameras can enhance perceptions of safety within the community, which is constructive in developing public confidence.” VCGLR

Hours of operation

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

Monday- Wednesday 10am – 11pm

Thursday – Saturday 10am – 1am the following day

Sunday 10am – 11pm

Proposed resident amendments:

- Hours of operation limited to 11pm on all days, including functions no exemptions

Venue management

Prior to commencement of the use the applicant must submit an updated Venue Management Plan (VMP) generally in accordance with the VMP prepared titled “Restaurant and ancillary bar – 221–229 Faraday Street Carlton dated February 2021. The updated VMP must be updated to reference a reduction in patron numbers to 350 patrons with the exception of special events where 500 patrons are permitted up to six times a year.

The updated VMP must be to the satisfaction of, and be approved by, the responsible authority. Once approved the VMP will form 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 prior written consent of the responsible authority.

Resident response:

Place a staff member or crowd controller at points of exit to monitor patron behaviours people move on to the street including

- Directing patrons to Faraday St for uber/taxi pick up
- Controlling patrons loitering in Dorrit St and access to laneway
- Controlling patron behaviour directly outside venue
- Include plans, policies or house rule strategies for private events submitted for public reference for example re music use of acoustic sound systems, entertainment, patron use of surrounding public spaces including Dorrit St footpaths and laneways

Proposed resident amendments:

Business to place staff member or crowd controller at points of exit to monitor patron behaviour as people move onto the street (as per VCGLR guidelines) including

- directing and monitoring patrons to Faraday Street for uber/taxi pick up

- directing and monitoring patron use of Dorrit Street and access to Faraday Lane

Business to publish resident communication policy re informing residents when big events are planned

- Provide copy of house rules for events
- Letter box or public notice re upcoming special event including traffic and patron control measures

Tables and chairs must be placed in a position so as to be able for at least 75% of patrons attending the premises at any time.

At all times when the premises is open for business, a designated manager must be in charge of the premises.

The predominant carried out on the premises during all trading hours must be the preparation and serving of meals for consumption on the premises at all times.

Resident response

This submission does not agree with statements made in many instances that “the predominate activity of the proposed business is as a restaurant engaged in the preparation and serving of meals”.

It also does not agree with the assertions that “the licence is proposed to relate to a restaurant where the presence of food will ensure liquor is reasonably consumed. And as such “the proposal reasonably limits the opportunity for adverse impacts resulting from the sale and consumption of liquor”.

The concerns raised by Dorrit Street residents in their objections and the adverse impacts they genuinely feel will result from the proposed development should not be overlooked and the permit granted because “the addition of one more licence for a restaurant use is not likely to introduce a negative cumulative impact as the primary land use relates to the consumption of food.”

- Approval of the permit as recommended in this report sets a precedent for late night style bars to proliferate in Commercial Zone abutting the Dorrit Street Residential Zone.
- The operational functions of the applicant business has potential to change the balance between commercial interests and residential amenity which currently exists between Dorrit St residents and businesses in Lygon Street that abut the Residential Zone (especially for residences on the eastern side which share Faraday and Lygon Lane with these businesses.

It also has potential to alter the south side of Faraday Street. Selling of liquor without food via bar service is not currently, nor has it been in the past, a function of any business in the Commercial Zone on south side of Faraday St from Rathdowne St to Swanston St where subject site is located.

Waste Management

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 practicable after garbage collection, to the satisfaction of the responsible authority.

Resident response:

Noise and litter impacts on neighbouring residents, in particular from bar and function activity, with large volumes

of empty bottles and movement of waste bins early morning or late night.

There is no stated reference for requirement for onsite bottle crushers although reference to bottle crushers was included in developer planning application as well as CofM assessment officer report.

Proposed resident amendments:

- Inclusion of onsite bottle crushers for recycling all bottles and glass (in addition to onsite storage of waste), and noise proof enclosures, with restrictions of hours of use to after 7am and before 9pm
- Inclusion of requirement to ensure 'regular cleaning, litter removal and maintenance checks of footpaths, laneways and public space adjacent to venue.'

Noise

The noise generated by the premises must at all times comply with the requirements of the State Environment Protection Policy, (Control of Noise from Commerce, Industry and Trade) No. N-1 and State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 to the satisfaction of the responsible authority.

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 State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 and State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2. The recommendations of the report must be implemented by the applicant to the satisfaction of the responsible authority.

Proposed resident amendments

- Install acoustic sealing on 5 windows that face Faraday Lane via heavy laminated glaze (>10.38mm) or secondary glazing to create air space between window panes (50-150mm)
- Install baffling and noise control devices on all external air-conditioning and mechanical exhaust systems and install screening of equipment from bedroom sight line of adjacent residence
- Identify and seal all air gaps in building and install sound absorption treatment of surfaces along internal wall of building facing onto Faraday Lane (south side)
- Provide acoustic report once building works completed to identify any areas noise may escape to surrounding residential areas

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.

No bottles or other waste may be removed from the site between the hours of 9pm and 7am the following morning, seven days a week.

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.

Proposed resident amendment:

- Inclusion of onsite bottle crushers for recycling all bottles and glass and noise proof enclosures, with restricted

waste disposal hours 7am to 9pm

- No external bin storage in laneway manage as per internal waste bins

No amplified live music or entertainment is permitted on the premises without the prior written consent of the responsible authority.

Permit expiry

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 an application is made in accordance with Section 69 of the Planning and Environment Act 1987.

Notes

The use of the footpath may require an Outdoor Café Permit under the City of Melbourne's Activities Local Law.

**Alternatively you
may attach your
written
submission by
uploading your
file here:**



[mcc_permit_conditions_22129_faraday_st_carlton.docx](#) 55.95 KB · DOCX

Please indicate Yes
whether you
would like to
address the Future
Melbourne
Committee live via
phone or Zoom in
support of your
submission: *

Submission to Future Melbourne Committee

Meeting June 1 2021

Agenda Item: 6.2 Planning Permit Application TP-2020-764 221-229 Faraday Street Carlton

Key points:

- Assessment process for TP-2020-764 221-229
- Resident responses to CoM planning officer decision rationale
- Resident requests for additional permit conditions and/or remedies to be undertaken by applicant to mitigate potential adverse amenity issues

This submission to the Future Melbourne Committee re Permit TP-2020-764 draws on combined substance of resident amenity concerns expressed by a group of Dorrit Street Carlton resident/owners who lodged an objection to the City of Melbourne re the above permit application and are known to the writers who have sought feedback to inform the discussion in the submission.

Contact: Glen Wilson glen.wilson49@gmail.com

Disclaimer: The information in this submission is of a general nature based on what was available to the writers prior to Future Melbourne Committee meeting June 1 2021. It is not intended as advice for any specific circumstance or replacement for responsible authority or professional legal advice.

This submission to the **Future Melbourne Committee** relies on plans, policies and guidelines of the **City of Melbourne (CoM)** and the **Victorian Commission for Gambling and Liquor Regulation (VCGLR)** and the **VCGLR Design Guidelines for Licenced Venues** to inform the discussion.

City Of Melbourne planning

The City of Melbourne has an integrated planning framework to ensure its strategies fit together to achieve the vision of growing Melbourne as a bold, inspirational and sustainable city.

The strong theme evident in the elements of the three key City of Melbourne planning strategies is of Melbourne as liveable, safe and community focussed city which cares for the wellbeing of all of its residents by adopting sensitive community focussed planning approaches.

(1) Future Melbourne “is the City of Melbourne 10 year plan to grow Melbourne as a global city and as one of the ten most liveable and sustainable cities in the world.

Goal 2 of the 2026 Future Melbourne Plan is A city for people. It is accessible, affordable, inclusive, safe and engaging. It promotes health and wellbeing, participation and social justice. Family friendly design in city planning puts the community at the forefront.

Priority 2.1 A Great place to be. Melbourne will be a great place to live, work and play at every stage of life. It will be welcoming, accessible, safe, clean and community focussed.

Priority 2.3 Designed for and by people. A set of well-designed precincts or villages that celebrate and draw from their heritage, and where decisions reflect the priorities and views of an inclusive community.

Priority 2.8 A family-friendly city. Melbourne will have neighbourhoods suitable for raising children.

(2) 2017-2021 Council Plan incorporates the Wellbeing Plan views health and safety as vital to a liveable city. Having an integrated plan drives a focus on health and wellbeing across the organisation and strengthens the mandate for health and wellbeing action. A priority of the plan is to “Partner to create an environment that feels safe and minimises harm, including from alcohol and drug use and violence against women and children.”

(3) Melbourne Planning Scheme (MPS) purpose includes

- express State, regional, local and community expectations for areas and land uses
- encourage a high standard of urban design and amenity
- recognise the need for, and contribute towards health, wellbeing and safety (ref:01,011)

Victorian Commission for Gambling and Liquor Regulation is the independent statutory authority established under the Victorian Commission for Gambling and Liquor Regulation Act 2011, responsible for regulating all forms of liquor licence activities in Victoria. This submission adopts the VCGLR definition that “amenity is defined as the quality that an area has of being pleasant and agreeable.”

VCGLR Design Guidelines for Licenced Venues support operators of licenced premises in creating safer venues without compromising the elements that make venues unique and attractive. “By ‘designing in’ elements to minimise opportunity for anti-social behaviour and negative amenity impacts the importance of the building and its design features are at the forefront in determining whether a licenced premises is suitable to be placed near a residential area.” “Creating safe licenced venues and surrounds is good for patrons, business and the community.”

Delegated Planning Application Report

1 Subject site and surrounds

1.1 The site

Dorrit Street Carlton is in a **Residential 1 Zone**.

221-29 Faraday Street Carlton is in **Commercial 1 Zone**

1.2 Surrounds

Residential Zone

Dorrit Street established as a residential street in the 1860's, as seen in the largely intact Victorian streetscape on the eastern side, with 25 residences. The western side has 36 residential flats owned by the Women's Hospital and built in the 1970's, 27 of which front Dorrit St or Faraday Lane Carlton.

There are over 200 residents living in this mix of privately owned residential properties and in Women's Hospital owned residences on the west side. There are also a growing number of 'shoptop' residents living above Lygon Street businesses that face onto Faraday and Lygon Lanes.

An aerial view of surrounding area shows the close juxtaposition of Dorrit St Residential Zone and Faraday St Commercial Zone and the close proximity of residences to the subject site. (ref P11 Fig 4) Planning Application Report).

There were 24 Dorrit Street owner/resident objectors to the permit application, including the Womens Hospital as the property owner and one of their tenants living directly opposite the rear of the subject site.

Commercial Zone

There are a mixture of planning zones in close proximity of the subject site – Residential 1 (to the south), Mixed Use Zone and Public Use Zone (to the west) – indicating the importance of assessing the impact the business operational functions will have on the surrounding area.

Reference to Figures 1,2,3,4 contained in the above Planning Application Report indicate the location and size of the subject site in relation to the adjacent Residential Zone and other licenced businesses in the Commercial Zone.

The Melbourne Planning Scheme characterises the planning focus attributed to the area as

“Lygon St (north of Grattan St) continues to provide for the convenience retail needs of the local residents and working community while discouraging the encroachment of restaurants and entertainment uses. Lygon Street (south of Grattan Street) is the regional restaurant and entertainment focus.” (ref: MPS 21.06-3, MPS 22.15)

3 Applicant Proposal

The Planning Application submitted to CoM on 4/2/21 by Metropol on behalf of the permit applicant describes the intention of the business Venue Management Plan as:

- “Offering liquor associated with **restaurant and cocktail lounge**
- Liquor able to be consumed both with and without food.
- Liquor served within the restaurant via table service only.
- Within the cocktail lounge liquor will be sold via bar service.
- Entrance to cocktail lounge via rear laneway(Faraday Lane) “to strengthen the municipalities laneway character and offer an intimate and exclusive space for patrons”
- The proposed patron capacity is 400 with seating provided 410 patrons including the seating capacity of 50 in the proposed cocktail lounge
- Up to six cocktail functions (weddings, birthdays) will be held per year which will allow for occasional larger patron capacity of 500.
- No amplified music played at the venue, with music limited to background music

Operating hours

Food service		Liquor service	
Monday - Wednesday	6am - 10:30pm	Monday- Wednesday	10am – 11pm
Thursday-Saturday	6am – 1am following day	Thursday-Saturday	10am- 1am following day
Sunday	6am – 10:30pm	Sunday	10am – 11pm

3.1 Plans/reports and residential/commercial interface conditions

Fig 5 Drawing showing the proposed layout and redline plan*	Ground Level Liquor licence plan	6/11/2020
Venue Management Plan	Restaurant and ancillary bar – 221-229 Faraday St Carlton	2/2/2021

NB Fig 5 Drawing showing the proposed layout and redline plan* was out of date when this Planning Application Report was prepared. This could affect the discussion and decisions made by the CoM planning officer, especially the areas likely to be used by patrons including areas outside the boundaries of the site ie. public spaces and footpaths, as required in MPS 22.22-4.Application Requirements.

A revised Drawing dated 27/3/21 was available, however, the writers don’t know if it was submitted to CoM for assessment.

On the revised Drawing toilets are now located where the cocktail bar in Fig 5 is shown and plumbing works for this toilet block are already in place.

Steel works for a planned mezzanine floor space that will house the cocktail bar are also in place. Works for a planned mezzanine floor require the roof of to be raised. As the building has heritage significance a CoM Permit application is required. The mezzanine floor could have implications for increasing patron size and cocktail bar activity resulting in resident amenity being affected.

The revised Drawing indicates a staircase leading to the mezzanine floor located on the ground floor at the rear of the building adjacent to the rear door leading onto Faraday Lane.

The planned increase in internal size of the building plus the expressed intention of the business to apply for a permit to use the footpath in Faraday Street is of concern for Dorrit Street residents.

Residential/Commercial interface

Number 70 Dorrit Street is situated 4 metres across Faraday Lane opposite the (south) rear boundary of subject site. On the side of the house facing onto Faraday Lane there are two windows with three more windows at the front (4 of which are bedroom windows).

There are five glazed windows on the (south) rear border of the subject site facing onto 70 Dorrit St across Faraday Lane. They are original windows and are intended to be retained. These windows were not acknowledged as existing and so were not able to be considered as a potential resident amenity problem in the assessment process.

There are several references throughout the Planning Application Report that refer to there being no windows or openings on the south rear border of the subject site and facing onto Faraday Lane, **which have been used to inform various recommendations and decisions of the CoM planning officer** when referencing noise impacts from the site. Refer P1 (10) P17, 18, 19

“P17 notes “The site does not have any openings ...that have direct interface with a sensitive area, The lack of windows ...at the south, east and west boundaries of the site will mitigate unreasonable noise travelling to the residential windows to the south of the site.”

Referencing that the site does not have **any openings** on the south border is perplexing. Apart from the 5 windows there are also two doors – 1 single door, proposed to be used for patron access the Cocktail Lounge off Faraday Lane, and 1 double door leading to the kitchen area. All 24 Dorrit Street residents who submitted objections were opposed to the single door, and Faraday Lane, being used by patrons and there is significant discussion in the Report on this topic.

Six Women’s Hospital residential flats are situated 20 metres from the south boundary of the site on the west side of Dorrit Street, each with bedroom and living room windows and open balconies facing onto Faraday Lane. Three private flats at 75 Dorrit Street on the corner of Faraday Street are also 20 metres from the subject site. In addition to these ten residences there are another five residences all within 30 metres of the subject site which is a key deciding factor in determining limits on trading hours after 11pm for licenced premises.

Melbourne Planning Scheme Clause 22.22.3 Commercial Zone specifies “Hours of operation of licenced premises in the Commercial Zones should be limited to: 11pm if the licenced premise is within 30 metres of a residential zone; 1am elsewhere.

Reference to Figures 1,2,3,4 contained in the above Planning Application Report provide graphic examples indicating the location and size of the subject site in relation to surrounding businesses and residences.

The subject site is a large building approximately equivalent in area of the three adjacent restaurants/shops in Lygon Street. It is also approximately equivalent in area of the five adjacent Dorrit St properties at the south border. Reference to Figures 1,2,3,4 contained in the above Planning Application Report indicates the location and size of the subject site in relation to surrounding businesses and residences.

3.2 Summary of proposed use of the site

“The CoM planning officer cites “The most appropriate characterisation of the proposed use of the site is as a restaurant, regardless of any cocktail lounge or bar. MPS Clause 73.03 provides the following definition of a restaurant: “Land used to prepare and sell food and drink, for consumption on the premises. It may include:

a) entertainment and dancing; and

b) the supply of liquor other than in association of the serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time.”

There is no characterisation for a cocktail lounge/bar or cocktail special event in the MPS that residents were able to find.

There is no assessment of the adequacy of available space needed to set out seating for 75% of the 500 proposed patrons for private events as Fig 5 seating layout discussed above is not applicable.

11. Consultation

The CoM planning officer notes that there were 24 objections to permit TP-2020-764 and that many of the objectors took specific issue with the use for patron entry of Faraday Lane via the rear door.” “The applicant was advised that the rear door to Faraday Lane adjoins the Residential 1 Zone and the use of the door for patrons would not be appropriate”.

“The objectors were contacted by the officer and informed that the applicant had accepted the change to the rear door being used for patron access and that a permit condition to restrict the use of the door was being considered. The objectors were asked if this would address their concern and if they would be willing to withdraw their objection.” “One objector withdrew.”

It should be noted that the applicant also contacted objectors by letter boxing objectors re the use of the laneway and also asking them to withdraw their objection. Further contact came via email from a Carlton Residents Association member also asked objectors to withdraw their objections.

13. Assessment

The CoM planning officer assessed the applicant request for planning approval to ‘use the land to sell and consume liquor’. The key assessment items for consideration include:

- Policies relating to licenced premises
- The objections received

13.1 Licenced premises

Melbourne Planning Scheme Clause 22.22 POLICY FOR LICENCED PREMISES THAT REQUIRE A PLANNING PERMIT applies to the consideration of all planning permit applications that involve the sale and consumption of liquor in the municipality. This policy applies where a permit is triggered under Clause 52.27 LICENCED PREMISES applies when a permit is required to use land to sell or consume liquor under the Liquor Control Reform Act 1998.

CoM planning officer decision:

“The proposal is an acceptable response to Clause 52.27 and Clause 22.22 (above) for the following reasons: (for easier referencing these have been numbered)

1. "The proposal reasonably limits the opportunity for adverse impacts resulting from the sale and consumption of liquor. The licence is proposed to relate to a restaurant where the presence of food will ensure liquor is reasonably consumed."
2. "The site does not have any openings or outdoor areas that have a direct interface with a sensitive use. The lack of windows and outdoor areas at the south, east and west boundaries of the Site will mitigate unreasonable noise travelling to the residential windows to the south of the Site."
3. "The applicant has been advised that the use of the rear doors by the patrons to Faraday Lane is not supported as this may create potential amenity relating to noise that would impact the residential uses to the south."
 - It is recommended that a permit condition requiring the door not to be used be applied to any permit issued to preserve the amenity of the surrounds."
4. "The proposal relates to a restaurant which is a lower risk venue when considering cumulative impacts for liquor consumption. While there are several licenced restaurants within 100 mtrs, many of these licences relate to restaurants. The addition of one more licence for a restaurant use is not likely to introduce a negative cumulative impact as the primary land use relates to the consumption of food."
5. "The proposal responds to the purpose of the Commercial 1 Zone which seeks to provide a vibrant mix of uses. The lack of outdoor areas and low risk use (restaurant) ensure that this can be achieved without compromising the amenity of the nearby residential uses."
6. The site is well serviced by public transport and easily accessed by taxis/ride share options which ensures that people can safely leave the premises."

Resident response re the above

1. This is basically saying that Dorrit Street residents will not have any amenity effects because the patrons have been in the presence of food and they will have consumed it reasonably. But this doesn't account for patrons using the cocktail bar where

- Liquor able to be consumed both with and without food.
- Liquor served within the restaurant via table service only.
- Within the cocktail lounge liquor will be sold via bar service

It's not the consumption of liquor that residents are concerned about as this is a function of many businesses nearby, it's more the late night use where food is not served and alcohol is served via bar service.

2. This is the issue discussed earlier re there being no windows and doors onto Faraday Lane.

3. The issue here is whether the permit condition **ensures** the door will not be used. The residents have requested noise and security measures to assist in stopping its use (refer permit conditions)

4. Basically this says one more restaurant won't be noticed as there are already so many nearby- but there are no late bars or event businesses with such large patron size (up to 500) that abut the residential zone, again with precedent setting potential.

5. This point combines the lack of outdoor areas and the restaurant argument. And it's not really a vibrant mix of uses if it means people making noise as they leave the premises, possibly accessing their cars are in Dorrit Street.

6. They may also be leaving to walk to public transport but will they do it quietly?

The reason for looking at the 6 assessment points above is because they are a recurring theme of all other decisions relating to potential resident amenity issues.

It is also important to examine the reasons relied on by the CoM planning officer to assess that:

“The proposal reasonably responds to the policy requirements of Clause 22.22-3 relating to - noise, hours, and patronage.”

The performance standards at Clause 22.22-3 are:

13.1.1 Noise

Clause 22.22 states licenced 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 Environment Protection Policies (SEPP)
- are regulated and monitored, making use of **noise limiters** where appropriate.

The CoM officer states that with regard to noise the proposal is acceptable for the reasons

- 1) The use will have background music only and does not seek to include amplified music. Noise limiters are not required as proposal is for a food based use rather than a night club.
- 2) **The Site does not have any openings or outdoor areas that have a direct interface with a sensitive use. The lack of windows at the south, east and west boundaries will mitigate unreasonable noise travelling to residential windows adjacent to the site. (this statement is completely untrue as there are 5 windows and two doors that are not mentioned)**
- 3) The applicant has been advised that the use of the rear doors by patrons to Faraday Lane is not supported as this may create potential amenity impacts relating to noise that would impact the residential uses to the south.
- 4) Noise impacts relating to the collection of waste have been considered and will be required to occur within the recommended EPA as well as the recommended hours at and MPS 22.22 (before 7am and after 9pm). This will ensure noise from waste will not be unreasonable.

Resident response

There is no mention of strategies to reduce noise such as crowd control, acoustic treatments of windows or baffling for equipment. Not to mention the really big problem bottles being dumped into bins stored in the in the laneway.

Refer (2) above: It has been noted earlier there are 2 doors from the subject site leading onto Faraday Lane and 4 metres opposite a residence with bedroom windows facing the doors - 1 door (near the toilet block) and 1 door (leading to the kitchen area). There will definitely be noise travel via these two doors and plus from the 5 windows.

Given the location of the windows and doors near noisy interior spaces, noise will travel into nearby residential windows via Faraday Lane (plus noise echoes into Lygon Lane as well) and will reach the side of the residence 4 metres on the other side of the lane, and across Dorrit Street to the Womens Hospital residences.

VCGLR Design Guidelines for Licenced Venues “noise impacts on adjacent properties can have a negative impact on the health and wellbeing of neighbours” and “Noise complaints about venues generally relate to noise emissions – where noise escapes the venue and is audible from the street or adjacent properties” via air gaps where walls and ceilings meet, around window frames, windows without acoustic sealing, air conditioning and mechanical exhaust system and doors.(ref: Element 3)

13.1.2 Patron Numbers

MPS Clause 13.1.2 “The maximum number of patrons permitted in a licenced premises should be limited to manage any unreasonable impact on the amenity of the surrounding uses and area and maximum occupancy capacity of the premises, as determined by the Building Act 1993”

COM planning officer:

The applicant has stated they are willing to accept a reduction in patron numbers which to reduce patronage from 500 to 350. This reduction is on the proviso that a maximum number of 500 patrons is permitted up to 6 times a year to allow for special events such as weddings and birthdays.

This is a reasonable suggestion to reduce likelihood of adverse amenity impacts relating to patron noise.

While the proposed licence is for a restaurant, proposed patron reduction will reduce likelihood of noise and is supported. It is recommended a permit condition be applied to any permit issued restricting the use to 350 patrons with exception of up to six special events per calendar year.

Resident response

This submission proposes that 200 should be the maximum number of patrons permitted at the premises at any time.

The applicant accepting a reduction in numbers to 350 (which is still too high) down from 500 (which is unreasonable given the proximity to a residential zone) but still proposes 500 patrons for special events with people arriving and leaving as groups of people do for weddings and birthdays.

Residents do not agree with the assertion that the licence is for a restaurant only and it is the other two business operational functions in any case – a late night cocktail bar and large private 500 patron functions that are more likely to cause adverse residential outcomes.

Patron limit at 200 is in line with similar licenced businesses nearby.

Venue	Capacity limit
Johnny’s Green Room	200 stand up capacity (serve food?)
Jimmy Watson’s	Max 200
Lagoon Dining	Max 100
University Cafe	Max 162 indoors and 72 footpath

Of the above licenced businesses the first three have a focus on serving liquor, however, they have designed the areas within their space so that it splits up functions and patron groups and they still serve food in conjunction with alcohol. Johnny’s Green Room is designed so patrons enter via a private corridor off Lygon Street well away from any residential areas and Jimmy Watsons has several small intimate spaces for patron groups. They don’t have large groups of 500 patrons.

The more patrons the more people noise as they leave and move into residential spaces regardless whether from a restaurant or after a special event such as a wedding. Patrons attending events are more inclined to leave at the same time once the event is over so the potential for a mass of 500 people moving into public spaces, including Dorrit Street, at 1am has huge potential to cause amenity problems, more so than leaving a restaurant at different times in small groups at around 10:30 pm.

This creates potential for personal safety and anti-social issues to arise. The large number of patrons increases the noise from the venue.

The VCGLR Design Guidelines for Licenced venues acknowledges that ‘patron use of public spaces can result in conflict with other patrons and passers-by, general loitering and antisocial behaviour’ with ‘impacts on adjacent space or private property, include littering (bottles, cigarette butts), damage to property, theft or assault and road safety issues associated with intoxicated patrons’ ... linked to when patrons leave a venue for the night”. (ref: Element 1)

For permanent late night liquor licences, in the inner city municipalities of Melbourne... the VCGLR will only consider applications to grant, relocate or vary conditions if licensees meet certain conditions. This includes, but is not limited to, a proviso that the patron capacity does not exceed 200 persons.” (ref: VCGLR Design Guidelines Element 1)

Hours of operation

It is recorded that food service will close at 10:30pm while the cocktail lounge will continue operating to 11pm/1am serving liquor via bar service. In essence the cocktail lounge then becomes a stand-alone enterprise and during that time it is operating independent of the preparation and serving of meals. The predominate activity is therefore serving of liquor in this instance.

The proposal to host/offer six private cocktail events per year for 500 patrons also highlights the focus on serving of alcohol rather than the preparation and service of meals. It also raises resident concerns that it is operating as event destination for large private functions which could expand in the future.

22.22-3 Melbourne Planning Scheme cites “Hours of operation of licenced premises in the Commercial 1 zone should be limited to:

- 11pm if the licenced premise is **within 30 metres of a Residential Zone**; 1am elsewhere

Applications to extend operating hours beyond the hours otherwise specified for indoor and outdoor areas within the policy will only be supported where the further extension of hours will not unreasonably impact on the amenity of the surrounding area.”

“The site is within 30 metres of a residential zone and the application seeks to vary the recommended hours of Clause 22.22 by operating until 1am from Thursday to Saturday; the application seeks to operate until 11pm on all other days”

“In this instance the variation is supported for the following reasons

1. The site does not contain outdoor areas or openings that share an interface with a residential zone. The Site does not have any openings that have a direct interface with a sensitive use.

2. The applicant has been advised that the use of the rear doors by patrons to Faraday Lane is not supported as this may create potential safety amenity impacts relating to noise that would impact the residential uses to the south.
3. The restriction of the rear doors to Faraday Lane by patrons means patrons can only exit into Faraday Street. Directing people away from the residential zone.
4. The proposed licenced premises relates to a restaurant which does not contain the same risk of noise or disturbance associated with a bar or night club.
5. The proposal seeks only to allow background music and will not contain live music or entertainment.”

Resident response:

There is good reason to limit a licenced business from staying open until 1am within 30 metres of a residential zone as reflected in the intent of the 22.22-3.

Permitting the business to operate to 1am is not justified especially when it could likely trigger residential amenity issues including anti-social behaviour.

- There are 10 residences within 30 metres of the site, one 4 metres from the rear boundary to the south which refutes the above statement there is no interface with a residential zone.
- there are 5 windows 2 doors on the south boundary of subject site that interface with residences within 30 metres that will be affected
- all Dorrit St residences will be affected when patrons are in the area past 1am, many of whom will enter Dorrit Street to access cars, share rides, public transport, walk home etc. And these patrons haven't been at a restaurant until 1am they have been at a cocktail lounge offering bar service without food.
- Background music should not be heard outside venue unless it is not background music which would trigger CofM complaint for violating permit conditions.

People entering and leaving a drinks only style cocktail lounge especially in the early morning hours, and milling in laneways or footpaths outside residences, have significant nuisance potential.

To access Faraday Lane entry must be via Dorrit Street - if people come in off Faraday Street - they pass by the fronts of at least 10 residences and if off Grattan Street the fronts of every residence (that's if they are on foot). If in cars they must pass or stop in front of all 40 residences as Dorrit Street is one way for traffic as is Faraday Lane.

Permitted trading hours are excessive in comparison with other businesses trading on Lygon St and in surrounding area (examples below).

Other licenced businesses in the area.

Venue	Trading hours	Conditions
Jimmy Watson	11pm	-
King and Godfree Rooftop	11pm Sun-Thur and midnight (Fri and Sat)	-
Lagoon Dining	1am	predominant activity must be preparation/serving of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

Papa Ginos	1am	predominant activity must be preparation/serving of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.
University Cafe	12am (11pm Sun)	predominant activity must be preparation/serving of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.
Crinitis	12am (11pm Sun and all times on footpath)	predominant activity must be preparation/serving of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.
Docs (Drummond St)	12am (11pm Sun and all times on footpath)	predominant activity must be preparation/serving of meals at all times and 75% tables and chairs available. Further condition: The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.

RECOMMENDATION

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

What will the Permit allow?

The preamble for the recommended amended permit should read:

Use of the land to sell and consume liquor in accordance with the endorsed plans.

Conditions

The following conditions are recommended to be included in the permit

Compliance with Endorsed Plans

The use as shown on the endorsed plans must not be altered or modified without the prior written consent of the responsible authority

Patronage

The maximum number of patrons on the premises must be no more than 350 at any one time with the exception of special events where 500 patrons are permitted up to six times per calendar year or with prior written consent of the responsible authority.

Resident response:

The proposed patron capacity is 350-500 is excessive and sets a new precedent for late night venues in the area.

Proposed resident amendments

- Patron limit of 200 in line with surrounding similar businesses
- Install tamper proof counting devices to measure the number of patrons entering the premises (this will also assist to control overcrowding).

Access

The southern door(s) to Faraday Lane must not be used by patrons on any day (or night) to the satisfaction of the responsible authority. This does not apply in the event of an emergency.

Resident response

- Single door at south boundary to Faraday Lane must be a dedicated emergency exit
- Door to remain closed at all times, not to be used for patrons, deliveries or staff exit.

Proposed resident amendments:

- Install self-closing solid core doors comprising continuous block, slide and rail, mineral composition and particle board on all doors that open onto Faraday Lane
- Install tamper proof emergency exit measures with alarm activated if opened
- Install security cameras in Faraday Lane to monitor any use of door

“Surveillance cameras for entry and exit and to record patrons arriving and leaving; as a crime deterrent; for enhancing community safety (the visible presence of surveillance cameras can enhance perceptions of safety within the community, which is constructive in developing public confidence.” VCGLR

Hours of operation

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

Monday- Wednesday	10am – 11pm
Thursday - Saturday	10am – 1am the following day
Sunday	10am – 11pm

Proposed resident amendments:

- Hours of operation limited to 11pm on all days, including functions no exemptions

Venue management

Prior to commencement of the use the applicant must submit an updated Venue Management Plan (VMP) generally in accordance with the VMP prepared titled “Restaurant and ancillary bar – 221-229 Faraday Street Carlton dated February 2021. The updated VMP must be updated to reference a reduction in patron numbers to 350 patrons with the exception of special events where 500 patrons are permitted up to six times a year.

The updated VMP must be to the satisfaction of, and be approved by, the responsible authority. Once approved the VMP will form 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 prior written consent of the responsible authority.

Resident response:

Place a staff member or crowd controller at points of exit to monitor patron behaviours people move on to the street including

- Directing patrons to Faraday St for uber/taxi pick up
- Controlling patrons loitering in Dorrit St and access to laneway
- Controlling patron behaviour directly outside venue
- Include plans, policies or house rule strategies for private events submitted for public reference for example re music use of acoustic sound systems, entertainment, patron use of surrounding public spaces including Dorrit St footpaths and laneways

Proposed resident amendments:

Business to place staff member or crowd controller at points of exit to monitor patron behaviour as people move onto the street (as per VCGLR guidelines) including

- directing and monitoring patrons to Faraday Street for uber/taxi pick up
- directing and monitoring patron use of Dorrit Street and access to Faraday Lane

Business to publish resident communication policy re informing residents when big events are planned

- Provide copy of house rules for events
- Letter box or public notice re upcoming special event including traffic and patron control measures

Tables and chairs must be placed in a position so as to be able for at least 75% of patrons attending the premises at any time.

At all times when the premises is open for business, a designated manager must be in charge of the premises.

The predominant carried out on the premises during all trading hours must be the preparation and serving of meals for consumption on the premises at all times.

Resident response

This submission does not agree with statements made in many instances that “the predominate activity of the proposed business is as a restaurant engaged in the preparation and serving of meals”.

It also does not agree with the assertions that “the licence is proposed to relate to a restaurant where the presence of food will ensure liquor is reasonably consumed. And as such “the proposal reasonably limits the opportunity for adverse impacts resulting from the sale and consumption of liquor”.

The concerns raised by Dorrit Street residents in their objections and the adverse impacts they genuinely feel will result from the proposed development should not be overlooked and the permit granted because “the addition of one more licence for a restaurant use is not likely to introduce a negative cumulative impact as the primary land use relates to the consumption of food.”

- Approval of the permit as recommended in this report sets a precedent for late night style bars to proliferate in Commercial Zone abutting the Dorrit Street Residential Zone.
- The operational functions of the applicant business has potential to change the balance between commercial interests and residential amenity which currently exists between Dorrit St residents and businesses in Lygon Street that abut the Residential Zone (especially for residences on the eastern side which share Faraday and Lygon Lane with these businesses.

It also has potential to alter the south side of Faraday Street. Selling of liquor without food via bar service is not currently, nor has it been in the past, a function of any business in the Commercial Zone on south side of Faraday St from Rathdowne St to Swanston St where subject site is located.

Waste Management

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 practicable after garbage collection, to the satisfaction of the responsible authority.

Resident response:

Noise and litter impacts on neighbouring residents, in particular from bar and function activity, with large volumes of empty bottles and movement of waste bins early morning or late night.

There is no stated reference for requirement for onsite bottle crushers although reference to bottle crushers was included in developer planning application as well as CofM assessment officer report.

Proposed resident amendments:

- Inclusion of onsite bottle crushers for recycling all bottles and glass (in addition to onsite storage of waste), and noise proof enclosures, with restrictions of hours of use to after 7am and before 9pm
- Inclusion of requirement to ensure 'regular cleaning, litter removal and maintenance checks of footpaths, laneways and public space adjacent to venue.'

Noise

The noise generated by the premises must at all times comply with the requirements of the State Environment Protection Policy, (Control of Noise from Commerce, Industry and Trade) No. N-1 and State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 to the satisfaction of the responsible authority.

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 **State** Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1 and State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2. The recommendations of the report must be implemented by the applicant to the satisfaction of the responsible authority.

Proposed resident amendments

- Install acoustic sealing on 5 windows that face Faraday Lane via heavy laminated glaze (>10.38mm) or secondary glazing to create air space between window panes (50–150mm)
- Install baffling and noise control devices on all external air-conditioning and mechanical exhaust systems and install screening of equipment from bedroom sight line of adjacent residence
- Identify and seal all air gaps in building and install sound absorption treatment of surfaces along internal wall of building facing onto Faraday Lane (south side)
- Provide acoustic report once building works completed to identify any areas noise may escape to surrounding residential areas

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.

No bottles or other waste may be removed from the site between the hours of 9pm and 7am the following morning, seven days a week.

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.

Proposed resident amendment:

- Inclusion of onsite bottle crushers for recycling all bottles and glass and noise proof enclosures, with restricted waste disposal hours 7am to 9pm

- No external bin storage in laneway manage as per internal waste bins

No amplified live music or entertainment is permitted on the premises without the prior written consent of the responsible authority.

Permit expiry

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 an application is made in accordance with Section 69 of the Planning and Environment Act 1987.

Notes

The use of the footpath may require an Outdoor Café Permit under the City of Melbourne's Activities Local Law.