

ALLOCATED OFFICER	Maggie Juniper		
DATE RECEIVED	22-Aug-2016		
PROPERTY NUMBER	130940		
PROPERTY ADDRESS	82-84 MOUNTJOY PARADE LORNE, VIC 3232		
LOT SIZE	460.84sqm		
TITLE DETAILS	Has a complete and current copy of title/s been submitted?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	Are there any restrictions, covenants, s173 agreements on title?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	Details:		
	Does the application contravene any of the requirements?		Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
	Does the application site plan and subdivision plan (if relevant) correspond with the title plan/s?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

APPLICANT	Sincock Planning
OWNER	CUDA DEVELOPMENTS PTY LTD
PROPOSAL	Buildings & Works associated with the Construction of a Four Storey Building containing a Basement Car Park, Two Taverns and Four Dwellings, an Increase in Patron Numbers and Increase in Licenced Area (associated with use for Tavern), a Reduction in Car Parking and Loading Bay Requirement (associated with use for Tavern).

ZONE	Commercial 1 Zone
ABUTTING RDZ	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
OVERLAY/S	Design and Development - Schedule 4
PARTICULAR PROVISIONS	Car Parking Clause 52.06 Loading and Unloading of Vehicles Clause 52.07 Land Adjacent to a Road Zone, Category 1 Clause 52.29 Licensed Premises 52.27 Live Music and Entertainment Noise Clause 52.43 Two or More Dwellings on a Lot and Residential Buildings Clause 55
VICSMART	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
INCORPORATED PLAN	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
HERITAGE	Is the site listed in the Shire's Heritage Significance Study? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

FEES	Amount: \$ 1,404.00	Paid: Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Pt <input type="checkbox"/>	Outstanding: \$ 0.00
-------------	---------------------	--	----------------------

PRE-APPLICATION	Has there been any pre-application consultation?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
	Details: Maggie Juniper					
RELEVANT HISTORY	App No:	09/0220	Decision:	Approved	Date issued:	3/12/09
	Proposal:	Use of land for Tavern & Sale & Consumption of Liquor				
	Comments:	Several previous permits				

CULTURAL HERITAGE	Is the site within the cultural sensitive mapped area on GIS?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	Is the proposal defined as a high impact activity?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

	Is a Cultural Heritage Management Plan required? Check online at http://www.aav.nrms.net.au/aavQuestion1.aspx	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	Is referral/notice to AAV considered appropriate?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
CROWN LAND	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If Yes, is Coastal Management Act consent required? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

APPLICATION INFORMATION CHECKLIST

The application includes the following minimum information that is required for all applications:

A completed and signed application form	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
A covering letter/written submission explaining the following:	
• The purpose of the application and the types of activities which will be carried out.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• The likely effects (if any) on adjoining land	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• How the proposal complies with the relevant sections of the Surf Coast Planning Scheme	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3 copies of fully dimensioned plans drawn to scale (one copy must be at A4 or A3 size), showing	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• Boundaries, dimensions and area of the site, including adjoining roads, easements, relevant ground and floor levels (AHD*), contours, waterways and orientation	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• Location of existing and proposed buildings and works, including setbacks from boundaries and site features	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• Location, species and height of all existing vegetation, and identifying any to be removed	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• Floor plan/s of proposed buildings and works	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• Access to the site (existing and proposed)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• Location and use of buildings and notable features on adjoining properties	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• Full elevations of proposed buildings and works including external materials and colours of all buildings and works and building heights	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• For subdivision, the proposed subdivision layout in context with the site conditions and including lot boundaries and sizes, with all dimensions and easements shown	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
Commercial Zone application requirements	
Neighbourhood and Site Description as required by Clause 54.01-1 or 55.01-1, as appropriate	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Written design response as described in Clause 54 or 55, as appropriate	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<i>Applications for use of land</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Details of the proposed use and/or development including: operating hours; staff numbers; delivery/despatch times and means; anticipated customer numbers; and any other relevant details.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Details of the likely effects, if any, on the neighbourhood, including: noise levels; air-borne emissions; emissions to land or water; traffic, including the hours of delivery and despatch; light spill or glare; etc.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Details of how any land not required for immediate use will be maintained;	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Details of any other licenses or approvals required from the Environment Protection Authority or Victorian WorkCover Authority for the proposal	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Justification for any reduction or waiver of car parking (if applicable).	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<i>Application for buildings and works</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Layout of existing and proposed buildings and works, including existing and proposed floor areas.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ All driveway, car parking and loading areas (fully dimensioned).	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Construction details of all drainage works, driveways, car parking and loading areas.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

▪ All external storage and waste treatment areas.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Areas not required for immediate use.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Elevations to scale and fully dimensioned, showing external materials and colours, all existing and proposed signage, proposed colours, lettering style, materials and any illumination or lighting.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
▪ Landscape plan as required by the C1Z and Streetscape and Landscaping Policy	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

FURTHER INFORMATION REQUIRED

Mandatory

Nil

Non-mandatory

Nil

PRELIMINARY ISSUES AT ALLOCATION STAGE

The allocation team identified the following preliminary issues to be considered when undertaking a detailed assessment of the application:

- Include details and status of any relevant amendments and strategies
- Undertake Detailed Assessment against the DDO4 – Discuss with Co-ordinator

The allocation team comprised: Mich Maggie Cameron Other:

REFERRALS

Subdivision Referrals Clause 66.01 *Delete all that are not relevant*

- No referrals are required

Use and Development referrals - Clause 66.02

- No referrals are required

Referral of permit applications under other State standard provisions – Clause 66.03

- No referrals are required

Referral of permit applications under local provisions - Schedule to Clause 66.04

- No referrals are required

Notice of permit applications under State standard provisions – Clause 66.05

- No referrals are required

Internal Referrals

Infrastructure	<input checked="" type="checkbox"/>	Comm. Emerg. Man	<input type="checkbox"/>	Open Space Planning	<input type="checkbox"/>
Environmental Health	<input checked="" type="checkbox"/>	Dev. Compliance & Local Laws	<input type="checkbox"/>	Parks & Open Space	<input type="checkbox"/>
Heritage Advisor	<input checked="" type="checkbox"/>	Env. & Climate Change	<input type="checkbox"/>		

Does the proposal have implications for achieving Building Regulations?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Refer to Building Surveyor?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Why?	
---	---------------------------------	---	-----------------------------	---------------------------------	---	------	--

PUBLIC NOTICE

Is the land owned, occupied or managed by Council?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>If yes, must comply with Clause 67</i>
--	---

Advertising required?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <i>why not?</i>			
Advertise by:	<input type="checkbox"/> Applicant	<input checked="" type="checkbox"/> Council	<input type="checkbox"/> Fee Paid <i>Do not issue decision until paid</i>	
		<input checked="" type="checkbox"/> Invoice required		
Advertising method:	<input checked="" type="checkbox"/> Letters	Date letters sent:	Advertising method:	
		3 Oct 2016		
	<input checked="" type="checkbox"/> Sign(s) on site	No. of signs required	1	
		Location of signs	Property frontage	
		Date signs displayed	6 October 2016	
<input type="checkbox"/> Newspaper / Publication	<input type="checkbox"/> Surf Coast Times	<input type="checkbox"/> Echo	<input type="checkbox"/> Winchelsea Star	
Date Notice completed satisfactorily (completed Stat. Dec. received or notice signed off by PO):			20 /10/ 2016	

PROPOSAL

The application seeks approval for Buildings & Works associated with the Construction of a Four Storey Building containing a Basement Car Park, Two Taverns and Four Dwellings, an Increase in Patron Numbers and Increase in Licenced Area (associated with use for Tavern), a Reduction in Car Parking and Loading Bay Requirement (associated with use for Tavern).

The plans considered as part of the application were submitted on 18 August 2016. Façade Concept plans were submitted 22 November 2016.

It is proposed to:

- Demolish existing buildings at the site and construct a four storey building containing a basement carpark, two taverns at ground floor and four dwellings over 3 levels above;
- Provide vehicle access to the site via a carriageway easement from Grove Road to a basement car park, which will be accessed via a car elevator at laneway level.
- Construct two lounge/bars (Taverns) at ground level in a side by side configuration with frontage to Mountjoy Parade; and
- Construct 3 levels of four (4) dwellings above – each with frontage to Mountjoy Parade

Basement Carpark

The basement will provide parking for eight (8) vehicles and include storage facilities and domestic waste storage associated with the dwellings, two offices, toilets and staff rooms associated with the proposed taverns, a pedestrian elevator and stair.

Ground Floor/Taverns

The Taverns will have a combined floor area of approx.406sqm and will have frontage to Mountjoy Parade through an external roofed terrace adjacent to the footpath. Separate amenities, kitchens and cool rooms etc will be provided for each Tavern at the west (rear) end of the building together with a common area for bin storage at the rear of the site with access via rear stairs.

First and Second Floor/Roof Level Dwellings

The 1st floor will contain two (2) Dwellings, designated as 'Apartment 1 & 2', each comprising 3 bedrooms (master with ensuite), a separate bathroom, laundry, and powder room and an open plan kitchen living and meals area opening onto a balcony overlooking Mountjoy Parade.

The second floor will also contain two dwellings designated as 'Penthouse 1 & 2', each comprising 3 bedrooms (master with ensuite and dual walk in robes), a separate bathroom, laundry and powder room and an open plan kitchen living and meals area opening onto a balcony overlooking Mountjoy Parade. The roof level will include two roof top decks, each with a spa pool associated with the proposed penthouses.

Access to the dwellings will be via the basement carpark pedestrian lift and/or a stairway at each side of the proposed building from Mountjoy Parade. Each dwelling will be allocated 2 car spaces in the basement.

Built Form

The proposed development will generally step back from the Mountjoy Parade street boundary and will have a maximum building level of RL20.10 AHD at the central dividing wall of the roof decks, equivalent to a height of 11.27 metres measured to the back of the Mountjoy Pde footpath - as applied by the Design & Development Overlay Schedule 4 (DDO4). The spa balustrade will be RL19.90 AHD and the deck balustrade RL19.30 equivalent to a maximum height of 11.11 metres and 10.51 metres respectively measured to the back of the Mountjoy Pde footpath. The remainder of the roof parapet will be RL 18.870 AHD – the later equivalent to a maximum height of 9.51 metres measured to the back of the Mountjoy Pde footpath.

The external building materials and colours would be as follows:

- Walls - Stone cladding (columns), render finish concrete (side walls) Dulux "Grey Pebble", Alucobond cladding 'natural zinc' and 'bronze metallic', vertical aluminium louvre screens (side walls)
- Windows - Powder coated aluminium
- Balustrades - Glazed panels 'grey' and vertical aluminium slats 'bronze metallic'
- Roof - Colorbond Traydeck * *colour to be approved*

The application does not involve the removal of native vegetation.

Background

Amendments to application after notice

The application was not amended after notice.

A Façade Concept Plan was submitted 22 November 2016 and an indicative Tavern Floor Layout Plan submitted 21st December 2016 in response to discussions between the applicant and the relevant officer.

No further Notice was undertaken.

SITE AND SURROUNDING AREA



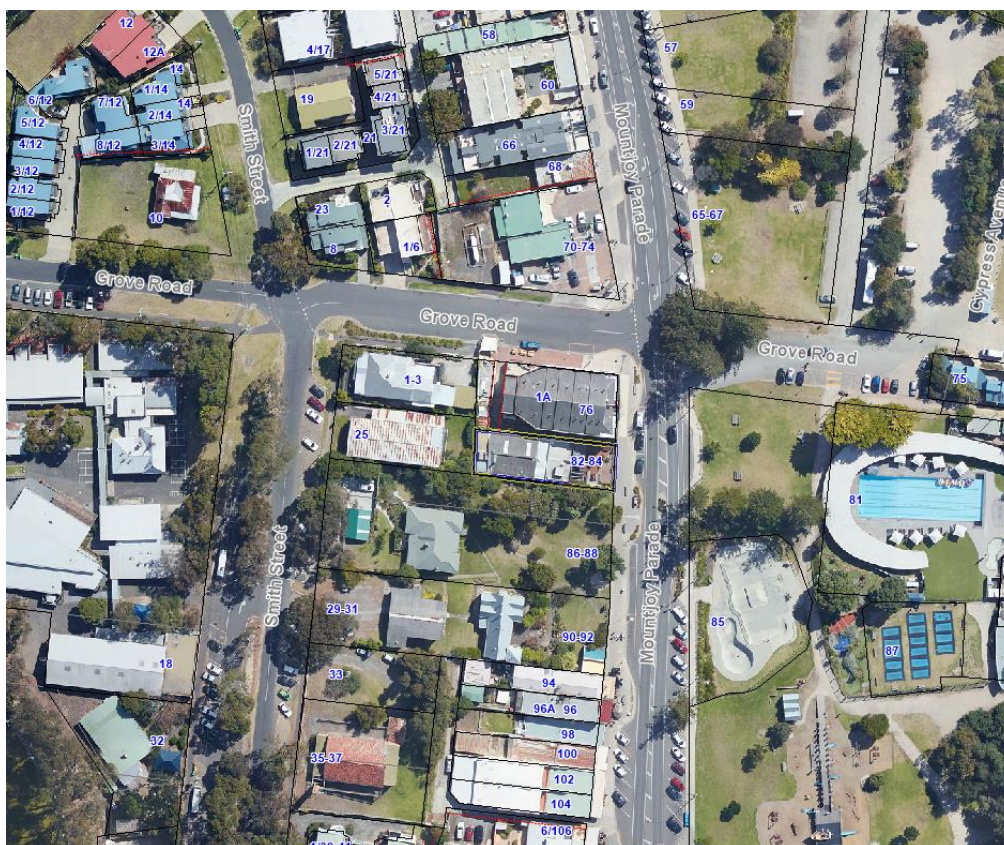
Subject Site: GIS 2015

The subject site (Lot 2 LP141746) is located on the west side of Mountjoy Parade Lorne near the corner of Grove Road within the Central Retail Core (DDO4) commercial precinct. The site has a 'front row' position and benefits from coastal views to the foreshore reserve and Loutitt Bay. To the north the site directly adjoins the Lorne Picture Theatre and on the south, a vacant treed lot, forming part of the Anglican Church gardens that extend further south to the church building itself.

The 461sqm rectangular shaped site has a relatively narrow street frontage of 12.19 metres for a depth of 37.90 metres and benefits from a carriageway easement at the rear, which connects with Grove Road and passes behind the Lorne Picture Theatre.

The site is currently used and developed for a tavern trading as Cuda Bar. The tavern operates under Permit 09/0220 (amended) and an On-Premises Licence and has permission to trade up to 1.00am each day except Good Friday and Anzac Day with a capacity of 180 patrons (110 internal and 70 external). The tavern also benefits from a recent Alfresco Dining Permit which allows use of the footpath up to 10.00pm each day with seating for 32 patrons.

No car parking is currently provided on the site.



Surrounds GIS 2016

The properties adjoining the site are described as follows:

- North at 76 Moutjy Parade Lorne – The Lorne Cinema, a large two storey building constructed in 1937 in the Art Deco style and which is within a Heritage Overlay; the building substantially abuts the common side boundary and the rear easement but steps away at the rear and has a maximum height of around 12 metres;
- South at 86-88 Moutjy Parade Lorne – a vacant lot and a dwelling (at a deep street setback) both associated with the Anglican Uniting Church further south at 90-92 Moutjy Parade; the church property comprises an undeveloped landscaped lot adjacent the subject site, the dwelling then a larger lot developed by a front garden setting and the church building set on higher ground and within a Heritage Overlay;
- Northwest at 1-3 Grove Road Lorne – a part two storey dwelling that appears to be used for short term accommodation;
- West at 25 Smith Street Lorne – the former Masonic Hall building, sited on elevated ground and with an open area adjoining the site;

The surrounding land is characterised by commercial and tourist accommodation development in and around Moutjy Parade that gives way to single dwelling development on the elevated land to the west within the General Residential 1 zone.

A site inspection was undertaken on 31 January 2017.

SURF COAST PLANNING SCHEME PROVISIONS

Commercial 1 Zone (C1Z) last updated VC104

Clause	Requirement	Proposal	Permit required
Clause 34.01-1 Use of land	<p>Permit required to use the land for:</p> <ul style="list-style-type: none"> • Accommodation (other than Corrective Institution) includes Dwelling and is a Section 1 use subject to “any frontage at ground floor level must not exceed 2 metres (other...)” 	Buildings & Works associated with the Construction of a Four Storey Building containing a Basement Car Park, Two Taverns	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

	<ul style="list-style-type: none"> Retail Premises (other than shop), includes Tavern and is a Section 1 use. Use of the subject land for Tavern is established by the existing use rights afforded by the previous permit 09/0220. 	and Four Dwellings, an Increase in Patron Numbers and Increase in Licenced Area (associated with use for Tavern), and Reduction in Car Parking and Loading Bay Required (associated with use for Tavern).	
Clause 34.01-3 Subdivision	<i>A permit is required to subdivide land.</i>	NA	NA
Clause 34.01-4 Buildings and works	<p><i>A permit is required to construct a building or construct or carry out works.</i></p> <p><i>This does not apply to:</i></p> <ul style="list-style-type: none"> <i>The installation of an automatic teller machine.</i> <i>An alteration to an existing building façade provided:</i> <ul style="list-style-type: none"> <i>The alteration does not include the installation of an external roller shutter.</i> <i>At least 80 per cent of the building facade at ground floor level is maintained as an entry or window with clear glazing.</i> <i>An awning that projects over a road if it is authorised by the relevant public land manager.</i> 	Buildings & Works associated with the Construction of a Four Storey Building containing a Basement Car Park, Two Taverns and Four Dwellings; an Increase in Patron Numbers and Increase in Licenced Area (associated with use for Tavern), and a Reduction in Car Parking and Loading Bay Required (associated with use for Tavern).	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Clause 34.01-9 Advertising signs	<i>Advertising sign requirements are at Clause 52.05. Category 1 requirements apply</i>	None Proposed	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Design and Development Overlay 4 – Schedule 4

Lorne Commercial/Tourist Accommodation Precincts (DDO4) *Last updated C49*

Clause	Requirement	Proposal	Permit required/ Complies
Clause 43.02-2 combined with Schedule 4 Buildings and works	<i>A permit is required to construct a building or to construct or carry out works</i>	Buildings & Works associated with the Construction of a Four Storey Building containing a Basement Car Park, Two Taverns and Four Dwellings, an Increase in Patron Numbers and Increase in Licenced Area (associated with use for Tavern), a Reduction in Car Parking and Loading Bay	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

		Requirement (associated with use for Tavern).	
Clause 43.02-4 Advertising signs	Advertising sign requirements are at Clause 52.05. Category 3 requirements apply	NA	Yes <input type="checkbox"/> No <input type="checkbox"/>

Provisions

The following particular provisions are considered in respect to this application:

Provision	Permit triggers/Requirements	Permit Required/ Applicable
52.06 Car parking	<p>The table at Clause 52.06-5 sets out the number of car spaces required for uses not covered by a car parking requirement for a use specified under another provision of the planning scheme or a schedule to the Parking Overlay.</p> <p>A permit may be granted to reduce or waive the number of car spaces required.</p>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
52.07 Loading and Unloading of Vehicles	<p><i>No building or works may be constructed for the manufacture, servicing, storage or sale of goods or materials unless:</i></p> <ul style="list-style-type: none"> ▪ <i>Space is provided on the land for loading and unloading vehicles as specified in the table to Clause 52.07.</i> ▪ <i>The driveway to the loading bay is at least 3.6 metres wide. If a driveway changes direction or intersects another driveway, the internal radius at the change of direction or intersection must be at least 6 metres.</i> ▪ <i>The road that provides access to the loading bay is at least 3.6 metres wide.</i> <p>A permit may be granted to reduce or waive these requirements if either:</p> <ul style="list-style-type: none"> ▪ <i>The land area is insufficient.</i> ▪ <i>Adequate provision is made for loading and unloading vehicles to the satisfaction of the responsible authority.</i> 	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
52.27 Licensed Premises	<p><i>A permit is required to use land to sell or consume liquor if any of the following apply:</i></p> <ul style="list-style-type: none"> ▪ <i>A licence is required under the Liquor Control Reform Act 1998.</i> ▪ <i>A different licence or category of licence is required from that which is in force.</i> ▪ <i>The hours of trading allowed under a licence are to be extended.</i> ▪ <i>The number of patrons allowed under a licence is to be increased.</i> ▪ <i>The area that liquor is allowed to be consumed or supplied under a licence is to be increased.</i> <p><i>This does not apply:</i></p> <ul style="list-style-type: none"> ▪ <i>To a limited licence.</i> ▪ <i>To a licence to manufacture liquor.</i> ▪ <i>If the schedule to this clause specifies that a permit is not required to use land to sell or consume liquor under a particular type of licence.</i> ▪ <i>To a variation that reduces the hours of trading allowed under a licence.</i> ▪ <i>To a variation that reduces the number of patrons allowed under a licence.</i> ▪ <i>To a variation that reduces the area within which liquor is</i> 	<p>Increase number of patrons.</p> <p>Increase licenced area</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>

	<p><i>allowed to be consumed or supplied under a licence.</i></p> <ul style="list-style-type: none"> ■ <i>To a variation of licence at the initiative of the Victorian Commission for Gambling and Liquor Regulation, pursuant to Section 58 of the Liquor Control Reform Act 1998.</i> ■ <i>To a variation of licence for a variation prescribed in Part 6, Regulation 31 of the Liquor Control Reform Regulations 2009.</i> ■ <i>If a different licence or category of licence is required solely as a result of changes to licence categories.</i> ■ <i>To a licence to sell only packaged liquor for consumption elsewhere issued before 8 April 2011.</i> 	
52.34 Bicycle Facilities Clause	<p><i>A permit may be granted to vary, reduce or waive any requirement of Clause 52.34-3 and Clause 52.34-4.</i></p>	<p>Bike racks are provided in basement carpark</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
52.43 Live Music and Entertainment Noise Clause	<p><i>This clause applies to an application required under any zone of this scheme to use land for, or to construct a building or construct or carry out works associated with:</i></p> <ul style="list-style-type: none"> ■ <i>a live music entertainment venue.</i> ■ <i>a noise sensitive residential use that is within 50 metres of a live music entertainment venue.</i> <p><i>This clause does not apply to:</i></p> <ul style="list-style-type: none"> ■ <i>the extension of an existing dwelling.</i> ■ <i>a noise sensitive residential use that is in an area specified in clause 1.0 of the schedule to this clause.</i> <p>Requirements to be met</p> <p><i>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.</i></p> <p><i>A noise sensitive residential use must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any:</i></p> <ul style="list-style-type: none"> ■ <i>indoor live music entertainment venue to below the noise limits specified in State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N2).</i> ■ <i>outdoor live music entertainment venue to below 45dB(A), assessed as an Leq over 15 minutes.</i> <p><i>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).</i></p> <p><i>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.</i></p>	<p>Existing use rights for Live Music and Entertainment is established by the current permit 09/0220.</p> <p>However as new building constructions require a permit under CO1 and a new use of dwelling (s) will be established – provision applies</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>

State Planning Policy Framework

The following State policies have been considered with respect to this application:

- Clause 11.01 Activity Centres
- Clause 11.05 Regional development
- Clause 11.07 Geelong (G21) regional growth
- Clause 12.02 Coastal areas
- Clause 12.04 Significant environments and landscapes
- Clause 13.04 Noise and air
- Clause 15.01 Urban environment

- Clause 15.02 Sustainable development
- Clause 15.03 Heritage
- Clause 17.01 Commercial
- Clause 19.03 Development infrastructure
- Clause 19.02 Community infrastructure

Local Planning Policy Framework

The following provisions from the LPPF are considered in respect to this application:

Clause 21.01 – Profile and Vision

The Surf Coast Shire Council Plan 2009-2013 establishes a future vision for the Shire. Under the Municipal Framework Plan it states that *“The underlying principle that directs all local policy and strategies of the Surf Coastal Planning Scheme is that the natural environment is the single most important attribute and asset of the Surf Coast Shire.*

The key strategic directions for sustainable land use and development as identified in the framework plan are relevantly:

- *To support and strengthen the individual character and role of the coastal and rural towns within the Shire that contributes to the diversity of experiences, and residential, commercial and recreational and employment opportunities.*
- *To promote Lorne as a primary tourist destination on the Great Ocean Road while protecting and enhancing its highly vegetated coastal urban character, residential amenity and forest hinterland.*

Clause 21.03 – Environmental Management

The relevant objective is:

- *To manage the risks of environmental hazards, including wildfire, salinity and flooding, to avoid adverse consequences on the natural and man-made environment.*

Clause 21.10 – Lorne Strategy

This clause identifies the character of Lorne as:

“Nestled in a beautiful, heavily treed, amphitheatre encircling Loutit Bay the spectacular natural beauty of Lorne and its environs make it a popular and attractive place to visit and live.”

Key issues and influences identified in the Strategy include:

- *Conserving, enhancing and reinstating the preferred character of a tall canopy treed setting with recessive buildings throughout Lorne, including areas that are substantially cleared of vegetation.*
- *The town’s character centres on its indigenous vegetation cover and the dominance of the vegetation over the built form. The tall gum trees (including Southern Blue-gum, Brooker’s Gum, Manna Gum, Messmate and Mountain Grey Gum) provide a backdrop to the town, canopy cover within the town and a border to the water’s edge around Louttit Bay.*
- *Other important neighbourhood character elements include low profile buildings with a sense of space between properties, views of surrounding landscape features and historic buildings scattered within the town.*
- *Balancing development demands with achieving the preferred township character. In particular, the continual conflict between maintaining the tall tree canopy versus the desire for views and greater building site coverage.*

At Clause 21.10-2, Settlement, Built Environment and Heritage the strategies in support of Objective 1: *“to support sustainable urban development in Lorne in a manner that enhances the distinctive, vegetated, low density coastal character of the town”* are:

- *Recognise that Lorne has limited growth opportunities due to physical limitations and the desire to protect and enhance the preferred neighbourhood character.*
- *Encourage new development that displays a coastal style of architecture, using design, materials, features and colours that contribute to the identity of Lorne, maintains a low rise building form, blends with the surrounding landscape and provides openness between properties.*
- *Seek to achieve a reasonable sharing of views of scenic landscape features from private land.*

The following local policies are relevant to the proposal:

- Streetscape and Landscape Policy

General Provisions

62 Exemptions	<i>Are there any exemptions relevant to the proposal?</i> <i>See Particular Provisions above</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
63 Existing uses	<i>Do existing use rights apply?</i> <i>See above</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
65 Decision guidelines	<i>Does the proposal meet the following relevant decision guidelines?</i> <i>See above</i>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Relevant Incorporated and/or Reference Documents

There are no documents relevant to this application.

Relevant Planning Scheme Amendments and/or Strategies

There are no Amendments and/or seriously entertained Strategies relevant to this application.

OBJECTIONS

The application received **two** (2) objections however both are from the same source but under different company names.

Council's electronic storage system (TRIM) was checked on 20 March 2017.

Copies of the objections are attached to the file, and are summarised as follows:

1. **Lorne Cinema, Theatre and Retail Complex 76-80 Mountjoy Parade Lorne**
 - Inconsistent with the coastal character of the area.
 - Overdevelopment of the site & lack of vegetation.
 - Detrimental impact on amenity arising from waste collection and conflict with pedestrian and vehicle traffic.
 - The development does not provide a dedicated loading bay and the proposed use of on street facilities will disrupt traffic.
 - The proposal to access the site via the 3m wide carriageway easement does not comply with relevant planning requirements.
 - Inadequate car parking response considering significant waiver required
 - Potential land use conflict arising from Accommodation and Tavern use

2. **Stay at Lorne Pty Ltd 25 Smith Street Lorne**
 - Inconsistent with the coastal character of the area.
 - Lacks respectful articulation to upper levels and integration with adjoining site to south
 - Lacks meaningful response to heritage listed cinema
 - Design response in no way 'improves the character'
 - Overdevelopment of the site & lack of vegetation.

The issues raised are covered in the discussion section of this report.

CONSULTATION

Consultation was not undertaken for the application.

DISCUSSION OF KEY ISSUES

The application seeks approval for Buildings & Works associated with the Construction of a Four Storey Building containing a Basement Car Park, Two Taverns and Four Dwellings; an Increase in Patron Numbers and Increase in Licenced Area (associated with use for Tavern), and a Reduction in Car Parking and Loading Bay Required (associated with use for Tavern), which requires a permit under the CO1Z, DDO4, CL52.06, CL52.07 and CL52.27.

Strategic Context

It is considered that the proposal generally meets the objectives and strategies of the relevant State and Local planning policies. There is policy support for providing higher intensity development which contributes to the activity and diversity of Mountjoy Parade including by providing tourist-related retailing facilities and accommodation within the Central Retail Core of Lorne - an identified tourist destination township on the Great Ocean Road.

Use of land

The subject site has an existing land use of tavern established by Permit 09/0220, defined as "*Land used to sell liquor for consumption on the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines and gambling.*" The tavern operates under an On Premises Licence. Since issue of that Permit, the zoning has changed from Business 1 to Commercial 1 and use for Tavern is now a Section 1 No permit required use (nested under Retail Premises). A permit is still required under CL52.27 Licensed Premises to use land for the sale and consumption of liquor and/or to vary a licence which is in force.

It is proposed to continue the current use but with a different floor area layout and new structure and to include a new use of Dwelling (s) above. Accommodation (Dwelling nested under) is a Section 1 Permit Not Required Use in the zone, provided that any frontage at street level associated with use for Dwelling does not exceed 2 metres. As the frontage at street level is substantially that of tavern with a small section < 2 metres allocated to access stairs to the dwellings above the Section 1 condition is met.

It is also proposed to increase patron numbers and the licenced area by the construction of 2 new taverns side by side with option for combining the floor areas to cater for larger functions. The existing Cuda Bar has a public floor area of approx. 336sqm including unroofed outside decking and the whole of the site is a 'red line area'. As the new public floor area (all roofed) is approx. 241sqm there will be no 'increase to the licenced area' and therefore no permit is required. However, a permit will be required under CL52.27 Licensed Premises to increase patron numbers.

CL 63 Existing Uses states:

63.01 Extent of existing use rights

An existing use right is established in relation to use of land under this scheme if any of the following apply:

- *The use was lawfully carried out immediately before the approval date. (inter alia)*

63.04 Section 1 uses

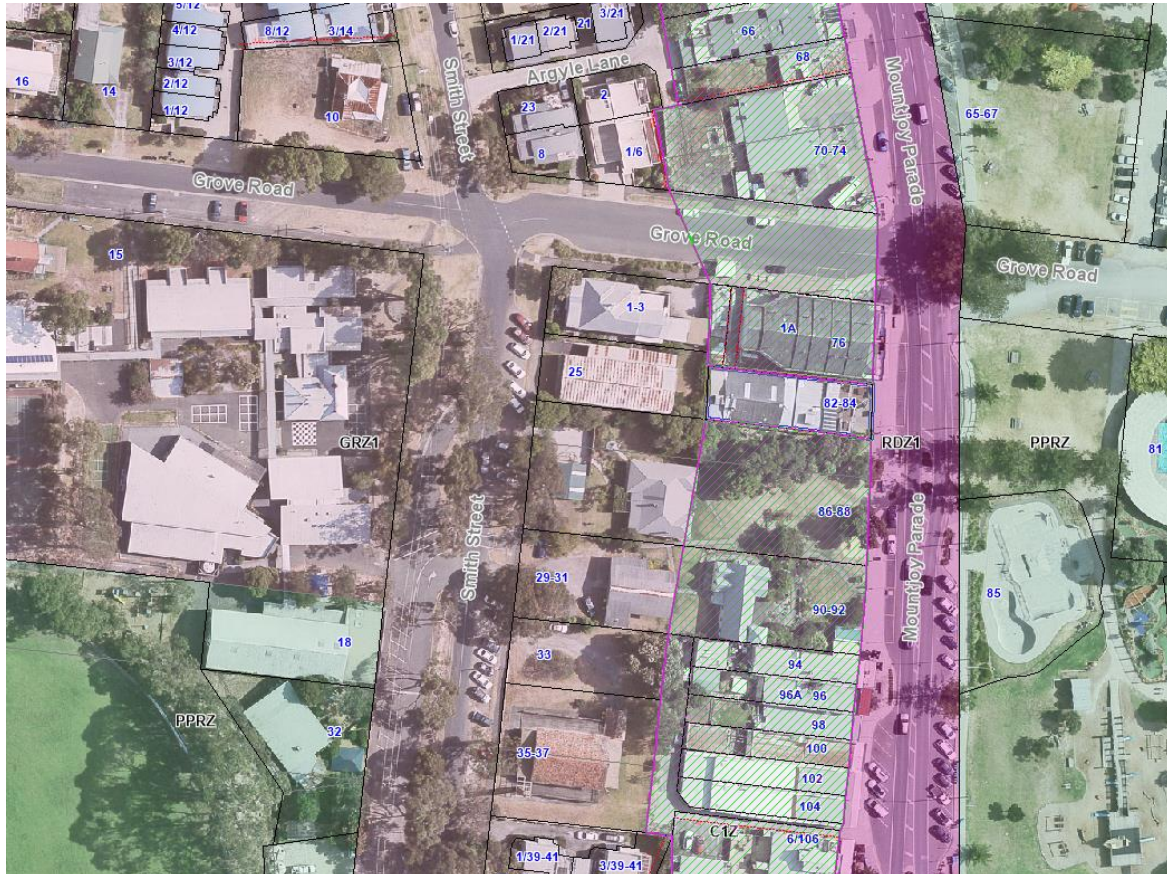
A use in Section 1 of a zone for which an existing use right is established may continue provided any condition or restriction to which the use was subject and which applies to the use in Section 1 of the zone continues to be met.

Permit 09/0220 (amended) under which the Cuda Bar operates includes a specific condition that "*Tables and chairs must be placed in position in the licenced premises so as to be available for at least 75% of patrons attending the premises at any one time*" The applicant has opposed application of this condition in that it more properly relates to restaurant/cafe use/licence and is inappropriate for a tavern but has advised that other current permit conditions would generally be acceptable with a variation to patron numbers as proposed. Despite use for tavern now being a Section 1 Permit Not Required Use, consideration of amenity related conditions are considered appropriate via CL52.17 Licensed Premises which is triggered by this application.

A permit is required for buildings and works and where two or more dwellings are being constructed (*as is the case here*), a proposal must be supported by a satisfactory neighbourhood and site description and design response. Furthermore, the Decision Guidelines require consideration of matters including the interface with adjoining zones – especially residential areas, as well as pedestrian movements, vehicle access and servicing,

car parking, streetscape, waste storage and amenity – related matters and, as appropriate, Clause 54 & Clause 55.

The site lies within the Mountjoy Parade commercial strip opposite the foreshore reserve and abuts commercial development in the north. In the south is a vacant lot zoned commercial then the Anglican Uniting Church further south. The commercial strip is narrow and has direct interface with the General Residential zone to the west (rear) and here the site adjoins a former Masonic Hall and in the northwest at 1 Grove Road - a dwelling now used for short term accommodation. In the southwest the site adjoins a dwelling associated with the Anglican Uniting Church. However, this section of Smith Street is atypical and has a predominance of community service uses including a primary school, halls and churches, a police station and CFA building with tourist accommodation further south.



Zoning Map GIS 2016.

The CO1Z Decision Guidelines specifically reference consideration of overlooking and overshadowing affecting adjoining land *in residential zones*. More broadly the Decision Guidelines also require consideration of Clause 55 objectives and standards.

The development is designed to look eastward across Mountjoy Parade to coastal views and whilst there are a limited number of bedroom windows in the rear elevation that will overlook the former Masonic Hall site (non-residential use) the 9m arc will not significantly affect existing accommodation/dwellings in the northwest and southwest. Shadow diagrams also indicate limited shading to the west to properties in the residential zone. At the rear the new development's scale/height will be limited to 5m/6m with some setback off the common boundary which, it is considered, will reasonably maintain daylight and sunlight to any future residential properties in the adjoining GRZ1.

As well, waste bins, AC units and other back of house items are to be contained within the basement carpark or a roofed area at the rear of the building.

The proposed dwellings will benefit from access to private east facing balconies/roof level decks with ocean views and appropriate access to daylight and ventilation for habitable rooms.

For all of the above reasons, it is considered the development will suitably interface with the General Residential zone in the west, provide suitable amenity for the proposed new dwellings/accommodation and will not detract from the amenity of the area.

Built Form

The site (and surrounding Commercial 1 & General Residential 1 zones) is within a Design and Development Overlay, Schedule 4 (DDO4) Lorne Commercial / Tourist Accommodation Precincts. The DDO4 has three precincts, each with a different focus and strategy for land use, and a detailed design outcome for development in each.

The Central Retail Core Precinct L1 applies to Mountjoy Parade, from Grove Road in the north to Bay Street in the south, and includes the application site 82-84 Mountjoy Parade. The **Design Objectives** of the Central Retail Core are:

- To promote the central retail core precinct as the preferred location for new retail development.
- To consolidate retail activities at street level with office and non-retail activities encouraged to locate at either first floor level or at the periphery of the central retail core.
- To maintain the low rise character of building facades along Mountjoy Parade.
- To encourage the establishment of tourist accommodation and units above street level.
- To implement urban design guidelines which improve the character and appearance of the precinct to create a pleasant place to shop and recreate.

DDO4 also sets out specific **Building and Works** requirements for building heights, setbacks and maximum plot ratio which are assessed as follows:.

Central Retail Core	Proposed	Complies:
<u>Building Height</u> <ul style="list-style-type: none"> ▪ The height of a building on land with a frontage to Mountjoy Parade should not exceed 7.5 metres above the footpath level at the street alignment. 	Front Façade: Max height 5.50m	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Any part of a building which exceeds a height of 7.5 metres should be set back at least 7.5 metres from the frontage to Mountjoy Parade. 	Side screens, front bulkhead and spa ledge encroach into setback	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<ul style="list-style-type: none"> ▪ The maximum height of all buildings should not exceed 10 metres above the footpath level at the Mountjoy Parade street alignment. 	Central wall, front bulkhead, spa ledge and side roof level balustrade exceed preferred height. Max building height proposed 11.27m.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<u>Plot Ratio</u> The maximum building plot ratio of a site should not exceed 2.0.	Plot Ratio: 3.5 including basement and 2.6 excluding Basement.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Design - Central Retail Core

The decision guidelines for the Central Retail Core under the DDO4 are as follows:

- Building height at street level should be scaled to maximise sunlight penetration and allow views over the buildings from the properties on the west side of Smith Street.
- Variations in facade and building height will be encouraged to achieve varied streetscape forms and to create view corridors between the frontage of buildings.
- A non-continuous building mass will be encouraged at street level with occasional setbacks along the streetscape to act as suntraps and activity areas.
- Ground floor awnings, post supported verandahs and decks will be encouraged, but continuity will be discouraged in the interests of achieving a diversity of facades and combination of sunlight and shade to the footpath areas using creative design ideas. Decks should be designed to add depth and texture to building facades but should not be solidly roofed to maximise sunlight penetration in the afternoon.
- Roof elements on the upper most portion of buildings visible from the adjacent street should be designed to slope toward the street at an angle of around 25 to 30 degrees.

- *A sense of life, vitality, habitation and a continually changing visual panorama will be encouraged along Mount Joy Parade, and this should be taken into account in the design and articulation of facades and built form. Creative design ideas will be encouraged in achieving these objectives.*
- *Painted external surfaces should provide colour, variation and detail to the streetscape.*
- *Planting will be encouraged to add visual interest to the streetscape and accentuate the strong image of Lorne with its well vegetated hillsides.*
- *Lighting be used to softly accentuate building form, texture and variety of the streetscape.*

The objectives and decision guidelines of DDO4 relevant to the Central Retail Core Precinct seek to deliver a character outcome which provides a varied streetscape and allows solar penetration to footpath areas through the application of setback distance to building height ratios and a general requirement to break up building mass.

In terms of the varied streetscape the proposal is assisted by its abutments, which include the Heritage building of the Lorne Theatre on the north side and the landscaped grounds of the Uniting Church on the south. As a result any contemporary structure such as that proposed by this application will add architectural variety consistent with the intent of the Overlay.

The built form generally meets the nominated building height and setback requirements with some minor exemptions arising from the penthouse level balustrade, the roof deck spa ledge and the central dividing wall and balcony side screens.

The DDO4 has been an effective planning tool and has delivered positive character outcomes in a highly pressured development environment along Mountjoy Parade in Lorne. Previous proposals in this area have been required to deliver built form outcomes, which while not always satisfying the numerical performance criteria do achieve an outcome consistent with the preferred streetscape character for this area.

Street Setbacks

The development has a modest 'pedestrian friendly' height at the street boundary and steps back with variation in building height from the Mountjoy Parade footpath. Shadow Diagrams at the relevant date indicate sunlight penetration to the Mountjoy Parade footpath will be provided until around 2.00pm consistent with adjoining properties with the shading after this time mostly a consequence of the footpath verandahs and orientation of Mountjoy Parade itself.

Only limited building elements project forward of the '7.50 metre setback line' and it is considered the low rise character of building facades and amenity along the Mountjoy Parade commercial frontage will be retained.

Building Height

The main impact from the encroachments proposed, arises from the 11.27m maximum building height (measured to back of footpath) of the central dividing wall (RL20.10 AHD) and the forward position of the roof top spa (RL AHD 19.90/max height back of footpath 11.11 metres) and its associated support structure over the penthouse balconies. The central dividing wall separates the two upper level penthouses and provides privacy for the occupants. While this part of the proposal exceeds the preferred maximum building height by 1.27m it is considered to be a small functional element of the building only and will have little impact on the streetscape character.

One of the key drivers to limit building height in the area of the subject land is to allow views over buildings from the properties on the west side of Smith Street (decision guidelines DDO4). In this case the land on the west side of Smith Street adjacent the subject land is occupied by the Lorne State School* so the view issue is less critical than if the land was developed for residential purposes. **no objection received*

The location and height of the roof top spa at the very edge/marginally forward of the nominated 7.5m street setback will potentially impact the streetscape character given its relative projection and height (around +1 metre) in excess of the preferred maximum building height. This element of the building would have less dominance over the streetscape if it were setback further from the front of the site where it will be better 'back grounded' by the existing Lorne Cinema building to the north. This was put to the applicant who advised relocation of the spa would be difficult as its proposed position over part of the front balcony is deliberate to minimise risk of leakage to rooms below.

Similarly the proposed roof top level balconies/balustrades (RL19.30 AHD/10.51metres max height back of footpath) extend to each side of the building, which will present a continuous building mass across the site that is inconsistent with the preferred character outcome identified in the decision guidelines. In order to achieve an outcome more consistent with the preferred character it is considered that the spa and balconies/balustrades

should be set in 1 metre from each side boundary. This represents a minor variation only and it is considered appropriate to require this by condition in the event that a permit is issued. The modification has been agreed by the applicant.

The timber balustrades at the penthouse level (2nd floor) also exceed the preferred building height within the required 7.5m setback however these are a lower building element that will visually blend with the adjoining Lorne Cinema building to the north and their impact on streetscape character is considered to be minimal.

Plot Ratio

Plot ratio is a planning tool used to moderate building volume and visual mass in conjunction with setback and height requirements. The proposed building will deliver a plot ratio of 3.56 approx. including the basement car park. However, as the basement will be set below ground level it will make no contribution to the building volume in the streetscape and it is reasonable to discount this level. The effective plot ratio is more appropriately assessed by including the Tavern, Apartment and Penthouse levels only, resulting in a plot ratio of approximately 2.60.

It is considered that this level of variation is acceptable as it provides an appropriate balance between the high level of building mass arising from the Lorne Cinema building next door and the landscaped grounds of the Uniting Church. As noted above, the building is stepped with variation in heights and the marginal non-compliance in plot ratio is not considered a key issue that will result in an excessively bulky building.

Design Detail

A Façade Concept Plan was submitted 22 November 2016 detailing a preliminary scope of external materials, finishes and colours. The Plan introduces vertical 'light weight' screening elements to the south side elevation which will achieve screening of the side access stairs as well as variation in external materials, finishes and colours.

The treatment of the southern elevation is critical in that it adjoins an open garden and will be highly visible in the streetscape for the short to medium term. The Concept Plan has improved this interface and it is considered appropriate to require by condition a final detailed external materials, finishes and colours plan for approval in the event that a permit is issued.

Landscaping

None has been provided within the front setback but this is consistent with all other commercial properties along Mountjoy Parade – the exception in the streetscape being the Anglican Uniting Church and its garden setting.

CL52-27 - Increase in Patron Numbers and Licenced Area

The existing tavern operates under Permit 09/0220C with conditions specifying the serving of light meals, provision of seating (75% patrons), hours of operation and maximum patron numbers of 182. The conditions are amenity related and take into account the mixed-use nature of the area, including the proximity of nearby accommodation uses and the lack of on-site car parking.

Use for Tavern is now as of right in the Commercial 1 zone but Clause 52.27 specifies that a permit is required to sell or consume liquor if inter alia:

The number of patrons allowed under a licence is to be increased

The area that liquor is allowed to be consumed or supplied under a licence is to be increased.

The proposal seeks to vary the existing use for sale and consumption of liquor (licence) by increasing/doubling the number of patrons from 182 for the existing tavern to a total of 360 patrons* across both proposed tenancies or to 180 patrons to each tavern. For each tavern it is proposed seating for 70 patrons would be provided with the remainder (110 patrons) accommodated via standing room (equates to approx. 40% of patrons seated). The applicant has provided confirmation from a registered building surveyor that based on the floor area *across both taverns* the number of occupants able to be accommodated under the relevant regulation is 699 standing and 278 seated. Furthermore, the proposed toilet facilities will cater for 600 males and 200 females *across both taverns*.

**the applicant has advised in response to a recently circulated draft of permit conditions that the patron capacity sought on the site was for 360 patrons and that the capacity of the footpath (currently 32 patrons) is additional to that number (Potentially this would allow a maximum patron capacity of 392 patrons in association with use the licensed premises although the Shires Alfresco Dining Policy limits footpath trading to 10pm as does the current liquor licence)*

Based on the above occupancy assessment the taverns have the floor area capacity to accommodate the proposed patron numbers and seating ratio. It is observed the number of toilets may not be adequate if a high

proportion of females were in attendance at either tavern or the tenancies combined at the proposed maximum 360 patron capacity, but essentially this is a matter for a building surveyor to determine.

As noted earlier, the new development will comprise licenced public areas totalling 241sqm approx. (all roofed) which is smaller than the current public area (336sqm approx.) and therefore no permit is required to increase the licenced area (*the current approved red line plan also covers the whole of the site and the footpath dining area*). Should a permit issue the later will not need to be included in what the permit allows.

The applicant has advised they wish to continue the current mode of operation where full restaurant meals are provided up to early evening but that generally after 9.30pm the space (s) would be used for a bar and include live entertainment on occasions - as currently. Apparently by arrangement live music is provided on different nights to the Lorne Hotel due to limited demand in the town. The applicant has also advised the proposed increase in patron numbers is to be able to cater for larger functions/conference groups that may be staying in Lorne.

The floor layout plan indicates each tavern will have a kitchen, toilets, a lounge/bar and roofed terrace the later opening to Mountjoy Parade. A concept seating layout plan has since been submitted December 2016 indicating seating for up to 138 patrons per tavern or 276 patrons across both taverns which is more seating than initially submitted (70 seats per tavern).

The current permit includes conditions which are relevant to this issue as follows:

1. *The use hereby approved must operate in accordance with the mix of activities outlined in the application documentation and must include the serving of snacks and light meals for consumption on the premises.*
2. *Tables and chairs must be placed in position on the licensed premises so as to be available for at least 75% of patrons attending the premises at any one time.*
8. *No more than 182 patrons shall be permitted on the premises, including both indoor and outdoor areas including the Footpath (alfresco dining area) at any one time.*

The applicant has opposed any application of a 'seating' condition arguing it is inappropriate for a tavern but has advised other current permit conditions would generally be acceptable but with a variation to patron numbers, including that the capacity of the footpath (currently 32 patrons) be additional to the patron numbers sought on site. (*Potentially this would allow a maximum patron capacity of 392 patrons although the Shires Alfresco Dining Policy limits footpath trading to 10pm as does the current liquor licence*)

CL52.27 Decision Guidelines direct consideration 'inter alia' of:

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

In support of the proposed increased patron numbers the applicant has highlighted:

- The site is located within an activity centre within a coastal holiday town where there is an expectation that the town centre will accommodate a range of retail and food and drink premises, especially to cater for the swelled visitor population over summer
- The current premises is operating without complaint and demerits on the licence and apart from holiday season the premises is at capacity for only a short period of the year
- Cuda Bar tavern provides full meals until early evening then operates as a bar with live entertainment (generally once per week) and it is intended this mix will continue
- Security will continue to be provided after 9.30pm
- The new taverns will have a similar floor area as the current premises
- The size and number of patrons is generally in line with other premises in Lorne with the exception of the larger tourist venues
- Whilst the site is within a cluster of licensed premises this is not unexpected within this type of coastal township
- The 1.00am close is consistent with the majority of premises in Lorne and the total proposed capacity is similar to other premises on Mountjoy Parade and given the capacity (floor area) is essentially halved via the building comprising 2 tenancies the total number for each tenancy is not excessive
- The site adjoins non-residential uses and faces the foreshore and away from the sensitive land uses located to the northeast and southwest
- The increase in patron numbers is likely to result in a redistribution of existing patrons in and around Mountjoy Parade rather than by drawing new patrons from outside the activity centre

- Mountjoy Parade has a long residential interface and it is accepted that the interface will differ from a residential amenity in a more suburban setting
- There are positive cumulative impacts including reinforcing the local identity of the town as a holiday destination and entertainment provider, enhanced vitality and choice and economic benefit
- The activity is consistent with the purpose of the zone and the nature of Mountjoy Parade

It is understood that the application seeks two new tenancies with new operating provisions and while some increase in patron numbers may be appropriate it is considered that the scale of increase proposed is problematic – a doubling of patron numbers on-site in conjunction with a reduction in the public floor area raises concerns about amenity impacts, crowding, queuing and possible patron behaviour. Additionally no commercial car parking is to be provided. An increase in the order of 33% would strike a balance between amenity considerations and the intended operational model – and would allow an increase in patron numbers to 240 across both taverns and/or 120 patrons per tavern *in addition* to the 32 patrons allowed in the footpath area. (*The applicant is opposed to any reduction in the proposed patron numbers of 360.*)

It is agreed the current Permit requirement to provide seating for 75% of patrons attending the premises at any one time mimics the standard conditions of a restaurant/café licence/use rather than tavern and is excessive. Consistent with the applicant's submission a lesser proportion of seating - in the order of 30% is considered appropriate and sufficiently flexible and would allow for greater standing capacity later evening without the risk of the taverns converting to an open premises with no/minimal seating. Additionally, the submitted proposed table layout plan (TPA Sheet 03a-11 dated 19th December 2016) suggests provision of on-site seating of 138 patrons to each tavern (approx. 76%). Given the lack of on-site storage space and a commercial lift it therefore seems impractical to move/remove all seating to accommodate late evening operations. (*The applicant is opposed to any minimum seating requirement.*)

Amenity related conditions have been consistently applied for proposals of this type, including taverns in Torquay, and are considered the minimum required to ensure the orderly operation of such premises and especially where commercial strips are narrow and interface with the residential zone and tourist accommodation precincts.

In this case the application appears to be relying on the CL 63 Existing Use provisions for continuation of use for a licenced premises (and tavern) but given that the site is being redeveloped and that changes to current permit/licence conditions have been sought it will be recommended that Planning Permit 09/0220C be cancelled, and that use for sale and consumption of liquor be included in 'what the permit allows' in the event a permit is issued.

The applicant is also opposed to application of (current) permit conditions that require installation and maintenance of a surveillance recording system and the closure of front doors to Mountjoy Parade from 11 pm arguing that compliance with SEPP N-2 should be the guiding document. These conditions were applied in association with a previous permit amendment to deal with complaints about noise and patron behaviour at the time and on the advice of Victoria Police, and it is agreed their continued application is unnecessary.

Clause 52.43 Live Music and Entertainment Venue

Despite reliance on an existing use for licensed premises (tavern), Clause 52.43 Live Music and Entertainment Noise is considered relevant in that this provision states:

This clause applies to an application required under any zone of this scheme to use land for, or to construct a building or construct or carry out works associated with:

- *A live music entertainment venue*
- *A noise sensitive residential use that is within 50 metres of a live entertainment venue*

This clause does not apply to:

- *The extension of an existing dwelling*
- *A noise sensitive residential uses that is in an area specified in clause 1 of the schedule to this clause*

CL52.43-2 states:

- **live music entertainment venue** means:
 - *a food and drink premises, nightclub, function centre or residential hotel that includes live music (inter alia)*
- **noise sensitive residential use** means *a boarding house, dependent persons unit, dwelling, nursing home, residential aged care facility, residential village or retirement village;*

In this case the site is being fully redeveloped, and a permit is required for the building and works under the CO1 zone. The new constructions are associated with a live music venue (tavern) and will also enable a new sensitive use for dwelling (s) above and clearly within 50 metres of the tavern. The redeveloped venue will also be within 50 metres of 2 other properties nearby that are used for accommodation. No exemptions are applied by the Schedules.

CL 52.43-3 requires a live music entertainment venue to be designed, constructed and managed to minimise noise emissions from the premises and to provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue. Conversely, a new noise sensitive residential use must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from indoor live music entertainment venue to below the noise limits specified in SEPP - N2.

In this case, both of the above are considered applicable. Apart from acceptance of compliance with SEPP- N2 as a condition of permit, the application has provided no details of any acoustic attenuation measures to be used in the new construction. Nor has an application been made to waive or reduce the requirement.

Given the proximity of the new dwellings and existing accommodation, in the event a permit is to issue, it will be recommended an acoustic report be submitted for approval to show how compliance with Clause 52.43-3 will be achieved including the details of acoustic attenuation measures to be used in the building construction. Furthermore, that certificates of compliance must be submitted from a registered building surveyor confirming compliance with this condition. Relevant conditions are recommended.

Car Parking

Clause 52.06 sets the car parking requirements for new developments and proposals for “a new use” and where “an existing use is increased by the measure specified in Column C of Table 1 in Clause 52.06-5”.

Based on the new dwelling use and the proposed increase in patron numbers associated with use for tavern the assessed parking demand is as follows:

Land Use	Area/No	Rate	Requirement
Tavern	360 patrons	0.4 spaces to each patron permitted	144 spaces
Dwelling (3 bedroom)	4 no.	2 spaces to each dwelling plus 1 space to every 5 dwellings for visitors	8 space 0 spaces
			152 spaces total

Based on CL 52.06, the statutory car parking requirement is 152 spaces. The application proposes to provide 8 car spaces within the basement level which represents a shortfall of 144 spaces and a reduction in the number of car spaces required has been sought.

Assuming that the basement spaces are to be apportioned to each dwelling, a reduction will be required for the tavern(s). Currently no car parking associated with the existing Tavern (182 patrons) is provided on the site and it is not proposed to add any commercial parking under the subject proposal. A reduction of 144 spaces is therefore required. However, the existing Tavern (182 patrons) can be assumed to generate a current requirement of 72 spaces and it is reasonable to allow this as a ‘credit’ resulting in a lesser requirement of 72 spaces (144 – 72 credit = 72 additional).

The application is supported by a Traffic and Transport Assessment report prepared by Cardno Victoria which concludes that the proposal has made an adequate response to the relevant provisions of the planning scheme in relation to car parking, bicycle parking and loading facilities and notes that “public car parking in coastal towns fluctuates substantially throughout the year, with peak periods typically resulting in parking supplies being inadequate, however that does not prevent activity from occurring within the town, but instead alters behaviour of both permanent residents and holiday makers”.

It is agreed that the majority of patrons are likely to walk to the premises and that the parking demand will be lower than the statutory rate. Given the concentration of visitor/tourist accommodation in and around Mountjoy Parade it is also considered patrons would be drawn from a lesser 1km radius of the site than the 2km used in the report – making walking all the more likely. The report does not include the additional 32 patrons able to be accommodated in the alfresco dining area on the footpath but it is accepted use of this area is highly weather dependent and limited by policy to 10.00pm and therefore unlikely to significantly impact on assessed parking

demand. The report concludes that the impact of the proposed development on the off-site parking in the area will be acceptable.

No Parking Overlay applies to Lorne's commercial areas and it has been officer practice to waive the requirement for commercial uses in new developments/redevelopments along Mountjoy Parade but to require provision of on-site parking for residential apartments above.

On balance the waiver of car parking spaces can be justified based on the high number of spaces provided at street level, including nearby public carparks, the walkability of the town, the number of patrons likely to be accommodated proximal to the premises and the nature of the proposed use (licenced premises) that will operate at different times to other businesses within the precinct with peak periods in the evening.

As discussed above, it has been recommended that the proposed increase in patron numbers (360 total) should not be supported at the level proposed and therefore the number of parking spaces to be waived will also be reduced from an assessed requirement of 72 *additional* spaces to 24 spaces. (240 patrons @ 0.4 spaces per patron = 96 spaces – 72 spaces credit = 24 spaces).

Loading and Unloading

The purpose of CI 52.07 is:

To set aside land for loading and unloading commercial vehicles to prevent loss of amenity and adverse effect on traffic flow and road safety.

A permit may be granted to reduce or waive these requirements if either:

- The land area is insufficient
- Adequate provision is made for loading and unloading vehicles to the satisfaction of the responsible authority.

Based on the commercial floor area a single 27.4sqm loading bay is required.

Currently commercial access to the site is provided by a 3m wide carriageway easement off Grove Road. The redevelopment of the site will result in a car lift to the basement car park at the end of the carriageway and thus make it impractical to undertake commercial rubbish removal. Bins will be required to be wheeled out to Grove Road for kerbside collection. Depending on the bulk of goods delivered to the taverns they potentially could be trolleyed to the site via the Mountjoy Parade entrance and/or from Grove Road using the rear stairs.

There is a loading zone at the eastern end of Grove Road on the southern side (adjacent Lorne Cinema) and small vans and trucks will be able to utilise this space for deliveries including for commercial waste removal. Domestic waste removal from the Grove Road footpath will be undertaken by the Shire.

As no loading bay is to be provided at the site a permit is required to waive this requirement. This is considered acceptable in the circumstances.

Bicycle Parking

CI 52.34 sets out the bicycle parking provision requirements with regard to various land uses and floor area. Based on the CL52.34 Table, the proposal requires 2 spaces for residents and staff and 1 visitor space for a total of 3 spaces. The basement plan shows bicycle hooks at the eastern end of the basement which exceed the minimum requirements.

Roof Top Plant/Bin Store

The development proposes a roofed service room between the second floor stairwell and the rear garage and so roof top plant should be limited only to the flues associated with the existing restaurant. Roof top plant can be prominent and unsightly in the streetscape and in views/outlook and this proposed service room is supported.. Notwithstanding a condition will be recommended requiring further consent to any roof top plant not shown on the endorsed plans.

Objections

The objectors have raised a number of issues relevant to the impact the proposal will have on the character of the area. This has been dealt with previously in this report and is considered acceptable for the reasons previously stated.

Traffic movement to and from the site, potential conflict with pedestrian movement and the adequacy of loading facilities has also been raised as a ground for objection however these issues have been considered by Councils traffic engineers and are considered acceptable subject to conditions.

The reduction in the number of parking spaces required can be justified based on the high number of spaces provided at street level, including nearby public carparks, the walkability of the town, the concentration of visitor accommodation in and around Mountjoy Parade and the nature of the proposed use that will operate at different times to other businesses within the precinct - with peak periods in the evening. The recommendation that the proposed increase in patron numbers should not be supported at the level proposed will also reduce the number of spaces to be waived.

Waste management on the site is a legitimate concern and while this has been addressed in a very basic manner within the application report, it needs further clarification via a waste management plan, which can be required by condition in the event that a permit is issued. It is noted there is a dedicated loading bay on Grove Road with easy proximity to the site

Potential land use conflict arising from Accommodation being situated above a commercial use is not uncommon and is best addressed through the proper application of building controls and permit conditions to control the management of the site.

Referrals

The application referrals are summarised in the Application Process and Timeframe Summary, attached to this report.

Referral responses have been received from Council's Infrastructure Department, Environmental Health Department, and the Heritage Advisor.

Standard conditions have been provided from Infrastructure and the EHO which are considered appropriate and should be included in the event that a permit is issued.

The Heritage advisor notes that the subject land is not included in the Heritage Overlay, however the carriageway easement at the rear is included with the Lorne Cinema on the Victorian Heritage Register and while this does not require a planning permit given the exemption provided at Clause 43.01-2 it is recommended that the applicants are encouraged to contact Heritage Victoria to determine if a heritage permit is required. It is considered appropriate to include this recommendation as a note in the event that a permit is issued.

The application was also referred to Victoria police which has offered no objection based on the fact that there have been no recent licencing or amenity issues associated with the existing Cuda Bar.

CONCLUSION

On balance it is considered that the application can be approved subject to amended plans to show compliance with the issues discussed in this report, however the application has not adequately justified the proposed increase/doubling in patron numbers and this element of the proposal is not supported. An increase in the order of 30% would strike a balance between amenity considerations and the intended operational model – and would allow an increase in patron numbers to 240 across both taverns and/or to 120 patrons per tavern.

It is also considered seating should be provided in the taverns and consistent with the applicant's submission a lesser proportion of seating than the current permit requirement - in the order of 30% of patrons, is considered appropriate and sufficiently flexible and would allow for greater standing capacity late evening without the risk of the taverns converting to open premises with no/minimal seating.

Amenity related conditions have been consistently applied for proposals of this type, including taverns elsewhere in the Shire, and are considered the minimum required to ensure the orderly operation of such premises and especially where commercial strips are narrow and interface with the residential zone and tourist accommodation precincts.

The application appears to rely on CL 63 Existing Use provisions for continuation of use for a licenced premises (and tavern) but given that the site is being redeveloped and that changes to current permit conditions have been sought rather than amending the current permit it is recommended that Planning Permit 09/0220C be cancelled and that use for sale and consumption of liquor be included. The majority of current conditions will be able to be applied to the new permit.

It is also considered that CL52.43 Live Music and Entertainment Noise is applicable and an acoustic report will be required to show how compliance with this provision will be achieved including the details of acoustic attenuation measures that must be used in the building construction. Furthermore, it is recommended that certificates of compliance must be submitted from a registered building surveyor confirming compliance with this condition.

RECOMMENDATION

It is recommended that a Notice of Decision to Grant a Permit be granted for Buildings & Works associated with the Construction of a Four Storey Building containing a Basement Car Park, Two Taverns and Four Dwellings, Use for the Sale and Consumption of Liquor (associated with use for Tavern), and Reduction in Car Parking and Loading Bay Requirements (associated with use for Tavern) in accordance with endorsed plans, subject to conditions.