

**1.2 1, 2, 3 & 4/317-319 CLAYTON ROAD, CLAYTON
INCREASE TO TRADING HOURS AND EXPANSION OF LIVE ENTERTAINMENT AT
THE CLAYTON HOTEL
(TPA/40027/A)**

EXECUTIVE SUMMARY:

This application proposes to amend Conditions 5 and 13 of Planning Permit TPA/40027, which applies to the Clayton Hotel (formerly known as the L'Unico Hotel).

The proposed changes relate to increasing the spread of the hours during which the sale and consumption of liquor can occur and the expansion of the type of live entertainment. No change is proposed to the existing gaming operations.

Specifically, it is proposed to increase the operating hours of the site to 24 hours a day, 7 days a week, except on Anzac Day, when shorter operating hours are proposed, and, to expand the type of live entertainment within the existing hotel.

The application was subject to public notification. No objections to the proposal have been received.

Key issues to be considered relate to the potential impact of the additional operating hours, potential noise impact of the live music on adjoining residential areas, whilst encouraging and supporting vibrancy in an activity centre.

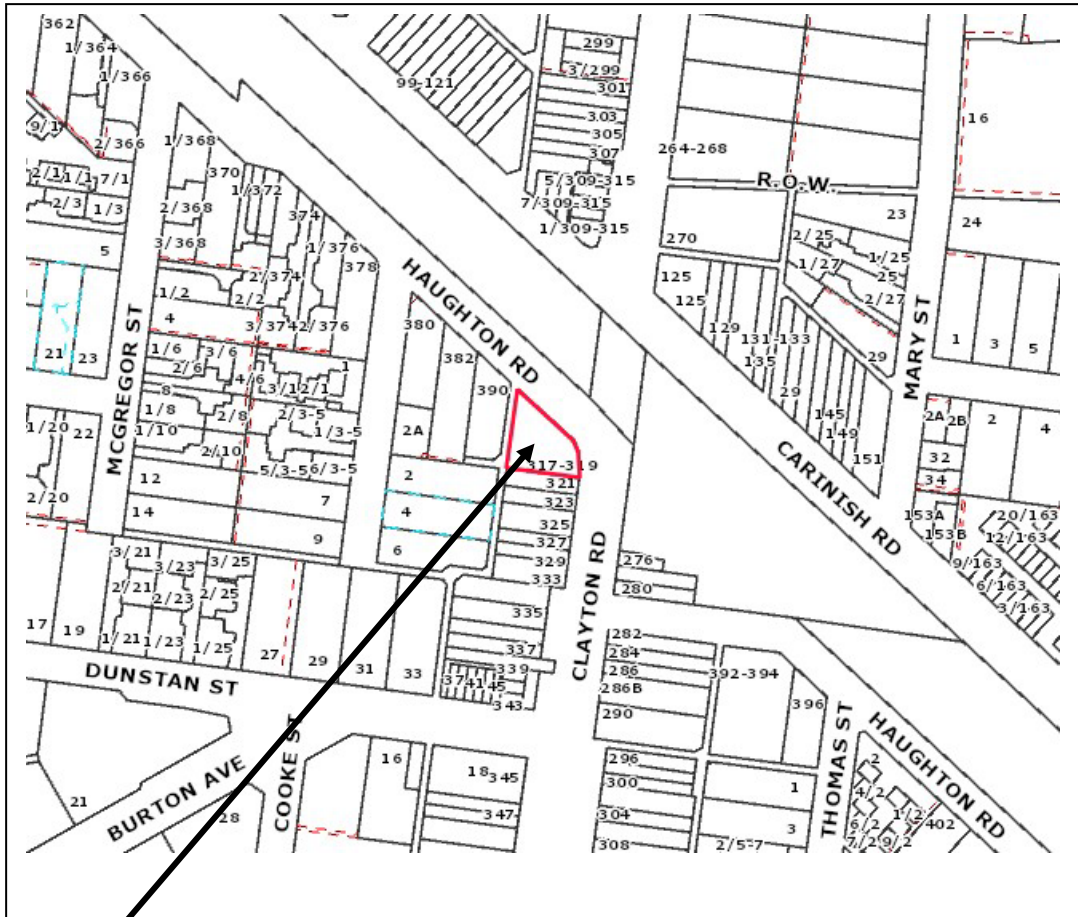
This application has been called in for consideration at a Council meeting by Councillor Lake.

This report assesses the proposal against the provisions of the Monash Planning Scheme including the relevant state and local planning policy framework, and recommends that an Amended Planning Permit issue.

RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE ACTING MANAGER:	Sean McNamee
RESPONSIBLE PLANNER:	Craig Smith
WARD:	Oakleigh
PROPERTY ADDRESS:	1, 2, 3 & 4/317-319 Clayton Road, Clayton
EXISTING LAND USE:	Existing Hotel (licensed premises comprising café/lounge bar, bistro,

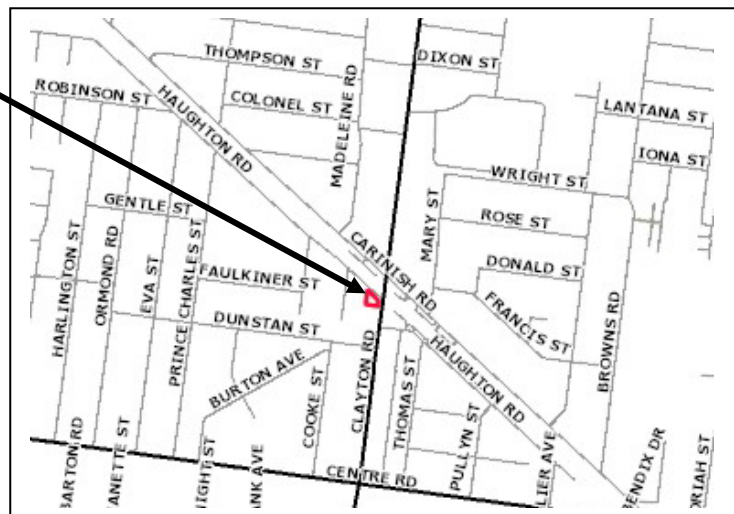
	restaurant, function rooms, TAB and gaming lounge)
PRE-APPLICATION MEETING:	No
NUMBER OF OBJECTIONS:	Nil
ZONING:	Commercial 1 Zone
OVERLAY:	Special Building Overlay
RELEVANT CLAUSES: <u>State Planning Policy Framework</u> Clause 11.03 Activity Centres Clause 17.01 Commercial <u>Local Planning Policy Framework</u> Clause 21.05 Economic Development Clause 21.06 Activity Centres	<u>Particular Provisions</u> Clause 52.27 Licensed Premises Clause 52.43 Live Music and Entertainment Noise <u>General Provisions</u> Clause 65 Decision Guidelines
STATUTORY PROCESSING DATE:	20 January 2018
DEVELOPMENT COST:	Nil

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



1, 2, 3 & 4/317-319 Clayton Road, Clayton - Increase To Trading Hours And Expansion Type Of Live Entertainment At The Clayton Hotel

RECOMMENDATION:

That Council resolves to amend Planning Permit (TPA/40027) issued on 15 February 2013 authorising buildings and works (including works within a Special Building Overlay) to the existing hotel (licensed premises comprising café/lounge bar, bistro, restaurant, function rooms TAB and gaming lounge on the site at 1,2,3 & 4/317-319 Clayton Road, Clayton by replacing Conditions 5 and 13 with the following:

Replacement Condition No. 5

“The use (excluding the gaming room) hereby permitted may operate only between the hours of:

- *Monday through to Sunday any time excluding between 3 am and 12 noon on Anzac Day.*

Replacement Condition No. 13

“The live entertainment hereby permitted in the venue is subject to the following requirements:

- a) *Live entertainment must be limited to:*
 - i. *Karaoke;*
 - ii. *A DJ or other music playback or program material; or*
 - iii. *A band or performer.*
- b) *Live entertainment must not occur after 1 am;*
- c) *Acoustic drum kits must not be used;*
- d) *Windows to the function room must remain closed during live entertainment performances;*
- e) *Doors to the function room balcony must close automatically;*
- f) *A noise limiting device must be installed, such as the CESVA LRF-04 or equivalent calibrated to limit octave band music levels to the maximum music levels defined as follows:*

	<i>Octave Band Centre Frequency, Hz</i>						
	<i>63</i>	<i>125</i>	<i>250</i>	<i>500</i>	<i>1000</i>	<i>2000</i>	<i>4000</i>
<i>Maximum music level allowable inside function room, at 3m in front of loudspeakers (Db)</i>	<i>93</i>	<i>99</i>	<i>109</i>	<i>113</i>	<i>110</i>	<i>101</i>	<i>115</i>

and to ensure compliance with Conditions 14 and 15.

The music levels must be periodically tested and documented by a suitably qualified and independent acoustic engineer. The results must be presented whenever required by the Responsible Authority.

BACKGROUND:**History**

A hotel has been operating from the site for over 20 years. Prior to that, the building was used as a retail arcade.

The premises currently has a licence to operate a TAB and up to 35 electronic gaming machines.

Planning Permit TPA/40027 was granted by VCAT on 15 February 2013 and allowed for the redevelopment of the hotel. The approved redevelopment allowed:

- The creation of a new main entrance from Haughton Road;
- An increase in the size of the bistro, to a total of 150 seats;
- The construction of an expanded bar on the ground floor to service the bistro, a new TAB and gaming room;
- The creation of a new café/lounge bar area on the ground floor;
- A reduction in the size of the TAB;
- The construction of three new smoking areas; and
- The construction of a new function/community room with 100 seats.

The Site and Surrounds

The site is located on the corner of Clayton Road and Haughton Road. It is known as the Clayton Hotel (formerly the L'Unico Hotel).

The hotel is within a double storey building. The ground floor comprises gaming lounge, TAB outlet, bar area, café/lounge, bistro, kitchen and toilet facilities. The upper storey comprises restaurant, function room, kitchen, bar facilities and two balcony/terrace areas.

No covenants are registered on title.

Features of adjoining land are as follows:

North: North of the site is the footpath and Roadway of Haughton Road and the rail line corridor including sky rail to remove the level crossing at Clayton Road.

South: Two storey commercial buildings forming part of the Clayton Activity Centre. Shop top housing adjoins the site at No. 321a Clayton Road.

East: The Clayton Railway Station and commercially zoned properties forming part of the Clayton Activity Centre. There are no residential dwellings immediately east.

West: Land directly abutting the subject site is a right of way laneway servicing the commercial properties. This laneway also divides these commercial properties from residential properties further east of the site, which face Nicholson Court.

An aerial photograph of the subject site and surrounding land can be found attached to this report (Attachment 2).

PROPOSAL:

The application proposes to amend Conditions 5 and 13 of Planning Permit TPA/40027. These conditions relate to the hours of operation and the ability to provide live entertainment on the site, respectively.

Condition 5 currently allows:

“The use (excluding gaming room) hereby permitted may operate only between the hours of:

- *Monday to Saturday 7.00am and 3:00am the following day; and*
- *Sunday (not being Anzac Day) 12 noon and 11:00pm”*

Condition 13 currently allows:

“The only live entertainment permitted is non amplified piano and/ or non-electric guitar with a maximum of two (2) musicians.”

The proposal seeks to replace these conditions with the following proposed conditions:

Condition 5:

“The use hereby permitted may operate and trade alcohol for consumption on the premise between the hours of:

Monday to Sunday at any time (excluding between 3am and 12 noon on Anzac Day.)”

Condition 13:

“Live entertainment is permitted in the venue subject to the following:

- a) Live entertainment does not occur after 1am;
- b) Windows to the function room remain closed during performances;
- c) Doors to the function room balcony close automatically;
- d) Live entertainment is in the form of:
 - i. Karaoke;
 - ii. A DJ or other music playback or program material; or
 - iii. A band or performer that does not include acoustic drum kits
- e) A noise limiting device is installed, such as the CESVA LRF-04 (<https://www.cesva.com/en/products/logger-limiters/lrf-04/>), calibrated to limit octave band music levels to the maximum music levels defined as follows:

	<i>Octave Band Centre Frequency, Hz</i>						
	<i>63</i>	<i>125</i>	<i>250</i>	<i>500</i>	<i>1000</i>	<i>2000</i>	<i>4000</i>
<i>Maximum music level allowable inside function room, at 3m of loudspeakers</i>	<i>93</i>	<i>99</i>	<i>109</i>	<i>113</i>	<i>110</i>	<i>101</i>	<i>115</i>

Attachment 1 details plans originally approved under Permit TPA/40027. No buildings and works are proposed as part of this current application.

PERMIT TRIGGERS:

Clause 52.27 – Licenced Premises

A permit is required for the sale and consumption of liquor.

It is noted that a planning permit is not required for use of a hotel in the Commercial 1 Zone.

Attachment 3 details the zoning and overlays applicable to the subject site and surrounding land.

CONSULTATION:

The Applicant was verbally advised that this application was coming to the May 2018 Council meeting, in addition to a letter that was sent to the Applicant formally informing them of the details of the Council meeting. The Applicant has been advised that officers recommend approval of the proposal subject to conditions, and an outline of the conditions and the ramifications of the conditions on the proposal has been explained.

Public Notice

The application was advertised by way of letters sent to the surrounding property owners/occupiers, and signs displayed on the Clayton Road and Haughton Road frontages.

No submissions or objections were received to the application.

Victoria Police was also notified of the application. Victoria Police provided a response, stating it had no objection to the proposal.

Referrals

Comments to the application were received from:

Internal

- Community Strengthening
Advised that it does not support the proposal on the grounds of social harm and financial cost to the community from increased alcohol consumption and gambling activity.

External

- Victorian Commission for Gambling and Liquor Regulation (VCGLR)
Advised that it does not object to the proposal or require any conditions.

It is noted that the VCGLR is a determining referral authority.

DISCUSSION:**Sale and Consumption of Liquor**

The purpose and decision guidelines of the Clause 52.27 Licensed Premises is to ensure that the sale and consumption of liquor on the premises does not unreasonably impact the amenity of the surrounding area.

The application was referred to the Victorian Commission for Gambling and Liquor Regulation which had no objection to the proposal and required no conditions.

The application was advertised to Victoria Police and surrounding owners and occupiers. Victoria Police stated it had no objection to the proposal and no objections have been received from local residents or the other businesses within the activity centre.

The proposed changes to conditions do not relate to the gaming component of the hotel. The permit currently allows 24 hour gaming and the application does not propose any changes to the conditions of the permit relating to gaming. Whilst potential social harm and financial cost from alcohol consumption are important community issues, we are unable to consider these as part of the planning application. The objectives and decision guidelines of the planning scheme are limited to amenity impacts to the surrounding area.

No evidence has been submitted that increasing the permitted hours would result in an increase in anti-social behaviour in the surrounding area. The crime statistics (source Victoria Police) provided by Community Strengthening have been considered. The crime statistics cover the period between 2012 and 2017 within 100 metres of the Clayton Hotel.

The statistics do not state whether the crime events were alcohol related, the type of crimes committed or if they were associated with the Clayton Hotel. The crime

statistics show no relationship between hours and crime events, other than a lower offence rate between 6 am and 12 noon.

Hours	Offences
12 midnight – 6 am	37
6 am – 12 noon	14
12 noon – 6 pm	39
6 pm – 12 midnight	39

The existing permit allows the sale and consumption of liquor to occur until 3 am and recommence at 7 am (other than Sunday). The proposed increase equates to an additional 4 hours and no evidence has been submitted to demonstrate that allowing sale and consumption of liquor between 3 am and 7 am would lead to a materially different local amenity outcome that currently exist.

Having regard to the discussion above, in particular the fact that Victoria Police have not objected, the increase to the hours for sale and consumption of liquor would not unreasonably impact the amenity of the surrounding area.

Live Music and Entertainment

Clause 52.43 Live Music and Entertainment Noise recognises that live music is an important part of the State’s culture and economy and seeks to ensure that noise from live music does not unreasonable impact the amenity of residential uses.

The expansion to the type of live entertainment from non-amplified piano and non-electric guitar with a maximum of two musicians to a limited range of amplified live entertainment options would not unreasonable impact the amenity of surrounding residential uses. The current hours for live entertainment are unrestricted. The proposed restriction until 1 am and the proposed sound limiting and attenuation measures, along with noise restrictions contained in the existing permit, would mitigate potential negative impacts to the surrounding residents.

No objections have been received from residents and noise from the live entertainment would continue to be subject to the amenity conditions of the permit and EPA noise regulations.

Activity Centres

Clause 11.03 Activity Centres, Clause 17.01 Commercial, Clause 21.05 Economic Development and Clause 21.06 Activity Centres seeks to encourage the development of vibrant activity centres. The proposal does not materially enhance or reduce the vibrancy or economic development of the Clayton Activity Centre.

CONCLUSION:

No objections have been received to the expansion of hours or live entertainment from Victoria Police, the Victorian Commission for Gambling and Liquor Regulation, local residents or the other businesses within the activity centre.

There is nothing to suggest that allowing sale and consumption of liquor between 3 am and 7 am would lead to a materially different local amenity outcome that currently exists.

The expansion to the type of live entertainment would not unreasonably impact the amenity of the surrounding area as the proposed restriction until 1 am and the sound limiting and attenuation measures would mitigate negative impacts.

The proposal does not materially enhance or reduce the vibrancy or economic development of the Clayton Activity Centre. It is recommended that the permit be amended to provide:

Replacement Condition 5 and 13 as set out in this report.

LIST OF ATTACHMENTS:

Attachment 1 – Proposed Development Plans.

Attachment 2 – Aerial Photograph (December 2016).

Attachment 3 – Zoning and Overlays Map.