

# Government Land Standing Advisory Committee

## Tranche 6 Report

### 35 Johnston Street, Collingwood

24 May 2017

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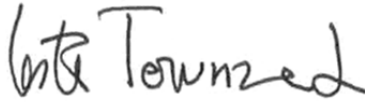
## List of Abbreviations

CAP	Collingwood Arts Precinct
FTGL Service	Fast Track Government Land Service
MSS	Municipal Strategic Statement
MUZ	Mixed Use Zone
PO	Parking Overlay
PPN3	Planning Practice Note 3: Applying the Special Use Zone
SUZ	Special Use Zone
the Act	the Planning and Environment Act 1987
VHR	Victorian Heritage Register
VPP	Victoria Planning Provisions

## About this report

On 29 December 2016, the Minister for Planning referred 35 Johnston Street, Collingwood to the Government Land Standing Advisory Committee as Tranche 6.

This is the report, under Section 151 of the *Planning and Environment Act 1987*, of the Government Land Standing Advisory Committee for Tranche 6.



Lester Townsend, Chair



John Ostroff, Member



Jennifer Fraser, Member

24 May 2017

## The Government Land Standing Advisory Committee

The Fast Track Government Land Service (FTGL Service) is a 2015 initiative to deliver changes to planning provisions or correct planning scheme anomalies for land owned by the Victorian Government. The Minister for Planning approved Terms of Reference to establish the Government Land Standing Advisory Committee (the Committee) under Part 7, section 151 of the *Planning and Environment Act 1987* in July 2015.

The purpose of the Committee is:

*... to advise the Minister for Planning on the suitability of changes to planning provisions for land owned by the Victorian Government.*

The Committee consists of:

- Chair: Lester Townsend
- Deputy Chairs: Brett Davis and Cathie McRobert
- Members: Gordon Anderson, Alan Chuck, John Collins, Mandy Elliott, Jenny Fraser, John Ostroff, Cazz Redding and Lynn Sweeney.

The Committee was assisted by Ms Emily To, Project Officer with Planning Panels Victoria.

The Committee's Terms of Reference state:

*The Committee must produce a written report for the Minister for Planning providing:*

- *An assessment of the appropriateness of any changes to planning provisions, in light of the relevant planning scheme and State and Local Planning Policy Frameworks.*
- *An assessment of whether planning scheme amendments could be prepared and adopted in relation to each of the proposals.*
- *An assessment of submissions to the Standing Advisory Committee.*
- *Any other relevant matters raised in the course of the Standing Advisory Committee Hearing.*
- *A list of persons who made submissions considered by the Standing Advisory Committee.*
- *A list of persons consulted or heard.*

## Details of the site and process

**Table 1 Proposal summary**

Proposal summary	
<b>Tranche and site reference</b>	Tranche 6: Site reference FT97
<b>Site</b>	35 Johnston Street, Collingwood
<b>Previous use</b>	Former Collingwood Technical College
<b>Site owner</b>	Creative Victoria
<b>Council</b>	Yarra City Council
<b>Exhibition</b>	13 February – 24 March 2017
<b>Submissions</b>	11 Submissions were received from: <ul style="list-style-type: none"> <li>- Yarra City Council</li> <li>- Creative Victoria</li> <li>- Contemporary Arts Precincts Ltd</li> <li>- Gurner Pty Ltd for 22-33 Johnston Street Pty Ltd</li> <li>- Foti Pavlakos</li> <li>- Circus Australia Ltd, trading as Circus Oz</li> <li>- PBS 106.7 FM (radio)</li> <li>- Tim Fitzgerald</li> <li>- Guido Staltari</li> <li>- Tanya Tescher</li> <li>- Catherine Willcock</li> </ul>

**Table 2 Proposed planning scheme changes**

Existing controls	Proposed changes
Mixed Use Zone	Special Use Zone
Design and Development Overlay – Schedule 12	Remove
Environmental Audit Overlay	Retain
Heritage Overlay 324 (HO324)	Retain
Heritage Overlay 354 (HO354)	Retain
Victorian Heritage Register (VHR) – VHR Number H2055	Retain
	Identify the site as a venue to which Clause 52.43 (Live music and entertainment) applies (new)
	Parking Overlay (new)

**Table 3**      **Committee process**

<b>Committee process</b>	
<b>Members</b>	Lester Townsend (Chair), Jennifer Fraser and John Ostroff
<b>Information session</b>	1 March 2017, the Melba Spiegeltent, 35 Johnston Street, Collingwood
<b>Hearing</b>	10 April 2017, Planning Panels Victoria, 1 Spring Street, Melbourne
<b>Site inspections</b>	6 March by Lester Townsend and Jennifer Fraser
<b>Appearances</b>	Yarra City Council represented by Ms Natalie Luketic of Harwood Andrews Circus Oz represented by Lou Oppenheim Contemporary Arts Precinct Limited represented by Marcus Westbury Gurner 22-33 Johnston Street Pty Ltd represented by Andrew Clarke of Matrix Planning Creative Victoria represented by Sean McArdle of Norton Rose Fulbright and calling evidence from: <ul style="list-style-type: none"><li>- Ross Leo of Marshall Day in Acoustics</li><li>- Tim Biles of Message Consulting in Planning</li><li>- Chris Coath of GTA in Traffic</li></ul>
<b>Date of this Report</b>	24 May 2017

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# 1 Summary and recommendations

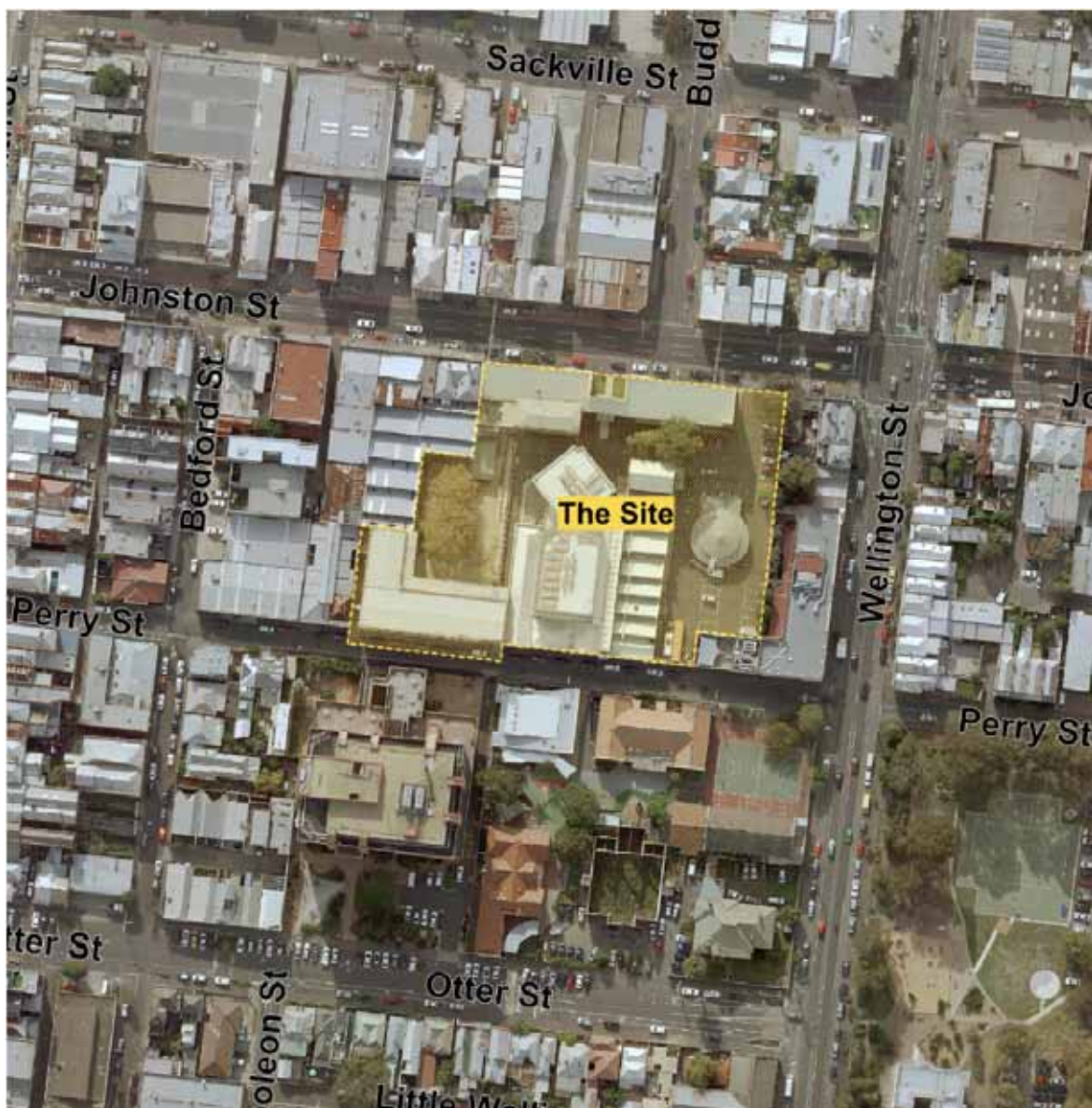
## 1.1 The site

The site is located at 35 Johnston Street, Collingwood (see Figure 1 below).

The information sheet published by the FTGL Service describes the site as follows:

*The site is the former Collingwood Technical College. It is partly occupied by Circus Oz (50 Perry Street, Collingwood) and a number of vacant buildings. The site is irregular in shape and has an overall area of approximately 8,396 square metres.*

**Figure 1** Site location



## 1.2 Summary

It is proposed by Creative Victoria (the site owner) that the land at 35 Johnston Street, Collingwood, be rezoned from Mixed Use Zone to Special Use Zone, with a new schedule that will specify the uses that can occur on the site.

The Committee considered all written submissions as well as the submissions presented to it at the Hearing. In addressing the issues raised in those submissions, the Committee has been assisted by the information provided to it as well as its observations from inspections of site. The Committee was also informed by the evidence presented to it throughout the parallel permit call-in process (as outlined in Chapter 2).

As such, the Committee has prepared the following table which summarises the existing, proposed and recommended controls for the site.

**Table 4 Existing and proposed controls**

Current planning scheme controls	Proposed planning scheme controls	Advisory Recommendation	Committee Recommendation
35 Johnston Street, Collingwood			
Mixed Use Zone	Special Use Zone	Special Use Zone	
Design and Development Overlay – Schedule 12 (DDO12)	Remove	Remove	
	Identify the site as a venue to which Clause 52.43 (Live music and entertainment) applies	Identify the site as a venue to which Clause 52.43 (Live music and entertainment) applies	
	Parking Overlay	Parking Overlay	
Environmental Audit Overlay	Retain	Retain	
Heritage Overlay 324 (HO324)	Retain	Retain	
Heritage Overlay 354 (HO354)	Retain	Retain	
Victorian Heritage Register – VHR Number H2055	Retain	Retain	

## 1.3 Recommendations

The Committee recommends that a planning scheme amendment be prepared and approved for 35 Johnston Street Collingwood to:

1. **Rezone the site to the Special Use Zone with the Schedule as shown in Appendix B.**
2. **Apply the Parking Overlay as shown in Appendix C.**
3. **List the site in the Schedule to Clause 52.43 (Live music and entertainment).**



## 2 Process issues for this site

### 2.1 Planning Permit Application PLN15/1032 (Collingwood Arts Precinct)

As well as considering this site under Tranche 6, the Minister for Planning has agreed to determine Planning Permit Application PLN15/1032, for the use of some buildings in the Collingwood Arts Precinct for arts related uses.

Following a request from the City of Yarra the Minister for Planning decided to call-in the permit application and refer it to a Panel pursuant to section 97E of the Act.

The Panel, consisting of Lester Townsend (Chair) and Jennifer Fraser has submitted a separate report on the permit call in.

The main parties in these two matters were the same. The parties agreed that the material presented in each matter was relevant to both matters, and that the Committee should consider all the material presented over both hearings, when forming its view on the matter before it.

Issue of noise impacts are extensively discussed in the panel report for the call in: *Panel Report: Yarra Planning Scheme Permit Application PLN15/1032, Collingwood Arts Precinct Call-In May 2017*.

## 3 Site constraints and opportunities

### 3.1 Zoning context

Figure 2 Current zoning

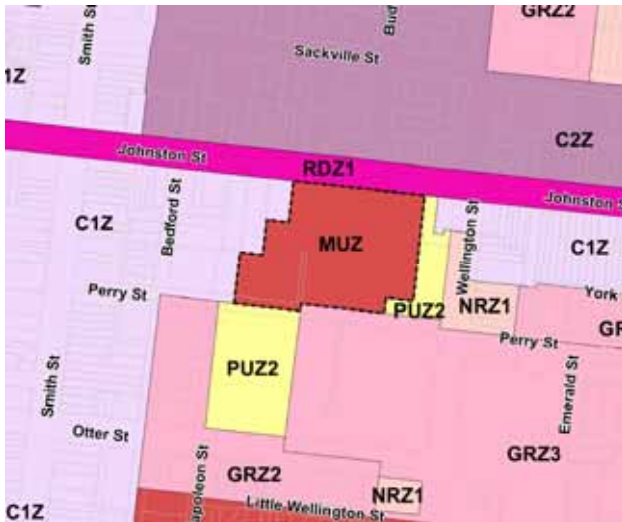
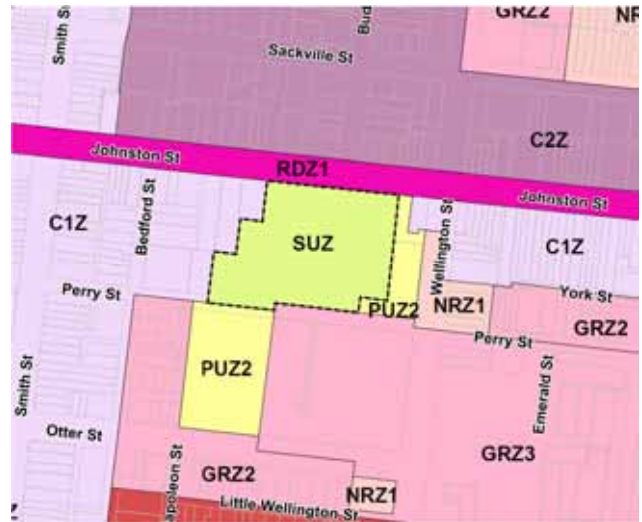


Figure 3 Proposed zoning



### 3.2 Physical constraints

#### (i) History of the site

The site was formerly the home to the Collingwood Technical College, however the college closed in 2005, and was vacant for several years. In 2010, the Victorian State Government funded the redevelopment of the precinct to create a facility to support the work of Circus Oz which has occupied that part of the site since 2014. The remaining parts of the site are currently unoccupied.

#### (ii) Site context

The subject site is approximately 8,396 square metres and contains several buildings. According to the Town Planning report<sup>1</sup> submitted by the site owner, the site has the following direct abutments:

- To the north the site abuts Johnston Street (a Road Zone Category 1), a major east-west traffic and bus route and commercial strip, which is identified as a Neighbourhood Activity Centre within the City of Yarra's MSS (Clause 21.08). Land opposite the site in Johnston Street is occupied by a range of retail and office premises within two storey buildings.
- To the south is Perry Street, provides a connection between Smith Street and Wellington Street. Land opposite the site in Perry Street is occupied by educational

<sup>1</sup> Town Planning Report prepared by Message Consultants Australia Pty Ltd 2016 on behalf of Creative Victoria.

uses in the form of St Joseph's Primary School and the Collingwood campus of Melbourne Polytechnic.

- To the west the site abuts the Tote Hotel which is located at the corner of Johnston Street and Wellington Street. South of this, the Neighbourhood Justice Centre extends south to Perry Street.
- To the west the site abuts two properties at 23-33 Johnston Street and 10 Perry Street.

The subject site is located in a highly accessible and well-serviced location with many public transport options. The site slopes towards the east with a number of mature trees within the site.

**(iii) Access**

Main vehicle access is via a crossover from Johnston Street in the north-east corner of the site. Two further crossovers exist on the Perry Street frontage.

## 4 Issues with the proposed changes

### 4.1 The Special Use Zone

#### 4.1.1 Is the Special Use Zone appropriate

The proposal rezones the site from the Mixed Use Zone (MUZ) to the Special Use Zone (SUZ).

##### (i) Evidence and submissions

###### The site users

Contemporary Arts Precincts Ltd and Circus Oz will be the main users of the site.

Contemporary Arts Precincts submitted that the organisation's aim is to deliver vibrant, cross-disciplinary creative precincts that provide spaces and support for non-profit small to medium creative organisations and individuals. It submitted that the project will revitalise the site into a major new contemporary arts precinct – the Collingwood Arts Precinct (the Arts Precinct). The site would include a large central courtyard which would provide public space open to arts audiences and the broader Collingwood community. Its location in an inner city area will have the ability to host a wide array of creative events. It was submitted that the precinct has come about partly due being adjacent to, and consistent with, a large number of vibrant creative activities.

In conclusion, Contemporary Arts Precincts submitted:

*The arts and creative industries are a constantly changing field of practice-artists are developing new ways of working and evolving their practices over time. The mix of tenants at CAP will change over time. The application (of) this Special Use Zone to the site would allow for the provision and protection of a dynamic arts ecology without the constant need for individual permit applications.*

Circus Oz submitted that it supported the introduction of the SUZ because it would provide recognition and protection of the current and future operations of Circus Oz. It will also ensure the establishment of a vibrant arts and cultural hub to meet wider community expectations.

###### Site owner submission

Tim Biles of Message Consultants gave planning evidence for the site owner. He considered that the rezoning would encourage and facilitate the development and use of the land as an integrated hub for arts and cultural activities, in line with the objectives stipulated in *Creative State* (the State Government's *Creative industries Strategy 2016-2020*), which supports activation of co-working spaces and hubs across the State. The unoccupied portion of the site is proposed to be a contemporary creative precinct, which would provide a home for small and medium creative organisations, as well as artists and other complementary businesses. Mr Biles stated that:

*The overall vision is for the arts precinct to provide for a broad range of arts and cultural activities including studios, workshops, galleries, rehearsal,*

*performances and events, and spaces for training, production and community engagement and to provide associated accommodation for artists and workers in the creative industries. The vision is for an active and diverse precinct where the outdoor spaces are used for informal recreation, events and performances which draw the community into the site.*

Mr Biles considered that the rezoning would facilitate a range of arts and crafts activities in this precinct by avoiding the need to obtain permits for key uses. He submitted that where unique circumstances exist, a site specific zone would be the most effective way of fostering a desired planning outcome, and referred to the Abbotsford Convent site as an example of this approach.

He was concerned that although the current MUZ enables a range of arts and associated land uses to be considered, it does not specifically promote or support the development of an arts precinct within the planning scheme. Additionally, the majority of the anticipated activities are in Section 2 of the Table to the MUZ, which therefore, require a planning permit. He states that:

*The [parts] of the precinct are expected to be used by a range of cultural businesses and individuals and would be expected to experience a relatively regular occurrence of tenant turnover and changes of land use within particular parts of the site, each of which would potentially require a planning permit.*

Mr Biles submitted that the SUZ with an appropriate Schedule would enable minor changes of use within a set of core arts and cultural activities without a permit and therefore contribute to the ongoing practicality of the arts precinct model. He considered that applying for planning permits for a substantial range of proposed uses, including waivers of car parking, would be difficult and entail delay.

Council supports the rezoning of the site to SUZ and advised that the rezoning to SUZ was appropriate. Council noted the view of the Panel in the Stonnington New Format Planning Scheme Panel Report (February 1999), that the SUZ should only be applied where the use is of such significance that it is regionally significant in some way or there were particular issues with zoning or management. Council pointed out that the first provision in the Purpose section of the Schedule to the SUZ is:

*To recognise the Collingwood Arts Precinct as a significant arts and cultural precinct of State and Metropolitan significance.*

Council submitted that there was merit in applying a zone that reflects the intended use and development of the precinct based on the scale and significance of this proposal.

### **Gurner Pty Ltd (Gurner)**

Gurner for 22–33 Johnson Street Pty Ltd has no issue with, and fully supports the establishment of an Arts Precinct at the site. It was submitted that all the proposed uses for the site are already and are either as of right or subject to a permit in the MUZ. It was submitted that the SUZ was inappropriate for the site and the MUZ should be retained.

The Committee was referred to *Planning Practice Note 3: Applying the Special Use Zone (PPN3)* and highlighted that the proposal did not satisfy three out of the four principles contained in PPN3:

- *The complexity of planning requirements is reduced by keeping the number of zones used to a minimum.*
- *Planning scheme maps identify the statutory requirements which apply to land, not the particular land uses which happen to exist there.*
- *Detailed and complex site specific zones are discouraged in preference for clear policy guidelines as the primary tool for decision making on planning matters.*
- *The planning permit should be the principal method for land use or development approval.*

Gurner argued that:

*The proposed SUZ completely removes land use permit requirements that currently exist in the MUZ. The draft planning scheme amendment is essentially replacing permit requirements with a planning approval by planning scheme amendment. Using permit triggers was a fundamental principle for the introduction of the VPP planning schemes.*

Gurner believes that the SUZ is being sought so as to avoid third party notice, decision and appeal rights currently available, and that the use of the SUZ to facilitate the arts activities is at odds with PPN3.

Gurner noted that Council's adopted *Johnston Street Local Area Plan (adopted December 2015)* identifies and supports the designation of an arts precinct for the site, and though it recommends various zoning changes along Johnston Street, it makes no recommendation to change the planning controls on the subject site to facilitate the Arts Precinct.

### **Guido Staltari**

In his written submission, Mr Guido Staltari considered that the SUZ would alienate and exclude the local community from considering future uses and other proposals.

#### **(ii) Discussion**

A critical issue is whether in light of the proposed uses for the site, the land should remain in the MUZ or be replaced by an alternative zone.

None of the proposed uses are prohibited by the existing MUZ, and the MUZ allows for the proposed uses subject to, in many cases, the grant of a permit. However, as the precise activities are intended to change over time, sometimes quickly to respond to new arts endeavours, and this would involve obtaining a large number of permits.

The Committee considers that when a permit is submitted for a new use (as required by the MUZ) there would be no guarantee that the Responsible Authority would make a decision in a timely fashion to allow for 'immediate' use of the site.

The Responsible Authority was not able to determine planning permit application PLN15/1032, for the use of some buildings in the Precinct for arts related uses, and 15

months after the applications was made requested that the Minister Planning call in the application.

The surrounding area contains diverse outlets for arts, crafts and recreation, and the present proposal reinforces such uses. In this respect, the Committee notes that Clause 21.02 of the Planning Scheme, *Municipal Profile, Arts and culture*, states:

*Yarra's role as a centre for live music is widely acknowledged, along with the capacity of Yarra's music venues to support emerging musicians. Yarra is also known for the number and diversity of commercial and community arts and cultural facilities located in the municipality, in particular the high number of commercial art galleries.*

Additionally, Strategy 7.1 of Clause 21.04-2, *Activity Centres* states:

*Supports a diversity of arts uses such as live music venues, performance spaces, galleries, and artist studios in appropriate and accessible locations.*

Given the significance and scale of the proposed use of the site as a new arts precinct which will have a broader benefit to the whole of the community, the site owner's vision for the site would be best achieved through the introduction of the proposed SUZ and associated schedule.

The Committee notes that PPN3 also states:

*A Special Use Zone can be considered when either:*

- *an appropriate combination of the other available zones, overlays and local policies cannot give effect to the desired objectives or requirements.*
- *the site adjoins more than one zone and the strategic intent of the site, if it was to be redeveloped, is not known and it is therefore not possible to determine which zone is appropriate.*

The Panel does not think that the MUZ can give effect to the desired policy objectives for the site in a practical fashion, because it will require multiple planning permit applications for a changing range of uses and decisions on those applications on short notice if the vision of the Precinct is to be realised.

### **(iii) Conclusion**

The Arts Precinct provides a unique opportunity to attract activities of local and state significance, with support from the State Government through Creative Victoria.

The Committee concludes:

- The SUZ with the proposed Schedule 1 will provide the flexibility for a variety of arts, crafts and recreational uses to change or be introduced expeditiously, without undue delay as required by the vision for the Arts Precinct.
- It would not be possible to manage the Arts Precinct in a timely fashion under the provisions of the MUZ.
- The proposal is consistent with PPN3 as there is no zone in the VPPs that will provide for the appropriate management of the site.

#### 4.1.2 The need for a Masterplan for Section 1 uses

##### (i) Evidence and submissions

Clause 6.0 of the exhibited Special Use Zone Schedule, that relates to buildings and works, states:

*A Masterplan **may** be prepared for the precinct (or part of the precinct), and approved by the Responsible Authority.*

The Clause then lists various matters that may be included in the Masterplan.

Council proposed the inclusion of a condition that for Section 1 uses that they “*must be in accordance with an approved Masterplan*”.

While acknowledging the State Government’s interest in expediting the reuse and development of the site, Council justified the introduction of the requirement for a Masterplan for various Section 1 uses as an alternative to the exemption from the giving of notice. It was considered that approving a Masterplan would allow for community involvement.

The site owner supported Council’s recommendation to tie Section 1 uses more directly to the Masterplan. It was submitted that this would set a more transparent framework for the distribution of activities across the site as well as their extent and intensity. It was proposed that Clause 4.3 (6.0) of the Schedule be amended so that an approved Masterplan **must** (not may) include the various listed requirements as amended.

The site owner also supported the provision of a Masterplan as it would provide flexibility and shorter decision timeframes than a planning permit process, subsequent amendments and third party appeals to VCAT.

Gurner, did not list any proposed alterations to Section 1 uses nor related proposed conditions, but submitted:

*If a Special Use Zone is proposed, then the provision of a Masterplan to provide guidance over the site use and development is essential to ensure a degree of certainty where all uses will be exempt from permit and all development permits are exempt from third party notice, decision and review rights.*

Gurner considered that the Masterplan referred to in Clause 6.0 of the Schedule should be mandatory.

Gurner submitted that the Masterplan for the site should be the subject of third party input, and in the absence of any Masterplan prepared for the site to date, the most appropriate way to accommodate such a plan is to require it to be an Incorporated Document. This would enable third parties to have a say on content and be notified through the planning scheme amendment process.

Contemporary Arts Precinct Limited did not oppose a Masterplan provided it did not lead to delays, and expressed concerns about the time taken to approve a Masterplan.



**(ii) Discussion and conclusion**

The SUZ and supporting Schedule was exhibited without the requirement to provide a Masterplan for Section 1 or Section 2 uses.

The Committee is not convinced that there is a need for a Masterplan in relation to the uses and activities on the site. It is intended that there will be a variety of uses relating to arts and crafts, entertainment and recreation together with ancillary uses. Such uses will be contained within the existing buildings. There was no evidence or submissions at the Hearing that indicated what inappropriate mix or location of uses the Masterplan would guard against. Certainly there may be advantages for the site operator to have a Masterplan, but it by no means clear that such a Masterplan needs to be given statutory weight.

No one has identified how any of the Section 1 uses might be inappropriate or might need to be subject to more stringent requirements than imposed by the SUZ if they were located in one building rather than another, or on one floor rather than another.

The intention for the site is to provide a variety of uses which include studios, workshops, galleries, rehearsal, performances and events, and spaces for training, production and community engagement and to provide associated accommodation for artists and workers in the creative industries. There is a need for flexibility and fluidity in location and timing of such uses within the site.

Council advises that there will be community consultation which, no doubt, will lead to delays incurred in consideration of the Masterplan before approval. In this context it is noted that Council was unable to decide a permit for the use of the ground floor of some of these buildings in a timely fashion.

The Committee does not believe that there is any need or benefit to make the distribution of uses across the site subject to approval under the Masterplan.

**4.1.3 The purposes of the zone**

**(i) Evidence and submissions**

There are seven purposes proposed for the Arts Precinct, as set out in the Schedule to the SUZ, relating to support for the site as an arts and cultural precinct.

Subject to the changes proposed by Council below, there was support for the purposes of the Zone being:

*To recognise the Collingwood Arts Precinct as a significant arts and cultural precinct of State and Metropolitan significance.*

Council proposed certain amendments to the Purposes, such as combining the second and third Purposes but excluding reference to *“and associated accommodation for artists and workers in the creative industries.”*

Council’s amended version of the second Purpose, with the removal of the third Purpose, reads:

*To provide for the use and development of the site as an integrated hub for the arts and creative industries, including studios, workshops, galleries, rehearsal, performance, live music and event spaces for training, production, entertainment community engagement activities.*

Council considered that the fourth Purpose in the Schedule is overly specific. The reference to the western courtyard should be removed in the absence of any plan accompanying the Schedule. Reference to the Noise Management Plan is an unnecessary level of detail in a Purpose provision. As such, the fourth Purpose should read *“To facilitate the activation of the site and provide for public access and the use of outdoor spaces”* with the balance of the Purpose being added to the revised second Purpose.

Council considered that the sixth Purpose is an appropriate Purpose on the face of it, but noted that the *“amenity of surrounding areas”* was a broad concept. It submitted that if the Committee considers that protecting residential amenity should be one of the key purposes of this zone, the word, *“particularly residential amenity”* could be inserted at the end of the Purpose.

With regard to the seventh Purpose, Council noted that this is identical to the third parking objective in Clause 1.0 of the Schedule to the Parking Overlay (PO). It was submitted that this provision should be located in the control to which it has most relevance, that is, car parking. Further, this Purpose should only be retained in the Schedule to the PO.

#### **(ii) Discussion and conclusion**

The Committee generally agrees with Council’s proposed changes to the Purposes set out in the Schedule, with the exception of adding *“particularly residential amenity”* to the sixth purpose. The Committee concludes the Purpose in its present form is considered acceptable in that it addresses amenity impacts of surrounding areas, without the need for additional qualification.

#### **4.1.4 Section 1 uses**

The exhibited Section 1 uses in the Table of Uses, with the exception of three uses, have no attached conditions. The exceptions are *Accommodation, Office, and Shop*, which must be used in conjunction with the use of the site for arts and creative industries. *Accommodation* is required to be for artists or other workers in the creative industries.

#### **(i) Evidence and submissions**

The Section 1 uses were generally supported by the site owner and Council, with certain exceptions as listed in Table 5.

**Table 5 Proposed changes to Section 1 use**

<b>Use</b>	<b>Council Proposed changes</b>
<b>Accommodation</b>	Should be relocated in Section 2 of the Table for which a permit is required, retaining the condition: <i>Must be used in conjunction with the use of the site for arts and creative industries, or must be accommodation for artists or other workers in the creative industries.</i>
<b>Caretaker's House</b>	Should be included within Accommodation as the use is nested in Dwelling
<b>Home Occupation</b>	Should include a condition  Must be in conjunction with the use of the site for arts and creative industries.
<b>Education centre, (other than Primary School and Secondary School), Home Occupation</b>	Should include a condition: <i>Must be used in conjunction with the use of the site for arts and creative industries.</i>
<b>Food and drink premises</b>	Should include a condition: <i>The leasable floor area must not exceed 150 square metres.</i>
<b>Informal outdoor recreation</b>	Should be included

Mr Staltari submitted that the site should not be used for a music and entertainment venue, and uses such as cabaret, nightclub, home occupation and market should be prohibited. His concerns related to the amenity impacts of such uses. He specifically raised concerns regarding the *Cabaret* use being in Section 1, when the *Nightclub* use lies in Section 2, and *Cabaret* is nested in *Nightclub* in the definitions in the Planning Scheme. He also queried how such uses could realistically be able to further the development and promotion of the creative arts. He submitted that the Section 1 uses - *Cabaret*, *Home Occupation* and *Market*, be removed.

**(ii) Discussion and conclusion**

The Committee agrees with Council's position of transferring *Accommodation* to Section 2 of the Table for which a permit is required. The use could create interface issues, particularly, in relation to noise sensitive residential uses and the generation of noise from non-residential uses within the site and the Tote hotel which abuts the site to the east. The Committee does not agree that *Caretaker's House* be removed from Section 1; it is typical to allow for a caretaker's house without a permit in zones that otherwise require a permit for Accommodation or prohibit Accommodation.

The Committee considers it unwise to attach any conditions to Home occupation. The Committee can envisage the accommodation on site being used for an artist in residence program, for a regional, interstate or international artist and the artist's partner legitimately wanting to operate a Home occupation, for example continuing to work remotely in their

job. Clause 52.11-1 of the Planning Scheme sets out in detail the requirements for Home occupation to avoid adverse effects to the neighbourhood.

The Committee does not agree with the proposed 150 square metre limit for food and drink premises. In the Commercial 1 Zone, – the predominant zone for the abutting land on Johnston Street – ‘Food and drink premises’ are as of right with no floor space limit. The site is 8,396 square metres; if a limit were to be applied something in the order of 10 percent of the site area, say 840 square metres would be appropriate. This level would provide flexibility for Food and drink operations to establish while ensuring they did not become a dominant use without a permit. It is important to note that amenity impacts are controlled by the provisions of the zone and a permit is not needed to impose amenity controls on the use.

A Nightclub is defined as:

*A building used to provide entertainment and dancing. It may include the provision of food and drink for consumption on the premises. It does not include the sale of packaged liquor, or gaming.*

A Nightclub includes a Cabaret which is undefined. A Cabaret involves performance and might be expected to be a regular part of the offering in the Arts Precinct. A nightclub does not necessarily involve live performance or an artistic element (though it might). The Committee supports the exhibited version of the controls again noting that a permit is not needed to impose amenity controls on the use. A Nightclub use that is not a Cabaret will require a permit.

The Committee recommends that ‘Trade supplies’ should be included in Section 1 with the condition ‘it must be in conjunction with the use of the site for the arts and creative industries.’ Under the Planning scheme the sale of some art material might fall within this definition.

In conclusion the Committee supports the exhibited version of Section 1 of the Table of Uses with the changes contained in Table 6.

**Table 6 Committee preferred version of Section 1 Table of Uses**

Use	Committee agreed changes
<b>Accommodation</b>	Relocated to Section 2 with the same condition as set out in Section 1.
<b>Office/Shop</b>	Delete these two uses from Section 2 as they have been placed there with the additional statement, (if the condition in Section 1 is not met). Clause 31.01 of the Planning Scheme requires that if any condition in a Section 1 use is not met, such a use becomes a Section 2 use for which a permit is required.
<b>Store</b>	Include the condition: Must be used in conjunction with the use of the site for the arts and creative industries.
<b>Trade supplies</b>	Include with the condition: Must be used in conjunction with the use of the site for the arts and creative industries.

#### **4.1.5 Industry and warehouse use – Section 2 condition**

The exhibited version of the Table of Uses shows that Industry and Warehouse uses are contained within Section 2 of the Table of Uses with the condition that they *must not be a purpose listed in the table to Clause 52.10*.

Clause 52.10 is headed *Uses with Adverse Amenity Potential*, the Purpose of which is:

*To define those types of industries and warehouses which if not appropriately designed and located may cause offence or unacceptable risk to the neighbourhood.*

##### **(i) Evidence and submissions**

Mr Biles was concerned that a number of uses which may take place in a diverse art precinct might include various kinds of ‘makers,’ in which case, as considered by the Panel in Amendments C123 and C124 to the Wodonga Planning Scheme, certain industries would be excluded by reason of Clause 52.10. These included small scale metal working, leather working, paper craft and joinery. In that instance the Panel recommended the removal of the Section 2 condition against industry to enable industry uses to be considered through a permit application. In the circumstances, Mr Biles recommended the removal of the Clause 52.10 condition for *Industry and Warehouse*.

Council considered that Clause 52.10 should be retained and submitted that the uses set out by Mr Biles on behalf of the site owner are likely to be encompassed within the definition of *Art and craft centre*.

##### **(ii) Discussion and conclusion**

The Committee notes that *Art and craft centre* is a Section 1 use with no conditions attached. This use is defined in Clause 74 of the Act as:

*Land used to manufacture, display, and sell, works of art or craft, such as handicrafts, paintings, and sculptures.*

The definition of *Art and craft centre* includes *manufacture*, and this would allow for small scale manufacturing of works or art or craft. Any other manufacturing uses not complying with the definition will require a permit and any uses with adverse amenity potential will be excluded from consideration under Clause 52.10 and consequently will be prohibited. This has the potential to exclude small scale arts related manufacturing operations that are themselves not directly producing art, for example someone producing wooden art easels from recycled timber, or someone producing speciality papers for other people’s art practice.

The Committee concludes that the condition should be removed.

#### **4.1.6 Section 3 Uses**

At the Hearing a number of technical changes were identified for the Table of Uses and the Committee has identified some further technical changes.

The Committee has also concluded that Animal husbandry, Aquaculture and Veterinary centre should be deleted from Section 3. If they are to be retained, ‘Agriculture’ (the head

term of the nest that they are part of) will need to be included in the Table of Uses to meet practice note advice on drafting. Doing this creates an extra level of complexity in the Table that would appear confusing.

#### **4.1.7 Noise Management requirement**

##### **(i) What the zone proposes**

The exhibited zone proposes:

###### *Management of noise*

*The use of the land must be managed so as to limit noise in accordance with the following:*

- *State Environment Protection Policy (Control of Noise from Industry, Commerce, and Trade) No. N-1 ("SEPP N-1").*
- *State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 ("SEPP N-2").*
- *The following Patron Noise Criteria:*

*For  $L_{Aeq}$  noise levels, the less stringent of the following:*

- *if noise is assessed external to a Noise Sensitive Building, noise emissions must comply with noise limits determined according to SEPP N-1 (as though patron noise were a noise source regulated by this Policy, but with no other modification to the application of the Policy).*
- *if noise is assessed internal to a Noise Sensitive Building, noise emissions must achieve the lower of the design sound level range for (whichever is relevant) houses and apartments in inner city areas, entertainment districts, or near major roads, as provided in Australian Standard AS2107:2016 'Acoustics—Recommended design sound levels and reverberation times for building interiors'.*

*For  $L_{Amax}$  noise levels, during the hours of 10pm-7am:*

- *'Sleep Disturbance Criteria', being a noise level of 55dB  $L_{Amax}$ , assessed inside a habitable room of a Noise Sensitive Building normally used for the purpose of sleeping.*

*For the purpose of the Patron Noise Criteria, 'Noise Sensitive Building' means a building referred to in the definition of 'Noise sensitive area' in SEPP N-1, being a Dwelling, Residential Building, Caretaker's House, Hospital, Hotel, Institutional Home, Motel, Reformative Institution, Tourist Establishment or Work Release Hostel.*

*When deciding on an application (including an application for approval of a Masterplan under this schedule) the responsible authority must have regard to, as appropriate:*

- *The Noise Management Plan prepared by Noise Consulting & Management Pty Ltd dated 21 December 2016. This Noise Management Plan may be amended to the satisfaction of the Responsible Authority.*

*For noise that is not subject to SEPP N-1, SEPP N-2 or patron noise criteria (as specified in this clause), EPA publication no. 1254, 'Noise Control Guidelines' 1254 and any other relevant noise guidelines published by EPA from time to time.*

**(ii) Evidence and submissions**

The issue of noise was dealt with extensively in the Panel report for the call in of Permit Application No PLN15/1032. The Committee adopts the relevant sections of the Panel's report which is attached in Appendix D.

**(iii) Discussion and conclusion**

The noise requirements proposed set an appropriate level of control for the uses. There was some discussion about what these levels mean in practice for music noise, but these issues cannot be resolved by this Committee process.

The patron noise limits establish a performance based approach to the issue in keeping with principles of the Victorian planning system. The Committee supports the changes proposed by Mr Leo in his evidence which were supported by Creative Victoria. Including the proposed limits in the SUZ Schedule will make it easier to use. The limits proposed are reasonable to protect the amenity of noise sensitive uses. An indicative number of patrons can be derived from these limits for use in day to day operations by the site users to ensure they comply with requirements.

The Panel concludes that the proposed noise requirements in the zone are generally appropriate, save for the need to update the limits specified for externally measured patron noise.

**4.1.8 Waste management plan**

The exhibited SUZ contains the requirement:

*Before any use commences (other than uses for which a planning permit has already been granted) a Waste Management Plan must be prepared to the satisfaction of the Responsible Authority. This requirement does not apply if waste management arrangements are provided for under a Masterplan approved by the Responsible Authority under clause 4.3.*

*The use of the land must be generally in accordance with an approved Waste Management Plan under this clause, or generally in accordance with an approved Masterplan under clause 4.3, as appropriate.*

*If in the opinion of the responsible authority a Waste Management Plan is not relevant to the evaluation of an application, or if the responsible authority considers that an existing approved Waste Management Plan adequately manages the waste anticipated to be generated by a new use, the responsible authority may waive the requirements of this clause.*

The Committee does support this requirement. It has the potential to add significant delays before a use could start, working against the whole idea of having a flexible and responsive approach.

It is not difficult to imagine a scenario where an arts organisation wants temporary use of part of building for a short term project, but is delayed while Council considers the waste management plan. Ultimately the aim of such a plan will be to protect amenity. Nothing would prevent a site user working with Council to achieve broader waste reduction or recycling initiatives.

The Committee does support the regular removal of waste from the site and the general requirement not to affect the amenity of the area. This can be achieved with simple requirements in the SUZ based on model planning permit conditions:

*All waste material not required for further on-site processing must be regularly removed from the site. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created to the satisfaction of the responsible authority.*

*Uses must be managed so that the amenity of the area is not detrimentally affected, through the:*

- *transport of materials, goods or commodities to or from the land*
- *appearance of any building, works or materials*
- *emission, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil*
- *presence of vermin*
- *others as appropriate.*

#### **4.1.9 Buildings and works**

The Committee supports the option use of a Masterplan to guide the physical development of the site. The exhibited SUZ included references to land uses and noise in the Masterplan requirements. The Committee considers these requirements should not include any reference to uses or noise: it should focus solely on built form.

The Committee supports the exemption from notice for building and works. The site is largely developed and subject to heritage controls. The Committee does not envisage works on the scale that adjoining properties need to have formal review rights, but would expect the site owner to informally consult with adjoining owners on any matter.

## **4.2 Suitability of the Parking Overlay**

The exhibited Schedule to the Parking Overlay (PO) contains four parking objectives to be achieved, which, in short, are to:

- encourage the re-use of buildings within the CAP for arts and creative industries
- acknowledge the constrained ability to provide on-site car parking
- recognise the site's proximity to the Principal Public Transport Network
- improve amenity for pedestrians by minimising vehicle access to and through the site.

In this context, Clause 2.0 of the Schedule states that a permit is not required to reduce the number of car spaces, (including reduce to zero), listed in Section 1 of the Table of Uses in the Schedule to the SUZ.



Additionally, the car parking requirement for a use in Section 1 of the Table of Uses in the Schedule to the SUZ is zero.

**(i) Evidence and submissions**

Mr Staltari was concerned about the impact that large events would have on traffic and parking in Perry and Johnston Streets. Other submitters were concerned that there would be very little on-street capacity to accommodate more visitors arriving by car and submitted that consideration should be given to on-site car sharing for CAP tenants and some designated loading spaces at the Johnstone Street entry. Ms Tescher, (owner of a property in Johnston Street), considered that the changes may result in inadequate parking in the area which would affect residents and business customers.

The site owner was supportive of reducing car parking to minimal levels whilst maximising pedestrian and cycle access due to the wide choice of alternative transport modes in the close vicinity of the site. Additionally, the provisions of the Schedule will avoid the potential need for repeated permit applications to reduce or waive parking requirements for uses that otherwise do not require a planning permit each time a tenant changes and there is a minor shift in the mix of activities.

The site owner presented traffic evidence from Mr Chris Coath. Mr Coath supported the introduction of the PO as it would assist in the efficient reuse of the site by removing the need to provide on-site car parking, and the need to seek a permit to reduce the parking requirement for uses listed in Section 1 of the Schedule.

He supported the reduction in car parking requirements and recognised that car parking in the area is constrained, with a reliance on alternative forms of transport and making use of walking and cycling. He submitted that if necessary, Council has at its disposal the ability to further manage on-street car parking to protect existing residences and businesses. A Masterplan for the site could consider management measures to minimise the impact of reduced parking provisions including (but not limited to), car sharing facilities, increased parking and end of trip facilities.

Council supported the car parking reduction for Section 1 uses contained in the Schedule. Issues were raised with the drafting of Clause 3.0 of the Schedule and the following amendments were proposed to Clause 52.06:

*For the purpose of Clause 52.06-5A, the car parking requirement:*

- *for a use that is listed in Section 1 of the Table of Uses in Schedule (NUMBER) to the Special Use Zone is zero.*
- *for a use that:*
  - *is not listed in Section 1 of the Table of Uses in Schedule (NUMBER), to the Special Use Zone; and*
  - *is listed in Table 1 of Clause 52.06-5;**the car parking rate in Column B of Table 1 in Clause 52.06 applies.*

*Any other uses not within the above categories must be provided with car parking to the satisfaction of the Responsible Authority.*

Mr Coath supported Council's proposed changes to the Schedule. Mr Clark raised no issues with regard to the introduction of the PO.

**(ii) Discussion and conclusion**

The Committee supports the proposed PO with the changes generally as proposed by Council and taking account of the following (noting the limited availability of on-street parking spaces):

- the limited numbers of on-site car parking spaces
- the availability of other modes of public transport as well as cycles and walking
- the removal of the need to require a planning permit to reduce or waive the car parking requirement each time there is a change of use within the site.

### **4.3 Schedule to Clause 52.43 of the Yarra Planning Scheme**

The operation of SEPP N-2 is moderated by Clause 52.43 of the Yarra Planning Scheme *Live Music and Entertainment Noise*. One of the purposes of Clause 52.43 is *"To ensure that the primary responsibility for noise attenuation rests with the agent of change"*. Clause 52.43 provides that:

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

*A noise sensitive residential use must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any:*

- *indoor live music entertainment venue to below the noise limits specified in SEPP No. N-2*
- *outdoor live music entertainment venue to below 45dB(A) assessed as an Leq over 15 minutes.*

In the clause a live music entertainment venue means:

- *a food and drink premises, nightclub, function centre or residential hotel that includes live music entertainment*
- *a rehearsal studio*
- *any other venue used for the performance of music and specified in clause 2.0 of the schedule to this clause, subject to any specified condition or limitation.*

Clause 52.43 applies to noise sensitive residential uses within 50 metres of a live music entertainment venue. It does not alter the limits set in SEPP N-2, however, it changes the point of measurement from outside a noise sensitive residential use to inside a habitable room with the windows and doors closed. In this way it shifts the obligation to comply with SEPP N-2 from the noise emitter to the noise receiver:

*A noise sensitive residential use must be designed and constructed to include acoustic*

*attenuation measures that will reduce noise levels from any:*

- *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).*
- *outdoor live music entertainment venue to below 45dB(A), assessed as an  $L_{eq}$  over 15 minutes.*

*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).*

*A permit may be granted to reduce or waive these requirements if the responsible authority is satisfied that an alternative measure meets the purpose of this clause.*

The issue of noise was discussed at length in the permit call in report. The relevant discussion is attached in Appendix D. The Committee adopts the Panel's reasoning.

#### **4.4 Conclusion**

Rezoning the land to the Special Use Zone, applying the Parking Overlay and listing the site in the schedule to Clause 52.43 will provide a practical set of controls that will protect the amenity of adjoining land owners while allowing the vision for an Arts Precinct to be realised. Current planning scheme controls are more or less unworkable in delivering the vision for the site.

## Appendix A: Document list

Documents Presented to Hearing (No.)	Description	Presented By
1	Clause 21.02 Yarra Planning Scheme	Mr Clarke
2	Planning Practice Note 3 Applying the Special Use Zone	Mr Clarke
3	Updated provisions for the SUZ	Mr Leo
4	Updated Table for Noise Management Plan	Mr Leo
5	Submissions on behalf of Creative Victoria	Mr McArdle
6	Submission on behalf of Yarra City Council	Ms Luketic
7	Submission on behalf of Contemporary Arts Precincts Ltd	Mr Westbury
8	Submissions on behalf of 22 – 33 Johnston Street Pty Ltd	Mr Clarke
9	Schedule 3 to the Special Use Zone Manningham Planning Scheme	Mr Clarke
10	Schedule 4 to the Special Use Zone Nillumbik Planning Scheme	Mr Clarke
11	Planning Practice Note 81 Live Music and Entertainment Noise	Mr Clarke
12	Planning Practice Note 23 Applying the Incorporated Plan and Development Plan Overlay	Mr Clarke
13	Ministerial Powers of Intervention in Planning and Heritage Matters	Mr Clarke
14	Contemporary Arts Precincts Business Plan	Mr McArdle
15	Contemporary Arts Precincts Ltd - Expression of Interest for the Collingwood Arts Precinct	Mr McArdle

## Appendix B: Special Use Zone – Committee preferred version

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### SCHEDULE [number] TO THE SPECIAL USE ZONE

Shown on the planning scheme map as **SUZ [number]**.

#### COLLINGWOOD ARTS PRECINCT

##### Purpose

To recognise the Collingwood Arts Precinct as a significant arts and cultural precinct of State and Metropolitan significance.

To provide for the use and development of the site as an integrated hub for the arts and creative industries. ~~To provide for a broad range of arts and cultural activities~~ including studios, workshops, galleries, rehearsal, performances [live music](#) and events spaces, and spaces for training, production and community engagement activities ~~and associated accommodation for artists and workers in the creative industries.~~

To facilitate the activation of the site and provide for public access and the use of outdoor spaces; ~~including the western courtyard, for informal outdoor recreation, events and performances including live music entertainment events managed in accordance with a Noise Management Plan approved under this schedule.~~

To encourage the adaptive re-use and re-purposing of existing vacant buildings including provision for contemporary design responses.

To ensure that the future use and development of the Collingwood Arts Precinct does not unduly impact on the amenity of surrounding areas.

~~To recognise the site's proximity to the Principal Public Transport Network and to reduce car parking demand by encouraging use of sustainable and active transport modes to and from the site.~~

### 1.0

#### Table of Uses

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##### Section 1 - Permit not required

Use	Condition
<del>Accommodation</del>	<del>Must be used in conjunction with the use of the site for arts and creative industries, or must be accommodation for artists or other workers in the creative industries.</del>
Art and craft centre	
<a href="#">Art studio</a>	
Cabaret	
Caretaker's house	
Cinema based entertainment facility	
Dancing school	
Education centre (other than Primary School or Secondary School)	
Food and drink premises	

Use	Condition
Home occupation Leisure and recreation (other than Major sports and recreation facility and Motor racing track) Market	
Office	Must be used in conjunction with the use of the site for arts and creative industries.
Place of assembly (other than Amusement Parlour, and Nightclub)	
Rehearsal studio <del>Art studio</del>	
Shop	Must be used in conjunction with the use of the site for arts and creative industries.
Store	<a href="#">Must be used in conjunction with the use of the site for arts and creative industries.</a>
<a href="#">Trade supplies</a>	<a href="#">Must be used in conjunction with the use of the site for arts and creative industries.</a>
Utility installation (other than <a href="#">Reservoir</a> )	
Any use listed in Clause 62.01	Must meet the requirements of Clause 62.01.

## Section 2 - Permit required

Use	Condition
Accommodation <del>(if the condition in Section 1 is not met)</del> (other than <a href="#">Caretaker's house and Corrective institution</a> )	<a href="#">Must be used in conjunction with the use of the site for arts and creative industries, or must be accommodation for artists or other workers in the creative industries.</a>
<a href="#">Agriculture (other than Apiculture and Intensive animal husbandry)</a>	
<del>Child care centre</del>	
Nightclub (other than Cabaret)	
Industry (other than Refuse disposal and Transfer station)	<del>Must not be a purpose listed in the table to Clause 52.10.</del>
<del>Manufacturing sales</del>	
Office <del>(if the condition in Section 1 is not met)</del> <a href="#">Primary School</a> <a href="#">Retail premises (other than Food and drink premises, Market, Shop and Trade Supplies)</a> <a href="#">Secondary school</a>	
<del>Shop (if the condition in Section 1 is not met)</del>	
Warehouse (other than Store)	<del>Must not be a purpose listed in the table to Clause 52.10.</del>
Any other use not in Section 1 or 3	

## Section 3 - Prohibited

### Use

~~Animal husbandry~~  
~~Aquaculture~~  
Brothel  
Corrective institution  
Intensive animal husbandry  
Major sports and recreation facility  
Motor racing track  
Service station  
Refuse disposal  
Transfer station  
Transport terminal  
~~Veterinary centre~~

## 2.0

### Use of land

#### Management of noise

The use of the land must be managed so as to limit noise in accordance with the following:

- State Environment Protection Policy (Control of Noise from Industry, Commerce, and Trade) No. N-1 (“SEPP N-1”).
- State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (“SEPP N-2”).
- The following Patron Noise Criteria:
  - For  $L_{Aeq}$  noise levels, the less stringent of the following:
    - If noise is assessed external to a Noise Sensitive Building, noise emissions must comply with ~~noise limits determined according to SEPP N-1 (as though patron noise were a noise source regulated by this Policy, but with no other modification to the application of the Policy).~~ the following patron noise design targets:
      - Day period – 50 dB or background noise (LA90) + 10 dB, whichever is higher.
      - Evening period – 45 dB or background noise (LA90) + 10 dB, whichever is higher.
      - Night period – 40 dB or background noise (LA90) + 5 dB, whichever is higher.
    - If noise is assessed internal to a Noise Sensitive Building, noise emissions must achieve the lower of the design sound level range for (whichever is relevant) houses and apartments in inner city areas, entertainment districts, or near major roads, as provided in Australian Standard AS2107:2016 ‘Acoustics—Recommended design sound levels and reverberation times for building interiors’.
  - For  $L_{Amax}$  noise levels, during the hours of 10pm-7am:
    - ‘Sleep Disturbance Criteria’, being a noise level of 55dB  $L_{Amax}$ , assessed inside a habitable room of a Noise Sensitive Building normally used for the purpose of sleeping.

For the purpose of the Patron Noise Criteria, ‘Noise Sensitive Building’ means a building referred to in the definition of ‘Noise sensitive area’ in SEPP N-1, being a Dwelling, Residential Building, Caretaker’s House, Hospital, Hotel, Institutional Home, Motel, Reformative Institution, Tourist Establishment or Work Release Hostel.

~~When deciding on an application (including an application for approval of a Master Plan under this schedule) the responsible authority must have regard to, as appropriate:~~

- ~~▪ The Noise Management Plan prepared by Noise Consulting & Management Pty Ltd dated 21 December 2016. This Noise Management Plan may be amended to the satisfaction of the Responsible Authority.~~

For noise that is not subject to SEPP N-1, SEPP N-2 or patron noise criteria (as specified in this clause), EPA publication no. 1254, 'Noise Control Guidelines' 1254 and any other relevant noise guidelines published by EPA from time to time.

### Management of waste

~~Before any use commences (other than uses for which a planning permit has already been granted) a Waste Management Plan must be prepared to the satisfaction of the Responsible Authority. This requirement does not apply if waste management arrangements are provided for under a Masterplan approved by the Responsible Authority under clause 4.3.~~

~~The use of the land must be generally in accordance with an approved Waste Management Plan under this clause, or generally in accordance with an approved Master Plan under clause 4.3, as appropriate.~~

~~If in the opinion of the responsible authority a Waste Management Plan is not relevant to the evaluation of an application, or if the responsible authority considers that an existing approved Waste Management Plan adequately manages the waste anticipated to be generated by a new use, the responsible authority may waive the requirements of this clause.~~

All waste material not required for further on-site processing must be regularly removed from the site. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created to the satisfaction of the responsible authority.

Uses must be managed so that the amenity of the area is not detrimentally affected, through the:

- transport of materials, goods or commodities to or from the land
- appearance of any building, works or materials
- emission, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil
- presence of vermin
- others as appropriate.

### Application Requirements

An application to use land must be accompanied by the following information, as appropriate:

- Any Master Plan approved for the site.
- The purpose of the use and the types of activities which will be carried out.
- The likely effects, if any, on nearby uses including noise levels, traffic, parking, the hours of delivery and dispatch of goods and materials, hours of operation.
- The compatibility of the proposed use with the purpose of the zone and the use of the site as an arts and creative industries precinct.
- Maintenance of areas associated with the use.

### Decision Guidelines

Before deciding on an application ~~for a planning permit or a request to approve a Master Plan~~, the responsible authority must consider as appropriate:

- The Noise Management Plan prepared by Noise Consulting & Management Pty Ltd dated 21 December 2016. This Noise Management Plan may be amended to the satisfaction of the Responsible Authority.
- How the proposal would contribute to:
  - ~~• The delivery~~ Delivering of an arts and creative industries precinct of State and Metropolitan importance.



- Facilitating an evolving physical and cultural development of the site which reflects the changing needs of the arts and creative community.
  - Integrating the precinct into its context and maximising opportunities for community access and use.
  - Recognising the importance of accommodating a variety of events in integrating the precinct with the surrounding community.
  - Maintaining the heritage values of the site and providing protection to and appreciation of the Keith Haring mural, while providing for contemporary design responses and adaptive re-use of the site.
  - Organising access and circulation to maximise accessibility by pedestrians and cyclists and minimising conflicts with vehicles.
  - Encouraging sustainable transport choices by maximising opportunities for access by means other than private cars and minimising on site car parking.
- The integrated planning of the precinct.

### **3.0 Subdivision**

#### **Application requirements**

An application to subdivide land must be accompanied by the following information, as appropriate:

- Any Masterplan approved for the site.
- The purpose of the subdivision.
- The likely effects the subdivision will have on adjacent land.
- The effects of the subdivision on the use of the site as an integrated creative arts precinct.

#### **Decision guidelines**

Before deciding on an application, the responsible authority must consider, as appropriate:

- The interface with adjoining land and any existing residential properties adjoining the site.
- The effect the subdivision will have on the potential of the land to accommodate existing and potential future uses in accordance with the purpose of this zone.

#### **Exemption from notice and review**

An application to subdivide land is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

### **4.0 Buildings and Works**

#### **Application Requirements**

An application to construct a building or construct or carry out works must be accompanied by the following information, as appropriate:

- Any Masterplan approved for the site.
- A plan, drawn to scale, that shows:
  - The boundaries and dimensions of the site.
  - Relevant ground levels.
  - The location, height and purpose of buildings and works on adjoining land.

- The layout and use of existing and proposed buildings and works, accessways, and car parking and loading areas.
- Elevation drawings to scale indicating the colour and materials of all proposed buildings and works.
- Details of proposed landscaping.
- Details of any heritage fabric to be altered or removed.
- Vehicle and pedestrian entry and exit points for the site.

### **Decision Guidelines**

Before deciding on an application, the responsible authority must consider, as appropriate:

- Any Masterplan approved for the site.
- The development of the site as an integrated arts precinct and the purposes of the zone.
- The interface with adjoining land, especially the relationship with existing residential properties.
- The location and type of access to the site.
- The provision and location of car parking.
- The appearance and bulk of buildings having regard to the adjoining land, especially the relationship with residential areas.
- The provision for landscaping.
- The movement of pedestrians and cyclists and vehicles providing for supplies, waste removal, emergency services and public transport.
- The effect of the proposed buildings and works on the amenity of the neighbourhood, including the effects of noise, lighting, overshadowing, building bulk and privacy.

### **Masterplan**

A Masterplan may be prepared for the precinct (or part of the precinct) and approved by the Responsible Authority.

An approved Masterplan may include, but is not limited to, the following:

~~▪ The arrangement of land uses and activities across the precinct.~~

- Access and circulation arrangements.
  - Measures to manage traffic, car parking and loading.
  - Proposed buildings and works including the location, extent and design of buildings.
  - Landscaping and the treatment of external areas.
- ~~▪ Measures to manage noise.~~
- Measures to protect the heritage features of the site while providing for contemporary design responses.
  - Waste management arrangements.

Once approved, the Masterplan may be amended to the satisfaction of the responsible authority.

### **Exemption from notice and review**

An application to construct a building or construct or carry out works for a use in Section 1 of this schedule is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

## **5.0 Advertising signs**

Advertising sign requirements are at Clause 52.05. This zone is in Category 1.

## Appendix C: Parking Overlay – Committee preferred version

Shown on the planning scheme map as **PO [NUMBER]**

### **COLLINGWOOD ARTS PRECINCT**

#### **1.0 Parking objectives to be achieved**

- To encourage the re-use of buildings within the Collingwood Arts Precinct for arts and creative industries as identified in Schedule [NUMBER] to the Special Use Zone.
- To acknowledge the existing built form and context of the site and the constrained ability to provide on-site car parking.
- To recognise the site's proximity to the Principal Public Transport Network and to reduce car parking demand by encouraging use of sustainable and active transport modes to and from the site.
- To improve amenity for pedestrians around and through the site by minimising vehicle access to and through the site.

#### **2.0 Permit requirement**

A permit is not required under Clause 52.06-3 to reduce (including reduce to zero) the number of car parking spaces required under Clause 52.06-5 for any use listed in Section 1 of the Table of Uses in Schedule [Number] to the Special Use Zone.

#### **3.0 Number of car parking spaces to be provided**

For the purpose of Clause 52.06-5A, the car parking requirement ~~for a use that:~~

- ~~▪ is listed in Section 1 of the Table of Uses in Schedule [Number] to the Special Use Zone; and~~
- ~~▪ is not listed in Table 1 of clause 52.06;~~

~~is zero;~~

~~For a use that:~~

- ~~▪ is not listed in Section 1 of the Table of Uses in Schedule [Number] to the Special Use Zone; and~~
- ~~▪ is listed in Table 1 of Clause 52.06-5;~~

~~the car parking rate in Column B of Table 1 in Clause 52.06 applies.~~

- For a use that is listed in Section 1 of the Table of Uses in Schedule (NUMBER) to the Special Use Zone is zero.
- For a use that is not listed in Section 1 of the Table of Uses in Schedule (NUMBER) to the Special Use Zone but is listed in Table 1 of Clause 52.06-5 is the car parking rate in Column B of the table.

Any other uses not within the above categories must be provided with car parking to the satisfaction of the Responsible Authority.

#### **4.0 Decision guidelines for permit applications**

Before deciding on an application vary the number of car parking spaces required, the Responsible Authority must consider as appropriate the decision guidelines set out in Clause 52.06-6.

## **Appendix D: Extract from Panel Report: Yarra Planning Scheme Permit Application PLN15/1032 –Collingwood Arts Precinct Call In**

### **3 Noise**

#### **3.1 What are the issues**

Three types of noise are relevant to this Application:

- commercial noise
- music noise
- patron noise.

Control of noise raises a number of issues:

- what is the relevant standard for commercial noise
- what is the relevant standard for music noise
- what is an appropriate standard for patron noise
- is the impact of acoustic treatment on the internal quality of the proposed apartments a relevant issue
- to what extent is music an integral part of Circus Oz and potentially a core element in a creative arts precinct
- how should the 'agent of change' principle be applied
- if there is a policy choice to be made between the successful operation of the Precinct and the development of 23-33 Johnston Street, which use should prevail.

Considering noise issues raised detailed questions:

- policy issues – to what extent is the ability to develop adjoining land in a cost effective or high quality way a relevant consideration
- practical issues – can the uses as proposed comply with relevant standards when operating
- statutory approval and interpretation issues mostly related to decisions around the agent of change and the definition of outdoor venues.

At the request of the Panel acoustic experts for the applicant, the Responsible Authority and the objector held a conclave and produced a Joint Statement of acoustic evidence. The Joint Statement indicated areas of agreement and disagreement in respect of the standards to be applied and the Without Prejudice Draft Conditions document issued by the Responsible Authority.

#### **The scope of this Panel**

The Panel can recommend different patron limits, hours of use, or acoustic conditions on the proposed uses.

Ultimately noise limits will be set by SEPP N-2, and while the permit could impose tighter restrictions than SEPP N-2, or restrictions based on a particular interpretation of SEPP N-2, it cannot rule on how SEPP N-2 is to be lawfully interpreted.

It is not the role of the Panel to decide on the following issues of statutory interpretation:

- whether concerts in the courtyard on the CAP site would be ‘outside concerts’ under SEPP N-2
- whether the limit on the number of ‘outside concerts’ in the CAP site courtyard and the Circus Oz amphitheater should be counted together (a total of six concerts) or separately (six concerts each) under SEPP N-2.

### **3.2 Proposed permit conditions**

The proposed permit conditions include:

- limits on operating times and patron numbers
- specific conditions relating to noise, as follows:

#### ***Acoustics***

5. *Before the use(s) commence(s), an amended Acoustic Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Acoustic Report will be endorsed and will form part of this permit. The amended Acoustic Report must be generally in accordance with the Acoustic Report prepared by Noise Impact Assessment prepared by ARUP on 10 August 2015 but modified to:*
  - (a) *Have regard to the existing residential properties contained within 23–33 Johnston Street (including noise impacts relating to the existing south-facing windows); and*
  - (b) *Reference the hours and number of patrons (within the designated hours at Condition 3 permitted by this permit, including the hours of operation outlined at Conditions 4 of this permit).*
6. *The provisions, recommendations and requirements of the endorsed Acoustic Report must be implemented and complied with to the satisfaction of the Responsible Authority.*
7. *The use(s) must comply at all times with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).*
8. *The use(s) must comply at all times with the State Environment Protection Policy – Control of Music Noise from Public Premises (SEPP N-2).*

Council's Planning Enforcement Officers reviewed the proposal and recommended<sup>1</sup> the following condition:

- *No amplified music or noise after 10pm at any outdoor area Sunday to Thursday*
- *No amplified music or noise after 11pm at any outdoor area Friday and Saturday*

*The above recommendation was made with consideration to the fact noise will generally carry further from an open area. Experience tells us that open areas in particular terraces and roof decks have a tendency to impact the amenity. The times suggested where no music or amplified noise is allowed was based on keeping consistent with the Environment Protection (Residential Noise) Regulations 2008 schedule for amplified music.*

### **3.3 Existing conditions**

#### **(i) Physical environment**

##### **Sources of music noise**

There are four existing sources of music noise, as shown in Figure 3:

- The Tote is a hotel, pub, bar and music venue on the corner of Johnston and Wellington Streets. The hotel, built in 1876, began hosting local and Australian punk, post-punk, heavy metal and hardcore bands in 1980. It is more than 70 metres from 23-33 Johnston Street.
- The Melba Spiegel tent is a historic mirrored wooden tent over 100 years old and available for hire as a venue. It has a seating capacity of 250 people. It is approximately 70 metres from 23-33 Johnston Street.
- The Circus Oz amphitheatre is an outside space designed for small scale performances. It is 17 metres from 23-33 Johnston Street.
- The Circus Oz building has internal spaces that can host live bands, the bandroom, which can open to the outdoors, is 18 metres from 23-33 Johnston Street.

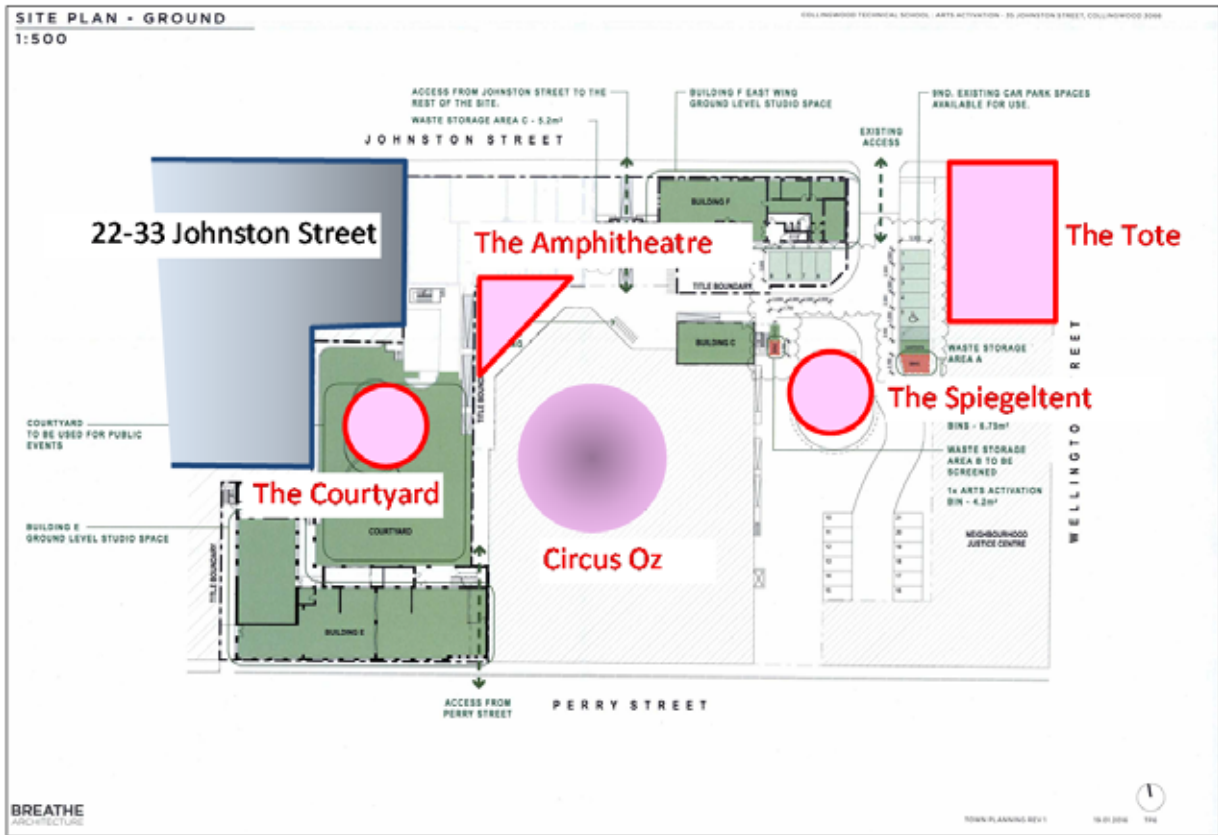
The music noise currently able to be emitted from these venues and their proximity to the CAP site and 23-33 Johnston Street are relevant to this permit. In particular, the music that can be emitted from the open air amphitheatre is relevant because it is only a metre from the boundary of the courtyard on the CAP site.

Music is proposed for the courtyard of the CAP site and for Buildings C, E and F.

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<sup>1</sup> Memo to: John Theodosakis FROM: Steve Alexander DATE: 07/03/2016 APPLICATION: PLN15/1032 SUBJECT: Amenity Enforcement Referral — 35 Johnston Street, Fitzroy (sic)

Figure 3: Indicative location of existing sources of noise



### Noise sensitive receivers

Noise is controlled to ensure appropriate noise limits are achieved at noise sensitive receivers. The noise sensitive receivers near to the CAP site comprise both existing and proposed dwellings. These were identified in a range of reports.<sup>2</sup>

The existing dwellings include:

- various dwellings in Perry Street to the south of the CAP site, in particular 10 Perry Street
- various upper level dwellings to the north of the CAP site on Johnston Street, in particular 54 Johnston Street
- various buildings in Bedford Street to the west of the site
- the existing dwellings across the upper storey of parts of 23–33 Johnston Street to the immediate west of the CAP site.

The proposed dwellings are at 23–33 Johnston Street and are adjacent to and overlook the courtyard of the CAP site. The proposed dwellings comprise:

- six storeys of student accommodation identified in PLN08/0894
- a mixed use development identified in PLN16/0845 comprising 12 storeys with apartments on levels 1-11.

<sup>2</sup> Statement of Evidence of Ross Cameron Leo, Marshall Day Acoustics p.5; Statement of Evidence – Acoustics SLR p.8.



The status of these applications in relation to applicable noise limits is discussed in the section on the 'regulatory environment' below.

**(ii) The noise environment**

Both SEPP N-1 and SEPP N-2 set noise limits which take into account existing background noise levels. It is necessary to establish these background levels. Comprehensive background measurements were undertaken by Mr Leo for Creative Victoria. These were both attended (at a range of times, dates and locations) and unattended in respect of the measurements taken at the top of the stairs at the rear of Building F (the closest point to 23–33 Johnston Street). The background noise levels are provided in Appendix F of the MDA Report<sup>3</sup> and for reference, background noise levels at various noise sensitive receivers and at various times of day are reproduced in Table 4 below.

**Table 4: Background noise levels by time**

Period	Background noise level, dB L90, 15 minutes		
	54 Johnston Street	10 Perry Street	23–33 Johnston Street
Day	52	43	47
Evening	51	43	45
Night	40	35	–
Night – Weekday (2200–0100 hours)	–	–	41
Night – Friday/Saturday (2200–0100 hours)	–	–	45*
Early morning 0600–0700 hours	–	–	44

\* Excludes periods on Saturday night affected by extraneous noise  
Source: Appendix F of the MDA Report

**Table 5: Background noise levels by octave band**

	Background noise level dB L90 15 minutes						
	Octave band centre frequency, Hz						
	63	125	250	500	1000	2000	4000
10 Perry Street -Tuesday (0045-0100 hours)	44	39	35	33	31	25	17
23–33 Johnston Street – Friday (0045–0100 hours)	48	43	41	40	38	34	25

Source: Appendix F of the MDA Report

The background noise levels are inputs for the assessment of the noise limits for commercial, music and patron noise.

<sup>3</sup> MDA p.34.

## Offsite music noise

The CAP site will not operate in a vacuum. The Tote Hotel and Circus Oz are music venues operating in proximity to the CAP site. There has been acoustic measurement of various events held at these sites with the outcomes provided in Documents 2, 4 and 5, summarised in Document 16<sup>4</sup> and reproduced in Table 6 below.

**Table 6: Measured noise levels at Gurner Site, various measurement sources**

Noise sources	Frequency – octave band (Hz) / measured levels at Gurner Facade (dB <sub>L10</sub> )						
	63	125	250	500	1000	2000	4000
Tote <sup>5</sup>	70	68	59	-	-	-	-
Spiegeltent <sup>6</sup> (shielded measurement location, level could be higher at upper levels) <sup>7</sup>	60	60	54	49	47	41	36
Circus Oz – rehearsal room <sup>8</sup> (Mr Peters noted that this measurement not taken in the night-time period, but used for illustration, i.e. assume use in the night-time period after 10pm)	65	58	54	49	44	44	41

The music noise emitted by these permitted operations is relevant to the level of noise protection that must be provided at the facade of the various proposals for 23–33 Johnston Street.

## 3.4 Commercial noise

### (i) What is the relevant standard for commercial noise

It is not disputed that any use on the land must comply with the State Environment Protection Policy – Control of Noise from Commerce, Industry and Trade (SEPP N-1).

SEPP N-1 aims to protect people residing in the Melbourne metropolitan region from commercial, industrial and trade noise by requiring these types of noise emissions to comply with the limits set. SEPP N-1 prescribes the methodology to be used. Submissions from both Mr Peters<sup>9</sup> and Mr Leo<sup>10</sup> provided information about the operation of SEPP N-1.

<sup>4</sup> Document 16 para 90 p.18.

<sup>5</sup> N Peters, 1 December 2016 Report tabled at day 1 of the Hearing (document 3).

<sup>6</sup> Noise Consulting Pty Ltd, Melba Spiegeltent Report, Ref 3008, dated 14 Oct 2016, p. 4.

<sup>7</sup> As per oral evidence of Mr Peters and Ms Williams on day 1 of the hearing.

<sup>8</sup> Noise Management Consulting Pty Ltd report, titled 'MELBA SPIEGELTENT EVENT, MUSIC ROOM OPERATIONS, OUTDOOR COURTYARD', Ref 3030, dated 16 Nov 2016, p. 6.

<sup>9</sup> RTA p.13.

<sup>10</sup> MDA App.E p.28.

Additionally Mr Leo calculated the SEPP N-1 noise limits for 23–33 Johnston Street as well as 54 Johnston Street.<sup>11</sup>

The details of air conditioning, ventilation, exhaust, mechanical equipment and deliveries required for the various tenancies at the CAP site are not yet known and so appropriate acoustic treatments or housing cannot be determined at this stage. However, experts<sup>12</sup> have no issue with the application of SEPP N-1 and agree that operations at the CAP site will be able to comply.

## **(ii) Conclusion**

The Panel accepts that the limits established by SEPP N-1 will apply. Acoustic treatments and housings at the CAP site must be designed, and operations managed, such that noise from commerce, industry and trade complies with the limits set by SEPP N-1.

## **3.5 Music noise**

### **3.5.1 The regulatory environment**

#### **(i) Indoor and outdoor venues**

SEPP N-2 provides the levels for music noise assessment. In general, the permissible noise levels are determined on the basis of land zoning and background noise levels plus an additional allowance. They are separately defined for day, evening and night periods and can also vary according to the day of the week.

Further, under SEPP N-2 permissible noise levels differ according to whether the venue being assessed is an indoor or an outdoor venue. The Panel has been invited to consider this question.

SEPP N-2 defines indoor and outdoor venues:

*Indoor venue – means a public premises with facility for music to be played indoors and includes, but is not restricted to, the following – hotel, cabaret, night club, discotheque, reception centre, skating rink, restaurant, cafe, health and fitness centre, recording and rehearsal studio, theatre, amusement park, amusement parlour, retail store, public hall or club*

*Outdoor venue – means a public premises, not being an indoor venue, where music is played in the open air ...*

SEPP N-2 also defines concerts:

*Concerts – means any operation of an outdoor venue where the effective noise level exceeds 55dB(A) at any measurement point in a noise sensitive area*

It is not disputed that any use on the land must comply with SEPP N-2. The issue is what this means in practice, especially in relation to the 'agent of change' principle.

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<sup>11</sup> MDA Appendix E Tables 29, 30 and 31.

<sup>12</sup> Joint Statement Item A 1.

**(ii) What is the relevant standard for music noise**

SEPP N-2 establishes music noise limits for indoor venues set relative to various times of day and background noise. In brief they are:

- Day/evening – background noise level  $L_{A90} + 5\text{dB}$
- Night – background noise level  $L_{OCT90} + 8\text{dB}$ .

Based on the measured background noise levels provided in Tables 4 and 5 the SEPP N-2 derived day, evening and night-time noise limits at the noise sensitive receivers would be as provided in Tables 7 and 8 below.

**Table 7: SEPP N-2 derived day and evening period limits, dB**

Description	SEPP N-2 Noise limit (Day/Evening), $L_{Aeq}$		
	54 Johnston Street	10 Perry Street	23-33 Johnston Street
<b>SEPP N-2 day/evening period noise limit</b>	57/56	48/48	50/49

**Table 8: SEPP N-2 derived night-time noise limit, dB**

Description	Octave band centre frequency, Hz						
	63	125	250	500	1000	2000	4000
<b>Weekday night period noise limit, <math>L_{10}</math></b>	50	42	43	41	39	33	24
<b>Weekend night-time noise limit, <math>L_{10}</math></b>	56	51	49	48	46	42	33

For outdoor venues SEPP N-2 places limits on operating times, the noise permitted and number of events that can be categorised as concerts.

Operating times are limited as follows:

- Events with a duration of five hours or less: 12.00 noon to 11.00pm
- Events with a duration of more than five hours: 12.00 noon to 10.00pm.

As indicated above concerts are defined as events where the effective noise level exceeds 55  $\text{dBL}_{Aeq}$  (or 45  $\text{dBL}_{Aeq}$  if measured indoors) at any measurement point in a noise sensitive area. The limit for outdoor venues is 65  $\text{dBL}_{Aeq}$  when the measurement point is located outdoors, and 55  $\text{dBL}_{Aeq}$  when located indoors.

There is no limit on the number of events held that are not categorised as concerts, that is, events where music is emitted up to 55 $\text{dBL}_{Aeq}$ . However, only six concerts a year are permitted.

Sources of music noise need to comply with SEPP N-2 which imposes a limit on how loud music can be, when measured outside the facade of existing dwellings. The idea is that a typical facade will attenuate the sound enough that an acceptable sound level is achieved inside.

**(iii) Clause 52.43**

New dwellings near an existing source of music noise must insulate their facade so that an acceptable internal noise level is achieved. This is based on the ‘agent of change’ principle, where the person making the change must deal with the noise issue: new music venues should not adversely impact existing dwellings, and new dwellings should not impose new restrictions on existing music venues.

This is given effect by Clause 52.43 *Live Music and Entertainment Noise*. One of the purposes of Clause 52.43 is “*To ensure that the primary responsibility for noise attenuation rests with the agent of change*”. Clause 52.43 provides that:

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

*A noise sensitive residential use must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any*

- *indoor live music entertainment venue to below the noise limits specified in SEPP No. N-2*
- *outdoor live music entertainment venue to below 45dB(A) assessed as an Leq over 15 minutes.*

Clause 52.43 applies to noise sensitive residential uses within 50 metres of a live music entertainment venue. It does not alter the limits set in SEPP N-2, however, it changes the point of measurement from outside a noise sensitive residential use to inside a habitable room with the windows and doors closed. In this way it shifts the obligation to comply with SEPP N-2 from the noise emitter to the noise receiver. It operates on a first in time basis, allowing the continued operation of existing music venues.

**(iv) Are the existing dwellings noise sensitive residential uses**

The existing dwellings (as provided in section 3.3.1) are noise sensitive residential uses.

**(v) Are the proposed dwellings noise sensitive residential uses**

The student accommodation permit PLN08/0894 was issued in 2010 subject to the submission and approval of additional documentation including, under Condition 16, a report detailing acoustic treatments to the building. The Panel understands that this had not been submitted to Council at the time of the Hearing.

The Panel notes the view of Dianne Williams that the Responsible Authority should require acoustic treatments, to respond to the noise conditions existing at the time the acoustic report is written, rather than the time the permit was issued. If this is the case music noise from the various operations on the Circus Oz site would need to be considered, as well as music noise levels from the Tote. The permit before this Panel cannot enforce that view; it is matter to be decided elsewhere. It is not the role of the Panel to approve the acoustic report under the existing permit.

The impact of the existing student accommodation permit on the level of noise from the CAP site, permissible under SEPP N-2, depends on how Condition 16 is applied. It is not clear that student housing is a noise sensitive residential use that will benefit from the 'agent of change' provision. This is not a matter for this Panel.

The Panel notes that even if this development could legally start under the student accommodation permit there would still be no guarantee that it would. Not all proposals that have permits are built. The Panel notes that the current permit has been extended on several occasions since it was issued.

An additional permit application PLN16/0845 has been lodged for 23–33 Johnston Street for a 12 storey mixed use development with apartments on levels 1-11. Should this permit be issued then this development would clearly be both a noise sensitive residential use and the 'agent of change'.

**(vi) Agent of change**

The CAP Limited proposal is the 'agent of change' for the existing dwellings. Its operations must comply with SEPP N-2 as measured outside the facade of the existing dwellings. Mr Leo's evidence provided background noise measurements and modelled site conditions (including the noise shielding effect provided by the various buildings on the site) and noise emissions. He concluded, as did Ms Williams, that the CAP Limited operations could comply with SEPP N-2. The Panel accepts this evidence.

If the CAP Limited proposal is considered the 'agent of change' for the proposed developments, then it must also comply with SEPP N-2 as measured outside the proposed facade of the new developments. Because this proposed facade is closer to the CAP Limited site and will not benefit from the acoustic shielding of the existing building, particularly on the upper levels, this would be a more onerous requirement for CAP Limited proposal to meet.

It was argued before the Panel that the planning applications for the CAP Limited site and 23-33 Johnston Street are somewhat contemporaneous, and that this is a basis for sharing compliance with Clause 52.43 rather than the first in time application of the provision.

The proposition put to the Panel is, in broad terms, that allowing concerts in the courtyard with noise levels as permitted under SEPP N-2 for outdoor venues, and treating PLN16/0845 as the 'agent of change' would require acoustic treatments on the facade that are uneconomic or contrary to broader planning policy. Mr Gurner submitted it was feasible to implement facade treatments that would protect residents from noise levels slightly lower than those permitted by SEPP N-2.

The contrary view is that the noise currently emitted from the amphitheatre means that any new development on 23-33 Johnston Street is obliged to undertake those facade treatments and that noise emitted from the courtyard is not the deciding factor.

Current operations at Circus Oz and the Tote will not be restricted, because the proposed developments are the 'agent of change' in relation to those operations, noting, however, that on a strict application of Clause 52.43 the proposed uses at 23–33 Johnston Street do

not have to take into account the music emissions from either the Tote or the Spiegeltent as they are more than 50 metres away.

### **3.5.2 Music from outdoor venues**

#### **(i) What are the issues**

The most critical issues relate to music noise from outside concerts.

Critical issues are:

- The relationship between music noise from the Circus Oz amphitheatre and the CAP courtyard.
- Is the courtyard an outside venue?
- Is the impact of acoustic treatment on the internal quality of the proposed apartments a relevant issue?
- To what extent is music an integral part of Circus Oz and potentially a core element in a creative arts precinct?

#### **(ii) Evidence and discussion**

##### **The relationship between the amphitheatre and the courtyard**

The Circus Oz amphitheatre is about a metre away from the CAP courtyard and 17 metres from the boundary with 23-33 Johnston Street. Tabled Document 8 details noise measurements taken at a concert in the open air amphitheatre. While the noise was measured at 92 dB(A) at five metres in front of the stage it was found that the music concert complied with the outdoor venue noise limits at all times and in all noise sensitive locations.<sup>13</sup>

The amphitheatre is a permitted use. Its operation has design implications for the facade of either of the proposals for 23-33 Johnston Street. Should either PLN08/0894 or PLN16/0845 proceed the operations of the amphitheatre will be the key design driver. Noise emissions from the courtyard, provided they do not exceed the noise levels of the amphitheatre, are not the key consideration.

##### **Is the courtyard an outside venue**

There was no expert agreement that the SEPP N-2 outdoor venue definition would apply to the courtyard. This matter was addressed by a number of the submitters.

Ms Williams, in evidence and as part of the Joint Statement, questioned whether the courtyard could be considered an outdoor venue both.<sup>14</sup> Mr Leo, considered the courtyard an outdoor venue and Mr Peters also provided qualified agreement to this proposition.<sup>15</sup>

The definition of the courtyard as either an indoor or outdoor venue affects the permissible noise levels:

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<sup>13</sup> Document 8 p.6.

<sup>14</sup> Ms Williams evidence Day 1 Joint Statement Item A.3.

<sup>15</sup> Joint Statement Item A.3.

- If the courtyard is categorised as an indoor venue the limits provided in Tables 7 and 8 are allowed to be emitted during the day, evening and night.
- If it is categorised as an outdoor venue then there are limits on operating times, the noise permitted and the number of events that can be categorised as concerts. The highest level of noise from an outdoor concert is 65 dBL<sub>Aeq</sub>.

The courtyard is clearly outside but whether it is an outside venue for the purposes of SEPP N-2 is not entirely clear. This is not ultimately a matter for this Panel to make recommendations about, unless it was minded to recommend a lower noise level than would usually be permitted in an outdoor venue.

### **Is the impact of acoustic treatment on the internal quality of the proposed apartments a relevant issue**

The acoustic attenuation required on the facade of any new development is a design constraint. The impact of that treatment on the internal amenity of the apartments is a relevant consideration in whether or not a proposal should be approved. But if the cost of the acoustic treatment of the facade of the proposed building is too high, the policy response should not be to lower the requirement when this will have an adverse impact on the operation of a neighbour's legitimate activities. Planning would not accept the reverse situation and allow a noisy activity to establish on the basis that it was too costly to provide sound insulation on the noise source.

Not all land has equal development potential, in this case the land at 23-33 Johnston Street is potentially constrained by being next to an existing established source of noise. There is no overriding policy presumption that the Gurner site should be developed for dwellings.

### **Could the Circus Oz amphitheatre concerts be quieter**

Live music is an essential part of Circus Oz and the Panel accepts that any control restricting the use of the amphitheatre (not that this any such restriction is part of this application) would adversely impact on the circus.

Whether or not the concerts could be quieter is not relevant to this Panel. It appears that Circus Oz has the right to use the amphitheatre as they have in the past.

### **Is use of the courtyard an essential element of the arts precinct**

The Panel also accepts that the ability to hold outdoor events with music is potentially a core element of the Precinct. The Precinct has the potential to be more than just gallery space, or another weekend market. It has the potential to foster participation in the arts and that participation may involve a range of community events that involve music.

### **(iii) Conclusion**

The Panel concludes that based on the existing dwellings SEPP N-2 can be complied with for external concerts and there is no need to impose additional limits in the planning permit.

The Panel is not persuaded that additional limits should be applied to allow for the development of dwellings at the rear of 23–33 Johnston Street (at all or in a more cost effective manner). This is essentially a policy issue.



The Panel concludes that it would not be appropriate to place limits on the CAP site operation above and beyond those required by SEPP N-2, or to try to specify decibel levels in the permit. Under the current conditions these precise limits depend on whether the student housing or the new application are deemed to be the agents of change in relation to existing music noise. Ultimately this is not an issue for this permit application.

If the Panel was convinced that CAP was the agent of change in an otherwise quiet environment it would make sense to place limits on the permit, but the Panel is not convinced that this is the case.

Certainly Gurner has the right to try to progress its approval of an acoustic report for the student housing and apply for a new development. To the extent that these permissions limit the operation of the CAP site they limit uses that have broad policy support and are of state significance.

It would be poor policy outcome if a single higher density or student housing development (which are supported across large areas of Melbourne) restricted the operation of a state significant arts precinct. There is nothing unusual about planning controls restricting private development on the basis of broader community development – this is one of the underlying reasons we have planning and the concept of net community benefit.

In relation to the acoustic treatment required for the student housing permit this is ultimately a matter for other decision makers. If that decision maker concludes that the student housing needs to protect itself from the current concerts in the Circus Oz amphitheatre, then this will also serve to protect those dwellings from noise from the courtyard.

### **3.5.3 Music from indoor venues**

#### **(i) Evidence and discussion**

There is expert agreement<sup>16</sup> that the SEPP N-2 indoor venue music noise limits should be applied to Buildings C, E and F. However, it was proposed<sup>17</sup> that in order to comply, music from these buildings should be limited to background music only.

Acoustic testing of the facades of Buildings C, E and F was carried out by MDA.<sup>18</sup> This testing indicates that the sound insulating properties of these existing building facades are expected to reduce overall internal noise levels by 20-30 dB at positions directly outside these buildings and that compliance should not be an issue. In oral evidence Mr Peters conceded that it was not necessary to limit music to background levels only in order to comply with SEPP N-2.

#### **(ii) Conclusion**

The Panel is satisfied that music emissions from Buildings C, E and F can be appropriately reduced so as to comply with SEPP N-2 and that there is no need to limit the music to background levels only.

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<sup>16</sup> Joint Statement Item A 2

<sup>17</sup> find ref in RTA

<sup>18</sup> MDA Appendix G p.

### 3.6 Patron noise

#### (i) What are the issues

The Panel must consider the levels of patron noise emitted from the CAP site and the issues this may raise for the amenity of the noise sensitive receivers. Patron noise levels are not dependent upon the number of patrons but rather vary according to a wide range of factors. These are usefully set out in the MDA Report.<sup>19</sup> Patron noise emissions can vary depending on the type of venue, the time of day and from day to day.

Patron noise is not covered by a SEPP or an industry guideline. The expert conclave agreed patron noise design targets. The Joint Statement establishes the targets as:

- background noise ( $L_{A90}$ ) plus 10dB( $L_{Aeq}$ ) for the day and evening periods
- background noise plus 5 dB for the night period, plus a sleep disturbance criterion of 55dB  $L_{Amax}$  inside bedrooms at night.<sup>20</sup>

The Special Use Zone under the FTGL Service proposes:

***The following Patron Noise Criteria:***

*For  $L_{Aeq}$  noise levels, the less stringent of the following:*

- *if noise is assessed external to a Noise Sensitive Building, noise emissions must comply with noise limits determined according to SEPP N-1 (as though patron noise were a noise source regulated by this Policy, but with no other modification to the application of the Policy).*
- *if noise is assessed internal to a Noise Sensitive Building, noise emissions must achieve the lower of the design sound level range for (whichever is relevant) houses and apartments in inner city areas, entertainment districts, or near major roads, as provided in Australian Standard AS2107:2016 'Acoustics—Recommended design sound levels and reverberation times for building interiors'.*

*For  $L_{Amax}$  noise levels, during the hours of 10pm-7am:*

- *'Sleep Disturbance Criteria', being a noise level of 55dB  $L_{Amax}$ , assessed inside a habitable room of a Noise Sensitive Building normally used for the purpose of sleeping.*
- *For the purpose of the Patron Noise Criteria, 'Noise Sensitive Building' means a building referred to in the definition of 'Noise sensitive area' in SEPP N-1, being a Dwelling, Residential Building, Caretaker's House, Hospital, Hotel, Institutional Home, Motel, Reformatory Institution, Tourist Establishment or Work Release Hostel.*

#### (ii) Submissions

Only Mr Leo made a submission that covered patron noise from the CAP site. Patron noise had been modelled based on tavern data and assessed against existing noise sensitive

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<sup>19</sup> MDA App J p.44.

<sup>20</sup> Joint Statement Item 4.

receivers. In respect of Buildings C, E and F Mr Leo noted that the solid building fabric provided very high levels of sound mitigation.

For early morning, day and evening Mr Leo largely found compliance with the agreed design targets at all existing noise sensitive receivers except for 10 Perry Street.<sup>21</sup> The exceedances at 10 Perry Street were as follows:

- +6dB in the early morning between 6.00am and 7.00am arising from potential patron activity in Building E
- +2dB in the evening.

Mr Leo submitted that the exceedance of 6dB could be managed by limiting the number of patrons in Building E to 50 between 6.00–7.00am.<sup>22</sup> He also submitted the 2dB exceedance “*is unlikely to cause impact at 10 Perry Street*”.<sup>23</sup>

The weeknight and weekend night predictions of patron noise<sup>24</sup> found that there was compliance at all existing noise sensitive receivers with the exception of exceedances of 3dB at 23–33 Johnston Street and 2 Bedford Street during weeknights. Mr Leo recommended that weeknight patron activity be assessed once the venue is operational.

Mr Leo submitted that his use of tavern data as the assessment basis for future patron noise was a conservative approach. This was also drawn to the attention of the Panel by Mr McArdle who asserted that:

*... the use of Building E for art related purposes will not necessarily result in the same noise levels as “Taverns with significant food offerings” and Mr Leo’s assessment should be considered conservative.*<sup>25</sup>

Mr Leo also modelled patron noise impacts on the two proposals for 23–33 Johnston Street.<sup>26</sup> In the worst case the modelling identified significant exceedances at both the future student accommodation and the mixed use development. These exceedances could be managed either by significant restriction on courtyard use at night or design of the facades to accommodate the patron noise levels and provide adequate levels of residential amenity.

In the Committee Hearing under the FTGL Service process Mr Leo reviewed the proposed Noise Management Plan prepared by Noise Consulting & Management Pty Ltd for the Arts Precinct including both Circus Oz and CAP sites. This plan proposes using SEPP N-1 and AS2107:2016 for the management of patron noise. Mr Leo proposed amendments to this document. The proposed amendments were tabled as Documents 3 and 4 to that hearing. They set internal patron noise levels for each floor of Buildings C, E and F and propose a further reduction to 20 of the number of patrons allowable in Building E between 6.00 am and 7.00am.

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<sup>21</sup> MDA Table 18 p.16.

<sup>22</sup> MDA para 8.2.5 p.16.

<sup>23</sup> MDA para.8.2.6 p.16.

<sup>24</sup> MDA para 8.2.2 p.17.

<sup>25</sup> Mr McArdle para 37 p.8.

<sup>26</sup> MDA paras 8.2.13-8.2.16, p18.

### **(iii) Discussion**

The design targets developed by the expert conclave do not set an absolute limit in the manner of statutory criteria but rather indicate whether future patron noise has the potential to cause unreasonable amenity impacts. They require the modelling of future patron noise to underpin future decision making.

The noise management standards set by the proposed Special Use Zone, as operationalised by the Noise Management Plan, incorporating the amendments proposed by Mr Leo, will allow CAP site management to measure patron noise emitted by operations and monitor compliance with the set standard. This enables a straightforward approach to compliance which is desirable.

### **(iv) Conclusions**

The Panel accepts the proposals for the management of patron noise as proposed under the Special Use Zone and as detailed under the Noise Management Plan as revised by Mr Leo and handed to the Committee as Documents 3 and 4 to that hearing.

If patrons are engaged in quiet activities and are not as noisy as tavern patron a larger number of patrons might be able to be accommodated on-site without producing too much noise. This could be managed by secondary consent.

The Panel concludes that that the draft permit should be amended to:

**Change Condition 3 to allow patron numbers to be varied by secondary consent**

**Change Condition 4 to limit the number of patron to in Building E to no more than 20 patrons in each level of Building E, excluding the basement, between 6:00am and 7:00am.**

## **3.7 Overall conclusion**

The Collingwood Arts Precinct is home to some intrinsically noisy art organisations, and may host some intrinsically noisy events as part of its operations. There is policy support for these organisations and these events (to the extent they support the vitality of the Precinct) and the CAP Limited site (and the wider Precinct) should be allowed to make as much noise as they are legally permitted (but no more than this).

Broader policy goals are better met, and a better net community benefit is derived, if the proposed developments on 23–33 Johnston Street do not restrict the operations of the Precinct, but whether or not they ultimately will restrict operations is not a matter to be decided by this process. This permit application cannot directly affect those decisions.

Planning control should not be imposed that attempt to place tougher restrictions than SEPP N–2 or a conservative interpretation of SEPP N–2.