

**1.4 52 MONTCLAIR AVENUE, GLEN WAVERLEY
THE DEVELOPMENT AND USE OF A 7 STOREY BUILDING AND REDUCTION IN THE
CAR PARKING REQUIREMENT
(TPA/38878/I)**

EXECUTIVE SUMMARY:

Planning Permit TPA/38878 was issued on 30 August 2011 for the development and use of a six-storey building comprising café, restaurants, place of assembly and massage facilities with on-premises liquor licence. The permit was amended on 28 June 2016 to allow construction of a seventh level to be used as café/restaurant. The development does not provide any car parking on site. The owner of the land has entered into a Section 173 Agreement with Council in which the owner agreed to pay a 'car parking contribution' as required by the car parking overlay applicable to the land at the time the original permit was issued.

This proposed amendment seeks to increase the maximum number of patrons to the existing place of assembly on level 5 from 40 to 120. The increased number of patrons will generate an additional requirement of 24 car parking spaces. As the development does not provide any car parking spaces on site, this amendment also seeks a full waiver of the additional car parking requirement.

The Car Parking Overlay has now been removed from the Planning Scheme. Council can no longer accept financial contributions in lieu of on-site car parking provision for applications.

The application was subject to public notification. One objection to the proposal has been received.

Key issues to be considered relate to any adverse impacts to the general area by the increased number of patrons, and impacts on car parking to the surrounding area.

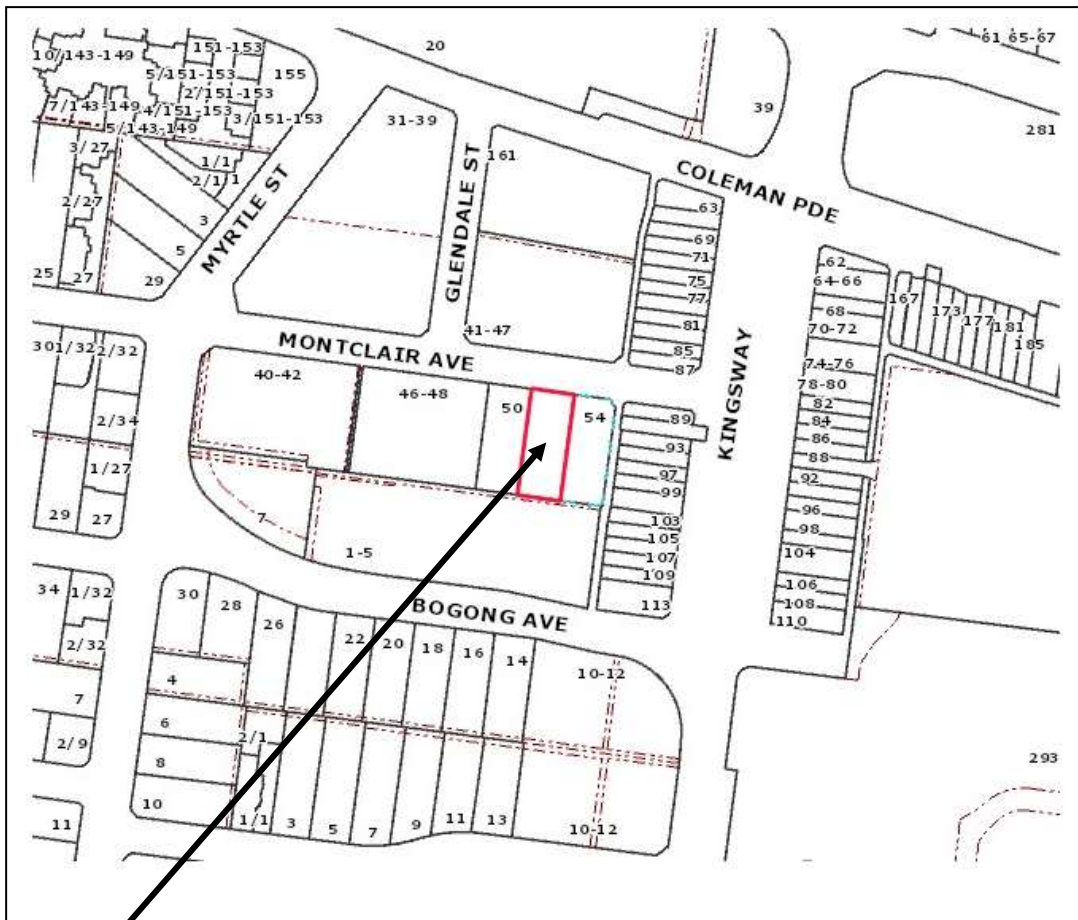
This report assesses the proposal against the provisions of the Monash Planning Scheme including the relevant state and local planning policy framework and issues raised by objectors.

The reason for presenting this report to Council is as the initial application was decided by Council.

The proposed development is considered appropriate having regard to the relevant provisions of the Monash Planning Scheme. It is recommended that Council resolve to issue a Notice of Decision to Grant an Amendment to Planning Permit (TPA/38818), subject to conditions.

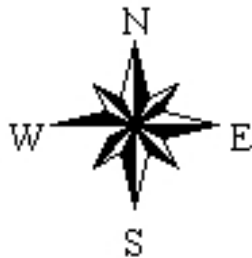
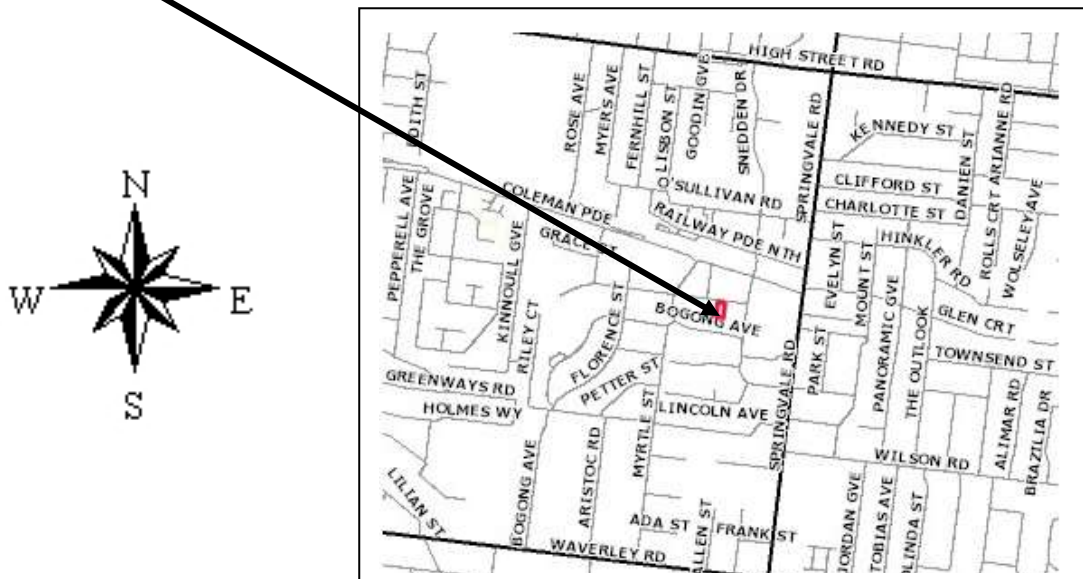
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Mariela Llopart (Acting)
RESPONSIBLE PLANNER:	Jeanny Lui
WARD:	Glen Waverley
PROPERTY ADDRESS:	52 Montclair Avenue, Glen Waverley
EXISTING LAND USE:	Commercial building
PRE-APPLICATION MEETING:	No
NUMBER OF OBJECTIONS:	One (1)
ZONING:	Commercial 1 Zone
OVERLAY:	Design and Development Overlay Schedule 12
RELEVANT CLAUSES: <u>Planning Policy Framework</u> Clause 18.01-1S- Land Use and Transport Planning Clause 18.02-2R– Principal Public Transport Network	<u>Local Planning Policy Framework</u> Clause 21.05- Economic Development Clause 21.06- Major Activity and Neighbourhood Centres Clause 21.08- Transport and Traffic Clause 22.14- Glen Waverley Major Activity Centre Structure Plan <u>Particular Provisions</u> Clause 52.06- Car Parking Clause 65 – Decision Guidelines
STATUTORY PROCESSING DATE:	3 September 2021
DEVELOPMENT COST:	N/A

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



RECOMMENDATION:

That Council resolves to issue a **Notice of Decision to Grant an Amendment to Planning Permit (TPA/38878)** which seeks to increase the number of patrons of the existing place of assembly on level 5 and reduction in the associated car parking requirement, at **52 Montclair Avenue GLEN WAVERLEY VIC 3150** subject to the following:

- Permit description amended to read *buildings and works for the development and use of a 7 storey building (plus basement) comprising café/restaurants, karaoke/lounge bar and snooker/lounge bar areas and internet cafe with an on-premises liquor licence for all levels. Proposed trading hours: 7 days a week between 7am and 1am the following day and reduction in the car parking requirement*
- Amended plans showing the additional patron numbers endorsed.

All existing permit conditions to remain as:

1. Before the development and use starts, three copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit.

The plans must be generally in accordance with the plans submitted with the application, but modified to show:

- a) The proposed amended application uses reflecting the 3 levels of cafe/restaurant uses, 2 levels of snooker/karaoke/lounge bar uses and the level of therapeutic massage facilities.
 - b) the location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at a distance from the street which is at or behind the setback alignment of buildings on the site or in compliance with Council's "Guide to Electricity Supply Meter Boxes in Monash".
 - c) the location of gas and water meters;
2. The development and use as shown on the endorsed plans must not be a without the written consent of the Responsible Authority
 3. Before the development begins, the owner of the land must enter into an agreement under section 173 of the Act in which the owner agrees to pay \$12,662.20 (GST inclusive) indexed by CPI (all groups) from 1 July 2011 to the responsible authority for:

- each car parking space or part thereof specified under this Scheme; or
- where a rate is not specified, as determined by the responsible authority and which cannot be provided on the land (net of car parking credits).

The agreement may provide for the payment of the contribution in instalments plus an interest component equivalent to the interest payable on unpaid rates and charges under the Local Government Act 1989 and it must provide that all instalments and accrued interest are paid within 5 years of the first instalment.

The agreement must provide that the contribution is to be indexed according to the CPI (all groups) from 1 July 2011 until it is paid. The agreement must also provide for the owner to pay Council's costs of preparing, registering and then upon its ending, deregistering the agreement.

A cash contribution for 124.1 car spaces is required.

As at the date this permit issued, the total amount payable for the development and use hereby permitted is \$1,571,379 (GST inclusive).

4. Prior to the endorsement of plans referred to in Condition 1 the owner of the land must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987. In addition to the usual mechanical provisions, the agreement must provide for the preparation of a Site Management Plan prepared to the satisfaction of the Responsible Authority and shall only be amended with the written consent of the Responsible Authority. The Site Management Plan required in the agreement must provide for the following matters:
 - a) Permanent display of the Management Plan in the common area;
 - b) The nature of the management of the complex and the contact details of the manager for each tenancy;
 - c) Provision of emergency contact details to be displayed so they are clearly visible to any person outside the site;
 - d) Provision to ensure that the approved uses do not cause negative impacts on the amenity of the surrounding area particularly in respect to patron behaviour, activities and the extent to which external areas may be used at night;
 - e) A requirement that should behavioural problems occur at the site causing disruption to surrounding residents, the operator under

this permit must immediately take ameliorative action to the satisfaction of the Responsible Authority;

- f) Maintenance of grounds and upkeep of the buildings;
- g) Details of rubbish bin storage and waste collection;
- h) Emergency and evacuation procedures.

The cost of the preparation and review of the Section 173 Agreement and its registration on the title of the land must be borne by the owner of the land.

5. The uses authorised by this permit may operate only between the hours of 7am to 1am, the following day, 7 days a week.
6. Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the Responsible Authority.

The plans must show a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge. The nominated point of discharge is the north-west corner of the site where the entire site's storm water must be collected and free drained via a pipe to the Council outside No. 50 Montclair Avenue via a 225mm pipe and 900 mm x 600 mm junction pit to be constructed to Council Standards. A new pit is to be constructed if a pit does not exist or is not a standard Council pit. If the point of discharge cannot be located then notify Council's Engineering Division immediately.

7. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties
8. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
9. Prior to commencement of any buildings and works on the site, a construction management plan must be prepared and submitted to the Responsible Authority for approval. The plan must be to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
 - a) measures to control noise, dust and water runoff;
 - b) prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;

- c) the location of where building materials are to be kept during construction;
- d) site security;
- e) maintenance of safe movements of vehicles to and from the site during the construction phase;
- f) on-site parking of vehicles associated with construction activities;
- g) wash down areas for trucks and vehicles associated with construction activities;
- h) cleaning and maintaining surrounding road surfaces.

Lighting must be designed baffled and located to ensure the safety and security of the premises, without adversely impacting on surrounding properties, to the satisfaction of the Responsible Authority.

10. Noise from mechanical services equipment and any music noise associated with the premises must at all times conform with the State Environment Protection policies SEPP N-1 and SEPP N-2, respectively.
11. Disabled access to the building must be provided to the satisfaction of the Responsible Authority. All work carried out to provide disabled access must be constructed in accordance with Australian Standards Design for Access and Mobility AS 1428.1.
12. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the top level of the building unless otherwise agreed to in writing by the Responsible Authority.
13. A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. When approved the plan will be endorsed and will then form part of the permit.
14. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
15. Before the use starts all works specified in this permit must be completed to the satisfaction of the Responsible Authority. The Responsible Authority must be advised in writing when all works are completed to enable the site to be inspected.
16. Any unused portion of the property must be kept drained and tidy at all times to the satisfaction of the Responsible Authority.

17. The location and details of signs shown on the endorsed plans must not be altered without the written consent of the responsible Authority.
18. All signs must be constructed and maintained to the satisfaction of the Responsible Authority.
19. External sign lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
20. The sign must not distract drivers due to its colouring, be mistaken for a traffic signal, be able to be mistaken as an instruction to drivers or constitute a road safety hazard in any way.
21. In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
 - (a) The development is not started before two (2) years from the date of issue.
 - (b) The development is not completed before four (4) years from the date of issue.

In accordance with Section 69 of the Planning and Environment Act 1987, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or:

 - (i) within six (6) months afterwards if the development has not commenced; or
 - (ii) within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

NOTES:

1. Building approval must be obtained prior to the commencement of the above approved works.
2. Premises used for the sale or storage of food in any manner whatsoever are to be registered under the Food Act require Council approval via the Chief Environmental Health Officer before occupation.
3. Unless no permit is required under the planning scheme, no sign must be constructed or displayed without a further permit.

4. Any new drainage work within the road reserve requires the approval of Council's Engineering Division prior to the works commencing. Three copies of the plans (A3-A1 size) for the drainage works must be submitted to and approved by the Engineering Division prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage conditions of the permit. A refundable security deposit of \$2,000 is to be paid prior to the drainage works commencing.
5. Engineering permits must be obtained for altered vehicle crossings and for new connections to Council pits and these works are to be inspected by Council (telephone 9518 3690)
6. Stormwater detention requirements may be obtained from Council's Engineering Department prior to the design of any stormwater detention system.
7. The redundant vehicle crossing is to be removed and reinstated with kerb and channel to the satisfaction of Council.
8. A drainage contribution will not be accepted in lieu of a detention system.
9. Detention system requirements are as follows:
 - Minimum storage = 7.00 cubic metres
 - Maximum discharge rate = 7.14 litres per second
 - Minimum orifice diameter if using orifice pit = 90 mm, otherwise install a Phillips multi cell or similar to control outflow
10. Unless no permit is required under the planning scheme, no sign must be constructed or displayed without a further permit.

BACKGROUND:**History****TPA/38878**

Council, at its meeting of 26 July 2011, resolved to issue a Notice of Decision to Grant a Planning Permit for the development and use of a six storey building comprising café/ restaurants, karaoke/ snooker/ lounge bar and massage facilities with on-premises liquor licence.

TPA/44329

Planning Permit TPA/44329 was issued under delegation on 8 September 2015 for the construction of a 7th level to the approved commercial building, to be used of a café/ restaurant with on-premises liquor licence.

The development of the seven storey building was completed in 2017.

Numerous amendments have been issued under delegation since the original planning permit TPA/38878 was issued.

- TPA/38878B was issued on 9 February 2016 to allow the construction of signage.
- TPA/38878C was issued on 28 June 2016 to allow consolidation of Planning Permit TPA/38878C & TPA/44329.
- TPA/38878D was issued on 1 September 2016 to allow additional 90 seats for the restaurants on levels ground, 1 & 2.
- TPA/38878E was issued on 30 June 2017 to allow change of use on level 3 from therapeutic massage to a restaurant with maximum 100 seats; and increase the maximum number of patrons of the karaoke/ lounge bar of level 4 from 30 to 65.
- TPA/38878F was issued on 22 September 2017 to allow change of use of level 4 from a karaoke/ snooker/ lounge bar to a restaurant with maximum 50 seats.
- TPA/38878G was issued on 5 February 2018 to allow increase in maximum number of patrons of the place of assembly on level 5 from 30 to 40; and level 6 from 10 to 40.

Car parking requirements generated by the approved development and land use were satisfied by cash in lieu car parking contributions as required by the Car Parking Overlay and implemented by Section 173 Agreements specified by the permit allowing for staged payment of car parking contributions.

Parking Overlay- Glen Waverley Principal Activity Centre Area

Previous permits (including amended permits) issued on the land were subject to the Parking Overlay requirements including the provision of cash in lieu contributions for car parking not provided on site.

The Parking Overlay was removed from the Monash Planning Scheme by Amendment C137 effective from 24 May 2018. Council can no longer accept a car parking contribution for applications decided after this date. Current provisions of the planning scheme allow for a waiver of car parking requirement to be considered.

The Site and Surrounds

The subject site is located on the south side of Montclair Avenue approximately 55 metres west of Kingsway, in the Glen Waverley Principal Activity Centre.

Land to the north and south of the subject site is occupied by Council car parking areas. Land to the east is currently being developed with an 11 storey mixed use building. Land to the west is currently vacant with approved development for an 11 storey building.

The Glen Shopping Centre is located approximately 360 metres to the north, and the Glen Waverley Railway Station and bus interchange are located approximately 200 metres, also to the north. Kingsway shopping strip is located approximately 50 metres to the east.

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

PROPOSAL:

An application has been received to amend the endorsed plans for level 5 to increase in maximum number of patron of the existing place of assembly from 40 to 120. No car parking spaces will be provided on site thus the application also seeks a reduction in car parking spaces for the 80 additional patrons.

Attachment 1 details plans forming part of the application.

PERMIT TRIGGERS:

Zoning

A permit is not required under the provision of Clause 34.01 *Commercial 1 Zone* for the proposed amendment as the use 'place of assembly' has been approved in the original permit TPA/38878.

Overlay

A permit is not required under the provision of Clause 43.02 *Design and Development Overlay Schedule 12* for the proposed amendment as no buildings and works are proposed.

Particular & General Provisions

Clause 52.06: Car Parking

Pursuant to Clause 52.06-3 *Car Parking*, a permit is required to reduce the number of car parking spaces required under Clause 52.06-5.

The proposal seeks a full waiver of the additional 24 car parking spaces generated by the proposed increase of 80 patrons, a permit is required under this provision.

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

CONSULTATION:**Public Notice**

The application was advertised in accordance with section 52 of the *Planning and Environment Act 1987* by sending notices to the surrounding property owners/occupiers, and a large sign displayed at the street frontage.

One objection was received. The main areas of concern relate to the lack of on site car parking provision or car parking contribution.

Attachment 4 details the location of objector properties.

Referrals**Internal Referral****Traffic Engineer**

The application was referred to Council's Traffic Engineer who advised that the peak period of patron demand for this use is generally later than the peak parking demand for the Glen Waverley Activity Centre, where there are sufficient parking spaces available for the anticipated demand. In addition, a Car Parking Assessment prepared by Traffix Group was submitted with the application which discussed a "centre-wide" approach to car parking. It is considered appropriate and the proposed waiver of car parking requirement is supported.

DISCUSSION:**Consistency with State and Local Planning Policies****State Planning Policy Framework (PPF)**

Clause 18.01-1S *Land use and transport planning* emphasizes effective integrating land use and transport planning. Clause 18.02-3R *Principal Public Transport Network* encourages to maximise the use of existing infrastructure and increase the diversity and density of development along the Principal Public Transport Network, particularly at interchanges, activity centres and where principal public transport routes intersect.

Local Planning Policy Framework (LPPF)

Clause 21.05 *Economic Development* emphasizes the continued growth in activity centres, particularly Glen Waverley, Oakleigh and Clayton. Clause 21.06 *Major Activity and Neighbourhood Centres* suggests to promote more sustainable transport patterns by ensuring major activity and neighbourhood centres are well serviced by public transport, by encouraging walking and cycling through providing safe and accessible public spaces, and by concentrating activities that generate high number of trips in highly accessible locations. This Clause also suggests the enhancement and promotion of the Glen Waverley Major Activity Centre as a major multi-functional activity centre servicing the south eastern metropolitan

area. In this Clause, the following objectives are identified for the Glen Waverley Major Activity Centre (where relevant):

- *Enhance the mix of retail, entertainment, office, residential and medical services to meet the needs of residents, workers and visitors through the implementation of the Glen Waverley Activity Centre Structure Plan 2014 (Updated 2016).*
- *Encourage the use of sustainable transport modes to/from and within the Major Activity Centre and decrease traffic congestion within the Centre, through the introduction of the Glen Waverley Activity Centre Sustainable Transport Plan 2014*

Clause 22.14 *Glen Waverley Major Activity Centre Structure Plan* identifies the Glen Waverley Major Activity Centre to be highly accessible by all travel modes; and suggests to reduce the need for vehicles through the activity centre by *enhancing the accessibility to car parking facilities...providing a high level of pedestrian priority on streets within the Glen Waverley Major Activity Centre commercial area.*

Assessment

Potential to impact on nearby properties

The subject site is located at the core of the Commercial area within the Glen Waverley Major Activity Centre, where there are other similar commercial uses exist. It is considered that the proposed amendment to increase the maximum number of patrons from 40 to 120 will have minimal adverse impacts on the general area given the nature of the Activity Centre., and intensification of the use for the size of the premises meets the objectives of Clause 22.14 *Glen Waverley Major Activity Centre Structure Plan* to meet the needs of the increasing number of local residents, works and visitors.

Car Parking, traffic and access

The increase in patron numbers however will require to provide 24 additional car parking spaces to satisfy the requirement of Clause 52.06 of the Monash Planning Scheme. As no car parking spaces are provided on site, a full waiver of 24 spaces is sought.

Use	Proposed increase in number of patrons	Clause 52.06 Requirement	Car spaces required	Car spaces provided
Place of assembly	80	0.3/ patron	24	0
Shortfall			24	

The Car Parking Assessment prepared by Traffix Group indicates that a car parking demand assessment on the peak business days for the subject premises (shops 11

& 12 at level 5) between 6pm and 1am on Friday 30 April and Saturday 1 May 2021. There were no COVID restrictions were in place when the assessment was undertaken. The surveys indicated that there were a minimum of 56 spaces available during the period within the survey area, except at 8pm when the parking capacity reached 99-100%. It was noted that the survey area did not include any area north of Railway Parade north and specifically did not include the Euneva Avenue multi-deck car park where additional capacity may have been available.

The Car Parking Assessment indicated that a minimum of 110 spaces were available in the peak period for the subject premises at 9pm Friday and 85 spaces were available at 9pm on the Saturday.

In general, the peak period of patron demand for the place of assembly is later than the peak parking demand for the Glen Waverley Activity Centre compared to other shops and restaurants. More parking spaces should be available after the peak hours of nearby restaurants or retail premises.

Additionally, a “centre-wide” approach to car parking is considered appropriate. Overall, Council’s Traffic Engineering advised that there are sufficient parking spaces within the Glen Waverley Major Activity Centre to satisfy the anticipated demand generated by this amendment, and supported the proposed waiver of parking.

CONCLUSION:

The proposed amendment to increase the number of patrons to the existing business is deemed consistent and in accordance with Council’s strategic vision for the Glen Waverley Major Activity Centre. The proposal will cause minimal adverse amenity impact to the area, and the anticipated car parking demand generated by the additional patrons will be aborted within the Activity Centre.

It is therefore recommended that the proposed amendment be approved.

LIST OF ATTACHMENTS:

Attachment 1 – Proposed Development Plans.

Attachment 2 – Aerial Photograph (January 2021).

Attachment 3 – Zoning and Overlays Map.

Attachment 4 – Objector Properties Location Map.