

Report to the Future Melbourne Committee

Agenda item 6.3

Planning Permit Application: TP-2022-561 5-7 Rankins Lane, Melbourne

7 February 2023

Presenter: Marjorie Kennedy, Head of Statutory Planning

Purpose and background

1. The purpose of this report is to advise the Future Melbourne Committee of Planning Permit Application TP-2022-561 at 5-7 Rankins Lane, Melbourne, for the use of the ground floor for an Adult Sex Product Shop (Section 2 Use).
2. The site is located within the Capital City Zone Schedule 2; Heritage Overlay (HO1205); Design and Development Overlay Schedules 1 and 2; and Parking Overlay Schedule 2 of the Melbourne Planning Scheme (refer Attachment 2).
3. Notice of the proposal was given by ordinary mail to the owners and occupiers of the surrounding properties and by posting one notice on the site for a 14 day period, in accordance with Section 52 of the *Planning and Environment Act 1987*. The application received 18 objections and over 60 letters of support.
4. The key concerns raised in the objections relate to the impact on the safety, amenity, character and appearance of the lane, and the visibility of signage (no signage is proposed) and products from outside the site (refer Attachment 3).

Key issues

5. The key issues for consideration in the assessment of the application relate to whether the site is an appropriate location for an Adult Sex Product Shop and the concerns raised in the objections.
6. The proposal is consistent with the purpose of the Adult Sex Product Shop and Sexually Explicit Adult Entertainment policies within the Melbourne Planning Scheme. It will not result in a cluster or concentration of Adult Sex Product Shops or Sexually Explicit Adult Entertainment, and is located well over 100 metres from the nearest similar premises.
7. The proposal complements the mixed use character of Rankins Lane, which includes active frontages and a range of land uses. The proposal is not anticipated to have any unreasonable adverse impact on the safety, amenity and character of the surrounding area by way of anti-social behaviour, noise, odour, waste and deliveries.
8. Recommended permit conditions require that sexually explicit advertisements, goods and products only be displayed within the premises. The internal layout, which would be endorsed if a permit was granted, has been designed to ensure that the display units are located along the side and rear walls. No products are displayed directly behind the shopfront, which is considered appropriate.

Recommendation from management

9. That the Future Melbourne Committee resolves to issue a Notice of Decision to Grant a Planning Permit subject to the conditions set out in the delegate report (refer Attachment 4 of the report from management).

Attachments:

1. Supporting Attachment (Page 2 of 13)
2. Locality Plans (Page 3 of 13)
3. Selected Plans (Page 4 of 13)
4. Delegate Report (Page 5 of 13)

Supporting Attachment

Attachment 1
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Legal

1. Legal implications. Division 1 of Part 4 of the *Planning and Environment Act 1987* (the Act) sets out requirements in relation to applications for permits pursuant to the relevant planning scheme.
2. As objections have been received, sections 64 and 65 of the Act provide that the responsible authority must give the applicant and each objector notice in the prescribed form of its decision to either grant a permit or refuse to grant a permit. The responsible authority must not issue a permit to the applicant until the end of the period in which an objector may apply to the VCAT for a review of the decision or, if an application for review is made, until the application is determined by the VCAT.

Finance

3. There are no direct financial issues arising from the recommendations contained within this report.

Conflict of interest

4. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

Health and Safety

5. Relevant planning considerations and potential amenity impacts that could impact on health and safety have been considered within the planning permit application and assessment process.

Stakeholder consultation

6. Public notice of the application has been undertaken to surrounding owners and occupiers, pursuant to Section 52 of the Act.

Relation to Council policy

7. Relevant Council policies are discussed in the attached Delegate Report (refer Attachment 4).

Environmental sustainability

8. The application is for a change of use. Clause 15.01-2L-01 (Energy and Resource Efficiency) of the Melbourne Planning Scheme is not applicable.

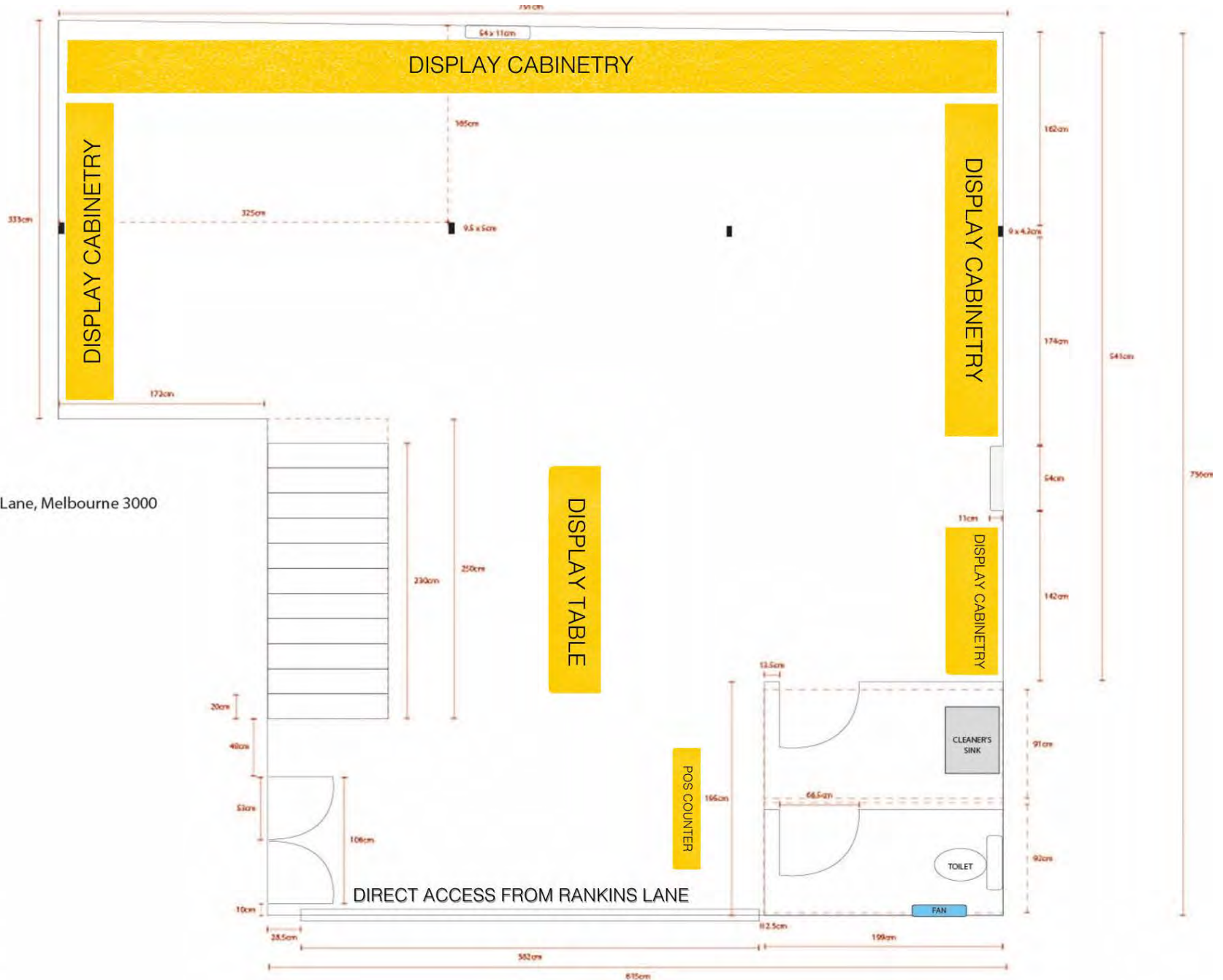
Locality Plan

Attachment 2
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5-7 Rankins Lane, Melbourne



Attachment 5. PROPOSED LAYOUT AND FLOW PLAN OF THE BUILDING



A4 = SCALE 1:40
Ground Floor, 5 Rankins Lane, Melbourne 3000

FLOORPLAN

version 4
20 July 2018

DELEGATE REPORT

PLANNING PERMIT APPLICATION

Application number:	TP-2022-561
Applicant:	High Tide Au
Owner:	Yvonne Smith
Architect:	N/A
Address:	5-7 Rankins Lane, Melbourne
Proposal:	Use of the ground floor for an Adult Sex Product Shop
Cost of works:	Not Applicable
Date of application:	23 September 2022
Responsible officer:	Adam Birch, Senior Urban Planner

1 SUBJECT SITE AND SURROUNDS

5-7 Rankins Lane, Melbourne ('the Site') is located on the eastern side of Rankins Lane off Little Bourke Street to the north (see Figure 1). Rankins Lane is a dead-end, Council lane, approximately 72.5 m in length.

Rankins Lane is characterised by low-scale, red brick heritage buildings and a mix of retail, commercial and residential uses. Commercial premises include Billie Jean Hair, Downtown Yoga Studio, Manchester Press, Fine Line Dance Studio and Blue Lady Tattoo.

The Site contains a three-storey, red brick building (see Figure 2) and is identified as a 'Contributory' heritage building in the Incorporated Document titled *Guildford and Hardware Laneways Heritage Study 2017: Heritage Inventory, November 2018 (Amended April 2022)*.

The land is formally described as Lot 1 of Title Plan 243072E, and is not affected by any easements or restrictive covenants.

High Tide occupy the ground floor and mezzanine, which together have a total floor area of approximately 51 square metres. The Adult Sex Product Shop component of the business is proposed to be located on the ground floor. The ground floor has been fitted-out for the proposed use, however the Adult Sex Product Shop has not commenced trading. A timber-framed, glazed shopfront has been installed in front of the roller door on Rankins Lane.

The Site is located within the Central City Retail Core. The nearest Adult Sex Product Shops and / or Sexually Explicit Adult Entertainment Venues are located at:

- Club X at 216 Swanston Street, Melbourne – approximately 350 metres east.
- Adult Discounters at 20 Waratah Place, Melbourne – approximately 600 metres east.

- Liberated Adult Centres at 29 Elizabeth Street, Melbourne – approximately 600 metres south.
- Crazyhorse Cinema at 34 Elizabeth Street, Melbourne – approximately 650 metres south.
- Dreams at 1-5 Elizabeth Street, Melbourne – approximately 650 metres south.

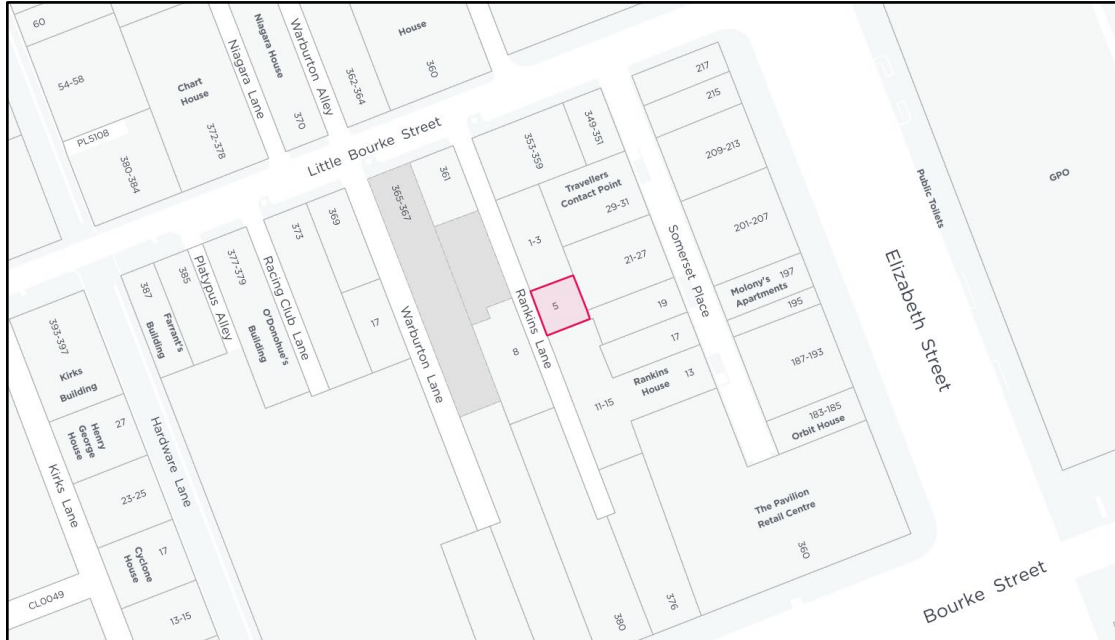


Figure 1: Locality Plan (Source: Compass)



Figure 2: Subject Site from Rankins Lane

2 BACKGROUND AND HISTORY

2.1 Pre-application discussions

Pre-application advice was provided over the phone by the duty planning officer, including the permit triggers and application requirements.

2.2 Related Application

Planning permit application TP-2022-695 was lodged on 25 November 2022 for modifications to the shopfront / entranceway and the construction and display of business identification signs. The application is currently under assessment. The shopfront is retrospective (see Figure 2).

3 PROPOSAL

The application seeks planning permission for use of the ground floor for an Adult Sex Product Shop (Section 2 Use), associated with sex therapy (Medical Centre, Section 1 Use) and workshops and seminars (Place of Assembly, Section 1 Use).

The proposed Adult Sex Product Shop will be offered in association with sexual education workshops, seminars and sex therapy targeting issues around sexuality, sexual function, intimacy and relationships.

Details of the proposal can be summarised as follows:

- Hours of operation: 10am to 6pm Monday to Sunday.
- Maximum number of staff onsite at any time: two.
- Restricted premises i.e. customers must be over 18 years of age.
- Access is via the shopfront on Rankins Lane.
- No onsite car or bicycle parking is proposed.
- No sexually explicit entertainment or sexual services are proposed.

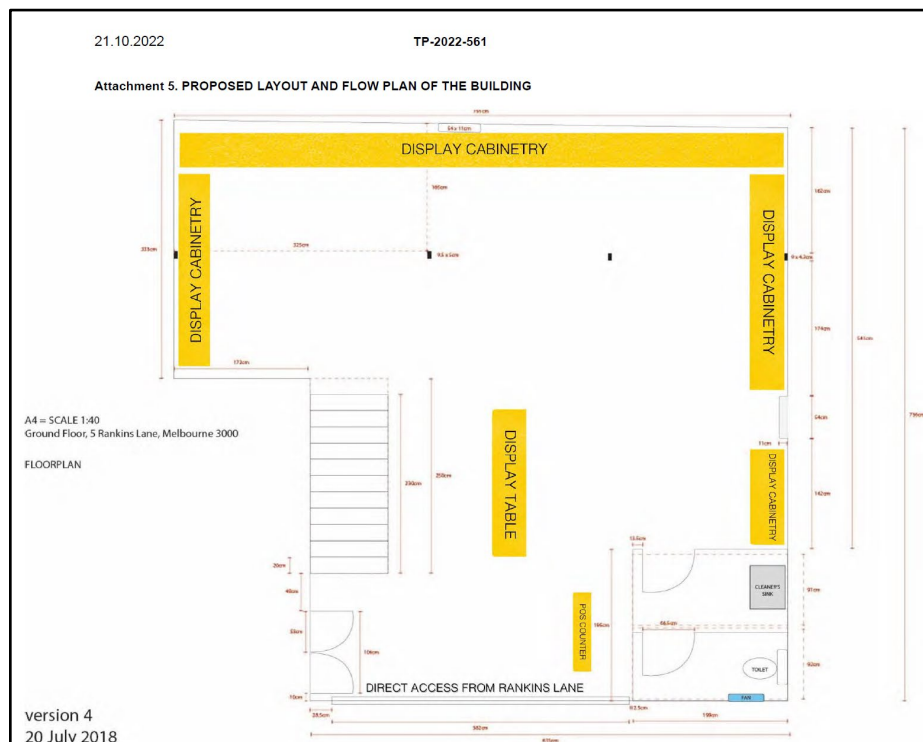


Figure 3: Proposed Ground Floor Plan (Source: Applicant)

4 STATUTORY CONTROLS

The following clauses in the Melbourne Planning Scheme require a planning permit for this proposal:

Clause	Permit Trigger
Clause 37.04 Capital City Zone Schedule 2	Pursuant to Clause 37.04-1 and Schedule 2 to the Capital City Zone, an Adult Sex Product Shop is a Section 2 – permit required land use. No permit is required to use the land for sex therapy (Medical Centre) and workshops and seminars (Place of Assembly).
Clause 43.01 Heritage Overlay HO1205	No permit is required for land use under this overlay.
Clause 43.02 Design and Development Overlay Schedules 1 and 2	No permit is required for land use under this overlay.
Clause 45.09 Parking Overlay Schedule 2	Pursuant to Clause 45.09-3 and Schedule 2 to the Parking Overlay, no car parking spaces are required for any use. No car parking is proposed, as such no planning permit is required under this overlay.
Clause 52.34 Bicycle Facilities	Pursuant to Clause 52.34-5, 'Shop' has a bicycle parking rate for leasable floor areas greater than 1,000 m ² . As the proposed leasable floor area is 51 m ² the bicycle parking requirements do not apply.

5 STRATEGIC FRAMEWORK

5.1 Planning Policy Framework (PPF)

- Clause 02.03-6 – Economic development
- Clause 11.03-1R – Activity centres – Metropolitan Melbourne
- Clause 11.03-6L-09 – Hoddle Grid
- Clause 13.07-1L-03 – Land use compatibility
- Clause 13.07-1L-05 – Adult sex product shop and sexually explicit adult entertainment
- Clause 17.01-1S – Diversified economy – Metropolitan Melbourne
- Clause 17.02-1S – Business

6 PARTICULAR PROVISIONS

There are no relevant particular provisions for this proposal.

7 GENERAL PROVISIONS

- Clause 65 – Decision Guidelines

8 PUBLIC NOTIFICATION

It was determined that the proposal may result in material detriment. Notice of the proposal was given by ordinary mail to the owners and occupiers of the surrounding properties and by posting one notice on the site for a 14 day period, in accordance with Section 52 of the *Planning and Environment Act 1987*.

9 SUBMISSIONS

9.1 Objections

18 objections have been received raising the following concerns:

- Inappropriate location for the use.
- Visibility of signage and products from outside of the site.
- Impact on the amenity, character, appearance and safety of the lane.
- Potential harm to children.
- Trading hours.
- Noise.
- Impact on car parking, vehicle access and foot traffic.
- Waste management.
- Impact on residential properties and other businesses in the area.

The impact on property values is not a relevant planning consideration and objections relating to the as-of-right therapy and workshop components of the business are not matters that can be addressed in this assessment.

9.2 Letters of Support

Over 60 letters of support have been received. Support was given for:

- The nature and concept of the business.
- Supporting relationships, sexual and mental health.
- De-stigmatisation.
- Community and economic benefit.
- Well-designed, modern space.
- Providing an inclusive and safe environment.
- Supporting the retail function and pedestrian activity in the area.

Notwithstanding the extent of support, the proposed land use will be assessed on its merits having regard to the controls and policies of the Melbourne Planning Scheme and with consideration of the concerns raised by objectors.

10 CONSULTATION

In response to the objections received, the applicant provided a written response that was circulated to all objectors on 1 December 2022. No objections were withdrawn.

11 REFERRALS

11.1 Internal

11.1.1 Waste and Recycling

Waste Services advised that:

- *Commercially rated properties are entitled to a Council collection of up to 120 L garbage and 240 L recycling per week. Given this business will exceed this threshold, all waste will need to be collected by a private operator.*
- *There is an alternative option for waste management at this site via the disposal of waste at nearby communal facilities (i.e. the garbage compactor in Kirks Lane and the recycling bins in Warburton Lane). The applicant would be required to pay for the use of these facilities. The WMP should be amended to specify either the use of communal facilities or collections of all waste by a private operator.*

Planner's Response

An amended Waste Management Plan was dated 8 October 2022. The waste will be disposed at the nearby communal facility.

11.2 External

No external referrals were required to be undertaken by the Melbourne Planning Scheme.

12 ASSESSMENT

12.1 Key Considerations

The application seeks approval for the use of the ground floor for an Adult Sex Product Shop in the Capital City Zone. The key issues for consideration relate to the appropriateness of the use of the Site and the concerns raised in the objections.

12.2 Land Use Term

An Adult Sex Product Shop is defined in Clause 73.03 as:

Land used to sell or hire sexually explicit material, including:

- a. publications classified as restricted under the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995; and*
- b. materials and devices (other than contraceptives and medical treatments) used in conjunction with sexual behaviour.*

The ground floor is proposed to be used for this purpose with the mezzanine level used for other services that do not require a planning permit. This includes ancillary office and consulting rooms associated with the therapy component of the business.

A planning permit is required for the Adult Sex Product Shop use only.

12.3 Land Use Compatibility

Clause 13.07-1L-05 (Adult sex product shop and sexually explicit adult entertainment) sets out the following considerations relevant to the current application:

Objective

To ensure that the location, appearance and concentration of Adult Sex Product Shops and Sexually Explicit Adult Entertainment are not detrimental to the amenity, character, image and public perceptions of the city.

Strategies

Discourage use or development of land for an Adult Sex Product Shop or Sexually Explicit Adult Entertainment in the retail core or where it would result in a concentration of these uses in an area.

Discourage development where the external appearance of the building will have a detrimental effect on the appearance of the street and character of the building and streetscape.

Design frontages and entries to be discrete and unobtrusive.

Allow signs when they are minimal and describe the use of the premises in simple terms.

No form of public address or sound amplification should be audible from outside the premises.

Policy guideline

Consider as relevant:

- *Discouraging an Adult Sex Product Shop or Sexually Explicit Adult Entertainment where it is located within 100 metres walking distance of an existing Adult Sex Product Shop or Sexually Explicit Adult Entertainment venue.*

The proposal is consistent with the purpose of the Capital City Zone Schedule 2 and Clause 13.07-1L-05 as:

- It is considered that the Site's geographical attributes are appropriate for the use given its location within the retail core of the Capital City Zone and in Rankins Lane, which contains a mix of ground floor commercial land uses.
- The proposed retail land use is consistent with the purpose of the zone which seeks 'to provide for the intensification of retail and other complementary commercial, community and entertainment uses within the established retail core'.
- The Site is located more than 100 metres from the nearest existing Adult Sex Product Shop or Sexually Explicit Adult Entertainment Venue. The proposal is consistent with the dispersal policy at Clause 13.07-1L-05.
- There is no evidence to suggest that the proposal would lead to a concentration of Adult Sex Product Shops or Sexually Explicit Adult Entertainment Venues.
- The use is not anticipated to have any unreasonable adverse impact on the safety, amenity and character of the surrounding area i.e. by way of anti-social behaviour, noise, odour, waste, deliveries.
- While a separate planning permit application has been submitted for the shopfront and signage, it is noted that the design of the shopfront and signage is simple, discrete and unobtrusive.
- The visibility of products from the public realm is limited with the shelving units being located on the side and rear walls of the shop.
- The proposed trading hours are daytime.

- The premises will only be accessible to persons over the age of 18.
- The specific nature of the business with integrated sex therapy, workshops and seminars encourages the safe and inclusive use the land.
- No onsite sexually explicit adult entertainment or services are proposed.

12.4 Other matters raised by objectors

In response to matters raised by objectors not already addressed in this report, the following is noted:

Objection	Response
Inappropriate location for the use	The Site is located within the retail core of the Central City, in an active laneway containing other retail land uses. The proposal does not result in a cluster or concentration of Adult Sex Product Shops or Sexually Explicit Adult Entertainment.
Visibility of signage and products from outside of the site	While a separate planning permit application has been submitted for the signage, the 'High Tide Modern Adult Store' signage is discrete in terms of its content, size and design. In relation to the internal layout, which would be endorsed if a permit was granted, the display units are located along the side and rear walls. No products are displayed directly behind the shopfront, which is considered appropriate.
Impact on the amenity, character, appearance and safety of the lane	The use is not anticipated to have any adverse impact on the safety, amenity and character of the surrounding area i.e. by way of anti-social behaviour, noise, odour, waste, deliveries.
Potential harm to children	No persons under the age of 18 will be permitted to enter to premises.
Trading hours	The proposed daytime trading hours, 10am to 6pm Monday to Sunday, are consistent with other retail stores and considered acceptable.
Noise	The proposal does not include any external speakers or amplification. There is no reason to suspect noise from the shop to be excessive.
Impact on car parking, vehicle access and foot traffic	The proposal does not include car parking. Historically, the Site was used as a garage and therefore the proposal reduces car parking. Loading and unloading of goods must occur within designated areas on-street. Pedestrian activity in the Central City is supported by policy (Clauses 11.03-6L-09 and 18.02-1S).
Waste Management	Refer Section 11.1.1 of this report.
Impact on residential properties and other businesses in the area	The impact on property prices is not a relevant planning consideration.

	Objections made to secure or maintain a direct or indirect commercial advantage cannot be considered.
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12.5 Conclusion

It is considered that the proposal is consistent with the relevant sections of the Melbourne Planning Scheme, and that a Notice of Decision to Grant a Planning Permit be issued for the proposal subject to conditions.

13 RECOMMENDATION

That a Notice of Decision to Grant a Planning Permit be issued subject to the following conditions.

Permit Preamble:

Use of the ground floor for the purpose of Adult Sex Product Shop in accordance with the endorsed plans.

Conditions:

Land Use

1. The use and location of the product display units as shown on the endorsed plans must not be altered without written consent of the Responsible Authority.

Display

2. Sexually explicit advertisements, goods and products must only be displayed within the Adult Sex Product Shop.

Trading Hours

3. Unless with the prior written consent of the Responsible Authority, the use of the Adult Sex Product Shop must only operate between 10am to 6pm Monday to Sunday.

Waste Management

4. Prior to the commencement of the use, a Waste Management Plan (WMP) generally in accordance with the WMP dated 28 October 2022 prepared by Soeren Poulsen must be submitted to and approved by the Melbourne City Council - Waste Services. The WMP must detail waste storage and collection arrangements and be prepared with reference to the Melbourne City Council Guidelines for Preparing a Waste Management Plan. Waste storage and collection arrangements must not be altered without prior consent of the Melbourne City Council – Waste Services.

Time Limit

5. This permit will expire if the use is not started within two years of the date of this permit. The Responsible Authority may extend the permit if a request is made in writing before the permit expires, or within six months afterwards.

Notes:

Sexually explicit entertainment must not be provided on the premises at any time. Sexually explicit entertainment is that provided by a person or persons who are nude, display sexual organs or are topless.