

Report to the Future Melbourne Committee

Agenda item 6.1

**Application to Amend a Planning Permit: TP-2021-620/A
2 North Wharf Road and 938 Collins Street, Docklands**

6 December 2022

Presenter: Julian Edwards, Director Planning and Building**Purpose and background**

1. The purpose of this report is to advise the Future Melbourne Committee of an application to amend existing Planning Permit TP-2021-620. The application seeks to amend the permit to allow for Sunday trading and other changes to the hours of operation. The existing permit allows 'use of barge as a place of assembly, buildings and works, and to exceed the maximum car parking rate set by the Parking Overlay' at 2 North Wharf Road and 938 Collins Street, Docklands, refer Attachment 2 – Locality Plan.
2. The location is within the Docklands Zone Schedules 2 and 7, Design and Development Overlay Schedules 12 and 50, Development Plan Overlay Schedule 3, Heritage Overlay (HO915) and Parking Overlay Schedule 6 of the Melbourne Planning Scheme.
3. The application seeks planning approval to specifically amend Condition 3 (Hours of Operation) to include Sunday trading 7am to 1am, trading from 6am Friday, and limited hours on Good Friday and ANZAC Day (12noon to 11pm).
4. The application is exempt from the public notice requirements and review rights of the *Planning and Environment Act 1987* ('the Act'). Notwithstanding, over 425 objections and 23 letters of support have been received. The key concerns raised in the objections relate to noise, suitability of the use in this location, hours of operation, patron management, traffic impacts and property values. Submissions also provided support contributing to the night time activation and economy.

Key issues

5. The vision for Docklands is a vibrant, active waterfront area with a mix of commercial, residential and innovation uses. The economic development strategies also include the encouragement of the activation of the waterfront through a range of commercial uses.
6. The consideration of the proposed amendment must balance the vision of Docklands with the reasonable amenity expectations of residents living in a mixed use precinct. This includes the proposed hours, patron numbers and noise attenuation measures. It is considered that the cumulative impact of the existing approved use and the proposed Sunday trading (7am to 1am) is considered excessive and contrary to policy that seeks to balance activation with amenity. A reduction in trade to 11pm on Sunday is more appropriate and balances the policy support of active uses within Docklands, as well as achieving a spread of operating hours across the week, with providing a reasonable level of amenity on nearby residents in this mixed use precinct.
7. The submitted Music Noise Assessment by Enfield Acoustics Pty Ltd dated 28 October 2022 (updated 14 November 2022) included background noise measurements and sound system calibration at three outdoor receptor locations on Thursday 27 October 2022. Officers sought an independent peer review of the assessment; the findings of which conclude that the assessment is suitable with respect to acoustics, however diligent continuous management of music noise levels by the venue are required to maintain conformance.
8. Additional permit conditions are recommended requiring a noise monitor and limiter to ensure ongoing compliance with the music noise limits.

Recommendation from management

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

Attachments:

1. Supporting Attachment (Page 2 of 41)
2. Locality Plan (Page 3 of 41)
3. Letter from Planning & Property Partners and Music Noise Assessment Report (Page 4 of 41)
4. Delegate Report (Page 24 of 41)

Supporting Attachment

Legal

1. Division 1 of Part 4 of the Act sets out requirements in relation to applications for permits pursuant to the relevant planning scheme. The relevant provisions of the Melbourne Planning Scheme are set out in the delegate report (refer to Attachment 4).
2. Pursuant to Clause 43.04-3 (Development Plan Overlay) Schedule 3, an application under any provision of this planning scheme 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.

Finance

3. There are no direct financial issues arising from the recommendations contained in 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 including the impact on human health from noise exposure have been considered within the planning permit application and assessment.

Stakeholder consultation

6. The application has been made available for public inspection. The application is exempt from the notice requirements of Section 52 and the review rights of Section 82 of the Act.

Relation to Council policy

7. Relevant Council policies are discussed in the attached delegate report (refer Attachment 4).

Environmental sustainability

8. Energy, Water and Waste Efficiency objectives and requirements were considered in the assessment of the original application. The application to amend the planning permit does not seek to vary these requirements.

Locality Plan

Attachment 2
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2 North Wharf Road and 938 Collins Street, Docklands



31 October 2022

Attachment 3

Agenda item 6.1

Future Melbourne Committee

6 December 2022

Melbourne City Council
Statutory planning Department
Attn: Julian Edwards
120 Swanston Street
MELBOURNE VIC 3000

By way of email: [REDACTED]

Dear Julian,

**PLANNING PERMIT TP-2021-620
SECTION 72 AMENDMENT REQUEST
2 NORTH WHARF ROAD, DOCKLANDS**

We continue to act on behalf of *Floating Venues Pty Ltd*, in regard to the above property and enclose an amendment application for alterations to the operating hours. We write in relation to Planning Permit TP-2021-620 (the 'Planning Permit'). The Planning Permit allows:

'Use of barge as a place of assembly, buildings and works, and to exceed the maximum car parking rate set by the parking overlay in accordance with the endorsed plans.'

It is the intent of this application to amend the days of operation approved by the Planning Permit and in order to bring consistency between condition 3 of the planning permit and endorsed Venue Management Plan which was endorsed under condition 8 of the planning permit and the liquor license associated with the venue. We make this request pursuant to Section 72 of *The Planning and Environment Act 1987* ('Act').

To assist Council's consideration, please find an accompanying acoustic assessment prepared by *Enfield Acoustic Logic Pty Ltd* in support of the application noting that this assessment has been provided to council under separate e-mail correspondence and we are aware that Council has appointed a consultant to peer review the assessment of Enfield.

PROPOSAL

Condition 3 of the Planning Permit specifies:

'Hours of Operation 3.

Except with the prior written consent of the Responsible Authority, the premises must only be open for the use between the following hours:'

<i>Monday to Thursday</i>	<i>6am to 11pm</i>
<i>Friday to Saturday</i>	<i>7am to 1am</i>

The endorsed Venue Management Plan specifies that the venue may operate on Sunday between the hours of 7am to 1am. In addition, the liquor license (32367482) issued for the premises specifies that liquor can be served between the hours of 9am and 1am the following day on Saturdays and Sundays. Both documents are provided as an appendix to this letter.

We request condition 3 to be amended in accordance with the endorsed Venue Management Plan as follows:

<i>Monday to Thursday</i>	<i>6am to 11pm</i>
<i>Friday</i>	<i>6am to 1am</i>
<i>Saturday and Sunday</i>	<i>7am to 1am</i>
<i>Good Friday & ANZAC Day</i>	<i>12pm to 11pm</i>



KEY CONSIDERATIONS

The proposed amendment seeks to formalise the inconsistencies identified above and will not result in unreasonable detriment to the adjoining land uses or the amenity of the area.

The rectification of the Sunday operations is considered appropriate when having regard to the following:

- The Sunday trade was identified within the Venue Management Plan submitted to Council, reviewed and further information requested, as well as informing Condition 8 and further endorsed under the Planning Permit. Accordingly, the Sunday operation we say was assessed by Council.
- No unreasonable noise impacts are anticipated to arise. Following the noise compliance testing by *Enfield Acoustic Logic Pty Ltd* on 27 October 2022, the noise volumes and recommendations have been complied with and satisfy the relevant *Environmental Protection Authority* ('EPA') requirements, and those specified in Design and Development Overlay Schedule 12 ('DDO12') of the Planning Scheme. Accordingly, the noise levels on Site are well within the EPA and DDO12 parameters.
- The trade of the venue on Sundays provides the necessary activation and attraction required within the Docklands urban renewal area.

For the foregoing reasons we submit that the proposed amendment is minor and will bring the approved documentation into alignment. Moreover, our client has demonstrated through the additional acoustic testing and advice that the venue can operate in accordance with the relevant EPA regulations and therefore not unreasonably impact upon the amenity of the area.

NOTICE EXEMPTIONS

We note councils previous advice pursuant to Development Plan Overlay (Clause 43.04-3) an application under any provision of this planning scheme 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.

Further, the Docklands Zone Schedule 7 specifies an application for use is exempt on 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.

Accordingly, we maintain that the proposal is exempt from third party notice and review and can therefore be assessed by officers promptly.

CONCLUSION

For the foregoing reasons, it is considered appropriate to amend the Planning Permit as detailed in this submission.

Our client has established this business with a high level of engagement with all levels of Council and has worked tirelessly to enable the commencement of their business after the devastation of the COVID-19 state of emergency and associated lockdowns.

The ability for our client to trade on Sundays is critical to the success and survival of the business and we respectfully request that Council apply all available resources to assess and resolve the grant of an amended planning permit as sought.

We trust that you have all relevant information to make a decision on the application, however should you require any additional information please contact the undersigned or Daniel Letty on 8626 9000 should Council have any queries regarding the correspondence.

Kind regards

A handwritten signature in blue ink, appearing to read 'Paul Little', is positioned above the printed name.

PAUL LITTLE
Planning & Property Partners Pty Ltd

MUSIC NOISE ASSESSMENT

Subject Premises: ATET, 2 North Wharf
Road, Docklands

Prepared For

ATET

DOC. REF: V1228-01-C NOISE IMPACT STATEMENT (R0)
14 NOVEMBER 2022



Document	Music Noise Assessment
Subject Premises	ATET, 2 North Wharf Road, Docklands
Client	ATET
Document Reference	V1228-01-C Noise Impact Statement (r0).docx
Date of Issue	14 November 2022



1 EXECUTIVE SUMMARY

Enfield Acoustics has investigated noise impacts from the Subject Premises of 2 North Wharf Road, Docklands, trading as ATET. It is understood that the operation has resulted in noise impact complaints from surrounding residents.

Testing has been carried out to empirically determine the levels of music amplification that could be supported in compliance with:

- The Planning Permit
- Environment Protection Regulations 2021 (Regulations)
- Publication 1826: Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues (Noise Protocol)

For day-to-day operations (trading up to 1am depending on the day in accordance with the Planning Permit), the Subject Premises would need to meet the *indoor entertainment venue* requirements under the Regulations and Noise Protocol, with the exception of 6 events per calendar year when the *outdoor entertainment venue* requirements would need to be complied with (trading until 11pm).

The Subject Premises and surrounding sensitive uses are also within the Docklands noise attenuation area, which is a scheduled area defined under Schedule 12 to the Design and Development Overlay under the Melbourne planning scheme. This allows the assessment of noise to be undertaken inside dwellings, but is only relevant to the 6 events per year operating as an *outdoor entertainment venue*. Day-to-day operations would still be limited as an *indoor entertainment venue*.

Based on the empirical testing carried out, the Subject Premises sound system has been calibrated and on-site amplification levels at the sound operator's desk would need to be limited as follows to comply with the Permit, Regulations and Noise Protocol:

Day-to-day operations:

- 87dB(A) L_{eq} up to 11pm (10pm Sundays);
- 99dB(C) L_{eq} up to 11pm (10pm Sundays); and
- 74dB(A) L_{eq} after 11pm (10pm Sundays);
- 86dB(C) L_{eq} after 11pm (10pm Sundays).

Up to 6 events per calendar year:

- 94dB(A) L_{eq} up to 11pm; and
- 106dB(C) L_{eq} up to 11pm.



2 SCOPE OF INVESTIGATION

1. Enfield Acoustics has been engaged by ATET (Respondent) to investigate noise complaints from the Subject Premises of 2 North Wharf Road, Docklands.
2. The Subject Premises operates from an open-air barge docked along north side of North Wharf Road.
3. It is understood that the Council has received complaints from multiple residents (Complainants), the details of which have not been provided.
4. The Complainants allege that excessive amplified music noise was emitted from the Subject Premises during the opening weekend of operation, 22-23 October 2022.
5. The Subject Premises is permitted to operate under Planning Permit TP-2021-620 and is subject to the following conditions relevant to this noise assessment:

Noise

10. The use must operate under the conditions assessed in the Acoustic Report prepared by Broner Consulting, dated 13 September 2021, and be to the satisfaction of the Responsible Authority.
 11. The noise generated by the premises must at all times comply with the requirements of the EPA Publication 1826.4 (or subsequently updated publication): Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues, to the satisfaction of the Responsible Authority.
 12. The Responsible Authority, with just cause, may at any time request lodgement of an acoustic report, prepared by a suitably qualified acoustic consultant. The report must be to the satisfaction of the Responsible Authority and identify all potential noise sources and sound attenuation work required to address any noise issues and to comply with EPA Publication 1826.4 (or subsequently updated publication): Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues. The recommendations of the report must be implemented by the applicant to the satisfaction of the Responsible Authority.
6. We are advised that the venue has obtained an endorsed venue management plan pursuant to condition 8 of the planning permit as approved by the City of Melbourne which allows for the premises to operate from Monday to Thursday 6am to 11pm, Friday 6am to 1am and Saturday and Sunday 7am to 1am.
 7. In addition, we are advised that the venue has been issued with an on-premises liquor license (License No. 323674482). This license allows for the sale and consumption for up to 551 patrons during 11am-11pm Monday to Thursday, 12noon and 1am the following day on Fridays and Saturday and Sunday trade between 9am and 1am the following day.
 8. Regardless of the permit, the Subject Premises is also required to comply with the statutory requirements of the *Environment Protection Regulations 2021 (Regulations)* and *Publication 1826: Noise Limit and Assessment Protocol for the Control of Noise*



from Commercial, Industrial and Trade Premises and Entertainment Venues (Noise Protocol).

9. The Broner Consulting report referred to at Condition 10 was based on predictive modelling to support the original application.
10. Enfield Acoustics has carried out testing of the Subject Premises sound system to empirically determine the maximum amplification levels that will result in compliance with the Regulations and Noise Protocol, the results of which are detailed in the following sections of this report.

3 ASSESSMENT

3.1 Policy Requirements

11. In accordance with the Regulations, the Subject Premises could be classified as either an *outdoor entertainment venue* or *indoor entertainment venue*. While the Subject Premises is not enclosed, it is common practice to consider permanent open air licensed premises (e.g. beer gardens) as indoor entertainment venues. In accordance with the Regulations, this also allows the Subject Premises to operate all days of the year however under more stringent noise limits. Conversely, an outdoor entertainment venue is permitted to operate at higher noise levels but less regularly.
12. In practice, classification as an outdoor entertainment venue is normally reserved for special events in a calendar year to allow for higher noise emissions temporarily. When classified as an outdoor entertainment venue, the use would be restricted to the following additional controls:
 - a. Hours for music noise emission limited to standard operating hours, being 12pm until 11pm.
 - b. An operating period of no more than 8 hours.
 - c. Six (6) uses per calendar year.
13. The above conditions can otherwise be varied under separate permits granted by the EPA.
14. Where classified as an outdoor entertainment venue, the Noise Protocol also provides special exemptions for this site because it is within the Docklands noise attenuation area, which is a scheduled area defined under Schedule 12 to the Design and Development Overlay under the Melbourne planning scheme. The Docklands noise



attenuation area varies the normal assessment requirements of the Noise Protocol as follows:

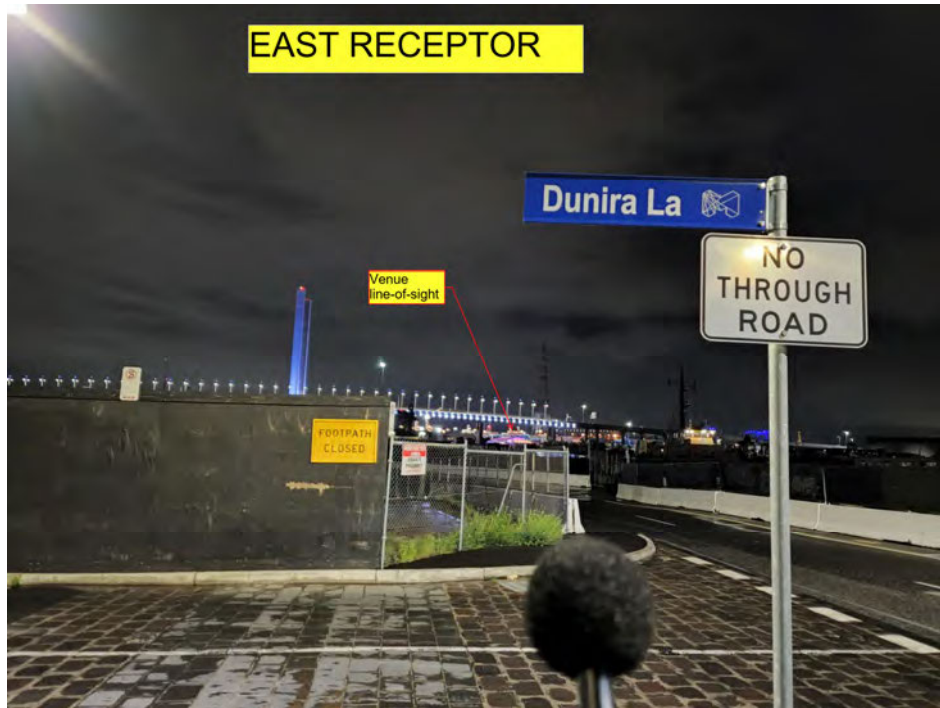
- a. It applies only to an outdoor entertainment venue, where both the outdoor entertainment venue and noise receptor are within the Docklands noise attenuation area.
 - b. Because it applies to an outdoor entertainment venue, it applies only during the standard operating hours described above at paragraph 12.
 - c. The assessment point is taken inside a sensitive use (i.e. residential dwelling) with all windows and doors closed.
 - d. The noise limit is an absolute value, being 45dB(A) L_{eq} inside the dwelling.
15. Beyond the special provisions noted above, normal day-to-day operations should instead be assessed against the indoor entertainment venue requirements, which generally require adherence to lower noise limits. These requirements are summarised as follows:
- a. Up to 11pm (10pm Sundays), the noise limits (L_{Aeq}) are derived by background noise (L_{A90}) plus 5dB.
 - b. After 11pm, the noise limits (L_{OCT10}) are derived by background noise (L_{OCT90}) plus 8dB. The noise limits are more stringent after 11pm as specific frequency bands are considered which better correlate with music noise impacts during sensitive hours (e.g. low frequencies).

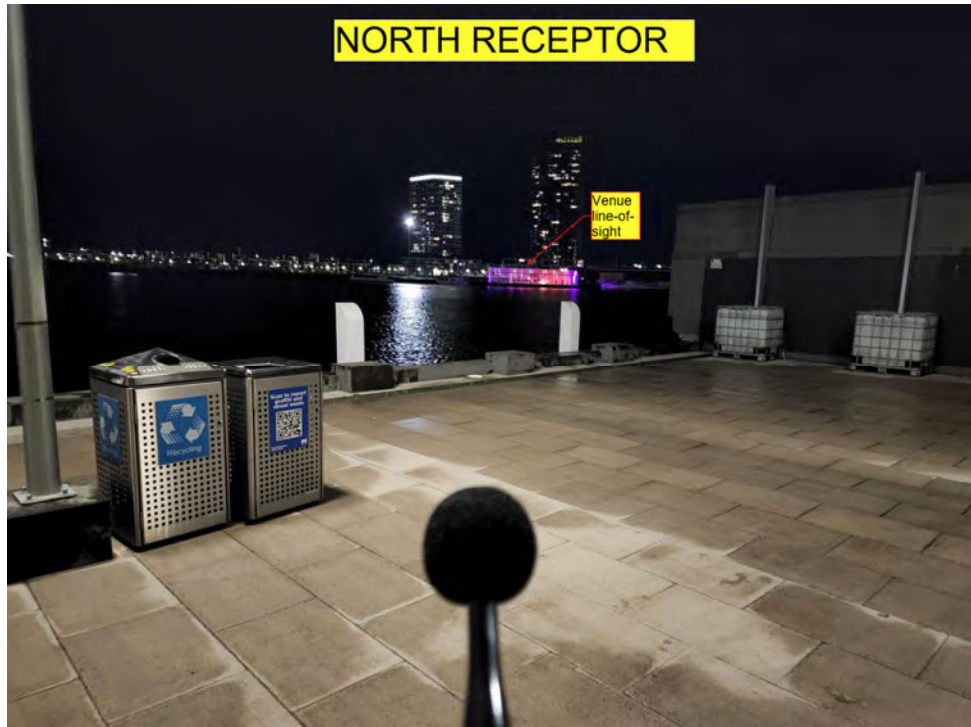
3.2 Sensitive Receptors

16. Our firm visited the Subject Premises on the night of 27 October 2022 to conduct testing. While specific details of Complainants have not been provided, we identified that there are three key receptor locations surrounding the Subject Premises, which would be representative of the highest noise impacts. These areas were identified as follows:
- a. Apartment and unit dwellings located on the corner of North Wharf Road and Dunira Lane, approximately 270m to the east of the Subject Premises (East Receptor).
 - b. Apartment and unit dwellings located along the River Esplanade, approximately 270m to the south of the Subject Premises (South Receptor).
 - c. Apartment and unit dwellings located along the Newquay Promenade, approximately 300m to the north of the Subject Premises (North Receptor).

17. Measurement and observation points are shown in the following aerial overlay and photographs. Compliance at these locations is expected to result in compliance at all other sensitive receptors on the basis of their relative proximity to the Subject Premises.







18. Because specific details of Complainants have not been provided, we have also not been provided with access to any dwellings to carry out testing inside residential dwellings. For the purpose of this assessment however, conservative estimates have been made with regard to noise reduction that would occur through building glazing and facades when assessing against the Docklands noise attenuation area variation (described above). Similarly, all measurements were carried out at the ground level interface of sensitive receptor buildings which are expected to also reasonably reflect the impacts at higher building elevations, given there was clear line-of-sight between the Subject Premises and measurement locations.
19. To determine conservative noise limits (as an indoor entertainment venue), background noise measurements were conducted during the latest hour of the Evening period (10pm-11pm) and Night period (12am-1am the following day). The most notable source of background noise observed at all receptor locations was traffic on the Bolte Bridge. The following Tables summarise the background noise levels recorded and derived noise limits for each receptor area, in accordance with the Noise Protocol:

East Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
10pm-11pm Background Noise, L ₉₀	49	N/A						
Day/Evening Noise Limit, L_{eq}	54	N/A						
12am-1am Background Noise, L ₉₀	N/A	57	51	48	42	40	32	19
Night Noise Limit, L₁₀	N/A	65	59	56	50	48	40	27
Outdoor Entertainment Venue Noise Limit, Docklands attenuation area	45dB(A) L _{eq} , inside (up to 11pm)							
South Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
10pm-11pm Background Noise, L ₉₀	52	N/A						
Day/Evening Noise Limit, L_{eq}	57	N/A						
12am-1am Background Noise, L ₉₀	N/A	57	52	48	43	43	35	25
Night Noise Limit, L₁₀	N/A	65	60	56	51	51	43	33
Outdoor Entertainment	45dB(A) L _{eq} , inside (up to 11pm)							



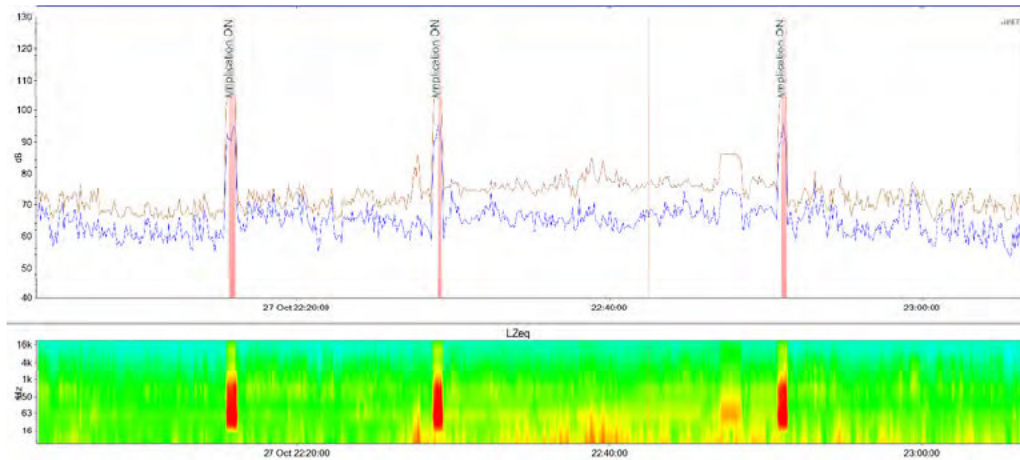
Venue Noise Limit, Docklands attenuation area								
North Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
10pm-11pm Background Noise, L ₉₀	50	N/A						
Day/Evening Noise Limit, L _{eq}	55	N/A						
12am-1am Background Noise, L ₉₀	N/A	56	49	45	39	39	31	16
Night Noise Limit, L ₁₀	N/A	64	57	53	47	47	39	24
Outdoor Entertainment Venue Noise Limit, Docklands attenuation area	45dB(A) L _{eq} , inside (up to 11pm)							

3.3 Sound System Calibration

20. During observations and testing, we requested the Respondent's sound system technician to amplify music noise at an elevated level so that a clear noise signal could be recorded at each receptor location. The amplification was limited to short periods of emission (30-60 seconds) to limit impacts on the sensitive receptors. A continuous dance music recording was played back with consistent rhythmic drums and bass for the purpose of the test and this was sufficient to establish an emission level at each receptor location. The purpose of this test was to calibrate levels at the Subject Premises that would result in compliance with the established noise limits at each of the receptor locations.



21. While testing was carried out at each receptor location, a second sound level meter continuously recorded noise levels at the sound mixing position on the Subject Premises to confirm that a consistent output level occurred during each test.
22. All testing was carried out using NTi XL2 Type 1 sound level meters. The instrumentation were calibrated before and after the assessment using a Larson Davis CAL200 calibrator. No drift in calibration was detected.
23. The output level on the Subject Premises was consistently the same level as follows (system on indicated as peaks in the following Figure taken from the sound level meter recording log):
 - a. 93dB(A) L_{eq}
 - b. 105dB(C) L_{eq}



24. The following Table summaries the test results recorded at each receptor location at the time of each amplification output noted in the above Figure:

East Receptor		dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L_{eq}		53	72	65	53	49	47	40	30
L_{10}		N/A	73	67	54	51	48	41	32
South Receptor		dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L_{eq}		55	76	65	53	50	49	42	32
L_{10}		N/A	77	67	55	53	50	43	34



North Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L _{eq}	58	79	70	56	55	49	43	31
L ₁₀	N/A	80	71	57	58	50	44	32

25. From the above measurement results, we are able to calibrate the on-premises amplification levels that would comply with the established noise limits as set out in paragraphs 14 & 15 of this report. From the testing, it is also apparent that the highest impacts would occur at the North Receptor (Newquay promenade).

3.4 Outdoor Entertainment Venue Calibration

26. For the purpose of assessing in accordance with the Docklands attenuation area, we note that this would ultimately be dependent on specific glazing construction at each dwelling. While it is reasonable to assume that apartment buildings have been constructed in accordance with DDO12, the conditions that apply are only those at the time of development, not retrospective after an outdoor entertainment venue has been established (DDO12 generally applies to Docklands Stadium). To provide a conservative estimate, we have assumed that glazing construction on sensitive lands is 6mm thick glass, which would be the most moderate window system available, noting that it is more likely that apartments have thicker, laminated and double-glazed windows. Otherwise, confirming window systems and actual internal noise levels would require access to specific apartments and units, which has not been provided.
27. Based on the measurement results and estimated acoustic performance of sensitive land windows, the following Table summarises the results against the requirements under the Docklands attenuation area:

East Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L _{eq} outside	53	72	65	53	49	47	40	30
Estimated Noise Reduction of windows	N/A	-12	-15	-19	-22	-27	-25	-29

Estimated Noise inside dwellings	38	Compliant						
South Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L_{eq} outside	55	76	65	53	50	49	42	32
Estimated Noise Reduction of windows	N/A	-12	-15	-19	-22	-27	-25	-29
Estimated Noise inside dwellings	40	Compliant						
North Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L_{eq} outside	58	79	70	56	55	49	43	31
Estimated Noise Reduction of windows	N/A	-12	-15	-19	-22	-27	-25	-29
Estimated Noise inside dwellings	44	Compliant						

28. Based on the above results, the following calibrated amplification levels on-premises would be acceptable as an outdoor entertainment venue:

- a. 94dB(A) L_{eq}
- b. 106dB(C) L_{eq}

3.5 Indoor Entertainment Venue Calibration

29. Under assessment as an indoor entertainment venue, the relevant measurement locations are external to dwellings, so no estimate is required with regard to window glazing at dwellings.



30. Based on the measurement results and established noise limits, the following Table summarises the results for both Day/Evening and Night periods:

East Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L _{eq} outside	53	N/A						
Day/Evening Noise Limit, L_{eq}	54	Compliant						
L ₁₀ outside	N/A	73	67	54	51	48	41	32
Night Noise Limit, L₁₀	N/A	65	59	56	50	48	40	27
Reduction Required	8dB							
South Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L _{eq} outside	55	N/A						
Day/Evening Noise Limit, L_{eq}	57	Compliant						
L ₁₀ outside	N/A	77	67	55	53	50	43	34
Night Noise Limit, L₁₀	N/A	65	60	56	51	51	43	33
Reduction Required	12dB							
North Receptor	dB(A)	63Hz	125Hz	250Hz	500Hz	1000Hz	2000Hz	4000Hz
L _{eq} outside	58	N/A						
Day/Evening Noise Limit, L_{eq}	55	Reduction Required, 3dB						



L ₁₀ outside	N/A	80	71	57	58	50	44	32
Night Noise Limit, L₁₀	N/A	64	57	53	47	47	39	24
Reduction Required	16dB							

31. Based on the above results, the following calibrated amplification levels on-premises would be acceptable as an indoor entertainment venue:
- 90dB(A) L_{eq} up to 11pm (10pm Sundays)
 - 102dB(C) L_{eq} up to 11pm (10pm Sundays)
 - 77dB(A) L_{eq} after 11pm (10pm Sundays)
 - 89dB(C) L_{eq} after 11pm (10pm Sundays)

3.6 Management Recommendations

32. It was confirmed during our inspection that the Respondent's sound system already includes a sound level meter and display system at the operator's desk. To that end, it would be satisfactory for either programmed amplification limiting to setup so that the calibrated levels are not exceeded, or that the levels are continuously monitored during live entertainment to ensure that levels are maintained by the sound system operator.
33. While we are satisfied that the measurements carried out to date are generally representative of the impacts at surrounding sensitive receptors, a 3dB safety margin is recommended for the above calibration levels for day-to-day operations to allow for any slight variation in background noise, given the assessment to date is based on a single night of recordings. No safety factor is deemed necessary at this stage for outdoor entertainment venue use given conservative assumptions regarding dwelling glazing have already been made and the requirement is an absolute value, not based on background noise.
34. Day-to-day sound system settings should be controlled in accordance with the indoor entertainment venue levels established above (with safety factor), which are slightly lower than the levels that would occur under the Docklands attenuation area provisions. There would be a minor benefit to the Respondent when operating as an outdoor entertainment venue (at least 4dB additional amplification), however those specific operations would need to be limited in accordance with the following:



- a. No more than six (6) times a year.
- b. Amplification turned off (or at background music levels so as to be inaudible off-site) after 11pm.
- c. Operation limited to no more than 8-hours between 12pm and 11pm.

4 SUMMARY

35. Amplification and music noise levels have been calibrated on-site for the Subject Premises.
36. While we are not in a position to respond directly to complaints raised during previous operations of the site, having not undertaken measurements at the time of complaint, we are satisfied that the Subject Premises can continue to trade and operate under the following management conditions:
 - a. Noise levels are continuously monitored or limited at the sound operator's desk to ensure that the following levels are not exceeded:
 - 87dB(A) L_{eq} up to 11pm (10pm Sundays);
 - 99dB(C) L_{eq} up to 11pm (10pm Sundays);
 - 74dB(A) L_{eq} after 11pm (10pm Sundays);
 - 86dB(C) L_{eq} after 11pm (10pm Sundays);
 - b. With the exception of no more than six (6) times per calendar year, amplification levels may be increased to:
 - 94dB(A) L_{eq} up to 11pm;
 - 106dB(C) L_{eq} up to 11pm;
 - Where limited to no more than 8-hours between 12pm and 11pm; and
 - Music amplification ceases or is inaudible at sensitive use buildings after 11pm.

DELEGATE REPORT

APPLICATION TO AMEND A PLANNING PERMIT

APPLICATION NO:	TP-2021-620/A
APPLICANT:	Floating Venues Pty Ltd c/- Planning & Property Partners Pty Ltd
OWNER:	Urban Renewal Authority Victoria (Development Victoria)
ARCHITECT:	N/A
ADDRESS:	2 North Wharf Road and 938 Collins Street, DOCKLANDS VIC 3008
PROPOSAL:	Amend the days and hours of operation approved by the planning permit
DATE OF APPLICATION:	31 October 2022
COST OF AMENDMENT:	N/A
RESPONSIBLE OFFICER:	Adam Birch, Senior Urban Planner

1. BACKGROUND

1.1 Planning Permit

Planning Permit TP-2021-620 was issued on 29 April 2022. The permit allows:

Use of barge as a place of assembly, buildings and works, and to exceed the maximum car parking rate set by the Parking Overlay in accordance with the endorsed plans.

Condition 2 (Patronage) allows a maximum of 700 patrons.

Condition 3 (Hours of Operation) allows the following hours of operation:

- Monday to Thursday 6am to 11pm
- Friday to Saturday 7am to 1am

The following conditions of permit relate to management of noise:

- Condition 10 requires the use to operate in accordance with the Acoustic Report prepared by Broner Consulting Pty Ltd dated 13 September 2021.
- Condition 11 requires the use to comply with the requirements of EPA Publication 1826.4: Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues (or subsequently updated publication).
- Condition 12 allows the Responsible Authority, with just cause, to request an acoustic report prepared by a suitably qualified acoustic consultant to identify all potential noise sources and sound attenuation work to address any noise issues and ensure compliance with EPA Publication 1826.4.

The following documents have been endorsed to form part of the permit.

Table 1: Endorsed Documents			
Condition No.	Type	Author	Date Endorsed
1	Endorsed Plans	Floating Spaces Pty Ltd	29/09/2022 (superseded corresponding plans endorsed 24/4/2022)
8	Venue Management Plan (August 2022)	ATET	29/9/2022
9	Waste Management Plan (19 September 2022)	Leigh Design Pty Ltd	29/9/2022
15	Road Safety Audit (May 2022)	Traffix Group Pty Ltd	29/9/2022

1.2 Liquor Licence

An on premises liquor licence was granted by the Victorian Gambling and Casino Control Commission (Licence Number 32367482). The licence allowed licenced trade for a maximum of 551 patrons for the following trading hours:

- Good Friday & ANZAC Day Between 12noon and 11pm
- Monday to Thursday Between 12noon and 11pm
- Friday Between 12noon and 1am the following morning
- Saturday & Sunday Between 9am and 1am the following morning

The licence also included conditions which required surveillance recording and crowd controllers.

1.3 Secondary Consent Request

A secondary consent request to amend the plans was approved on 29 September 2022. This amendment relocated the barge approximately 250 m to the east, modified the layout and changed the vehicle access and car parking. The revised location was needed due to wharf works required at the original site and is intended to be temporary.

1.4 Enforcement History

Over the opening weekend (22-23 October 2022), Council received a high number of complaints relating to excessive noise and Sunday trading to 1am the following day. Since that time, the Applicant has complied with Condition 3 (Hours of Operation), including no Sunday trading (excluding the hour from midnight to 1am which is permitted), and noise has been monitored.

While the volume of complaints has reduced since the opening weekend, Council continues to receive complaints regarding excessive noise, trading beyond

allowable hours and anti-social behaviour, all of which have been investigated and continue to be monitored.

2. SITE AND SURROUNDS

The premises, trading under the name 'ATET', is berthed on the northern edge of North Wharf, Docklands and east of Shed 2. The premises is accessed via North Wharf Road that connects with Collins Street to the east.

The nearest noise sensitive land uses (townhouse dwellings and apartment dwellings) are located approximately between 270 to 300 metres to the north, east and south of the site.



Figure 1: Aerial Photograph showing site in context of existing noise sensitive uses



Figure 2: Recent photographs of the premises

3. PROPOSAL

The application seeks approval to amend Planning Permit TP-2021-620 under Section 72 of the *Planning and Environment Act 1987* by amending Condition 3 (Hours of Operation) as follows:

Approved hours of operation

- Monday to Thursday 6am to 11pm
- Friday to Saturday 7am to 1am

Proposed hours of operation

- Monday to Thursday 6am to 11pm
- Friday **6am** to 1am
- Saturday and **Sunday** 7am to 1am
- Good Friday & ANZAC Day 12noon to 11pm

In support of the application and in response to complaints received, the Applicant submitted a Music Noise Assessment by Enfield Acoustics Pty Ltd dated 28 October 2022 and 14 November 2022.

4. RELEVANT POLICIES

The following sections of the Melbourne Planning Scheme set out relevant policy considerations for the application:

4.1 Municipal Planning Strategy

Clause 02.02	Vision
Clause 02.03-1	Settlement
Clause 02.03-2	Environmental and landscape values
Clause 02.03-3	Environmental risks and amenity
Clause 02.03-6	Economic development
Clause 02.03-7	Transport

4.2 Planning Policy Framework

Clause 11	Settlement
Clause 11.03-1R	Activity centres – Metropolitan Melbourne
Clause 11.03-6L-03	Docklands
Clause 12	Environmental and landscape values
Clause 12.03-1S	River corridors, waterways, lakes and wetlands
Clause 13	Environmental risks and amenity
Clause 13.05-1S	Noise management
Clause 13.07-1L-03	Land use capability
Clause 13.07-1L-04	Licensed premises
Clause 13.07-3S	Live music
Clause 17	Economic development
Clause 17.01-1R	Diversified economy – Metropolitan Melbourne

Clause 17.04-1R	Tourism in Metropolitan Melbourne
Clause 18	Transport
Clause 18.01-1L	Land use and transport planning
Clause 19	Infrastructure
Clause 19.02-3S	Cultural facilities
Clause 19.02-3R	Cultural facilities – Metropolitan Melbourne

5. STATUTORY CONTROLS

The application to amend Planning Permit TP-2021-620 relates only to the hours of operation of the land use; no demolition, buildings or works are proposed.

Section 3 (Definitions) of the *Planning and Environment Act 1987* ('the Act') defines 'land' as including:

- a. *buildings and other structures permanently fixed to land; and*
- b. *land covered with water; and*
- c. *any estate, interest, easement, servitude, privilege or right in or over land.*

For this application, the location of the barge on the water of Victoria Harbour is 'land' as defined under the Act.

The table below sets out the controls that apply to the land and trigger the need for a permit.

Table 2: Statutory Controls	
Clause	Permit Trigger
Clause 37.05 Dockland Zone Schedule 2 (Victoria Harbour Precinct) Schedule 7 (Waterways)	Permit Required (DZ7 only) DZ2 applies to North Wharf where a permit is not required for a place of assembly (Section 1 Use). DZ7 applies to the Victoria Harbour where permit is required for a place of assembly (Section 2 Use).
Clause 43.01 Heritage Overlay HO915 (Victoria Dock, Harbour Esplanade, Victoria Harbour Promenade, North Wharf Road, Docklands Drive and Newquay Promenade, Docklands)	Permit Not Required HO915 is included on the Victorian Heritage Register (Ref No H1720). A heritage place which is included in the Victorian Heritage Register is subject to the requirements of the <i>Heritage Act 2017</i> .
Clause 43.02 Design and Development Overlay Schedule 12 (Noise Attenuation Area) Schedule 50 Area 7 (Victoria Harbour Precinct)	Permit Not Required A permit is not required to use land under the Design and Development Overlay.

<p>Clause 43.04 Development Plan Overlay Schedule 3 (Victoria Harbour Precinct)</p>	<p>Permit Required</p> <p>A permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority.</p> <p>Victoria Harbour Development Plan 2010 approved by the Minister for Planning on 7 March 2011 applies to the Victoria Harbour Precinct.</p> <p>A permit granted must:</p> <ul style="list-style-type: none"> • Be generally in accordance with the development plan. • Include any conditions or requirements specified in the schedule. <p>The proposal is generally in accordance with the development plan. The proposal will activate the land until it is ready to be fully developed. The Applicant is aware (as directed by Development Victoria) that the proposal will have to be discontinued upon development permitted under the development plan commencing.</p>
<p>Clause 45.09 Parking Overlay Schedule 6 (Docklands – Victoria Harbour)</p>	<p>Permit Not Required</p> <p>No planning permit trigger for the amended application, which seeks to amend the operating hours.</p>
<p>Clause 52.27 Licenced Premises</p>	<p>Permit Not Required</p> <p>Under the schedule, a permit is not required for the sale and consumption of liquor under any licence required under the Liquor Control Reform Act 1998 applying to all land within the Docklands Zone.</p>
<p>Clause 53.06 Live Music Entertainment Venues</p>	<p>Permit Not Required</p> <p>This clause applies to an application required under any zone of this scheme to use land for or to construct a building or construct or carry out works associated with:</p> <ul style="list-style-type: none"> • A live music entertainment venue. • A noise sensitive residential use that is within 50 metres of a live music entertainment venue. • A noise sensitive residential use that is in an area specified in clause 1.0 of the schedule to this clause. <p>There are no noise sensitive residential uses within 50 metres of the live music entertainment venue, as such the requirements are not applicable.</p>
<p>Clause 65.01 Approval of an Application or Plan</p>	<p>Sets out the considerations the Responsible Authority must consider, as appropriate.</p>
<p>Clause 66.04 Referral of Permit Applications Under a Local Provision</p>	<p>Development Victoria – Determining Referral Authority</p> <p>Any permit application for use or development within the Docklands Zone must be referred to Development Victoria.</p>

6. NOTICE REQUIREMENTS AND REVIEW RIGHTS EXEMPTION

Pursuant to Clause 43.04-3 (Development Plan Overlay), if a development plan has been prepared to the satisfaction of the Responsible Authority, an application under any provision of this planning scheme 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.

Therefore the application was not advertised.

An objector cannot apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of a decision of the Responsible Authority to grant a permit.

7. SUBMISSIONS

While the application is exempt from notice and review, 23 letters of support and 425 objections have been received

7.1 Letters of Support

Twenty three submissions in support of the application have been received highlighting the following:

- Positive social, economic and built form impact
- Bring life back to Docklands
- Support live music and night-time economy
- Noise not excessive; complaints exaggerated
- Support recovery from COVID-19 pandemic.

7.2 Objections

Over 425 objections have been received in response to the application raising the following concerns (summarised):

- Hours of operation
- Excessive noise
- Patron management
- Appropriateness of a bar / nightclub of this type in this location
- Traffic impacts, including illegal parking and patron egress
- Breach of existing permit conditions
- Impact on property values.

8. EXTERNAL REFERRALS

The application was referred to Development Victoria who advised that they had no objection to the amendment of Condition 3 (Hours of Operation) subject to the Responsible Authority being satisfied that amenity impacts can be managed.

Development Victoria noted that in relation to Conditions 5 and 6 of Planning Permit TP-2021-620, the Applicant must continue to ensure current licensing for occupation and access of Development Victoria's land.

9. INTERNAL REFERRALS

The application was referred to Waterways & Recreation who did not object to the proposal.

10. ASSESSMENT

10.1 Key Considerations

The application seeks to amend Planning Permit TP-2021-620 to allow Sunday trading and other variations to the hours of operation as set out in section 3 of this report.

The key considerations in the assessment of this application relate to:

- Policy context
- Hours of operation
- Noise
- Patron numbers and management
- Other matters raised in the objections.

This amendment is not an opportunity to re-examine the original decision to grant a permit.

10.2 Policy Context

The site is located in Dockland Zone Schedule 2 (Victoria Harbour Precinct) and Schedule 7 (Waterways). The purpose of the Docklands Zone is:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To ensure that use and development take account of the unique nature of the water environment.

To encourage a variety of dwelling types within the Melbourne Docklands area to suit a diversity of needs.

To ensure that development takes account of the relationship of the Melbourne Docklands area to the Central Activities District and the policies relating to the future development of the Central Activities District and other parts of the capital city.

To encourage visual and physical linkages between the Melbourne Docklands and adjacent areas, in particular the Central Business District.

To provide for the conservation and enhancement of buildings, areas and places of scientific, aesthetic, architectural or historical significance.

Schedule 2 (Victoria Harbour Precinct) has the purpose of:

- *To provide for a range of commercial, residential, recreational, educational, technology, business and leisure uses within a mixed use environment.*
- *To provide a promenade environment for urban art and waterfront events and festivals.*
- *To provide a retail focus for Docklands that complements retailing in the Central City.*
- *To encourage the refurbishment of existing wharves for commercial, institutional and public uses.*

Schedule 7 (Waterways) has the purpose of:

- *To provide for the mooring of watercraft.*
- *To provide for integration with adjoining development.*
- *To provide for extensive public access to the water.*

- *To ensure the conservation of the general form of Victoria Harbour.*
- *To ensure that any use and development on the edge of the waterways is appropriately designed, operated and maintained so as to retain an attractive waterfront.*

The Municipal Planning Strategy identifies Docklands as an Existing Urban Renewal Area. Clause 02.03-1 (Strategic Directions) provides the following description:

Docklands is a residential, commercial and visitor destination providing housing, office, industry, research, institutional, business, education, entertainment/leisure, marina and sporting uses and public spaces. As an extension to the Hoddle Grid, Docklands has become a vital urban redevelopment and activity hub.

Clause 02.03-2 (Environmental risks and amenity) recognises that:

The City has licensed premises that provide opportunities for social interaction and a vital night-time economy providing music, food and entertainment. Well managed licensed premises contribute positively to the activity, character and image of the City.

Clause 02.03-6 (Economic development) states:

The City is a national and international tourist destination and the State's entertainment and celebration capital. The numerous large sports and entertainment venues, convention facilities and cultural facilities draw visitors to the city.

In promoting tourism, the Council will:

- *Encourage development that supports tourism at sports and entertainment venues, convention and cultural facilities.*
- *Support development that promotes the Docklands waterfront as a tourism and leisure destination of State significance.*

Clause 11.03-6L-03 (Docklands) includes the following objectives and economic development strategies:

- *To provide a waterfront place of character and quality in which to live, work and visit.*
- *To encourage innovative, viable development built to the highest design and environmental standards.*
- *To strengthen Docklands relationship with the Hoddle Grid and the Yarra River Corridor.*
- *Encourage active uses fronting the waterfront to promote maximum activity.*
- *Facilitate Victoria Harbour waterfront and Waterfront City as the primary retail precinct that complements retailing in the Hoddle Grid.*

Clause 13.05-1S (Noise management) includes the following objectives, strategies and policy guidelines:

- *To assist the management of noise effects on sensitive land uses.*
- *Ensure that development is not prejudiced and community amenity and human health is not adversely impacted by noise emissions.*

- *Consider as relevant the noise requirements in accordance with the Environment Protection Regulations under the Environment Protection Act 2017.*

Clause 13.07-1L-03 (Land use compatibility) includes the follow strategies relevant to the site in terms of context and the operation of late night premises:

- *Ensure residential development in or adjacent to the Capital City, Docklands, commercial or mixed use zones, is designed to mitigate the amenity impacts from surrounding uses, particularly noise.*
- *Ensure noise and disturbance from late night commercial uses do not compromise the reasonable needs of residents and other users of the City.*

Clause 13.07-1L-04 (Licensed premises) includes the following objectives and strategies relevant to the current application. Policy guidelines for noise, patron numbers and hours of operation are discussed in the assessment section below.

- *To identify appropriate locations and trading hours for licensed premises.*
- *To minimise adverse impacts from licensed premises on the amenity of the area.*
- *To maintain the positive character, image and function of the City.*
- *To ensure that the cumulative impacts of licensed premises are assessed where venues are clustered.*
- *Ensure licensed premises will not have an unreasonable impact on the amenity of the surrounding area, including through noise, patron numbers and hours of operation.*

Clause 13.0-7-3S (Live music) includes the following objectives, strategies and policy guidelines.

- *To encourage, create and protect opportunities for the enjoyment of live music.*
- *Identify areas where live music venues are encouraged or where there are high concentrations of licensed premises or clusters of live music venues.*
- *Implement measures to ensure live music venues can co-exist with nearby residential and other noise sensitive land uses.*
- *Consider as relevant the social, economic and cultural benefits to the community of the development of new live music entertainment venues.*

Clause 17 (Economic development) seeks:

- *To provide for a strong and innovative economy, where all sectors are critical to economic prosperity.*
- *To contribute to the economic wellbeing of the state and foster economic growth by providing land, facilitating decisions and resolving land use conflicts, so that each region may build on its strengths and achieve its economic potential.*

10.3 Hours of operation

The application seeks to amend Planning Permit TP-2021-620 to allow Sunday trading and other variations to the hours of operation as follows:

Approved hours of operation

- Monday to Thursday 6am to 11pm

- Friday to Saturday 7am to 1am

Proposed hours of operation

- Monday to Thursday 6am to 11pm
- Friday 6am to 1am
- Saturday and Sunday 7am to 1am
- Good Friday & ANZAC Day 12noon to 11pm

Clause 13.07-1L-04 (Licensed premises) includes the following policy guidelines in Docklands:

- *Limiting hours of operation of bars, hotels and nightclubs in the Capital City Zone and Docklands Zone to 1am.*
- *In the Capital City Zone and Docklands Zone, limiting the use of outdoor areas (including smoking areas, rooftops and open courtyards) to 1am; and in noise sensitive areas, limiting alcohol consumption in outdoor areas to 11pm.*
- *Applications to extend operating hours beyond the hours otherwise specified for indoor and outdoor areas within this policy will only be supported where the further extension of hours will not unreasonably impact on the amenity of the surrounding area.*

In relation to the proposed Sunday trading (7am to 1am), it is considered that restricting the operating hours until 11pm is appropriate in this instance. This provides an appropriate balance of allowing trade until 1am two nights a week, but restricting trade on Sundays and weekdays to 11pm to manage potential impact on the residents within this mixed use area.

It is also noted that the reduction in hours will also assist with patrons leaving the site, as public transport services cease around midnight on Sundays. The last trains depart Southern Cross Station around 12midnight, and the last trams depart from the nearest tram stop at the intersection of Bourke Street and Collins Street (Routes No. 11 and 48) around 12midnight also.

The proposed Good Friday and ANZAC Day trading (12noon to 11pm) is not an extension of hours, rather aligning them with the restrictions of the *Liquor Control Reform Act 1988*.

In relation to the proposed additional morning trading hour on Fridays (from 7am to 6am), this change is consistent with opening hours Monday to Thursday and is considered acceptable, noting at this time the premises is not licenced until 12noon and music levels must be at the 'Night Period' level under *the EPA Regulations 2021*.

10.4 Noise

Since the commencement of the use (opening weekend 22-23 October 2022), the premises has been subject to a significant number of noise complaints from residents in Docklands. The complaints and objections to this amendment have raised concern with excessive noise impacting:

- Quiet enjoyment of dwellings.
- Sleep, and health and wellbeing.
- Ability to rely on natural ventilation by the need to close doors and windows to reduce noise.
- Vibration from bass amplification.

It is noted that upon investigation some of these complaints were made during a time when the venue was not operating, and therefore were impacts from other floating venues (boats) which do not require planning permission.

Clause 13.05-1S (Noise management) seeks to assist the management of noise effects on sensitive land uses.

Application for a planning permit must consider as relevant the noise requirements in accordance with the Environment Protection Regulations under the *Environment Protection Act 2017*. The relevant policy document for this application is the Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues (Publication 1826, Environment Protection Authority, May 2021).

In support of the application and in response to complaints received, the Applicant submitted a Music Noise Assessment by Enfield Acoustics Pty Ltd dated 14 November 2022 (the 'Enfield Acoustic Report'). Officers sought an independent peer review of this report by Renzo Tonin & Associates; the findings of which were provided in a letter dated 15 November 2022 (the 'RT&A Peer Review').

10.4.1 Enfield Acoustic Report

The Enfield Acoustic Report classifies the premises as an 'indoor entertainment venue' as it is common practice to consider permanent open-air premises as indoor entertainment venues (e.g. beer gardens). This classification allows the premises to operate every day of the year but under more stringent noise limits (compared to an 'outdoor entertainment venue').

The noise limits for an indoor entertainment venue are summarised below:

- Up to 11pm (10pm Sundays), the noise limits (L_{Aeq}) are derived by background noise (L_{A90}) plus 5dB.
- After 11pm (10pm Sundays), the noise limits (L_{OCT10}) are derived by background noise (L_{OCT90}) plus 8dB.

The noise limits are more stringent after 11pm as specific frequency bands are considered which better correlate with music noise impacts during sensitive hours (i.e. low frequencies).

Background noise measurements were conducted 10pm to 11pm and 12am to 1am on Thursday 27 October 2022 at three outdoor receptor locations approximately 270 m east, 270 m south and 300 m north. Compliance at these locations is expected to result in compliance at all other noise sensitive uses.

On the same evening, sound system calibration was undertaken to ensure that the amplification levels complied with the established noise limits.

Based on the above results and a 3dB safety margin, the following calibrated amplification levels would be acceptable as an indoor entertainment venue:

- 87dB(A) L_{eq} up to 11pm (10pm Sundays)
- 99dB(C) L_{eq} up to 11pm (10pm Sundays)
- 74dB(A) L_{eq} after 11pm (10pm Sundays)
- 86dB(C) L_{eq} after 11pm (10pm Sundays)

The Enfield Acoustic Report concludes that the premises can continue to operate provided noise levels are continuously monitored and limited at the sound operator's deck to ensure the above noise limits are not exceeded.

10.4.2 Renzo Tonin and Associates Peer Review

Council sought an independent peer review of the Enfield Acoustic Report. The review concludes that it is suitable with respect to acoustics, however diligent continuous management of music noise levels by the venue are required to maintain conformance.

More specifically, the RT&A Peer Review found the Enfield Acoustic Report to have:

- Used suitable methods to establish noise limits.
- Set out EPA Publication 1826 typical indoor entertainment venue noise limits (assessable outside dwellings) following appropriate methods.
- Conservatively assumed 6 mm glazing at the dwellings rather than double glazing which would further reduce noise levels within the dwellings.
- Set out dB(A) and dB(C) guidance noise levels within the venue for conformance with typical noise limits at the dwellings in a format that is actionable.

The RT&A Peer Review provided draft permit conditions with mechanisms for enforcement of noise limits (i.e. a noise limiter and monitoring device) that have been included in the recommendations of this report (Section 11).

A noise limiter is an electronic device installed and used to restrict music volumes to pre-determined levels and to provide continuous monitoring of sound levels. It is recommended that a condition of the amended permit be included that requires the installation of a tamper-proof device that would ensure that noise levels are set in accordance with the Noise Protocol and the acoustic recommendations. The device should be set up to temporarily disconnect the amplification in the event the pre-determined noise levels are breached. The device can be recalibrated if needed (such as a relocation of the barge, or a change in amplification equipment or layout).

The device would assist in ensuring compliance with the planning permit and Noise Protocol. In the event a complaint is made, Council can request a copy of the noise log to check for any breach.

10.5 Patron numbers and management

There is an inconsistency between Planning Permit TP-2021-620 and On-premises Licence No. 32367482; Condition 2 (Patronage) of the Planning Permit has a maximum of 700 patrons whereas the Liquor Licence has a maximum of 551 patrons.

This inconsistency has been discussed with the Applicant and they have no objection to the amended permit being corrected / updated to provide for no more than 551 patrons.

The proposed Sunday trading and other variations to the hours of operation will be subject to all of the conditions of the Planning Permit, including Condition 8 (Venue Management Plan).

10.6 Other matters raised in the objections

In addition to the above matters already addressed in this assessment, the following responses to the objections are provided.

Table 3: Response to objections	
Objection Themes	Response

Appropriateness of a bar / nightclub of this type in this location	<p>This matter was considered in the assessment of the original application and cannot be reconsidered in the assessment of the current amendment, except in the context of the proposed Sunday trading and other variations to the hours of operation.</p> <p>In summary, there is strong policy support for a venue of this type in Docklands provided the premises can be managed so not to adversely impact the reasonable needs of residents as set out in Section 10.2 of this report.</p>
Traffic impacts, including illegal parking and patron egress	<p>Similarly, this matter was considered in the assessment of the original application and cannot be reconsidered in the assessment of the current amendment.</p> <p>A Venue Management Plan and Road Safety Audit have been endorsed to satisfy Conditions 8 and 15, respectively. These documents refer to the current location and address these concerns.</p> <p>Illegal parking is not a relevant planning consideration however the concerns have been provided to Council's On-Street Compliance Team.</p>
Breach of existing permit conditions	<p>The land must be developed and used in accordance with the Planning Permit.</p> <p>Any person can report an alleged breach at any time.</p> <p>A large number of complaints have been received since opening weekend. Council has been actively engaging with the venue to ensure the use and its impacts are closely monitored, including noise monitoring. The Planning Enforcement Team will continue to monitor the premises and investigate any potential breaches.</p>
Impact on property values	This is not a relevant planning consideration.

11. RECOMMENDATION

It is recommended that an Amended Planning Permit be issued subject to the following conditions.

For completeness, a full copy of the conditions has been provided with amendments shown in **bold** and ~~strike through~~.

Date of amendment	Brief description of amendment	Name of responsible authority that approved the amendment
xxx	<p>Section 72 Amendment</p> <p>Condition 3 (Trading Hours) amended to allow Sunday trading, trading from 6am on Friday, limited hours on Good Friday and ANZAC Day.</p> <p>Condition 10 amended to refer to the new Acoustic Report.</p> <p>New noise conditions inserted (13 and 14).</p>	Melbourne City Council

Subsequent renumbering of conditions.

Condition 2 (Patron Numbers) reduced from 700 to 551.

Compliance with Endorsed Plans

1. The use and development as shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.

Patronage

2. The maximum number of patrons on the premises must be no more than ~~700~~ **551** at any one time unless with the prior written consent of the Responsible Authority.

Hours of Operation

3. Except with the prior written consent of the Responsible Authority, the premises must only be open for the use between the following hours:

Monday to Thursday	6am to 11pm
Friday to Saturday	7am 6am to 1am
Saturday	7am to 1am
Sunday	7am to 11pm
Good Friday & ANZAC Day	12noon to 11pm

Development Victoria Conditions

4. Prior to commencement of development the Applicant must prepare and submit for Development Victoria's approval, detailed plans of all proposed works on Development Victoria land.
5. Prior to commencement of development the Applicant must ensure licencing for the occupation of Development Victoria's land is achieved including Development Victoria's approval of venue management plans.
6. Pedestrian egress from the venue after daylight hours is not permitted unless with the prior written approval from Development Victoria.
7. The commencement of the use remains subject to the completion of Development Victoria's Seawall Condition Assessment and satisfactory completion of necessary rectification works.

Venue Management Plan

8. Prior to the commencement of the use and development, an amended Venue Management Plan (VMP) must be submitted and approved by the Responsible Authority. The amended VMP must be generally in accordance with the VMP titled ATET, dated October 2021, but amended to include:
 - a) Hours and patron numbers consistent with Condition 2 and 3

- b) Information regarding patron egress and traffic management required to comply with condition 6.
- c) ~~Reference to a minimum of two shuttle buses for patrons to leave the land after sun down when the use has a capacity of 550 patrons or more.~~

Waste Management

- 9. Prior to the commencement of the use and development, a Waste Management Plan (WMP) must be prepared, submitted and approved by the Responsible Authority. 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 and Recycling.

Noise

- 10. The use must operate under the conditions assessed in the Acoustic Report prepared by ~~Broner Consulting~~ **Enfield Acoustics Pty Ltd**, dated ~~13 September 2024~~ **28 October 2022**, and be to the satisfaction of the Responsible Authority.
- 11. The noise generated by the premises must at all times comply with the requirements of the EPA Publication 1826.4 (or subsequently updated publication): Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues, to the satisfaction of the Responsible Authority.
- 12. The Responsible Authority, with just cause, may at any time request lodgement of an acoustic report, prepared by a suitably qualified acoustic consultant. The report must be to the satisfaction of the Responsible Authority and identify all potential noise sources and sound attenuation work required to address any noise issues and to comply with EPA Publication 1826.4 (or subsequently updated publication): Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues. The recommendations of the report must be implemented by the applicant to the satisfaction of the Responsible Authority.

Sunday trade

- 13. **Before Sunday trading commences, a report prepared by a suitably qualified acoustic consultant must be submitted and approved by the Responsible Authority confirming that a Noise Monitor and Limiter ("the Device") is operating and has each and every of the following characteristics which are also operating:**
 - a) **The Device limits noise levels so as to ensure compliance with the indoor entertainment venue noise limits set out in EPA Publication 1826.4 (Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues); and set out in the Music Noise Assessment by Enfield Acoustics Pty Ltd dated 14 November 2022;**
 - b) **The device is able to control octave band music levels;**
 - c) **The device is set up for all amplified music on site to be controlled by the limiter;**

- d) **The device is capable of recording and storing logged music noise levels in 15 minute intervals for a period of at least 30 days. The logged levels are to be provided to the Responsible Authority on request;**
- e) **The device is located in a tamperproof box or has a software lock, not accessible to personnel other than the venue's acoustic consultant;**
- f) **The device is commissioned by a suitably qualified acoustic consultant to ensure compliance with the noise limits for all time periods. In addition to meeting the nominated octave band levels within the venue, compliance measurements are to be undertaken at sensitive receiver locations;**
- g) **The music noise limiter shall be recalibrated as necessary to maintain compliance when any changes are made to the audio equipment or to the layout, which have the potential to affect the compliance status of the venue;**
- h) **The Device is wired to ensure that the limiter governs all power points potentially accessible for amplification;**
- i) **The Device is set in such a way that power to the amplification equipment is reduced to compliant levels if the sound level generated by the amplification equipment exceeds for one second the maximum sound level for which the monitor is set;**
- j) **The monitor level component of the Device includes a calibratable frequency discriminating sound analyser with an internal microphone incorporated in its own tamper-proof enclosure (beyond the normal reach of a person). Such a sound analyser will indicate by green, amber and red illuminated halogen lamps the approach and exceeding of the set maximum noise level. The lamps must be in the clear view of staff and any disc jockey in the room;**
- k) **The Device must prevent a relevant noise level referred to in these conditions being exceeded.**

Once submitted and approved, the noise report will be endorsed to form part of the permit.

- 14. Amplified music is not permitted to be played other than through the permanently installed sound system and when the Device is installed and operating to ensure compliance with EPA Publication 1826.4 to the satisfaction of the Responsible Authority.**
- 15. A sign must be attached to an internal wall in a prominent position adjacent to the entry / exit point to advise patrons to leave the premises in a quiet and orderly fashion. The sign must be to the satisfaction of the Responsible Authority.
- 16. Empty bottles from the operation of the premises must be deposited into recycling bins quietly so as not to cause disturbance to adjoining and nearby residents, to the satisfaction of the Responsible Authority.

Traffic

- 17. Prior to the commencement of the development, including / excluding demolition and bulk excavation, a desktop Road Safety Audit prepared by a suitably qualified professional must be provided to the satisfaction of the Responsible Authority. The Road Safety Audit must address the following matters:
 - a) Vehicular / bicycle / pedestrian access arrangements.

- b) Loading arrangements.
- c) Internal circulation / layout.
- d) All works within the public realm.

When provided to the satisfaction of the Responsible Authority the Road Safety Audit will be endorsed to form part of this permit.

Permit Expiry

18. This permit will expire if one of the following circumstances applies:

- a) 30 September 2026, or
- b) Upon 90 days written notice by Development Victoria of commencement of development activities related to the Collins Wharf Development Plan (2017) which will conflict with the operation of the approved use.

The Responsible Authority may extend the permit if a request is made in writing in accordance with Section 69 of the Planning and Environment Act 1987.

Notes

- This Planning Permit does not represent the approval of other departments of Melbourne City Council or other statutory authorities. Such approvals may be required and may be assessed on different criteria from that adopted for the approval of this Planning Permit.
- The City of Melbourne will not change the on-street parking restrictions to accommodate the servicing, delivery and parking needs of this development, as the restrictions are designed to cater for other competing demands and access requirements.
- The City of Melbourne in partnership with Melbourne Water has completed new flood modelling for some areas in the municipality. To implement the modelling, Melbourne Planning Scheme Amendment C384 has been prepared which proposes to apply the Land Subject to Inundation Overlay (LSIO) to land affected by riverine flooding and drainage flooding respectively, and includes corresponding planning provisions. The overlays will trigger the requirement for a planning permit assessment for additional areas in the municipality once gazetted in the planning scheme. It is highly recommended you consult with Council's Drainage Team or Melbourne Water (depending on the type of overlay) to ensure Building Permit requirements (i.e. finished floor levels) are considered early in the application process which may require an amendment to the planning permit.
- The proposal hereby permitted must comply with the provisions of the Heritage Act 2017 and with any lawful requirements made by Heritage Victoria.