APPLICATION FOR PLANNING PERMIT: 67-71 HARDWARE LANE, MELBOURNE

Division: Sustainability and Regulatory Services

Presenter: Con Livanos, Executive Officer Planning

Purpose

1. To advise the Committee of an application to amend Planning Permit TP03/531 to increase the hours of operation of the existing tavern from 1am to 3am seven days a week.

2. This report is presented to the Planning Committee at the request of Councillor Ng.

Summary

Application Number: TP-2003-531/A

Proposal: Increase the hours of operation of the existing tavern from Monday to Saturday 7am to 3am the next morning (except Anzac Day and Good Friday) and on Sunday 10am to 3am the following morning.

Applicant: Toby Silcock

Zoning: Capital City Zone Schedule 1

Overlay: Heritage Overlay Schedule 667 – 67-71 Hardware Lane, Design and Development Overlay 1, 2 and 3.

Existing Use: Tavern

Number of Objections: None

Recommendation from Management

3. That the Planning Committee determine to amend the Planning Permit to allow an increase in the hours of operation of the existing tavern on Friday and Saturday only until 3am the following morning, subject to a new patron management plan condition (see Attachment 1).

Proposal

4. Planning Permit TP03/531 was issued for use of the basement and ground floor of the existing building as a bar/tavern in accordance with the endorsed plans on 26 September 2003.

5. The hours of operation of the existing tavern are as follows:

5.1. Monday to Saturday 7am to 1am the following morning (except Anzac Day and Good Friday), and

5.2. Sunday 10am to 1am the following morning.
The proposed hours of operation for the tavern are as follows:

6.1. Monday to Saturday 7am to 3am the next morning (except Anzac Day and Good Friday), and

6.2. Sunday 10am to 3am the following day (except Anzac Day).

The subject site is located on the western side of Hardware Lane between Lonsdale and Little Bourke Street Melbourne. The site is occupied by a four storey brick warehouse building (former Dyson’s Building). The building has been afforded an ‘A’ grading in Council’s heritage study but is not included on the Victorian Heritage Registrar. This application does not propose any external alterations (see Attachment 2).

This application applies to the basement and ground floor level of the premises which are currently used as a tavern and restaurant respectively. The current liquor licence is an “on-premises” licence without “restaurant” conditions, which could result in both levels being used as a tavern (see Attachment 3).

Entry to the basement bar is provided via stairs directly onto Hardware Lane. An internal stair case is located at the rear of the premises which links the basement bar to the upper level restaurant. Access to the restaurant is also provided independently via a short flight of stairs at the building frontage (see Attachment 4).

The upper levels of the building contain office and residential uses. Access is provided to the upper level residential units via a separate entrance on the southern side of the building façade.

The site is surrounded by commercial uses including retail, commercial, entertainment and tavern uses at ground level. The upper levels of the nearby buildings are predominantly used for commercial, office and residential uses.

Key Issues

12. The key issues relate to the potential amenity impacts (essentially patron noise and behaviour) resulting from the increased hours of operation from 1am to 3am on nearby residential properties.

13. State planning policies seek to strengthen the role of the capital city by focusing entertainment uses within the precinct. Local policies specifically encourage entertainment and 24 hour activities within the CBD. While the MSS encourages residential uses, it recognises that residential development must not compromise the CBD’s other functions.

Internal operation

14. The proposed closing time of 3am on Friday and Saturday nights only is considered to be consistent with the MSS and the vision for a 24 hour city. The initial permit granting permission to operate until 1 a.m. was issued in 2003 and there have been no complaints concerning the operation of the premises.

15. All music noise at residential locations is required to meet the provisions of the State Environment Protection Policy (Control of Music from Public Premises) No. N-2. The application was lodged with a Noise Measurements and Noise Impacts Statement. The normal operation of The Mill was measured from within the apartment above the restaurant and was found to comply with N-2 noise limit requirements. The report also found that the venue will comply with applicable noise limits and will not adversely affect the amenity of nearby residents if allowed to operate until 3am.
16. The existing permit includes a condition stating that unless prior written approval is first obtained from the responsible authority, no live bands are permitted to perform. A condition also requires that live music shall be limited to in house DJ’s only.

**External operation**

17. The current planning permit contains a condition which requires that security staff control intending patrons waiting outside the premises, patrons departing the premises and numbers of patrons entering the premises. This condition would be retained.

18. To ensure further amenity protection, a new condition is proposed on the amended permit requiring the applicant to submit a patron management plan to the satisfaction of the responsible authority prior to the increase in the hours of operation. This plan will require, amongst other things, management of the noise levels within the venue; management of patrons entering and leaving the venue and smoking outside; the keeping of a complaints register; and the name and telephone number of the venue operator. The operation of the use must be carried out in accordance with the patron management plan.

19. Subject to appropriate management of the premises and compliance, including standard high risk conditions that will be imposed on any liquor licence issued, the increase in the hours of operation of the existing tavern is considered acceptable in terms of amenity impact on nearby residential properties. It is considered that the proposed tavern use does not pose a threat to reasonable expected amenity levels in this precinct. The Melbourne Planning Scheme recognises that the amenity expectations of residents living in the city must be different from those living in traditional suburban settings.

**Relation to Council Policy (including Municipal Strategic Statement)**

*Municipal Strategic Statement (Clause 21.02)*

20. Clause 21.02-1 Municipal Profile states that:

“The Central City and Docklands support a diversity of uses operating 24 hours a day, ranging from office uses through the day; and residential, leisure and entertainment uses through the day and night...”

21. Clause 21.04 Land Use, recognises that:

“Amenity is a key priority of the City. It must be managed and enhanced in a way which ensures quality of life for existing and future residents. However, the type of amenity achieved will vary in different parts of the municipality....”

22. The intention of the Municipal Strategic Statement is to identify the amenity expectations and standards for both residential and non-residential uses in the different parts of the City. Table 3 at Clause 21.04, “Land Use Amenity Principles” sets out amenity standards and expectations for various zones in the City.

23. For the Capital City Zone the land use amenity principles are as follows:

“Residential amenity in the Capital City and Docklands Zones is not comparable to that of residential zones, and residential use and development in these zones must not compromise the other purposes and functions of the Central City and Central Activities District.

*New residential use and development in these zones needs to acknowledge and manage off-site impacts including appropriate acoustic attenuation measures.*”


24. Clause 21.04-2 (Retail, entertainment and the arts):

“To provide a diverse range of leisure, cultural and entertainment facilities and enhance the City as Victoria’s pre-eminent cultural and entertainment location.

Support and encourage the growth of a vibrant cultural environment in the Central City, Southbank and Docklands, by supporting entertainment uses and the arts.”

25. Clause 21.08-1 (Central City) recognises that:

“The Central City is Victoria’s largest and most varied focus of activity, a vibrant mixed use area which operates 24 hours a day and is the State’s gateway to the global economy”.

26. The vision for the Central City at Clause 21.08-1 includes the following:

“...The Central City continues to be a 24 hour precinct, attracting visitors from a wide catchment at all times of the day to a diversity of entertainment venues and facilities. However, entertainment venues and other potential noise generating premises have been carefully managed to minimise off site impacts, in recognition of the growing residential community within the Central City”

The Central City has grown as a high-density inner city residential environment. Excellent construction and effective management of non residential uses as well as good design of new dwellings in the City has meant that a diverse range of uses can co-exist. Noise and light spill has been recognised as an inevitable part of inner city living because of the diverse land uses, people and traffic in the area at all times. Significant amenity benefits are obtained through excellent access to the facilities and services and to public transport...”

27. For land use implementation strategies with the Central City, the following is identified:

“Encourage the development of a range of complementary precincts within the Central City that offer a diverse range of specialist retail, cultural and entertainment opportunities.

Support entertainment, bars, eating and other evening uses throughout the Central City.

Encourage the provision of varied facilities and services which support the diversity of tourists visiting the Central City.”

Time Frame

28. Section 79 of the Planning and Environment Act 1987 (“the Act”) provides that an applicant for permit may appeal to the VCAT against failure of the Responsible Authority to grant a planning permit within 60 days, excluding the notification period. The application has exceeded the 60 day time limit and therefore, may be subject to an appeal at VCAT.

Consultation

29. The application was advertised and no objections were received.

Finance

30. There are no direct financial issues that arise from the recommendations in this report.
Legal

31. Division 1 of Part 4 of the Act sets out the requirements in relation to applications for permits and amendments of permits pursuant to the relevant planning scheme.

Background

32. Planning Permit TP03/531 was issued on 26 September 2003. Plans were endorsed to show compliance with the permit on 12 January 2004. Amended plans were endorsed under secondary consent and approved on 6 December 2005. On the 12 October 2006 the permit was granted an extension of time until 26 September 2007 by the tribunal.

33. The application to amend the Planning Permit TP03/351/A was lodged on 23 November 2006. This application was amended on 27 June 2007. The application was advertised from 12 to 26 July 2007.

Attachments:
1. Proposed Planning Permit Conditions
2. Locality Plan
3. Existing Liquor Licence
4. Approved Development Plans
# PROPOSED CONDITIONS FOR APPLICATION

**TP-2003-531/A - 67-73 HARDWARE LANE, MELBOURNE VIC 3000**

## EXTEND HOURS OF OPERATION

1. Prior to the commencement of the development hereby permitted the applicant must submit to the Responsible Authority three copies of plans drawn to scale generally in accordance with the plans accompanying the application but amended to show:
   a) Provision made for a waste storage area

   These amended plans must be to the satisfaction of the Responsible Authority and when approved shall be the endorsed plans of this permit.

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

3. A noise management plan, in consultation with an acoustic engineer must be submitted and approved by Council prior to the commencement of the use. This plan shall identify potential noise sources and indicate works to be undertaken to prevent the escape of noise from the premises. Any required works must be completed prior to the commencement of the use. Noise attenuation works to the premises shall involve, but not be limited to, those specified in the submitted report and upon operation of the premises any further works to ensure compliance with the relevant State Environment Protection Policies.

4. The maximum noise level emitted from the premises must not exceed levels specified in the State Government Protection Policy (Control of Noise from Commercial, Industrial or Trade Premises within the Melbourne Metropolitan Area), No. N-1 or levels specified in the State Government Protection Policy (Control of Music Noise from Public Premises) No.N-2.

5. Licensed security staff must be present in the premises during business hours calculated at the ratio of two (2) security staff for the first 100 patrons and an additional security officer for the next 100 patrons or part thereof.

6. The duties of the security staff referred to in the preceding condition shall include (but not be limited to) and shall be properly supervised to ensure effective:-
   a) Control of intending patrons outside the premises.
   b) Control of Noise by intending and departing patrons outside the premises.
   c) Control of numbers of patrons entering the premises.

7. Maximum patron numbers shall be restricted to 300 at any one time.

8. No sexually explicit adult entertainment shall be provided on the premises.

9. No advertising signs shall be erected, painted or displayed on the land without the permission of the Responsible Authority unless in accordance with the exemption provisions of the Melbourne Planning Scheme.
10. The premises shall only operate during the following hours:
   • Sunday 10am to 1am the following day
   • Monday to Thursday 7am to 1am the following day
   • Friday and Saturday 7am to 3am the following day
   • Good Friday and Anzac Day 12 noon to 1am the following day

11. Unless prior written approval is obtained from the Responsible Authority, no live bands shall be permitted to perform.

12. Any live music shall be limited to in house DJ’s only except with the written consent of the Responsible Authority.

13. No bottles or other waste materials shall be removed from the site between the hours of 9.00pm on any day and 8am the following morning.

14. No garbage bin or waste materials generated by the permitted use shall be deposited or stored outside the site and bins must be returned to the garbage storage area as soon as practicable after garbage collection.

15. Prior to the commencement of the use hereby permitted, a Patron Management Plan must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The Patron Management Plan shall include (but is not limited to):
   a) Monitoring and control of sound sources and levels within the premises;
   b) Where specifically permitted, the management of DJs for keeping music within acceptable levels.
   c) The contact number and name of the designated manager for lodging of complaints.
   d) The keeping of a complaints register and procedure for treating complaints;
   e) Management of patrons entering and leaving the premises.
   f) Management of patrons wishing to leave the confines of the venue or other enclosed space to smoke;
   g) Pass out arrangements where permitted;
   h) Signage placed on exit points requesting patrons to consider the amenity of the neighbourhood and to minimise noise;
   i) Security arrangements and the conduct of security staff
   j) General operation proposed by the applicant.

   The operation of the use must be carried out in accordance with the endorsed Patron Management Plan or as amended with the prior written consent of the Responsible Authority.

16. Prior to the commencement of the use hereby permitted, a clearly legible sign shall be placed directly outside the entrance to the premises, identifying a telephone number effective for contacting the designated manager at all hours during which the premises is operating. The design, lighting and maintenance of the sign shall be to the satisfaction of the Responsible Authority.

17. The time for the commencement of the use hereby authorised is, pursuant to Section 68(2) of the Planning and Environment Act 1987, specified as 2 years from the date of issue of this permit.

   The time within which the use is to be commenced may on application made before or within 3 months after the expiry date of this permit be extended by the Responsible Authority.
NOTES:
(a) The operator under this permit is encouraged to become a member of the City Licensing Forum and the Melbourne City Council’s Melbourne Licensees Accord and to adopt the “Responsible Practice Guidelines for Licensees within the City of Melbourne (2007)”.

(b) Disabled access and facilities for the permitted area should be considered by the relevant building surveyor as part of the building permit approval process.
The City of Melbourne does not warrant the accuracy, currency or completeness of information in this product. Any person using or relying upon such information does so on the basis that the City of Melbourne shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information.
On-premises Licence

Subject to the provisions of the Liquor Control Reform Act 1998 and any conditions specified in the licence, the licensee is authorised to supply liquor up to and including 31 December 2007

Licensee
ZEN LOUNGE PTY LTD

Address
9 MITCHELL STREET
Licensed premises
RICHMOND 3121
address
67-73 HARDWARE LANE
MELBOURNE 3000

Trading as
THE MILL BAR AND RESTAURANT

TYPE OF LICENCE
This licence is an on-premises licence and authorises the licensee to supply liquor on the licensed premises for consumption on the licensed premises during the trading hours specified below.

AMENITY
The licensee shall not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the licence relates during or immediately after the trading hours authorised under this licence.
The licensee shall ensure that the level of noise emitted from the licensed premises shall not exceed the permissible noise levels for entertainment noise as specified in the State Environment Protection Policy (Control of Music Noise from Public Premises) No.N-2.

MAXIMUM CAPACITIES
Basement 143 patrons.
Ground Floor 119 patrons.

TRADING HOURS
Sunday Between 11 a.m. and 11 p.m.
Good Friday & Anzac Day Between 12 noon and 11 p.m.
On any other day Between 11 a.m. and 1 a.m. the following morning.

APPROVALS/CONSENTS
Section 9(1)(b) Footpath/External area. The licensee is authorised to supply liquor on premises, other than the licensed premises, authorised by the Director of Liquor Licensing and shown on the approved plan during the hours specified below for consumption on those premises.
Monday to Sunday Between 11 a.m. and 11 p.m. during intermittent road closure hours only.

End of Conditions - Printed on 02/11/2007 (Lcrmb 05/05/2007 11:31:15)
FINANCE ATTACHMENT

APPLICATION FOR PLANNING PERMIT: 67-71 HARDWARE LANE, MELBOURNE

There are no direct financial issues that arise from the recommendations in this report.

Joe Groher
Manager Financial Services
LEGAL ATTACHMENT

APPLICATION FOR PLANNING PERMIT: 67-71 HARDWARE LANE, MELBOURNE

Division 1 of Part 4 of the Planning and Environment Act 1987 (“the Act”) sets out the requirements in relation to applications for permits pursuant to the relevant planning scheme.

Section 72 of the Act states that a person entitled to use or develop land in accordance with a permit may apply for an amendment to the permit.

Section 73 of the Act provides that:

“(2) If the responsible authority decides to grant an amendment to a permit subject to conditions, the conditions must relate to the amendment to the permit; and

(3) Any conditions to which an amendment to a permit is subject form part of the permit when it is issued”.

The Act and the regulations made under the Act prescribe various time limits in which the Responsible Authority must decide applications for planning permits.

Section 79 of the Act provides that if the Responsible Authority fails to grant a permit within the prescribed time (60 days) an applicant may appeal to the Victorian Civil and Administrative Tribunal.

Kim Wood
Manager Legal Services