

9.1.1 No. 1/162 (Lot 4; D/P: 62324) Oxford Street, Leederville – Proposed Change of Use from Shop and Office Building to Shop, Office Building and Small Bar (Unlisted Use)

Ward:	South	Date:	30 March 2012
Precinct:	Oxford Centre; P 4 Leederville Town Centre Masterplan	File Ref:	PRO0784; 5.2011.638.1
Attachments:	001 – Property Information Report and Development Application Plans 002 – Applicant's submission		
Tabled Items:	Nil		
Reporting Officer:	R Narroo, Senior Planning Officer (Statutory)		
Responsible Officer:	C Eldridge, Director Planning Services		

OFFICER RECOMMENDATION:

That;

The Council, in accordance with the provisions of the City of Vincent Town Planning Scheme No. 1 and the Metropolitan Region Scheme, APPROVES the application submitted by Canford Hospitality Consultants Pty Ltd on behalf of the owner, Tricast Development Pty Ltd and Bayking Holdings Pty Ltd for Proposed Change of Use from Shop and Office Building to Shop, Office Building and Small Bar (Unlisted Use) at No. 1/162 (Lot 4; D/P: 62324) Oxford Street, Leederville, as shown on plans stamp-dated 23 December 2011 and amended plans dated 26 March 2012, subject to the following conditions:

1. the hours of operation of the small bar shall be limited to:

DAY	HOURS OF OPERATION
Monday to Thursday	7:00am to 11:00pm
Friday and Saturday	7:00am to 12:00 midnight
Sunday	7:00am to 10:00pm

2. the hours of operation of the small bar where alcohol can be sold and/or served shall be limited to:

DAY	HOURS OF OPERATION
Monday to Thursday	11:00am to 10:30pm
Friday and Saturday	11:00am to 12:00 midnight
Sunday	11:00am to 10:00pm

3. the maximum number of patrons to occupy the small bar at any one time shall be ninety four (94) persons;
4. packaged liquor shall not be sold at the premises;
5. the windows, doors and adjacent floor area facing Oxford Street shall maintain an active and interactive frontage to Oxford Street;
6. a detailed Management Plan that addresses the control of noise, patron and anti-social behaviour, traffic, car parking, the collection and disposal of rubbish and litter associated with the development and any other appropriate matters shall be submitted to and approved by the City prior to the first occupation of the development, and thereafter implemented and maintained;

7. all external fixtures, such as television antennas (of a non-standard type), radio and other antennas, satellite dishes, external hot water heaters, air conditioners, and the like, shall not be visible from the street(s), are designed integrally with the building, and be located so as not to be visually obtrusive from Oxford Street;
8. all signage that does not comply with the City's Policy No. 3.5.2 relating to Signs and Advertising shall be subject to a separate Planning Application, and all signage shall be subject to a separate Sign Licence application, being submitted and approved prior to the erection of the signage;
9. bin numbers and collection shall comply with the City's minimum service provision; and
- ~~10. the Car Parking area shall be available to the patrons of the small bar; and~~
- 14 10. PRIOR TO THE ISSUE OF A BUILDING LICENCE, the following shall be submitted to and approved by the City:

~~14~~ 10.1 Cash-in-lieu

~~14~~ 10.1.1 pay a cash-in-lieu contribution of ~~\$5,462~~ \$22,127 for the equivalent value of ~~4,762~~ 7,138 car parking spaces, based on the cost of \$3,100 per bay as set out in the City's 2011/2012 Budget; OR

~~14~~ 10.1.2 lodge an appropriate assurance bond/bank guarantee of a value of ~~\$5,462~~ \$22,127 to the satisfaction of the City. This assurance bond/bank guarantee will only be released in the following circumstances:

- (a) to the City at the date of issue of the Building Licence for the development, or first occupation of the development, whichever occurs first; or
- (b) to the owner(s)/applicant following receipt by the City of a Statutory Declaration of the prescribed form endorsed by the owner(s)/applicant and stating that they will not proceed with the subject 'Approval to Commence Development'; or
- (c) to the owner(s)/applicant where the subject 'Approval to Commence Development' did not commence and subsequently expired.

The car parking shortfall and consequent cash-in-lieu contribution can be reduced as a result of a greater number of car bays being provided on-site and to reflect the new changes in the car parking requirements; and

~~14~~ 10.2 Acoustic Report

An Acoustic Report in accordance with the City's Policy No. 3.5.21 relating to Sound Attenuation shall be prepared and submitted to the City for approval. The recommended measures of the approved Acoustic Report shall be implemented and certification from an Acoustic Consultant that the measures have been undertaken, prior to the first occupation of the development;

Note: The above Officer Recommendation was revised, corrected and distributed prior to the meeting. Changes are indicated by strike through and underline.

COUNCIL DECISION ITEM 9.1.1

Moved Cr Topelberg, Seconded Cr Buckels

That the recommendation be adopted.

Debate ensued.

Cr Carey departed the Chamber at 7.22pm.

Debate ensued.

PROCEDURAL MOTION

Moved Cr Topelberg, Seconded Cr Maier

That the item be DEFERRED for further consideration.

Cr Carey returned to the Chamber at 7.24pm.

PROCEDURAL MOTION PUT AND LOST (3-6)

For: Cr McGrath, Cr Maier, Cr Topelberg
Against: Mayor Hon. MacTiernan, Cr Buckels, Cr Carey Cr Harley, Cr Pintabona, Cr Wilcox

MOTION PUT AND CARRIED (6-3)

For: Mayor Hon. MacTiernan, Cr Buckels, Cr Carey Cr Harley, Cr McGrath, Cr Wilcox
Against: Cr Maier, Cr Pintabona, Cr Topelberg

ADDITIONAL INFORMATION:

Amended Car Parking Table

Car Parking	
Car parking requirement (nearest whole number): <ul style="list-style-type: none"> • Small Bar – 1 space 4.5 persons of maximum number of persons approved for the site-94 persons = 20.89 car bays • Office – 1 space per 50 square metres of gross floor area- 118 square metres= 2.36 car bays • Shop – 1 space per 15 square metres of gross floor area – 80 square metres= 5.33 car bays Total= 28.58 car bays= 29 car bays	29 car bays
Apply the adjustment factors. <ul style="list-style-type: none"> • 0.85 (The proposed development is within 400 metres of a bus stop/station) • 0.85 (The proposed development is within 400 metres of one or more existing public car parking place(s) with in excess of a total of 75 car parking spaces) • 0.80 (The proposed development is within 400 metres of a rail station) 	(0.578) = 16.762 car bays
Minus the car parking provided on-site	15 car bays
Minus the most recently approved on-site car parking shortfall	N/A
Resultant shortfall	1.762 car bays

The applicant has confirmed that only staff, not visitors to the small bar will be able to access the car parking area. Accordingly, the car parking has been recalculated.

Five bays on site are allocated to the office and shop (as per above table - $8 \times 0.578 = 4.624 = 5$ car bays), the remaining ten bays are allocated to the small bar. Given the parking will only be allocated to staff and not visitors, it is considered only five bays are reasonably allocated to the small bar. This creates a shortfall for visitor bays for which cash-in-lieu is proposed. The new calculation is as follows:

Car Parking	
Car parking requirement (nearest whole number): <ul style="list-style-type: none"> Small Bar – 1 space 4.5 persons of maximum number of persons approved for the site-94 persons = 20.89 car bays <p>Total=20.89 car bays= 21 car bays</p>	21 car bays
Apply the adjustment factors. <ul style="list-style-type: none"> 0.85 (The proposed development is within 400 metres of a bus stop/station) 0.85 (The proposed development is within 400 metres of one or more existing public car parking place(s) with in excess of a total of 75 car parking spaces) 0.80 (The proposed development is within 400 metres of a rail station) 	(0.578) = 12.138 car bays
Minus the car parking provided on-site	5 car bays
Minus the most recently approved on-site car parking shortfall	N/A
Resultant shortfall	7.138 car bays

PURPOSE OF REPORT:

This proposal requires referral to the Council for determination given that the proposal relates to an unlisted use, being a small bar.

BACKGROUND:

The subject site is located within Precinct 1 - Oxford Street North of the Leederville Town Centre Masterplan and Built Form Guidelines. The building was being used as a shop and now it is vacant.

History:

Date	Comment
10 April 2001	The Council at its Ordinary Meeting approved an application for change of use from vacant building to shop and office building and associated alterations and additions.
23 December 2011	Application submitted.
26 March 2012	Amended Plans submitted.

DETAILS:

Landowner:	Tricast Developments Pty Ltd and Bayking Holdings Pty Ltd
Applicant:	Canford Hospitality Consultants Pty Ltd
Zoning:	Metropolitan Region Scheme: Urban Town Planning Scheme No. 1 (TPS 1): Commercial
Existing Land Use:	Shop
Use Class:	Small Bar (Unlisted Use)
Use Classification:	"SA"
Lot Area:	778 square metres
Right of Way:	N/A

The application is for change of use from shop and office building to shop, office building and small bar (unlisted use). The small bar will be used as a wine bar and proposes no changes to the building structure.

The proposed operating hours in the application (as shown in Appendix 9.1.1) are:

Monday to Saturday: 6:00am to 12:00 midnight; and
Sunday: 10:00am to 10:00pm.

The operating hours discussed in the detailed proposal (as shown in Appendix 9.1.1) of the small bar are:

Monday to Thursday: 10:00am to 11:00am;
Friday and Saturday: 10:00am to 12:00 midnight; and
Sunday: 10:00am to 10:00pm.

ASSESSMENT:

Town Planning Scheme/R Codes/Residential Design Element's Initial Assessment

Design Element	Complies 'Acceptable Development' or TPS Clause	OR	'Performance Criteria' Assessment or TPS Discretionary Clause
Density/Plot Ratio	N/A		N/A
Streetscape	N/A		N/A
Front Fence	N/A		N/A
Front Setback	N/A		N/A
Building Setbacks	N/A		N/A
Building Height	N/A		N/A
Building Storeys	N/A		N/A
Open Space	N/A		N/A
Bicycle Parking	N/A		N/A
Car Parking			✓
Privacy	N/A		N/A
Solar Access	N/A		N/A

Town Planning Scheme/R Codes/Residential Design Element's Detailed Assessment

Issue/Design Element: Parking	
Requirement:	Clause 7(iii) of Parking and Access Policy No. 3.7.1
Applicants Proposal:	The proposal is for a change of use from shop to small bar.
Performance Criteria:	Clause 7 (iii): Where the number of bays proposed for a development is less than the number required, the City of Vincent may approve this parking situation in terms of the provisions in this Policy relating to Reciprocal Parking, Combined Parking, Shortfall Parking and/or Cash-in-lieu.
Applicant justification summary:	Not submitted.
Officer technical comment:	The proposed development is considered to comply with the performance criteria as the calculated shortfall is 1.762 and a condition is proposed for cash in lieu for the shortfall. Refer to "Comments" below for car parking discussion.

CONSULTATION/ADVERTISING:

Required by Legislation:	No	Required by City of Vincent Policy:	Yes
--------------------------	----	-------------------------------------	-----

Consultation Type:	Twenty-one days advertising with sign on site and newspaper advertising.
---------------------------	--

Comments Period:	19 January 2012 to 9 February 2012.
-------------------------	-------------------------------------

Comments Received:	Three submissions were received, two supports and one objection.
Support	It is considered that the Leederville Entertainment Precinct is missing a quality wine bar. This proposed small bar/wine bar will bring a new element of sophistication to the Leederville strip.
Objection	The Department of Education provided the following comments: <i>"The Department has a serious objection to the proposal to include a small bar within the development. The school has an accommodation village right next to the proposed development where many students stay throughout the year. There is no objection regarding the proposal for continued use as a shop and office."</i>
Comment	Department of Planning (DOP) - The subject site is affected by the Other Regional Road (ORR) reservation for Vincent Street. Therefore the proposal was referred to DOP for comments. The DOP has no objection to the proposal.

Summary of Comments Received:	Officers Technical Comment:
Issue: Impact on the accommodation village next to the subject site.	Dismiss. The subject site is located within a commercial zone and in the Leederville centre. Therefore uses like small bars are expected to be able to operate in this area.

Note: Submissions are considered and assessed by issue rather than by individual submitter for clarity.

LEGAL/POLICY:

Town Planning Scheme No. 1 and associated Policies.

RISK MANAGEMENT IMPLICATIONS:

If this application is refused the applicant has a right of appeal to the State Administrative Tribunal.

STRATEGIC IMPLICATIONS:

The City's *Strategic Plan 2011-2016* states:

"Natural and Built Environment

1.1 *Improve and maintain the natural and built environment and infrastructure*

1.1.2 *Enhance and maintain the character and heritage of the City."*

SUSTAINABILITY IMPLICATIONS:

The following tables outline the applicable sustainability issues for this proposal:

ENVIRONMENTAL	
Issue: Adaptive Reuse	Comment:
The proposal uses an existing building for the proposed small bar. The adaptive use of this existing space has a lower environmental impact than constructing a new building for this purpose.	

SOCIAL	
Issue: Small Bar – local community facility	Comment:
The small bar has the potential to provide an additional entertainment option within the Leederville Town Centre. The proposal outlines that the venue is designed to cater for the local community in as a "local, community minded venue that aims to give the public more choice in their licensed premises selection and creating environments that are safe, friendly and designed with integrity."	

ECONOMIC	
Issue Small Bar – Active Use	Comment:
<p>The proposed small bar has significant potential to provide a venue for the local community and for tourists that will build upon the existing economic development for example cinemas and restaurants. The proponent also outlines their intention to hire local people “with good local knowledge, who are able to engage with local customers, as well as tourists”. The use provides for additional employment opportunities as an economic benefit.</p>	

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

COMMENTS:

Health Services

Following a preliminary assessment of the plans (submitted 17 January 2012) by the City's Health Services in accordance with the *Health (Public Building) Regulations 1992*, it has been estimated that the proposed toilet facilities, available floor area and aggregate exits widths may accommodate a maximum of ninety four (94) persons. Prior to commencement of trade at the premises, the City will undertake a final assessment of the Public Building, to calculate the Maximum Accommodation Number and it is advised that the final number may vary from the preliminary estimate of ninety four (94) patrons.

Planning Services

Hours of Operation

As described the application is for hours in accordance with the maximum permitted trading hours as stipulated in the Liquor Control Act 1988. The detailed outline of the proposed wine bar for this location shows shorter hours with start times at 10:00am and ending at 11:00pm Monday to Thursday inclusive.

The applicant is requesting the City to consider maximum permitted trading hours as stipulated in the Liquor Control Act 1988 so that functions/events at the proposed small bar may be properly catered for. The maximum permitted trading hours are as follows:

- “(a) on a day other than a Sunday – from 6 a.m. to midnight;
- (b) on a Sunday – from 10 a.m. to 10 p.m.;
- (c) on a Sunday that is New Year's Eve – from 10 p.m. to 12 midnight;
- (d) on New Year's Day – from immediately after 12 midnight on New Year's Eve to 2 a.m.;
- (e) on Good Friday or Christmas Day – from 12 noon to 10 p.m., but only for liquor sold ancillary to a meal supplied by the licensee;
- (f) on ANZAC Day – from 12 noon to 12 midnight.”

The proposed hours are considered to raise two issues relating to the hours of and the sale of alcohol times.

The first issue relates to the general operation in regards to the impact on amenity between 6:00am and 7:00am. It is considered opening at 6:00am in the morning will impact on the amenity of the area in terms of noise and traffic (deliveries). Opening at 7:00am can be considered, given the site is centrally located, adjacent to a cafe that opens at 7:00am, and the noise regulations change at 7:00am to higher allowable noise limits.

The second issue relates to service of alcohol. The proposal is to serve alcohol within all of the proposed hours from 6:00am in the morning to 12 midnight. This is not supported as it is assessed to have a high potential to affect the amenity of the local area given it is not located within the Entertainment Precinct, is adjacent to an educational establishment and in close proximity to residential dwellings. It is proposed that the business be allowed to operate from 7:00am but alcohol not be allowed to be served until 11:00am. This allows for alcohol to be served with lunch. It is noted that venues like Fibber McGee's and The Garden which serve alcohol open at 11.30am and Kitsch Bar although it has an approval from 8:30am only opens the bar at 5:00pm. In regards to closing times it is recommended that the closing times Monday to Thursday are to be 11.00pm which is earlier than the proposed 12:00 midnight to reflect the location of the proposal in the Leederville North Precinct and that there are residential uses nearby. The other small bar Kitsch bar in this precinct has a closing time of 10:30pm Monday to Thursday and this has not caused an undue amenity impact to date.

The recommended operating hours are:

Monday to Thursday	7:00am to 11:00pm;
Friday and Saturday	7:00am to 12:00 midnight; and
Sunday	7:00am to 10:00pm

With the further proposed control of alcohol only being able to be served from 11:00am.

Parking

The City's Policy No. 3.7.1 relating to Parking and Access suggests that the Council may determine to accept a cash-in-lieu payment where the shortfall is greater than 0.5 car bay to provide and/or upgrade parking in other car parking areas.

Clause 22 (i) of the City's Parking and Access Policy states the following:

"If the total requirement (after adjustment factors have been taken into account) is 10 bays or less, cash in lieu may be provided for any shortfall."

The subject site is located within a commercial zone and therefore reasonable to expect such type of uses such a small bar to be located in this area. The small bar will complement the existing commercial uses in the area and will provide increased activity on the street, which is one of the visions of the Leederville Town Centre Masterplan.

The proposed shortfall in car parking (1.762 car bays) is considered acceptable in this instance, as it is within close proximity of the train station, fee parking public car parks and other forms of public transport (such as buses and taxis). It is also conditioned that the available onsite parking is available for patrons.

In light of the above, given the site is located within a commercial zone and the shortfall in parking will not having any impact on the amenity of the area, the proposal is recommended for approval.

It is considered that the proposed change of use from shop to small bar is supportable with the proposed conditions restricting both operating times and sale of alcohol times to reflect the location of the small bar. Accordingly, the application is recommended for approval, subject to standard and appropriate conditions.