

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P224/2024  
PERMIT APPLICATION NO.TPA/55136

### CATCHWORDS

Section 77 of the *Planning and Environment Act 1987* (Vic); Monash Planning Scheme; Commercial 1 Zone; Brewery and beer hall; Oakleigh Major Activity Centre; Locational considerations; Brewery; Bar; Licensed premises; Sensitive interface conditions; Site layout and design.

<b>APPLICANT</b>	The Zythologist Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>RESPONDENTS</b>	Ashley John Williams Margaret Ann Buchanan
<b>SUBJECT LAND</b>	84 Carlisle Crescent HUGHESDALE VIC 3166
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	18 September 2024
<b>DATE OF ORDER</b>	4 October 2024
<b>CITATION</b>	The Zythologist Pty Ltd v Monash CC [2024] VCAT 940

### ORDER

#### No permit granted

- 1 In application P224/2024 the decision of the responsible authority is affirmed.
- 2 In planning permit application TPA/55136 no permit is granted.

Margaret Baird  
**Senior Member**

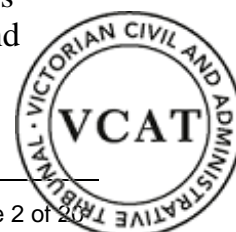
### APPEARANCES

For The Zythologist Pty Ltd	Shivam Tandon, Director, The Zythologist Pty Ltd
For Monash City Council	David De Giovanni, David De Giovanni Town Planning
For Margaret Ann Buchanan	Margaret Buchanan
For Ashley John Williams	No appearance



## INFORMATION

Description of proposal	<p>Use of the existing warehouse building for a brewery and bar/beer hall (as annotated on the plans); associated buildings and works such as modified openings and new fencing; the sale and consumption of liquor; and the display of two flood-lit business identification signs.</p> <p>Approximately half the floor area would be for the brewery (242m<sup>2</sup>) with the balance (256m<sup>2</sup>) for the bar/beer hall. The industry (brewery) would operate seven days a week between 6.00am and 6.00pm. The bar/beer hall would operate between 3.00pm and 10.00pm on Wednesday and Thursday; and between 12.00pm and 10.00pm, Friday, Saturday and Sunday. The maximum number of patrons would be 135 (7.00am – 6.00pm) with a cap of 100 (6.00pm – 10.00pm). Background music would be played. Three on-site car spaces would be in the site's front setback, plus two bicycle hoops.</p>
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme.
Zone and overlays	Commercial 1 Zone. Design and Development Overlay, Schedule 11 (DDO11).
Permit requirements	Clause 34.01 – to use the land as an industry (brewery), and also to construct or carry out works. Clause 43.02-2 – to construct or carry out works. Clause 52.05-11 – to display flood-lit business identification signage. Clause 52.27 – to use land to sell and consume liquor.
Relevant scheme policies and provisions	Clauses 02.03, 02.04-3, 11.03-1S, 11.03-1L-01, 11.03-1L-06, 13.05-1S, 13.06-1S, 13.07-1S, 13.07-1L-02, 15.01-1S, 15.01-1L-01, 17.01-1L, 17.02-1S, 34.01, 43.02, 52.05, 52.06, 52.27, 52.34, 53.10, 65 and 71.
Land description	The subject land comprises two titles, with a total area of 750m <sup>2</sup> . This includes a 'road' to the rear. Rights of way are to the side boundaries. The subject land contains a two-storey vacant shop/office (which is excluded from the proposal and permit application) and a warehouse which wraps around that two storey structure. An open concreted front setback gives access to parking and storage. A high fence and gate are on the site frontage.
Tribunal inspection	Prior to the hearing on 18 September 2024, as parties were advised at the start of the hearing. The land and area were re-visited after the hearing.



## REASONS<sup>1</sup>

### INTRODUCTION

- 1 The Zythologist Pty Ltd ('applicant') has applied to the Tribunal for a review of a decision made by the Monash City Council ('Council') to refuse a planning permit to use and develop the land at No. 84 Carlisle Crescent, Hughesdale ('subject land'). Approval is sought to adapt the existing warehouse, and concrete area fronting Carlisle Crescent, for an industry (brewery) and bar.
- 2 The subject land is in the Oakleigh Major Activity Centre ('MAC'). The land is pictured in Figure 1. The brick and render two-storey shop/office is not part of the permit application. A bus stop abuts the land's street frontage.



Figure 1 – Image showing the subject land. Source: Attachment to the Council's submission.

### KEY ISSUES

- 3 Based on the parties' grounds and submissions, and having regard to the relevant and applicable considerations under the Monash Planning Scheme ('scheme'), the key matters to be determined in this application are whether:
  - the use of the land for a brewery, and for the sale and consumption of liquor, are acceptable having regard respectively to the purpose and provisions of clauses 34.01 and 52.27, and scheme policy;
  - the proposed development is an acceptable response to the land's context and relevant scheme policy and provisions;
  - the proposed brewery and licensed premises will create unacceptable amenity impacts for adjacent and nearby properties in terms of noise, odour, patron activity, loading and waste management;
  - the layout of the development is satisfactory under clause 52.06-9, particularly with respect to pedestrian safety and vehicular movement.
  - the proposal will result in unacceptable traffic impacts.

<sup>1</sup> The submissions and evidence of the parties, tendered supporting exhibits, and statements of grounds have all been considered in determining the proceeding. In accordance with the Tribunal's practice, not all of this material will be cited or referred to in these reasons.



## DECISION MAKING FRAMEWORK

### Acceptable outcomes and integrated decision making

- 4 I must decide whether to grant a permit and, if so, what conditions should apply to a permit. Is the permit application acceptable having regard to the relevant policies and provisions in the scheme? Clause 71.02-3 'Integrated decision making' states the Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

### Scope

- 5 The permit application triggers five permissions under the scheme, as listed in the 'Information' section of these reasons. My decision must be made in the context of these permissions. It is relevant that orders from a Practice Day Hearing dated 15 May 2024 determined that:
- Planning permission is not required pursuant to clause 52.06 of the Monash Planning Scheme as a permit is not required to reduce the required number of car parking spaces for a new use of an existing building if the requirements set out in clause 52.06-3 are met. I find that those requirements are met for this application.
- 6 The Council subsequently amended its ground of refusal no. 3 to read:
- The proposal fails to satisfy the purpose of Clause 52.06-9 of the Monash Planning Scheme (Design Standards for Car Parking) in relation to pedestrian safety and vehicular movement.
- 7 Respondents did not seek to amend any grounds.
- 8 At the hearing I reminded parties of the Practice Day Hearing determination and stated that I would not be re-visiting this matter.
- 9 The Tribunal's determination did not make findings about the implications or merits of any loss of parking serving the older two-storey office/retail space (which I understand was part of a previous single use of the whole of the lots). The Tribunal formed the view that:<sup>2</sup>
- Whether or not, on its merits, there is an argument to be made that insufficient parking is provided on the site, the Scheme, through the exemptions in clause 52.06, provides that planning permission is not required to reduce the number of car parking spaces that would otherwise be required. This is the case whether the land parcel is confined to the land subject to this application or whether the entirety of the land, comprising both buildings, is included in the calculation.
- 10 A bar is as-of-right land use under clause 34.01 of the scheme. The focus of clause 52.27 is the suitability of the location of the proposed licensed premises and potential amenity impacts.

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<sup>2</sup> *The Zythologist Pty Ltd v Monash CC* [2024] VCAT 459, [24].



## Potential for changes to the proposal

- 11 Toward the end of the hearing, after other submissions had been completed, Mr Tandon suggested that he could potentially make changes to the hours of operation, loading/deliveries, and numbers of patrons.
- 12 Other parties objected to hearing these submissions, as a matter of procedural fairness.
- 13 I appreciate that the applicant's suggestion was made with the aim of responding to matters raised by other parties. However, there has been no application to amend the permit application and/or plans under the Tribunal's Practice Note PNPE9 and no prior notice has otherwise been given to the Tribunal or parties. Moreover, the case advanced by the applicant relies on multiple technical reports addressing matters such as operating hours, patron numbers and loading/waste management arrangements described in submissions, not an amended permit application.<sup>3</sup>
- 14 It is open to me to receive further submissions from the parties about the potential for changes. I have not decided to do so. The reasons that follow explain why I have decided to affirm the Council's decision. Consequences of potential changes, such as to loading and waste collection arrangements, need to be documented, with implications for the layout shown in the plans and the operation of the facility able to be fully understood and assessed. My concerns about the permit application would necessitate a holistic re-think, rather than changes to be implemented through permit conditions.

## PLANNING CONTEXT

- 15 Broadly, the scheme seeks to support investment, and the development and the growth of businesses and activity centres for a range of land uses. It encourages (among other things) sustainable transport, and seeks to promote and enhance the unique characteristics of each centre.<sup>4</sup>
- 16 The subject land is within the MAC which the scheme identifies as a major entertainment destination.<sup>5</sup> Policy states:

Licensed venues can add to the vibrancy and character of the centres and provide for a lively community focus. However, research shows that alcohol related violence or injury, and other forms of anti-social behaviour, is more likely to occur within or near licensed premises.

There is a need to minimise the adverse impacts on safety and amenity from licensed premises while still supporting the viability of centres.

Council seeks to:

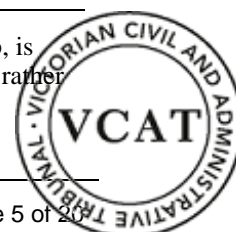
- Minimise the impact of licenced premises on the amenity, vitality and viability of the Glen Waverley and Oakleigh Activity Centres.

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<sup>3</sup> However, at the hearing, I noted the Town Planning Report, July 2023 by Hansen Partnership, is based on a different layout to that before me (eg. use of the front setback for outdoor seating, rather than parking).

<sup>4</sup> Such as set out in clauses 02.03-3 and 02.03-6.

<sup>5</sup> With the Glen Waverley Major Activity Centre, at clause 02.0303.





- 17 The Oakleigh Major Activity Centre Policy<sup>6</sup> shows the subject land is at an edge of the MAC, within Precinct 3D ‘Commercial Periphery’. Retail shop uses are discouraged in Sub-Precincts 3C and 3D.

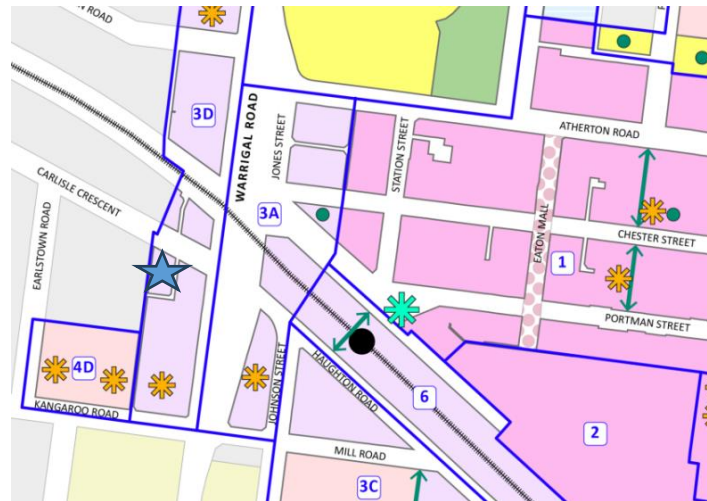


Figure 2 – Extract from the Oakleigh Major Activity Centre framework plan (clause 11.03-1L-06), with the subject land notionally marked with a blue star.

- 18 The Oakleigh Major Activity Centre Policy seeks to encourage the development of activities that provide a mix and level of activity that attracts people, creates a safe environment, stimulates interaction and provides a lively community focus.
- 19 It is policy to facilitate use and development within the Oakleigh Major Activity Centre that:
- Promotes the Centre as a focal point for the community, fostering its social and cultural development.
  - Increases diversity and density of dwellings.
- 20 These outcomes are consistent with the purpose of clause 34.01.<sup>7</sup>
- 21 Giving effect to policy, the subject land is zoned Commercial 1 (‘C1Z’), as shown in Figure 3.



Figure 3 – Vicplan zoning plan, with the subject land outlined in red.

<sup>6</sup> Clause 11.03-1L-06.

<sup>7</sup> The zone purpose includes to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses; and to provide for residential uses at densities complementary to the role and scale of the commercial centre.

- 22 Contextually, the subject land:
- abuts C1Z land to the north, east and south.
  - abuts a property in a General Residential Zone to its west and south-west. This is part of the Oaklea Hall Aged Care facility at No. 4-8 Earlestown Road. It is understood that this is a high care facility.
- 23 Carlisle Street is otherwise a street with a strong character of single storey period dwellings, contained within a Neighbourhood Residential Zone. Heritage Overlay Schedule 95 applies to much of the residential area but not to any part of the subject land or immediately adjacent lots.
- 24 The scheme seeks to:<sup>8</sup>
- Ensure that use or development of land is compatible with adjoining and nearby land uses.
  - Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.
  - Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.
- 25 These themes are evident in other policies that are relevant to this permit application including:
- Clauses 13.05 (Noise management) which identifies an aged care facility as a sensitive use in the following strategy:

Minimise the impact on human health from noise exposure to occupants of sensitive land uses (residential use, child care centre, school, education centre, residential aged care centre or hospital) near the transport system and other noise emission sources through suitable building siting and design (including orientation and internal layout), urban design and land use separation techniques as appropriate to the land use functions and character of the area;
  - Clause 13.06-1S (Air quality management);
  - Clause 34.01-8 decision guidelines which include consideration of the interface with adjoining zones, especially the relationship with residential areas; the movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport; and the storage of rubbish and materials for recycling.
- 26 Licensed premises are addressed through the purpose and provisions in clause 52.27 as well as policy at clause 13.07-1L-02. The latter applies specifically to the Glen Waverley and Oakleigh Activity Centres.
- 27 The purpose of these clauses are aligned:
- Clause 52.27 –

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<sup>8</sup> Clause 13.07-1S.



- To ensure that licensed premises are situated in appropriate locations.
  - To ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.
  - Clause 13.07-1L-02 –
    - To minimise the adverse amenity impacts associated with licensed premises in the Glen Waverley and Oakleigh Activity Centres.
- 28 I do not set out all of the relevant provisions, decision guidelines, policies and strategies from these clauses. All have been considered as relevant, as is the case with all clauses listed in the ‘Information’ section of these reasons.
- 29 I do, however, highlight the decision guidelines in clause 52.27, as well as several strategies and specific policy guidance in clause 13.07-1L-02, which are as follows:
- Clause 52.27’s decision guidelines which are:
    - The Municipal Planning Strategy and the Planning Policy Framework.
    - The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.
    - The impact of the hours of operation on the amenity of the surrounding area.
    - The impact of the number of patrons on the amenity of the surrounding area.
    - The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.
  - Clause 13.07-1L-02’s strategies which include:
    - Discourage licensed premises where its operation may result in unreasonable amenity impact on the surrounding area and any nearby residential uses.
    - Ensure licensed premises to operate and be managed in a manner that provides for the safety and amenity of patrons, the general public and nearby owners and occupiers of land.
    - Ensure licensed premises are designed to incorporate characteristics that minimise anti-social behaviour.
    - Minimise any identified adverse amenity impacts associated with the licensed premises, including by:
      - Ensuring venues do not exceed the safe and amenable operating capacity of the premises, such as through maximum patron numbers, operating hours and frequency and hours of music entertainment.
      - Locating activities or equipment that may cause amenity impacts, such as queuing areas, seating areas, outdoor smoking areas, air-conditioning, exhaust fan systems,



security alarms and external lighting, away from sensitive uses.

- Implementing on-site noise attenuation measures where unreasonable noise impacts on surrounding uses may result from the operation of the licensed premises.
- Clause 13.07-1L-02 – Policy guidance includes:
  - Discouraging licensed premises that cater for more than 200 patrons.
  - Implementing management procedures for crowd control (including security staffing arrangements), waste management (including the storage and collection of waste and recyclable materials) and complaints.
  - Implementing measures so that noise emissions from licensed premises comply with the standards specified in the State Environment Protection Policy (SEPP) No.1 – Control of Noise from Commerce Industry and Trade and SEPP No.2 – Control of Music Noise from Public Premises.[sic]<sup>9</sup>

## **ACCEPTABILITY OF THE USE OF THE LAND FOR AN INDUSTRY (BREWERY), AND TO SELL OR CONSUME LIQUOR**

### **Overview of parties' positions**

- 30 The applicant has explained that The Zythologist is a science-based craft beer brewery and analytical testing company, based at Monash University. The proposal is a small-scale operation with a maximum production capacity of less than 200 litres per day; effectively a 'micro-brewery'. Not all brewery production would occur on-site. Partly finished product would be brought to the subject land for fermentation, packaging, use on-site, and distribution. The current business operation involves beer production by contract manufacturers at existing breweries.
- 31 Mr Tandon has explained that the proposal could be understood as akin to a cellar door. The focus, he states, is to foster an understanding and testing the niche product. That is, showcasing the product.
- 32 The bar/tap room would have a limited beer range. It would few other product items such as wine or hard liquor. Food would comprise 'heat and serve' and fryer items, with given examples being frozen pizza and pies, without the need for kitchen staff.
- 33 The applicant submits the general design layout of the site, hours of operation and patron numbers have been adapted to minimise any impact on neighbouring areas. The Council's grounds are challenged in this regard, including the ground that the brewery is an inappropriate use in this location

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<sup>9</sup> These SEPPs have been superseded by Environment Protection Regulations under the *Environment Protection Act 2017* (Vic) and the incorporated Noise Protocol (Publication 1826, Environment Protection Authority, November 2020) and 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). These documents are referred to in the DDEG acoustic report (October 2023), which was submitted with the permit application and which the applicant relies on.

due to the likely adverse impact on the amenity of adjoining properties through emissions and the hours of operation. Mr Tandon refers, as an example, to the design of the premises where the tap room/bar are on the west side of the building (providing a buffer to the Oaklea Hall Aged Care facility). Loading and deliveries use an existing opening to the western lane (signed as Pesky Land) which services other properties including the aged care facility.

- 34 The applicant relies on six reports provided through to the Council through the permit application process, and later traffic advice through two memoranda.<sup>10</sup>
- 35 The applicant submits:
- The DDEG acoustic report (October 2023) states that acoustic requirements are satisfied. The applicant accepts noise control measures recommended in that report.
  - A traffic and car parking report submitted with the permit application (by Red Square Traffic Pty Ltd, October 2023) states that parking and traffic engineering considerations are satisfied. Overall, the impact on car parking demand and traffic movement in the area would be minimised due to the proposed operating hours, patron capacity and nature of use. Further, other development and many alternative permitted uses of this site (eg. restaurant, gymnasium, child care centre etc.) would inevitably increase the car parking demand and traffic movement in the area too. Further, it would be logical to assume that fewer people would choose to drive to a venue which serves liquor, hence potentially reducing the car park demand. There is also excellent access to a bus stop in front of the site and a nearby railway station.
  - With respect to anti-social behaviour, the scale and scope of the proposed operations are relevant and:
    - The proposal is ‘a family-friendly, specialty beer focused venue which would also serve meals (as opposed to nightclubs, entertainment venues, etc.), liquor related anti-social behaviour can primarily be reduced to a function of Responsible Service of Alcohol and compliance of liquor licensing conditions’.
    - The applicant has held multiple liquor licenses in the past with an excellent track record (nil violations) and satisfies its responsible service of alcohol obligations.
    - The proposed hours of operation are standard in an activity centre and do not exceed that of, say, a restaurant.
    - The applicant supports the Council’s draft permit condition relating to the implementation of a patron management plan to further mitigate the risk of anti-social behaviour.

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<sup>10</sup> Traffix Group, memoranda dated 3 and 6 May 2024 (as clarified at the hearing).

- With respect to odour and air emissions, the applicant's analysis<sup>11</sup> is that according to National Pollution Inventory Emission Estimation Technique for Beer and Ready-to-drink Alcohol Beverage Manufacturing, estimated emissions from the proposed operations can be considered as insignificant or low risk.
- The *Environment Protection Act 2017* (Vic) Guidance for Assessing Odour also classifies 'brewery' as low odour potential. This reflects the evolution of brewing operations whereby the emissions and odours once attributed to such operations are no longer the case, hence the low odour classification attributed to breweries.
- Similar breweries, examples of which the applicant has given, operate in a mixed commercial and residential setting without known odour or emission complaints.

- 36 The Council and respondents challenge these and other submissions presented by the applicant.
- 37 Ms Buchanan states the parking, traffic, noise, and activity generated by the proposed brewery cannot escape impacting on the adjacent residential area. Should the development proceed, she submits the quiet residential and heritage nature of this surrounding area will suffer a major loss in amenity and security. The change of business type to that proposed is radical, is not family-friendly, and carries a huge negative impact on the area's amenity.
- 38 The Council and respondents refer to the very close proximity of the subject building to the adjacent (west side) aged care accommodation. The Council submits the presence of multiple habitable windows and courtyards in this facility facing the subject land 'raises the bar and brings into question the suitability of the review site for an industrial land use'.
- 39 The Council's submission raises questions and identifies concerns about the layout of the premises, which contribute to its position about the suitability of the proposed brewery and proposed licensed premises on the subject land, particularly the impact on the aged care facility.
- 40 These matters as expressed in the Council's submission include:
- Is the decision to re-locate the principal loading area for this industrial land use from the site frontage (main roller door) to this side area sensitive to its abutments?
  - What are the effects of noise from truck engines idling, reversing beepers being engaged, side doors being opened/closed for deliveries (ie brewing materials and moving pallets of beer for distribution), and pallet moving equipment (tugs/forklift) etc on the amenity of these adjacent windows?
  - What are the effects of noise from multiple large bins being wheeled up and down the right-of-way to the collection vehicle that is then parked along the Carlisle Crescent frontage of the residential aged care facility?

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<sup>11</sup> Emissions and Odour Analysis prepared by The Zythologist Pty Ltd, dated 9 September 2024.

- What are the effects of odours emanating from the building when these doors are opened for loading and bin collection?
  - What are the effects of odours from the industry (beer brewing) noting the mill component is located in the south-west corner of the [sic] and some 5 metres away from the windows of the adjacent residential aged care facility? Is there a flue associated with this component?
  - What are the effects of patrons loitering in the right-of-way after leaving the venue?
  - The acoustic report recommends that ‘the front entry doors should remain closed during operating hours’. The reality is these doors will open/close hundreds of times during an evening. What happens then?
- 41 The Council submits the layout of the venue is clearly one that is focussed on drinking. The plans indicate a bar area, however, there is no kitchen space and only a very small ‘prep’ as part of the bar. It says the applicant’s explanation of the proposal, given at the hearing, confirms this focus.
- 42 At the hearing I also enquired about aspects of the land and proposal including the following:
- the location of smoking areas - which the applicant states are not proposed on-site and will occur off-site, although no additional details were able to be given.
  - the proposed treatment of two windows in the west elevation window refer to grilles potentially for ventilation as the applicant stated, but on my reading do not appear to have been assessed as part of the acoustic report.
  - the existing skylights shown on the roof plan, that do not appear to have been assessed as part of the acoustic report. However, the applicant states they have been considered.
  - how the three public entries into the premises are proposed to operate so as to limit noise escape having regard to the recommendations in the acoustic report that ‘All front entrances must be closed, except as required for entry / exit by staff and patrons’ – of the three doors, only the largest has a shallow airlock while the others are proposed to have automatic door closers.
  - whether consideration has been given to any impact or mitigation required for the two storey building that directly abuts both a stairwell and the mezzanine which is partly proposed to serve as a function room. This does not appear to have been assessed as part of the acoustic report. There are also first floor windows associated with this building facing into the proposed parking/entry space/frontage.
- 43 In addition to the presence of the aged persons accommodation facility, submissions by Ms Buchanan and Mr Williams cite the proximity of a secondary girls’ school and the valued heritage and amenity qualities of the residential area, which they say this proposal does not respect and would

negatively affect. Reference is made to rowdy and/or anti-social behaviour, which is not only intrusive but can be intimidating. Ms Buchanan suggests most craft breweries are in industrial areas, for good reasons.

- 44 Ms Buchanan refers to experience of a ‘previous use on the corner with increased noise levels at night - especially at closing times, urination in the nearby lane, groups loitering around their cars parked in front of residents’ houses, rubbish left on the nature strips, and lots of cars coming and going’. In response, the applicant refers to differences compared with the proposal for the subject land, including later hours than the proposal adopts.
- 45 The Council has provided information that, it says, demonstrates contextual and factual differences when comparing the similar breweries to which the applicant has referred and the specific circumstances of the subject land and proposed design and layout.

## Findings

- 46 The warehouse on the subject land is not purpose-built for industry (brewery with bar/beer hall). Adapting the building to accommodate the proposal in this location can be contemplated ‘in principle’ given the policy settings and noting a bar does not trigger a planning permit under clause 34.01. A facility of the type proposed could contribute to the mix and diversity of land uses in the MAC. It would use a site that is, as I understand it, vacant or under-used.
- 47 The planning context to which I have referred, and specifically the provisions in clauses 34.01 and 52.27, and relevant policies such as clauses 13.07-1S and 13.07-1L-02, emphasise the need to assess the suitability of the proposed location, given its attributes and its sensitivities. The operation, design and layout are all relevant in considering the suitability of the subject land and whether any potential impacts are, or can be, minimised and mitigated.
- 48 The explanation of the proposal provided by the applicant suggests a balance of production and tasting, and layout, that are ‘low key’ in terms of visitation and activity. The planning report says:<sup>12</sup>
- Similar to other craft beer focused venues around inner-Melbourne, the focus on beer would be complemented by a strong food offering, within a low-key atmosphere.
- 49 The applicant has described the applicant company’s intentions and focus on understanding the brewing process, and for sampling, tasting, enjoying and purchasing. It has been indicated that patrons may stay for one to two hours, with larger groups (perhaps celebrating an occasion) potentially staying longer. I find the food offering is limited. The plans do not include, for example, kitchen and related storage facilities, as these are said to not be needed for the business model described.
- 50 Based on the material available to me, I do not consider the proposal as it is documented would have a ‘strong food offering with a low-key atmosphere’. The proposal involves partial production or finishing of the brewing production process on the land, with the bar/beer hall. The latter is sizeable

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<sup>12</sup> Hansen Partnership, July 2023, Section 1, page 2.



in the context of proposed on-site activities – both in terms of the proposed patron numbers and the physical size of the bar/beer hall space.

- 51 The subject land is evidently at the periphery of the MAC in a pocket of commercial land and with nearby land uses that give an impression of being somewhat detached from the balance of the MAC because of the railway station and road overpass. The setting has a strong relationship with the residential area when considering other features such as the site's frontage and orientation, lane abutments, backs of commercial buildings and uses to the west, and side elevations of premises at the corners of Warrigal Road and Carlisle Crescent.
- 52 These and other elements of the site's physical context can be appreciated in Figure 4.



Figure 4 – Extract from the Hansen Partnership report, July 2023, at page 7 (image looking west).  
The subject land is coloured red, with the two storey building included.

- 53 I agree with the applicant that it is reasonable to consider use of laneways that service commercial premises to similarly be available to service the subject land. The western lane is informally signed on-site as 'Pesky Lane', although this street naming may not be formalised. Having acknowledged that, the residential interface with the Oaklea Hall Aged Care facility has a high degree of sensitivity in planning terms. It is relevant to take account of the layout of the aged care complex (with habitable room windows and open spaces facing the subject land), the manner in which the brewery and licensed premises are designed and proposed to be operated, and the size and manner of operation proposed.
- 54 I appreciate that the applicant intends to comply with legislation and policies addressing noise and air emissions and would endeavour to do so. Reports relied upon by the applicant seek to address these matters. The reports make

recommendations as to how to achieve compliance, including changes that could be shown as amendments to the plans, reports and as permit conditions.

- 55 An example is limiting hours for waste collection and deliveries) as shown below:<sup>13</sup>

**Table 25 Deliveries and Private Waste Collections Schedules**

Activity Type	Permitted Times
Deliveries	<ul style="list-style-type: none"><li>7 am to 10 pm Monday to Saturday</li><li>9 am to 10 pm Sundays and Public Holidays</li></ul>
Private Waste Collections	<ul style="list-style-type: none"><li>7 am to 8 pm Monday to Saturday</li><li>9 am to 8 pm Sundays and Public Holidays</li></ul>

- 56 It is important to state that I must be satisfied that the premises can operate in a manner that ensures it appropriately co-exists with other land uses in the context. It is also relevant to be mindful that the subject land could be leased to or owned by a different entity if a planning permit is granted rather than the permit applicant in this proceeding. A planning permit runs with the land and not the individual proponent. Consequently, the proposed brewery use, the licensing to sell and consume liquor, and the operation, management and layout need to be mindful that a different operator rather than The Zythologist could act on a permit if granted.
- 57 The information relied on by the applicant has gaps and raises questions that are relevant to the findings in the technical assessments. There are valid questions asked by other parties about the practicality of the implementation and mitigation so as to achieve an acceptable amenity outcome.
- 58 Among these concerns are:
- The waste management plan relies on private waste collection via Pesky Lane and using a kerbside location with a collection vehicle required to park in a public car parking space. There is no guarantee that the space will be available at collection times.
  - The size and form of equipment and vehicles associated with loading, deliveries and waste collection is partly documented, however, there is little detail with respect to the deliveries of partly-brewed product and what that may encompass with respect to the use and continued access along Pesky Lane. This is relevant because of the interface condition with multiple aged care accommodation rooms.
  - The lack of detail about specific operational arrangements to limit noise escape from the three entry doors, given the frequency and time for doors opening and closure to allow for the movement of patrons, arriving, departing and looking for a smoking location. The acoustic report states doors should be fitted with an automatic door closing

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<sup>13</sup> DDEG report, section 10, at page 37.

device to ensure that the doors are not inadvertently left open, but with three doors (only one with an airlock) and 100 patrons permitted within the site into the evening, the practical outcomes is uncertain.

- The specific operational arrangements to address other recommendations of the acoustic report, and enforceability, are also limited in their detail. These recommendations include:
  - Deliveries via the loading bay to the west of the project site should only be conducted when the beer hall is not operating, and ‘when loud brewing activities are not being undertaken’ – what this means in practice is undocumented.
  - As partly processed brewed items will arrive at the premises via the lane, there may be potential air and noise emissions issues external to the site that are undocumented and addressed.
  - Delivery vehicle engines, including ancillary motors for refrigeration equipment should be turned off whilst making the delivery – what this means in practice is undocumented as is the case with, for example, reversing beepers.
- The acoustic report that does not appear to have addressed a range of potentially relevant matters as referred to in paragraph 42, above, which may add to noise escape and transmission affecting off-site locations. Thus, there are likely additional noise sources whose mitigation has not been adequately addressed.
- The layout of the parking spaces, as discussed below, involves cars impeding access to entry doors; limited circulation space around this staff parking area; and awkward vehicle movements within the site. The Traffix memorandum of 3 May 2024 is referred to as a ‘high level review’ of the car parking layout and states:

The only outstanding design issue relates to the lack of a DDA space, however this could be readily solved through a minor carpark redesign or dispensation implications of accommodating an accessible space’.<sup>14</sup>
- The plan attached to the memorandum, reproduced in part below, shows that the minor redesign will exacerbate issues that I find the Council has properly not been satisfied on. The DDA space is hard-up against the largest entry door. There are no swept paths with respect to the redesign, which the Council’s representative states will be more awkward, and bicycle access seems restricted once the fence is taken into account.

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<sup>14</sup> Unless a dispensation is granted through the building permit process.

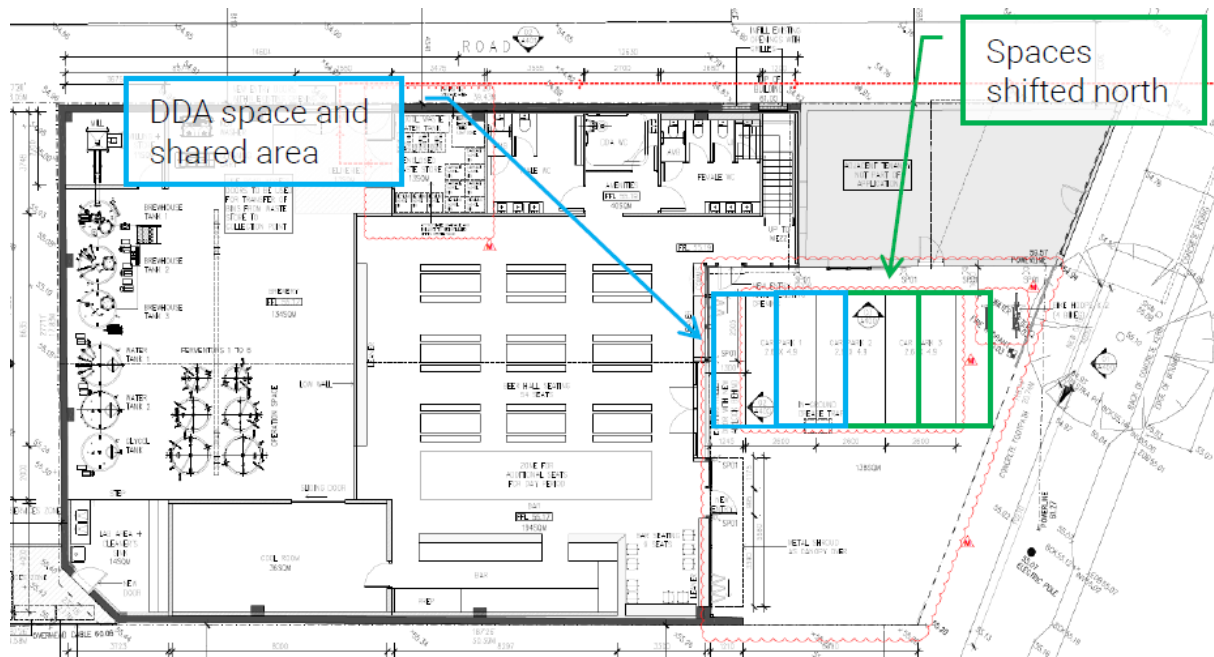


Figure 5 – Extract of plan from the Traffic memorandum dated 3 May 2024, showing changes to accommodate an accessible car space.

- While less than 200 patrons (citing local policy) are proposed, and a patron management plan can be provided by a permit condition, I have not been satisfied that patron management has been sufficiently thought through to be satisfied this will be suitability addressed without the types of impacts on the amenity of the area to which the scheme refers. This includes ensuring the proposed licensed premises is designed to incorporate characteristics that minimise anti-social behaviour. For example, and as the Council has referred to in part:
  - There is no detail on how patrons will be managed so that they do not loiter down the western lane opposite the windows of the aged care facility nor the eastern lane which will be blocked by the rear services area, creating a space with potential safety issues.
  - The impact of activity around the land with respect to any queues, smokers, and movement of patrons to and from the subject land.
  - Consideration of ride share/taxi services given a bus stop abuts the front of the site.

59 Taken together, the combination of concerns are not, in my view, appropriate to defer to permit conditions for resolution and review. There are potential unknown consequential impacts for the design, layout and operation of the premises in a location with specific sensitivities.

60 I record that no party has argued that there is a cumulative impact that warrants refusal of a permit under clause 52.27.

## Conclusion

61 For the above reasons, based on the information available to me, I am unable to conclude that the proposed industrial use, and the application to sell and





consume liquor, are appropriate and acceptable in this location. The proposal is not 'low-key' insofar that it has the potential to adversely affect the amenity of the area.

- 62 The suggestion that hours and patrons could be reduced may seek to respond to sensitivities and concerns. However, specific consideration would be required as to how the facility would actually operate in accordance with the recommendations of various reports based on the current proposal or any amended proposal. Either way, the layout at the front entry of the land is problematic. I also remark that greater restrictions would in turn limit the capacity for the applicant to potentially use the land, and the opportunity for the boutique business to flourish.

## **DESIGN AND BUILT FORM, INCLUDING SIGNAGE**

### **Overview of parties' positions**

- 63 No party has raised issues about the re-use of the existing building, with modifications, with respect to clause 43.02 and DDO11. DDO11 controls development, with a preferred building height of four storeys.
- 64 The applicant submits the works to the building and site will significantly improve the presentation of the property. This includes new openings, colour, and signs combining with the proposed use of the site to add vibrancy to the site and locality. The Council does not disagree with respect to much of the development, and signs, which the delegate report states will improve the streetscape presentation of a run-down warehouse building with timber paling and galvanised iron fencing in the frontage.
- 65 In addition to issues about the location and workability of the parking area in the front of the site, the Council refers to the lack of front fencing across much of the frontage, and the removal of a side section to allow car access, with respect to the creation of concealed spaces and the poor streetscape outcome.
- 66 There seems to be some uncertainty about the front fence arrangement based on the applicant's comments at the hearing, although this may be readily resolved.
- 67 Although some parties have referred to the heritage precinct, the land is not part of that Heritage Overlay. I think the presentation of the front of the site requires reconsideration, not only the car parking arrangement and site operation.

### **Signs**

- 68 The proposal signs are assessed under clause 52.05 including decision guidelines in that clause.
- 69 No party has opposed the proposed signage.
- 70 The officer's report states the total display area of business identification signs is 16.6m<sup>2</sup>. It says the scale of the signs is compatible with the scale and form of the building, being painted on the façade, and providing an adequate





amount of information without visual clutter. Whilst there is no other illuminated sign in the area facing the residential properties, the report states the proposed illumination will be relatively subtle with strip lighting located beneath the signs and is consistent with the commercial zoning of the land.

## **CAR PARKING**

### **On-site parking provision**

- 71 Respondents express concern about the heavy use of on-street parking, and impacts of current demands by persons attending various places including staff and visitors to the aged care facility, railway station, schools, restaurants. They refer to illegal parking, cars parked over driveways and other impacts. Restrictions currently operate, affecting parking availability for residents and their visitors.
- 72 As I stated earlier, this concern is not one given weight. No parking reduction is required under clause 52.06 and the Council has properly withdrawn its ground of refusal relating to this matter.

### **Car park layout and design**

- 73 The Council, as responsible authority, raises multiple concerns with respect to the parking layout upon which it is not satisfied. This ground is relevant to clause 52.06-9.
- 74 I have referred to the concerns relating to patron and pedestrian safety when considered with the movements required to use parking spaces, and removal/alterations to a fence to facilitate the movements. For example, conflict and pinch points are created by the proposed vehicle parking and swept path area with the pedestrian access points to and from the proposed venue. This fails Design Standard 6.
- 75 I have taken into account that the three car spaces are intended for staff parking. However, their presence is problematic for patron access and egress as well as for the use of bicycle loops when also taking into account the location of new front fencing.
- 76 I have also referred to some uncertainties about the use of Pesky Lane and consequential access impacts and emissions impacts. As I have indicated, the use of the laneway is an opportunity, as historically seems to have been the case, but it is the nature of loading and deliveries that may contribute to congestion and inconvenience for other businesses that rely on the through access this right-of-way provides, along with van/truck vehicle activity.

## **TRAFFIC**

- 77 Residents refer to increased traffic as a consequence of the proposal even though some public transport may be used. They say Carlilse Crescent is an extremely busy road, with very frequent public buses in both directions providing connection to the Oakleigh Station and surrounds. Carlilse Crescent provides an important connection for those wishing to drive east/west across Warrigal Road, to travel south on Warrigal Road and to connect to Kangaroo Road to travel north on Warrigal Road. Carlilse



Crescent is a key connection for local traffic to the Oakleigh Station, and Sacred Heart Girls College (on weekends and weekdays).

- 78 Additional cars visiting a brewery and searching for limited parking in the area will only exacerbate problems associated with the already very busy road. The safety of road users, parked cars and pedestrians in the area will be negatively impacted.
- 79 I accept the proposal has the potential, and prospect, of additional traffic and parking demands in this location. However, I do not find this is a reason to refuse a planning permit, in principle.

#### **NET COMMUNITY BENEFIT**

- 80 The proposal to adapt the subject land for the proposed brewery and licensed premises has failed to demonstrate that the site is an appropriate location for its intended use and activities. The measures advanced fail to adequately demonstrate that the proposed industry and the sale or consumption of liquor permitted by a liquor licence will have an acceptable level of impact on the amenity of the surrounding area. Given the level of uncertainty, I am not persuaded these matters can be resolved by permit conditions.
- 81 Policy support to foster vibrancy, entertainment and commercial development in the MAC is expressly qualified by specific strategies for the periphery of the MAC in recognition of potential impacts on existing residential uses in the adjacent residential area (which also align with considerations in clause 52.27). General policy support does not outweigh the concerns identified about the suitability of the location for the proposal, and its operational and design shortcomings.

#### **CONCLUSION**

- 82 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Margaret Baird  
**Senior Member**