VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P917/2023
PERMIT APPLICATION NO.TPA/54546

APPLICANT	ASRA Industries Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	346 Warrigal Road OAKLEIGH SOUTH VIC 3167
HEARING TYPE	Hearing
DATE OF HEARING	8 March 2024
DATE OF ORDER	8 March 2024

ORDER

Permit granted

1 In application P917/2023 the decision of the responsible authority is set aside.

2 In planning permit application TPA/54546 a permit is granted and directed to be issued for the land at 346 Warrigal Road Oakleigh South VIC 3167 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows the use of the land as a place of assembly (hookah/shisha lounge)

Katherine Paterson
Member

APPEARANCES

For applicant	Frank Perry, Town Planner
For responsible authority	Peter English, Town Planner

INFORMATION

Description of proposal	Use of the existing premises as a place of assembly (hookah/shisha lounge). The maximum number of patrons proposed is 60, while a maximum of three staff are proposed. No food or alcohol is proposed with only light refreshments and coffee provided. No live music is proposed. Carparking would be provided in the form of the existing car park providing nine spaces. It is proposed tat the use will operate in the following hours: • Monday – Wednesday 11am to 12 midnight • Thursday – Saturday 11am to 2am (following morning) • Sunday 11am to 12 midnight
Nature of proceeding	Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	Commercial 2 Zone, Design and Development Overlay 5
Permit requirements	Clause 34.02-1 – To use land for a place of assembly ((hookah/shisha lounge)
Land description	The subject site contains a building with a basement car park containing 9 spaces. It has previously been used as an office and 24 hour gymnasium, ad is currently used as photography studio
Tribunal inspection	26 February 2024

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REASONS[1]

1 For the reasons given orally at the conclusion of the hearing.

Katherine Paterson
Member

[1] The submissions of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

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APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/54546
LAND	346 Warrigal Road OAKLEIGH SOUTH VIC 3167

WHAT THE PERMIT ALLOWS

The permit allows the use of the land as a place of assembly (hookah/shisha lounge) in accordance with the endorsed plans:

CONDITIONS

Amended Plans

1 Before the development starts, plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the advertised application plans but modified to show:

a) Removal the plan title 'Proposed Office' from the plans and replacement with the words 'Site Layout'.

b) Any changes required to ensure the use complies with the requirements of the Acoustic Report required in Conditions 8 & 9.

c) A notation that a Patron Management Plan applies to the use in accordance with Condition 11.

No Alterations

2 The use depicted on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Number of Patrons

3 At any time no more than 60 patrons may be present on the land. The responsible authority may consent in writing to vary this requirement.

Hours of Operation

4 Except with the prior written consent of the Responsible Authority, the use is limited to the following hours:

Hours of operation:

- Monday to Saturday – 11am to 11:00pm
- Sundays – 11am to 10:00pm

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5 No live music is proposed to be played at the venue.

6 No external sound amplification equipment, PA system or loudspeakers are to be used for the purpose of any announcements, broadcasts, playing of music or similar purposes, to the satisfaction of the Responsible Authority.

Acoustic Report

7 Prior to commencement of the use or current with the endorsement of any plans an Acoustic Report to the satisfaction of the Responsible Authority must be prepared by a suitably qualified acoustic engineer and must be submitted to and approved by the Responsible Authority. When approved, the Acoustic Report will be endorsed and will form part of this permit. The acoustic report must make recommendations to limit the noise impacts to ensure they do not exceed the requirements of the Environment Protection Regulations 2021 (as amended from time to time) as measured in accordance with the Noise Protocol. Noise Protocol means the Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues, published by the Environment Protections Authority on its website, as in force from time to time.

8 Any changes required to the site, building and use required to ensure compliance with the Acoustic Report must be clearly identified on the plans and be undertaken and/or implemented prior to commencement of the use on the land.

9 The use must operate in accordance with the requirements and recommendations of the approved endorsed Acoustic Report.

Patron Management

10 Before the use starts, a Patron Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The patron management plan must be prepared by a person with suitable qualifications or experience to the satisfaction of the Responsible Authority and must detail how the venue will operate to ensure any impacts on the surrounding residential area will be managed, including but not limited to:

a) The area to be covered by the Patron Management Plan.

b) The publication of complaints telephone number and email addresses to properties within 100 metres of the site.

c) Procedures to be undertaken by staff in the event of complaints by a member of the public, Victoria Police, or an 'authorised officer' of the Responsible Authority.

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d) Measures to be taken by management and staff to ensure patrons depart the premises and the surrounding area in an orderly manner and car park patrols;

e) The measures to be taken by management and staff to ensure that patrons do not cause nuisance or annoyance to persons when leaving the site.

f) Training of staff in the management of patron behaviour;

g) Details of any measures to work with neighbours and other residents to address complaints and general operational issues; and

h) Any other measures to be undertaken to ensure no unreasonable amenity impacts.

When approved, the patron management plan will be endorsed and will form part of this permit.

11 The provisions, recommendations and requirements of the endorsed Patron Management Plan must be implemented and complied with to the satisfaction the Responsible Authority.

Management/Supervision of Premises

12 At all times when the premises is open for business, a designated manager must be in charge of the premises to the satisfaction of the responsible authority.

13 Before the approved use starts, a prominent notice must be erected at the exit point of the building requesting patrons be quiet when leaving the premises.

Amenity

14 The amenity of the area must not be detrimentally affected by the use or development, through the:

a) transport of materials, goods or commodities to or from the land;

b) appearance of any building, works or materials;

c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, rubbish, grit or oil;

d) presence of vermin; and

e) others as appropriate.

To the satisfaction of the Responsible Authority.

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Expiry of permit for use

15 This permit as it relates to use will expire if the use does not commence within two (2) years after the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the period referred to in this condition.

– End of conditions –

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