

Delegate Report



Mansfield Shire

File Number: DA4267
Planning Application No. P003/22
Responsible Officer: Tim Berger
Attachments: N/A

Conflict of Interest

In accordance with Sections 127 and 128 of the Local Government Act 2020, the author does not have a conflict of interest in this matter.

<i>Application Details</i>	
APPLICANT	C & H Thierry
PROPOSAL	Use and development of the land for Industry (distillery), cellar door and sale and consumption of liquor
APPLICATION LODGED	12 January 2021
STATUTORY DAYS	61 (as at 19 April 2022)
NOTICE AND SUBMISSIONS	The application was advertised to adjoining and nearby owners and occupiers. At the time of writing, 10 objections and 3 letters of support have been received.
<i>Property Details</i>	
PROPERTY ADDRESS	126 Godwills Road, Mansfield
LAND DESCRIPTION	Lot 2 on Plan of Subdivision 444132F
RESTRICTIVE COVENANTS	Section 173 Agreement X700264D – requires: <ol style="list-style-type: none">1. One dwelling only is permitted on Lot 22. Prior to the construction of any building on the site the Owner of Lot 2 must obtain consent from Mansfield Shire Council for the position and design of buildings proposed to be construction on the site.

	<p>3. <i>The dwelling in (2) above must comply with the Good Design Guide.</i></p> <p>4. <i>All buildings are to be located within the Building Envelopes as shown on the plan at Schedule A.</i></p> <p><i>Section 173 Agreement AC183725P requires:</i></p> <p>1. <i>One dwelling only is permitted on Lot 2.</i></p> <p>2. <i>Prior to the construction of any building on the site the Owner of Lot 2 must obtain consent from Mansfield Shire Council for the position and design of buildings proposed to be construction on the site.</i></p> <p>3. <i>The maximum height of a building on Lot 2 must be the same level as the highest point of the natural ground level at the north north west corner of the building envelope.</i></p> <p>The proposal seeks to vary Condition 2 of the Section 173 Agreement, which will be discussed in detailed below.</p>
LAND AREA	48.64ha
EXISTING USE	Dwelling with existing distillery (has operated as a Home Based Business under Clause 52.11 of the Scheme)
<i>Planning Provisions</i>	
ZONE	Farming Zone – Schedule 1 (FZ1)
OVERLAYS	Environmental Significance Overlay – Schedule 1 (ESO1)
MUNICIPAL PLANNING STRATEGY	<p>Clause 02.03-2 – Environmental and landscape values</p> <p>Clause 02.03-4 – Natural resource management</p> <p>Clause 02.03-7 – Economic development</p>
LOCAL PLANNING POLICY FRAMEWORK	<p>Clause 13.02-1S – Bushfire planning</p> <p>Clause 14.01-1S – Protection of agricultural land</p> <p>Clause 14.02-1S – Catchment planning and management</p> <p>Clause 14.02-2S – Water quality</p> <p>Clause 15.01-2S – Building design</p> <p>Clause 15.01-6S – Design for rural areas</p>

	Clause 17.01-1S – Diversified economy Clause 17.04-1S – Facilitating tourism
PARTICULAR PROVISIONS	Clause 52.02 – Easements, Restrictions and Reserves Clause 52.27 – Licensed Premises
<i>Permit Triggers</i>	
	Clause 35.07-1 – A permit is required for the use of land for industry (distillery) as a Section 2 use. Clause 35.07-4 – A permit is required to construct a building or construct or carry out works for a section 2 use and buildings within 100 metres of a waterway. Clause 52.27 – A permit is required to use land to sell and consume liquor.
<i>Other</i>	
CULTURAL SENSITIVITY	No
DWMP RISK RATING (IF RELEVANT)	N/A

Background

Proposal

The permit applicants seek approval for Use and development of the land for Industry (distillery), cellar door and sale and consumption of liquor at 126 Godwills Roads, Mansfield (Lot 2 PS444132F). In this application, the cellar door will consist of three individual tasting pods. The proposed works will be situated to the north of the site, accessed from Godwills Road.

Details of the proposal are as follows:

- The distillery has previously been operating as a home-based business and this proposal now seeks to formalise the use as a permitted use under the zone. The expansion of the operation by adding a cellar door essentially ensures the use is no longer a home-based business and therefore is now a section 2 use. The distillery has a gross floor area of 233.1sqm, encompassing barrel cooperage area, two storage areas (one to store the wine) and workshop.
 - A total of 4 carparks are provided for the distillery, situated to the east of the distillery.

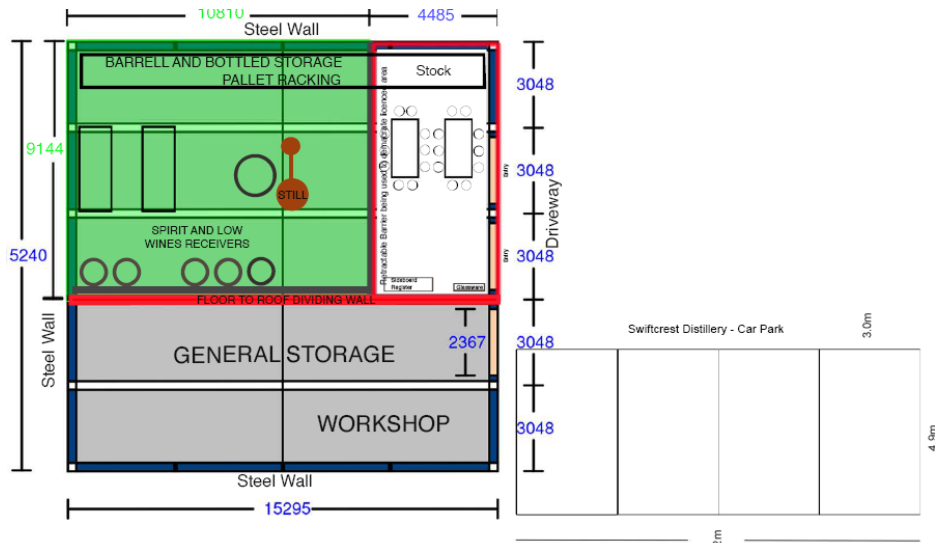


Figure 1: Existing distillery within the site

- Three tasting pods that could accommodate a maximum of 8 people each pod, with three sittings per day. The pods will be ancillary to its primary use (distillery).
 - The operation hours are as follows: 11:00 a.m. to 7:00 p.m.
 - Number of staff: 2 currently, with potential to increase
 - Maximum of customers (for distillery tours): 10 unless extended by request or private tour group, undertaken on Saturday at 11am and 3pm.



Figure 2: Example of a tasting pod

- The tasting pods will be constructed on stumps, minimising any works or scaring on the existing landscape. The proposed pods and buildings will be in muted colours, blending in with the existing rural landscape.

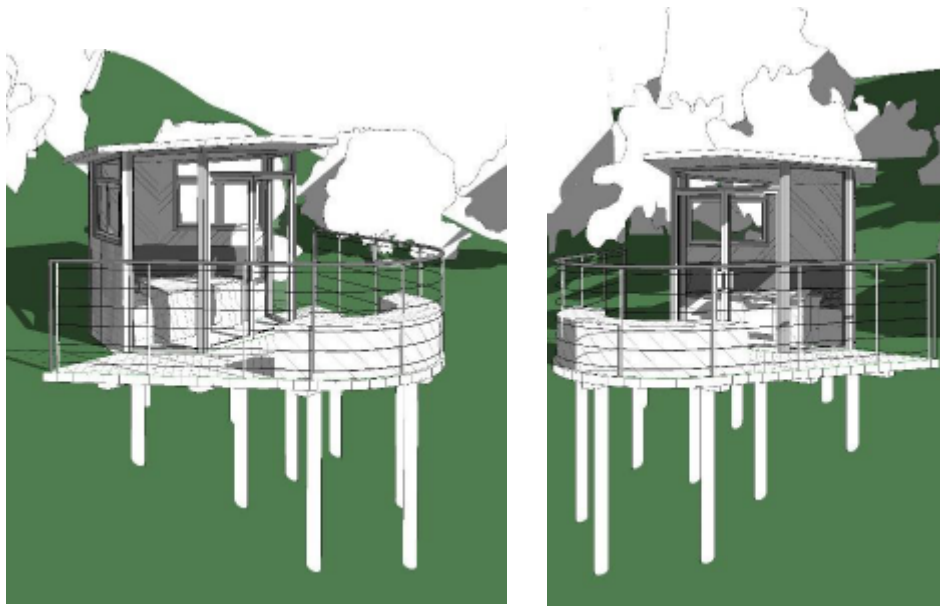


Figure 3: Proposed renders of the tasting pods built on stumps

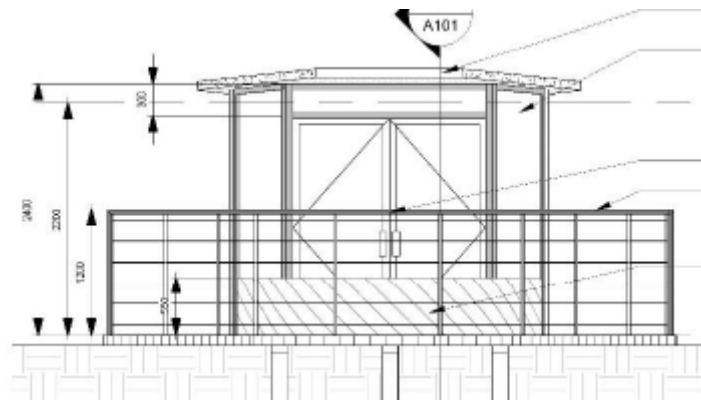


Figure 5: Proposed east elevation of the pod



Figure 4: Proposed west elevation of the pod

- Tours carried out by pre-booking online to manage the number of visitors accordingly.
- A total of 12 parking spaces are provided to the north of the site and 1 disabled parking space located next to the proposed kitchenette.
- A kitchenette including cool room, washing facilities and fridges located to the northwest of the pods.

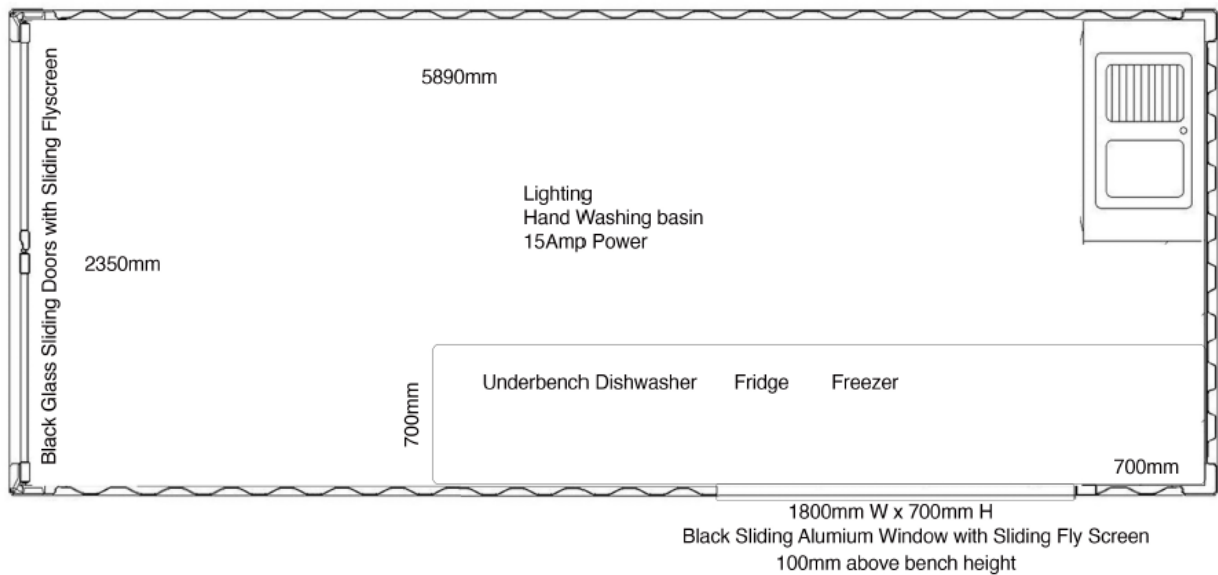


Figure 5: Proposed kitchenette

- A toilet with disabled ambulant facilities will be sited independent of the pods and kitchenette.

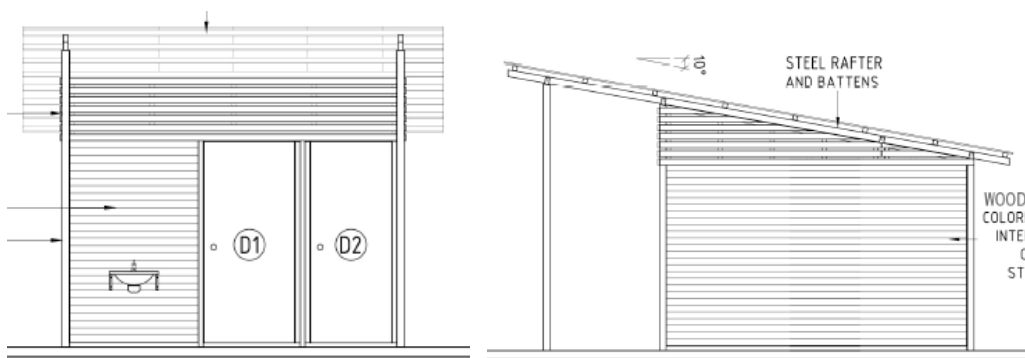


Figure 6: Proposed toilet facilities

- A 10,000L water tank is proposed between the kitchenette and toilet facilities.
- A gravel path is proposed to connect the disabled car park/kitchenette to the tasting pod.
- An experience centre that provides workshops/masterclasses within the top of the hill – location to be confirmed.

A Land Capability Assessment is provided by Eco Vision Australia, submitted as part of this application. A 3,200L septic tank is proposed, ensuring effluent disposal generated from the site is managed appropriately.

Subject site, neighbourhood and environs

The subject site is irregular in shape, encompassing a site area of 48.64 hectares. The site is located on the eastern side of Godwills Road. There are two existing private internal driveways going through the site, accessed off Godwills Road; one situated along the north/northwest and the other along the east/southeast. The site topography is relatively steep, sloping upwards in a southeast – northwest direction, with spot heights across the site varying from 380m to 500m AHD.

The site currently contains an existing dwelling and distillery situated towards the south of the site. The distillery has been operating as a home-based business. Access to these buildings is via the existing private internal roads, located along the east/southeast. The site has several watercourses, feeding into Howes Creek located to the northwest of the site. An existing dam is located to the south of the site, between the existing dwelling and distillery. The remainder of the site consists of open pastures.

The surrounding environment is similar in character, being zoned Farming. The surrounding allotments are varied in sizes, typically consisting of one residential dwelling with several outbuildings. A mix of vacant and newly developed lots are found in the area. The areas further to the northwest and northeast are zoned Rural Living, with the allotments being smaller in size.

The site appears to have access to reticulated power, telecommunications, but not water and sewer.

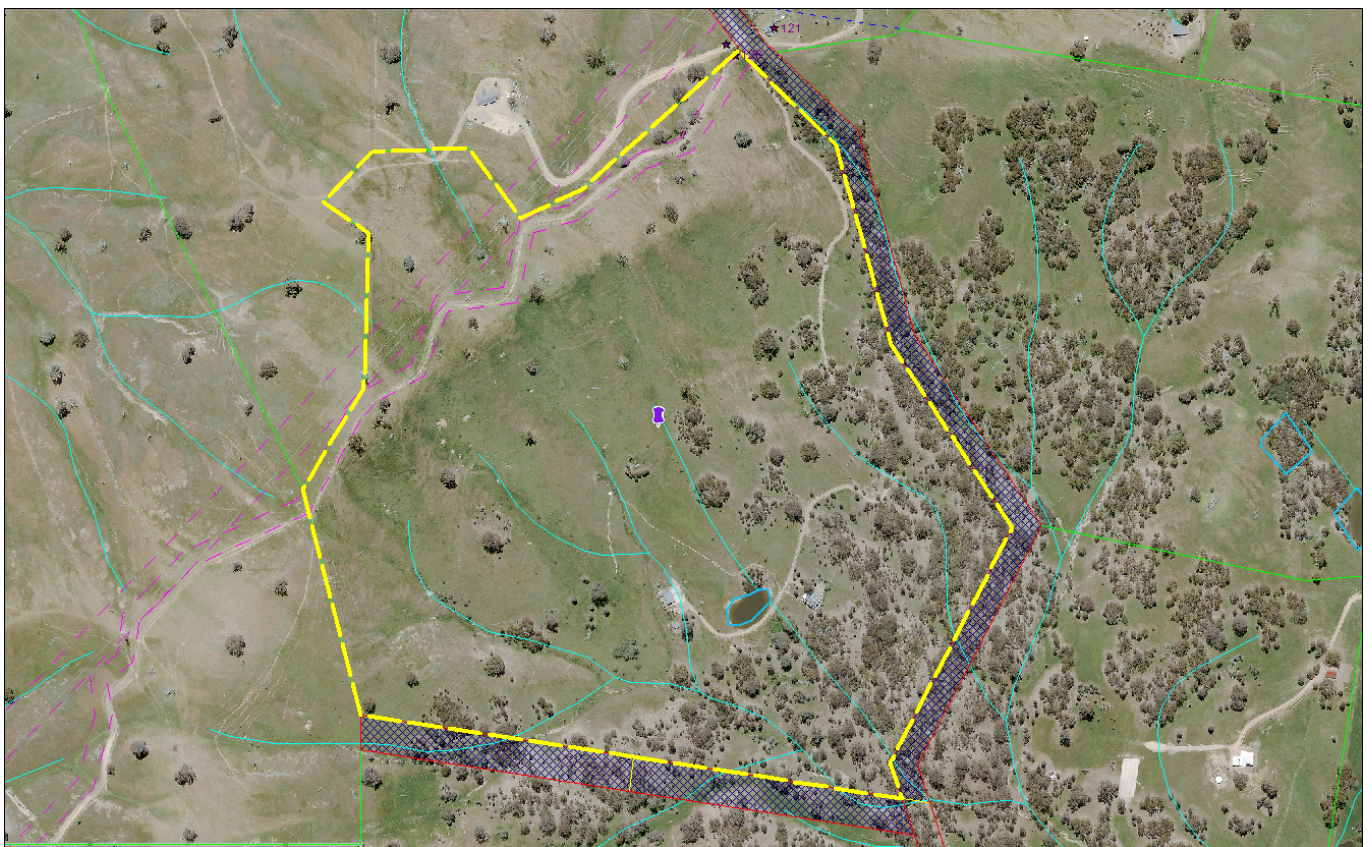


Figure 7: Aerial photo of site and surrounding area (Source: Council GIS 2019 images)

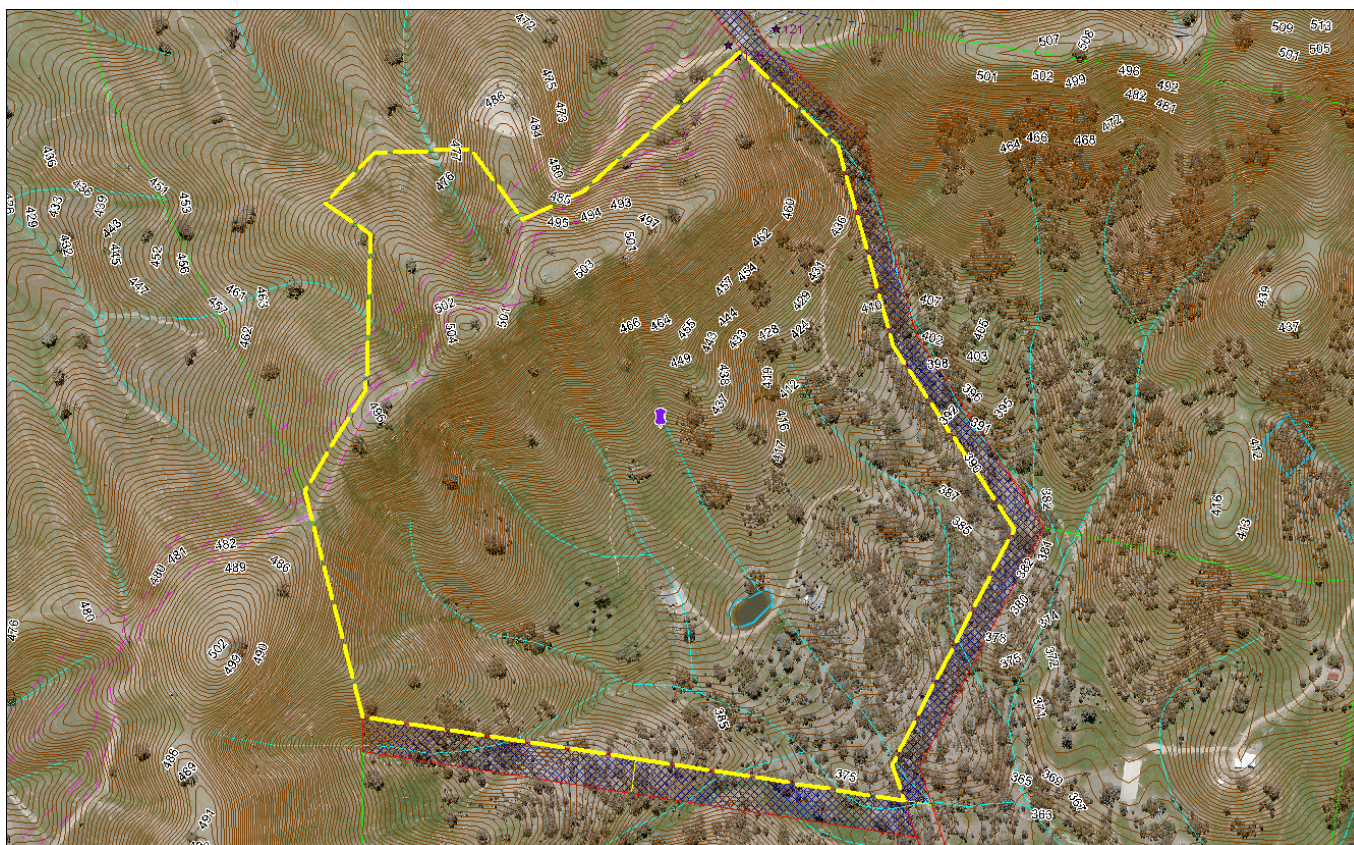


Figure 8: Aerial photo of site and surrounding area with contour mapping at 1 metre intervals (Source: Council GIS 2019 images)

Site History

Planning permits approved for the subject land include the following: -

- P206/13 – Construction of a Rural Store – issued 29 January 2014

Consultation

Referral Responses

Referral Agency	Referral Trigger	Response
GOULBURN-MURRAY WATER (GMW)	Section 55 Determining – Clause 66.02-5 and Clause 66.04	Conditional consent. Response received 8 February 2022

Advertising

Advertising was undertaken pursuant to Section 52 of the *Planning and Environment Act 1987*, by direct mail to adjoining and nearby property owners and occupiers.

As a result of public notification, eleven (11) objections and three (3) letters of support have been received (an additional objection was received and subsequently withdrawn).

The objections submitted raise the following concerns:

- Traffic impacts and road safety concerns from the development
- Safety impacts from non-residents using the road
- Contrary to the rural character of the area
- Privacy impacts to adjoining properties
- Noise impacts
- Visual impacts
- Property devaluation
- Health impacts and air pollution
- Impact of a licenced premises

The permit applicant was provided with copies of objections lodged (with personal identifying information redacted) and provided a written response which was circulated to the objectors. One objection was withdrawn as a result, with all other objections maintained or further comments provided.

These concerns are considered and responded to in the assessment section of this report.

Mansfield Planning Scheme and Context Assessment

Municipal Planning Strategy (MPS)

The following Municipal Planning Strategies are relevant to this application:

Clause 02.03 – Strategic Directions

Clause 02.03-2 – Environmental and landscape values

Biodiversity

Large areas of native vegetation have been cleared for agriculture, especially in the Mansfield basin. Although the current rate of clearing has reduced, the incremental loss of remaining habitat is a major issue. Potential threats to remnant vegetation include clearing (including removal of single paddock trees), salinity, roadside management, lack of regeneration, inappropriate fire regimes, disturbance and damage; including that caused by livestock grazing, timber harvesting and intensification of use and development.

Protection of remnant vegetation is a high priority including in:

- *Roadsides, which provide some of the most significant native habitats and are under threat through pressures from development and degradation.*
- *Riparian zones, where vegetation is particularly important for the protection of native habitat and biodiversity values, but also for its benefits to water quality that result from riparian buffer zones with a width of at least 30 metres.*

Landscapes

The scenic value of the mountains, foothills, valleys and cleared grazing country is characteristic of the municipality and of intrinsic importance to its landscape.

Rural areas are acknowledged as one of the Shire's and the region's greatest assets. Significant for rural production as well as from a natural landscape perspective promoting tourism and attracting visitors to the Shire, many of the rural valleys are recognised as having significant landscape qualities unique to the State and worthy of protection.

Significant landscape and natural features include parts of the Eildon. Development along ridgelines or highly visible slopes can impact the landscape character of the area.

Council's strategic directions for environmental and landscapes values are to:

- *Protect areas of remnant vegetation for their environmental, habitat and scenic values, including roadside vegetation, riparian environments, scattered trees and native grasslands.*
- *Protect the landscape character of the Shire and significant landscape features including large old trees, visually significant ridges and view corridors.*
- *Protect the environmental, landscape and visual significance of rural areas, mountain and environmental features and alpine approach areas.*

Comment:

No native vegetation is proposed for removal as part of this application. This will protect existing vegetation of high priority within the site. Furthermore, the pods will be built on stumps, minimising earthworks required. The construction of the outbuildings will be undertaken in accordance with the EPA guidelines. This ensures the proposed works will not cause any detrimental impacts on the existing biodiversity and landscape values of the area.

Although the pods and associated outbuildings are built near the ridgeline of the site, the buildings will be in muted colours, are small in area and sited to follow contours of the land. Landscape screening will be required between the subject land and adjoining property at 121 Godwills Road to minimise visual impacts from that as a result. This will blend in with the surrounding rural landscape character. Any impacts relating to visual amenity when viewed from the surrounding environment will therefore be minimised.

Clause 02.03-4 – Natural resource management

Agriculture

Rural land is under increasing pressure for residential use and development not associated with the rural use of the land. Productive agricultural land must be maintained to remain agriculturally viable and ensure the ongoing ability to farm is protected. To do so, it is important that only marginal rural land in areas with a minimal visual impact be developed for small scale rural or rural living style development.

Council's strategic directions for the management of agricultural land are to:

- *Protect productive agricultural land from land fragmentation and incompatible use and development.*
- *Support diversifying the agricultural base to include the development of viticulture, horticulture, and more intensified agricultural pursuits.*

Water and Declared Special Water Supply Catchments

Over 95 per cent of the Shire lies within a Declared Special Water Supply Catchment. The catchments include parts of Lake Eildon Environs.

Lake Eildon and Lake Nillahcootie are artificial water storage lakes and significant economic, environmental and tourism resources. However, their primary function is to regulate water supply to downstream irrigation areas. Onsite wastewater management for surrounding use and development is a key issue, with their cumulative impact risking to affect catchment health, water quality and public health. Unsewered towns such as Goughs Bay, Macs Cove and Howqua are located on the shores of Lake Eildon, and Jamieson is located on two of the Lake's key tributaries.

Council's strategic directions for catchment planning and management are to:

- *Protect the environmental significance and visual amenity of local water sources and Special Water Supply Catchments.*
- *Avoid development in catchments that is detrimental to water quality.*
- *Minimise the cumulative impact of onsite wastewater treatment systems on the water quality of Declared Special Water Supply Catchments.*

Comment:

The application is accompanied by a Land Capability Assessment, demonstrating that the site can treat and retain wastewater generated from the use and development. The application was referred to Goulburn Murray Water relating to the Lake Eildon Water Catchment, with no objection received. Siting of the works is limited to the northern portion of the land, on slopes that are largely unsuited to meaningful agricultural production. The siting and nature of the use does not preclude agricultural activities from occurring on the balance of the land consistent with the Farming Zone provisions.

Clause 02.03-7 – Economic DevelopmentAgriculture

Agriculture remains a significant contributor to the local economy with the major agricultural pursuits being timber processing, pasture seed production, wool production, prime lamb and beef production. Most agricultural land has a moderate agricultural land capability rating that is best suited to grazing and crop production.

Tourism

With the significant visual, cultural and environmental value of many areas in the Shire, tourism is a key local economic driver, particularly around nature-based, food and wine, (on- and off-road) bicycle tourism. Popular tourist destinations in and around Mansfield include:

- *Lake Eildon for water-based activities such as house boating, fishing and water skiing.*

The proximity of Lake Eildon to Melbourne has also made its environs popular for the establishment of 'weekenders' and holiday homes, similarly to other local townships providing both close access to Melbourne, Mansfield infrastructure and services and nature.

The increasing number of visitors and added pressure to provide entertainment and recreation facilities that help reinforce Mansfield's competitive advantage in the tourism sector can negatively impact the built and natural environment and landscape character of the area.

Council's strategic directions for economic development are to:

- *Diversify the economic base, particularly to reinforce the role of the Shire as a year-round tourism destination.*
- *Support environmentally sustainable industries as alternatives to the traditional forms of industry.*
- *Support the continued growth of the agricultural sector*
- *Support traditional and emerging forms of agriculture.*
- *Attract high quality tourism development that is compatible with the environmental attributes and character of the area.*
- *Minimise the negative impact that tourism can have on the built and natural environment.*

Comment:

Food and wine tourism is one of the key drivers for tourist visitation in Mansfield Shire, with the proposal offering private tours to the distillery, but also offers visitors a boutique experience in a tasting pod. The pods experience will provide visitors the opportunity to enjoy the scenic views of the surrounding high country unique to the Shire.

Planning Policy Framework (PPF)

The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the Planning and Environment Act 1987) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

Clause 13.02-1S – Bushfire planning

Objective

To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

Comment:

The emphasis of relevant policy at the State and Local level is on the preservation of landscapes and character of areas like Mansfield and as the highest priority the preservation of human life in bushfire affected areas. This clause requires the Responsible Authority to ensure the protection of human life *over all other policy considerations*.

As the proposal will result in a congregation of people unfamiliar with the area, it is recommended that a Bushfire Emergency Management Plan be prepared and implemented for the activity to mitigate the risk to human life to an acceptable level.

Clause 14.01-1S – Protection of agricultural land

Objective

To protect the state’s agricultural base by preserving productive farmland.

Comment:

While the proposal does not support agricultural production, the siting of the works and nature of the land around the site allows for agriculture to continue if sought (such as grazing activities). The proposal is sited close to the northern boundary of the land, allowing the balance of the land to be retained for potential agricultural use. Given the siting of the works and surrounding activities, the proposal will not prejudice the use of nearby land for agriculture.

Clause 14.02-1S – Catchment planning and management

Objective

To assist the protection and restoration of catchments, water bodies, groundwater, and the marine environment.

Comment:

The site consists of various watercourses, with one being situated approximately 50m away from the proposed buildings. The closest distance of the proposed works to the river will be setback more than 50m from the watercourse (Fig 9). Goulburn-Murray Water has reviewed the application and raised no objections to the proposal subject to conditions.

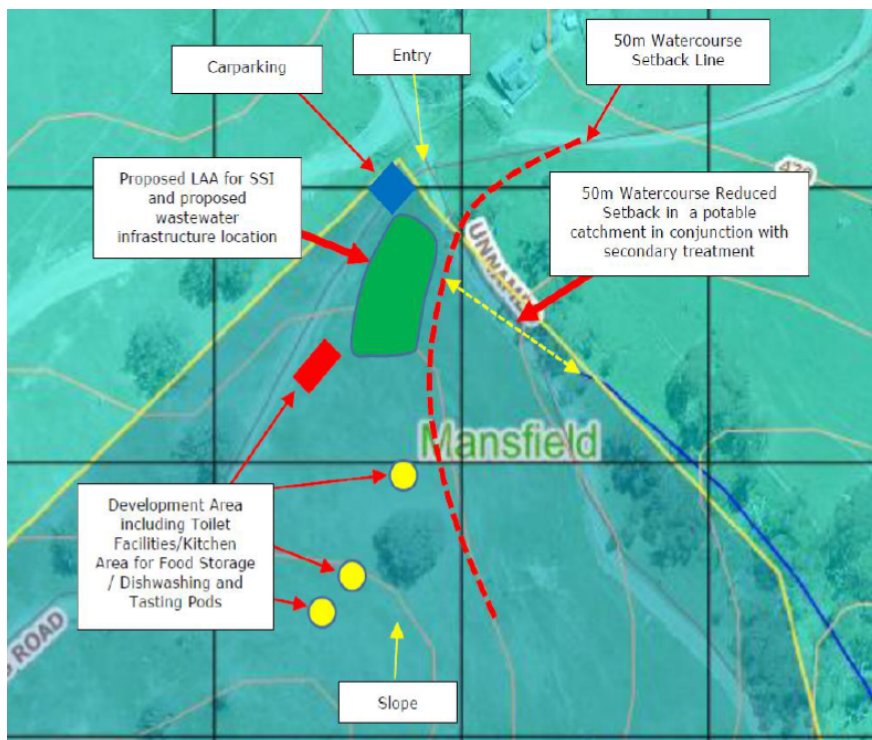


Figure 9: Proposed buildings being setback more than 50m from the watercourse (red line)

Clause 14.02-2S – Water quality

Objective

To protect water quality.

Comment:

As noted above, the pods will be built on stumps, minimising earthworks required as opposed to being built in-ground. Whilst the kitchenette and toilet are built in-ground, it only occupies a total building footprint of 26.1sqm. All works will be undertaken to EPA guidelines.

Clause 15.01-2S – Building design

Objective

To achieve building design outcomes that contribute positively to the local context and enhance the public realm.

Comment:

The proposed tasting pods and associated outbuildings are all low-scale development, nestled into the topography of the land. The proposed buildings will be in muted colours, which will be managed by conditions on permit. The proposal is therefore considered to commensurate with the rural character of the surrounding area. The site is not identified as being in area of particular visual amenity (noting that the area exhibits landscape characteristics that would be valued by landowners in that area), and the development does not detract from this rural character.

Clause 15.01-6S – Design for rural areas

Objective

To ensure development respects valued areas of rural character.

Comment:

As discussed, the proposal is commensurate with the reasonable expectations of development forms in a rural landscape, which will not unreasonably impede on the natural scenery of the area as experienced from the public or private realm. The buildings are small in scale, nestled into the side of the hill (as opposed to the ridgeline) and will be constructed in muted, non-reflective tones to suit the landscape. Combined with required landscaping and the scale of the development, the buildings will have limited visibility from nearby properties.

Clause 17.01-1S – Diversified economy

Objective

To strengthen and diversify the economy.

Comment:

By proposing tasting pods and associated outbuildings will enhance visitors experience into the area while visiting the distillery. The pods experience will provide visitors the opportunity to enjoy the scenic views of the surrounding high country unique to the Shire with local products, consistent with the intent of this clause.

Clause 17.04-1S – Facilitating tourism

Objective

To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.

Comment:

Given the various activities proposed within the site, it will facilitate tourism into the Shire. The proposal will not only offer visitors an opportunity the taste of local produce but will also offer scenic high-country views unique to the Shire.

Zoning

Clause 35.07 – Farming Zone (FZ)

Purpose

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for the use of land for agriculture.*
- *To encourage the retention of productive agricultural land.*
- *To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.*
- *To encourage the retention of employment and population to support rural communities.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*
- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

Decision guidelines

Before deciding on an application to use or subdivide land, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

General issues

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *Any Regional Catchment Strategy and associated plan applying to the land.*
- *The capability of the land to accommodate the proposed use or development, including the disposal of effluent.*
- *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.*

Agricultural issues and the impacts from non-agricultural uses

- *Whether the use or development will support and enhance agricultural production.*
- *Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.*
- *The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.*
- *The capacity of the site to sustain the agricultural use.*
- *The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.*

Environmental issues

- *The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.*
- *The impact of the use or development on the flora and fauna on the site and its surrounds.*
- *The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.*
- *The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.*

Design and siting issues

- *The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.*
- *The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.*
- *The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.*
- *The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.*
- *Whether the use or development will require traffic management measures.*

Comment:

The relevant provisions of the Municipal Planning Strategy and the Planning Policy Framework are discussed earlier in this report. The application material demonstrates that the land can support the use and development, with the assessment to be undertaken relating to whether such use and development is appropriate for the site.

In terms of agricultural issues, the development will not support and enhance agricultural production on the lot. However, it is considered that the proposal will not be of detriment to agricultural production of the site and area. The use occupies a small area of the site in the northern corner of the lot, with the balance of the land suitable for agricultural activities unimpeded by the proposal. The works are sited appropriately having regard to other agricultural uses in the area, with no land use conflicts expected as a result.

Buildings associated with the use are clustered together and sited/designed so as to minimise visual impacts from surrounding public and private land. Given the proximity of the dwelling at 121 Godwills Road to the development area, conditions are recommended to

ensure landscaping of this boundary and re-siting of the car parking area to minimise potential visual impacts from the development.

Concerns have been raised in objections as to the traffic generation of the activity. Access to the site is gained via Old Tonga Road to Godwills Road; both of which are unsealed Council roads. Given the nature of the land use proposed, it is considered that traffic volumes will be moderate in the context of a rural road, with the existing road network suitable to accommodate the potential traffic to the site. Traffic to the pods will be mitigated by operating parameters, being that each pod is highly unlikely to have 8 patrons on site at the same time, each attending by individual private vehicle – pods are booked by people in groups between 1-8, with larger groups likely to attend in a smaller number of vehicles. No vehicles such as coaches, buses or trucks are proposed to attend the site. Behaviour of road users on the public road network is beyond the control of the operator, however road users will need to drive to conditions in the same manner as any other rural road.

For these reasons, the proposal is considered acceptable against the relevant provisions of the Farming Zone.

Overlays

Clause 42.01 – Environmental Significance Overlay – Schedule 1 (ESO1)

Purpose

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To identify areas where the development of land may be affected by environmental constraints.*
- *To ensure that development is compatible with identified environmental values.*

Comment:

The subject land is within the Environmental Significance Overlay (ESO1). However, a permit is not required for the construction of the proposed buildings in accordance with Clause 3.0 under Schedule 1 of the Environmental Significance Overlay, as the site area is more than 40 hectares (being 48.64ha) and a Land Capability Assessment is prepared in accordance with the EPA guidelines.

Particular Provisions

Clause 52.06 – Car Parking

Purpose

- *To ensure that car parking is provided in accordance with the Municipal Planning Strategy and the Planning Policy Framework.*
- *To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.*
- *To ensure that car parking does not adversely affect the amenity of the locality.*
- *To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.*

Comment:

The distillery has a floor area of approximately 233.1sqm, which requires a total of 5 parking spaces according to Column A of Clause 52.06-5. There are four parking spaces provided beside the distillery and another 12 parking spaces provided for the tasting pods.

The pods are considered ancillary to the distillery which does not require any parking spaces to be provided. The proposal therefore provides sufficient parking spaces and therefore does not require a permit. All car parking spaces comply with the design requirements of Clause 52.06-9.

Clause 52.27 – Licensed Premises

Purpose

- *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.*

Comment:

A permit is required to use land to sell or consume liquor under the *Liquor Control Reform Act 1998*. As noted above, food and wine tourism are one of the key drivers for tourist visitation in Mansfield Shire. Given the location of the site, the sale and consumption of liquor will contribute to a positive impact to the local economy.

The operation hours of the distillery are from 7am to 9pm, which is primarily for manufacturing, which is considered appropriate. No light spills or noise impacts will be generated after 9pm. Any impacts on the residential amenity of the surrounding environment will therefore be maintained.

The proposal will only open for tours on Saturdays at 11am and 3pm, limited to a total of 10 patrons in one setting (can be extended by request). Sale and consumption of liquor within the 'pods' is largely limited to tastings as part of a booked session, with the likelihood of adverse impacts from on-site liquor consumption minimal. The number of patrons is considered acceptable as it will not generate a large crowd into the area. Any noise impacts will also be controlled and managed appropriately, ensuring the amenity of the surrounding residents will be protected.

General Provisions

Clause 65.01 – Approval of an Application or Plan

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- *The matters set out in Section 60 of the Act.*
- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The purpose of the zone, overlay or other provision.*
- *Any matter required to be considered in the zone, overlay or other provision.*
- *The orderly planning of the area.*

- *The effect on the environment and amenity of the area.*
- *The proximity of the land to any public land.*
- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*
- *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*
- *The extent and character of native vegetation and the likelihood of its destruction.*
- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*
- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*

Comment:

The proposed use and development will be generally in accordance with the relevant matters in this Clause. As explored through this report, matters relating to water quality are suitably addressed as part of the application. No native vegetation removal is required, and no unreasonable amenity impacts to adjoining or nearby public or private land are expected.

Section 173 Agreements

The section 173 agreements include a restriction on regarding buildings within a building envelope and these are as follows:

Condition 2 reads the following:

7. COVENANTS BY THE OWNER

The Owner agrees and covenants excepting with the further written consent of the Responsible Authority to provide for the following:-

- (1) One dwelling only is permitted on Lot 2.
- (2) Prior to the construction of any building on the site the Owner of Lot 2 must obtain consent from Delatite Shire Council for the position and design of buildings proposed to be construction on the site.
- (3) The dwelling in (2) above must comply with the Good Design Guide.
- (4) All buildings are to be located within the Building Envelopes as shown on the plan at Schedule A.

Figure 10: Covenant restrictions of Section 173 Agreement, X700264D.

7. COVENANTS BY THE OWNER

The Owner agrees and covenants excepting with the further written consent of the Responsible Authority to provide for the following :

- (1) One dwelling only is permitted on Lot 2.
- (2) Prior to the construction of any building on the site the Owner of Lot 2 must obtain consent from Mansfield Shire Council for the position and design of buildings proposed to be constructed on the site.
- (3) The maximum height of a building on Lot 2 must be the same level as the highest point of the natural ground level at the north north west corner of the building envelope.

Figure 11: Covenant restrictions of Section 173 Agreement, AC183725P.

The Agreements above allow consideration for the position and design of buildings proposed within the site by obtaining consent from Mansfield Shire Council. The applicant therefore seeks permission from Council to build the pods and ancillary buildings to the north (near the entrance), which is outside of the building envelope shown in Schedule A. This is not a permit trigger as such, but a matter requiring Council consent.

The location of the pods and associated outbuildings is considered appropriate, being situated near the hilltop. This allows visitors to enjoy the views of the high country and surrounding landscape unique to the Shire, with siting that minimises visual impacts. Furthermore, by locating the pods and associated outbuildings away from the main distillery will provide more opportunities for visitors to enjoy the views of the existing scenic rural landscape. This is consistent with the Mansfield Planning Scheme, encouraging tourism to the Shire. Given the proposal will reinforce the role of the Shire as a year-round tourism destination, the proposed location of the buildings is therefore considered acceptable.

Response to Objections

Concern: Traffic impacts and road safety concerns from the development

Response: The proposal, at maximum capacity would result in 24 patrons utilising the pods, and 10 undertaking a tour of the distillery. These activities rarely overlap and would further be unlikely to be at maximum occupancy with every individual using different vehicles (particularly given the nature of the use). The likely traffic impacts from the proposal are well within what can be expected to be accommodated on the existing road network to the subject site.

Concern: Safety impacts from non-residents using the road

Response: Road users will be required to drive to conditions, as is the case on rural/regional roads across Victoria. The manner in which visitors to the site drive is not within the control of the permit holder, with it being a reasonable expectation that all visitors will drive in accordance with relevant road rules.

Concern: Contrary to the rural character of the area

Response: The proposed works are limited in scale, located below the ridgeline and consistent with rural tourism developments found elsewhere in Mansfield Shire and regional Victoria. The development is considered to be commensurate with rural development forms in the area and consistent with the surrounding character.

Concern: Privacy impacts to adjoining properties

Response: The proposed tasting pods/cellar door is located approximately 100 metres from the closest dwelling at 121 Godwills Road, with the car parking area located at least 50 metres from this dwelling as required by the proposed conditions. Landscape screening is to be required on the common boundary with this property. In light of this, privacy is considered to be appropriately maintained having regard to the zoning and context of the site.

Concern: Noise impacts

Response: The use is largely confined to the proposed buildings on the land. Given the scale of the use and nature of the activity, noise emissions from the site will likely be minimal and contained within the buildings. Conditions will be imposed on any permit issued to ensure compliance with EPA noise requirements to protect the amenity of nearby properties.

Concern: Visual impacts

Response: The proposed works are sited below the ridgeline of the property, with a minimal footprint and vegetation screening to be required to the adjoining property at 121 Godwills Road. The buildings are to be constructed in muted, non-reflective tones and are small scale that will nestle into the landscape.

Concern: Property devaluation

Response: As has been regularly held by the Victorian Civil and Administrative Tribunal, property values are not a relevant planning consideration.

Concern: Health impacts and air pollution

Response: This concern appears to be a broader concern relating to the impacts of traffic on the road, which is not within the control of the permit holder. Old Tonga Road and Godwills Road are public roads available for use by all members of the public, with the intensity of the development such that health impacts and pollution are unlikely to result.

Concern: Impact of a licenced premises

Response: The sale and consumption of liquor on the site is largely limited to tastings, to assist in packaged liquor sales for later consumption off the premises. Given the nature of the use, operating hours and capacity, it is unlikely that adverse amenity impacts/antisocial behaviour will occur as a result of on-site liquor consumption.

Conclusions

This application proposes the Use and development of the land for Industry (distillery), cellar door and sale and consumption of liquor known as 126 Godwills Road, Mansfield formally known as Lot 2 PS444132. Having assessed the application against the relevant clauses of the Mansfield Planning Scheme, it is considered that the proposal responds positively to the site and surrounding area, providing for a small-scale tourism development associated with a boutique manufacturing operation consistent with relevant Planning Policy and other similar operations within the Mansfield Shire.

Officer Recommendation

NOTICE OF DECISION TO GRANT A PLANNING PERMIT

That Council issue a **Notice of Decision** for Planning Application P003/22 for Use and development of the land for Industry (distillery), cellar door and sale and consumption of liquor on **Lot 2 on Plan of Subdivision 444132F**, commonly addressed as 126 Godwills Road, Mansfield in accordance with the endorsed plans and subject to the following conditions: -

ATTACHMENT ONE – DRAFT PLANNING PERMIT CONDITIONS

DRAFT PERMIT CONDITIONS P003/22

Proposal: Use and Development of Industry (Distillery), Cellar Door and Sale and Consumption of Liquor

126 Godwills Road, MANSFIELD

Amended Plans Required

1. Prior to the endorsement of plans, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the plans will be endorsed and will then form part of the permit.

The plans must be generally in accordance with those submitted with the application, but modified to show:

(a) Relocation of the car parking area to be setback at least 50 metres from the dwelling at 121 Godwills Road at the closest car parking space.

(b) A landscaping plan prepared by a suitable landscape professional, that must show:

- i. A survey (including botanical names) of all existing vegetation to be retained within 15 metres of development areas.
- ii. A range of plant types such as large shrubs and trees that form a vegetation screen along the shared boundary of the subject land and 121 Godwills Road, except where vehicle access is required. The landscape area must be at least 10 metres width.
- iii. A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity and quantities of each plant.
- iv. At least 50% species selection by type and number must be indigenous to the local Ecological Vegetation Class to the satisfaction of the Responsible Authority.
- v. All trees must to be installed at a minimum pot size of 250mm and height when planted of 1.5 metres and shrubs installed at a minimum pot size of 200mm.
- vi. The provision of notes regarding site preparation, including the removal of all weeds, proposed mulch, planting instructions, plant establishment procedures and any specific maintenance requirements.

(c) Details of any cut/fill required to accommodate the relocated car parking area.

Endorsed Plans Condition

2. The use and development as shown on the endorsed plans must not be altered or modified without the written consent of the responsible authority.

Amenity Condition

3. The use must not detrimentally affect the amenity of the neighbourhood to the satisfaction of the Responsible Authority, including through the:
 - a) Transport of materials, goods or commodities to or from the land;
 - b) Appearance of any building, works or materials; or
 - c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.

Waste Management

4. Prior to the commencement of the use, a Waste Management Plan must be submitted and approved to the satisfaction of the Responsible Authority. The Plan must include, but not limited to the following:
 - a) Calculations showing the amount of waste and recycling expected to be generated;
 - b) A statement of whether the industry waste and recycling will be collected by Council or a private collection, stating the size of bins, frequency of collection and hours of collection;
 - c) State where and when the bins will be placed for waste collection; and
 - d) Confirm that the bins will be removed from the street promptly after collection.

When submitted and approved to the satisfaction of the Responsible Authority, the Waste Management Plan and associated notated plans will form part of this permit.

Hours of Operation

5. The use allowed by this permit must operate only between the following hours:
 - Distillery
 - i. Production - Monday to Sunday: 7am – 9pm
 - ii. Tours - Saturday: 10am – 7pm
 - Tasting pods (cellar door)
 - i. Thursday to Sunday: 10am - 7pm

Maximum Number of Patrons

6. Each pod/cellar door structure may have no more than 8 persons at any one time (excluding staff).
7. Except with the written consent of the Responsible Authority, the distillery tours must not have more than 10 persons at any one time (excluding staff).

Noise

8. Noise levels associated with the use must at all times comply with the Environment Protection Regulations under the *Environment Protection Act 2017* and the incorporated Noise Protocol (Publication 1826.2, Noise Limit and Assessment Protocol for the Control of Noise from Commercial, Industrial and Trade Premises and Entertainment Venues, Environmental Protection authority, March 2021), or any other superseding regulation.

Should the Responsible Authority deem it necessary, the owner and/or occupier of the land must submit an Acoustic Report to the satisfaction of the Responsible Authority which demonstrates compliance, or which outlines any measures considered necessary to achieve compliance.

The recommendations of the Acoustic Report must be implemented no later than three (3) months after the date that the Responsible Authority advises in writing that it is satisfied with the report, or as otherwise agreed in writing by the Responsible Authority. The endorsed plans must also be amended within three (3) months, or as otherwise agreed in writing by the Responsible Authority, to accord with the recommendations contained in the Acoustic Report to the satisfaction of the Responsible Authority.

External Materials

9. The external materials of the building allowed under this permit, including the roof, must be constructed of materials that are of muted colours. No materials having a highly reflective surface must be used.

For the purpose of the condition “highly reflective” includes unpainted or unpainted aluminium, zinc or similar materials. Cladding materials must be coloured or painted in muted colours.

Landscaping

10. Unless with the prior written consent of the Responsible Authority, within 3 months of the commencement of the use of the cellar door/tasting pods hereby permitted, the landscaping as shown on the endorsed plans must be carried out, completed and maintained to the satisfaction of the Responsible Authority.
11. Unless otherwise agreed in writing by the Responsible Authority, the landscaping areas shown on the endorsed plans must be used for landscaping and no other purpose and any landscaping must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

Tree Protection

12. Prior to the commencement of works, a Tree Protection Zone must be set up around all trees within 15 metres of any works to be undertaken. The Tree Protection Zone must be established in accordance with the relevant Australian Standard and maintained until all development works are completed.

13. The owner and/or occupier of the site must ensure that, prior to the commencement of works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained and are advised of any obligations in relation to the protection of trees.
14. No trenching or soil excavation is to occur within the Tree Protection Zones of retained trees unless shown on the endorsed plans without the written consent of the Responsible Authority.

Licensed Premises

15. Liquor must only be sold and consumed in the red-line area shown on the endorsed plan, to the satisfaction of the Responsible Authority.
16. Except with the prior written consent of the Responsible Authority, the consumption of alcohol on the premises must only be undertaken between the following hours:
 - (a) Thursday to Monday: 10am – 7pm

Car Parking and Access

17. Prior to the commencement of use of the building/s hereby approved, all car parking spaces and access lanes shown on the endorsed plans must be:
 - Constructed in an all weather surface;
 - Properly formed to such levels that they can be used in accordance with the plans;
 - Drained; and
 - Marked to indicate each car space and all access lanes;

to the satisfaction of the Responsible Authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times.

Bushfire Emergency Management Plan

18. Before the commencement of the use, a Bushfire Emergency Management Plan to satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority in consultation with the Country Fire Authority. The plan must address the following matters:
 - Site management to reduce the impact of bushfire in the area on the site;
 - Management actions during the declared Fire Danger Period;
 - Management responses to the forecast Fire Danger Rating on each day of operation, including closing the camping area on days of Extreme and Code Red;

- Actions in the event of a bushfire threatening or impacting on the site, including details of the location/s for emergency assembly, evacuation and shelter-in-place (in the event that evacuation from the site is not practicable).
- Measures to reduce the risk of fire starting on the site;
- Transport arrangements for staff and visitors;
- The need for any additional arrangements for persons with special needs;
- Training for staff, visitors on emergency procedures;
- The nature and frequency of emergency procedure exercises
- Actions for other emergencies (non-bushfire);
- Emergency procedures including the assignment of roles and responsibilities to staff. This must include assigning responsibility for the:
 - i. Management and oversight of emergency procedures
 - ii. Training of employees in emergency procedures
 - iii. Reviewing the effectiveness of emergency procedure exercises and implementing procedure improvements
 - iv. Accounting for all persons during the emergency procedures
 - v. Monitoring and review of the Emergency Plans at least annually.

Engineering Conditions

19. Appropriate measures must be implemented throughout the construction stage of development to rectify and/or minimise mud, crushed rock or other debris being carried onto public roads or footpaths from the subject land to the satisfaction of the Responsible Authority.
20. Before the commencement of use of the cellar door/tasting pods, or by such later date as is approved by the Responsible Authority in writing, the following works must be completed in accordance with the endorsed plans and to the satisfaction of the Responsible Authority:
- (a) All stormwater discharging from the site, buildings, vehicle access ways and works must be discharged to a water tank, soakwell or otherwise discharged so as not to cause erosion, flooding or nuisance to the subject or surrounding land to the satisfaction of the Responsible Authority. The water tank/s (if required) must be in muted, non reflective tones to the satisfaction of the Responsible Authority;
 - (b) The areas shown on the endorsed plans for vehicle access to the permitted buildings and works must be constructed in accordance with the endorsed plans and be surfaced with concrete, reinforced concrete, brick paving, gravel, crushed rock or hot

mix asphalt so as to prevent mud or other debris from being carried onto the road to the satisfaction of the Responsible Authority.

21. Any damage to Council managed assets (such as roads and stormwater infrastructure) as a result of the development must be repaired at the cost of the developer to the satisfaction of the Responsible Authority.
22. All construction and ongoing activities must be in accordance with sediment control principles outlined in 'Construction Techniques for Sediment Pollution Control' (EPA, 1991) to the satisfaction of the Responsible Authority.

Wastewater Conditions

23. Prior to the commencement of works associated with the toilet and kitchenette, an *Application for a Permit to Install* a septic tank system must be submitted and approved by Council prior to any installation.
24. Stormwater from the works must not be permitted to enter the effluent disposal field, septic tank or any associated wastewater infrastructure to the satisfaction of the Responsible Authority.

Goulburn-Murray Water Conditions

25. All construction and ongoing activities must be in accordance with sediment control principles outlined in 'Construction Techniques for Sediment Pollution Control' (EPA, 1991).
26. All wastewater from the kitchenette and toilet facilities must be treated to a standard of at least 20mg/L BOD and 30mg/L suspended solids using a package treatment plant or equivalent. The system must be an EPA approved system, installed, operated and maintained in accordance with the relevant EPA Code of Practice and Certificate of Conformity.
27. As required by the current EPA – Code of Practice *On-site Wastewater Management*, Publication 891.4, July 2016, the wastewater disposal area must meet minimum setback distances of 100m from the nearest waterway, 60m from any dams, 20m from any bores and 40m from any drainage lines. Reduced setbacks may be applied in accordance with the requirements of the current EPA – Code of Practice *On-site Wastewater Management*, Publication 891.4, July 2016, where wastewater is treated to a secondary standard.
28. The wastewater disposal area must be kept free of stock, buildings, driveways and service trenching and must be planted with appropriate vegetation to maximise its performance. Stormwater must be diverted away. A reserve wastewater disposal field of equivalent size to the primary disposal field must be provided for use in the event that the primary field requires resting or has failed.

Permit Expiry

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

- a) The development is not started within two (2) years of the date of this permit
- b) The development is not completed and use commenced within four (4) years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing in accordance with the *Planning and Environment Act 1987*.