



6.2 108 ORMOND ROAD, ELWOOD (PDPL/00013/2023)
LOCATION/ADDRESS: 108 ORMOND ROAD, ELWOOD
EXECUTIVE MEMBER: LAUREN BIALKOWER, ACTING GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT
PREPARED BY: DONNA D'ALESSANDRO, MANAGER CITY DEVELOPMENT
MARK FRIEDRICHSEN, SENIOR PLANNER

1. PURPOSE

1.1 To consider and determine Planning Application PDPL/00013/2023 for use of the land for the sale of packaged liquor for consumption off the premises

2. EXECUTIVE SUMMARY

WARD:	Canal
TRIGGER FOR DETERMINATION BY COMMITTEE:	More than 16 objections
APPLICATION NO:	PDPL/00013/2023
APPLICANT:	BHS Hospitality Pty Ltd
EXISTING USE:	Vacant commercial premises
ABUTTING USES:	Commercial
ZONING:	Commercial 1 Zone
OVERLAYS:	Design and Development Overlay – Schedule 18 (Elwood Neighbourhood Activity Centres and Adjoining Residential Land) Special Building Overlay – Schedule 2 (Port Phillip City Council Local Drain)
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired

- 2.1 This application seeks approval to use the land for the sale of packaged liquor for consumption off the premises.
- 2.2 The site contains an attached single-storey commercial building which forms one of a row of three near-identical Victorian era buildings. The subject building's façade at ground level has been substantially altered and features an aluminium framed shopfront. The site formerly hosted a dry-cleaning business.
- 2.3 Ormond Road runs in a generally east-west direction between St Kilda Street and Glen Huntly Road. The site is regular in shape with a frontage to Ormond Road of 4.7 metres, a depth of 47.5 metres and an overall area of 223 square metres.
- 2.4 The application does not propose any buildings and works, other than an internal fitout which does not require planning approval.
- 2.5 A planning permit is required pursuant to Clause 52.27 (Licensed Premises) of the Port Phillip Planning Scheme.



- 2.6 Proposed hours for the sale of liquor are:
- Monday to Saturday: 9am to 11pm
 - Sunday: 10am to 11pm
 - ANZAC Day: 12 noon to 11pm
- 2.7 The licensed area would be 104m² with patron access provided via the main entry door off Ormond Road. One existing car parking space at the rear of the site will be retained.
- 2.8 The application was advertised, and 28 objections received. Key concerns include:
- Oversupply of liquor outlets
 - Negative impact to the area, including health, anti-social behaviour and vandalism
 - Does not promote diversity in retailers
 - Negative financial impact on existing retailers providing the same service
- 2.9 A Consultation meeting was held on 28 March 2023. The meeting was attended by Ward Councillors, the applicants, six objectors and Planning Officers. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns, and for the applicant to respond. The meeting did not result in any changes to the proposal.
- 2.10 The proposal is considered acceptable for the following reasons:
- The proposed retail shop for sale of packaged liquor is modest in size, with appropriate hours and is an acceptable use for a local activity centre;
 - The proposal would not have an unreasonable amenity impact on the surrounding area.
- 2.11 It is recommendation Notice of Decision to Grant a Permit (NOD) be issued for this application, subject to recommending conditions.

3. RECOMMENDATION A

- 3.1 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Grant a Permit.
- 3.2 That a Notice of Decision to Grant a Permit be issued for **the use of the land for the sale of packaged liquor for consumption off premises** at 108 Ormond Road, Elwood.

- 3.3 That the decision be issued as follows:


No Alterations

- 1 The layout and description of the use as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority

Hours for the Sale of Liquor

- 2 Without the prior written consent of the Responsible Authority, liquor may only be sold on the site between the following times:
- 9am – 11pm Monday to Sunday
 - 10am - 11pm Sunday

7. SITE AND SURROUNDS

Description of Site and Surrounds	
Site Area	Approximately 223m ²
Existing building & site conditions	<p>The site is regular in shape, with a north (front) boundary of 4.7m and side boundaries of 47.5m.</p> <p>The site contains an attached single-storey brick building with modified ground level shopfront façade. The building has no setback from the footpath</p>
<p>Site: 108 Ormond Road</p>  <p>Source – Council officer, 4/4/23</p>	
Surrounds/neighbourhood character	<p>The site is located within the Ormond / Glen Huntly Road Neighbourhood Activity Centre, a commercial/retail area which also provides some residential uses. The identified strategic role and function of the commercial strip is to provide daily/weekly retail goods and services to the local catchment area, along with local entertainment such as cafes and restaurants.</p> <p>Businesses within the immediate vicinity of the site include a pizza restaurant and a book store, while further afield are other liquor outlets, cafes, a post office, newsagent and supermarket.</p> <p>Ormond Road provides angled car parking on its south side and parallel parking on the north. Lack of parking at street corners allows for a wider footpath at these locations, providing opportunities for outdoor dining areas.</p> <p>Public transport to the activity centre is provided by bus routes 600, 606, 922 and 923, which all travel along Ormond Road to destinations including Southland Shopping Centre, St Kilda and Elsternwick.</p>



8. PERMIT TRIGGERS

8.1 The following zone and overlay controls apply to the site, with planning permission required as described.

Zone, Overlay or Particular Provision	Why is a permit required?
Clause 34.01 Commercial 1 Zone	Pursuant to Clause 34.01-1, a permit is not required to use land for the purpose of a shop.
Clause 43.02 Design and Development Overlay – Schedule 18 (Elwood Neighbourhood Activity Centres and Adjoining Residential Land)	Pursuant to Clause 43.02, a permit is not required for the use of land.
Clause 44.05 Special Building Overlay – Schedule 2 (Port Phillip City Council Local Drain)	Pursuant to Clause 44.05, a permit is not required for the use of land.
Clause 52.27 Licensed Premises	Pursuant to Clause 52.27, a permit is required to use land to sell or consume liquor if a licence is required under the <i>Liquor Control Reform Act 1998</i> As a license is required under the Liquor Control Reform Act 1998 a permit is required .

9. PLANNING SCHEME PROVISIONS

9.1 Planning Policy Frameworks (PPF)

The following Planning Policies are relevant to this application:

- Clause 11 Planning for Places, including
 - Clause 11.03-1L-01 Activity Centres
 - Clause 11.03-1L-04 Local and Neighbourhood Activity Centres
- Clause 13 Environmental Risks and Amenity
 - Clause 13.07-1L-04 Tourism, Entertainment Uses and Licensed Premises
- Clause 17 Economic Development, including
 - Clause 17.02 Commercial

9.2 Other relevant provisions

- Clause 52.27 Licensed Premises



Clause 65 Decision Guidelines

Clause 71.02 Operation of the Planning Policy Framework

9.3 Relevant Planning Scheme Amendment/s

The following Planning Scheme Amendments are relevant to this application:

Amendment C203port

Amendment C203port is a municipal-wide amendment, which:

- Implements the Port Phillip Planning Scheme Audit 2018 and the land use and development directions of Council's adopted strategies and documents, including Act and Adapt – Sustainable Environment Strategy 2018-28, Art and Soul – Creative and Prosperous City Strategy 2018-22; Don't Waste It! – Waste Management Strategy 2018-28, In Our Backyard – Growing Affordable Housing in Port Phillip 2015-25, and Move, Connect, Live – Integrated Transport Strategy 2018-28.
- Updates the Port Phillip Planning Scheme to comply with Victorian Government changes to planning schemes regarding language, format and structure introduced by Amendment VC148.
- Updates local heritage policy to implement new Heritage Design Guidelines, which provide detailed and illustrated guidance on eleven development themes, informed by extensive consultation undertaken in 2019.
- Introduces new local VicSmart planning provisions to enable quicker assessments of some minor types of planning permit applications.
- Removes eleven Incorporated Documents from the Port Phillip Planning Scheme as they are obsolete.

2. Amendment C203port was approved with changes by the Minister for Planning and was gazetted on 14 April 2023. There are no transitional arrangements in the adoption of C203port. The Planning Scheme Amendment is policy neutral in respect to the majority of the policy changes where it does not alter the meaning of policy previously in the Port Phillip Planning Scheme. Where it is not policy neutral, it introduces gives effect to adopted Council strategies and plans, augment policy by filling a known policy gap and/or respond to a recommendation of the Port Phillip Planning Scheme Audit 2018.

10. REFERRALS

10.1 The application was not required to be internally or externally referred.

11. PUBLIC NOTIFICATION/OBJECTIONS

11.1 It was determined that the proposal may result in material detriment, therefore Council gave notice of the proposal by ordinary mail to the owners and occupiers of surrounding properties (28 letters) and directed that the applicant give notice of the proposal by posting 1 notice on the site for a minimum 14-day period, in accordance with Section 52 of the *Planning and Environment Act 1987*.

11.2 The application has received 28 objections. The key concerns raised in the objections are summarised below:

- Oversupply of liquor outlets



- Negative impact on the character of the area, including health, anti-social behaviour and vandalism
- Does not promote diversity in retailers
- Negative financial impact on existing retailers providing the same service

The objector concerns are addressed within the Officer Assessment at Section 11 of this report.

11.3 A consultation meeting was held on 28 March 2023. The meeting was attended by ward councillors, planning officers, the applicants and six objectors. The meeting provided an opportunity to explain the application, for the objectors to elaborate on their concerns and for the applicant to respond. No changes have been made to the proposal following the meeting.

12. OFFICER'S ASSESSMENT

12.1 Does the proposed use of the site have strategic policy support?

A key objective of Clause 11.03-1L-01 (Activity Centres) is to *maintain and strengthen a network of distinct, diverse and viable activity centres that facilitate appropriate housing and economic growth*. Clause 11.03-1L-04 (Local and Neighbourhood Activity Centres) seeks to *reinforce the role and character of local and neighbourhood centres to provide goods, services and employment opportunities that serve the needs of the surrounding community*.

Specifically to the Ormond / Glen Huntly Road Neighbourhood Activity Centre, Elwood, the policy seeks to *reinforce the primary daily/weekly retail goods and services role of Elwood Junction and Elwood Village*.

A key strategy of Clause 13.07-1S (Land Use Compatibility) is to ensure use of land is compatible with adjoining and nearby land uses. A retail outlet is appropriate within a Neighbourhood Activity Centre, as indicated by the use not requiring a permit pursuant to the Commercial 1 Zone. Additionally, Clause 13.07-1L-04 (Tourism, Entertainment Uses and Licensed Premises) seeks to minimise possible adverse impacts from tourism uses, entertainment uses and licensed premises on the amenity of surrounding land uses.

This policy statement is particularly relevant to on-premises liquor consumption such as bars and nightclubs, with references to late-night patronage, parking congestion and reduced amenity due to noise and anti-social patron behaviour. As discussed further within this report, it is considered amenity impacts from the proposal would be acceptable.

Clause 17.02-1S (Business) encourages commercial facilities in existing activity centres, along with the provision of new convenience shopping facilities to provide for the needs of the local population within and adjacent to existing commercial centres.

12.2 Financial impacts, over supply of liquor outlets and lack of retail diversity

Matters such as financial impact on other similar businesses, perceived lack of need for a liquor outlet or lack of diversity amongst retail offerings are not valid planning considerations. These matters have been discussed in various VCAT decisions, including *Barkersgrove Pty Ltd v Greater Bendigo CC [2006] VCAT 242 (21 February 2006)*, which noted (at para 33) *'It is a long-established planning principle that the lack of need for a proposal will rarely, if ever, be a reason for refusing the grant of a permit'*.



Similarly, Senior Member Baird noted a paragraph 22 of *Tuhan v Moira SC* [2016] VCAT 235 (22 February 2016): "...therefore, even though there is no express need for another licensed liquor outlet, that is also not an appropriate reason to refuse a permit".

Other matters raised by objectors are addressed below.

12.3 Does the proposed use comply with the decision guidelines of Clause 52.27 (Licensed Premises)?

The proposal is assessed against relevant decision guidelines as follows:

- *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area*

It is not considered that an additional packaged liquor venue would have an unreasonable impact on the amenity of the surrounding area. It is reasonable to expect that, in the vast majority of cases, liquor would be purchased from the venue for consumption at home, or possibly as BYO to a local restaurant.

It is acknowledged that some objectors expressed concern about personal safety from anti-social behaviour fuelled by intoxication. The planning scheme is not responsible to address all social and community concerns. This notion has been addressed in a number of VCAT cases, including *Hunt Club Commercial Pty Ltd v Casey CC (Red Dot)* [2013] VCAT 725 (20 May 2013), where Deputy President Dwyer noted, inter alia:

As a matter of general principle, a broad concern about the social harm caused by alcohol, the accessibility of alcohol in the community generally, or the potential for the abuse or misuse of alcohol, will rarely (if ever) be a relevant consideration in the exercise or discretion for a particularly licensed premises under Clause 52.27

and

Town planning is not a panacea for all perceived social ills, nor is planning decision-making a forum for addressing all issues of social or community concern... Town planning does not involve itself in moral judgements nor, subject to this locational or spatial perspective, in the operation of a competitive market economy in which certain goods and services are lawfully made, sold or consumed. Whilst town planning seeks to secure a pleasant, efficient and safe working, living and recreational environment, it is not the role of town planning to address all issues of public health...

It is acknowledged that negative amenity impacts associated with noise, nuisance and anti-social behaviour is a relevant consideration. However, it is submitted that the proposed packaged liquor use is modest in scale and unlikely due to its location, would not result in unreasonable off-site amenity impacts.

- *The impact of the hours of operation on the amenity of the surrounding area*

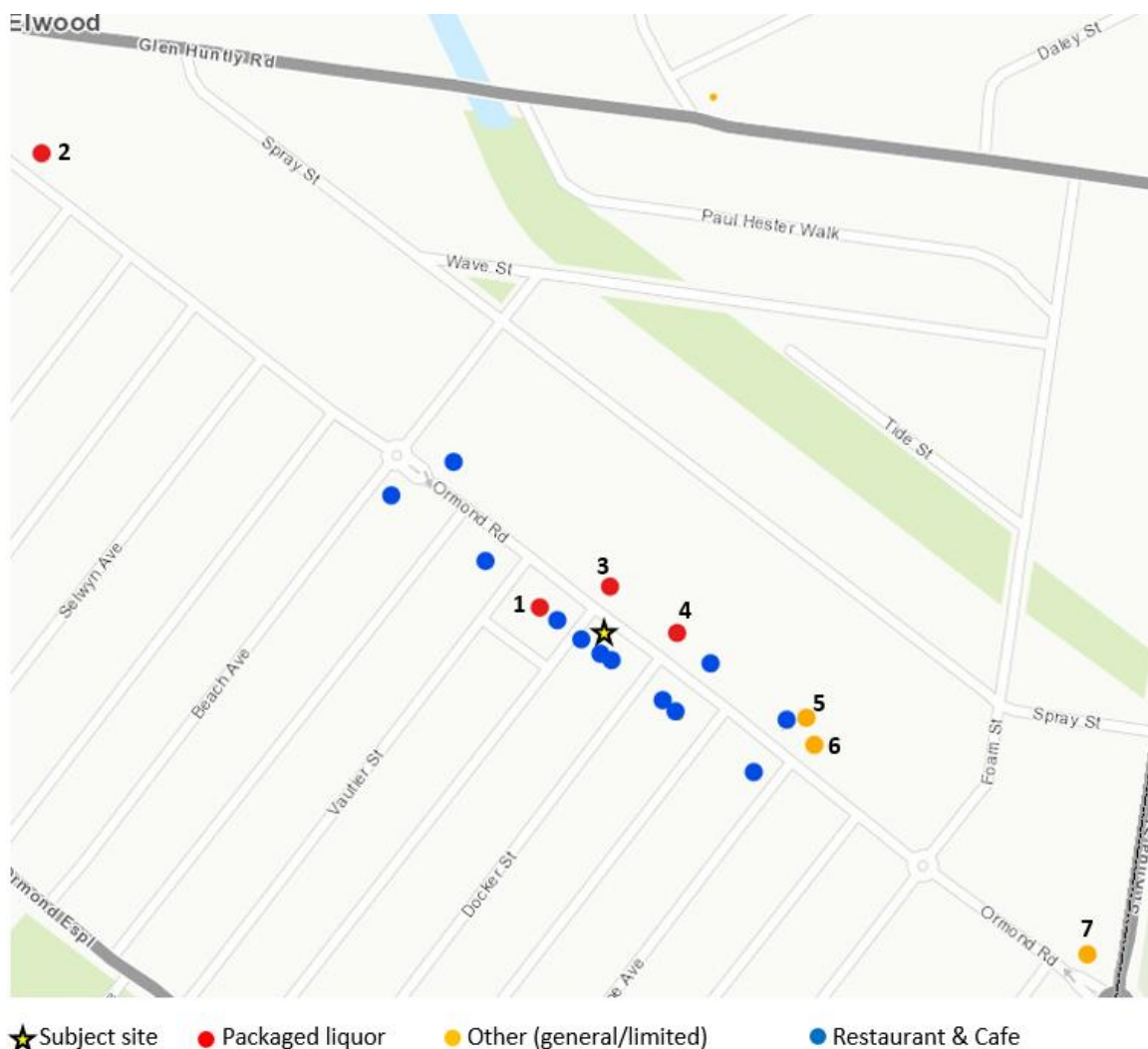
The proposed licensed hours of the premises are generally consistent with those of other packaged liquor outlets in the surrounding area, as well as with the 'ordinary trading hours as defined in the *Liquor Control Reform Act 1998*.

Trading to 11 pm is considered acceptable and does not intrude into the sensitive late night-time period.

- *The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area*

Pursuant to Planning Practice Note 61 (Licensed Premises: *Assessing Cumulative Impact*, June 2015), the subject proposal is deemed to sit within a 'cluster', in that there are at least three other licensed venues within a 100-metre radius of the subject site, or 15 within a 500-metre radius. However, even though the site is in a cluster, this does not mean that an application for a new licensed outlet is not supportable.

The majority of other licensed venues are within 170 metres of the subject site, with two outlying venues within a 500-metre radius. The majority of these venues hold Restaurant and Café licenses that typically restrict alcohol consumption in association with a dine-in meal. The locations of all licensed premises within this radius are shown along with the two outlying venues that sit within 500 metres of the subject site on the map below.





The table below provides information about the venues other than restaurants and cafes.

Map no.	Business name	Address	Licence Type	Distance from subject site	Hours
1	Cellarbrations	92-98 Ormond Rd	Packaged Liquor	28m	9am-11pm 10am-11pm Sunday 12 noon-11pm ANZAC Day <i>Note, the company's website indicates trading hours are to 9pm Sun-Thurs and 10pm Fri-Sat</i>
2	Elwood Wine and Spirits	33 Ormond Rd	Packaged Liquor	440m	9am-11pm 10am-11pm Sunday 12 noon-11pm ANZAC Day <i>Note, a Google search indicates the premises is not open beyond 8.30pm on any night of the week</i>
3	Foodworks	109 Ormond Rd	Packaged Liquor	opposite	9am-11pm 10am-11pm Sunday 12 noon-11pm ANZAC Day <i>Note, the company's website indicates the business is not open beyond 8pm on any night of the week)</i>



4	Elwood Gourmet Butchery (also known as Felice's Place Gourmet Butchers)	125 Ormond Rd	Packaged Liquor	38m	9am-11pm 10am-11pm Sunday 12 noon-11pm ANZAC Day <i>Note, the company's website identifies trading to 7pm and weekdays and 4pm on weekends</i>
5	Ebisu Kitchen	161 Ormond Rd	General (consumption on and off premises)	130m	9am-11pm 12 noon-11pm ANZAC Day
6	Baked in Elwood	167 Ormond Rd	Limited (generally restricted to supplying packaged liquor with home-delivered meals or take-away orders)	145m	No nominated hours
7	Mahoneys Art Bar & Restaurant	205 Ormond Rd	Limited (generally restricted to supplying packaged liquor with home-delivered meals or take-away orders)	346m	9am-10pm Monday to Thursday 9am-11pm Friday & Saturday 10am-10pm Sunday 12 noon-11pm ANZAC Day
<p>Council has recently issued a Planning Permit (PDPL/00605/2022) for 62-64 Ormond Road, approving a change from an existing Restaurant and Café licence to a General licence, allowing for sale of liquor for consumption off the premises. Approved licensed hours under the permit are to 1am daily.</p>					

Of the four other venues with existing packaged liquor licenses, three are located within 40 metres of the subject site. As confirmed by a site visit on 4 April 2023, the Elwood Gourmet Butchery's range of packaged liquor is limited to a single cabinet offering a small selection of wines. It is evident that this tenancy is not a packaged liquor outlet per se, and that the sale of liquor is a small ancillary component of the main butcher shop use.



An important consideration under the Practice Note is the mix of licensed premises, which can influence potential amenity impacts. In this instance, there are limited late-night licenses. Due to the combination of these factors, it is considered the cumulative impact of an additional packaged liquor licence would be acceptable.

13. INTEGRATED DECISION MAKING

13.1 Clause 71.02 of the Planning Scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance the positive and negative environmental, social and economic impacts of the proposal in favour of net community benefit and sustainable development. When considering net community benefit, fair and orderly planning is key, the interest of present and future Victorians must be balanced and the test is one of acceptability.

The proposal would result in positive and negative impacts, which are outlined below:

Positive

- The proposed use will utilise a currently vacant shopfront within a vibrant activity centre.
- The proposal would provide employment opportunities for the local area.
- The proposal is consistent with relevant legislation regarding appropriate hours for the sale of liquor.

Negative

- The application has received 28 objections.

14. COVENANTS

14.1 There is no restrictive covenant on the title (Volume 08308 Folio 837).

15. OFFICER DIRECT OR INDIRECT INTEREST

15.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

16. OPTIONS

- 16.1 Approve as recommended
- 16.2 Approve with changed or additional conditions
- 16.3 Refuse - on key issues

17. CONCLUSION

- 17.1 The proposal has been assessed against the relevant planning controls, particular regard to Clause 52.27 (Licensed Premises) of the Port Phillip Planning Scheme. The use is also supported by the Planning Policy Framework.
- 17.2 The use would not result in unreasonable amenity impacts and is an acceptable response to the Port Phillip Planning Scheme.
- 17.3 For these reasons, it is recommended that the proposal be supported subject to any conditions included on any permit issued (NOD).

ATTACHMENTS 1. Advertised Plan - 108 Ormond Rd, Elwood [📄](#)