

5.4 T220807 PA - Use of land for indoor recreation (gymnasium) and associated works to construct car parking spaces - 4/108 Mulcahy Road Pakenham

Responsible GM: Lili Rosic
Author: Ben McGeehan

Recommendation(s)

That Council issue a Notice of Refusal to Grant a Permit for use of land for an Indoor Recreation Facility (gymnastics centre) and associated works to construct car parking spaces, on the following grounds:

- 1. The number of parking spaces proposed is insufficient having regard to the expected demand based on the proposed patron and staff numbers.
- 2. The layout of the proposed parking spaces does not satisfy the requirements of clause 52.06-9 and is considered likely to result in unsafe and inefficient parking outcomes which will potentially create off-site impacts.

Attachments

- 1. T220807 PA Locality Map [**5.4.1** 1 page]
- 2. T220807 PA Officer Report [5.4.2 14 pages]
- 3. CONFIDENTIAL REDACTED T220807 PA Objection [5.4.3 1 page]
- 4. T220807 PA Plans [**5.4.4** 5 pages]

Executive Summary

APPLICATION NO.:	T220807
APPLICANT:	BK Gymnastics Pty Ltd
LAND:	L4 PS524360 V10833 F612, 4/108 Mulcahy Road Pakenham VIC 3810
PROPOSAL:	Use of land for indoor recreation facility (gymnastics centre) and associated works to construct car parking spaces
PLANNING CONTROLS:	Industrial 1 Zone (IN1Z)
NOTIFICATION & OBJECTIONS:	Pursuant to Section 52 of <i>The Planning and Environment Act 1987</i> the proposal was advertised by way of a sign on the site and notices sent to owners and occupiers of adjoining and adjacent lots.



	As a result, one objection was received which in summary raised concerns around the lack of parking for 40 patrons.
KEY PLANNING CONSIDERATIONS:	Provision of an adequate number of car parking spaces having regard to the proposed number of patrons and staff.
	Dimensions and accessibility of the existing and proposed car parking spaces.
REASON FOR MEETING:	Recommendation for Refusal
RECOMMENDATION:	Notice of Refusal to Grant a Permit

Executive Summary

The application proposes use of the existing warehouse/factory building to provide gymnastics classes. In detail:

- A maximum of 40 students plus 4 staff on the premises at any one time (ie: 44 persons on the premises concurrently).
- Hours of operation 8.30am to 9.30pm Monday to Friday, 8.30am to 6.30pm Saturday to Sunday.
- The centre will host gymnastics classes, kinder gym, competitive classes and themed birthday parties.
- The site currently has access to 14 car parking spaces, and it is proposed to construct an additional 6, in 3 tandem pairs (a total of 20 spaces).

The application was subject to public notice and received one objection which raised concerns pertaining to a lack of car parking.

An assessment against relevant policy concludes that the use is inconsistent with State and Local policy and the purpose to the Industrial 1 Zone. The proposal does not provide a sufficient number of conveniently accessible parking spaces and it is therefore considered likely to create unreasonable impacts in the location and to other land users.

Relevance to Council Plan

Not applicable.

TOWN PLANNING COMMITTEE MEETING

ATTACHMENT 5.4.1



APPLICATION FOR CONSIDERATION OFFICER REPORT



Application Details:

Application is for:	Use of land for an Indoor Recreation Facility (gymnastics centre) and associated works
Applicant's/Owner's Name:	BK Gymnastics Pty Ltd
Date Received:	8 December 2022
Statutory Days:	470 days @ 6 May 2024 (FI provided 23 January 2023)
Application Number:	T220807
Planner:	Ben McGeehan
Land/Address:	L4 PS524360 V10833 F612, 4/108 Mulcahy Road Pakenham VIC 3810 Property number 1606650440
Zoning:	Industrial 1 Zone (IN1Z)
Overlay/s:	None
Zoological/ Botanical/ Cultural Sensitivity:	Not applicable.
Under what clause(s) is a permit required?	33.01-1 (IN1Z) use land for indoor recreation facility The use 'indoor recreation facility' is defined as 'A building used for indoor leisure, recreation, or sport.' and nests beneath 'minor sports and recreation facility' which in turn nests beneath the top level use 'leisure and recreation' which is a Section 2 Use within the IN1Z. Major sports and recreation facility Dance studio Da

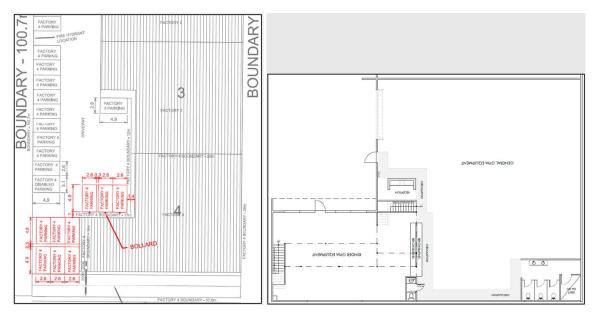
Restrictive covenants on the title?	None
S173 Agreements on title?	None
Current use and development:	Vacant warehouse / factory
Recommendation	□ Permit □ NOD
	⊠ Refusal
Documents relied upon	 Planning report by SD Planning Proposed development plans by W. Norman Traffic Impact Assessment by O'Brien Traffic Title documents
Plans to be endorsed:	☐ Yes ☑ No, refusal

Proposal

The application proposes to use the existing warehouse / factory building for an Indoor Recreation Facility (gymnastics centre). In detail the use is described by the applicant as follows:

- A maximum of 40 students plus 4 staff on the premises at any one time (ie: 44 persons on the premises concurrently).
- Hours of operation 8.30am to 9.30pm Monday to Friday, 8.30am to 6.30pm Saturday to Sunday.
- The centre will host gymnastics classes, kinder gym, competitive classes and themed birthday parties.
- The site currently has access to 14 car parking spaces, and it is proposed to construct an additional 6, in 3 tandem pairs (a total of 20 spaces).

It is noted that officers have queried the accuracy of the plans with the proponent; the proponent believes they are accurate but Council assessment, utilising a combination of past records and aerial photography suggests otherwise. This is illustrated below.

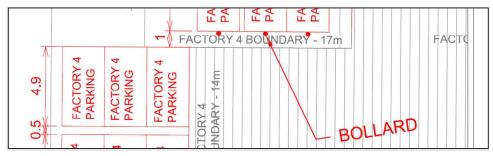


Proposed site layout plan (left) and Proposed floor plan (right)

Approved development plans suggest that the west wall is setback from the west boundary by approximately 7.85m. A review of Council's aerial photography generally concurs with this figure, as indicated below.



The applicant's plans show the provision of $3 \times 2.6 \text{m}$ wide car parking spaces, plus an offset from the boundary of at least 0.5 m, totalling at least 8.3 m.



Subject site & locality

A virtual inspection of the site and the surrounding area has been undertaken using Council's electronic records and information provided to Council by the permit applicant.



Aerial photography (GIS, 26 April 2023).

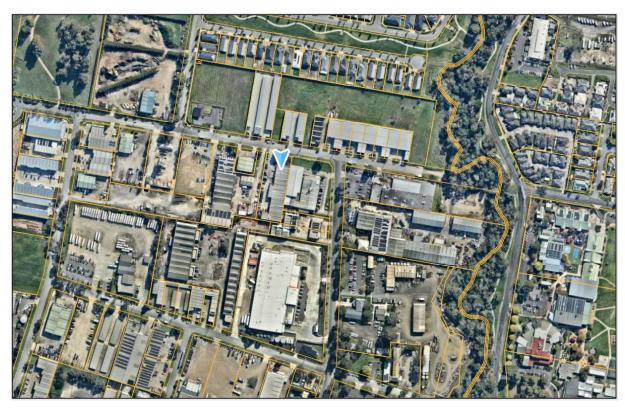
The site is made up of the rear lot in a 4-unit industrial development, plus an allocation of parking spaces within the common property which runs along the western side of the development site. The site is on the south side of Mulcahy Road, approximately 565m north of the Princes Highway, 3km northwest of the Pakenham CBD.

One crossover services the common property which in turn provides access to the subject lot.

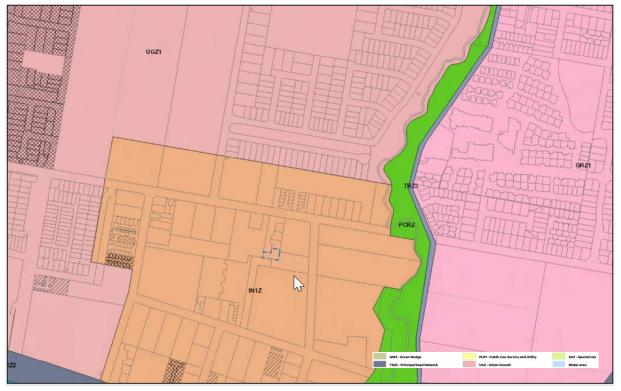
The land is affected by two easements (drainage and sewerage) which run across the rear boundary. These are not relevant to this proposal on the basis that no works are proposed in this vicinity.

The main characteristics of the surrounding area are:

- Land in all directions is zoned Industrial 1 and developed accordingly.
- Surrounding land is developed by a mix of modest factories, large warehouse spaces, self-storage units and transport depots.



Aerial view of context (GIS, 26 April 2023)



Zoning plan (VicPlan, 26 April 2023)

Council raised concerns as to the layout and usability of the proposed parking layout within the RFI issued 5 January 2023. When the further information was provided, issues of accuracy were again raised, but refuted by the permit applicant.

It is noted that following an initial review of the permit application, on 24 March 2023 Council provided advice to the permit applicant that it would be unable to support the numbers requested, and sought directions from the permit applicant as to whether they would like a permit, with conditions, or to amend the permit application.

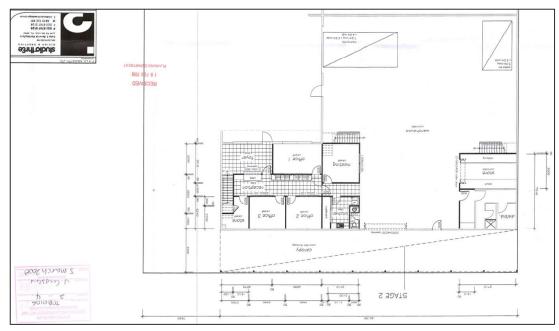
On 19 April 2023 the permit applicant sought a meeting, and on 9 May 2023 a (virtual) meeting took place, attended by the permit applicant, their traffic expert, two members of Council's Transport team, planning coordinator and the officer handling the file. At the conclusion of this meeting, an undertaking was given for Council to finalise its position and advise the permit applicant. Council advised the applicant on 11 May 2023 on what it would support, and again requested direction. The applicant was followed up a number of times.

On 3 August 2023 the permit applicant sought a decision (refusal) from Council. On 3 August 2023 the officer phoned to ensure the applicant was aware of the ramifications of their request, offering advice and noting appeal rights, s72 amendment options, etc. The applicant was fully aware, and confirmed their request.

Permit/Site History

The history of the site includes:

 Planning Permit T080106 was issued 5 March 2008 for alterations and additions to the subject building. Aerial photography suggests that the canopy proposed to the south has not been constructed, so this permit has expired.



- T150101 was issued on 25 March 2015 for a dance school at 3/108 Mulcahy Road (the adjacent warehouse to the north). Maximum 25 students (8 parking spaces).
- T180122 was issued 21 August 2018 for a swim school at 1/108 Mulcahy Road (the front warehouse). Maximum of 8 students and 3 staff on the site at any one time (9 parking spaces).

Planning Scheme Provisions

Zone

The land is subject to the following zones:

• Industrial 1 Zone Schedule 1 (IN1Z)

Overlays

The land is subject to the following overlays:

None

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- 13.05 Noise
- 13.07 Land Use Compatibility
- 17 Economic Development

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

• 21.01-3 Strategic Issues, Key influences

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/documents include:

- Clause 52.06 Car parking
- Clause 65 Decision Guidelines
- Clause 66 Referral and Notice Provisions
- Clause 71.02-3 Integrated Decision Making

Planning Permit Triggers

The proposal for use of the land for indoor recreation facility (gymnastics centre) and associated works to construct car parking spaces requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 33.01-1 of the IN1Z a planning permit is required to use the land for indoor recreation facility as it is a Section 2 use within the Industrial 1 Zone.
- Pursuant to Clause 33.01-4 of the IN1Z a planning permit is required to undertake buildings and works (car parking spaces).
- Pursuant to Clause 52.06-3 car parking must be provided to the satisfaction of the Responsible
 Authority. It is not a permit trigger as the use is not listed within the Table to clause 52.06-5 and
 therefore it becomes a matter to the satisfaction of the Responsible Authority consent.

Public Notification

Pursuant to section 52 of the *Planning and Environment Act 1987* the proposal was advertised by way of a sign on the site and notices sent to owners and occupiers of adjoining and adjacent lots. As a result, one objection was received which in summary raised the following concerns:

A lack of parking for the proposed 40 patrons.

Referrals

External Referrals/Notices Required by the Planning Scheme:

There are no external referrals required for this proposal. The land is not affected by any overlays, nor is not proximate to any high-voltage power or classified road.

Internal Referrals

Internal Council Referral	Advice/ Response/ Conditions	
Traffic	Council's Traffic unit has objected based on a range of concerns, including plan accuracy, accessibility of the parking spaces (both in terms of the tandem configuration and the need to drive through spaces to access other spaces), shortfall compared to proposed numbers and knowledge of current parking issues in the vicinity.	
	Traffic team comments include:	
	The maximum number of patrons that can be accommodated at the facility at any one time would be restricted to 20 (Staff and students) based on the current parking configuration.	
	The current parking configuration is NOT including the proposed tandem parking. Basically, the current 14 car spaces is considered acceptable to accommodate 20 patrons (i.e. staff members and students).	
	We have discussed within the team, provision of tandem parking for staff use is fine, however, the access to those bays via the shared zone/disabled bay is not acceptable.	
	If tandem bays or any parking spots are proposed in the unsealed area to increase the parking capacity of the site, bays will have to be line marked on an all-weather sealed pavement.	

Assessment

Planning Policy Framework

Of relevance to this application, in summary, State Policy, and the purpose of Planning in the state, is to ensure orderly planning which is to be achieved through considerations such as:

- · Considering the compatibility of land uses in proximity
- Providing sufficient and functional car parking
- Managing off-site amenity impacts from new uses, including matters such as noise, traffic movements and car parking
- Ensuring that uses can operate in a manner which is reasonably safe

Whilst the proposed siting of the gymnastics centre is acceptable in some respects, such as that it won't create unreasonable off-site noise impacts given its separation from sensitive land uses, the shortfall in car parking, and the configuration, which does not satisfy relevant provisions, is considered likely to result in a disorderly, unsafe outcome which is likely to:

- Create off-site impacts such as through additional traffic movements and unreasonable demand for on-street parking.
- Create impacts to other occupants of the four units which make up 108 Mulcahy Road all of which
 operate car-parking intensive uses using parking spaces which, whilst allocated to them, sit within
 'common' property and could easily be used by visitors to the subject use.

Setting aside the differences in measurements asserted by officers, the non-standard parking layout
will not encourage safe and convenient parking. Given the use is designed to be primarily used by
young people, who have a lower level of road safety awareness, the design should be ideal, rather
than opportunistic.

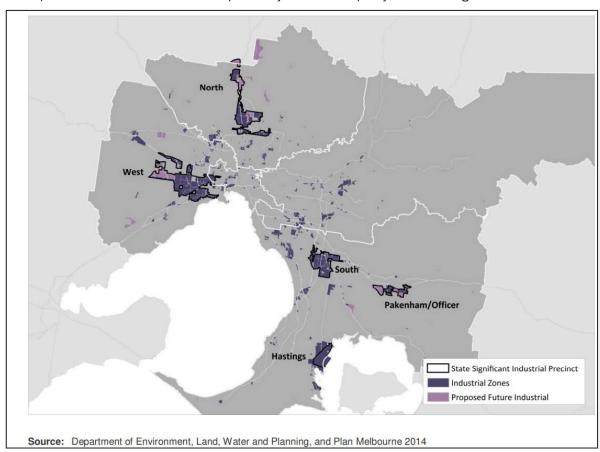
Clause 17, specifically clauses 17.01 (employment) and 17.02 (commercial) provide support for the development of areas, and introduction of uses of land, which provide a diverse economy, providing a range of services and employment to service the needs of the community. Uses such as that proposed within IN1Z land pose a difficulty for planners. On the one hand, if smaller, surplus industrial land can have a use introduced which does not adversely impact neighbouring lots, that is a positive aspect. However industrial lots are generally in areas of lower levels of amenity, are usually provided with (relatively) small levels of car parking (to service a lower parking demand) and are often in areas where as-of-right uses which generate large vehicle movements which could be in conflict with a high number of young people.

It is for this reason that the purpose to the zone should be given great weight, and only where other factors in favour of a proposal, such as location, parking, access, safety, outweigh the overarching concerns, that a permit should issue.

Detailed discussion is provided later in this report regarding parking, design and access.

For these reasons, the proposal is considered at odds with policy.

Having regard to Clause 17.03-3S – State significant industrial land, the objective of this policy is to protect industrial land of state significance where relevant strategies seek the protection of state significant industrial precincts from incompatible land uses to allow for future growth. The Officer/Pakenham industrial areas are specifically listed in this policy as a State Significant Precinct.



The above map identifies industrial areas and state significance industrial precincts in the Plan Melbourne strategic document. Of the many industrial areas across Greater Melbourne, the

Subject site

Subject site

Pakenham/Officer precinct forms one of five, although the subject land and surrounding area does not form part of the state-significant area. Rather, the site is identified as locally significant.

Existing and Future Industrial Land – Southern Region – source: Melbourne Industrial and Commercial Land Use Plan.

Whilst the proposed land use is not industrial, the use of land for an Indoor Recreation Facility holistically is considered acceptable as the site is located within an area where there are established non-industrial uses and which is not identified to be of State significance (existing or future). This location in Pakenham is not as recently developed as is land within Southeast Business Park or land south of Bald Hill Road and east of Koo Wee Road for example which is considered to be more conducive to industrial land uses (and complimentary uses). The subject site is also in close proximity to land located within the Urban Growth Zone which is allocated for residential purposes therefore this non-industrial use is appropriately sited (refer to Zoning map above).

However due to issues surrounding the on-site carparking arrangement and maximum patron numbers, the particulars of the use do not result in an acceptable planning outcome and is discussed further in this report.

Local Planning Policy Framework

There is minimal policy which relates specifically to the site in question, being outside any of the strategic employment or growth areas, nor within an activity centre. Local policy at **clause 21.01-3**, key issues, *economic development*, provides the following key areas for consideration:

- The development of the State-significant Pakenham-Officer Industrial Precinct as a major provider of employment for south-east Melbourne.
- The development of a balanced local economy and local employment opportunities for residents.
- The need to support and strengthen existing businesses.
- The attraction of new business, particularly to the State-significant Officer-Pakenham Industrial Precinct south of the Princes Freeway.

- The protection and sustainable use of agricultural and particularly land with soil that is of a high quality within the Western Port Green Wedge.
- The role of tourism within the wider business community.

[emphasis added]

And particular use and development strategies include:

- Encouraging an attractive, functional and sustainable built form in existing and future development.
- The restructure of inappropriate subdivisions.
- The integration of community safety with new and existing use and development.
- The location and characteristics of gaming venues.
- Encouraging the investigation of potential locations for a third airport in Melbourne's southeast.
- Ensuring any redevelopment of golf courses has net community benefit and does not adversely impact upon the environment.

[emphasis added]

It is considered that the proposal does not represent an appropriate balance between the development of the economy and employment, and the need to ensure that community safety is foremost when considering new uses, particularly where these are aimed at children.

Strategic vision at clause 21.01-4 includes that:

Cardinia Shire will be developed in a planned manner to enable present and future generations to live healthy and productive lives and to enjoy the richness of the diverse and distinctive characteristics of the Shire. Council is committed to fostering wellbeing of the community and environment in the Cardinia Shire. In doing this, it seeks to balance the competing needs of the environment, economic development and the community by:

- Developing a strong economic base.
- Recognising and protecting the diverse and significant environmental and cultural heritage values in the municipality.
- Providing opportunities to create and maintain a cohesive, safe and robust community.
- Enhancing the experience of people who live, work and visit the municipality.

[emphasis added]

Whilst policy supports the development of a strong economic base, it must not be at the unreasonable loss of safety, particularly where the proposal is aimed at children. The use has not demonstrated that the parking layout can operate in a safe and effective manner which will avoid unreasonable off-site impacts, and foster a safe use.

Industrial 1 Zone (IN1Z)

A permit is required pursuant to clause 33.01-1 to use the land for indoor recreation as it nests beneath the Section 2 use '*leisure and recreation*' and does not appear as a separate entry, nor does it appear within Section 3. A permit is also triggered under clause 33.01-4 for buildings and works associated with the car parking spaces.

Inter alia, the purpose to the zone is 'To provide for manufacturing industry, the storage and distribution of goods and associated uses in a manner which does not affect the safety and amenity of local communities.' The proposed use is not directly associated with any uses encouraged within the purpose to the zone and can be described as an opportunistic use of a vacant industrial property.

A primary aim of the planning system is to separate uses which can create conflicts, to ensure, within reasonable limits, that safety is prioritised.

Setting aside potential conflicts occurring between industrial and non-industrial uses, when buildings are developed within industrial areas, such as the building which is proposed to be occupied by this use, parking is generally provided in a manner which is consistent with likely Section 1 uses. Many industrial uses are space intensive with low staff numbers. Whilst this is perfectly reasonable when industrial / Section 1 uses are introduced, it creates limitations when other uses are proposed, such as the indoor recreation facility that is the subject of this application.

As detailed in the Planning Policy Framework assessment above, whilst the use may be considered satisfactory in this locality, taking into account the other non-industrial uses taking place within 2 of the 4 units on the subject land and general location of the site, the primary concern with the proposal pertains to car parking and the number of patrons at any one time which is discussed further below.

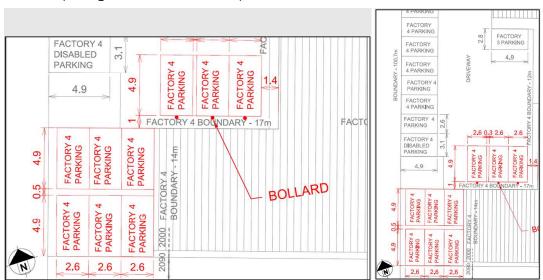
52.06 - Car Parking

Under Clause 52.06, a proposal must provide parking, including that the arrangements satisfy various dimensional provisions, to the satisfaction of the Responsible Authority, if that use is not specified within the Table to clause 52.06-5, as is the case for this proposal.

The proposed parking arrangements are considered unsatisfactory for a number of reasons, including:

• Number of spaces (taking into account usability of the spaces)

Council's traffic team is concerned that the number of spaces, particularly given the layout of the proposed additional spaces, is unsatisfactory for a patronage of 40, plus 4 staff. As is obvious in the extract of the car parking layout plan (below) 6 of the spaces are in a tandem layout, the 2 spaces on the east are not off-set from the building wall, the 4 spaces to the west cannot be accessed if existing parking spaces are occupied, the 1 existing disability accessible space cannot be accessed if the spaces to the north of the building are occupied. In short, the majority of the additional parking is either unusable or impractical to use.



Dimensions / clearance to spaces

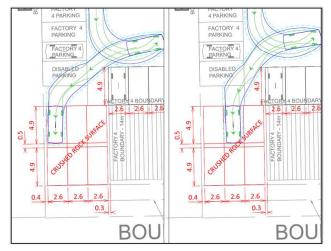
As has been detailed earlier in this report, officers believe that the car parking layout plan is inaccurate – the actual space appears to be approximately 0.5m less in width east-west where the 6 spaces, in 3 tandem pairs, are proposed.

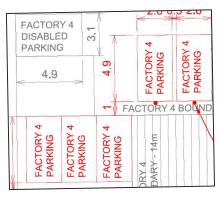
Table 2 to clause 52.06-9 sets out car parking space dimensions, including the requirement to provide clearance beside spaces (where they do not adjoin another space where this clearance can be 'shared'). Where these adjoin another space (beside) the clearance can be 'shared' however for the proposed tandem parking spaces adjacent the building (eastern pair) there is no clearance.

Accessibility of the spaces

Clause 52.06-9 sets out various numeric requirements for parking spaces, accessways and turning movements, to ensure safe and convenient use of facilities. It would appear that none of the proposed parking spaces can satisfy the turning movement requirements of this clause, and that at least 4 of the 6 proposed spaces cannot be accessed unless at least 2, or likely 3, other parking spaces are vacant.

See below an extract from the applicant's swept path assessment demonstrating these concerns, noting that the base plans for the swept paths are different to the parking layout plan. The parking layout plan shows the parking spaces in front of the office (to the east) are 1m further north, which would place them in direct conflict with the swept path. They cannot be moved 1m to the south, as per the swept path, otherwise access to the office will be impossible, as they would be zero offset from the front of the building, where the entry door is.

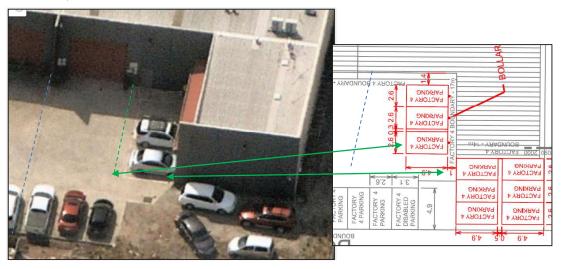




Swept paths (left)

Parking layout plan (right)

Further evidence of these inconsistencies can be seen using nearmap.com oblique photography (15 February 2023). Note that the northern wall of 4/108 Mulcahy Road aligns with the northern edge of the 3rd last car parking space, however on the car parking layout plan, it does not (see blue dotted line). And the parking spaces in front of the office have been pushed 1m back (see green dotted line).



Turnover / conflicts

Uses such as that proposed create a substantially larger vehicle turnover than industrial uses where, in the main, staff arrive, potentially leave/return for lunch, then leave. The provision of multiple parking spaces which a) cannot be entered/exited from utilising a single corrective movement, b) are directly in front of the entry to a property which will be frequented by young people and c) don't satisfy dimensional requirements, is considered unsatisfactory and contrary to the purpose of planning, being creating safe and orderly planning outcomes.

The proposal does not demonstrate how it can satisfy the requirements of clause 52.06. Plans appear not to accurately depict the existing conditions, what changes are proposed, and how the proposed conditions can satisfy the purpose of clause 52.06 which is, inter alia, to ensure that an appropriate number of spaces are provided, that those spaces can be efficiently used and that a safe environment is created.

Objector Concerns

The application was subject to public notice pursuant to Section 52 of the *Planning and Environment Act* 1987 and Council has received one objection. The objection raises concerns about the quantum of patrons/staff versus the provision of parking.

As has been discussed in detail previously in this report, officers share this view.

Conclusion

Whilst the use of the land is not directly supported by the purpose to the zone, it is allowable and could be considered acceptable were it possible to provide a sufficient number of safe and conveniently accessible parking spaces, meeting statutory requirements. The proposal does not provide adequate parking, nor parking that is reasonably usable and for this reason it is considered to be contrary to relevant policy. The proposal should therefore not be supported.

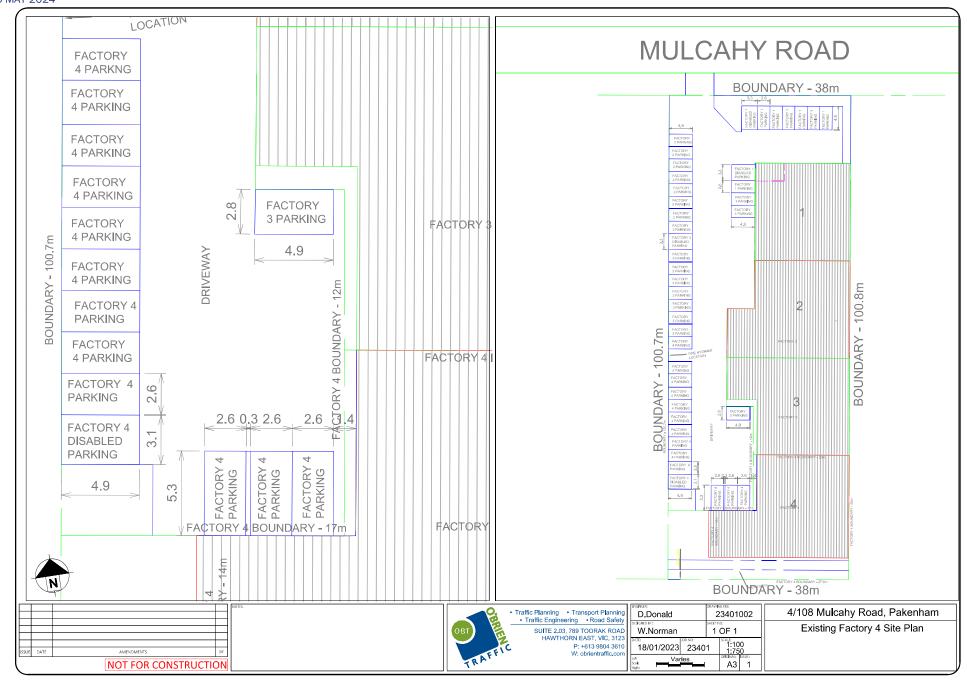
Recommendation

Notice of Refusal

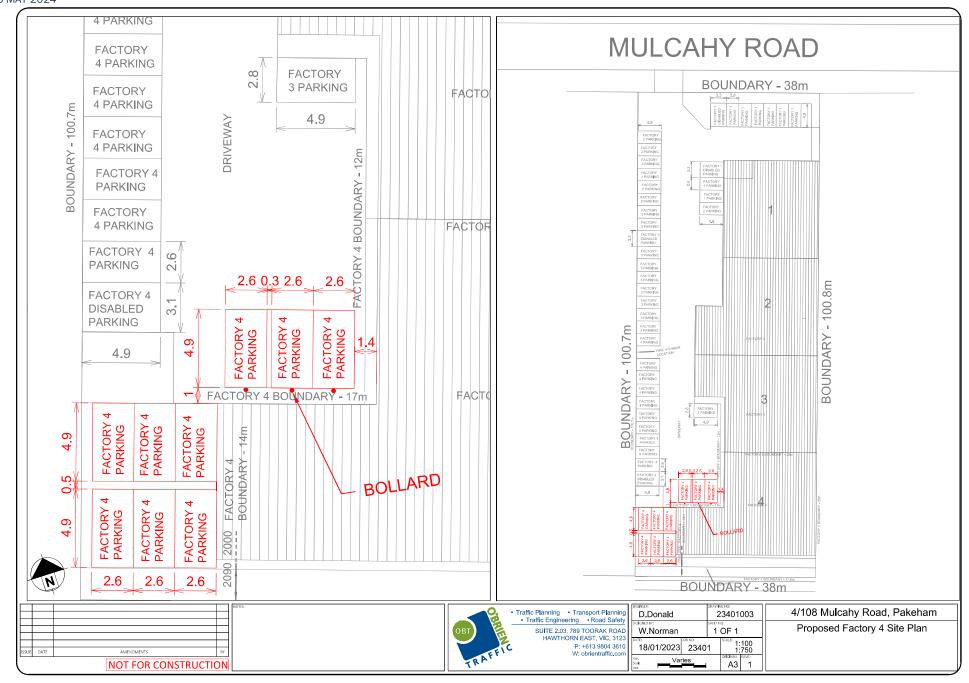
That Council having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* in relation to Planning Application No. T220807 decides to issue a Notice of Refusal to Grant a Permit in respect of the land known and described as L4 PS524360 V10833 F612, 4/108 Mulcahy Road Pakenham VIC 3810, for Use of land for an Indoor Recreation Facility (gymnastics centre) and associated works on the following grounds:

Grounds:

- 1. The number of parking spaces proposed is insufficient having regard to the expected demand based on the proposed patron and staff numbers.
- The layout of the proposed parking spaces does not satisfy the requirements of clause 52.06-9
 and is considered likely to result in unsafe and inefficient parking outcomes which will potentially
 create off-site impacts.



Town Planning Committee Meeting 6 May 2024



Town Planning Committee Meeting 6 May 2024

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PAKENHAM, VIC

DESCRIPTION

TP ISSUE

SK PRLEIMINARY

SK PRELIMINARY

BY DATE

M.R 15/11/22

M.R 05/12/22

M.R 7/11/22 Client

BELGRAV**I**A

BK GYMNASTICS

PAKENHAM, VIC

4 / 108 MULCAHY ROADPLAZA DRIVE,

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Project management

2204101

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NOVEMBER 2022

L.M

Drawing Title EXISTING UPPER FLOOR PLAN

M.R