



**Colac Otway
SHIRE**

AGENDA

**PLANNING COMMITTEE
OF THE
COLAC-OTWAY SHIRE
COUNCIL**

11 FEBRUARY 2009

at 10.30am

**COPACC Meeting Room
Rae Street, Colac**

An audio recording of this meeting is being made for the purpose of verifying the accuracy of the minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, subpoena or by any other law, such as the Freedom of Information Act 1982

COLAC-OTWAY SHIRE COUNCIL MEETING

11 FEBRUARY 2009

TABLE OF CONTENTS

OFFICERS' REPORTS

SUSTAINABLE PLANNING AND DEVELOPMENT

PC091102-1	PLANNING PERMITS FOR THE MONTH OF JANUARY 2009.....	5
PC091102-2	USE & DEVELOPMENT OF A LICENSED CAFE AND MICRO-BREWING FACILITY, ASSOCIATED WORKS AND WAIVER OF CARPARKING, ON- PREMISE LIQUOR LICENCE & SIGNAGE	10

NOTICE is hereby given that the next **PLANNING COMMITTEE OF THE COLAC-OTWAY SHIRE COUNCIL** will be held in the COPACC Meeting Room, Rae Street, Colac on 11 February 2009 at 10.30am.

AGENDA

1. OPENING PRAYER

*Almighty God, we seek your
blessing and guidance in our
deliberations on behalf of the
people of the Colac Otway Shire.
Enable this Council's decisions to be
those that contribute to the true
welfare and betterment of our community.*

AMEN

2. PRESENT

3. APOLOGIES

4. MAYORAL STATEMENT

Colac Otway Shire encourages active community input and participation in Council decisions. The Planning Committee provides an opportunity for both objectors and proponents to address Council for up to five minutes. Priority will be given to people who have advised Council in advance that they wish to address the Planning Committee. Planning Committee meetings also enable Councillors to debate matters prior to decisions being taken.

I ask that we all respect each other during this process by:

- being courteous and respectful in the way in which you speak;
- not speaking unless you have been permitted to by me as chairperson;
- respecting the local laws which govern meeting procedure (copies of these are here for your information); and
- understanding that I have a responsibility to ensure proper meeting procedure and the upholding of the local law.

I also would like to inform you that the meeting is being taped. The audio recording of the meeting is being made for the purpose of verifying the accuracy of the minutes of the meeting. In some circumstances the recording may be disclosed, such as where Council is compelled to do so by court order, warrant, subpoena or by any other law, such as the Freedom of Information Act 1982.

5. DECLARATION OF INTEREST

6. VERBAL SUBMISSIONS FROM APPLICANTS/OBJECTORS

The Mayor is to read out the names of those applicants and objectors who have confirmed in writing that they wish to make a verbal submission. These verbal submissions will be made in relation to each respective agenda item and must be directly relevant to the respective agenda item. A time limit of 5 minutes will apply.

7. CONFIRMATION OF MINUTES

- Planning Committee Meeting of the Colac-Otway Shire Council held on the 21/01/09.

Recommendation

That the Planning Committee confirm the above minutes.

OFFICERS' REPORTS

Sustainable Planning and Development

PC091102-1	PLANNING PERMITS FOR THE MONTH OF JANUARY 2009
PC091102-2	USE & DEVELOPMENT OF A LICENSED CAFE AND MICRO-BREWING FACILITY, ASSOCIATED WORKS AND WAIVER OF CARPARKING, ON-PREMISE LIQUOR LICENCE & SIGNAGE

Jack Green
Acting Chief Executive Officer

PC091102-1 PLANNING PERMITS FOR THE MONTH OF JANUARY 2009

AUTHOR: Janole Cass
 DEPARTMENT: Sustainable Planning and Development

ENDORSED: Doug McNeill
 FILE REF: GEN00450

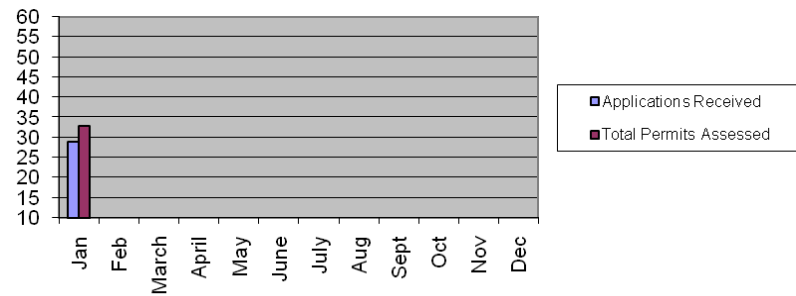
29 Planning permit applications received for the period of 1st January 2009 to 31st January 2009
 33 Planning permit applications were considered for the period of 1st January 2009 to 31st January 2009

APPLIC NO	DATE RECEIVED	Proposal	DATE ISSUED	ACTUAL TIME	Authority	Decision
PP11/09	15-Jan-09	Alteration & addition to an existing recreational building.	27-Jan-09	12	Under Delegation	Permit Issued
PP12/09	14-Jan-09	Extend garage on house for use as a work room/studio with a loft for storage.	28-Jan-09	12	Under Delegation	Permit Issued
PP128/08-A	17-Dec-08	Replace existing timber bridge with a single span concrete structure - Amendment Removal of 1 tree and relocation of 9 tree ferns and other ferns from work zone	27-Jan-09	41	Under Delegation	Permit Issued
PP150/08	05-May-08	Two Units and a Two (2) lot subdivision	08-Jan-09	149	Under Delegation	NOD To Grant Permit
PP198/08	06-Jun-08	Construction of four dwellings and a four lot subdivision and common property	28-Jan-09	95	Planning Committee	NOD To Grant Permit
PP215/08	25-Jun-08	Development Of Two Dwellings & Two Lot Subdivision	09-Jan-09	116	Under Delegation	Permit Issued
PP263/08	23-Jul-08	Construction of a dwelling	30-Jan-09	86	Under Delegation	Refusal To Grant
PP284/08	28-Aug-08	Construction of Three (3) Water Tanks	19-Jan-09	109	Under Delegation	Permit Issued
PP296/08	29-Aug-08	Use & Development of a dwelling	28-Jan-09	65	Under Delegation	Permit Issued

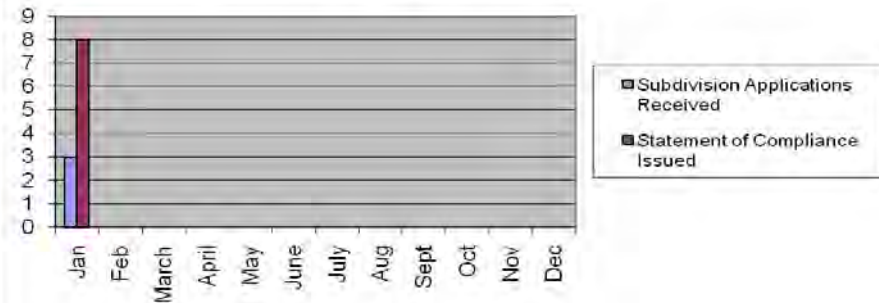
APPLIC NO	DATE RECEIVED	Proposal	DATE ISSUED	ACTUAL TIME	Authority	Decision
PP301/06-A	24-Nov-08	Use Of A Residential Building & Associated Works - Amendment	05-Jan-09	30	Under Delegation	Permit Issued
PP315/07	20-Oct-08	Subdivision of land comprising R1 on LP10522, consolidation of excised land with Vol09999 Folio 280, and removal of carriageway easement over portion of road to be consolidated.	30-Jan-09	54	Under Delegation	Permit Issued
PP325/08	19-Sep-08	Development of two (2) solar lights around the wharf.	15-Jan-09	53	Under Delegation	Permit Issued
PP328/05-B	22-Jan-09	Thirty One (31) Lot Staged Subdivision - Amendment	22-Jan-09	1	Under Delegation	Permit Issued
PP334/08	07-Oct-08	Erection Of Two (2) Signs On Building For Indoor Children's Party Centre	27-Jan-09	112	Under Delegation	Permit Issued
PP342/08-A	18-Dec-08	Development of a warehouse (storage shed) - Amendment	08-Jan-09	21	Under Delegation	Permit Issued
PP343/08	07-Oct-08	To construct a hayshed	15-Jan-09	56	Under Delegation	Permit Issued
PP349/08	15-Oct-08	Use & Development Of The Land For Trade Supplies Outlet, Associated Works & Signage in Accordance with the endorsed plans.	13-Jan-09	54	Under Delegation	Permit Issued
PP368/08	24-Oct-08	Alteration & additions to existing dwelling and construction of a garage	27-Jan-09	18	Under Delegation	Permit Issued
PP381/08	07-Nov-08	Alterations and additions to existing dwelling	12-Jan-09	35	Under Delegation	Permit Issued
PP384/08	10-Nov-08	Minor Alterations To The Front Kiosk Area Of Cape Otway Lightstation	13-Jan-09	1	Under Delegation	Permit Issued
PP398/08	19-Nov-08	Construction Of A Dwelling & Shed	27-Jan-09	17	Under Delegation	Permit Issued

APPLIC NO	DATE RECEIVED	Proposal	DATE ISSUED	ACTUAL TIME	Authority	Decision
PP403/08	14-Nov-08	Removal Of Native Vegetation & Construction Of A Sealed Road	09-Jan-09	87	Under Delegation	Permit Issued
PP412/08	25-Nov-08	Construction Of A Single Story Dwelling	28-Jan-09	64	Under Delegation	Permit Issued
PP423/08	26-Nov-08	Two (2) lot subdivision & realignment of existing boundaries.	27-Jan-09	40	Under Delegation	Permit Issued
PP424/08	05-Dec-08	Awning Addition To An Existing Shop Front	28-Jan-09	56	Under Delegation	Permit Issued
PP425/08	27-Nov-08	Removal Of Drainage Easement	08-Jan-09	48	Under Delegation	Permit Issued
PP426/08	02-Dec-08	Two (2) Lot Subdivision	28-Jan-09	47	Under Delegation	Permit Issued
PP427/08	27-Nov-08	Two (2) Lot Subdivision	27-Jan-09	60	Under Delegation	Permit Issued
PP428/08	03-Dec-08	Addition Of A Rumpus Room To Garage	07-Jan-09	35	Under Delegation	Permit Issued
PP431/08	04-Dec-08	To Remove The Drainage Easement	28-Jan-09	8	Under Delegation	Permit Issued
PP434/08	09-Dec-08	Alterations & Additions To Existing Dwelling	07-Jan-09	29	Under Delegation	Permit Issued
PP436/08	11-Dec-08	Install Additional Antennas On Tower	27-Jan-09	95	Under Delegation	Permit Issued
PP52/07-A	14-Jan-09	Development & Use Of A Dwelling In Accordance With The Endorsed Plans - Amendment	30-Jan-09	17	Under Delegation	Permit Issued
		Average Days to Process Planning Application		52		

Planning Permits Received & Determined for 2009

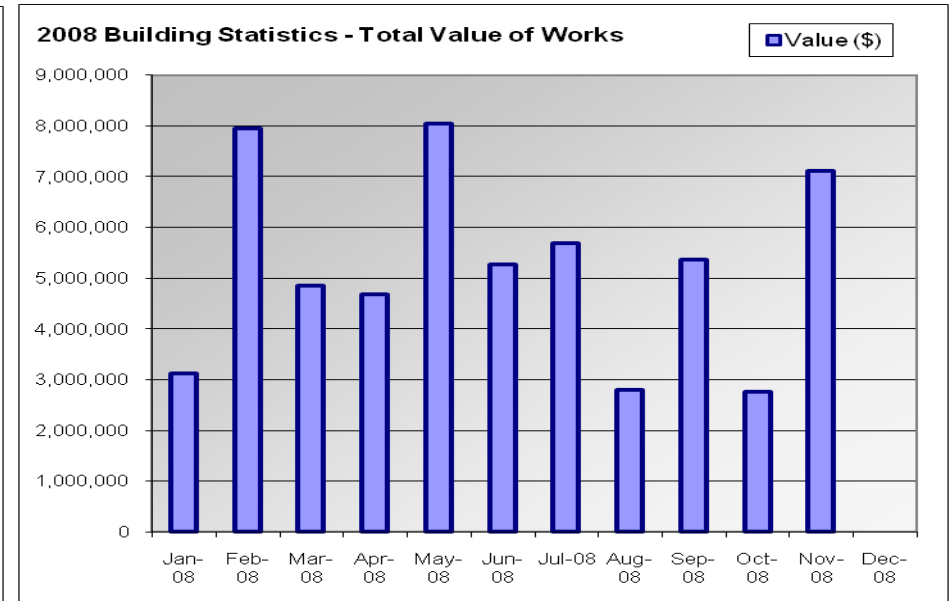
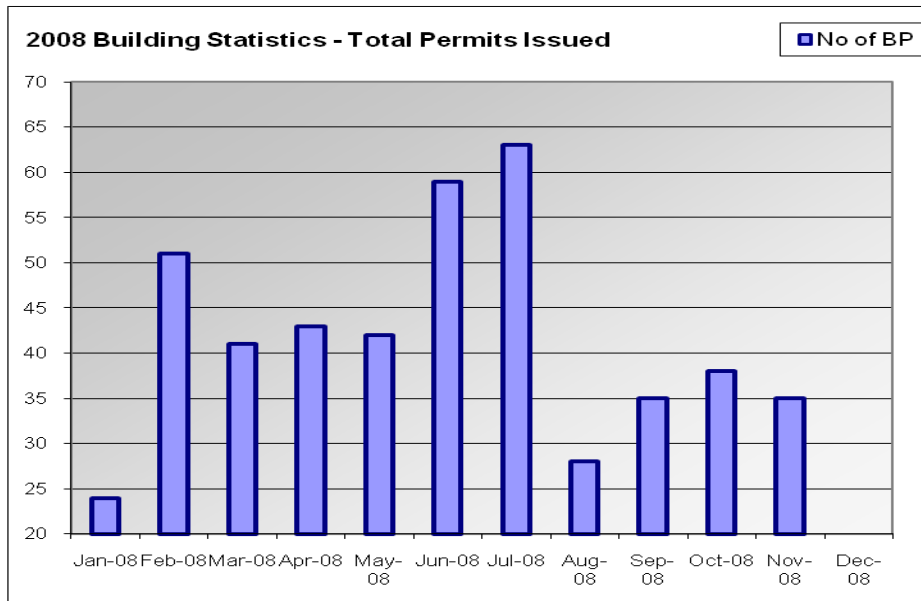


Subdivision Applications for 2009


[Pulse Building Statistics](#)
[Financial Yr Stats](#)
[Pulse Building Reports](#)

	Domestic		Residential*		Commercial		Retail		Industrial		Hospital/HealthCare		Public Buildings		Municipal Totals	
	No of BP	Value (\$)	No of BP	Value (\$)	No of BP	Value (\$)	No of BP	Value (\$)	No of BP	Value (\$)	No of BP	Value (\$)	No of BP	Value (\$)	No of BP	Value (\$)
Jan-08	20	2,466,200	1	50,000	1	90,000	1	11,500	0	0	1	500000	0	0	24	3,117,700
Feb-08	47	4,280,656	0	0	3	113,020	0	0	0	0	0	0	1	3,553,701	51	7,947,377
Mar-08	34	4,552,124	0	0	4	156,781	1	100,000	1	20,000	0	0	1	22,000	41	4,850,905
Apr-08	36	4,376,049	0	0	2	38,550	2	227,950	0	0	0	0	3	39,966	43	4,682,515
May-08	35	3,040,877	1	50,000	4	4,660,000	1	55,000	0	0	0	0	1	250,000	42	8,055,877
Jun-08	50	4,422,243	3	600,000	2	144,000	1	0	2	90,000	1	20000	0	0	59	5,276,243
Jul-08	50	4,411,138	0	0	8	532,950	1	15,000	1	10,000	1	9000	2	711,874	63	5,689,962
Aug-08	27	2,491,383	0	0	0	0	1	300,000	0	0	0	0	0	0	28	2,791,383
Sep-08	27	1,183,923	1	750,000	1	2,000	2	17,500	1	124,000	0	0	3	3,289,452	35	5,366,875
Oct-08	32	2,468,125	1	50,000	3	203,000	2	41,105	0	0	0	0	0	0	38	2,762,230
Nov-08	28	4,674,000	2	2,211,000	3	75,000	0	0	0	0	0	0	2	162,000	35	7,122,000
Dec-08																
Totals	386	38,366,718	9	3,711,000	31	6,015,301	12	768,055	5	244,000	3	529,000	13	8,028,993	459	57,663,067

*Multi-Development



Building Stats

***Please note that the Building Commission website has only been updated to November 2008.

Recommendation(s)

That Council's Planning Committee note the January 2009 statistical report.

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**PC091102-2 USE & DEVELOPMENT OF A LICENSED CAFE AND MICRO-BREWING FACILITY, ASSOCIATED WORKS AND WAIVER OF CARPARKING, ON-PREMISE LIQUOR LICENCE & SIGNAGE**

AUTHOR: Helen Evans  
DEPARTMENT: Sustainable Planning and Development

ENDORSED: Doug McNeill  
FILE REF: PP177/08

**Location:**

**Applicant:**

**Zoning:** Township Zone, Adjacent Road Zone Category 1

**Overlay controls:** Erosion Management Overlay – Schedule 1, Wildfire Management Overlay

**Amendment:** Nil

**Abuts:** Township Zone

**Restrictive Covenants:** Nil

**Reasons for Planning Committee consideration:**

This application is before Planning Committee as the applicant is seeking a waiver of car parking.



**Summary**

- The planning application proposes the use and development of a licensed cafe and micro-brewing facility, associated works and waiver of car parking, and on-premise liquor licence and signage.
- The site is located in a Township Zone and the proposed microbrewery component of the application is a prohibited use in this zone. This aspect of the proposal is therefore not able to be considered by the Planning Committee in making its decision.
- The application was advertised and two (2) objections were received that raised issues in relation to waiver of car parking and effluent disposal.
- The Forrest Master Plan adopted by Council supports the concept of on street car parking, and conditions proposed in the recommendation require a contribution from the applicant to establish parking in this location to service the use.
- The proposed café, associated works (excluding the microbrewery) and the waiver of car parking would be appropriate for the site and it is recommended that a Notice of Decision to Grant a Planning Permit be issued.
- Given the broader implications of restrictions on microbrewery uses under the Planning Scheme, it is recommended that Council write a letter to the Minister on the issue.

**Proposal**

Planning permit application PP177/08 was received by Council on 20 May, 2008. The application seeks approval for the use and development of a licensed café/restaurant, micro-brewing facility, associated works, waiver of carparking and an on-premise liquor licence (refer to Appendix A).

The plans submitted with the application propose to convert an existing unused shopfront into a café/restaurant. The existing building has a height of 6.25m and is constructed of a mix of sheet cladding (weatherboard and Custom-Orb) with iron hip roofing with an overall floor area of 134m<sup>2</sup>. The café will comprise of a lounge and dining area capable of seating 42 patrons inside, and outside dining for 8 patrons, with a kitchen at the rear of the building. It is proposed to replace the existing verandah with a new structure. Stage 2 of the development proposes to demolish the existing attached garage and construct a new building attached to the existing dwelling and shopfront to use as a microbrewery and loading area. The area proposed for the brewery is 113m<sup>2</sup>. The proposed site coverage is 36% with 463 square metres of total floor area.

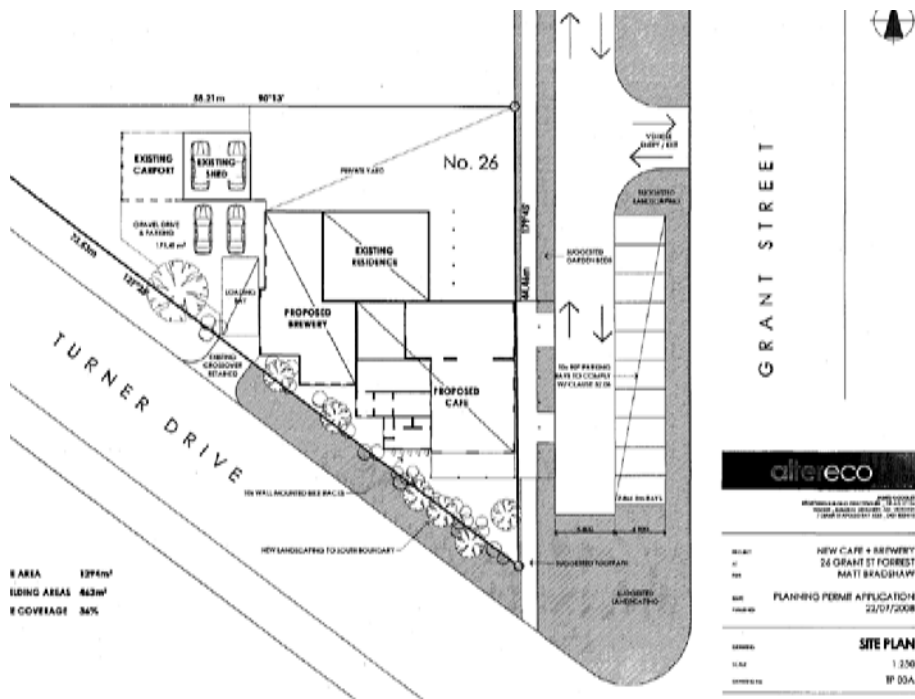
The proposed hours for the café/restaurant are:

- Monday to Saturday 9am to Midnight
- Sunday 9am to 8pm

The spread of hours at expected peak periods will vary dependent upon demand. Other times of the year will drop down to opening only on Fridays, Saturdays and Sundays.

The planning proposal includes details of signage proposed for the business. The applicant proposes a floodlit 3-dimensional sign to be constructed on the roof line of the building, measuring 10m x 1m, with an overall area of 10 square metres. The alphabetical characters will be constructed in wood and painted black and lit with overhead lighting during the evening hours of operation. It is also proposed to print the trading name on the entrance windows but no details of the signage has been provided with the application.

A request for further information was sent to the applicant on 12 June 2008, as the proposal did not provide information in relation to effluent disposal, land stability, the road reserve parking layout, justification of waiver of onsite parking, and the proposed liquor licence area. Amended plans and supporting information were received on 4 August 2008 (Refer to Appendix B below).



## Amended site plan



The site is located on the northwest corner of Grant Street and Turner Drive in Forrest within the Township Zone.

[illegible]

The site currently contains a single storey dwelling with an attached garage orientated toward Grant Street, and vehicular access off Turner Drive. An unused building (formerly used as a general store and an opportunity shop) is attached to the dwelling and also fronts Grant Street. The former shop building has a zero setback to Grant Street with a verandah protruding over the road reserve. A shed and carport is located to the rear of the dwelling. The balance of the site comprises garden and lawn areas, with scattered mature vegetation.

Immediately in front of the site, is a raised concrete slab within the road reserve where it is understood that a petrol bowser was situated in relation to the former general store use. It is also understood that the petrol tank was located on the subject site around the corner, in Turner Drive, and it is likely that there are still pipes under the sealed pavement. The applicant has advised that the tank was above ground and has since been removed.

Informal parking along Grant Street is provided by the particularly wide road reserve. The west side of the road reserve provides an area of approximately 20.5m wide between the property boundary and Grant Street road pavement.

Development to the immediate north, west and south, is single storey dwellings. To the east is the general store/post office and a garage/machinery shed.

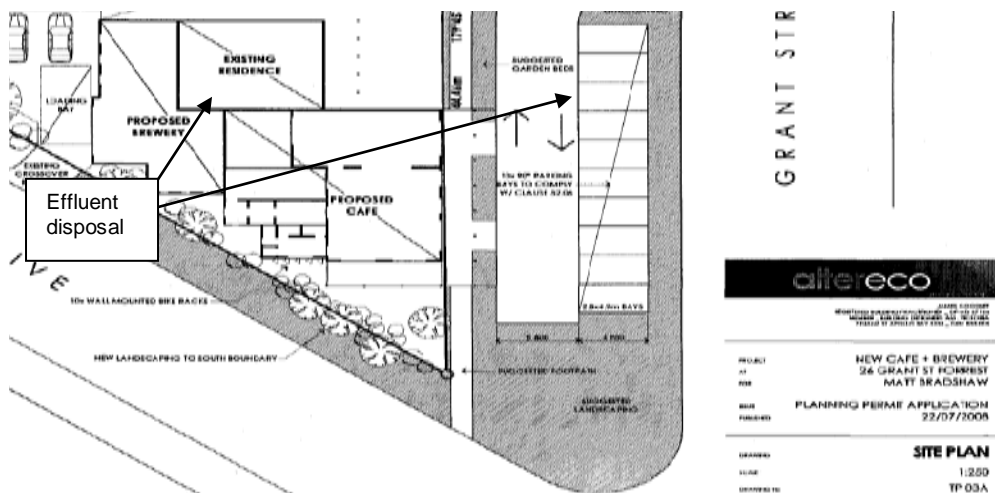
Characteristics of Forrest include generally lower density residential development as the town is not sewered. The township services the surrounding community with a post office and general store, primary school, medical centre, public hall and church all located along the frontage of Grant Street.

## Referrals

The application was referred to VicRoads, Country Fire Authority and Environment Protection Authority pursuant to Section 55 of the Planning and Environment Act 1987, each providing no objection to the proposal subject to conditions.

Council's Infrastructure, Health and Building Departments were also consulted, each providing no objection to the proposal subject to conditions.

Council's Health Department raised concerns with the proposal in relation to effluent disposal. After a number of discussions with the applicant, the Environmental Health Officer was satisfied that the effluent could be treated on site. The effluent disposal area is proposed to be located in the western corner of the lot, including the existing carport area, and along the northern boundary of the site.



**Notice of Application**

The application was advertised pursuant to Section 52 of the Planning and Environment Act 1987 with public notices being sent to adjoining and opposite property owners/occupiers and a sign was placed on site for a period of 14 days, together with a public notice in the Colac Herald on 25 August 2008. At the conclusion of the notification period a total of two (2) objections were received.

The grounds of objections may be summarised as follows:

- *Inadequate parking facilities provided;*
- *Concern regarding effluent disposal;*
- *Potential overuse of the site providing for poor tourism experience;*
- *Storage of product for manufacturing associated with the microbrewery.*

The matters raised by the objections are discussed in detail in later sections of this report.

**Consideration of the Proposal**

The land is contained within the Township Zone and included in the Erosion Management Overlay – Schedule 1 and the Wildfire Management Overlay. A planning permit is required for the use and development of land for a café/restaurant, signage, on premise liquor licence associated works and waiving of car parking. The proposed use of a microbrewery is not permitted under the zone (see further discussion below).

There are a range of State and Local Planning Policies that must be considered when assessing this application, these are detailed below.

**a) State and Local Planning Policy Framework, including the Municipal Strategic Statement.**

The State Planning Policy Framework seeks to ensure the objectives of planning in Victoria 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. The following policies are relevant to the consideration of this application:

- Clause 11.03– Principles of Land Use and Development Planning
- Clause 14.01– Urban Settlement
- Clause 17.04 – Tourism
- Clause 21.04-2– The Otway Ranges and Foothills
- Clause 21.04-1– Tourism
- Clause 21.04-07 – Tourism
- Clause 21.04-13– Smaller Communities (Forrest)
- Clause 22.05– Coastal and Otway Ranges Townships

The proposal is considered to be consistent with the provisions of the State and Local Planning Policies as outlined above. The proposed use will provide employment opportunities and diversification of business types available in the town. The café/restaurant will complement the existing business activities in the town and provide a service for eco tourists attracted to the area, in line with the objectives of Clause 21.04-7– Tourism.

The proposed use will assist in promoting the economic future of the community and results in a small scale activity which assists and complements the tourism resources of the region. Grant Street functions as the commercial area of the town and it is considered that the development of the site in the manner proposed will strengthen the vitality of the town and further consolidate the commercial hub of the township.

**b) Planning Scheme Amendment C55 (Review of Planning Scheme)**

When approved by the Minister for Planning, Amendment C55 will include the Forrest Master Plan as a Reference Document at Clause 21.07 in the Colac Otway Planning Scheme.

**c) Zoning**

The site is located within a Township Zone under the Colac Otway Planning Scheme. The purpose of the zone is as follows:

- To provide for residential development and a range of commercial, industrial and other uses in small towns.
- To encourage residential development that respects the neighbourhood character.

When considering a planning application for use of land Council is required to give consideration to the decision guidelines at Clause 65, and the following matters, as appropriate:

- The effect that existing uses on adjoining or nearby land may have on the proposed use.
- The design of buildings, including provision for solar access.
- The availability and provision of utility services.
- The effect of traffic to be generated by the use.
- The interim use of those parts of the land not required for the proposed use.

The current application proposes two uses of a similar scale that can be operated independently of each other. Neither use is considered subservient or ancillary to the other use. As such, the microbrewery cannot be considered as an ancillary use to that of the cafe/restaurant. The microbrewery is a separate use and must be a permissible use under the provisions of the planning scheme for it to be supported.

A cafe/restaurant is a permissible use under the Township Zone and is defined under the Planning Scheme as:

*“Land used to prepare and sell food and drink, for consumption on the premises. It may include:*

- a) entertainment and dancing; and*
- b) the supply of liquor other than in association with the serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time.*

*It does not include the sale of packaged liquor.”*



The microbrewery does not fall within the above definition and must be considered as a separate use. As there is no definition specifically pertaining to a microbrewery in the Planning Scheme, it is necessary to determine the nature of the activity and how it should be defined in order to determine whether it is a permitted use under the Township Zone.

Council Officers raised concerns with the applicant that the 'microbrewery' may be prohibited based on the provisions of the planning scheme, and advised that further research would be undertaken to ascertain whether this component of the proposal was permissible. The applicant provided a detailed outline of the process involved in the production of the beer to assist in defining the use.

Based on the research undertaken, the use of the land for a microbrewery of the scale proposed is prohibited under the Township Zone for the following reasons.

In the Township Zone, Industry is a permit required use (Section 2) with a condition that the use "must not be a purpose listed in the table to Clause 52.10" (amenity buffers). If the purpose is listed in Clause 52.10 then the use becomes a Section 3 use and is prohibited. 'Food and beverage production other than above' is listed in Clause 52.10 and therefore under the Township Zone a use within this category is prohibited. A microbrewery falls within 'food and beverage production'.

Industry is defined as:

*Land used for any of the following operations:*

- a) *any process of manufacture;*
- b) *dismantling or breaking up of any article;*
- c) *treating waste materials;*
- d) *winning clay, gravel, rock, sand, soil, stone, or other materials (other than Mineral, stone, or soil extraction);*
- e) *laundering, repairing, servicing or washing any article, machinery, or vehicle, other than on-site work on a building, works, or land; or*
- f) *any process of testing or analysis.*

*If on the same land as any of these operations, it also includes:*

- a) *storing goods used in the operation or resulting from it;*
- b) *providing amenities for people engaged in the operation;*
- c) *selling by wholesale, goods resulting from the operation; and*
- d) *accounting or administration in connection with the operation."*

To assist in the categorisation of the use, Council Officers researched a number of VCAT determinations relating to microbreweries as follows:

1. *Golding v Mornington Peninsula SC & Ors [2002] VCAT 415 (24 April 2002)*
2. *Van Den Bergen v Cardinia SC [2002] VCAT 981 (20 May 2002)*
3. *Wayne v Mitchell CC [2005] VCAT 2334 (26 October 2005)*

Two of the above decisions deal with the matter of defining a microbrewery and have determined that the use would be classified as 'industry'. In the VCAT determination *Van Den Bergen v Cardinia*, a microbrewery is referred to as a use under the 'food or beverage production other than listed above' in Clause 52.10. Officers have relied upon these determinations in arriving at a view that the use is prohibited.

Council Officers also contacted other Councils where applications for microbreweries have been supported and found that in some cases the applications were considered under the former Rural Zone, which has now been replaced by the State Government as part of the Rural Zones review by the more restrictive Farming Zone where Industry other than Rural Industry is prohibited.

A microbrewery would be prohibited under most zones except for the Industrial Zones and the Business 4 Zone in the planning scheme, as the use is included in Clause 52.10 under 'food and beverage production and subject to Note 1'.

Given the restrictive nature of the Planning Scheme in relation to this activity there would be merit in Council writing to the Minister for Planning to consider a review of this provision. The use is supported in principle by Council officers due to the economic benefits it would have for the Forrest township, and it would be disappointing if such proposals cannot be considered in the Shire except in industrial zones. The proposed use and development presents an opportunity to enhance the vibrancy of the township of Forrest by introducing an activity that would generate a focal point for members of the community and visitors alike. The cafe/restaurant component of the proposal can be supported under the provisions of the zone; however, the micro-brewery component of the proposal cannot be supported as it is considered to be a prohibited use under the current proposal. The recommendation proposes that amended plans be lodged for approval that deletes reference to the microbrewery component.

#### Home occupation

In the VCAT determination, *Payne v Mitchell CC [2005] VCAT 2334 (26 October 2005)*, the Tribunal indicated that the proposal being considered in that case may be assessed in a number of alternate ways, one being whether the proposal for a boutique beer production could be considered under the definition of home occupation provided the requirements set out in Clause 52.11-1 are met. However, one of the critical tests for a home occupation is whether the use has an impact on the amenity of the area. In the above case, it was argued that the amenity requirement could not be met by the respondent.

The Tribunal member concluded the following:

*"The planning scheme specifically provides the opportunity for residents to run occupations from their own homes. In practice it allows a small business to be set up and run from a home until such time as it reaches a certain size or level of intensity, at which time it becomes other than a home occupation and has to be considered as an industry or some other form of commercial or business enterprise. I am aware that my refusal of the application for industry and manufacturing sales may encourage the applicant to try and operate the brewery as a home occupation. If that occurs, it is the responsibility of the permit applicant to comply with the requirements set out in clause 52.11-1 of the Mitchell Planning Scheme."*

It is possible that the above may present an alternative option for the applicant in terms of the microbrewery component; however this opportunity is potentially limited given the constraints of the Home Occupation provisions. For example, to conduct an activity under the Home Occupation provisions without the need to obtain a planning permit, the applicant would need to comply with, amongst other things, the following:

- Person conducting the home occupation must reside in the dwelling;
- Only 1 person who does not live in the dwelling may work in the occupation;
- The area available for the activity must not exceed 50m<sup>2</sup> or one third of the dwelling, whichever is the lesser.
- Activity must not adversely affect the amenity of the neighbourhood.

Provision is available under the Home Occupation clause to apply for a planning permit to allow two persons who do not live in the dwelling to work in the occupation and increase the floor area used for the activity to 100m<sup>2</sup> or one-third of the gross floor area of the dwelling, whichever is the lesser.

The size of the existing dwelling has been estimated as 123m<sup>2</sup> in gross floor area, this would mean that to operate the microbrewery as a Home Occupation, the activity could only be conducted within an approximate area of 40m<sup>2</sup>, based on the current circumstances.

Under this scenario the proposal could not be considered as a home occupation.

#### **d) Overlay Controls**

##### ***Erosion Management Overlay Schedule 1 (EMO1)***

A permit is required for buildings and works under Clause 44.04-1. The purpose of this overlay is to protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development.

A geotechnical report was provided with this application, prepared by 2020 Engineering Solutions, dated 7 July 2008. The report concludes that the risk to life and property is low to extremely low.

##### ***Wildfire Management Overlay (WMO)***

The purpose of this overlay is:

- To identify areas where the intensity of wildfire is significant and likely to pose a threat to life and property.
- To ensure that development which is likely to increase the number of people in the overlay area:
  - Satisfies the specified fire protection objectives.
  - Does not significantly increase the threat to life and surrounding property from wildfire.
- To detail the minimum fire protection outcomes that will assist to protect life and property from the threat of wildfire.

A permit is required for buildings and works under Clause 44.06-1 where the works are associated with either a place of assembly, retail premises and/or industry. The application was referred to Country Fire Authority who offered no objection to the proposal subject to conditions.

#### **e) Relevant Particular Provisions**

##### **Clause 52.05-9, Advertising Signs**

Signage within a Township Zone must meet the requirements of Category 3. The purpose of this clause is to ensure that signs in high amenity areas are orderly, of good design and do not detract from the appearance of the building on which a sign is displayed or the surrounding area.

A planning permit is required for all business identification signage.

The proposal includes an illuminated three dimensional sign to sit on the roof along the Grant Street (East elevation) frontage and has an overall area of 10m<sup>2</sup>.

Given the size of the proposed advertising sign, style, location and materials used in relation to the size of the building, it is considered that the sign above the veranda can be supported. Details of the remaining proposed signage on the windows will need to be provided and assessed separately. Amended plans can be required should the permit be issued, and further assessed when received.

The signage proposed as location based signage on the back of a 1960 classic car cannot be approved as part of the planning permit application. This type of signage would require Local Laws approval and also VicRoads approval if located adjacent to a major road.

#### Clause 52.06, Car parking

The purpose of this clause is to ensure the car parking facilities are provided and that the location of the car parking areas do not adversely affect the amenity of the area, are safe and efficient and protect the role and function of nearby roads.

If the requirements of this clause cannot be met, a permit is required to reduce or waiver the car parking requirement under this provision.

Car parking requirements for the use and development, as proposed, are detailed in the table below:

| Use                                                   | Calculation rate                                          | Number of spaces |       |
|-------------------------------------------------------|-----------------------------------------------------------|------------------|-------|
| Previous use as an Opportunity shop attracts a credit | 134sqm x 8/100m <sup>2</sup> . (shop)                     | -10.70*          |       |
| Existing dwelling. No change to existing conditions   | 2 spaces per dwelling.                                    |                  | 2.00  |
| Proposed micro-brewery                                | 113.4 <sup>2</sup> . x 2.9/100m <sup>2</sup> . (industry) |                  | 3.28  |
| Proposed café 50 seats                                | 50 seats x 0.6spaces per seat (restaurant)                |                  | 30.00 |
| Total to be provided onsite                           | Note 2 spaces existing                                    | -4.00            |       |
| Subtotal                                              |                                                           | -14.70           | 35.28 |

|                               |  |  |       |
|-------------------------------|--|--|-------|
| Waiver required for both uses |  |  | 20.58 |
|-------------------------------|--|--|-------|

As the micro-brewery component of the proposal is considered to be prohibited, the number of car spaces required for the proposed use of the land for a cafe/restaurant is 17.3 spaces.

The applicant is seeking a waiver of all car parking requirements on the basis that:

- it is proposed to utilise the car parking facilities currently available on the road reserve immediately in front of the subject site;
- any available land on the site will be used for the treatment of effluent;
- up to 5 staff will be required and these staff are likely to be sourced from the local community and will walk to the site;
- provision would be made for a bicycle stand to accommodate 10 bicycles, reducing the number of car spaces required as it considered that users of the surrounding bicycle tracks will frequent the development and cyclists could also utilise the Department of Sustainability and Environment Mountain Bike trailhead car park (some 440m south of the site).

The Forrest Township Master Plan, 2002 (reviewed in 2007) contains a streetscape Master Plan for the Town. The Master Plan was produced in consultation with the community and provides direction in relation to how the Forrest community would like to see the streetscape developed in the future. The Master Plan, amongst other things, identifies the *“southern entry from Turner Drive closed to vehicles for traffic management and safety reasons and improved car parking opportunity”*. An initiative identified as part of the Master Plan is to *“develop Grant Street including the rationalization of the existing service road, one-way traffic management, increased parking, street tree planting, kerb and channel and sealed footpaths”*.

The plans submitted with the planning application show street parking in accordance with the Master Plan, however, advice from Council's Infrastructure Department recommended that the entrance to Grant Street adjacent to Turner Drive be moved further north and the applicant submitted amended plans showing this. The amended site plan demonstrated that 10 formal car spaces could be constructed within the road reserve consistent with the Master Plan. While the Master Plan supports the concept of formalised parking and streetscape improvements it does not contain a program for the construction of such improvements. The Plan identifies a number of organisations who may contribute to funding some of the initiatives in the plan, other than the Council. Council has no current funding commitments in relation to initiatives for improvements identified in the Plan.

Under normal circumstances the applicant would be required to provide car parking on-site to meet the car parking needs generated by the activity. Given the location of the site and the opportunity to provide formal car parking on the road reserve consistent with the Forrest Township Master Plan, it is considered reasonable to require a contribution towards the provision of car parking.

Council Officers have held discussions with the applicant regarding the waiver of car parking and the potential to provide a financial contribution in lieu of providing the car parking on site. The applicant has provided an estimate based on providing 10 car spaces on the road reserve in front of the development consistent with the Master Plan. The estimate for the construction of the car park was \$30,100. The applicant considers that a contribution of one third of the estimated cost would be reasonable given that the area is used by the local school bus, general store customers and other road users.

Council also sought an estimate for the same works and the estimate was \$45,500, however, this did not include footpath, engineering survey and design, supervision fee or geotechnical investigation.

As the road reserve in front of the development will only provide for 10 car spaces, eight less than that required by the use and development, it is considered appropriate that the applicant contribute 50% towards the cost of formalising the car park in this area. One option would be to require an upfront monetary contribution based on a reliable estimate of the cost of the works at today's value, the other option would be to require the applicant to contribute 50% of the cost of the works based on an estimate at the time of the proposed construction of the car park. This then allows for change in the cost of works depending on when the works are required to be carried out.

Requiring a contribution to this car park will effectively require Council to commit to setting aside funds for the balance of the construction costs should the application proceed and the works be carried out. The works would need to be incorporated into the capital works programs budget and would be subject to consideration in the budget process.



There are a number of other applications where a reduction of car parking has recently been supported in Forrest; however, all have provided some on-site car parking facilities as outlined below:

| Address         | Application details            | Number of spaces                                               | Comments                                                                                                       |
|-----------------|--------------------------------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| 3 Blundy Street | PP252/06 approved June 2007    | 13 spaces required, 6 spaces provides shortfall of 7 spaces    | 16 seat café and bric a brac shop. Council supported application, objector appealed to VCAT, permit issued.    |
| 16 Grant Street | PP300/03 approved August 2004  | Reduction of 9 to 7 spaces                                     | Forrest Guesthouse. Council refused, applicant appealed to VCAT, waiver granted.                               |
| 39 Grant Street | PP247/06 approved October 2007 | 38 Spaces required, 23 spaces provided, shortfall of 15 spaces | 50 seat restaurant with general licence, shop, dwelling and take away food premises, permit issued, no appeal. |

The most relevant example is the restaurant at 39 Grant St, Forrest. While the development has not commenced, the planning permit issued requires 23 car spaces to be provided on-site at the cost of the permit holder.

Other recent proposals have provided up to half of the car spaces required for a commercial venture, however, in this instance, the applicant is seeking to utilise public land to provide for parking required for their development. If the lot was larger and capable of providing for parking onsite, permit conditions would require that parking was provided onsite in accordance with Council standards at the applicant's expense. As the lot is not large enough to contain onsite parking, and there is a suitable area that could be utilized for parking in front of the site, it is considered reasonable that the applicant either develop the car parking or provide a contribution to the upgrade of the area.

It is essential that carparking is provided to serve this activity. If no carparking is provided as part of the application then support could not be given to the proposal. It is recommended that the applicant be required to fund 50% of the cost of formalising the car park in front of the development based on an estimate of the cost of constructing the car park at the time of the commencement of the use.

#### Clause 52.07 Loading and Unloading of Vehicles

This provision is to set aside land for the purposes of loading and unloading commercial vehicles and to prevent the loss of amenity and adverse effect on traffic flow and road safety. The loading area required for this proposal is 27.4sqm (length of 7.6m and width of 3.6m and height of 4.0m).

The application indicates that all loading and unloading will be carried out onsite west of the proposed brewery building. The application satisfies the requirements of this clause.

#### Clause 52.27, Licensed Premises

The purpose of this Clause is to ensure that licensed premises are situated in appropriate locations and that the impact on the amenity of the surrounding area is considered.

An on-premise liquor license with an area of 175m<sup>2</sup> is being sought as part of this application. It is proposed that the licensed area be the dining area, the lounge area and the outdoor seating area located in the southern corner of the site. The on premises license is considered to be the most appropriate outcome for the site as it is usually associated with a restaurant. This type of license sets out that the premises must predominantly be used for the preparation and serving of meals for consumption on the premises. Tables and chairs are required to be made available for at least 75% of patrons attending the premises at any one time. It is considered that the approval of this type of license will not impact on the surrounding amenity of the neighbourhood.

### **Summary**

The proposed use and development will make a positive contribution to the township of Forrest, and in principle should be supported. However, support can only be given for the cafe/restaurant component of the proposal as the microbrewery is considered to be prohibited under the Township Zone.

The applicant has indicated that the microbrewery component of the proposal is critical to the success of the business as a tourist attraction that people may choose to visit. It is unfortunate that the provisions of the Colac Otway Planning Scheme do not provide Council with the scope to support such a use in its current format. It is recommended that Council write to the Minister for Planning to seek a review of this provision in regard to this activity as it has implications for other such developments elsewhere.

The cafe/restaurant component can be supported subject to the applicant making a contribution for the provision of car parking on the road reservation.

It is recommended that Council support the licensed cafe/restaurant component of the proposal subject to conditions.

**Recommendation(s)**

- A) That Council's Planning Committee resolve to issue a Notice of Decision to Grant a Planning Permit for Planning Permit Application PP177/08 for the use and development of the land for café/restaurant and associated works, an on premise liquor license, advertising signage and waivering of car parking subject to the following conditions:**

***Amended plans***

- 1. Prior to the commencement of the use and/or development, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies provided. The plans must generally be in accordance with the plans submitted with the application, but modified to show:**
  - Fully detailed plans of all proposed signage, including location, dimensions and wording, materials and colours;**
  - Floor and elevation plans for all buildings, fully dimensioned and drawn to scale, external materials and colours.**
  - Deletion of any reference to the microbrewery component of the proposal.**

***to the satisfaction of the responsible authority.***
- 2. The layout of the site and the size of the proposed buildings and works as shown on the endorsed plans must not be altered or modified without the written consent of the Responsible Authority.**

***Liquor Licence***

- 3. The provision and or consumption of liquor within the development hereby permitted must be subject to the issue of a Liquor Licence, pursuant of the provision of the Liquor Control Reform Act, 1988, as amended.**
- 4. The cafe/restaurant may only operate between the following hours without the further written permission of the responsible authority:**
  - (a) Monday to Saturday 9.00 am to midnight;**
  - (b) Sunday 9.00am to 8.00pm**



***Infrastructure, car parking & drainage***

5. ***Before the commencement of the use, detailed road and on street parking construction plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority and VicRoads. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must include:***
- (a) The access road showing fully sealed pavement with SM2 kerb and channel 5.5 metre minimum back to back;***
  - (b) Reinstatement (closure) of the existing access point from Turner Drive onto the road reserve east of the subject site;***
  - (c) Drainage to a legal point of discharge. Drainage design to include provision for underground drainage as required;***
  - (d) Access and on street parking on the Grant Street Road reserve that meets Council Standards;***
  - (e) Line marking and landscaping plan;***
  - (f) The car park aisle width and parking bays to be in accordance with AustRoads Guideline Part 11 'Parking';***
  - (g) Provision for a minimum of 10 car spaces one of which must be provided for the exclusive use of disabled persons. The car space must be provided as close as practicable to a suitable entrance of the building and must be clearly marked with a sign to indicate that the space must only be utilised by disabled persons. The minimum dimensions of the disabled car space must be 3.2 metres wide by 4.9 metres long.***

***All works constructed or carried out must be in accordance with those plans.***

6. ***Before the use commences, the owner must:***
- (a) Concrete the area to be used for public seating where the petrol tank was situated in the southeast corner of the site;***
  - (b) Remove the concrete slab on the road reserve and reinstate to the satisfaction of the responsible authority;***
  - (c) Erect a temporary barrier to prevent vehicular access of the existing access point from Turner Drive onto the road reserve east of the subject site to the satisfaction of the responsible authority.***
7. ***The driveway entrance off Turner Drive is to be constructed to Council's minimum standard to the satisfaction of the Responsible Authority.***
8. ***No fewer than 4 car spaces must be provided on the land for the use of the residence and staff employed in the business.***
9. ***Prior to the commencement of the use, the permit holder must make a cash contribution to the Colac Otway Shire of 50% of the estimated cost of the car park outlined in Condition 5. The estimated cost must be undertaken by a qualified engineer to the satisfaction of the Responsible Authority and within three months prior to the use commencing.***

10. *All run off from stormwater, including overflow from water storage, must be taken to a legal point of discharge to the satisfaction of the Responsible Authority.*

#### **Amenity**

11. *The use and development must be managed so that the amenity of the area is not detrimentally affected, through the*
- *Transport of materials goods or commodities to or from the land*
  - *Emission of noise, artificial light, vibration, smell, fumes, smoke ,waste water etc*
12. *External lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.*
13. *All security alarms or similar devices installed on the land must be of a silent type in accordance with any current standard published by Standards Australia International Limited.*

#### **Food Safety & Effluent Disposal**

14. *That the premises be limited in size to a 50 seat restaurant to ensure that the resultant waste water produced can be adequately disposed of within the title boundaries.*
15. *The permit holder must obtain a permit from Council's Health Department before any works are started on the restaurant and a detailed plan submitted for approval showing the fixtures and fittings of the kitchen and food preparation areas.*
16. *A food safety plan must be submitted to Council covering the food operations. A suitable number of staff must also be trained in food handling techniques before the premises can be registered to sell food or alcoholic beverages.*
17. *The septic system must be upgraded to cater for the increased loading and an application for such alteration must be approved by Council's Health Department prior to the commencement of any works on such system.*

#### **Signage**

18. *The location and details of the sign and its structure as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.*
19. *All signs must be constructed and maintained to the satisfaction of the Responsible Authority.*
20. *The sign may only be illuminated between the hours of Monday to Saturday 9am to Midnight and Sunday 9am to 8pm.*

#### **Conditions required by Environment Protection Authority**

21. ***Section 6 of EPA publication 888.1 Guidelines on the Design, Installation and Management Requirements for Underground Petroleum Storage Systems (UPSS) outlines the requirements for the removal/decommissioning of disused UPSS.***

***Conditions required by Country Fire Authority***

***Water Supply Requirements***

22. ***A static water supply, such as a tank must be provided unless there is a hydrant connected to a reticulated water supply within 120 metres of the rear of the building.***

***Vegetation Management Requirements***

23. ***A distance of 30 metres around the proposed building or to the property boundary (whichever is the lesser) must be maintained to the following requirements during the declared 'Fire Danger Period' to the satisfaction of the responsible authority.***
- ***Grass must be no more than 100mm in height***
  - ***Leaf litter must be less than 10mm deep***
  - ***There must be no elevated fuel on at least 50% of the area. On the remaining 50% the elevated fuel must be at most, sparse, with very little dead material.***
  - ***Dry shrubs must be isolated in small clumps more than ten metres away from the building.***
  - ***Trees must not overhang the roofline of the building.***
24. ***This permit will expire if one of the following circumstances applies:***
- (a) ***The development is not started within two years of the date of this permit.***
  - (b) ***The development is not completed within four years of the date of this permit.***

***The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.***

***Note: Non-flammable features such as tennis courts, patios, driveways, or paths should be incorporated into the vegetation management plan, especially on the north and western sides of the proposed building.***

***Features with high flammability such as coir doormats, firewood stacks should not be located near the building during the fire danger period.***

***Note: for low category of bushfire attack***

***The land is in a bushfire prone area designated under regulation 804 of the Building Regulations 2006. Grassland with minimal trees or cultivated gardens is the predominant vegetation within 100 metres of the proposed building, which corresponds to a low category of bushfire attack under AS 3959.***

- B) Council Officers make a submission to the Minister for Planning in relation to Clause 52.10 – Food and beverage production seeking a review of this provision particularly as it related to uses like microbreweries, to express concern that the Planning Scheme is currently inhibiting appropriate investment opportunities in this regard.**

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