



**Colac Otway  
SHIRE**

**AGENDA**

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

**11 MARCH 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 MARCH 2009

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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 March 2009 at 10.30am.

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## 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 11/02/09.

### Recommendation

*That the Planning Committee confirm the above minutes.*

## OFFICERS' REPORTS

### Sustainable Planning and Development

PC091103-1	PLANNING PERMITS FOR THE MONTH OF FEBRUARY 2009
PC091103-2	USE & DEVELOPMENT OF A LICENSED CAFE WITH ANCILLARY MICRO-BREWING FACILITY, ON-PREMISE LIQUOUR LICENCE, WAIVER OF CARPARKING, ASSOCIATED WORKS AND SIGNAGE AT 26 GRANT STREET, FORREST
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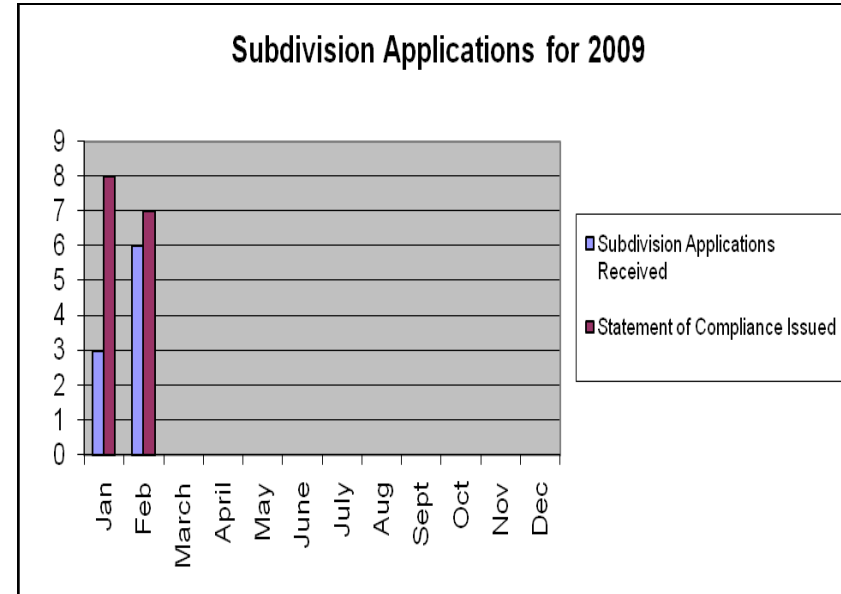
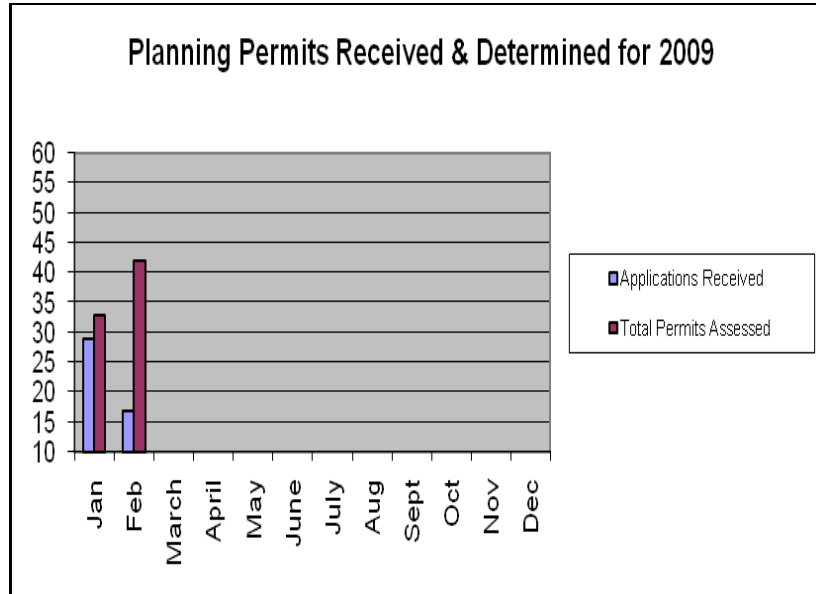
Jack Green  
Acting Chief Executive Officer



APPLIC NO	DATE RECEIVED	PROPOSAL	DATE ISSUED	ACTUAL TIME	AUTHORITY	DECISION
PP266/08	06-Aug-08	EXTENSION TO LIQUOR LICENSING AREA	09-Feb-09	141	UNDER DELEGATION	NOD To Grant Permit
PP275/08	14-Aug-08	USE OF LAND FOR PLACE OF ASSEMBLY AND WAIVER OF CARPARKING	05-Feb-09	0	UNDER DELEGATION	Application Lapsed
PP303/08	01-Sep-08	TWO (2) LOT SUBDIVISION	23-Feb-09	153	UNDER DELEGATION	NOD To Grant Permit
PP322/08	03-Sep-08	CONSTRUCTION OF A 75ML RING TANK DAM	19-Feb-09	46	UNDER DELEGATION	Permit Issued
PP339/08	08-Oct-08	USE & DEVELOPMENT OF A DWELLING	16-Feb-09	92	UNDER DELEGATION	Permit Issued
PP340/08	08-Oct-08	USE & DEVELOPMENT OF A SINGLE DWELLING	13-Feb-09	92	UNDER DELEGATION	Permit Issued
PP348/08	17-Oct-08	USE & DEVELOPMENT OF A STUDIO AS HOME OCCUPATION (PUPPETEER)	16-Feb-09	84	UNDER DELEGATION	Permit Issued
PP354/08	20-Oct-08	EXTENSIONS & ALTERATIONS TO EXISTING DWELLING	09-Feb-09	75	UNDER DELEGATION	Permit Issued
PP367/08	23-Oct-08	REMOVAL OF PINE TREES	23-Feb-09	107	UNDER DELEGATION	Permit Issued
PP373/08	31-Oct-08	REFURBISH EXISTING BUILDING AND ADDITION TO GROUND FLOOR	13-Feb-09	26	UNDER DELEGATION	Permit Issued
PP377/08	28-Oct-08	USE OF THE LAND FOR A SWIM SCHOOL & ADVERTISING SIGN	09-Feb-09	79	UNDER DELEGATION	NOD To Grant Permit
PP380/08	07-Nov-08	DEVELOPMENT OF A SHED	09-Feb-09	49	UNDER DELEGATION	Permit Issued
PP381/04-C	24-Nov-08	CONSTRUCTION OF A DWELLING & SHED - AMENDMENT	11-Feb-09	49	UNDER DELEGATION	Permit Issued
PP385/08	14-Nov-08	CONSTRUCTION OF A THREE (3) BEDROOM DWELLING	09-Feb-09	34	UNDER DELEGATION	Permit Issued
PP386/08	14-Nov-08	DEVELOPMENT OF A VERANDAH & NON ILLUMINATED ADVERTISING SIGN	06-Feb-09	39	UNDER DELEGATION	Permit Issued

APPLIC NO	DATE RECEIVED	PROPOSAL	DATE ISSUED	ACTUAL TIME	AUTHORITY	DECISION
PP392/08	14-Nov-08	CONSTRUCTION OF A DWELLING AND RENOVATE EXISTING SHED	19-Feb-09	44	UNDER DELEGATION	Permit Issued
PP394/08	11-Nov-08	ADDITIONS & ALTERATIONS TO A FOOD & DRINK PREMISES & ADVERTISING SIGN.	24-Feb-09	50	UNDER DELEGATION	Permit Issued
PP405/08	24-Nov-08	TITLE BOUNDARY ALTERATIONS	24-Feb-09	0	UNDER DELEGATION	Withdrawn
PP410/08	24-Nov-08	CONSTRUCTION OF PALLET STORAGE & DRYING SHED	09-Feb-09	77	UNDER DELEGATION	Permit Issued
PP422/08	25-Nov-08	CONSTRUCTION OF A NEW DECK AND SMOKERS AREA ROOM	19-Feb-09	46	UNDER DELEGATION	Permit Issued
PP430/08	04-Dec-08	ERECTION OF A BUSINESS SIGN	10-Feb-09	0	UNDER DELEGATION	Withdrawn
PP439/08	08-Dec-08	WORKS FOR BRIDGE UPGRADES	25-Feb-09	79	UNDER DELEGATION	Permit Issued
PP440/08	08-Dec-08	WORKS FOR BRIDGE UPGRADES	25-Feb-09	79	UNDER DELEGATION	Permit Issued
PP441/08	08-Dec-08	WORKS FOR BRIDGE UPGRADES	25-Feb-09	79	UNDER DELEGATION	Permit Issued
PP442/08	08-Dec-08	WORKS FOR BRIDGE UPGRADES	25-Feb-09	79	UNDER DELEGATION	Permit Issued
PP443/08	08-Dec-08	WORKS FOR BRIDGE UPGRADES	25-Feb-09	79	UNDER DELEGATION	Permit Issued
PP444/08	08-Dec-08	WORKS FOR BRIDGE UPGRADES	25-Feb-09	79	UNDER DELEGATION	Permit Issued
PP445/08	08-Dec-08	WORKS FOR BRIDGE UPGRADES	25-Feb-09	79	UNDER DELEGATION	Permit Issued
PP446/08	08-Dec-08	WORKS FOR BRIDGE UPGRADES	25-Feb-09	79	UNDER DELEGATION	Permit Issued
PP48/07-A	22-Jan-09	CONSTRUCTION OF DWELLING - AMENDMENT.	24-Feb-09	0	UNDER DELEGATION	Withdrawn
PP6/09	05-Jan-09	PROPOSED HABITABLE OUTBUILDING	06-Feb-09	31	UNDER DELEGATION	Permit Issued
PP9/09	12-Jan-09	CONSTRUCTION OF A SHED	11-Feb-09	14	UNDER DELEGATION	Permit Issued

APPLIC NO	DATE RECEIVED	PROPOSAL	DATE ISSUED	ACTUAL TIME	AUTHORITY	DECISION
		Average Days to Process Planning Application		66		





**Building Stats upto December 2008**

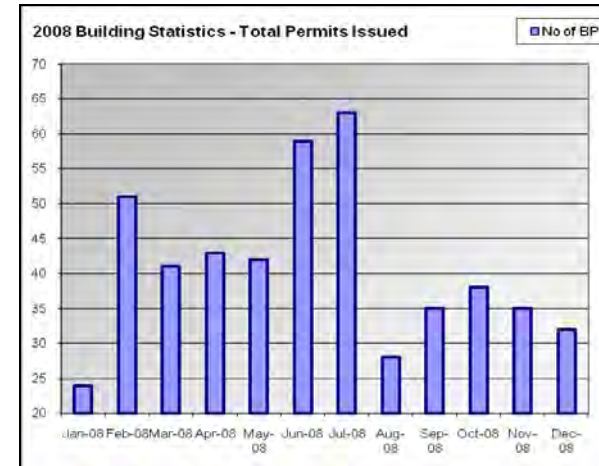
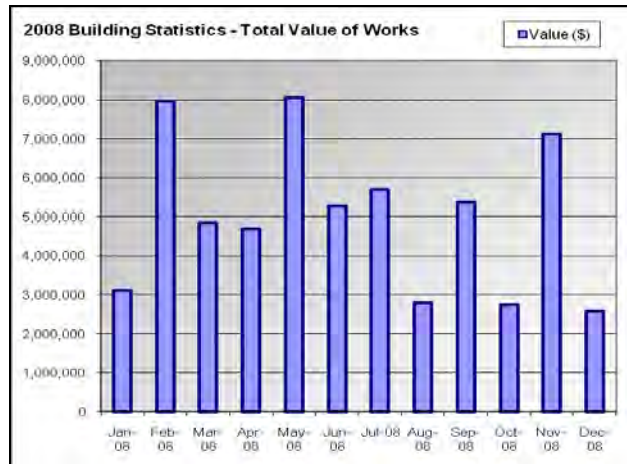
[Pulse Building Statistics](#)

[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	4,673,600	2	2,210,898	3	75,343	0	0	0	0	0	0	2	162,000	35	7,121,841
Dec-08	28	2,214,512	0	0	3	79,885	1	280,500	0	0	0	0	0	0	32	2,574,897
<b>Totals</b>	<b>414</b>	<b>40,580,830</b>	<b>9</b>	<b>3,710,898</b>	<b>34</b>	<b>6,095,529</b>	<b>13</b>	<b>1,048,555</b>	<b>5</b>	<b>244,000</b>	<b>3</b>	<b>529,000</b>	<b>13</b>	<b>8,028,993</b>	<b>491</b>	<b>60,237,805</b>

\*Multi-Development



**Building Stats up to January 2009**

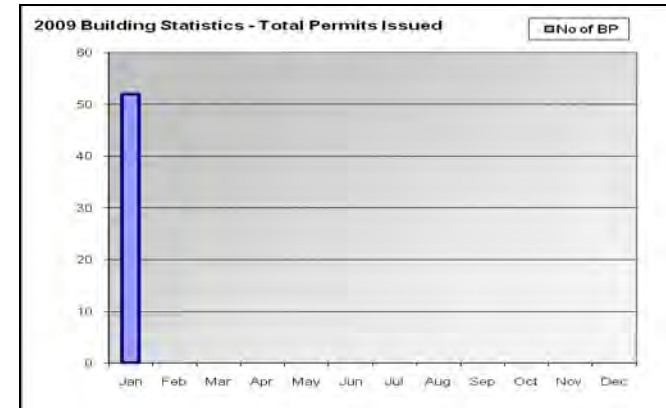
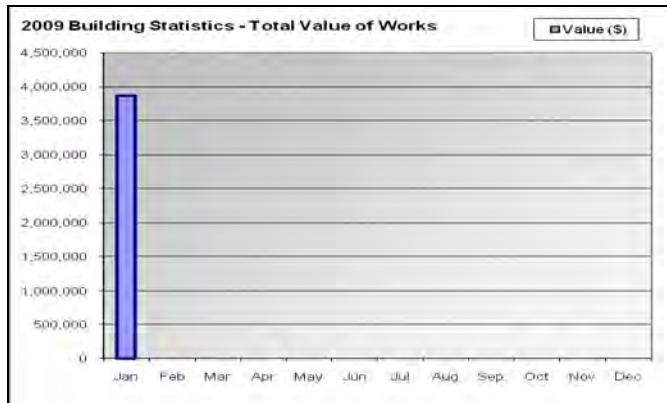
[Pulse Building Statistics](#)

[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	43	3,586,040	1	105,000	6	165,090	1	10,000	0	0	0	0	1	0	52	3,866,130
Feb																
Mar																
Apr																
May																
Jun																
Jul																
Aug																
Sep																
Oct																
Nov																
Dec																
<b>Totals</b>	<b>43</b>	<b>3,586,040</b>	<b>1</b>	<b>105,000</b>	<b>6</b>	<b>165,090</b>	<b>1</b>	<b>10,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>52</b>	<b>3,866,130</b>

\*Multi-Development



**Building Stats**

**\*\*\*Please note that the Building Commission Website has been updated to January 2009**

**Recommendation(s)**

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

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**PC091103-2 USE & DEVELOPMENT OF A LICENSED CAFE WITH ANCILLARY MICRO-BREWING FACILITY, ON-PREMISE LIQUOR LICENCE, WAIVER OF CARPARKING, ASSOCIATED WORKS AND SIGNAGE AT 26 GRANT STREET, FORREST**

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 1, Wildfire Management Overlay

**Amendment:** Nil

**Abuts:** Township Zone

**Restrictive Covenants:** Nil

**Reasons for Planning Committee consideration:**

This application is before Planning Committee as a reduction in car parking requirements is being sought.

**Summary**

- The application seeks approval for a café with ancillary microbrewing facility on the site, with an on-premises liquor licence and waiver of car parking.
- The proposal was advertised and received two objections that mainly concerned lack of on-site car parking and effluent disposal.
- Whilst the proposal has been supported by officers due to its potential social and economic benefits for Forrest, there was initial concern that the microbrewery component of the use was prohibited under the Planning Scheme.
- Officers reported the application to the February 2009 Planning Committee meeting recommending that the proposal be approved subject to the microbrewery component of the use being removed from the plans on this basis, after not being able to find a means of supporting the full proposal. The Planning Committee deferred the item at the request of the applicant so that further discussions could take place with officers.
- The applicant has since submitted amended plans that show a significant reduction in scale of the microbrewery use, and agreed to limiting the output of the microbrewery. This has enabled the microbrewery to be considered as ancillary to the use of the land for a café/restaurant, and for the use to be considered.
- This report recommends that Council support the amended proposal, which is a positive outcome for the township and broader tourism economy. It also recommends that Council writes to the Planning Minister asking that he review the planning provisions as they apply to microbreweries due to the restrictive nature of the current controls, which constrain the extent to which these uses can establish.

**Background**

Council at the Planning Committee meeting on the 11 February 2009 resolved to defer item PC091102-2 (Development of a Café and Micro-Brewing Facility) to allow the Council to reconsider a modified proposal.

Whilst every effort was made by Council Officers to have this matter heard at the 25 February 2009 Council meeting, all the information required was not received from the proponent until after the agenda deadline. Therefore, the application is now presented to the March Planning Committee for consideration.

A copy of the Officer's report to the February Planning Committee meeting is attached for information.

The report presented to the Planning Committee advised that the micro-brewery component of the application is prohibited and recommended that a Notice of Decision to Grant a Permit be issued for the application excluding any reference to the micro-brewery. Recommended conditions in the report included a requirement for amended plans to delete any reference to the Micro-brewery and a condition that required a monetary contribution paid to Council in lieu of the provision of onsite car parking.

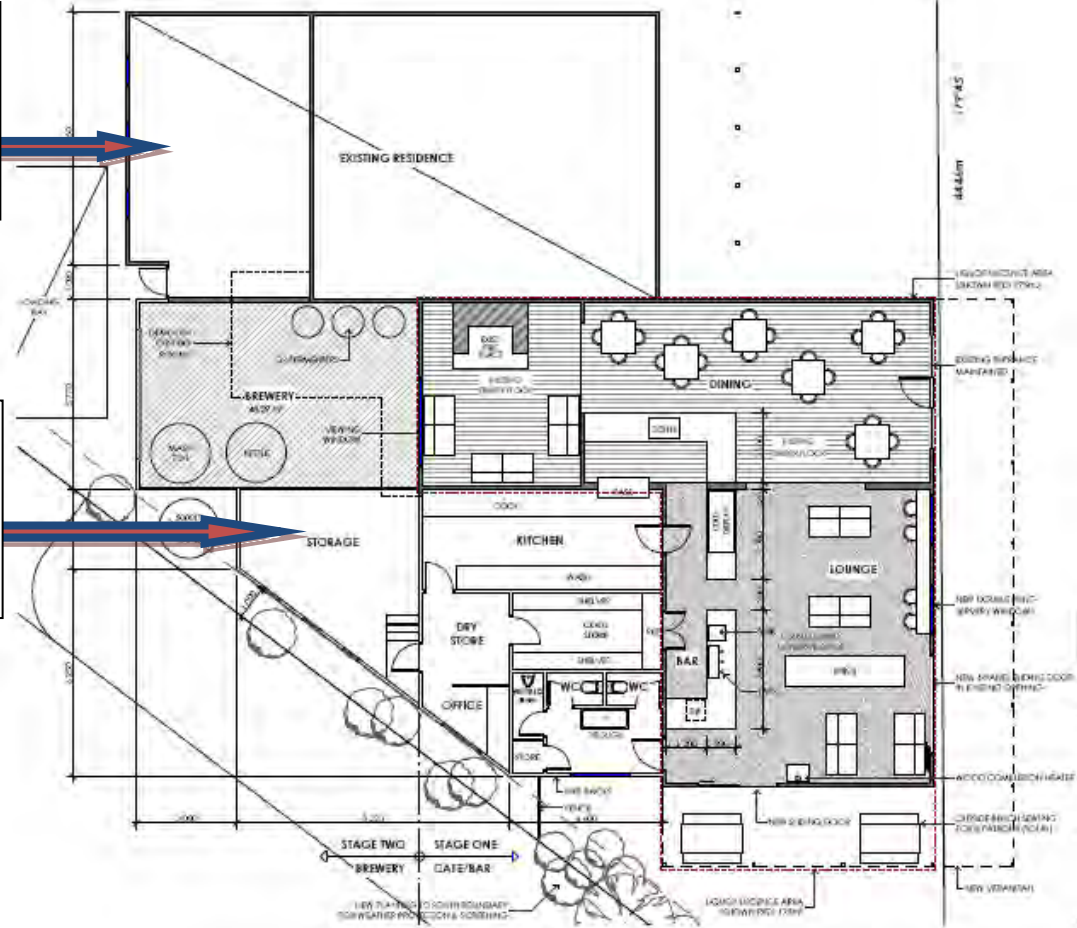
A meeting was held on 5 February 2009 with the applicants, Council Officers and a number of Councillors to discuss options that may be available to the applicants in amending their proposal to accord with the provisions of the planning scheme. In response to that meeting, Council received a letter from the applicants that requested Council defer the matter to allow sufficient time for the applicant to review and alter their application prior to a determination. The applicant also made a verbal presentation to the Planning Committee confirming their request to have the matter deferred.

**Amended Proposal**

The applicant has amended the proposal to '*Use and development of the land for a licensed café with ancillary micro-brewing facility, on premise liquor licence and waiver of car parking*'. The applicant has also submitted amended plans that show a reduction in the floor area used for the microbrewery from 113m<sup>2</sup>. to 49m<sup>2</sup>. It is noted, however, that the total area of the built form has not changed. The area not required for the brewery is now proposed to be become storage and part of the existing dwelling.

Originally part of the microbrewery proposal. Amended to remain as part of the dwelling.

Originally part of the microbrewery proposal. Amended to become storage are for the café.



The purpose of the micro-brewery is to enable a theme based café and bar where patrons are attracted to the site for the food and drink; and the ability to consume a unique beer product after viewing the brewing process through a window. The café would then offer the beer on the menu and patrons would also be able to purchase the product. It is not proposed to operate the micro-brewery independent from the café.

It is proposed to produce 26,000 litres of beer per year with 10,000 litres of this to be sold for off premise consumption. The volume of product will be determined by demand.

It is proposed that the beer would be a feature of the menu in the same way that other restaurants offer a certain product like seafood or local wines. The applicant uses the example of preserves and brewing coffee as a similar food preparation process to the brewing process.

The applicant also states that from a monetary perspective, the brewery component is only expected to be approximately 10% of the overall turnover for the business operation.

**Notice of application**

Notice in accordance with Section 52 of the Planning and Environment Act was required for the original application. Letters were sent to adjoining owners and occupiers, a sign erected on the site for 14 days and a notice published in the Colac Herald. Two objections were received to the original proposal. The objections received were not based on amenity issues relating to the brewing component of the application.

The amended plans show a reduction in the scale of the microbrewery with the floor area being reduced and the production of product also being scaled back. The original application included the micro brewery and as the amended application proposes a reduction in the scale of the microbrewery use, it was not considered necessary to re-advertise the amended plan. A reduction in the activity will not result in an increase in material detriment to the amenity of the area beyond the original proposal.

### Consideration of proposal

Clause 64.01 of the Colac Otway Planning Scheme states that 'if land is used for more than one use and one use is not ancillary to the other, each use must comply with this scheme'. Therefore, if it is considered that the microbrewery is not ancillary, it becomes a prohibited use under the Township Zone according to the provisions of Clause 52.10, as previously discussed in the Report presented to the February Planning Committee.

In the amended proposal, the applicants are seeking consent for the microbrewery component as ancillary to the café use.

In the VCAT determination, *The Club Cape Schank Resort Co Ltd v Mornington Peninsula Shire Council No. 1999/019322 determined 21 June 2001*, the Tribunal indicated that the question of ancillary use is one of fact and degree. Mr Morris QC referred to the two circumstances of ancillary use:

- a) *Ancillary activity quite different to the activities constituting the primary use of the property but are a necessary adjunct to the primary use, there being a close association between the ancillary and principal uses; and*
- b) *Activities which grow out of or develop from the primary use and are intended to enhance it – the scale and magnitude of the use is a relevant consideration in determining the matter of fact whether the use is ancillary or not*

In another VCAT determination, *Alphonso v Casey CC (Red Dot) [2006] VCAT 595 6 April 2006*, the Tribunal considered that it isn't 'correct to say that the activities in question have to be a necessary adjunct. It is enough that they be an adjunct of the use. They need not be essential.'

Council must be satisfied that the microbrewery component of the development is an adjunct to the café and must consider the **scale** and **magnitude** of the microbrewery component in determining whether the use is ancillary or not.

A comparison of the changes is shown in the table below. The applicant indicated that it is now proposed to produce 26,000 litres of beer per annum of which 10,000 litres will be sold for off-premise consumption. The area set aside for the microbrewery is 49m<sup>2</sup>. The equipment proposed to be used is a 1200 litre brew house. The original application stated that it was proposed to brew approximately once a week therefore producing 62,400 litres per annum. The amended proposal stated that it is proposed to brew only once a fortnight producing the 26,000 litres.

|                                            | Original proposal   | Amended proposal |
|--------------------------------------------|---------------------|------------------|
| Floor area for micro-brewery               | 113m <sup>2</sup> . | 49m <sup>2</sup> |
| Proposed product output (litres per annum) | 62400               | 26000            |
| Proposed brewing frequency                 | Weekly              | Fortnightly      |

For a comparison, the O'Brien Microbrewery located in central Ballarat anticipated producing 1,000,000 litres per annum and has an area of 187m<sup>2</sup> set aside for production and packaging of beer. The Ballarat example produces 5347 litres per square metre compared to the 530 litres per square metre for the current proposal.

The applicant advised that it is now proposed to brew once a fortnight. The 1200 litre brew house does not need to be full to operate properly. The brewing process takes around 8 hours, then the liquid is transferred into a fermenting vat that sits for between 8 to 14 days dependent upon whether ale or lager is being produced. At the end of the fermentation process, the beer is then transferred to a keg or bottle for consumption.

In support of their argument to consider the brewery as ancillary, the applicant compared the brewing activity to that of being similar to the brewing of coffee or making of jams/preserves. It is considered that there is a tenuous link in comparing the brewing of beer with the making of coffee and preserves, as the brewing of beer changes the structure of the molecules of the primary ingredient whereas the other examples remain in their original structure. It is considered this comparison has little relevance in considering whether the use should be considered as ancillary to the café/restaurant. It is also not common for a separate room to be set aside for this activity together with a viewing area to watch the processing. Further to this, you would normally expect to find coffee available at most eating places and the grinding of the coffee is the only process that changes the physical structure of the bean. The brewing of beer changes the structure of the malt into alcohol whilst the making of jams/preserves mixes the fruit/vegetable with additives and preserves it for a longer time.

The amended floor plan does however show a reduction in the area to be utilised for the brewing activity, although there has been no overall reduction in the floor area of the built form. The area that was previously proposed for the brewery is now proposed as part brewery area, part storage and part dwelling. It is proposed that the storage area will be utilised for dry storage related to the café. With the other storage area already shown on the plans, a significant amount of floor area will be used for storage. The area now marked to remain as part of the existing dwelling is a lean-to that is currently used as a workshop and will remain so.

The applicant expects that the sale of the beer brewed onsite will equate to approximately 10% turnover and claims that the percentage of beer to overall sales revenue is a more accurate measurement of determining ancillary use. It is considered that in this circumstance this is not a reasonable measure to use in determining whether the use is ancillary or not, because if the product was a less expensive product, then a higher volume of the product would need to be turned over to make the profit and vice-versa.

In summary, referring back to VCAT's reference to the two circumstances of ancillary use, the question is whether the micro-brewery activity is an adjunct to the café use and how the scale and magnitude of the micro-brewery compares to the principal use.

Adjunct is defined as '*something incidental or not essential that is added to something else*'. It is reasonable to consider that there is a close relationship between the serving of alcohol, whether it be made on the premise or not, and a café/bar and therefore the microbrewery could be considered as an adjunct.



In comparison to the original proposal, the applicant has amended the proposal to halve its proposed brewery output and also reduce the floor area required to produce the brew. This reduction of output and floor area reduces the scale of the development but does it reduce the magnitude of the microbrewery? The applicants state in their submission that the microbrewery is the component to attract customer's attention to the business and therefore regardless of the scale of the development the magnitude of the microbrewery is essential to the applicants' business.

The café use is the principal use and offers a range of attractions other than the microbrewery, and has the ability to operate successfully in its own right. Although the applicants see the microbrewery component as the major drawcard, Council Officers consider that the magnitude of the microbrewery is not to a degree that it could not meet the tests outlined in the VCAT determination above.

Comparing the scale and magnitude of the original proposal against the amended proposal where the floor area associated with the micro-brewery is reduced to less than half of the original floor area and the amount of beer to be produced is also reduced to less than half of what was originally proposed, it is considered possible to support the micro-brewery component of the development as ancillary to the principal use of the café subject to conditions.

Additional conditions have been recommended to ensure that the scale and magnitude of the microbrewery do not increase beyond an ancillary use. The amended proposal included suggested conditions to ensure that the microbrewery component would remain as ancillary to the café. One of these conditions was considered appropriate for inclusion. Conditions will require that the floor area used in relation to the microbrewery and that the volume of production will not increase above what is hereby considered and that the microbrewery will cease to operate if the café closes.

#### Home occupation

Although the applicant has not applied for Home Occupation, an assessment of the amended micro-brewery component of the application has been undertaken.

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, and if an extension to the existing dwelling of 49m<sup>2</sup> was approved, this would mean that the microbrewery could operate as a Home Occupation as the brewery would not exceed 50m<sup>2</sup> or one-third of the gross floor area.

Under this scenario the proposal could be considered as a home occupation however no goods manufactured may be displayed so that they are visible from outside the site and Council would need to be satisfied that there would be no emissions from the site.

The applicants' representative advised that this is not an appropriate option for the applicant due to the financial implications of linking the business and the dwelling.

#### Car parking

In the report presented to the February Planning Committee, car parking requirements and the need for a contribution in lieu of car parking were discussed. The applicant, in their amended application, restated their offer of \$10,000 as a contribution towards the parking provision and upgrade of the road reserve adjacent to the site.

The applicant provided an estimate of works at \$30,100 and offered to contribute to one third of this cost. Council also obtained an estimate of works at \$45,500 (excluding footpath, engineering survey and design, supervision fee or geotechnical investigation). Given the variance between the two estimates, the following permit condition number 9 was recommended in the February report:

- “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.*”

By wording the condition in this form, it was considered that a new estimate could be obtained closer to the time of the use commencing allowing for a more appropriate contribution dependent upon the costs at that time.

If Council were to accept the offer of \$10,000 from the applicant, this would equate to approximately \$500 per car space whereas to develop the land into a formal carpark area would be more accurately estimated at around \$4300 per car space (excluding the land value). Further to this, works to improve the car parking in this area would become Council's responsibility and any costs, including inflation, would remain with Council.

After further consideration of this issue, it is considered that the condition could be reworded to be more definitive in relation to the cost that would be incurred by the applicant, to provide a greater level of certainty of the amount, and to be consistent with the approach taken elsewhere in relation to cost-in-lieu contributions. Therefore, Condition 9 has been altered to:

- "13. *Prior to the commencement of the use of the cafe, the permit holder must make a cash contribution to the Colac Otway Shire of \$22,750 (being 50% of the estimated cost of the car park).*"

### **Conclusion**

In relation to the micro-brewery component of this proposal, comparing the scale and magnitude of the original proposal against the amended proposal where the floor area associated with the micro-brewery is reduced to less than half of the original floor area and the amount of beer to be produced is also reduced to less than half of what was originally proposed, it is considered possible to support the micro-brewery component of the development as ancillary to the principal use of the café subject to conditions. This is a good outcome for all parties. Council Officers have worked hard with the applicant over several months to try and resolve previous issues relating to the microbrewery use. Officers believe the use will be of significant social and economic benefit to Forrest. As flagged in the previous report, Officers recommend that Council write to the Minister for Planning expressing its concern about the constraints imposed by the Planning Scheme when considering these types of applications (refer to Recommendation B).

Consideration has been given to the Applicant's request to review the contribution required in lieu of the provision of car parking and the condition relating to this has been amended to provide greater surety around the cost to be incurred by the Applicant should they proceed with the project. Whilst the amount requested is higher than proposed by the applicant it is considered a reasonable and appropriate amount.

### **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 with ancillary micro-brewery 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 on 16 February 2009, 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.**

**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 9.00am to midnight;**
  - (b) **Sunday 9.00am to 8.00pm**

#### **Ancillary use (Microbrewery)**

5. **The floor area to be used in association with the Micro-brewery (all storage and equipment including bottling, kegs, ingredients, waste, vats and brew house) must not exceed forty-nine (49) square metres.**
6. **The volume of all types of alcoholic brew made on the premises must not exceed 30,000 litres per annum. Records of the amount of brew produced must be kept onsite and be available upon inspection to the satisfaction of the Responsible Authority.**
7. **The volume of all types of alcoholic brew made on the premises and sold for consumption off the premises must not exceed 10,000 litres per annum. Records of the amount of retail sales of the produce must be kept onsite and be available upon inspection to the satisfaction of the Responsible Authority.**
8. **If the café use hereby permitted ceases, the microbrewery production must also cease.**
9. **Activities associated with the brewing and bottling of beer (except for maturation and fermentation) must not be conducted outside the hours of 9.00am and 5.00pm unless written approval is granted from the Responsible Authority prior to the event.**

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

10. **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.**
11. **The driveway entrance off Turner Drive is to be constructed to Council's minimum standard to the satisfaction of the Responsible Authority.**
  12. **No fewer than 4 car spaces must be provided on the land for the use of the residence and staff employed in the business.**
  13. **Prior to the commencement of the use of the cafe, the permit holder must make a cash contribution to the Colac Otway Shire of \$22,750 (being 50% of the estimated cost of the car park).**
  14. **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**

15. **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**
16. **External lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.**
17. **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**

18. **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.**
19. **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.**
20. **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.**
21. **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.**

22. ***Effluent generated from the brewing process including any washing/rinse waste water or bottle washing water shall be treated as industrial waste and be disposed of via Barwon Water treatment facilities.***
23. ***In the event that Barwon Water refuses to accept or ceases to accept the effluent from the brewing operation then the premises shall stop the brewing operation immediately. Alternative methods of disposal of effluent generated by the brewing and bottling procedure must be approved by Council.***

#### **Signage**

24. ***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.***
25. ***All signs must be constructed and maintained to the satisfaction of the Responsible Authority.***
26. ***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**

27. ***Operation of the micro-brewing facility must not emit odours offensive to the senses of human beings beyond the boundaries of the premises.***
28. ***Noise from the operation must meet the noise limits provided in the EPA publication N3/89 Interim Guidelines for Control of Noise from Industry in Country Victoria.***
29. ***Liquid wastes must be disposed of in compliance with agreement from the relevant water authority.***
30. ***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***

31. ***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***

32. ***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.*

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

- The development is not started within two years of the date of this permit.*
- 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, 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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**PC091103-3 PP117/08 - USE AND DEVELOPMENT OF 210 PIERCES ROAD, BEEAC (CA141, 149 AND 153, PARISH OF ONDIT) FOR A BROILER FARM (B), ASSOCIATED BUILDINGS AND WORKS, INCLUDING ACCESS AND A DAM, AND A MANAGER'S RESIDENCE**

AUTHOR: Anne Sorensen                      ENDORSED: Doug McNeill  
DEPARTMENT: Sustainable Planning and Development      FILE REF: PP117/08

**Location:**

**Applicant:**

**Zoning:** Farming Zone

**Overlays:** Land Subject to Inundation (applies to a small part of the land in the north-west area of the property once the north-south boundary realigned)

**Amendment:** Amendment C55 (Planning Scheme Review) does not propose any zone or overlay changes to the land

**Abuts:** Land zoned Farming

**Restrictive Covenants:** Nil

**Reasons for Planning Committee Consideration:**

Council needs to provide direction on its position in relation to this application to advocate at the forthcoming Victorian and Civil Administrative Tribunal (VCAT) in April 2009. A total of 27 objections have been received in relation to this application.

**Summary**

- The applicant has lodged an application for a review against Council's failure to determine planning applications PP116/08 and PP117/08 for two adjoining broiler farms, Broiler Farms A and B, with the Victorian and Civil Administrative Tribunal (VCAT). The hearing date for the review has been scheduled to begin on 20 April 2009 for a period of 8 days.
- At the Planning Committee meeting on 14 October 2008, Council resolved to issue a Notice of Decision to Grant a Permit (PP115/07) for the re-subdivision of six crown allotments at 210 Pierces Road Beeac to facilitate the buffer and separation distances required for Broiler Farms A and B. The applicant has lodged an application for a review against conditions on the Notice of Decision to Grant a Permit issued for the re-subdivision.
- Council resolved at the Planning Committee meeting 14 October 2008 to defer consideration of application PP117/08 (seeking approval for Broiler Farm B) until such time as an Environmental Risk Assessment is undertaken by the applicant for both Broiler Farms A and B and that the two applications be considered concurrently. Both Broiler Farm applications (PP117/08 and PP116/08) are being considered by Council at the March 2009 Planning Committee meeting.
- An Environmental Risk Assessment (ERA) was received by Council in December 2008 and referred to the Environment Protection Authority (EPA) and Department of Primary Industries for review and comment.



- Council Officers are awaiting written confirmation from the EPA of verbal advice received in relation to the ERA.
- Under the Victorian Code for Broiler Farms an ERA is not required for Class B Broiler Farms of 320,000 bird capacity where the boundary buffer and separation distances required by the Code are satisfied.
- The EPA has expressed no objection to a single broiler farm of 320,000 bird capacity.
- This site is suitable for the use and development of the land for a broiler farm of 320,000 birds as it meets all the requirements of the Victorian Code for Broiler Farms and is unlikely to result in unacceptable amenity impacts on nearby sensitive uses (dwellings).
- It is recommended that Council advocate support of this proposal at the forthcoming VCAT hearing in April 2009 subject to the conditions included in the Council report of 14 October 2008 (and as detailed in this report).

### **Background**

At the Planning Committee Meeting of 14 October 2008, Council considered two planning applications for 210 Pierces Road Beeac, one for the re-subdivision of the land (PP115/08), the other for a Broiler Farm (B) on the eastern half of the property (PP117/08).

At the October 2008 meeting:

- Council resolved to defer consideration of application PP117/08 until such time as an Environmental Risk Assessment is undertaken by the applicant for Broiler Farms A and B and that the two applications be considered concurrently.
- Council resolved to issue a Notice of Decision to Grant a Permit for the re-subdivision of six crown allotments at 210 Pierces Road Beeac to facilitate the buffer and separation distances required for Broiler Farms A and B.

A copy of the report for P117/08 is attached as Appendix A. This report provides detailed information on the proposal, responses from referral authorities, issues raised in objections received, consideration of the proposal in context to the planning scheme provisions, in particular the Victorian Code for Broiler Farms and issues raised by objectors. The report recommended that PP117/08 be supported by the issue of a Notice of Decision to Grant a Planning Permit subject to 40 planning permit conditions.

Since that time the applicant has lodged an application for review under Section 77 of the Planning and Environment Act against Council's failure to determine applications P116/08 and PP117/08 for Broiler Farms A and B.

The applicant has also lodged an application for review against conditions contained in the Notice of Decision to Grant a Planning Permit PP115/08 for the re-subdivision of the land.

The VCAT hearing for each of these will commence on 20 April 2008 and is expected to go for a period of 8 days.

At the Directions Hearing held in December 2008, the applicant advised that it was likely they would engage a number of expert witnesses to provide evidence at the hearing on such matters as odour, traffic, and the like.

In response to Council's resolution of October 2008, the applicant submitted an ERA in December 2008. The ERA was made available on Council's website and a copy was sent to the objectors' representative at the Directions Hearing by the applicant.

The ERA was referred to the EPA and DPI for review and comment in December 2008. No response or comments have been received from DPI. Discussions have been held with a number of Officers from EPA who have provided verbal advice on the ERA, but no written response confirming these comments has been received at this stage.

### **Consideration of Proposal**

In the Council Report of 14 October 2008, an assessment of the application against the provisions of the planning scheme was undertaken. It was found that the proposal was consistent with the strategic directions for rural land use, particularly as the activity is being located outside the area identified as high quality agricultural land, and complied with the relevant statutory controls including the Victorian Code for Broiler Farms at Clause 52.31 for a Class B farm.

Under the Code, there is no requirement for an ERA for a Class B farm unless "Superior Technology is applied to reduce boundary buffer and/or separation distance requirements. This broiler farm proposal does not propose the use of "superior technology" and meets the required boundary buffer distance of 260 metres and separation distance of 700 metres to the nearest dwelling.

The matter of when an ERA should be required for broiler farm proposals was discussed extensively in the VCAT determination: *Krusic-Golub vs Golden Plains SC (2006) VCAT 255 (24 February 2006)*. This determination discusses the need for ERAs where applications are made for a number of individual broiler farms of 320,000 bird capacity that meet required buffer and separation distances, but are within the same locality. This determination established that where Class B farms comply with buffer and separation distances of the Code and have a maximum bird capacity of 320,000, no ERA is required, even though there may be more than one being proposed within the same locality. The circumstances when an ERA may be required is when the proposal is a "Special Class" or proposing to use "Superior Technology" or when the buffer and separation distances may not be adequate due to local topographical and climatic considerations.

A request for an ERA was made to the applicant largely based on the written advice received from the EPA who raised the issue of cumulative impacts of two farms of 320,000 bird capacity that are proposed close to each other. The EPA suggested that an ERA would provide Council with a means of ensuring that the buffers and separation distances provided are adequate for two farms. The EPA did not raise any objections to a single 320,000 bird farm being located in this area, where it meets the boundary buffer and separation distances.

The ERA was required by Council to assess the cumulative impact of two farms should both farms be supported. Notwithstanding this, the ERA provides an assessment of Farm B alone and Farms A and B combined.

As no ERA is required for a single proposal for a 320,000 bird farm, Council can form a view on whether to support the application without the findings of the ERA for Farm B.

### **Victorian Code for Broiler Farms**

Both Broiler Farms A and B are classified as a Class B farm under the Code and meet the required boundary buffer and separation distances.

For Class B Farms, the boundary buffer must be entirely within the property boundary but it is permitted that part of the separation distance may be outside the property boundary provided there are no existing or likely sensitive land uses within the separation distance.

The boundary buffer is designed to allow for the dispersion of emissions as part of the normal farm operations whereas the separation distance is to minimise impacts associated with abnormal or unexpected events (such as plant upsets or accidents).

When measuring the buffer and separation distances, the measure point for tunnel ventilated sheds is taken from the centroid of the exhaust fans. For both broiler farms the exhaust fans are located at the western end of the shed complex. For Broiler Farm B, the subject of consideration, with the exhaust fans in this location and the broiler farm complex positioned 260 metres from the southern common property boundary, the boundary buffer (260m) and separation distances (700m) to four existing dwellings is met. The separation distances are in excess of that required by the Code and outlined below:

- Nearest dwelling to the east on Weering School Road is 745 metres;
- Dwelling to the north-east on Weering School Road is 840 metres;
- Dwelling to the north on Pierces Road is 1010 metres;
- Dwelling to the north-west on Pierces Road is 1075 metres.

There are no existing dwellings to the south of the broiler farm complex.

Under the Code, the proposal must also satisfy separation distances where lots are vacant and may be used for the purposes of a dwelling. The Code requires Council to have regard to the potential for the development of a dwelling on the adjoining property 'as of right' (that is, without a planning permit). Where a site adjoining a proposed broiler farm is currently vacant, it should be assumed that an 'as of right' dwelling may be located centrally on the property (that is, the available separation distance will be calculated to the centre line of the adjoining allotment if that lot is currently vacant).

The applicant has provided a locality plan which demonstrates that sites for new dwellings on adjoining properties are available that would be outside the separation distances required by the Broiler Code (Refer to Appendix B). As the property directly to the west is in the same ownership as this site it has not been included in the calculations in this scenario, however a dwelling could be located near Pierces Road, the most logical location (as proposed in the application for Broiler Farm A), which is outside the required separation distance from the Broiler Farm B.

There are no 'as of right' dwelling entitlements on any of the lots abutting the subject land as all lots surrounding the proposed development site have areas less than 80 ha. The size of the lots generally range from 16 ha to 55 ha, with many of the lots in single ownership and farmed as a larger farming unit. A planning permit would be required to use and develop any of the lots adjacent to the land proposed for the broiler farm. Consideration of any such proposal would be given to the strategic and statutory provisions of the planning scheme including the Code. The Code provides guidance on the consideration of applications for dwellings near a broiler farm and states that:

*"Councils should not support any application for a planning permit that would allow the possibility of a new dwelling to be built within the separation distance of an existing broiler farm."*

If the broiler farm is supported, the siting of any new dwelling on an adjoining property would need to be considered in light of the separation distances required to be met under the Broiler Code. New dwellings proposing to locate within the separation distances would be unlikely to be supported.

### **Environmental Risk Assessment**

Appendix 3 of the Code contains technical information on ERAs, the use of emissions modelling and Superior Technology. The design and layout of broiler sheds, farm equipment and development of operational and management practices can minimise routine emissions of odour, dust and noise and the likelihood of abnormal emissions or accidental releases.

When conducting an ERA, the Code identifies the following factors that should be taken into consideration:

- Shed ventilation system and air movement control;
- Fan location(s) and capacity;
- Weather patterns, including prevailing winds and the occurrence of stable atmospheric conditions;
- Topographical features of the site;
- Stocking density;
- Plantation width, depth, terrain and vegetation cover;
- Pollution control technology (for example, stacks, scrubbers and biofilters);
- Waste management and storage practices (for example, collection and disposal of litter and dead birds);
- Odour modelling data, including assessment of cumulative impacts involving other sources in the vicinity;
- The impact of high bird mortality;
- Chemical use schedule and application practices.

Emissions modelling is able to predict whether emissions will lead to adverse impacts at the property boundary, and at any point beyond it, including the location of sensitive uses, like dwellings.

The Code requires that EPA approved models must be used in odour and dust emissions modelling, and the following design criterion should be used:

- *For odour, predicted concentrations are calculated as three minute averages and to minimise the potential impacts on nearby sensitive land uses and the likelihood of complaints, maximum predicted concentrations must not exceed five odour units at and beyond the boundary buffer for 99.9% of the meteorological scenarios modelled. Usually the modelling exercise involves predictions for each hour of a calendar year of meteorological data.*
- *For dust emissions, the State Environment Protection Policy (Air Quality Management) specifies a design criterion of 183 mg/m<sup>3</sup> (one-hour average), which also must be met by 99.9% of the model'*

The EPA has prepared an “Interim Guideline for Environmental Risk Assessments (Odour) for the Victorian Code for Broiler Farms.” This guideline is a draft at present and expected to form part of the draft revised Victorian Code for Broiler Farms document when released for public comment in the near future. The draft guideline provides advice to proponents and the community about ERAs and sets out the minimum requirements needed for an ERA in order to be able to assess the acceptability of a broiler farm application. An ERA is a process or tool used to identify any potential environmental impacts/risks of a site whilst taking into account site specific management, mitigation and contingency planning.

These risks and the accompanying site information can then be assessed as to the acceptability and likelihood of the impact on the surrounding amenity.

An ERA is a staged process and depending on the individual proposal, a proponent may need to undertake one or more stages in the assessment in order to demonstrate that there is unlikely to be impacts on surrounding sensitive uses.

The three stages are outlined below:

|                    |  |
|--------------------|--|
| <b>Stage One</b>   | Assessment of objectives, criteria and Best management Practices of the code and modelling of air and dust impacts against the design criteria (requirements of SEPP AQM). |
| <b>Stage Two</b>   | Where SEPP AQM design criteria cannot be met, assessment of risk to surrounding sensitive land uses.   |
| <b>Stage Three</b> | Where risk assessment undertaken in Stage 2 is moderate or high, an assessment of risk management strategies, technologies and redesign options.                           |

If the design criteria of SEPP AQM are met no further risk assessment process is needed. If this cannot be met Stage 2 and 3 will be required.

### **Environmental Risk Assessment prepared by GHD**

Council received the ERA report prepared by GHD on 5 December 2008. The report was referred to the EPA and the DPI on 10 December 2008 for review and comment.

The ERA provides an odour impact assessment and environmental risk assessment of two proposed 320,000 bird broiler farms at 210 Pierces Road Beeac. The assessment has been provided for a “Class B” farm as classified under the Victorian Code for Broiler Farms.

The ERA report describes the proposed farm sheds and their ventilation and defines the two dispersion model inputs; namely shed odour emission rate (OER) and site representative meteorology. Dispersion modelling using AUSPLUME of both farms is then presented and the results compared to the Broiler Code odour criterion. The report provides an environmental risk assessment of Farm B on its own and provides an environmental risk assessment on the cumulative impact of both Farm B and A when in operation.

The ERA also includes a dust impact assessment as required by the Broiler Code.

As the design criteria is not met for Farm B under Stage One of the EPA guidelines, the report prepared by GHD has undertaken an evaluation of Farm B under Stages Two and Three of the guidelines.

In undertaking the evaluation in the ERA, GHD has departed from the methodology outlined in the EPA guidelines and adopted a “classic risk matrix approach” specified in Australian Standard AS4360. The risk matrix approach provides an estimated qualitative measure of risk (i.e. ‘low’, ‘moderate’ and ‘high’).

Detail of the above methodology is outlined at Section 8.2 – GHD’s approach to Quantifying risk to Odour Impact pg 25/26 of the report.

Based on this methodology, the report makes the following conclusions:

#### Odour

- The effect of both Farms A and B operating does increase the potential exposure of residents compared to when either farm is operating alone;
- The effect of Farm A operating in addition to Farm B is a marginal increase in peak odour levels at the most exposed residences (4% to 50%);
- The ERA analyses show that the risk of disamenity for both the single farm (Farm B) scenario, and for both farms operating is Low; and
- The low risk returned by the ERA is consistent with the farms meeting the required separation distances.

#### Dust

- The Broiler code criterion for TSP (i.e. dust particles) is contained on-site to the north and east, but has excursions to the west and south of 380m and 240m respectively onto adjoining paddocks;
- The predicted peak 99.9%ile TSP levels at existing nearby residences do not exceed 45% of the code criterion; and
- The EPA design criterion for PM10 is met at the residence with an increased margin of 13% over that obtained for TSP.

#### **Environment Protection Authority response**

Council has no in-house expertise to provide a peer review of the ERA and therefore has relied upon the EPA for a review of the ERA report. Although Council Officers referred the report to the EPA in December 2008, no written formal response has been received although a number of discussions have taken place between Council Officers and representatives from the EPA in relation to the ERA.

The EPA have verbally raised concerns with the methodology and the data used in the ERA as the EPA have found it difficult to calibrate to confirm or otherwise the findings of the ERA. A meeting has been arranged between the Applicant, EPA representatives and Council Officers to discuss the differences in the methodology and data mid March 2009. This meeting is being held just prior to the Planning Committee meeting. Council will be informed of the outcome of this meeting and any subsequent changes to the views of the EPA (if any).

Notwithstanding this, the EPA has advised Council that it has no objection to a single 320,000 bird capacity broiler farm (Class B) providing it complies with the boundary buffer and separation distances under the Broiler Code.

An ERA is not required for this proposal as it complies with the boundary buffer and separation distances of the Broiler Code. There is no intention of employing “superior technology” for the purposes of reducing boundary buffer or separation distances and there are no meteorological conditions that would suggest that an ERA would be warranted for a single 320,000 bird capacity broiler farm in this location. Therefore, the findings of the ERA, in terms of this proposal, are somewhat academic, as an ERA is not required.

### **Conclusion**

Out of the two broiler farm proposals, if Council decides to support only one broiler farm then this proposal would be the most logical to support as this farm has easy access to Pierces Road which is sealed, is less prone to inundation (the LSIO only covers a minor part of the site) and future landscaping could easily screen the broiler farm complex from view once established.

The proposed broiler farm meets the requirements of the Broiler Code and the provisions of the State and Local Planning Scheme.

An ERA is not required under the Broiler Code for a single farm with a 320,000 bird capacity. The ERA has only been provided to assess the cumulative impact of having two farms near each other in this locality. EPA has no objection to a single 320,000 bird capacity broiler farm.

The concerns of the objectors can be addressed by the inclusion of conditions on any permit that is issued. Ongoing monitoring of the management and practices of the broiler farm will take place annually in accordance with the Broiler Code and the EMP. Any non-compliance matters can be appropriately addressed should they occur.

Given the above, there is no reason why the application should not be supported, therefore, it is recommended that Council advise VCAT that it would have determined to issue a Notice of Decision to Grant a Permit for the use and development of the land for a broiler farm if a review had not been lodged with the Tribunal.

### **Recommendation(s)**

***That the Planning Committee advise the Victorian and Civil Administrative Tribunal that it would have determined to issue a Notice of Decision to Grant a Permit for the use and development of 210 Pierces Road, Beeac (CA 141, 149, and 153, Parish of Oudit)(proposed Lots 1, 2 and 3) for the purposes of a Class B, Broiler Farm B, associated buildings and works, including access and a dam, and a Managers dwelling subject to the following conditions, if a review had not been lodged with the Tribunal:***

***1. Before the use and development commences, the following documents to the satisfaction of the Responsible Authority must be submitted to the Responsible Authority for approval and be approved by the Responsible Authority:***

***1.1 Amended plans which must be drawn to scale and with dimensions. Three copies must be provided and the plans must be generally in accordance with the plans submitted with the application but modified to show:***

***1.1.1 The access road must be set 30 metres north of the southern common property boundary;***

- 1.1.2 ***The type, specifications and location of all external flood and security lighting to be used including provision for light baffling to ensure all light is contained within the property boundary;***
- 1.1.3 ***Deletion of the spent litter pads;***
- 1.1.3 ***Stormwater wetland treatment pond and other drainage;***
- 1.1.4 ***Location, dimensions and specifications of any dams to be constructed on site.***
- 1.2 ***Environmental Management Plan (EMP) which is site specific;***
- 1.3 ***Water Use and Re-use Plan addressing stormwater, rainwater and reticulated water use and re-use issues including a plan for the management of areas from which water is proposed to be harvested. The plan must also detail arrangements for the provision on site of an emergency water supply;***
- 1.4 ***Amended Landscape Plan which must be site specific and have due regard to the visual impact of the sheds and other buildings, including consideration of bunding and mounding. The Landscape Plan must show the location and type of all proposed screen and other plantings and landscaping, anticipated tree or shrub height and width at maturity, timetables for plantings and arrangements for maintenance of the landscaped areas. All trees and shrubs included in the Landscape Plan must be indigenous to the locality. The Landscape Plan must show:***
  - 1.4.1 ***A 15 metre wide landscaping strip along the southern common property boundary commencing at the Weering School Road frontage to the edge of the western property boundary;***
  - 1.4.2 ***A 15 metre wide landscaping strip along the Weering School Road frontage from the southern common property boundary for a distance of 500 metres.***
  - 1.4.3 ***A 10 metre wide landscaping strip, setback approximately 10 metres from the sheds, around the perimeter of the shed complex.***
  - 1.4.4 ***The landscaping strips must contain a mixture of canopy trees and shrubs to ensure effective screening.***

***When approved, the Landscape Plan will be endorsed by the Responsible Authority and will then form part of this permit.***
- 1.5 ***Earthworks Plan must be submitted that shows the extent of the earthworks to be undertaken including details on the amount of fill required for the construction of the development. The earthworks plan will be referred to the CCMA for comment.***
2. ***The use and development approved by this permit must at all times be conducted in accordance with the requirements of:***
  - 2.1 ***The Victorian Code for Broiler Farms, September 2001, as amended;***
  - 2.2 ***The Code for Accepted Farming Practice for the Welfare of Poultry, December 2003, as amended:***



**2.3 Environmental Management Plan,**

**2.4 Each of the Permit Documents.**

*to the satisfaction of the Responsible Authority.*

- 3. The layout of the site and size of the buildings and works, as shown on the endorsed plans, must not be altered or modified without the consent in writing of the Responsible Authority.**
- 4. The use permitted by this permit must not commence until the subdivision permitted by Planning Permit PP115/07 has been lodged and registered with Land Victoria and evidence of such provided to the Responsible Authority.**
- 5. The poultry shed must be designed and constructed using a tunnel-vented exhaust system or such other alternative technology which complies with the requirement of the Broiler Code, to the satisfaction of the Responsible Authority.**
- 6. All trees and shrubs included in the endorsed Landscape Plan must be planted prior to the completion of the development and the commencement of the use and must thereafter be maintained to the satisfaction of the Responsible Authority.**
- 7. Prior to the commencement of any works pursuant to this permit the permit holder must lodge a landscape performance bond with the Responsible Authority. The bond can be either a monetary contribution or an irrevocable bank guarantee in favour of the Responsible Authority. The bond is to be based on the endorsed Landscape Plan with additional details to be provided to the satisfaction of the Responsible Authority incorporating:**
  - 7.1 An estimate of the quantity and type of materials, watering equipment, plants, etc. required; and**
  - 7.2 A quotation from a reputable nursery supplier for the implementation of the Landscape Plan identifying the cost for materials, plants and labour. The quotation is to be independently verified to Responsible Authority's satisfaction.**

*The bond is to comprise the verified quotation plus a 10% margin for unforeseen costs. When the landscape works are complete to the satisfaction of the Responsible Authority, 85% of the bond will be released. The balance is to be retained as a maintenance bond for a period of three (3) years following the date of release of the 85%. If the landscaping has not been maintained to the Responsible Authority's satisfaction at the end of the three years the maintenance bond is to be applied to upgrade the landscaping.*

- 8. Any dam shall be constructed by a suitably qualified and experienced contractor in accordance with Southern Rural Water's guidelines for dam construction and maintained to the satisfaction of the Responsible Authority.**
- 9. All bird litter must be removed from the site as soon as possible after it is removed from the sheds. All trucks removing litter from the site must have covered loads.**
- 10. There shall be no stockpiling of litter on the site and no bird litter may be spread or otherwise disposed on the site.**

11. ***The removal of dry bird litter from the sheds by use of machinery must occur between the hours of 7.00 am and 8.00 pm and no removal may be undertaken on Sundays and Public Holidays including Christmas Day and Good Friday.***
12. ***The permit holder must dispose of dead birds off site using a contractor specializing in this type of disposal or in an alternative manner to the satisfaction of the Responsible Authority. Pending collection for offsite disposal, dead birds must be held in sealed refrigerated containers or otherwise as approved by the Responsible Authority.***
13. ***The use authorized by this permit must be operated as a dry litter poultry operation only and the provision for the collection and disposal of solid wastes and for the collection, treatment and disposal of any liquid wastes to arise from the development and use hereby permitted must comply with all applicable laws and regulations.***
14. ***If the Responsible Authority determines that the amenity of nearby residents is adversely affected in the emission of an unreasonable level of odour from the site the permit holder must immediately and to the satisfaction of the Responsible Authority take such action as is required to prevent those emissions, which may include adjusting stocking density in the sheds, removing litter immediately, or any other actions reasonably required to rectify the emission of offensive odour.***
15. ***The poultry sheds and all feed stores must be vermin and bird proof to the satisfaction of the Responsible Authority.***
16. ***The manner of discharge of all water from the site must be to the satisfaction of the Responsible Authority and the CCMA.***
17. ***Other than the loading and placement of live birds, no deliveries to or removals from the site must take place after 8.00 pm or before 7.00 am on any day without the prior written approval of the Responsible Authority.***
18. ***The permit holder shall require that all contractors and suppliers accessing the site from the Hamilton Highway do so by way of Weering School Road and Barpinda-Poorneet Road.***
19. ***The loading and unloading of vehicles and the delivery of goods to and from the premises must at all times be carried on entirely within the site.***
20. ***The surface of the car parking and loading areas and access lanes must be constructed and maintained to the satisfaction of the Responsible Authority to prevent dust and drainage run-off.***
21. ***The driveway entrance on Weering School Road shall be designed in accordance with AS2890.2-2002 and shall be properly maintained to the satisfaction of the Responsible Authority.***
22. ***Security lighting or external floodlighting (if required) must be installed in such a manner that it does not create amenity problems outside the site.***

- 23. All vehicles used in the delivery, pick-up and transportation of live birds must be fitted with high performance sound-reducing mufflers to the satisfaction of the Responsible Authority and the permit holder must use its best endeavours to ensure that such activities do not cause any unreasonable noise impact on the amenity of the surrounding area.**
- 24. The permit holder must use its best endeavours to avoid sanitizing sheds with odorous chemicals which give rise to offensive odours being detectible off site. Airborne sprays or chemical odours must not be transmitted beyond the site to the detriment of any person to the satisfaction of the Responsible Authority.**
- 25. All walls of the poultry sheds and other buildings hereby permitted which will be visible from beyond the site must be coloured or painted in non-reflective muted tones to the satisfaction of the Responsible Authority.**
- 26. All goods and materials must be stored out of view of so as not to be unsightly when viewed from nearby roads to the satisfaction of the Responsible Authority.**
- 27. Prior to the commencement of the use, the permit holder must enter into an agreement with Barwon Region Water Authority (Barwon Water). The agreement must provide for a centralised potable water storage facility to be established to serve the development authorised by this permit. The agreement shall provide for the taking of up to 25 ML per annum (or such other amount permitted by Barwon Water) during periods where the taking of water will not adversely impact the supply of water to other water users in the vicinity of the development. The agreement shall provide an appropriate mechanism for the operation and maintenance of the storage facility to provide for an equitable sharing of potable water by other water users in this area.**
- 28. An all waste septic tank disposal system is to be constructed concurrently with the new dwelling, such that all liquid waste must at all times be contained within the curtilage of the title. Such system must be designed and installed to the satisfaction of the Responsible Authority.**
- 29. A Permit to install an all waste septic tank system must be lodged and approved by the Responsible Authority prior to the commencement of works. Such system must be designed and installed to the satisfaction of the Responsible Authority before a Permit to Use the waste septic tank system can be issued.**
- 30. The proposed septic tank system must not be located within 60 metres of the bank of any surface waters, unless the liquid waste is treated to the satisfaction of the Responsible Authority. Any such reduction in distance to the surface waters will be at the discretion of the Responsible Authority.**
- 31. The floor of the managers dwelling must be constructed no lower than 118.0 metres Australian Height Datum.**
- 32. If any works will impact on a waterway or groundwater or will include the use of water for irrigation or commercial purposes from these resources or from a dam, soak or spring, it will be necessary for the land owner or permit holder to apply to Southern Rural Water for a licence in accordance with Section 51 or 67 Water Act 1989.**

33. *The Barpinda-Poorneet Road approach to the Hamilton Highway intersection shall be widened as necessary to accommodate the turning path of trucks, to the satisfaction of VicRoads and the Responsible Authority.*
34. *Access off Pierces Road will only be permitted for the approved dwelling. No access will be permitted from Pierces Road to service the Broiler Farm Complex.*
35. *Access onto Weering School Road must be constructed to the minimum standard for farm access in accordance with the requirements of VicRoads' Guidelines for Truck Access to Rural Properties, April 2006 and allow sufficient storage area to cater for a B-Double to be parked within the gateway area. i.e. 25 metres off the edge of the road to the gate into the property.*
36. *Access points onto Weering School Road must be constructed with an asphalt overlay over Weering School Road for the length of the road abutting the access point as well as the sealing of the holding area required in Condition 35 to the satisfaction of the Responsible Authority.*
37. *Any B-Double vehicles 25 metres in length or in excess of 50 tonnes must obtain written consent from the Responsible Authority and VicRoads to use Weering School Road and/or Barpinda-Poorneet Road.*
38. *The permit holder must prepare and submit to the Responsible Authority a Fire Prevention Plan for approval by the Responsible Authority prior to the commencement of the use hereby permitted. Such a plan, when approved, shall be endorsed and form part of this permit.*
39. *Prior to the construction of the access road, construction plans must be submitted showing the details of the standard of the access and any drainage requirements, to the satisfaction of the Responsible Authority.*
40. *This permit will expire if one of the following circumstances applies:*
  - 40.1 *The development and use are not started within two years of the date of this permit;*
  - 40.2 *The development is not completed within four years of the date of this permit.*

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

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**PC091103-4 PP116/08 - USE AND DEVELOPMENT OF 210 PIERCES ROAD, BEEAC (CA140, 148 AND 152, PARISH OF ONDIT) FOR A BROILER FARM (A), ASSOCIATED BUILDINGS AND WORKS, INCLUDING ACCESS AND A DAM, AND A MANAGER'S RESIDENCE**

AUTHOR: Anne Sorensen  
DEPARTMENT: Executive

ENDORSED: Doug McNeill  
FILE REF: PP116/08

**Location:**

**Applicant:**

**Zoning:** Farming Zone

**Overlays:** Land Subject to Inundation

**Amendment:** Amendment C55 (Planning Scheme Review) does not propose any zone or overlay changes to the land

**Abuts:** Land zoned Farming

**Restrictive Covenants:** Nil

**Reasons for Planning Committee Consideration:**

Council needs to provide direction on its position in relation to this application to advocate at the forthcoming Victorian and Civil Administrative Tribunal (VCAT) in April 2009. A total of 27 objections have been received in relation to this application.

**Summary**

- The applicant has lodged an application for a review against Council's failure to determine planning applications PP116/08 and PP117/08 with the Victorian and Civil Administrative Tribunal (VCAT). The hearing date has been scheduled to begin on 20 April 2009 for a period of 8 days.
- At the Planning Committee meeting on 14 October 2008, Council resolved to issue a Notice of Decision to Grant a Permit (PP115/07) for the re-subdivision of six crown allotments at 210 Pierces Road Beeac to facilitate the buffer and separation distances required for Broiler Farms A and B. The applicant has also lodged an application for a review against conditions on the Notice of Decision to Grant a Planning Permit for re-subdivision of the land.
- Council resolved at the Planning Committee meeting on 14 October 2008 to defer consideration of application PP117/08 (seeking approval for Broiler Farm B) until such time as an Environmental Risk Assessment is undertaken by the applicant for Broiler Farms A and B and that the two applications be considered concurrently. Both Broiler Farm applications are being considered by Council at the March 2009 Planning Committee Meeting.
- PP116/07 (Broiler Farm A) was not reported to Council in October 2008 as Council was awaiting the receipt of an ERA for both broiler farms before making any decision on Broiler Farm A.
- An Environmental Risk Assessment (ERA) was received by Council in December 2008 and referred to the Environment Protection Authority (EPA) and Department of Primary Industries for review and comment.

- Council Officers are awaiting formal written confirmation from the EPA of verbal advice received in relation to the ERA.
- Under the Victorian Code for Broiler Farms an ERA is not required for a Class B Broiler Farm of 320,000 bird capacity where the boundary buffer and separation distances required by the Code are satisfied. However the reason an ERA was sought was due to the two Broiler Farms A and B being adjacent to one another, and the potential consequence of cumulative effects of odour from both farms.
- The land is located to the north of the Colac Township in a rural area that is generally used for a range of farming related activities including grazing of livestock. Many farms operate on a 'whole of farm' basis where multiple titles are owned and farmed as a single entity.
- The land is within the area identified as "northern plains" in the Municipal Strategic Statement. Under Planning Scheme Amendment C55, the land sits outside the area identified as "Farmland of Strategic Significance"
- The land is zoned Farming where the minimum allotment size for subdivision to create new lots is 80 hectares.
- The total area of the land used for the Broiler Farm A is 82 hectares (subject to the re-subdivision occurring) otherwise the area would be 96 ha.
- A total of 27 objections have been received which raise a range of issues, some of which relate to the management of the Broiler Farm, off-site impacts and suitability of the use in relation to the provisions of the Farming Zone.
- The use is a legitimate agricultural activity and complies with the Victorian Code for Broiler Farms. The use is considered to be consistent with the objectives of the Farming Zone. Many of the matters raised by the objectors can be addressed through the inclusion of conditions on any permit issued.
- The application on its own, as a single 320,000 bird capacity farm, warrants support given its compliance with Planning Scheme provisions and the Broiler Code requirements. However, the concerns raised in relation to the cumulative odour impacts generated by the two broiler farms A and B is not fully known at this stage as the EPA have not advised that the risk identified in the ERA is acceptable. As further discussions are proposed between the relevant parties, it is recommended that the Committee only support the proposal if the EPA advise Council in writing that they agree with the findings of the ERA and that the risk is acceptable.

## Background

At the Planning Committee Meeting of 14 October 2008, Council considered two planning applications for 210 Pierces Road Beeac, one for the re-subdivision of the land (PP115/08), the other for Broiler Farm B on the eastern half of the property (PP117/08). Consideration of PP116/08 (Broiler Farm A) was delayed pending the receipt of an Environmental Risk Assessment for the purposes of assessing the cumulative impacts of having two broiler farms, with a total bird capacity of 640,000, close to each other.

At the October 2008 meeting:

- Council resolved to defer consideration of application PP117/08 until such time as an Environmental Risk Assessment is undertaken by the applicant for Broiler Farms A and B and that the two applications be considered concurrently.
- Council resolved to issue a Notice of Decision to Grant a Permit for the re-subdivision of six crown allotments at 210 Pierces Road Beeac to facilitate the buffer and separation distances required for Broiler Farm A and B.

Since that time the applicant has lodged an application for a review under Section 77 of the Planning and Environment Act against Council's failure to determine applications P116/08 and PP117/08 for Broiler Farms A and B.

The applicant has also lodged an application for review against conditions contained in the Notice of Decision to Grant a Planning Permit PP115/08 for the re-subdivision of the land.

The VCAT hearing for each of these applications will commence on 20 April 2008 and is expected to go for a period of 8 days.

At the Directions hearing held in December 2008, the applicant advised that it was likely they would engage a number of expert witnesses to provide evidence at the hearing on such matters as odour, traffic, and the like.

In response to Council's resolution of October 2008, the applicant submitted an ERA in December 2008. The ERA was made available on Council's website and a copy was sent to the objectors' representative at the Directions Hearing by the applicant.

The ERA was referred to the EPA and DPI for review and comment in December 2008. No response or comments have been received from DPI. Discussions have been held with a number of Officers from EPA who have provided verbal advice on the ERA but no written response confirming these comments has been received at this stage. A meeting will be held on 10 March 2009 between the Applicant, Council Officers and EPA representatives to discuss the ERA with a view to discussing issues raised by the EPA.

### **Proposal**

A Planning Permit application has been submitted for the use and development of the western part of 210 Pierces Road, Beac for the purposes of a Broiler Farm (A) complex.

The Broiler Farm will have a total capacity to house 320,000 birds in 6 sheds, each shed having a capacity to house 53,333 birds. Refer to Appendices for details pertaining to the siting, location and built form of the farm complex.

#### **a) *The proposed development will comprise of:***

- Building and works including six broiler sheds, a machinery shed, staff amenities building, backup generator shed, feed silos, spent litter pad and water tanks;
- Carriageway easement is proposed across the eastern half of the land to provide an access road off Weering School Road. This formed part of the re-subdivision application;
- Construction of a new dam; and;
- Use and development of a dwelling for the farm manager.

#### **b) *Location of development and separation distances***

The broiler farm complex will be located in the southern portion of the western part of the property. The six broiler sheds are proposed to house 53,333 birds each and will run in an east-west direction with the exhaust fans located at the western end of the sheds. The location of the exhaust fans becomes the centroid point upon which the buffer and separation distances are measured.

The new farm centroid will be approximately:

- 915 metres from the nearest dwelling, which is located to the north of the site;
- 1070 metres from the dwelling to the north-west of the site
- 1010 metres from the caretakers dwelling on the eastern portion of the land;
- 680 metres from Weering School Road;
- 863 metres from Pierces Road;
- 520 metres from the proposed broiler farm complex on the eastern portion of the land;
- 420 metres from the eastern boundary (subject to the re-alignment of boundaries);
- 260 metres from the western side boundary; and
- 260 metres from the southern boundary.

The proposed 'spent litter pad' is setback approximately 130 metres from the southern common property boundary.

The proposed access, via a carriageway easement over the eastern portion of the land from Weering School Road, runs parallel with the southern common property boundary.

**c) Shed size**

Details of the sheds are as follows:

- Each shed will be 159m long x 16.46m wide x 3.8m height to the ridgeline with the roof having a 6.5 degree pitch;
- The floor area of each shed will be 2,614m<sup>2</sup> and the combined floor area of the complex is 15,684m<sup>2</sup>;
- Sheds will be spaced 15 metres apart;
- Shed floors will be raised by 600mm above natural ground level;
- Shed floors will consist of a compacted clay base with a hard surface such as concrete or dry rolled concrete with bitumen sprayed on top.
- Broiler sheds and the utility shed will be constructed of pale green colourbond;
- Shed roofs will be clad in zincalume for bird health and energy efficiency;
- 12 x 30 tonne silos will be constructed in 3 banks of 4.

**d) Shed ventilation**

The sheds will be designed with "minimum ventilation tunnel vent" technology. The applicant has advised that the shed design and operation represents "best practice" technology.

*Tunnel Ventilation* involves the use of a bank of extractor fans which are located at one end of each shed which draw fresh air into the sheds. The air is drawn through the length of the sheds and expelled by the fans at the other end. The number of fans in operation at any one time depends on the rate of air exchange required.

*Minimum Ventilation* involves the constant exchange of air through the sheds via the use of fans. Even during the initial brooding period there is always a minimum amount of ventilation occurring in the sheds to ensure an adequate air exchange rate to maintain acceptable temperature, air quality and humidity levels in the sheds. Fresh air is usually drawn in via a series of adjustable 'mini air vents' which are located along the top of one of the sidewalls of the sheds.



In this instance, minimum ventilation will be provided by three minimum ventilation fans in the opposite sidewall, two minimum ventilation fans at the eastern end of the sheds and by one or more of the tunnel ventilation fans at the western end.

Evaporative cooling pads will be located at the eastern end of the sheds, on the sidewalls of the shed at the opposite end to the fans. Water is circulated through the evaporative cooling pads and the air drawn through is cooled in the same manner as for an evaporative air conditioning system.

The sheds are a controlled environment monitored by a computer system to ensure that the correct temperature is maintained at all times for bird health.

**e) Landscaping**

The proposal shows a landscape buffer around the shed complex and the 'spent litter pad'. It is proposed to use a selection of eucalypt trees and native shrubs.

**f) Farm Operation**

It is anticipated that there will be 5.6 batches of birds produced by the farm per annum. The birds are brought onto the site over a period of 2-3 days in batches approximately every 65 days. The growing period is 7-8 weeks with a 10 day period for shed clean up.

Birds are progressively removed from the shed from 32 days onwards, with quantity depending on market demands.

It is proposed that drinking water be provided to the shed from mains supply. Water will be initially stored in the three large storage tanks and then fed into an automatic watering system within the sheds.

**g) Litter**

Prior to the delivery of birds, a 6 to 8 centimetre layer of wood shavings, sawdust, rice hulls or similar material (deep litter) is distributed over the entire shed floor. The purpose of the deep litter is to decompose the droppings of the birds. The deep litter is removed from the sheds at the end of each batch. The applicant has advised that most of the spent litter will be removed from the sheds by contractors, however, it is proposed to retain some litter for on-site use to fertilise pastures. It is proposed to store some litter in the 'spent litter pad' while waiting for it to be used on the balance of the property.

Once all the litter has been removed from the sheds, the sheds are sprayed with high pressure disinfectant sprays that do not produce any free flowing water.

It is proposed that dead birds will be collected on a daily basis and disposed of via composting onsite in accordance with the EPA requirements.

**h) Vehicle Movements**

It is anticipated that there will be up to 109 semi-trailer and B-double truck visits per batch, and with 5.6 batches per annum it is anticipated that there will be:

| Type                                          | Per Batch | Total |
|-----------------------------------------------|-----------|-------|
| Delivery of day old chickens in delivery vans | 6         | 34    |
| Gas Deliveries                                | 2         | 12    |

|                                     |            |            |
|-------------------------------------|------------|------------|
| Litter in and out                   | 18         | 100        |
| Feed Deliveries – B-double vehicles | 32         | 179        |
| Mature bird pick ups                | 51         | 286        |
| Maintenance vehicles as required    |            |            |
| <b>Total</b>                        | <b>109</b> | <b>611</b> |

All vehicle movements will take place during the day except when mature birds are picked up from the sheds for delivery to the processor. Mature birds will be picked up between 8.30 pm and 7.00 am.

**i) Water Management**

It is proposed that all site drainage from the 'farm site area' will be collected and transferred to the new retarding dam. Table drains will be constructed along the perimeter of the sheds and hard stand areas to direct stormwater flows to the proposed dam. This dam will supply water for stock and landscape irrigation purposes.

**j) Environmental Management Plan (EMP)**

The applicant has submitted an EMP based on the Generic EMP in the Victorian Code for Broiler Farms.

**h) Cultural Heritage Management Plan**

The applicant has advised that a CHMP is not required as the land is not within an area of Cultural Heritage Sensitivity. This has been confirmed by the Aboriginal Affairs Victoria via email dated 17 June 2008 from Harry Webber, Coordinator Heritage Assessments.

**Subject Site and Locality**

The total area of the property is approximately 193 hectares which is made up of six crown allotments each with an area of 32 ha. Site and surrounds is shown in Appendices.

The land has road frontage of 1595 metres to Pierces Road which is an unsealed gravel road and frontage of 1211.37 metres to Weering School Road which has a sealed surface. The land has abuttal to an unconstructed government road along the western boundary of the allotments.

PP115/08, the re-subdivision application, realigns the north-south boundary between the allotments, creating the following allotment entitlement for Broiler Farm A:

- 3 crown allotments each with an area of 27.41 ha, overall area of 82.23 ha;
- Frontage of 680 metres to Pierces Road;
- A depth of 1238 metres.

The land is currently vacant with no significant vegetation. The topography of the land is relatively flat with a slight fall to the south-west.

The land is situated within a rural area, approximately 5 km from the township of Beeac. Properties within this area are generally used for farming activities, in particular, for the grazing of livestock.

## Referrals

The application has been referred under Section 52 of the Planning and Environment Act to the following authorities for comment:

| Authority                                                | Authority Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Council Response                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Corangamite Catchment Management Authority (CCMA)</b> | <p>No objections to the proposal subject to the following conditions:</p> <ul style="list-style-type: none"> <li>• <i>The floor of the managers dwelling must be constructed no lower than 118.0 metres Australian Height Datum.</i></li> <li>• <i>Prior to works commencing a flood storage replacement plan must be submitted for approval. The plan must include the following details to the satisfaction of the CCMA:</i> <ol style="list-style-type: none"> <li>a) <i>Calculation of the volume of lost temporary flood storage that will result from construction of the shed pad, and all other areas that will be finished above the existing surface level (e.g. loading pads, dam embankments as applicable).</i></li> <li>b) <i>The location and dimensions of replacement storage areas or area.</i></li> </ol> </li> </ul> <p>The CCMA advised that for the purpose of calculating the volume of lost flood storage the Authority has estimated the applicable 1% Annual Exceedance Probability Flood level to be 117.7.</p> | <p>Council has recently prepared and placed on exhibition Amendment C12 – Land Subject to Inundation Overlay and Floodway Overlay. Council Officers have liaised with the CCMA in relation to imperial data pertaining to the areas included in the overlays.</p> <p>For this property, the area included in the overlay has not changed significantly. Refer to Appendices. The majority of the western portion of the land is included in the LSIO.</p> |
| <b>Southern Rural Water</b>                              | <p>No objection to the proposal subject to the following condition:</p> <ul style="list-style-type: none"> <li>• If any works will impact on a waterway or groundwater or will include the use of water for irrigation or commercial purposes from these resources or from a dam, soak or spring, it will be necessary for the land owner or permit holder to apply to Southern Rural Water for a licence in accordance with Section 51 or 67 Water Act 1989.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>The condition required by SRW will be included should the application be supported.</p>                                                                                                                                                                                                                                                                                                                                                                |

|                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Dept Sustainability and Environment</b> | Made no comments in relation to the proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>VicRoads</b>                            | <p>No objection to the proposal subject to the following condition:</p> <ul style="list-style-type: none"> <li>The Barpinda-Poorneet Road approach to the Hamilton Highway intersection shall be widened as necessary to accommodate the turning path of trucks, to the satisfaction of VicRoads and the Responsible Authority.</li> </ul> <p>The authority advised that the Hamilton Highway is under their control and the other roads on the proposed route, i.e. Weering School and Barinda-Poorneet Roads are local roads under the control of Council.</p> | The application was referred internally to Council's Infrastructure Dept. Council comments on local roads are contained under Infrastructure Dept.                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Barwon Water</b>                        | <p>Barwon Water initially provided Council with two responses. One requested further information on water usage, demand and onsite capacity. The second response related to a recent interim policy that has now been replaced.</p> <p>Further advice has been received from Barwon Water confirming that an "in principle" agreement has been reached to supply the development with potable water. This is further discussed in the body of the report.</p>                                                                                                    | <p>The issue around the supply of potable water has been resolved between Barwon Water and the applicant.</p> <p>A condition will be required that the permit holder enter into an agreement with Barwon Water for the provision of potable water, should a planning permit be supported.</p>                                                                                                                                                                                                                                       |
| <b>Environment Protection Authority</b>    | <p>EPA advised that the proposal does not require an EPA Works Approval and therefore EPA are not a referral authority under Section 55 of the P&amp;E Act.</p> <p>EPA confirmed that buffer distances proposed for each farm appear to meet the requirements of the Code for a Class B Farm.</p> <p>EPA raised the issue of cumulative impacts given the size and close proximity of two 320,000 bird capacity broiler farms in this locality and the need to consider local</p>                                                                                | <p>In considering whether an ERA is required, Council Officers had regard to the following VCAT determination: <b><i>Krusic-Golub v Golden Plans SC (2006) VCAT 255 (24 February 2006)</i></b>. This determination deals extensively in relation to the need for an ERA where applications are made for a number of individual broiler farms of 320,000 bird capacity that meet required buffer and separation distances, but within the same locality. The VCAT determination established that where Class B farms comply with</p> |

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|                                          | <p>metrological conditions of the area and whether the recommended buffers in the Code pertaining to Class B farms would be adequate in this circumstance. EPA suggested that an ERA would provide Council with a means of ensuring that the buffers provided are adequate for two farms.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>the buffer and separation distances of the Code and have a maximum bird capacity of 320,000, the Code does not require an ERA. The other circumstance when an ERA may be required is when the proposal is a "Special Class" or proposing to use "Superior Technology" or when the buffer and separation distance may not be adequate due to local considerations.</p> <p>Council Officers have discussed the potential of cumulative impacts as a result of two 320,000 farms and the need for an ERA with the applicant. As a result of these discussions the applicant agreed to prepare an ERA, which was submitted to Council in December 2008.</p> |
| <p><b>Dept of Primary Industries</b></p> | <p>DPI made comments in relation to the separation distances, air quality, litter use and dead bird management.</p> <p>DPI had difficulty in accurately measuring the buffer and separation distances on the plans due to a distortion when the plans were reproduced and therefore asked Council to confirm the accuracy of the distances.</p> <p>DPI advised that there may be an increased risk of odour nuisance resulting from cumulative odour effects from the two farms and suggested that an ERA be undertaken.</p> <p>DPI have advised that if litter is used on the farm as fertiliser it should be used in accordance with the Guidelines for Manure Management and noted that the re-use of litter on site can provide a valuable fertiliser for the broader farm operations and is encouraged.</p> <p>DPI advised that composting of dead birds needs to be conducted in accordance with the EPA</p> | <p>Council Officers have checked the plans for their accuracy and found that the plans are to scale and the buffer and separation distances shown on the plans submitted with the proposal are correct.</p> <p>The applicant has agreed to have an ERA prepared prior to consideration of Farm A, and this has since been submitted.</p> <p>Comments from the DPI in relation to litter disposal will be considered in context to the concerns raised in objections received, further in the report.</p>                                                                                                                                                   |

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                          |
|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
|                                      | <p>Victoria, Environmental Guidelines for Composting and Other Organic Recycling Facilities.</p> <p>DPI advised that as a general rule spent litter and composting areas should be situated away from waterways and sensitive uses.</p> <p>DPI also made some general comments in relation to the EMP provided as part of the application.</p>                                                                                                                                                                                                    |                                                          |
| <b>Council's Health Dept</b>         | No objection subject to conditions placed on any permit issued.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Conditions will be included should the permit be issued. |
| <b>Council's Infrastructure Dept</b> | <p>No objection was received. Advised that the access onto Weering School Road will need to be constructed to the minimum standards for farm access as set by VicRoads (Guidelines for Truck Access to Rural Properties, April 2006) and allow sufficient storage area to cater for a B-Double to be parked within the gateway area. Further discussion regarding the use of local road by B-Doubles is contained in the body of the report.</p> <p>Site drainage and the management of stormwater will need to comply with EPA requirements.</p> | Condition will be included should the permit be issued.  |

### Public Notice

The applicant was required to give notice of the application under Section 52 of the Planning and Environment Act by sending letters to all owners and occupiers within a radius of 350 metres of the land, by placing a sign on the Pierces and Weering School Road frontages for a minimum of 14 days, and by placing a notice in the Colac Herald for one issue.

Notification was undertaken for a second time as members of the community raised concerns that the notification process had not been undertaken correctly because some of the information was missing from material available for inspection. Whilst Council Officers believe that the advertising was carried out correctly, it was agreed to readvertise the three applications (this application and the applications for Farm B and the re-subdivision) in order to ensure that all residents had reasonable access to all information so that they would not be disadvantaged in making submissions.

The proposal was readvertised mid August 2008 for a period of 14 days by sending letters to all owners and occupiers within a radius of 350 metres of the land and by placing a notice in the Colac Herald for one issue. Six new objections were received and further information was received from four existing objectors.

At the conclusion of the notification period a total of 27 objections were received that objected to all three applications. Copies of the objections are at Appendices. The matters raised in the objections generally fall under the following categories:

- i. Proposal is contrary to the purpose of the zone;
- ii. Use is incompatible with agricultural activities on nearby properties
- iii. Inappropriate buffer and separation distances;
- iv. Environment Risk Assessment;
- v. Amenity impact caused by emission of offensive odour;
- vi. Amenity impacts caused by increased traffic;
- vii. Disposal of litter and dead birds;
- viii. Risk of environmental impact on surface, groundwater and overland flow;
- ix. Impact on water supply;
- x. Inundation and flooding of site;
- xi. Risk of disease transfer to livestock;
- xii. Inadequate landscaping to screen the development;
- xiii. Decrease in property values;
- xiv. Generic Environment Management Plan submitted;
- xv. No Cultural Heritage Management Plan submitted.

The concerns raised in the objections are discussed in the following section of this report.

### **Consideration of the Proposal**

The land is included in the Farming Zone, where the schedule specifies a minimum subdivision area of 80 hectares. The majority of the western part of the land (CA 140, 148 and 152) is included in the Land Subject to Inundation Overlay.

Under the Farming Zone a permit is required for a Broiler Farm which must meet the requirements of Clause 52.31.

Under Clause 52.31, a broiler farm must comply with the Victorian code for Broiler Farms, September 2001.

#### **a) State (SPPF) and Local Planning Policy Framework (LPPF) including Municipal Strategic Statement (MSS)**

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 17.05 - Agriculture

The objective seeks to ensure that the State's agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use and to enable protection of productive farmland which is of strategic significance in the local or regional context.

In considering a proposal to develop agricultural land, the following factors must be considered:

- The desirability and impacts of removing the land from primary production, given its agricultural productivity.
- The impacts of the proposed subdivision or development on the continuation of primary production on adjacent land, with particular regard to land values and to the viability of infrastructure for such production.
- The compatibility between the proposed or likely development and the existing uses of the surrounding land.
- Assessment of the land capability.

Clause 17.05 Intensive animal industries

The objective seeks to facilitate the establishment and expansion of cattle feedlots, piggeries, poultry farms and other intensive animal industries in a manner consistent with orderly and proper planning and protection of the environment. The Responsible Authority must have regard to the Victorian code for Broiler Farms, September 2001 when considering applications for Broiler Farms.

Clause 21.03-03 and 21.04.02 – The northern plains and lakes

The key objective is to maintain the viability of large scale agriculture and the retention of high quality land, recognising the environmental significance of key sites while allowing limited diversification into new uses and providing for the accommodation of tourist related development.

Clause 21.04.02 identifies the following relevant matters for consideration:

- Encouraging land management practices that are sustainable and protect the environment.
- Ensuring that existing dairying and other agricultural producers are supported from encroachment by conflicting development such as hobby farms.
- Protecting viable agricultural properties by introducing an 80 ha minimum area. The variation in minimum lot size reflects the generally more extensive nature of agricultural enterprises in the north east part of the shire and is designed to prevent the fragmentation of viable agricultural units into small hobby farms.
- Encouraging the restructure of agricultural holdings into larger units.
- Providing for innovative agricultural activities that do not detract from the long-term sustainability of large-scale agriculture.

**b) Planning Scheme Review Amendment C55**

While the above planning scheme amendment makes no changes to the land in relation to the zone or overlay, there are changes proposed to the Municipal Strategic Statement that are relevant to this proposal. In particular, at Clause 21.02 – Land Use Vision, the Strategic Framework Plan has been modified to identify the north-west corner of the municipality, west of the Colac-Ballarat Road, as an area of "Farmland of Strategic Significance".



Grazing and cropping farming practices are the preferred land uses in areas designated as 'Farmland of Strategic Significance'.

Under Clause 21.05-1 – Agriculture, a key objective is to: *“maintain the viability of large-scale agriculture and the retention of areas of farmland of strategic significance and other high quality agricultural land for agricultural use.”*

The land subject of this proposal is not located within the area identified as “Farmland of Strategic Significance”.

Council is currently awaiting Ministerial approval of Amendment C55 subsequent to adoption of the amendment at the October 2008 Council Meeting.

### **c) Zone Provisions**

The objectives of the Farming Zone are outlined below:

- To implement the SPPF and the LPPF including the MSS and local planning policies.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, particularly dwellings, do not adversely affect the use of land for agriculture.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
- To protect and enhance natural resources and the biodiversity of the area.

Clause 35.07-6 - Decision guidelines sets out a range of matters for consideration under the categories of: General, Agricultural, Dwelling, Environment and Design and siting issues.

### **d) Victorian Code for Broiler Farms**

Clause 52.31 requires that any proposal for a Broiler Farm must comply with the requirements of the Victorian Code for Broiler Farms, September 2001. The proposed Broiler Farm has been classified as a “Class B” farm under the classifications contained within the Code. An assessment of the proposed Class B Broiler Farm has been undertaken and found to generally comply with the requirements of the Code.

The Code was prepared by a technical committee comprising representatives of the Dept of Natural Resources and Environment (now Dept of Sustainability and Environment), Dept of Infrastructure (now Dept of Transport), Environment Protection Authority, Municipal Association of Victoria, Mornington Peninsula, Cardinia and Golden Plains Shire Councils, Victorian Chicken Meat Council, Victorian Farmers Federation Chicken Meat Group, and the Chicken Meat Research and Development Committee.

The Broiler Code is currently under review and has been for some time. A representative from the Department of Primary Industries (DPI) has advised that they are hoping a draft Code would be available for public comment in the coming months. Even if a draft Code was out for public comment it would have no legal standing until such time as the draft Code was formally incorporated into the planning scheme, replacing the September 2001 Code. DPI advised that the timeline for when the 2001 Code may be replaced has not been set but would be a minimum of 6 months and more likely 12 months.

Until such time as the 2001 Code is formally replaced within the Victoria Planning Provisions, Council is bound to make decisions on Broiler Farm proposals based on the existing Code that is incorporated into the Planning Scheme.

When interpreting the Code, DPI advised that the intention is that the objectives and the criteria must be met, whereas, the Guidelines are “best practice” and should be applied to broiler farms, although discretion exists to consider alternative methods other than those contained in the Code.

### **Environmental Risk Assessment**

Appendix 3 of the Code contains technical information on ERAs, the use of emissions modelling and Superior Technology. The design and layout of broiler sheds, farm equipment and development of operational and management practices can minimise routine emissions of odour, dust and noise and the likelihood of abnormal emissions or accidental releases.

When conducting an ERA, the Code identifies the following factors that should be taken into consideration:

- Shed ventilation system and air movement control;
- Fan location(s) and capacity;
- Weather patterns, including prevailing winds and the occurrence of stable atmospheric conditions;
- Topographical features of the site;
- Stocking density;
- Plantation width, depth, terrain and vegetation cover;
- Pollution control technology (for example, stacks, scrubbers and biofilters);
- Waste management and storage practices (for example, collection and disposal of litter and dead birds);
- Odour modelling data, including assessment of cumulative impacts involving other sources in the vicinity;
- The impact of high bird mortality
- Chemical use schedule and application practices.

Emissions modelling is able to predict whether emissions will lead to adverse impacts at the property boundary, and at any point beyond it, including the location of sensitive uses, like dwellings.

The Code requires that EPA approved models must be used in odour and dust emissions modelling, and the following design criterion should be used:

- *For odour, predicted concentrations are calculated as three minute averages and, to minimise the potential impacts on nearby sensitive land uses and the likelihood of complaints, maximum predicted concentrations must not exceed five odour units at and beyond the boundary buffer for 99.9% of the meteorological scenarios modelled. Usually the modelling exercise involves predictions for each hour of a calendar year of meteorological data.*
- *For dust emissions, the State Environment Protection Policy (Air Quality Management) specifies a design criterion of 183 mg/m<sup>3</sup> (one-hour average), which also must be met by 99.9% of the model.*

The EPA has prepared an “Interim Guideline for Environmental Risk Assessments (Odour) for the Victorian Code for Broiler Farms.” This guideline is a draft at present and expected to form part of the draft revised Victorian Code for Broiler Farms document when released for public comment in the near future.

The draft guideline provides advice to proponents and the community about ERAs and sets out the minimum requirements needed for an ERA in order to be able to assess the acceptability of a broiler farm application. An ERA is a process or tool used to identify any potential environmental impacts/risks of a site whilst taking into account site specific management, mitigation and contingency planning. These risks and the accompanying site information can then be assessed as to the acceptability and likelihood of the impact on the surrounding amenity.

An ERA is a staged process and depending on the individual proposal, a proponent may need to undertake one or more stages in the assessment in order to demonstrate that there is unlikely to be impact on surrounding sensitive uses.

The three stages are outlined below:

|                    |                                                                                                                                                                            |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Stage One</b>   | Assessment of objectives, criteria and Best Management Practices of the code and modelling of air and dust impacts against the design criteria (requirements of SEPP AQM). |
| <b>Stage Two</b>   | Where SEPP AQM design criteria cannot be met, assessment of risk to surrounding sensitive land uses.                                                                       |
| <b>Stage Three</b> | Where risk assessment undertaken in Stage 2 is moderate or high, an assessment of risk management strategies, technologies and redesign options.                           |

If the design criteria of SEPP AQM are met no further risk assessment process is needed. If this cannot be met Stage 2 and 3 will be required.

### **Environmental Risk Assessment prepared by GHD**

Council received the ERA report prepared by GHD on 5 December 2008. The report was referred to the EPA and the DPI on 10 December 2008 for review and comment.

The ERA provides an odour impact assessment and environmental risk assessment of two proposed 320,000 bird broiler farms at 210 Pierces Road Beeac. The assessment has been provided for a "Class B" farm as classified under the Victorian Code for Broiler Farms.

The ERA report describes the proposed farm sheds and their ventilation and defines the two dispersion model inputs; namely shed odour emission rate (OER) and site representative meteorology. Dispersion modelling using AUSPLUME of both farms is then presented and the results compared to the Broiler Code odour criterion. The report provides an environmental risk assessment of Farm B on its own and provides an environmental risk assessment on the cumulative impact of both Farm B and A when in operation.

The ERA also includes a dust impact assessment as required by the Broiler Code.

As the design criteria is not met for Farm A and B under Stage One of the EPA guidelines, the report prepared by GHD has undertaken an evaluation of Farm A and B under Stages Two and Three of the guidelines.

In undertaking the evaluation in the ERA, GHD has departed from the methodology outlined in the EPA guidelines and adopted a "classic risk matrix approach" specified in Australian Standard AS4360. The risk matrix approach provides an estimated qualitative measure of risk (i.e. 'low', 'moderate' and 'high').

Detail of the above methodology is outlined at Section 8.2 – GHD's approach to Quantifying risk to Odour Impact pg 25/26 of the report.

Based on this methodology, the report makes the following conclusions:

#### Odour

- The effect of both Farms A and B operating does increase the potential exposure of residents compared to when either farm is operating alone;
- The effect of Farm A operating in addition to Farm B is a marginal increase in peak odour levels at the most exposed residences (4% to 50%);
- The ERA analyses show that the risk of disamenity for both the single farm (Farm B) scenario, and for both farms operating is Low; and
- The low risk returned by the ERA is consistent with the farms meeting the required separation distances.

#### Dust

- The Broiler code criterion for TSP (i.e. dust particle emissions) is contained on-site to the north and east, but has excursions to the west and south of 380m and 240m respectively onto adjoining paddocks;
- The predicted peak 99.9%ile TSP levels at existing nearby residences do not exceed 45% of the code criterion; and
- The EPA design criterion for PM10 is met at the residence with an increased margin of 13% over that obtained for TSP.

### **Environment Protection Authority response**

Council has no in-house expertise to provide a peer review of the ERA and therefore has relied upon the EPA for a review of the ERA report. Although Council Officers referred the report to the EPA in December 2008, no written formal response has been received, although a number of discussions have taken place between Council Officers and representatives from the EPA in relation to the ERA.

The EPA have verbally raised concerns with the methodology and data used in the ERA as the EPA have found it difficult to calibrate the data to confirm or otherwise its findings. A meeting has been arranged between the Applicant, EPA representatives and Council Officers to discuss the differences in the methodology and data mid March 2009. This meeting is being held just prior to the Planning Committee meeting. Council will be informed of the outcome of this meeting and any subsequent changes to the views of the EPA (if any).

Notwithstanding this, the EPA has advised Council that based on an assessment of the ERA its view is that there may be a significant risk of odour impact from the cumulative impact of two broiler farms based on its experience with farms of this size located at the existing distance from the nearest dwellings. EPA do not agree with the conclusions of the ERA that the risk of odour impact is low for the two broiler farms.

As the EPA raises doubt with the findings of the ERA, which have not been resolved at this stage, Council has the following options in forming a view on this proposal.

1. Council Officers can continue to facilitate discussions between the EPA and the Applicant on the methodology and data used in the ERA to better understand whether the risk is acceptable. The EPA has advised that this approach has been undertaken in other situations where a departure from the EPA methodology was used in odour modelling which resulted in an agreed position on the findings of that ERA.

2. At the end of these discussions, should the risk be acceptable then Council could agree to support the proposal and advise VCAT accordingly. If the risk was not acceptable then Council should not support this proposal based on the interim position of the EPA. In this scenario, officers would consider engaging an independent company to undertake an ERA for the proposal and appear as an expert witness at the forthcoming VCAT hearing.
3. If Council chooses not to request representatives from the EPA to be party to the proceedings of the VCAT hearing. There is no guarantee that representatives of the EPA would be given consent to appear at the VCAT hearing.

**d) Overlay Provisions**

The objectives of the Land Subject to Inundation Overlay are outlined below:

- To implement the SPPF and the LPPF including the MSS and local planning policies.
- To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the flood plain management authority.
- To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
- To reflect any declaration under Division 4 of Part 10 of the Water Act, 1989 where a declaration has been made.
- To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria).

The majority of the western portion of the land subject to this proposal is included in the LSIO. Comments were sought from the CCMA which have been discussed under the "Referral" section of this report.

**e) Consideration of objections**

*i) Proposal is contrary to the purpose of the zone*

The subject land is located to the east of the Colac-Ballarat Road within a rural area that is used for agricultural activity. Under Amendment C55, this area is not included in the area identified as "Farmland of Strategic Significance". In the area identified as "Farmland of Strategic Significance", grazing and cropping farming practices are the preferred land uses. The Municipal Strategic Statement gives no specific direction on the preferred location of broiler farms, therefore, agricultural land outside of the area identified as "Farmland of Strategic Significance", in the Farming Zone would be expected to be able to be used for a broader range of agricultural activities.

Under the planning scheme, a Broiler Farm sits under the umbrella definition of "intensive animal husbandry" along with cattle feedlots, piggeries and other intensive animal industries. These activities are considered legitimate agricultural uses that would normally be expected to be located within rural areas. These uses sit under this definition as the animals or birds are housed within an enclosed area and reared on grain, pellets, and the like.

These types of agricultural activities occupy a small area of land but because of the intensive nature of the use, require substantial buffer and separation distances from dwellings and other sensitive uses to ensure that the amenity of adjoining properties are not impacted upon.

With a broiler farm the buffer and separation distances are quite substantial and therefore it is necessary to occupy much larger sites than the activity itself requires.

The proposed broiler farm complex will occupy between 1-2 hectares of land leaving over 80 hectares for other agricultural activities, including grazing of livestock. Diversification of agricultural activities can assist in achieving a more favourable economic return, particularly when markets are volatile.

The land will remain a large viable agricultural unit as consolidation of the titles was required by the resubdivision permit.

*ii) Use is incompatible with agricultural activities on nearby properties*

Broiler farming activities are strictly controlled and must operate and conform to various forms of legislation and guidelines. The Chicken Meat Industry requires farms to comply with strict protocols and security measures, particularly in relation to the spread of disease. "Bio-security Guidelines for Poultry Producers" have been prepared by the Department of Primary Industries which set out best practice processes for the management and operation of broiler farms.

The closest setback from an adjoining farming property is 260 metres, to the south of the broiler farm complex and to the east, where another broiler farm complex is proposed by the same applicant (PP117/08). In all other instances the boundary buffer and separation distances to other properties varies between 260 metres and 700 metres. The nearest dwelling is 915 metres from the broiler farm complex. These distances should be sufficient to ensure that there is no impact on grazing or other agricultural activities on adjoining properties.

*iii) Inappropriate buffer and separation distances*

Both Broiler Farm A and B are classified as a Class B farm under the Code and meet the required boundary buffer (260 m) and separation distances (700 M).

For Class B Farms, the boundary buffer must be entirely within the property boundary but it is permitted that part of the separation distance may be outside the property boundary provided there are no existing or likely sensitive land uses within the separation distance. The boundary buffer is designed to allow for the dispersion of emissions as part of the normal farm operations whereas the separation distance is to minimise impacts associated with abnormal or unexpected events (such as plant upsets or accidents).

When measuring the buffer and separation distances, the measure point for tunnel ventilated sheds is taken from the centroid of the exhaust fans. For both broiler farms, the exhaust fans are located at the western end of the shed complex. For Broiler Farm A, the subject of consideration, with the exhaust fans in this location and the broiler farm complex positioned 260 metres from the southern common property boundary, the boundary buffer (260m) and separation distances (700m) to the two existing dwellings is met.

The separation distances are in excess of that required by the Code and outlined below:

- Nearest dwelling on the north side of Pierces Road is 915 metres;
- Dwelling to the north-west on Pierces Road is 1070 metres;
- Proposed Caretakers Dwelling on the eastern portion of the land is 1010 metres.

There are no existing dwellings to the south or directly west on adjoining lots of the broiler farm complex.

Under the Code, the proposal must also satisfy separation distances where lots are vacant and may be used for the purposes of a dwelling. The Code requires Council to have regard to the potential for the development of a dwelling on the adjoining property 'as of right' (that is, without a planning permit). Where a site adjoining a proposed broiler farm is currently vacant, it should be assumed that an 'as of right' dwelling may be located centrally on the property (that is, the available separation distance will be calculated to the centre line of the adjoining allotment if that lot is currently vacant).

The applicant has provided a locality plan that demonstrates that sites for new dwellings on adjoining properties are available that would be outside the separation distances required by the Broiler Code (Refer to Appendices).

There are no 'as of right' dwelling entitlements on any of the lots abutting the subject land as all lots surrounding the proposed development site have areas less than 80 ha. The size of the lots generally range from 16 ha to 55 ha, with many of the lots in single ownership and farmed as a larger farming unit. A planning permit would be required to use and develop any of the lots adjacent to the land proposed for the broiler farm. Consideration of any such proposal would be given to the strategic and statutory provisions of the planning scheme including the Code. The Code provides guidance on the consideration of applications for dwellings near a broiler farm and states that:

*"Councils should not support any application for a planning permit that would allow the possibility of a new dwelling to be built within the separation distance of an existing broiler farm."*

If the broiler farm is supported, the siting of any new dwelling on an adjoining property would need to be considered in light of the separation distances required to be met under the Broiler Code. New dwellings proposing to locate within the separation distances would be unlikely to be supported.

There is currently an application for a dwelling on land to the west of the site, within the separation distance, and this broiler farm application would need to be taken into account when determining that application.

v) *Amenity impact caused by emission of offensive odour*

Like all agricultural enterprises, some odour is associated with the keeping and breeding of livestock and birds. Broiler farms have the potential to emit odours that the general community may find offensive. It is reasonable to expect that residents, living near a broiler farm, should have the same level of amenity as other residents in rural areas. Odour becomes problematic when it is transmitted beyond property boundaries to sensitive uses like dwellings. The Broiler Code requires boundary buffer and separation distances as one means of mitigating the risk of the transmission of offensive odour beyond property boundaries and as a means of protecting the amenity of residences near a broiler farm.

The EPA has indicated that the boundary buffer and separation distances have been designed to cater for a single 320,000 bird capacity broiler farm and in their view may not be adequate in circumstances where two or more 320,000 bird capacity broiler farms are to be located in the same locality.

Notwithstanding the boundary buffer and separation distances required under the Broiler Code, prevailing meteorological conditions and local topographical features should be taken into account when assessing whether the prescribed buffer and separation distances are adequate. For instance, where the topography is undulating or hilly, valleys or similar land forms can channel air movements in a particular direction.

Other meteorological conditions such as prevailing winds or fogs can create local conditions that may be a factor in determining buffer and separation distances. In this circumstance, the topography is flat and prevailing winds are westerly, so the risk of odour being trapped by inversion layer or the channelling of air movement in a particular direction is reduced.

Generally offensive odours generated by broiler farms occur when there is an incident that causes the litter to become wet or when the capacity of the litter to absorb the moisture from the bird droppings is exceeded. Abnormal or unexpected events (such as plant upsets, accidents or leaks) may cause an increase in odour generated by a broiler farm.

Proper management of broiler farms is essential in mitigating risks of these types of incidences occurring and offensive odour emitting beyond property boundaries.

The EMP requires the monitoring of any such incidents and remedial action must be taken immediately to rectify any problems that occur.

Where broiler farms are well managed, the likelihood of incidents occurring that may impact on the amenity of neighbouring properties is reduced. An EMP would be required to be approved as a condition of any approval.

vi) Amenity impacts caused by increased traffic

The applicant has advised that the broiler farm will generate over 600 vehicle movements per year, which averages out at one per day. However, vehicle movements will be concentrated depending on the stage of the batch cycle. The most concentrated periods will be when the birds are being picked up to be sent to the processor and when the litter is being delivered and removed.

Should both Broiler Farms A and B be supported then vehicle movements would double these figures.

The number of vehicle movements generated by the operation of the broiler farm has been questioned by some objectors who have suggested that vehicle numbers are more likely to be double what has been estimated in the proposal. If vehicle movements were 1200 per year this would mean that there would be an average of an additional two vehicle movements per day.

The number of vehicle movements generated by the farm will depend to some degree on the type, size and carrying capacity of the vehicle required or available to undertake the activity.

Weering School Road and Barpinda-Poorneet Road currently carry approximately 120 vehicles per day (two-way). The additional traffic generated by this proposal, whether it is the amount estimated by the applicant or the amount estimated by the objectors, is unlikely to result in an unreasonable impact on the capacity of the road network to accommodate the increase in traffic or the amenity of the area.

The applicant has identified the Weering School Road to Baripinda-Poornet Road then onto the Hamilton Hwy as the preferred route for vehicular movements. Both Weering School Road and Baripinda-Poornet Road are local roads under the control of Council. Weering School Road and Baripinda-Poornet Road is not a gazetted B-Double route.

Concerns were raised in objections regarding the suitability of this route given it is not a declared B-Double route and the fact that the Colac-Ballarat Road is a declared B-Double route that would appear to be more suitable for articulated vehicles.



While VicRoads have no control over local Council roads, their comments were sought in relation to the suitability of the proposed vehicle route. In their view, the proposed route appeared to be satisfactory given that the roads were of a standard that could easily accommodate the safe movement of articulated vehicles.

VicRoads were also asked to comment on an alternate route to connect to Colac-Ballarat Road as this road is a declared B-Double route. They advised that the Barpinda-Winchelsea Road is a four metre wide, single lane road and would not be suitable for B-Doubles or semi-trailers. In their view, Eurack Road could be an alternate route to the Colac-Ballarat Road, as it has a 6.2 metre wide pavement, two lane road that would allow for the safe movement of articulated vehicles.

Not all the vehicle movements generated by the broiler farm will be B-Doubles. The application identifies that feed deliveries will be by B-Double vehicles while the other vehicle movements will be generated by delivery vans and semi-trailers.

Only B-Doubles that are 25 metres long or have a carrying capacity of in excess of 50 tonnes require permits for approved routes. Individual permits may be granted for B-Doubles to use local roads. If a request was made to use Weering School Road, Barpinda-Poomeet Road, then consideration would be given to the condition of this part of the road network. Council's Infrastructure Dept has advised that the geometric profile of the roads is appropriate for larger vehicles as widening of sections of the road network has recently occurred. On this basis it is expected that favourable consideration would be given to applications, subject to certain conditions in relation to times of use and damage to the roadways.

A condition will be placed on any permit issued that requires B-Doubles meeting the above category to obtain a permit from VicRoads to use the local road network.

*vii) Disposal of litter and dead birds:*

Objectors have raised concerns regarding the stockpiling of litter and the composting of dead birds onsite. While the spreading of untreated fowl manure is an accepted practice in rural areas, concerns have been raised in relation to the transfer of contaminants and pathogens into the natural environment. The EPA and DPI have guidelines that provide advice in the management of litter that is stockpiled on properties.

It is considered that the characteristics of the site are such that the spreading of untreated fowl manure and the composting of dead birds onsite should be discouraged, therefore, a condition should be placed on any permit issued requiring that all litter should be removed from the site at the completion of each batch and that dead birds be kept in a freezer until they are removed from the site.

*viii) Impact on water supply*

In response to Barwon Water's request for information relating to the volume of potable water required for the development, the applicant advised the following:

| <b>Activity</b>                                             | <b>Amount</b>                                                                                                                                        |
|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Annual amount of water required for Farm A                  | 18-20 ML – 60-70% will be used for drinking and the remainder used for cooling purposes.                                                             |
| Peak hourly demand for water (usually during summer months) | Peak hourly demand will be in the order of 10,000 litres per hour. This will be drawn from the on-site storage tanks.                                |
| Average daily demand for water                              | The average daily demand for water will be approximately 52,000 litres.                                                                              |
| On-Site storage capacity                                    | Enclosed tanks will be used to store water on-site for drinking and cooling purposes. A minimum storage capacity of 750,000 litres will be provided. |

Barwon Water and the Applicant have previously held discussions relating to water supply, following which the Applicant has proposed the following to Barwon Water:

- Install a 100mm private main along Pierces Road from the main in Colac-Ballararat Road;
- Construct a main water storage dam with a capacity of 10 megalitres to serve as a joint storage for both farms;
- Runoff from the shed roofs will be harvested and stored in the stormwater catchment dam at each farm site. This water would be pumped into the main storage dam as required.
- The proposed 0.75 megalitres of tank storage will be retained for each farm as the primary supply of potable water to the sheds. This would be filled directly from the private main or from the main storage dam as conditions dictate. All water from the main storage dam that is to be used for drinking purposes will require treatment prior to being pumped into the tanks;
- Water for use in the evaporative cooling pads will be sourced from the main supply dam. This will not require treatment prior to use.

Barwon Water has advised that the storage calculations outlined above are in line with recent discussions and that Barwon Water has no objection to the plan proposed and fully supports any potable water replacement initiatives.

Should both Broiler Farm A and B be supported then water usage would be double the amount indicated in the table above.

*ix) Inundation and flooding of site*

Objectors have raised concerns regarding inundation and flooding of the site. Photographic evidence has been submitted by objectors that show in 1983 parts of the land being covered in water. Andrew Watts, Qasco Victoria Pty Ltd was engaged by objectors to review film and inspect prints under 3D, stereoscope to provide additional information in relation to inundation of the land. Photographic material was reviewed from 1956, 1970, 1977, 1983, 1990, 1994 and 2000.

Based on this information, Andrew Watts makes the conclusion that the land in large parts may be wet and/or under water for some part of any given year and notes that for the last 11 years Victoria has been experiencing a very dry period and cannot determine the effect that this dry spell has had on inundation during that period but inundation is not as obvious.

The LSIO covers a large part of the land to the west of the north-south boundary. This application was referred to the Corangamite Catchment Management Authority (CCMA), and their comments are detailed above in the referral section of this report.

As the Broiler Code, under Element 1, Guidelines 1 (pg 22), states that: *“Broiler sheds and associated earthworks must not be located in areas designated as subject to inundation under any planning scheme, and must not adversely affect flood plain capacity or natural drainage lines”* Council Officers sought clarification in regard to this matter in relation to Farm A, proposed on the western portion of the property.

The CCMA advised that Farm A is not expected to adversely affect flood plain capacity or natural drainage lines. In relation to Farm A, CCMA has requested that the applicant prepare a “flood storage replacement plan” for approval by the CCMA.

The CCMA advised that when considering a proposal on land within the LSIO, the CCMA first assesses the nature of flooding expected on the property – i.e. river flood plain (riverine), storm water, water logging due to poor drainage, or pooling in low lying areas. The CCMA can then determine whether:

- The proposal will maintain the free passage and temporary storage of flood water; and
- Whether the proposal is likely to be damaged by flood waters.

Based on available land surface elevation data and CCMA’s understanding of the area, the CCMA has concluded that flooding on the subject property is associated with low lying areas prone to poor drainage and water logging. The CCMA also considers that the actual area prone to water logging is less than that indicated by the LSIO.

The CCMA provided digital images and referred to the Flood Data Transfer Project (commissioned by DNRE in 1998) in arriving at their conclusion. After considering all information, the CCMA advised that the flooding on the subject property is due to shallow pooling in natural depressions fed by runoff from small rural catchments of less than 25 ha.

As the CCMA is the referral authority under Section 55 of the Act for the LSIO, Council must give appropriate weight to their comments given their expertise in this area. The CCMA has raised no concerns in relation to the Broiler Farm A Complex, the subject of this report.

It is noted that substantial earthworks will be required to provide the fill pad to 0.6 metres above natural ground level for both broiler farm complexes. No detail has been submitted with the application in this regard, therefore, the applicant will be required to submit a plan showing the details of all earthworks required. The earthworks plan would be referred to CCMA for comment.

x) *Risk of disease transfer to livestock and environment impact on surface waters*

The matter of disease risks associated with the broiler farm has been raised in objections received. The applicant in response to these concerns engaged Dr. Peter C. Scott, Scolexia Pty Ltd who prepared a Report on Avian Diseases associated with Broiler Farms.

Dr. Scott was asked to respond to the following matters:

- The risk of pathogens/disease organisms likely in the dam and/or surface runoff waters;
- The risk a broiler farm poses to humans, domestic livestock or wildlife off-site.

Dr. Scott's report provides the following comments on infectious agents:

#### Viruses

The report states: *"There are no specific pathogenic avian viruses that are recognised as potential pathogens of people, livestock, horses or wildlife under normal exposure conditions. Avian viruses are not considered a risk in the assessment of this report."*

#### Bacteria

In terms of bacteria, the report discusses in detail five bacteria types that are considered most relevant to broiler farms. They are:

- *Enterococcus*;
- *Escherichia coli*;
- *Salmonella spp.*;
- *Campylobacter spp.*, and;
- *Protozoa (coccidiosis)*.

The report states that: *"While there are a number of avian bacterial pathogens that have been known to affect people and livestock these are considered a very low risk assessment under normal exposure conditions."*

Dr. Scott's report provides the following summary in relation to the findings in response to the above two matters:

- a) The pathogens known to be associated with poultry need conditions such as consumption of contaminated production, direct intimate contact with poultry or waste to result in disease transmission to humans or livestock.
- b) These pathogens associated with poultry (*Salmonella spp.* And *Campylobacter spp.*), etc. are widely distributed in the environment and thus commonly associated with other domestic livestock.
- c) *E.coli 0157* is particularly associated with livestock such as cattle but not with poultry. Thus ruminants are potentially a higher risk of being reservoirs of these bacteria that can cause clinical diseases in humans.
- d) The current requirements of broiler farms under the State Planning legislation and other state regulatory bodies mean that the risk of contaminated runoff is very low.
- e) Work undertaken by the RIRDC indicates that the risk of aerosol spread of avian pathogens is very limited and confined to the immediate perimeter of the shed.
- f) Current farming practices both within Australia and internationally indicates that there are no particular causally associated risks with the farming of cattle, sheep and horses with best practice broiler farm operations.

Dr. Scott makes the following conclusion:

*"An assessment of the known pathogens/disease organisms associated with poultry farms indicate that the risk of any impact on the health of livestock and people at adjoining properties is most unlikely."*

*xi) Inadequate landscaping to screen the development*

Landscaping is important in reducing the visual impact of the development on the landscape and rural character of the area. Landscaping can also assist in buffering noises and reducing the emission of light. For that reason it is considered that substantial landscaping should be provided along the southern common property boundary and along the Weering School Road frontage to screen the development from the adjoining properties and reduce any potential impact on the amenity of these properties caused by the day to day activities conducted on the site, and in particular the pick-up of birds during the night time period.

A detailed landscaping plan should be required and the payment of a bond in accordance with the provisions of the Broiler Code.

*xii) Decrease in property values*

Property values are not a matter that requires planning consideration.

*xiii) Generic Environment Management Plan submitted*

The Broiler Code requires an Environment Management Plan to be submitted as part of an application for a broiler farm. The objective of the EMP is to ensure best practice management and a commitment to continuous improvement in environmental performance is ongoing. The EMP is intended to minimise risk of any adverse event with potential to impact on the environment or the surrounding community during the ongoing operation of a new farm. A generic EMP is included in the Broiler Code for the purposes of developing and assessing a site specific EMP.

Annual audits are undertaken to assess compliance with the EMP. The audit must be undertaken by an accredited auditor and the report must be sent to Council. The annual audit may be made available to members of the community on request.

Given the role of the EMP it is important that they are site specific, therefore, the applicant will be required to provide a site specific Environment Management Plan prior to the commencement of the use of the land for a broiler farm if the application is supported.

*xiv) No Cultural Heritage Management Plan submitted.*

Evidence has been obtained from the Aboriginal Affairs Victoria that confirms that a Cultural Heritage Management Plan is not required. In any case, the Aboriginal Heritage Act provides that if any cultural heritage is found during the works, works should cease and the appropriate authority be notified of the finding.

## **Conclusion**

The key issue in considering this proposal is the findings of the ERA. The EPA have raised some concerns with the findings of the ERA as the methodology and data used is not consistent with EPA's requirements.

This raises some uncertainty around the findings of the ERA and whether the risk is acceptable. Council should be confident that if this proposal was supported that the cumulative impact of two broiler farms near each other would be acceptable. It is recommended that Council Officers facilitate discussions between the EPA and the applicant to discuss the different approaches in the detail of the ERA.

Based on the outcome of these discussions, Council has the option of deciding whether or not to support this application as detailed above.

It terms of an assessment of the proposal against the provisions of the State and Local Planning Scheme it was found to otherwise comply and the concerns of the objectors could be addressed by the inclusion of conditions on any permit that is issued. Ongoing monitoring of the management and practices of the broiler farm would take place annually in accordance with the Broiler Code and the EMP. Any non-compliance matters could be appropriately addressed should they occur.

Given the above, it is considered that support could be given to the proposal providing that Council receives written advice from the EPA to the effect that there is an acceptable risk associated with the cumulative impact of two broiler farms near each other. If such advice is not received, Council should not support the proposal at VCAT.

### **Recommendation(s)**

- A. That Council Officers facilitate discussions on the Environment Risk Assessment between the Environment Protection Authority and the applicant to determine whether the risk concerning the cumulative off-site impacts from dust and odour of Farms A and B is acceptable.**
- B. That at the end of these discussions, should the EPA agree in writing that the risk is acceptable for the two broiler farms, that the Victorian and Civil Administrative Tribunal be advised that Council would have determined to issue a Notice of Decision to Grant a Permit for the use and development of 210 Pierces Road, Beeac (CA 140, 148, and 152, Parish of Ondit) for the purposes of a Class B Broiler Farm A, associated buildings and works, including access and a dam, and a Managers dwelling subject to the following conditions, if a review had not been lodged with the Tribunal:**
- 1. Before the use and development commences, the following documents to the satisfaction of the Responsible Authority must be submitted to the Responsible Authority for approval and be approved by the Responsible Authority:**
    - 1.1 Amended plans which must be drawn to scale and with dimensions. Three copies must be provided and the plans must be generally in accordance with the plans submitted with the application but modified to show:**
      - 1.1.1 The access road must be set 30 metres north of the southern common property boundary;**
      - 1.1.2 The type, specifications and location of all external flood and security lighting to be used including provision for light baffling to ensure all light is contained within the property boundary;**
      - 1.1.3 Deletion of the spent litter pads;**
      - 1.1.3 Stormwater wetland treatment pond and other drainage;**
      - 1.1.4 Location, dimensions and specifications of any dams to be constructed on site.**
    - 1.2 Environmental Management Plan (EMP) which is site specific;**

- 1.3 **Water Use and Re-use Plan addressing stormwater, rainwater and reticulated water use and re-use issues including a plan for the management of areas from which water is proposed to be harvested. The plan must also detail arrangements for the provision on site of an emergency water supply;**
- 1.4 **Amended Landscape Plan which must be site specific and have due regard to the visual impact of the sheds and other buildings, including consideration of bunding and mounding. The Landscape Plan must show the location and type of all proposed screen and other plantings and landscaping, anticipated tree or shrub height and width at maturity, timetables for plantings and arrangements for maintenance of the landscaped areas. All trees and shrubs included in the Landscape Plan must be indigenous to the locality. The Landscape Plan must show:**
  - 1.4.1 **A 15 metre wide landscaping strip along the southern common property boundary commencing at the edge of the eastern property boundary to the edge of the western property boundary;**
  - 1.4.3 **A 10 metre wide landscaping strip, setback approximately 10 metres from the sheds, around the perimeter of the shed complex.**
  - 1.4.4 **The landscaping strips must contain a mixture of canopy trees and shrubs to ensure effective screening.**

**When approved, the Landscape Plan will be endorsed by the Responsible Authority and will then form part of this permit.**

- 1.5 **Earthworks Plan that shows the extent of the earthworks to be undertaken including details on the amount of fill required for the construction of the development. The earthworks plan will be referred to the CCMA for comment.**
2. **The use and development approved by this permit must at all times be conducted in accordance with the requirements of:**
  - 2.1 **The Victorian Code for Broiler Farms, September 2001, as amended;**
  - 2.2 **The Code for Accepted Farming Practice for the Welfare of Poultry, December 2003, as amended;**
  - 2.3 **Environmental Management Plan,**
  - 2.4 **Each of the Permit Documents.**

**to the satisfaction of the Responsible Authority.**
3. **The layout of the site and size of the buildings and works, as shown on the endorsed plans, must not be altered or modified without the consent in writing of the Responsible Authority.**
4. **The use permitted by this permit must not commence until the subdivision permitted by Planning Permit PP115/07 has been lodged and registered with Land Victoria and evidence of such provided to the Responsible Authority.**

5. The poultry shed must be designed and constructed using a tunnel-vented exhaust system or such other alternative technology which complies with the requirement of the Broiler Code, to the satisfaction of the Responsible Authority.
6. All trees and shrubs included in the endorsed Landscape Plan must be planted prior to the completion of the development and the commencement of the use and must thereafter be maintained to the satisfaction of the Responsible Authority.
7. Prior to the commencement of any works pursuant to this permit the permit holder must lodge a landscape performance bond with the Responsible Authority. The bond can be either a monetary contribution or an irrevocable bank guarantee in favour of the Responsible Authority. The bond is to be based on the endorsed Landscape Plan with additional details to be provided to the satisfaction of the Responsible Authority incorporating:
  - 7.1 An estimate of the quantity and type of materials, watering equipment, plants, etc. required; and
  - 7.2 A quotation from a reputable nursery supplier for the implementation of the Landscape Plan identifying the cost for materials, plants and labour. The quotation is to be independently verified to Responsible Authority's satisfaction.

The bond is to comprise the verified quotation plus a 10% margin for unforeseen costs. When the landscape works are complete to the satisfaction of the Responsible Authority, 85% of the bond will be released. The balance is to be retained as a maintenance bond for a period of three (3) years following the date of release of the 85%. If the landscaping has not been maintained to the Responsible Authority's satisfaction at the end of the three years the maintenance bond is to be applied to upgrade the landscaping.
8. Any dam shall be constructed by a suitably qualified and experienced contractor in accordance with Southern Rural Water's guidelines for dam construction and maintained to the satisfaction of the Responsible Authority.
9. All bird litter must be removed from the site as soon as possible after it is removed from the sheds. All trucks removing litter from the site must have covered loads.
10. There shall be no stockpiling of litter on the site and no bird litter may be spread or otherwise disposed on the site.
11. The removal of dry bird litter from the sheds by use of machinery must occur between the hours of 7.00 am and 8.00 pm and no removal may be undertaken on Sundays and Public Holidays including Christmas Day and Good Friday.



12. The permit holder must dispose of dead birds off site using a contractor specializing in this type of disposal or in an alternative manner to the satisfaction of the Responsible Authority. Pending collection for offsite disposal, dead birds must be held in sealed refrigerated containers or otherwise as approved by the Responsible Authority.
13. The use authorized by this permit must be operated as a dry litter poultry operation only and the provision for the collection and disposal of solid wastes and for the collection, treatment and disposal of any liquid wastes to arise from the development and use hereby permitted must comply with all applicable laws and regulations.
14. If the Responsible Authority determines that the amenity of nearby residents is adversely affected in the emission of an unreasonable level of odour from the site the permit holder must immediately and to the satisfaction of the Responsible Authority take such action as is required to prevent those emissions, which may include adjusting stocking density in the sheds, removing litter immediately, or any other actions reasonably required to rectify the emission of offensive odour.
15. The poultry sheds and all feed stores must be vermin and bird proof to the satisfaction of the Responsible Authority.
16. The manner of discharge of all water from the site must be to the satisfaction of the Responsible Authority and the CCMA.
17. Other than the loading and placement of live birds, no deliveries to or removals from the site must take place after 8.00 pm or before 7.00 am on any day without the prior written approval of the Responsible Authority.
18. The permit holder shall require that all contractors and suppliers accessing the site from the Hamilton Highway do so by way of Weering School Road and Barpinda-Poorneet Road.
19. The loading and unloading of vehicles and the delivery of goods to and from the premises must at all times be carried on entirely within the site.
20. The surface of the car parking and loading areas and access lanes must be constructed and maintained to the satisfaction of the Responsible Authority to prevent dust and drainage run-off.
21. The driveway entrance on Weering School Road shall be designed in accordance with AS2890.2-2002 and shall be properly maintained to the satisfaction of the Responsible Authority.
22. Security lighting or external floodlighting (if required) must be installed in such a manner that it does not create amenity problems outside the site.
23. All vehicles used in the delivery, pick-up and transportation of live birds must be fitted with high performance sound-reducing mufflers to the satisfaction of the Responsible Authority and the permit holder must use its best endeavours to ensure that such activities do not cause any unreasonable noise impact on the amenity of the surrounding area.

24. The permit holder must use its best endeavours to avoid sanitizing sheds with odorous chemicals which give rise to offensive odours being detectible off site. Airborne sprays or chemical odours must not be transmitted beyond the site to the detriment of any person to the satisfaction of the Responsible Authority.
25. All walls of the poultry sheds and other buildings hereby permitted which will be visible from beyond the site must be coloured or painted in non-reflective muted tones to the satisfaction of the Responsible Authority.
26. All goods and materials must be stored out of view of so as not to be unsightly when viewed from nearby roads to the satisfaction of the Responsible Authority.
27. Prior to the commencement of the use, the permit holder must enter into an agreement with Barwon Region Water Authority (Barwon Water). The agreement must provide for a centralised potable water storage facility to be established to serve the development authorised by this permit. The agreement shall provide for the taking of up to 25 ML per annum (or such other amount permitted by Barwon Water) during periods where the taking of water will not adversely impact the supply of water to other water users in the vicinity of the development. The agreement shall provide an appropriate mechanism for the operation and maintenance of the storage facility to provide for an equitable sharing of potable water by other water users in this area.
28. An all waste septic tank disposal system is to be constructed concurrently with the new dwelling, such that all liquid waste must at all times be contained within the curtilage of the title. Such system must be designed and installed to the satisfaction of the Responsible Authority.
29. A Permit to install an all waste septic tank system must be lodged and approved by the Responsible Authority prior to the commencement of works. Such system must be designed and installed to the satisfaction of the Responsible Authority before a Permit to Use the waste septic tank system can be issued.
30. The proposed septic tank system must not be located within 60 metres of the bank of any surface waters, unless the liquid waste is treated to the satisfaction of the Responsible Authority. Any such reduction in distance to the surface waters will be at the discretion of the Responsible Authority.
31. The floor of the managers dwelling must be constructed no lower than 118.0 metres Australian Height Datum.
32. If any works will impact on a waterway or groundwater or will include the use of water for irrigation or commercial purposes from these resources or from a dam, soak or spring, it will be necessary for the land owner or permit holder to apply to Southern Rural Water for a licence in accordance with Section 51 or 67 Water Act 1989.

33. The Barpinda-Poorneet Road approach to the Hamilton Highway intersection shall be widened as necessary to accommodate the turning path of trucks, to the satisfaction of VicRoads and the Responsible Authority.
34. Access off Pierces Road will only be permitted for the approved dwelling. No access will be permitted from Pierces Road to service the Broiler Farm Complex.
35. Access onto Weering School Road must be constructed to the minimum standard for farm access in accordance with the requirements of VicRoads' Guidelines for Truck Access to Rural Properties, April 2006 and allow sufficient storage area to cater for a B-Double to be parked within the gateway area. i.e. 25 metres off the edge of the road to the gate into the property.
36. Access points onto Weering School Road must be constructed with an asphalt overlay over Weering School Road for the length of the road abutting the access point as well as the sealing of the holding area required in Condition 35 to the satisfaction of the Responsible Authority.
37. Any B-Double vehicles 25 metres in length or in excess of 50 tonnes must obtain written consent from the Responsible Authority and VicRoads to use Weering School Road and/or Barpinda-Poorneet Road.
38. The permit holder must prepare and submit to the Responsible Authority a Fire Prevention Plan for approval by the Responsible Authority prior to the commencement of the use hereby permitted. Such a plan, when approved, shall be endorsed and form part of this permit.
39. Prior to the construction of the access road, construction plans must be submitted showing the details of the standard of the access and any drainage requirements, to the satisfaction of the Responsible Authority.
40. *Prior to works commencing a flood storage replacement plan must be submitted for approval. The plan must include the following details to the satisfaction of the CCMA:*
  - 40.1 Calculation of the volume of lost temporary flood storage that will result from construction of the shed pad, and all other areas that will be finished above the existing surface level (e.g. loading pads, dam embankments as applicable);
  - 40.2 The location and dimensions of replacement storage areas or area.
41. This permit will expire if one of the following circumstances applies:
  - 41.1 The development and use are not started within two years of the date of this permit;
  - 41.2 The development is not completed within four years of the date of this permit.

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

- C. That if the risk is determined to be unacceptable by the Environment Protection Authority in accordance with recommendation A above, the Victorian and Civil Administrative Tribunal be advised that the application would not have been supported based on the following grounds:**
- 1. The proposal does not comply with the Victorian Code for Broiler Farms as it has the potential to impact on the amenity of sensitive uses in close proximity to the site.**
  - 2. The risk of the cumulative impact of odour generated by two 320,000 Class B broiler farms near each other is unacceptable.**
  - 3. The Environmental Risk Assessment has not been based on an approved Environment Protection Authority methodology required by the Victorian Code for Broiler Farms.**
- D. That Officers write to the Environment Protection Authority to request that the relevant representatives from the Environment Protection Authority be a party to the proceedings of the Victorian and Civil Administrative Tribunal hearing.**

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