



Colac Otway
SHIRE

AGENDA

PLANNING COMMITTEE MEETING
OF THE
COLAC-OTWAY SHIRE
COUNCIL

11 AUGUST 2010

at 10:30 AM

COPACC

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 PLANNING COMMITTEE MEETING

11 AUGUST 2010

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NOTICE is hereby given that the next *PLANNING COMMITTEE MEETING OF THE COLAC-OTWAY SHIRE COUNCIL* will be held in COPACC on 11 August 2010 at 10.30 am.

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 acknowledges the original custodians and law makers of this land, their elders past and present and welcomes any descendents here today.

Colac Otway Shire encourages active community input and participation in Council decisions. Council meetings provide one of these opportunities as members of the community may ask questions to Council either verbally at the meeting or in writing.

Please note that some questions may not be able to be answered at the meeting, these questions will be taken on notice. Council meetings also enable Councillors to debate matters prior to decisions being taken.

I ask that we all show respect to each other and respect for the office of an elected representative.

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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 held on the 14/07/10.**

Recommendation

That Council confirm the above minutes.

OFFICERS' REPORTS

Sustainable Planning and Development

- PC101108-1 PLANNING & BUILDING STATISTICAL REPORT
- PC101108-2 DEVELOPMENT OF THE LAND FOR A SHOP (PHARMACY), FENCING, SIGNAGE AND ASSOCIATED WORKS AND A WAIVER OF CARPARKING AT 33 DONALDSON STREET, COLAC
- PC101108-3 AMENDMENT TO PLANNING PERMIT PP245/07 TO ALTER CONDITION 2. PERMIT ISSUED FOR CHANGE OF USE TO ACCOMMODATION AND CONSOLIDATION OF TITLES AT 25-27 CAWOOD STREET, APOLLO BAY

Rob Small
Chief Executive Officer

PC101108-1

PLANNING & BUILDING STATISTICAL REPORT

AUTHOR:	Janole Cass	ENDORSED:	Jack Green
DEPARTMENT:	Sustainable Planning & Development	FILE REF:	GEN000450

Summary

This report provides statistics relating to the month of July 2010.

Planning Statistics

29 Planning permit applications were received for the period of 1 July 2010 to 31 July 2010.

25 Planning permit applications were considered for the period of 1 July 2010 to 31 July 2010.

Building Statistics

Please note that the Building Commission Website has been updated to June 2010.

Attachments

1. PLANNING STATISTICAL REPORT JULY 2010

Recommendation(s)

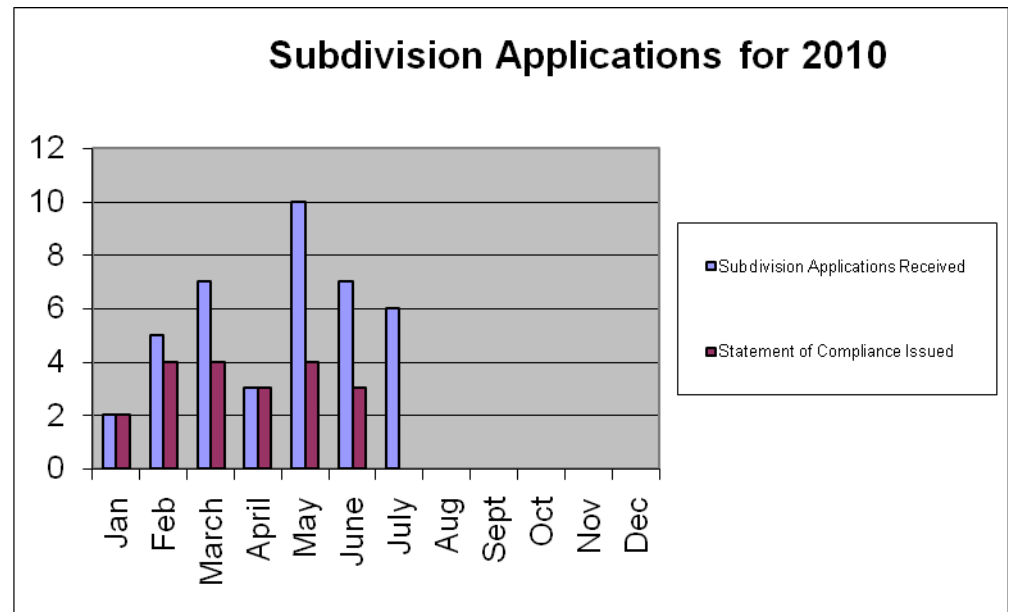
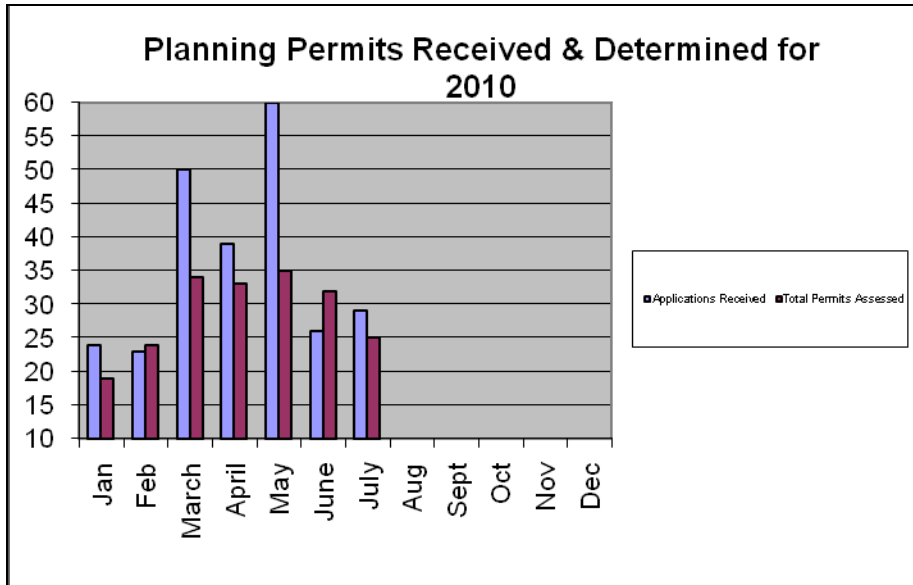
That Council's Planning Committee note the statistical report.

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## Planning Statistical Report July 2010

| APPLIC NO  | DATE RECEIVED | LOCATION                               | PROPOSAL                                                                                                                                                                     | DATE ISSUED | ACTUAL TIME | AUTHORITY          | DECISION           |
|------------|---------------|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------|--------------------|--------------------|
| 316/2005-3 | 19 APR 2010   | 395 BLUE JOHANNA ROAD, JOHANNA         | DEVELOPMENT & USE OF THE LAND FOR A SINGLE DWELLING, ACCESS & ASSOCIATED WORKS – AMENDMENT                                                                                   | 14 JUL 2010 | 11          | PLANNING COMMITTEE | REFUSAL TO GRANT   |
| 137/2008-2 | 14 JUL 2010   | 28 PASCOE STREET, APOLLO BAY           | EXTENSION TO EXISTING FIRE STATION – AMEMDMENT                                                                                                                               | 27 JUL 2010 | 13          | UNDER DELEGATION   | PERMIT ISSUED      |
| 309/2009-1 | 4 NOV 2009    | 110 ROWLANDS ROAD, BARWON DOWNS        | THREE (3) LOT SUBDIVISION                                                                                                                                                    | 1 JUL 2010  | 120         | UNDER DELEGATION   | PERMIT ISSUED      |
| 358/2009-1 | 22 DEC 2009   | 42 MURRAY STREET, COLAC EAST           | CONSTRUCTION OF FIVE (5) DWELLINGS                                                                                                                                           | 21 JUL 2010 | 107         | UNDER DELEGATION   | NOTICE OF DECISION |
| 10/2010-1  | 15 JAN 2010   | 23 HARRINGTON STREET, SEPARATION CREEK | RENOVATION & EXTENSION OF EXISTING DWELLING, INCLUDING ADDITIONAL FLOOR LEVEL                                                                                                | 16 JUL 2010 | 10          | UNDER DELEGATION   | PERMIT ISSUED      |
| 42/2010-1  | 2 MAR 2010    | 570 DUNLOPS ROAD, BIRREGURRA           | RE-SUBDIVISION OF FIVE (5) LOTS TO CREATE FOUR (4) LOTS                                                                                                                      | 1 JUL 2010  | 75          | UNDER DELEGATION   | PERMIT ISSUED      |
| 55/2010-1  | 9 MAR 2010    | 19 TALBOT STREET, COLAC                | TWO (2) LOT SUBDIVISION                                                                                                                                                      | 16 JUL 2010 | 44          | UNDER DELEGATION   | PERMIT ISSUED      |
| 58/2010-1  | 11 MAR 2010   | 4 LANGDONS LANE, COROROOKE             | CONSTRUCTION OF A SHED (OUTBUILDING)                                                                                                                                         | 1 JUL 2010  | 44          | UNDER DELEGATION   | PERMIT ISSUED      |
| 64/2010-1  | 16 MAR 2010   | 70 MURRAY STREET, COLAC                | ALTERATIONS & ADDITIONS TO SHOP, SIGNAGE, EXTERNAL PAINTING AND WAIVER OF 4 CAR SPACES                                                                                       | 14 JUL 2010 | 76          | PLANNING COMMITTEE | PERMIT ISSUED      |
| 67/2010-1  | 17 MAR 2010   | 2 SEYMOUR CRESCENT, APOLLO BAY         | TWO (2) LOT SUBDIVISION & CONSTRUCTION OF A TWO (2) STOREY DWELLING                                                                                                          | 16 JUL 2010 | 18          | UNDER DELEGATION   | PERMIT ISSUED      |
| 69/2010-1  | 19 MAR 2010   | 6 KARINGAL DRIVE, WYE RIVER            | CONSTRUCTION OF AN OUTBUILDING                                                                                                                                               | 16 JUL 2010 | 18          | UNDER DELEGATION   | PERMIT ISSUED      |
| 73/2010-1  | 25 MAR 2010   | 1745 COLAC FORREST ROAD, GERANGAMETE   | USE & DEVELOPMENT OF THE LAND FOR HOUSEBOAT ACCOMMODATION & ASSOCIATED WITH AN OUTDOOR RECREATION FACILITY                                                                   | 1 JUL 2010  | 31          | UNDER DELEGATION   | PERMIT ISSUED      |
| 87/2010-1  | 8 APR 2010    | 125 BIRREGURRA YEODENE ROAD, YEODENE   | USE AND DEVELOPMENT OF THE LAND FOR THE PURPOSE OF CONSTRUCTING A FIRE STATION, ASSOCIATED BUILDINGS AND WORKS, REMOVAL OF NATIVE VEGETATION AND THE INSTALLATION OF SIGNATE | 1 JUL 2010  | 43          | UNDER DELEGATION   | PERMIT ISSUED      |
| 99/2010-1  | 4 MAY 2010    | 374 QUEEN STREET, ELLIMINYT            | CONSTRUCTION OF A DWELLING & GARAGE                                                                                                                                          | 15 JUL 2010 | 39          | UNDER DELEGATION   | PERMIT ISSUED      |
| 102/2010-1 | 23 APR 2010   | 1429 PRINCES HIGHWAY, PIRRON YALLOCK   | REPLACING PARISH ROOF                                                                                                                                                        | 12 JUL 2010 | 45          | UNDER DELEGATION   | WITHDRAWN          |
| 104/2010-1 | 27 APR 2010   | 360 PHILLIPS TRACK, WEEAPROINAH        | INSTALLTION OF A CANOPY TOUR & SIMULATOR & ALTERATIONS TO EXISTING VISITOR CENTRE BUILDING                                                                                   | 14 JUL 2010 | 55          | PLANNING COMMITTEE | PERMIT ISSUED      |
| 113/2010-1 | 3 MAY 2010    | 77 MAIN STREET, BEEAC                  | USE OF PREMISES AS A SHOP, ADVERTISING AND WAIVER OF TEN (10)                                                                                                                | 14 JUL 2010 | 37          | PLANNING COMMITTEE | PERMIT ISSUED      |

| APPLIC NO  | DATE RECEIVED | LOCATION                             | PROPOSAL                                                                                    | DATE ISSUED | ACTUAL TIME | AUTHORITY        | DECISION            |
|------------|---------------|--------------------------------------|---------------------------------------------------------------------------------------------|-------------|-------------|------------------|---------------------|
|            |               |                                      | CAR SPACES                                                                                  |             |             |                  |                     |
| 117/2010-1 | 5 MAY 2010    | 2480 TIMBOON COLAC ROAD, IRREWILLIPE | CONSTRUCTION OF A NETBALL/SHELTER SHED                                                      | 16 JUL 2010 | 49          | UNDER DELEGATION | PERMIT ISSUED       |
| 121/2010-1 | 6 MAY 2010    | 2 LEAH STREET, COLAC                 | TWO (2) LOT SUBDIVISION                                                                     | 1 JUL 2010  | 19          | UNDER DELEGATION | PERMIT ISSUED       |
| 139/2010-1 | 18 MAY 2010   | 17 FORREST STREET, COLAC             | BUILDINGS & WORKS FOR THE PURPOSE OF CONSTRUCTING A NEW DECK, PERGOLA, DAM AND CARPARK AREA | 16 JUL 2010 | 62          | UNDER DELEGATION | PERMIT ISSUED       |
| 140/2010-1 | 19 MAY 2010   | 122 MAIN STREET, BEEAC               | TWO (2) LOT SUBDIVISION                                                                     | 15 JUL 2010 | 31          | UNDER DELEGATION | PERMIT ISSUED       |
| 141/2010-1 | 21 MAY 2010   | 107 MAIN STREET, BEEAC               | CONSTRUCTION OF A GARAGE (RETROSPECTIVE)                                                    | 1 JUL 2010  | 10          | UNDER DELEGATION | PERMIT ISSUED       |
| 164/2010-1 | 16 JUN 2010   | 13 MURRAY STREET, COLAC              | REPLACE EXISTING SIGNAGE & WINDOW GRAPHICS                                                  | 1 JUL 2010  | 1           | UNDER DELEGATION | PERMIT ISSUED       |
| 175/2010-1 | 28 JUN 2010   | 205 WARROWIE ROAD, IRREWARRA         | EXTENSION TO EXISTING SHED                                                                  | 8 JUL 2010  | 10          | UNDER DELEGATION | PERMIT ISSUED       |
| 181/2010-1 | 7 JUL 2010    | 10 BREAKWATER ROAD, APOLLO BAY       | INSTALLATION OF A FISH CLEANING TABLE                                                       | 23 JUL 2010 | 16          | UNDER DELEGATION | PERMIT NOT REQUIRED |
|            |               |                                      | <b>AVERAGE DAYS TO PROCESS PLANNING APPLICATIONS</b>                                        |             | <b>39</b>   |                  |                     |



[Pulse Building Statistics](#)

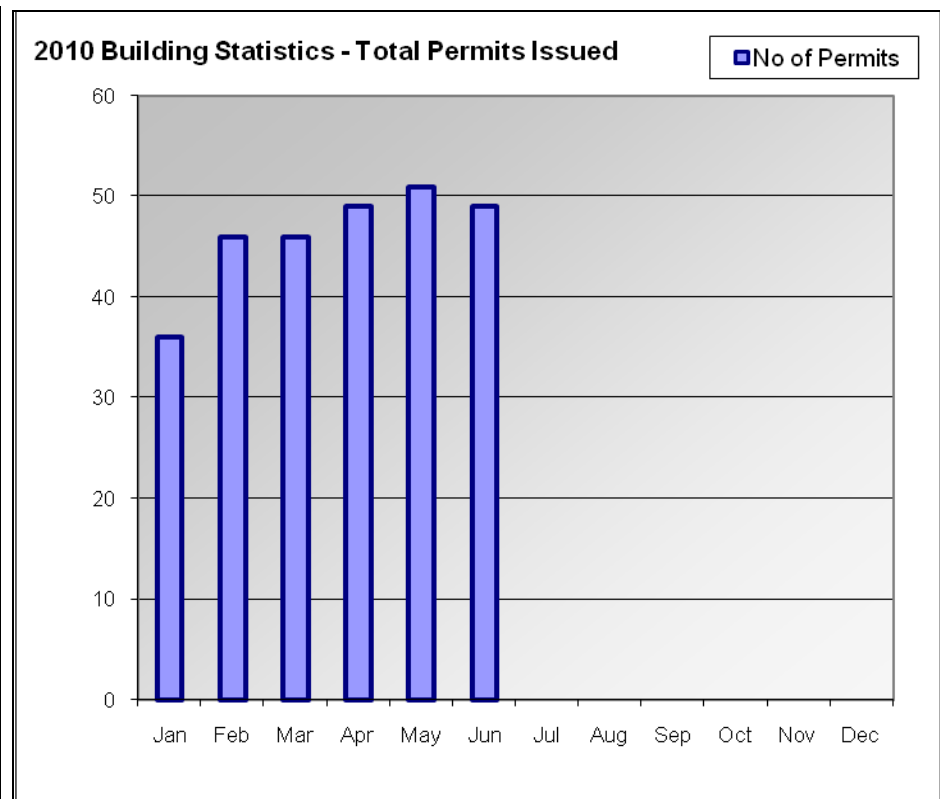
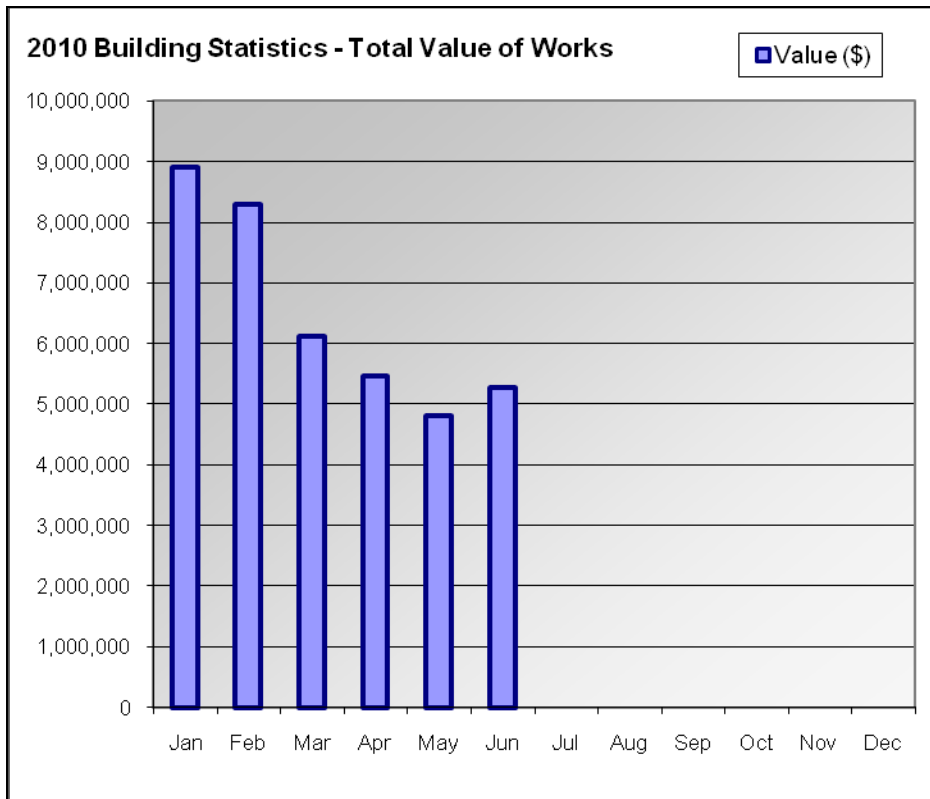
[Financial Yr Stats](#)

[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           | 28         | 4,006,262         | 0            | 0              | 3          | 2,156,102        | 0        | 0              | 1          | 700,000          | 0                   | 0          | 4                | 2,044,000        | 36               | 8,906,364         |
| Feb           | 35         | 4,714,164         | 0            | 0              | 5          | 1,116,245        | 2        | 202,000        | 1          | 200,000          | 0                   | 0          | 3                | 2,063,065        | 46               | 8,295,474         |
| Mar           | 30         | 3,682,282         | 1            | 10,000         | 6          | 246,720          | 2        | 239,000        | 0          | 0                | 0                   | 0          | 7                | 1,931,805        | 46               | 6,109,807         |
| Apr           | 43         | 5,063,194         | 0            | 0              | 3          | 124,230          | 0        | 0              | 0          | 0                | 0                   | 0          | 3                | 275,640          | 49               | 5,463,064         |
| May           | 41         | 3,516,484         | 0            | 0              | 5          | 155,750          | 0        | 0              | 1          | 250,000          | 0                   | 0          | 4                | 885,425          | 51               | 4,807,659         |
| Jun           | 39         | 3,673,155         | 2            | 837,632        | 5          | 290,855          | 1        | 50,000         | 0          | 0                | 0                   | 0          | 2                | 432,437          | 49               | 5,284,079         |
| Jul           |            |                   |              |                |            |                  |          |                |            |                  |                     |            |                  |                  |                  |                   |
| Aug           |            |                   |              |                |            |                  |          |                |            |                  |                     |            |                  |                  |                  |                   |
| Sep           |            |                   |              |                |            |                  |          |                |            |                  |                     |            |                  |                  |                  |                   |
| Oct           |            |                   |              |                |            |                  |          |                |            |                  |                     |            |                  |                  |                  |                   |
| Nov           |            |                   |              |                |            |                  |          |                |            |                  |                     |            |                  |                  |                  |                   |
| Dec           |            |                   |              |                |            |                  |          |                |            |                  |                     |            |                  |                  |                  |                   |
| <b>Totals</b> | <b>216</b> | <b>24,655,541</b> | <b>3</b>     | <b>847,632</b> | <b>27</b>  | <b>4,089,902</b> | <b>5</b> | <b>491,000</b> | <b>3</b>   | <b>1,150,000</b> | <b>0</b>            | <b>0</b>   | <b>23</b>        | <b>7,632,372</b> | <b>277</b>       | <b>38,866,447</b> |

\*Multi-Development





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**PC101108-2                    DEVELOPMENT OF THE LAND FOR A SHOP (PHARMACY),  
FENCING, SIGNAGE AND ASSOCIATED WORKS AND A  
WAIVER OF CARPARKING AT 33 DONALDSON STREET,  
COLAC**

|             |                                       |           |            |
|-------------|---------------------------------------|-----------|------------|
| AUTHOR:     | Helen Evans                           | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning<br>& Development | FILE REF: | PP95/2010  |

**Location:** 33 Donaldson Street, Colac (Lots 99, 100, 101 LP80848)

**Zoning:** Business 1 Zone, Abuts Residential 1 Zone

**Overlay controls:** Nil

**Proposed Amendments:** Nil

**Purpose:**

The application is seeking approval to construct a building to be used as a Pharmacy, erection of fencing, signage, construction of a car parking area, and to waive twenty (20) car spaces.

The application is before the Planning Committee as the proposal includes the waiver of twenty car spaces.

It is recommended that a Notice of Decision to Grant a Planning Permit be issued.

**Declaration of Interests**

No officer declared an interest under the *Local Government Act 1989* in the preparation of this report.

**Summary**

- The application seeks approval for the development of a shop (pharmacy), erection of a fence, signage, construction of 9 car spaces and an access way, and the waiver of 20 car spaces.
- The site is situated within Business 1 Zone land located in the residential area northwest of the main commercial area in Colac.
- The pharmacy will complement existing commercial activities within this small shopping centre which provides day to day goods for the residents nearby.
- Public notice of the application was given and two objections have been received.
- The development is consistent with the planning scheme provisions and it is considered that the waiver of car parking will not have a negative impact on traffic management or parking in the immediate area.
- It is recommended that a Notice of Decision to Grant a Permit be issued subject to conditions.

**Background**

No previous planning approval has been issued for this site.

The need for a third pharmacy in Colac has been advocated by the community over recent years due to lack of local competition leading to a local petition being circulated throughout Colac. The current two pharmacies are owned by the one pharmacist. The petition was signed by approximately 4,700 residents and gained support from politicians and pharmacists from around Victoria.

A pharmacist sought a location in Colac that would be appropriate for this type of business and this site has been chosen as under the Pharmacy Board guidelines, a new pharmacy cannot be located within 1.5kms from a current pharmacy licence holder unless approved by the Commonwealth Health Minister.

It was established that vacant land in Donaldson Street was appropriate for this type of business, with the land being zoned Business 1 Zone, and was outside 1.5kms from the nearest existing pharmacy licence at the time. It is understood that the 1.5km radius finishes midway through the subject site. The 1.5km is measured from the midpoint of each door way. The pharmacist then approached the land owners and subsequently submitted a planning permit application to the Colac Otway Shire to develop and operate a pharmacy.

It is understood that a third licence has been granted to another pharmacist at 327 Murray Street, Colac (formerly Canadian Rooster) however this application is currently before the courts. Should this licence be upheld, then the licence required for the site at 33 Donaldson Street will be within 1.5kms of the 327 Murray Street site.

This issue has been raised with the applicant, however they wish to continue with this application regardless of the court's decision. A planning permit must be issued for the site prior to the applicant being able to make application to the Pharmacy Board.

**Issues / Options**

Council has the options of:

- Supporting the application through the issue of a Notice of Decision to Grant a Permit;
- Supporting the application with changes:
- Refusing to grant a permit.

Key issues relate to the waiver of car parking and amenity of nearby residents.

**Proposal**

The application seeks approval for the development of a building and associated works to be used as a shop (pharmacy), provision of 9 car spaces and the waiver of 20 car spaces.

The proposed building is to be constructed to the eastern (front) boundary across the full length, and along the northern and southern boundaries for a length of 21.5 metres. An area to the west (rear) of the site is proposed to be used for 9 car spaces, access and a loading area. The car park will be accessed via a road reserve from Moore Street.

The proposed building will be constructed of sheer brick walls on the north and south elevations, and the west elevation fronting onto the rear of the site and the proposed car park will be brick with sliding entrance doors and a roller door for deliveries. The east elevation proposes brick with substantial windows to front Donaldson Street with a small invert in the middle with larger windows proposed to allow this to be converted in the future to provide pedestrian access into the building.

The applicant advises that due to the 1.5km radius from an existing pharmacy, the principle entrance to the building will be from the carpark to satisfy the 1.5km setback. After the pharmacy has been operating for a period of 3 months, the building can be altered to provide an entrance to the Donaldson Street frontage. A verandah is proposed on the east and west elevations. The adjoining buildings in the Business 1 Zone also have verandahs extending out over the footpath onto Donaldson Street.

Two business identification signs with the dimensions of 8m x .7m (total 11.2m<sup>2</sup>) are proposed on the west and east elevation fascias and another sign with the dimensions of 1.5m x 1.5m (2.25m<sup>2</sup>) is also proposed at the entrance to the unnamed road directing patrons to the pharmacy entrance and the car park.

Access to the car parking area and entrance to the building is proposed via a road reserve located southwest of the subject site and accessed from Moore Street. Nine car spaces, waste storage and a loading area are to be located in the western portion of the site.

The applicant has advised that the building will be operated as a Discount Pharmacy and offer an extensive home delivery service. It is also planned to service the local hospital, nursing homes and aged care facilities.

The proposed operating hours are Monday-Friday 9.00am – 5.30 pm and Saturday 9.00am - 1.00pm.

The applicant has also provided a detailed analysis of customer demand for car parking based on similar pharmacies operating in Ocean Grove and Rosebud.

### **Site & Surrounds**

This site is located on the western side of Donaldson Street with an overall area of 632 square metres. It is rectangular in shape with a frontage of 18.28 metres and a depth of 38.5 metres.

The subject site is currently vacant flat land and used as a backyard to the dwelling located behind the convenience store to the south. A solid fence fronts onto Donaldson Street.

This land is located within a small pocket of Business 1 Zoned (B1Z) land located on the corner of Moore and Donaldson Streets, Colac. This small section of business zoned land is surrounded by Residential 1 Zone (R1Z) land that is used for residential purposes. The shopping centre currently contains a convenience store and a laundrette as well as eight car parks situated on the Donaldson Street frontage.

### **Public Notice**

Public notice of the application was given in accordance with Section 52 of the *Planning and Environment Act* by sending a copy of the notice to adjoining property owners and occupiers and a sign was placed on the Donaldson Street and Moore Street frontage of the site for a period of 14 days.

At the conclusion of the notification period two objections were received. Issues raised in the objections have been summarised as follows:

- Concern over lack of parking provided and that parking in Donaldson Street will prevent larger vehicles (buses, garbage truck, emergency vehicles) getting past.
- The car park survey provided was conducted during summer whereas the Laundromat is much more utilised during the winter months. Laundromat patrons need to park for at least 45 minutes
- The bus turnaround time is over an hour between pickups to the nearest stop.

- Security concerns with the dispensing of medications.

The issues raised by the objections will be addressed in detail later in this report.

### **Referrals**

The application was referred internally to the Building, Environmental Health and Infrastructure Departments. No objection was received subject to conditions being imposed should a permit be issued.

### **Planning Controls**

The land is included in the Business 1 Zone. A planning permit is required for buildings and works in a Business 1 Zone; signage; and a reduction of car parking requirements. The use of the land for a shop does not require planning approval.

### State and Local Planning Policy Framework

The State 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 State and Local Planning policies are relevant to this proposal:

- Clause 11 – Introduction, Goal and Principles
- Clause 14.01 – Settlement
- Clause 17.02 – Business
- Clause 19.03 – Design and built form
- Clause 21.02 – Vision
- Clause 21.03 – Settlement
- Clause 21.03-2 – Colac
- Clause 21.05 – Economic Development

This proposal is considered to be consistent with the broader principles of the State and Local Planning Policy Framework as it proposes to provide a shop (pharmacy) in an appropriate zone. The built form is consistent with the adjoining businesses and the low scale design is also appropriate for the surrounding area. The use of the land for a pharmacy will complement the existing convenience store and launderette.

### Zoning

The site is included in the Business 1 Zone (B1Z). The key objective in relation to this proposal is:

- To encourage the intensive development of business centres for retailing and other complementary commercial, entertainment and community uses.

A 'shop' is defined as:

*'land used to sell goods or services, or to hire goods. It includes the selling of bread, pastries, cakes or other products baked on the premises. It does not include food or drink premises, gambling premises, landscape gardening supplies, manufacturing sales, market, motor vehicle, boat, or caravan sales, postal agency, primary produce sales, or trade supplies.'*

It is considered that the proposed use of the land as a pharmacy is defined as a 'shop' and a planning permit is not required for such a use in a Business 1 Zone. A permit is required to construct a building or carry out works in a Business 1 Zone.

Consideration of the following decision guidelines is required in the assessment of the proposal:

- The movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport.
- The provision of car parking.
- The interface with adjoining zones, especially the relationship with residential areas.
- The streetscape, including the conservation of buildings, the design of verandahs, access from the street front, protecting active frontages to pedestrian areas, the treatment of the fronts and backs of buildings and their appurtenances, illumination of buildings or their immediate spaces and the landscaping of land adjoining a road.
- The storage of rubbish and materials for recycling.
- The design of buildings to provide for solar access.

The proposed development is of a similar design as the adjoining buildings within this small shopping centre. The building will be constructed of brick with mainly glass frontage and will be built to the eastern boundary with an overhead verandah. The interface with the residential property to the north will be a sheer brick wall to a height of 3.8 metres. This interface will not impact on the solar amenity of the neighbouring property as the wall is located on the northern property boundary and the private open space for the dwelling at 31 Donaldson Street is separated from this boundary by an existing outbuilding. Along the western boundary and the balance of the northern boundary, a fence to a height of 2 metres is required to be constructed to protect the amenity and privacy of the residential properties immediately adjoining the site.

The proposed buildings and works will enhance the commercial activity in the area. The use is 'as of right' and the proposal is for the buildings and works. The buildings and works are considered to be appropriate for this location and zoning.

#### Overlays

No Overlays affect this site

#### Relevant Particular Provisions

##### Clause 52.05 Signage

Signage requirements are set out at Clause 52.05. Within a Business 1 Zone, a permit is required for any business identification signage that exceeds 8 square metres in total advertisement area.

Two business identification signs with the dimensions of 8m x .7m (total 11.2m<sup>2</sup>) are proposed on the west and east elevation fascias and another sign with the dimensions of 1.5m x 1.5m (2.25m<sup>2</sup>) is also proposed at the entrance to the unnamed road directing patrons to the pharmacy entrance and the car park. The signs proposed will not be illuminated.

The scale and form of the signage proposed is appropriate for the area and the size of the building.

Clause 52.06 Car Parking

Car parking requirements are set out at Clause 52.06. Car parking requirements for the use of a shop are eight spaces to be provided for each 100m<sup>2</sup> of leasable floor area. It is proposed to construct 360m<sup>2</sup> of leasable floor area which requires the provision of 29 car spaces onsite.

The proposal provides for the provision of 9 spaces onsite and seeks a waiver of 20 car spaces. Given the size of the site and proposed built form, no additional car spaces can be physically provided on the land.

The decision guidelines suggest that a reduction in parking provision may be justified based on consideration of:

- The availability of car parking in the locality
- The availability of public transport in the locality
- Any empirical assessment of car parking demand.
- Any reduction in car parking demand due to the sharing of car spaces by multiple uses, either because of variation of car parking demand over time or because of efficiencies gained from the consolidation of shared car parking spaces.

The applicant provided the following information in support of the request for a waiver:

- A survey of the eight on-street car parks provided in front of the business zoned land was undertaken by the applicant for a week in March 2010. The survey indicates that between the hours of 8am to 6pm that the highest utilisation was five spaces on the Sunday.
- Surveys of other pharmacies at Ocean Grove and Rosebud were also submitted as part of the justification for a reduction in car parking requirements. These surveys were taken over a period of 3 months and demonstrate that approximately 300 patrons visited the site per day and that 12 car spaces was the highest utilisation of the parking area in any 15 minute period.
- The pharmacy will require a maximum of 8 car parks – 5 for customers and 3 for staff
- The pharmacy intends to offer an extensive delivery service, consisting of 4-5 deliveries per day.
- It is proposed to remark the 8 spaces on Donaldson street to 9 spaces.
- The Colac bus route stops on the corner of Donaldson and Moore Street.
- Substantial parking is available in Moore Street.
- Limited space available onsite to meet the car parking requirements.
- The total number of parks available to the business complex will be 18 plus 2 tenants car parks.

Two objections were received in relation to parking. The issues were:

- Concern over lack of parking provided and that parking in Donaldson Street will prevent larger vehicles (buses, garbage truck, emergency vehicles) getting past.
- The car park survey provided was conducted during summer whereas the Laundromat is much more utilised during the winter months. Laundromat patrons need to park for at least 45 minutes.
- The bus turnaround time is over an hour between pickups to the nearest stop.



For the first 3 months of the operation of the pharmacy, access to the shop will be from the car park accessed from Moore Street. This will encourage customers to park at the rear and also make them aware that parking is available at the rear of the site therefore reducing the likelihood that customers will park in Donaldson Street.

Donaldson Street has a pavement width of approximately 7 metres and Moore Street has a pavement width of approximately 10.3 metres. As the width of an average vehicle is 2.1 metres, Donaldson Street is considered wide enough for a car to be parked on both sides of the road whilst still allowing for an average size vehicle to pass.

The applicant stated that the expected average number of customers per 15 minutes is three to four. Based on this assumption, the onsite parking proposed will meet the demand and will not have a major impact on the surrounding streets.

It is considered reasonable to allow the waiver of car spaces in this instance as it appears that the proposed car spaces will accommodate any staff parking needed and still provide for onsite parking for customers; there is no room on the lot to accommodate further car spaces; and a public parking area is available at the Donaldson Street frontage and in Moore Street for any overflow.

As Council is aware the State Government Advisory Committee Report relating to the Car Parking Provisions prepared in August 2007 recommends adopting a rate of 3.5 car spaces/100m<sup>2</sup> of leasable floor area for a "shop" use. Although the State Government has not at this stage incorporated the recommendations of the Advisory Committee Report into planning schemes it is widely accepted through VCAT determinations that the car parking requirements for retail type activities are unrealistic and that the recommendations in the advisory report are generally more appropriate. If you were to apply the State Government Advisory Committee Report rate of 3.5 then 12.5 car spaces would be required for the pharmacy (shop) for this proposal. Given the site constraints, the size of the proposed shop and limited potential for any expansion, the existing car parking available and the local neighbourhood area, it is considered that the level of car parking being provided is adequate for the proposed use.

While Consultants have been engaged to prepare a car parking study for Apollo Bay and Colac Townships, this site is outside of the study area, however, the preliminary findings of the study for the Colac Township suggests that the existing supply of car parking within the study area generally satisfies parking demand for the Colac commercial precinct.

### **Consideration of the Proposal**

A permit is not required for the use of the land as a 'shop' however a permit is required for the buildings and the associated works.

As advised in the Background section of this report, this planning permit application has been lodged on the basis that the building will be used as a pharmacy. Should this planning permit be issued, the applicant must then obtain a licence to operate as a pharmacy.

In planning terms, a pharmacy would be defined as a 'shop' and a permit is not required for the use of the land as a 'shop' in the Business 1 Zone. It is possible that the issuing of this permit may result in the building being used for some other type of retail outlet other than a pharmacy without further planning consideration should a pharmacy licence not be issued. A 'shop' is an 'as of right' use in the Business 1 Zone and therefore this application should be considered on the merits of the buildings and works and the waiver of car parking and not on the type of business likely to be operating out of the building.

It is considered that the proposed development is consistent with the planning provisions and the land is appropriately zoned for this type of proposal. The land is currently vacant and has been for a number of years.

Overall, the proposed development, including the signage, is consistent with the surrounding business complex in the form and design of the building.

#### **Corporate Plan / Other Strategies / Policy**

Any relevant policy issues have already been addressed earlier in this report.

#### **Financial & Other Resource Implications**

This proposal raises no financial or resourcing implications for Council.

#### **Risk Management & Compliance Issues**

This proposal raises no risk management or compliance issues.

#### **Environmental Consideration / Climate Change**

There are no environmental or climate change implications arising from this proposal.

#### **Communication Strategy / Consultation Period**

Public notice of the application was required in accordance with Section 52 of the *Planning and Environment Act* as discussed earlier in the report.

#### **Conclusion**

It is considered that the proposed development is consistent with the planning provisions and the design of the building is complementary to the business complex in its design and form. It is proposed to provide 9 car spaces onsite and the application has adequately demonstrated that those spaces are expected to accommodate any parking demand with the establishment of the building and the waiver of twenty car spaces is supported as no further spaces can be accommodated on the site.

It is recommended that a Notice of Decision to Grant a Permit be issued subject to conditions.

#### **Attachments**

Nil

#### **Recommendation(s)**

***That Council's Planning Committee resolve to issue a Notice of Decision to Grant a Permit for the development of the land for a shop (pharmacy), fencing, signage and associated works and a waiver of twenty (20) car spaces at 33 Donaldson Street, Colac, in accordance with the following conditions:***

- 1. 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.***
- 2. Prior to the commencement of the use of the building, solid fencing to a height of 2 metres, must be erected along the western boundary for a length of 30 metres from the north boundary, and erected along the northern boundary for a length of 14 metres from the west boundary to the satisfaction of the Responsible Authority. All costs associated with the erection of the fence will be at the expense of the applicant.***

3. ***Prior to the commencement of the use of the building, signage must be erected within the Moore Street Road Reserve directing traffic to the onsite car park to the satisfaction of the Responsible Authority. Signage must be provided from both directions and all costs associated with the erection of the signage will be at the applicant's expense.***
4. ***Prior to the commencement of the use of the building, the car parking area, located to the east of the subject site, must be re-marked to alter the number of car parks from eight to nine to the satisfaction of the Responsible Authority. All costs associated with the line-marking will be at the applicant's expense.***
5. ***Within six months of the commencement of the use, the east elevation of the building must be altered to provide pedestrian access directly into the building to the satisfaction of the Responsible Authority.***
6. ***Prior to the issue of a Building Permit, Lots 99, 100 & 101 PS80848 (Certificate of Titles Volume 8731 Folio 824, Volume 8731 Folio 825 and Volume 8731 Folio 826) must be consolidated under the provisions of the Subdivision Act, 1988.***
7. ***Any external lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.***
8. ***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 and be connected to a security service.***
9. ***All external plant and equipment must be acoustically treated or placed in sound proof housing to reduce noise to a level satisfactory to the responsible authority.***
10. ***Loading and unloading of all goods, materials and items must be carried out on the site within the defined loading bay on the endorsed plan to the satisfaction of the Responsible Authority.***
11. ***Prior to commencement of the development, a stormwater management plan, designed by a qualified engineer must be lodged with the Responsible Authority verifying that post development stormwater discharge volume from the land does not exceed 64 litres per second per hectare. When approved, such design must be endorsed and must form part of the permit issue. The stormwater management plan must include detailed drainage calculations for carpark construction arrangements.***
12. ***Prior to the commencement of the use, the carpark and vehicular access to the carpark area as shown on the endorsed plans must be sealed with asphalt or concrete (or an equivalent to the satisfaction of the Responsible Authority) to the satisfaction of the Responsible Authority.***
13. ***Prior to commencement of the construction of the sealed carpark, detailed design plans must be submitted to the Responsible Authority for approval. When approved, these plans will be endorsed and form part of the permit. The plans must include (but not limited to):***
  - a) ***Pavement thickness design***

- b) Detailed layout plan including the turning paths of the expected vehicles using the loading bay indicating that the vehicles are able to enter and leave the site in a forwards motion within the restrictions of the site*
  - c) Cross section plan*
  - d) Lighting detail*
  - e) Drainage layout including long sections*
  - f) Line-marking and signage detail*
- 14. Areas set aside for parked vehicles and access lanes, as shown on the endorsed plans and detailed design plans, must be:**
- a) Constructed to the satisfaction of the Responsible Authority.*
  - b) Properly formed to such levels that they can be used in accordance with the plans.*
  - c) Surfaced with asphalt, concrete or approved equivalent to the satisfaction of the Responsible Authority.*
  - d) Drained and maintained to the satisfaction of the Responsible Authority.*
  - e) Line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.*
  - f) Clearly marked to show the direction of traffic along access lanes and driveways*
- 15. The sealed carpark must be constructed in accordance with the approved plans described in condition 13 and 14. Parking areas and access lanes must be kept available for these purposes at all times.**
- 16. In areas set aside for car parking, measures must be taken to the satisfaction of the Responsible Authority to prevent damage to fences or landscaped areas.**
- 17. Vehicles under the control of the operator of the use or the operator's staff must not be parked on Moore Street or Donaldson Street.**
- 18. No fewer than 9 car parking spaces must be provided on the land for the development including 1 space clearly marked for the disabled.**
- 19. 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.**
- 20. All signs must be constructed and maintained to the satisfaction of the Responsible Authority.**
- 21. The signs must not be illuminated by external or internal light except with the written consent of the responsible authority.**
- 22. Prior to the commencement of the use, the site must be landscaped in accordance with the endorsed plan to the satisfaction of the Responsible Authority.**

- 23. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.**
- 24. This permit as it relates to advertising signs expires fifteen years after the date it is issued.**
- 25. 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.**

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**AMENDMENT TO PLANNING PERMIT PP245/07 TO ALTER
CONDITION 2. PERMIT ISSUED FOR CHANGE OF USE TO
ACCOMMODATION AND CONSOLIDATION OF TITLES AT
25-27 CAWOOD STREET, APOLLO BAY**

| | | | |
|-------------|---------------------------------------|-----------|------------|
| AUTHOR: | Helen Evans | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning
& Development | FILE REF: | PP245/07-2 |

Location: 25-27 Cawood Street, Apollo Bay (formerly 24-26 Murray Street, Apollo Bay)

Zoning: Residential 1 Zone (R1Z)

Overlay controls: Design and Development Overlay Schedule 7 (DDO7)

Proposed Amendments: Nil

Purpose:

This application is seeking approval for an amendment to a current planning permit PP245/07. The applicant is seeking to alter the wording of Condition 2 of the permit.

The application is before the Planning Committee as seven (7) objections have been received to the application.

It is recommended that the amendment be refused.

Declaration of Interests

No officer has declared an interest under the *Local Government Act 1989* in the preparation of this report.

Summary

- The application seeks approval to alter the wording of Condition 2 of PP245/07 which requires, amongst other things, "*the proposed access off Murray Street will be locked at all times and only accessible for maintenance issues such as access to the gas cylinders at the rear of the cabins and landscaping maintenance.*"
- The applicant proposed that the condition be altered to allow pedestrian access to Murray Street at the discretion of the Manager of the caravan park.
- The original planning permit PP245/07 was granted on 4 December 2007 for the change of use to accommodation and consolidation of titles and at that time Condition 2 was the result of an agreement between the objectors and the applicant.
- Public notice of the application to amend the permit was given and seven (7) objections have been received that raise issues relating to traffic management, amenity and safety.
- A revised proposal that limited access to Murray Street to daylight hours was discussed with the applicant and circulated to all objectors for comment. The general feedback from objectors was that the revised proposal did not satisfy their concerns particularly the issue of traffic management.

- There have been no substantive changes in circumstances to the operation of the caravan park that warrant the support of the modified permit condition particularly given that this condition was based on an agreement between the original objectors to PP245/07 and the applicant. Modification of the condition as sought is considered to have the potential to impact on the amenity of nearby residents.
- Complaints were received during the 2008/09 summer period resulting in Council's Enforcement Officer investigating the complaints.
- It is recommended that a refusal to grant an amendment to the permit be issued.

Background

The Koorungal Family Holiday Park originally operated a caravan park from 25-27 Cawood Street on land immediately north of the subject site. The subject land was previously known as 24 and 26 Murray Street, Apollo Bay and each lot contained a single storey dwelling. The dwellings were removed and a planning permit was granted in December 2007 to change the use of the land to 'accommodation' and provide for a consolidation of titles. The proposal was to incorporate the land with the principle site used for the caravan park. The development included the erection of four unregistered movable dwellings (UMD's) and 4 caravan sites (1 car park per unit/site also provided) with all vehicular access to the site via the Cawood Street entrance.

Five objections were received to the original application. The applicant carried out their own negotiations with the objectors and the applicant agreed to the following permit condition that incorporated the requirement to allow limited access to the Murray Street frontage for maintenance only:

"Before the development starts, 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 must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:

- *The front fence to be set back 1.5m off the front property boundary (Murray Street frontage) and to be constructed of 1.5m high solid wooden paling fencing.*
- *The frontage of the site (within the 1.5m front fence setback) is to be landscaped accordingly with semi-mature trees ranging from 1m to 2m in height.*
- *The western property boundary (side) fence is to be constructed of colorbond steel fencing as per fire safety specifications for caravan parks.*
- ***The proposed access off Murray Street will be locked at all times and only accessible for maintenance issues such as access to the gas cylinders at the rear of the cabins and landscaping maintenance.***
- *No signage to be constructed on the Murray Street frontage.*
- *Nature strip to include approximately 4 trees of similar ages and species.*
- *Landscaping to a height of 1.5m along the eastern boundary"*

All objectors withdrew their objection based on the above condition being incorporated into any planning permit issued for the use of the land for accommodation as proposed.

During the summer period last year, complaints were received by Council's Enforcement Officer advising that the gate was unlocked and that the owner was not adhering to permit conditions. This resulted in a number of inspections by Council's Enforcement Officer and led to the caravan park operator lodging the current amendment application.

Issues / Options

Council has the options of:

- Supporting the application for an amendment to the permit through the issue of an amended planning permit subject to conditions;
- Supporting the application for amendment with changes;
- Refusing to grant an amendment to the permit.

The key issue relating to this application is the potential adverse amenity impacts to owners and occupiers of Murray Street.

Proposal

An application has been submitted that proposes changes to Condition 2 on PP245/07 to allow pedestrian access to Murray Street. The applicant proposed the following modification:

"To allow the proposed pedestrian access off Murray Street to be locked at the discretion of the Manager and not at all times apart from maintenance access as stated."

The application seeks to amend Condition 2 as the caravan park manager believes the requirement of keeping the access gate locked is an inconvenience to park patrons and also considered a possible emergency egress point. It is submitted that the nature strip trees will limit the area of potential car parking and that any foreseeable impact to adjoining property amenity would be minimal. The amendment is for the gate to be locked at the discretion of the Manager.

Site & Surrounds

The area now occupied as part of the Koorinal Family Holiday Park is 1.012ha. The site has frontage to Cawood Street and Murray Street, Apollo Bay. The Cawood Street frontage is 35.36 metres wide and provides vehicular access for the whole of the park. The Murray Street frontage is a similar length to that of Cawood Street but fenced with a 1.7 metre high timber paling fence setback 1.5 metres from the property boundary to allow for landscaping on the street side of the fence. Two pedestrian width gates are available to the Murray Street frontage. The development allowed by PP245/07 has been designed to back onto Murray Street with the cabins facing into the caravan park. Vehicular access to these cabins is provided from the entrance off Cawood Street. The park contains 65 cabins and/or caravan sites, an existing residence; office; and a recreational and facilities area.

The surrounding properties are a mix of single dwellings and multi units that are used for both long term and short term accommodation. The site at 28 Murray Street, to the west, is currently vacant while the land at 20-22 Murray Street contains a unit development. Murray Street is a sealed road with grass verges and no footpaths. Cawood Street is a sealed road with footpath, kerb and channel. From the Murray Street entrance, it is approximately 670 metres to the commercial area as opposed to 820 metres from the Cawood Street entrance.

Public Notice

Public notice of the application was given in accordance with Section 52 of the *Planning and Environment Act* by sending a copy of the notice to all adjoining and opposite owners and occupiers and a sign was placed on the Murray Street frontage of the site for a period of 14 days.

At the conclusion of the notification period, 7 objections were received. The grounds of the objections are summarised as follows:

- The variation will create an unacceptable precedent to enable private parking, customer and commercial vehicles to park on public residential streets.
- Murray Street is undeveloped in terms of kerb and channel. People will become bogged.
- More appropriate pedestrian paths are available in Cawood Street, not Murray Street.
- Pedestrian access and safety compromised by on-street parking which forces pedestrians to walk on the road.
- Unrestricted parking could possibly lead to dangerous congestion situations.
- Street trees will not limit on-street parking, just move it further along Murray Street.
- The Park manager has not demonstrated compliance with the condition and left the gate unlocked.
- Amenity and safety of Murray Street.
- Pedestrian noise.
- Stormwater discharge from the cabins not correctly discharged and has flooded 22 Murray Street on occasion.
- Previous agreement with objectors regarding locking of the gate.
- Has not satisfied current planning permit requirements.
- Lack of specifics to the variation request.

The applicant was also asked to respond to the concerns raised in the submissions, and the following response was submitted:

- The owner has now planted the nature strip trees.
- The holiday park does not promote parking in Murray Street and adequate parking is provided on the site for patrons.
- The nature strip trees will restrict potential for on-street car parking.
- The holiday park has no control over on-street parking.
- Increased vehicle activity, car parking and pedestrians could be considered as typical of residential streets in Apollo Bay during peak holiday periods and not increased by the activity of the holiday park specifically.
- Pedestrian access via the pedestrian gate on Murray Street frontage should be encouraged to reduce unnecessary vehicle traffic on the road network.
- The informal nature of Murray Street (ie no kerb and channel, no footpaths) creates a shared environment between pedestrians and vehicles therefore naturally slowing traffic.
- The impact on Murray Street is arguably limited to the peak holiday period and consistent with the township generally.

The applicant's response was forwarded to the objectors for their consideration and the objectors responded to Council indicating that they considered that their concerns were still not satisfactorily addressed.

With a view of addressing the objectors concerns, Council officers discussed alternate wording of the condition with the applicant. After discussions, the applicant offered that the gate be operated by a daylight sensor. The sensor together with a keypad lock would operate the gate automatically and stay activated during daylight hours only, therefore locking the gate when night falls. This would mean that in summer pedestrian access would be available up to approximately 8.30pm and progressively reduce as daylight hours shorten during the remaining months of the year. This proposal would eliminate the need for seasonal programming, ongoing management and the human control element.

A letter was sent to all objectors outlining this proposal and seeking feedback. A number of objectors responded indicating that this revised proposal did not satisfy their concerns.

Referrals

It was not considered necessary to formally refer the amendment request internally to any Council Department, however, Council officers have had discussions with the Infrastructure Department and Local Laws in relating to parking related matters.

Planning Controls

The land is included in the Residential 1 Zone and is subject to Design and Development Overlay Schedule 7. A planning permit is required for the use as well as the buildings and works associated with accommodation.

The use and development of the land has already been approved by PP245/07 and was considered to meet the relevant planning provisions at that time. Given the approval currently in place, consideration can only be given to the amendment request.

When considering an application to amend a planning permit, the Responsible Authority, in accordance with Section 73 of the *Planning and Environment Act 1987*, must only make changes to the planning permit that relate to the amendment and must only apply additional conditions, if necessary, that relate to the amendment being sought.

Consideration of the Proposal

PP245/07 was granted for the use and development of the land as accommodation for the purpose of providing additional accommodation to an existing caravan park operation, and was issued subject to a number of conditions including the one that is the subject of the proposed amendment being considered by Council.

In considering this request, it is appropriate to consider the original purpose and role of the condition, any potential impact arising through the modification or removal of the condition and relevant decision guidelines at Clause 65.01 of the Colac Otway Planning Scheme which requires the responsible authority to consider any effect on the amenity of the area.

As raised in the objections to the amendment, residents of Murray Street and surrounds have concerns with the amenity impacts should the gate providing access to Murray Street be left open at the Manager's discretion or with a sensor and keypad lock. These concerns have been categorised into the following four issues;

- a) On-street parking in Murray Street
- b) Safety of pedestrians
- c) Amenity of residents in Murray Street

d) Not a specific change to condition

On-street parking in Murray Street

The objectors have raised concerns that if the gate is open for general pedestrian movement, then patrons of the park are more likely to park their vehicles on the Murray Street nature strip, particularly those patrons occupying the cabins close to Murray Street. The Holiday Park provides 1 car space per cabin/caravan site. Condition 2 of the original permit required that four trees be planted along the nature strip. This planting has recently been completed. The applicant submits that it does not encourage or promote parking along Murray or Cawood Street and that the landscaping, now completed on the Murray Street frontage will restrict the potential for parking on the road reserve of Murray Street.

Consideration has been given to other mechanisms to deter vehicles from parking on the nature strip along Murray Street. These options are discussed below.

An option available would be to place bollards along the frontage to prevent parking, however, while it is considered that this would be effective it would provide a possible risk management hazard for Council as an obstruction within the road reserve and move parking further along Murray Street.

Restricted parking in Murray Street is another option, but again, it is considered that this would not solve the issue but rather move it further along Murray Street. Another alternative would be to provide parking restrictions for the whole street which again would not solve the issue and potentially cause more inconvenience for all residents and visitors alike.

It should also be remembered that the Murray Street road reserve is a public reservation for the use of the general public as well as residents. Adequate car parking is provided for patrons of the caravan park within the site and it is preferred that patrons utilise this area for parking, however, it is difficult to prevent visitors to the area or other members of the public from parking in Murray Street given its status as a public street unless parking restrictions apply. There is no evidence that confirms that the patrons or visitors thereof of the Holiday Park are parking their vehicles in Murray Street.

Persons are able to park within the road formation as no kerb and channel is present in Murray Street, the road formation can be defined as the pavement to the drain. Council's Local Laws department have advised that because of the lack of definition between the road pavement and road reserve, due to the absence of kerb and channel, it could be difficult to enforce parking of vehicles on the nature strip unless the parking on the road reserve was considered dangerous or obstructive.

As previously discussed, complaints were made last summer regarding the gate being unlocked and that people were parking in the road reserve. As Council officers have no evidence as to whether the vehicles parked in Murray Street are related to the holiday park, it is difficult to link the parking issues directly to the gate.

Safety of pedestrians

Objections included issues about the safety of pedestrians. No footpaths are provided in Murray Street or nearby Pascoe Street to provide formal pedestrian access to the business centre of Apollo Bay whereas Cawood Street and the Great Ocean Road provide a concrete footpath to the business centre. The Murray-Pascoe Street route is approximately 670 metres long whilst the Cawood Street-Great Ocean Road path is approximately 820 metres.

Allowing the gate to be open during daylight hours or at the Manager's discretion is likely to lead to the gate being open the majority of the time particularly through the busy holiday periods. It is likely that the shorter walk will be used more often, encouraging pedestrians to either walk along the roadside or on the grassed nature strips.

If the 65 sites were all occupied, with an average of 2-3 people per site, up to 130-195 people may be accommodated at the Holiday Park. While some of the patrons may utilise the Cawood Street access, it would be highly probable that a significant percentage would also use the Murray Street pedestrian access. From a safety perspective, it would be better to encourage pedestrians to use existing footpaths along Cawood Street and the Great Ocean Road rather than contributing to additional conflict between pedestrians and motorists where formal footpaths are not provided.

The applicant submits that the informal nature of Murray Street creates a shared environment between pedestrians and vehicles and therefore naturally slows traffic resulting in improved safety.

Amenity of residents in Murray Street

The objectors raised concern in relation to their amenity should the gate be open at the Manager's discretion. The objectors consider that the gate will be left open which will provide opportunity for the numerous patrons to walk in and out of the park from Murray Street at all hours causing concern with noise, congestion due to street parking and pedestrian safety.

It is considered that a number of these impacts may be significantly reduced should the opening of the gate for restricted times be permitted particularly if the gate was to be closed during the evening, however, the objectors have clearly indicated that this still does not address their concerns.

The applicant submits that any impact imposed on Murray Street would be arguably limited to peak holiday periods only and this is consistent with the experience of the township during this period generally.

The gate is located in the south eastern corner of the site fronting Murray Street. A path has been constructed along the eastern boundary to the gate which also causes concern particularly for the amenity of the residents of the adjoining property. Consideration was given to the moving of the gate to the centre of the Murray Street frontage between the cabins, however, the applicant indicated that this would be unacceptable as it would result in the loss of an onsite car park.

Not a specific change to the condition

Planning permit conditions must be relevant, reasonable and provide for certainty. The amendment being sought is 'for the gate to be locked at the discretion of the Manager'. It is considered that this does not provide for certainty nor is it enforceable and to change the condition to this would render the condition useless as it does not provide for any measurable timing or requirements for the locking of the gate.

This condition was initiated by the applicant during consultation (without Council representation) with the objectors to the original application. Agreement was reached between the applicant and the objectors based upon this condition being placed in the permit.

Council's Enforcement Officer has made several inspections to the subject site over the past twelve months and found that, at times, the gate has been left unlocked and was being used by park patrons. Council's Enforcement Officer has had several conversations with the Park Manager regarding the locking of the gate and adhering to the conditions of the permit.

As previously discussed, the first option that the gate be opened at the discretion of the Park Manager is not reasonable wording of a condition that is measurable and enforceable and is not supported.

The amended option offered by the applicant was to connect the gate to a daylight sensor with a keypad lock that would be available only to park patrons (who were given the password to the keypad) during daylight hours and is a more reasonable and enforceable option. Although this option may meet the tests of 'reasonable' and 'certainty' it has the potential to impact on the amenity of nearby residents in Murray Street.

Council officers have tried to mediate a resolution to satisfy both parties but without success.

Corporate Plan / Other Strategies / Policy

Any relevant policy issues have already been addressed earlier in this report.

Financial & Other Resource Implications

This proposal raises no financial or resourcing implications for Council for the consideration of the planning application.

Risk Management & Compliance Issues

This proposal raises no risk management implications for Council however should the request for an amendment be refused, there is potential for a need for on-going monitoring of compliance of the permit requirement that the gate be locked.

Environmental Consideration / Climate Change

There are no environmental or climate change implications arising from this proposal.

Communication Strategy / Consultation Period

Public notice of the application was required as noted earlier in the report.

Conclusion

The proposed modification to Condition 2 does not provide certainty nor can it be enforced, therefore, it would be unreasonable to expect that such a condition could be supported. The further amended wording as discussed with the applicant and forwarded to the objectors for comment does provide certainty and could be enforced but is not supported by the objectors to the application. There is no real demonstrated need for pedestrian access to be provided to the site from Murray Street, particularly when satisfactory vehicle and pedestrian access is provided from Cawood Street.

The potential for detrimental impact on the amenity to the surrounding properties is considered to be unreasonable and the application is not supported on this basis.

The original approval for cabins on this site was also based on an agreement between objectors and the applicant that a condition would be included in the permit to restrict pedestrian access onto Murray Street. It would appear that there is no substantive change in circumstances that warrants the modification or removal of this condition.

It is recommended that the request to amend the permit to alter Condition 2 be refused.

Attachments

Nil

Recommendation(s)

That Council 's Planning Committee resolve to refuse to grant an amendment to the permit PP245/07 for the rewording of condition 2 at 25-27 Cawood Street, Apollo Bay for the following reasons:

- 1) The proposed modification of Condition 2 as proposed in the planning application provides lack of certainty and is unenforceable.***
- 2) The opening of the gate for pedestrian access to Murray Street frontage will be materially detrimental to the amenity of the neighbourhood.***
- 3) There is no substantive change in circumstances in the operation of the caravan park that warrants an amendment to Condition 2 as approved by PP245/07 in December 2007.***

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