



**Colac Otway
SHIRE**

AGENDA

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

9 MARCH 2011

at 10:30 AM

COPACC Meeting Room

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

9 MARCH 2011

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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 Meeting Room on 9 March 2011 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.

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

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.'

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 09/02/11.

Recommendation

That Council confirm the above minutes.

OFFICERS' REPORTS

Sustainable Planning and Development

PC110903-1	PLANNING & BUILDING STATISTICAL REPORT
PC110903-2	USE OF THE LAND AS A WINE BAR AND RESTAURANT, INCLUDING VARIATION TO LIQUOR LICENCE, REDUCTION OF CAR PARKING REQUIREMENT, ADDITIONS TO EXISTING BUILDING, ERECT NEW IRON GATES AND BUSINESS IDENTIFICATION SIGNAGE AT 49 & 53-57 MAIN STREET, BIRREGURRA
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Rob Small
Chief Executive Officer

PC110903-1**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 February 2011.

Planning Statistics – February 2011

30 Planning Permit Applications were received for the period 1 February 2011 – 28 February 2011.

21 Planning Permit Applications were considered for the period 1 February 2011 – 28 February 2011.

Building Statistics

Please note that the Building Commission website has been updated to December 2010.

Attachments

1. Planning and Statistical Report February 2011

Recommendation(s)

That Council's Planning Committee note the statistical report.

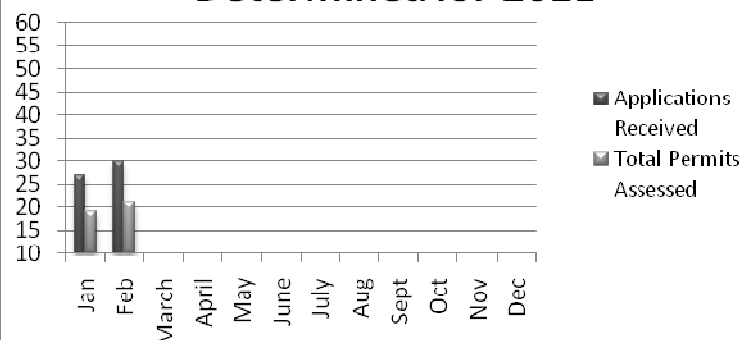
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## Planning Statistical Report February 2011

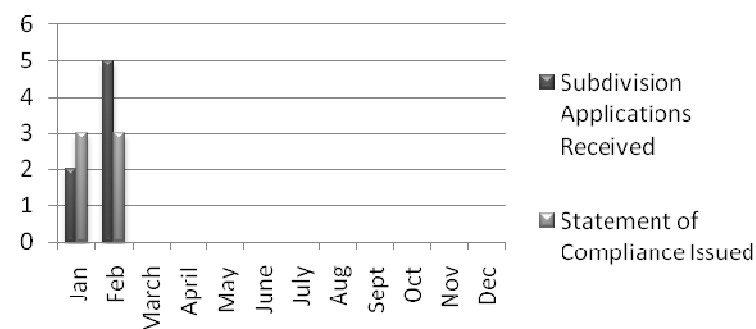
| APPLIC NO  | DATE RECEIVED | LOCATION                                 | PROPOSAL                                                                                                                                                 | DATE ISSUED | ACTUAL TIME | AUTHORITY          | DECISION         |
|------------|---------------|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------|--------------------|------------------|
| 257/2004-3 | 1 APR 2009    | 3812 COLAC LAVERS HILL RD, FERGUSON      | ORGANIC PRIMARY PRODUCTION/ECO TOURISM DISPLAY & ASSOCIATED PRIMARY PRODUCE SALES & SIGNAGE - AMENDMENT                                                  | 21 FEB 2011 | 458         | UNDER DELEGATION   | REFUSAL TO GRANT |
| 10/2008-3  | 6 JAN 2011    | 22 GREAT OCEAN RD, APOLLO BAY            | NINE (9) LOT STAGED SUBDIVISION & REMOVAL OF DRAINAGE                                                                                                    | 9 FEB 2011  | 0           | UNDER DELEGATION   | WITHDRAWN        |
| 46/2008-2  | 10 AUG 2010   | 304 MURRAY ST, COLAC                     | USE & DEVELOPMENT OF LAND FOR THREE (3) SHOPS, ASSOCIATED STORAGE & REDUCTION IN CAR PARKING (6 SPACES) - AMENDMENT<br>REMOVAL OF SECTION 173 AGREEMENT. | 16 FEB 2011 | 0           | UNDER DELEGATION   | LAPSED           |
| 150/2008-2 | 27 OCT 2010   | 196 POUND RD ELLIMINYT                   | TWO (2) UNITS & A TWO (2) LOT SUBDIVISION - AMENDMENT                                                                                                    | 18 FEB 2011 | 43          | UNDER DELEGATION   | PERMIT ISSUED    |
| 245/2009-2 | 10 JAN 2011   | 1425 BIRREGURRA FORREST RD, BARWON DOWNS | REINSTATEMENT OF WEIR, CONSTRUCTION OF FISH LADDER, EROSION PROTECTION WORKS & TOPPING UP OF EXISTING EMBANKMENT - AMENDMENT                             | 10 FEB 2011 | 73          | UNDER DELEGATION   | PERMIT ISSUED    |
| 235/2010-1 | 18 AUG 2010   | 25 FOOTBALL RD, GELLIBRAND               | CONSTRUCTION OF A DWELLING, GARAGE & HORSE STABLE                                                                                                        | 15 FEB 2011 | 0           | UNDER DELEGATION   | WITHDRAWN        |
| 245/2010-1 | 27 AUG 2010   | 9 GALLOP ST, COLAC EAST                  | USE OF THE SITE FOR CAR SALES                                                                                                                            | 15 FEB 2011 | 0           | UNDER DELEGATION   | LAPSED           |
| 252/2010-1 | 1 SEP 2010    | 167 FOREST ST, COLAC                     | TWO (2) LOT SUBDIVISION                                                                                                                                  | 3 FEB 2011  | 108         | UNDER DELEGATION   | PERMIT ISSUED    |
| 270/2010-2 | 28 JAN 2011   | 7 HOWARTH ST, ELLIMINYT                  | EXTENSION TO PRE-SCHOOL CENTRE - AMENDMENT                                                                                                               | 4 FEB 2011  | 7           | UNDER DELEGATION   | PERMIT ISSUED    |
| 281/2010-1 | 23 SEP 2010   | 415 BIRREGURRA RD, BIRREGURRA            | TWO (2) LOT RE-SUBDIVISION                                                                                                                               | 2 FEB 2011  | 195         | UNDER DELEGATION   | PERMIT ISSUED    |
| 290/2010-1 | 20 SEP 2010   | 63 MAIN ST, BIRREGURRA                   | USE AND DEVELOPMENT AS A SHOP AND OFFICE, REDUCTION OF TWO (2) CAR SPACES                                                                                | 10 FEB 2011 | 104         | PLANNING COMMITTEE | PERMIT ISSUED    |
| 320/2010-1 | 5 NOV 2010    | 42 CLARK ST, COLAC EAST                  | USE OF THE LAND FOR A MUSEUM & REDUCTION OF CARPARKING                                                                                                   | 10 FEB 2011 | 41          | PLANNING COMMITTEE | PERMIT ISSUED    |
| 342/2010-1 | 3 DEC 2010    | 178 SINCLAIR ST SOUTH, COLAC             | CONSTRUCTION OF A DWELLING                                                                                                                               | 10 FEB 2011 | 70          | UNDER DELEGATION   | PERMIT ISSUED    |
| 349/2010-1 | 9 DEC 2010    | 9 NOEL ST, APOLLO BAY                    | USE OF LAND AS ACCOMMODATION                                                                                                                             | 21 FEB 2011 | 75          | UNDER DELEGATION   | PERMIT ISSUED    |
| 1/2011-1   | 9 DEC 2010    | 24 MURRAY ST, COLAC                      | ERECTION OF SIGNAGE TO FRONT FACADE                                                                                                                      | 3 FEB 2011  | 7           | UNDER DELEGATION   | PERMIT ISSUED    |
| 24/2011-1  | 7 FEB 2011    | 375 GREAT OCEAN RD, MARENGO              | BUILDINGS AND WORKS COMPRISING THE CONSTRUCTION OF ADDITIONS TO AN EXISTING DWELLING.                                                                    | 10 FEB 2011 | 3           | UNDER DELEGATION   | PERMIT ISSUED    |

| APPLIC NO  | DATE RECEIVED | LOCATION                          | PROPOSAL                                                                                                        | DATE ISSUED | ACTUAL TIME | AUTHORITY          | DECISION           |
|------------|---------------|-----------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------|-------------|--------------------|--------------------|
| 28/2011-1  | 14 FEB 2011   | 4 HARRISON ST, MARENGO            | BUILDINGS AND WORKS COMPRISING ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING                                | 18 FEB 2011 | 6           | UNDER DELEGATION   | PERMIT ISSUED      |
| 333/2010-1 | 26 NOV 2011   | 80 KENTS RD, BARWON DOWNS         | WORKS COMPRISING THE CONSTRUCTION OF A ROAD AND THE REMOVAL OF VEGETATION                                       | 25 FEB 2011 | 0           | UNDER DELEGATION   | WITHDRAWN          |
| 211/2010   | 6 AUG 2010    | 30-32 GREAT OCEAN RD, LAVERS HILL | USE & DEVELOPMENT OF A SHOP & A FOOD & DRINK PREMISES WITH ASSOCIATED BUILDING & WORKS & ASSOCIATED CAR PARKING | 3 FEB 2011  | 77          | UNDER DELEGATION   | NOTICE OF DECISION |
| 280/2007-2 | 4 NOV 2010    | 10 ARTHUR CRT, APOLLO BAY         | AMENDMENT TO PLANNING PERMIT FOR A REFUSE TRANSFER STATION – PROPOSED CHANGES TO OPERATION HOURS                | 10 FEB 2010 | 49          | PLANNING COMMITTEE | NOTICE OF DECISION |
| 348/2009   | 15 DEC 2009   | 2 BASS CRT, SKENES CREEK          | PROPOSED ADDITIONS & ALTERATIONS TO DWELLING                                                                    | 11 FEB 2011 | 179         | UNDER DELEGATION   | NOTICE OF DECISION |
|            |               |                                   | <b>AVERAGE DAYS TO PROCESS PLANNING APPLICATIONS</b>                                                            |             | <b>71</b>   |                    |                    |

### Planning Permits Received & Determined for 2011



### Subdivision Applications for 2011



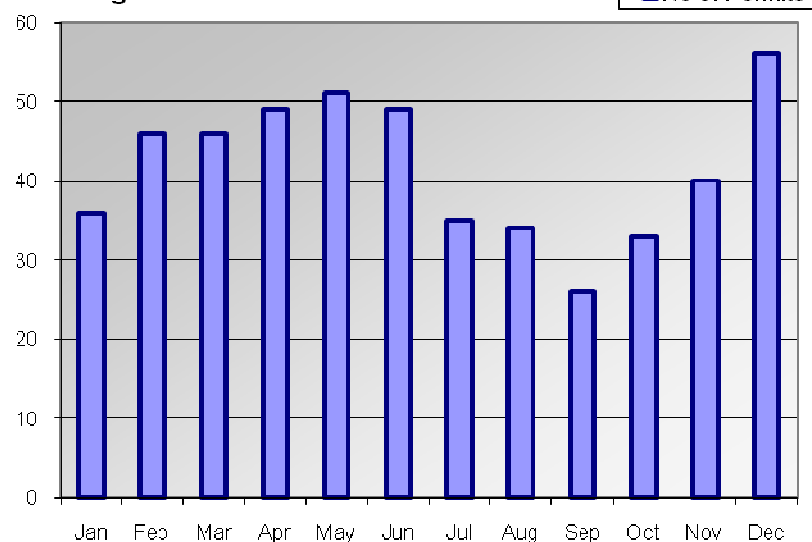
## Pulse Building Reports

## Financial Yr Stats

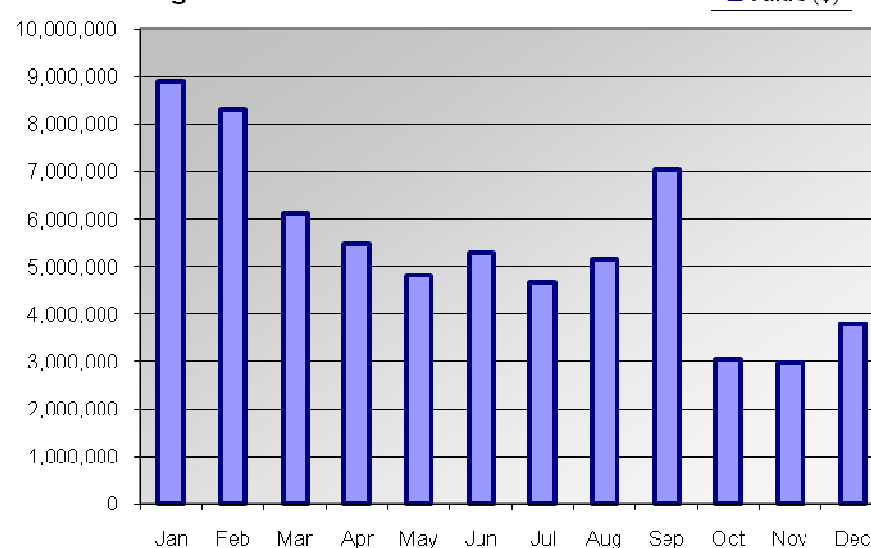
|               | Domestic   |                   | Residential* |                  | Commercial |                  | Retail    |                  | Industrial |                  | Hospital/HealthCare |              | Public Buildings |                   | Municipal Totals |                   |
|---------------|------------|-------------------|--------------|------------------|------------|------------------|-----------|------------------|------------|------------------|---------------------|--------------|------------------|-------------------|------------------|-------------------|
|               | 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           | 27         | 3,691,419         | 0            | 0                | 2          | 47,900           | 3         | 229,014          | 1          | 34,000           | 1                   | 2500         | 1                | 642,640           | 35               | 4,647,473         |
| Aug           | 26         | 3,924,339         | 0            | 0                | 2          | 120,000          | 1         | 174,104          | 1          | 615,000          | 0                   | 0            | 4                | 326,000           | 34               | 5,159,443         |
| Sep           | 19         | 1,681,008         | 0            | 0                | 0          | 0                | 0         | 0                | 2          | 1,517,008        | 0                   | 0            | 5                | 3,850,217         | 26               | 7,048,233         |
| Oct           | 25         | 2,742,744         | 0            | 0                | 3          | 79,487           | 2         | 35,000           | 0          | 0                | 0                   | 0            | 3                | 195,905           | 33               | 3,053,136         |
| Nov           | 36         | 2,593,554         | 1            | 250,000          | 2          | 45,000           | 0         | 0                | 0          | 0                | 0                   | 0            | 1                | 70,000            | 40               | 2,958,554         |
| Dec           | 45         | 3,226,955         | 0            | 0                | 7          | 184,920          | 2         | 185,000          | 0          | 0                | 0                   | 0            | 2                | 184,000           | 56               | 3,780,875         |
| <b>Totals</b> | <b>394</b> | <b>42,515,560</b> | <b>4</b>     | <b>1,097,632</b> | <b>43</b>  | <b>4,567,209</b> | <b>13</b> | <b>1,114,118</b> | <b>7</b>   | <b>3,316,008</b> | <b>1</b>            | <b>2,500</b> | <b>39</b>        | <b>12,901,134</b> | <b>501</b>       | <b>65,514,161</b> |

\*Multi-Development

2010 Building Statistics - Total Permits Issued



2010 Building Statistics - Total Value of Works





**PC110903-2                    USE OF THE LAND AS A WINE BAR AND RESTAURANT,  
INCLUDING VARIATION TO LIQUOR LICENCE,  
REDUCTION OF CAR PARKING REQUIREMENT,  
ADDITIONS TO EXISTING BUILDING, ERECT NEW IRON  
GATES AND BUSINESS IDENTIFICATION SIGNAGE AT 49  
& 53-57 MAIN STREET, BIRREGURRA**

|             |                                       |           |            |
|-------------|---------------------------------------|-----------|------------|
| AUTHOR:     | Helen Evans                           | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning<br>& Development | FILE REF: | PP335/2010 |

**Location:** 49 and 53-57 Main Street, Birregurra

**Zoning:** Township Zone, Abuts RDZ1

**Overlay controls:** Heritage Overlay Schedule 303

**Proposed Amendments:** Nil

**Purpose:**

The application is before Council for consideration as the application is seeking approval for a reduction in car parking requirements. It is recommended that the application be approved and that a Planning Permit is issued subject to conditions.

**Declaration of Interests**

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

**Summary**

- Planning permission is sought for the use of the existing building on the site as a wine bar and restaurant and associated works including signage, alteration to the existing liquor licence, and a reduction in the number of car spaces to be provided onsite. It is proposed to consolidate the land with the adjoining land and operate it together with the Royal Mail Hotel.
- A 50 seat restaurant is proposed together with a wine bar and courtyard area. Thirty-three car spaces are to be provided onsite with rear access off Jenner Street. A reduction of eighteen car spaces is being sought and it is considered that the request is reasonable and is unlikely to have any significant impact on parking availability for the immediate area.
- An objection was received raising concern regarding residential amenity and loss of privacy. These concerns have been satisfactorily addressed through consultation with both the applicant and objector. The consultation resulted in agreement between all parties with fencing and landscaping along the western boundary to address concerns. Permit conditions will ensure compliance to this agreement should the application be supported.
- As the objection was withdrawn, it is recommended that a planning permit be issued.

**Background**

An application (PP237/2010) was received on 23 August 2010 seeking approval for the use of part of the existing building as a wine bar in conjunction with the hotel business on the adjoining land at 49 Main Street, Birregurra. The application also sought approval for a variation to the liquor licence and display of a business identification sign.

The plans submitted with the application indicated that the balance of the building would be used as a dining area and shop. The front portion of the building is currently used for retail purposes and the rear of the building is used as a dwelling. Further information was sought from the applicant that sought:

- Clarification about the proposal particularly as a current existing planning permit allowed for the subdivision of the subject land;
- Details about how the proposed parking was convenient for patrons;
- Explanation of the discrepancies between the plans as to what is proposed; and
- Clarification of whether the proposed wine bar is to form part of the hotel operation, or whether the wine bar is to operate independently, as it appeared that the wine bar would be dependent on the hotel land for facilities including toilets and storage.

The applicant submitted further information on 11 October 2010 amending the application to change the use of the land to a wine-bar (tavern) and restaurant, including a variation (extended area) to the existing general liquor licence, waiver of 21 car spaces and business identification signage.

Officers still had concerns in relation to these plans and met with the applicant on 1 November 2010 to discuss the following matters:

- no toilets for the existing shop area;
- no kitchen shown for the proposed new restaurant;
- stairwell on plans not leading anywhere;
- convenience of car parking provided,
- extent of the area proposed for the liquor licence;
- proposed signage conflict with recently approved planning permit for the verandah;
- car parking proposed over existing effluent disposal area; and
- plans not adequate.

To reduce confusion with the superseded copies of the application, a new application (PP335/2010) was submitted on 26 November 2010 for *'the use of the land (in part) for a wine bar and restaurant in conjunction with the adjoining hotel; external alterations to the existing building to facilitate a new kitchen; variation to an existing licence, business identification signage and reduction in required number of onsite car parks'*.

Upon further inspection of the site, it was found that iron gates had been erected at the front of the site. Council Officers again wrote to the applicant advising of the contravention of the planning scheme and the need for planning approval. The applicant submitted a further amendment to the application on 24 January 2011 seeking consent to the gates.

**Issues / Options**

Council has the options of:

- a) Supporting the application through the issue of a Planning Permit subject to conditions.
- b) Refusing to grant a permit.

The key issues with the application are the reduction in car parking, neighbourhood amenity and containment of waste on-site.

### **Proposal**

The application seeks to use part of the front of the building previously used as a shop as a wine bar. It is proposed that the wine bar, called Zampatti's, will open as part of the existing Royal Mail Hotel and proposes lounge style seating with a small seated bar area. It is proposed to have approximately five stools around the bar. It is also proposed to provide seating and tables for 16 patrons. Access to the wine bar is intended from the street entrance or through the common courtyard between the proposed bar and existing hotel. A door in the wine bar building provides a connection into the hotel courtyard. It is proposed to erect new iron gates (retrospective) across the frontage of the courtyard area and also retain the driveway access to allow for deliveries outside opening hours. Seating for 16 patrons will be offered in the courtyard as an alternative to the indoor bar area during fine weather. Additional tables and chairs in the courtyard will be associated with the wine bar. The wine bar will only open as part of the existing hotel and proposed hours of operation are 11am to 11pm daily (except for restricted days/hours directed by the liquor licence). The applicant indicated that during quieter periods the wine bar may close whilst the hotel remains open. Two additional staff members will be required to service the area.

The proposed restaurant will be within the existing building located at 53-57 Main Street (within the Zampatti's business), and will be accessed from the proposed wine bar, or alternatively from a new car park to be located at the rear of the existing hotel. It is proposed that the maximum number of patrons will be 50 at any one time. In fine weather, outdoor seating is proposed to be provided in the rear yard as an alternative (not in addition) to inside dining.

The proposed opening hours of the restaurant are 11am to 11pm daily (except for restricted days/hours directed by the liquor licence). The applicant indicated that opening hours will depend on demand (i.e. the site will be closed during quieter periods). Three additional staff members will be required to service the restaurant.

External changes are proposed to the western façade of the building to infill a small alcove along the building boundary. The infill will not be visible from Main Street.

It is not proposed to open the restaurant until reticulated sewer is connected to the land to accommodate the increase in effluent and the area at the back of the hotel currently used as an effluent disposal field can be fully utilised for parking.

The applicant has indicated that:

- the wine bar and courtyard area will attract a parking requirement of 23.9 car spaces; and
- the restaurant area will attract 30 car spaces; and
- 3 spaces be credited for the previously shop use of the wine bar area; and
- 33 spaces to be provided onsite;

therefore requiring a reduction in 18 car spaces.

The application indicates that a total of 33 car spaces are to be provided at the rear of 49 Main Street. Part of this area is currently being utilised as the effluent disposal field for the hotel. It is proposed to provide 9 car spaces (gravel surface only in the short term) in conjunction with the opening of the wine bar and the remaining 24 spaces would be provided after connection to reticulated sewerage. It is also proposed that the restaurant would not commence operation until reticulated sewerage is connected and the car parking area is constructed.

This application also seeks approval for an increase in the floor area to be covered by the existing general liquor licence. It is proposed to expand the licensed area into the adjoining property (53-57 Main Street, Birregurra) by approximately 582m<sup>2</sup>.

The sign currently illegally erected on the Main Street façade 'Zampatti's wine bar' is proposed to be hung from the verandah. The sign measures 3m x 0.5m. The sign will not be illuminated. It is also proposed to display a sign on the Main Street façade directing traffic to the rear car park to be provided.

### **Site & Surrounds**

The site is located in the commercial precinct of the Township Zone along the south side of Main Street in Birregurra. The site consists of two existing allotments which have frontage to both Main Street and Jenner Street. 49 Main Street (C/A 8) is approximately 2,044m<sup>2</sup> in area and contains the Royal Mail Hotel fronting onto Main Street. The effluent disposal field and outbuildings associated with the hotel are located to the rear of the site. Vehicular access to the site is via Jenner Street. 53-57 Main Street (C/A 7) is approximately 2043m<sup>2</sup> in area and contains a building fronting onto Main Street. This building has three separate occupancies – a dwelling at the rear, a shop and an office with street frontage. The frontage to Jenner Street has a garden appearance. Vehicular access is available for C/A 7 but not formed from Jenner Street.

The surrounding properties in Jenner Street contain dwellings or are vacant. The surrounding properties in Main Street include the general store and dwelling to the west and a vacant building (formerly Nippers Restaurant) to the east. Main Street is a wide sealed street that provides for on-street parking on both sides of the road and Jenner Street has a wide grassed road reserve with gravel pavement. A shop and office are immediately beside the proposed wine bar and are located on the same allotment and within the same building.

### **Public Notice**

Public notice of the application was given in accordance with Section 52 of the *Planning and Environment Act* by sending letters to adjoining owners/occupiers and a sign was displayed on the site for a period of fourteen days. The applicant has provided a Statutory Declaration stating that the advertising has been carried out in accordance with Council's requirements.

At the conclusion of the notification period, one objection was received. The grounds of objection may be summarised as follows:

- Noise carrying through to the neighbouring property;
- Lack of privacy in the backyard of the neighbouring property;
- Dust and noise created from patrons exiting the rear park area and driving along Jenner street;
- Concern with smoke drifting across into the neighbouring property if smoking is permitted in the rear grassed courtyard.

The objector requested that there be some high, sound proofing barriers put along the boundary that would address the privacy and noise concerns, and also that the rear courtyard area be designated as non-smoking.

Officers met with the applicant and objector to discuss these, resulting in an agreement from the applicant to erect, at his expense, a 2.5 metre high solid fence constructed of iron, for a length of 25 metres starting at the verandah wall and continuing south along the western boundary. The applicant also agreed to plant, at his own expense, black bamboo plants (or an appropriate alternative to Council's satisfaction) along the western boundary for the length of the 2.5 metre high fence.

The plants are to be planted at a width that will provide a visual screen to the objector's property. The applicant also agreed to the rear courtyard area being designated as non-smoking.

The objector has withdrawn their objection however it is based upon the above fencing and landscaping being undertaken, and that the car parking is provided as per the plan submitted with the application.

### **Referrals**

The application was referred to Council's Building, Health and Infrastructure Departments, none of which object to the proposal providing conditions are placed on any approval issued.

In principle the Health Department has no objections to the proposal, however further information is required to be submitted prior to commencement of the restaurant use regarding the proposed kitchen to ensure that the design and size satisfies the relevant Health and Building Regulations. This can be addressed through permit conditions if approved. The Health Department also stipulated that approval of the restaurant was based upon 50 patrons and that the number of toilets to be provided for staff and patrons would need to be compliant with the Building Regulations.

The Health Department also advised that it does not recognise any agreement between the shop proprietors and the hotel proprietors for them to use the hotel toilet facilities. Such agreement is purely between the proprietors and if the shop use of such toilets were to impact adversely upon the hotel facilities, then other toilet facilities would have to be provided. Likewise if the shop was sold, sublet further or somehow otherwise developed then the Health Department would not recognise any pre-existing agreement between the proprietors or right of use of the hotel toilets by the shop proprietors / patrons.

It is proposed that the wine bar utilises the amenities and kitchen facilities of the Hotel. The Health Department advises that it has no objection to the wine bar use utilizing the existing toilets and septic disposal system on the basis that the hotel proprietors recognise that it is their responsibility to manage the septic system so that it complies with the EPA guidelines on septic tank use and that no public nuisance is caused. If it is found that the septic system cannot manage the effluent disposal, the use of the wine bar may be limited to ensure that the septic system is not overloaded. Proposed conditions require that the restaurant use not commence until the land is sewered.

Council's Infrastructure Department provided comment regarding the expected increase in traffic movements in Jenner Street. It is expected that the wine bar and restaurant will generate 45 vehicle movements daily for each use, therefore generating approximately 90 vehicle movements per day overall. Based upon the expected traffic increase, it is recommended that the eastern section of Jenner Street should be sealed and constructed in accordance with an 'Access street' as described in the Infrastructure Design Manual. An access street provides a carriageway width of 7.5m with a 3.5m minimum verge width, footpath provision and SM2 kerb and channel. The length of road to be constructed would be approximately 60 metres. Currently the existing width of this section of Jenner Street is approximately 5 metres and has a gravel surface.

### **Planning Controls**

The land is within the Township Zone and is subject to the Heritage Overlay Schedule 303. A planning permit is triggered by:

- Clause 32.05 Township Zone – use of a wine bar and restaurant and associated building works
- Clause 43.01 Heritage Overlay Schedule 303 – signage & alterations to building

- Clause 52.05 Advertising Signage – erection of a business identification sign
- Clause 52.06 Car parking – reduction in car parking provision
- Clause 52.27 Licensed premises – alteration to Liquor Licence

a. State and Local Planning Policy Framework

The State and Local Planning Policy frameworks seek to ensure the objectives of planning in Victoria are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social, and economic factors in the interests of net community benefit and sustainable development. The following policies are relevant to the consideration of this application.

- Clause 11.05 – Regional Development
- Clause 15.03 – Heritage
- Clause 21.02-2 – Land Use Vision
- Clause 21.03-4 – Birregurra
- Clause 22.01-7 – HO303 – Birregurra Main Street Precinct, Birregurra

Overall the proposal is generally consistent and satisfies the key objectives relating to enhancing commercial development in the existing centre whilst respecting the heritage values of the built form.

b. Zone provisions

The site is included in the Township Zone. The objectives of the Township Zone are outlined below:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To provide for residential development and a range of commercial, industrial and other uses in small towns.*
- *To encourage residential development that respects the neighbourhood character.*

The use of the land as a restaurant and wine bar requires planning approval in a Township Zone. Any buildings and works associated with these uses also requires planning approval.

The use of the land for a restaurant and wine bar is considered appropriate given that the land is located within the 'commercial' precinct of the Birregurra Township. The use of the land for these purposes is reliant on the adjoining land (C/A 8) for the provision of effluent disposal and car parking. This will be discussed further later in this report together with the amenity issues raised by the objector.

c. Overlay Provisions

The purpose of the Heritage Overlay is:

- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The site is part of the Birregurra Town Precinct (Schedule 303) and is shown to be a contributory building. A permit is required to display or construct a sign and to externally alter a building by structural work, rendering, sandblasting or in any other way.

The Statement of Significance identifies the Birregurra Main Street Precinct as being of historic importance in demonstrating a continuum of growth from the simple timber buildings constructed at the time of settlement in the 1860s located mainly, but not exclusively, to the east, to the more substantial building of the early decades of the twentieth century predominantly but not exclusively constructed to the west. The Birregurra Main Street Precinct is of historic importance in demonstrating the community's commitment to their town, especially through the street plantings that illustrate efforts to beautify the town, and the memorials.

The application proposes to carry out minor changes to the external structure of the building by infilling an alcove on the western boundary and to erect a sign on the newly constructed verandah on the Main Street. The works on the western boundary will not be visible from the Main Street or Jenner Street and therefore are not considered to affect the heritage values of the precinct.

The proposed sign is of a size and design that is respectful of the heritage significance of the precinct.

d. Relevant Particular Provisions

Clause 52.05-6 Advertising Signs

This clause seeks to regulate the display of signs, ensure that the signage is compatible with the amenity and visual appearance of an area, ensure that signs do not contribute to excessive visual clutter or visual disorder, and that the signs do not cause loss of amenity or adversely affect the natural or built environment.

In a Township Zone, advertising sign requirements are a Category 3 - High amenity areas. The purpose of the signage is to ensure that signs in high-amenity areas are orderly, of good design and do not detract from the appearance of the building on which a sign is displayed or the surrounding area.

The signage proposed is 3m x 0.5m and is to be hung from the verandah over the Main Street footpath. The sign will not be illuminated. The sign will be simple in design with the words 'Zampatti's Wine Bar' in black print on a creamy/yellow background.

It is also proposed to display a sign on the Main Street façade directing traffic to the rear car park to be provided. If approved, permit conditions will specify amending plans showing design and siting of this sign.

The signage scale and form is considered reasonable in relation to the site and the surrounding buildings and signage. The signage will provide easy identification of the business and the signage is of a design that adds to the vitality and colour of the area.

Clause 52.06 - Car Parking

Under Clause 52.06, a new use must not commence or the floor area of an existing use must not be increased until the required car spaces have been provided on the land. Two new uses are proposed – a wine bar and restaurant.

Within the table to Clause 52.06, a wine bar is not specifically identified; however it is considered that the use 'Tavern', which is identified in the table, would provide an appropriate car space measure for a wine bar. The car parking requirement for a tavern is 60 spaces to each 100 sqm of bar floor area available to the public, plus 30 car spaces to each 100 sqm of lounge floor area available to the public. A restaurant is identified in the table requiring 0.6 spaces to each seat available to the public.

The floor area for the wine bar (including the courtyard area) is 79 sqm and it is proposed to provide 50 seats to the restaurant. The applicant is also claiming a credit of 3 spaces for the former use of the wine bar building area.

Council Officers and the applicant agree that:

- the wine bar and courtyard area will attract a parking requirement of 23.9 car spaces; and
- the restaurant area will attract 30 car spaces; and
- 3 spaces should be credited for the previous shop use of the wine bar area; and
- 33 spaces are to be provided onsite

A reduction of 18 car spaces from the planning scheme requirement is therefore required for the proposal.

The application indicates that a total of 33 car spaces are to be provided at the rear of 49 Main Street. Part of this area is currently being utilised as the effluent disposal field for the hotel. It is proposed to provide 9 car spaces (gravel surface only) in conjunction with the opening of the wine bar and the remaining 24 spaces would be provided after connection to reticulated sewerage and also that the restaurant would not commence operation until reticulated sewer is connected and the car parking area is constructed.

The site plan does satisfactorily define the car parking area for 33 car spaces. This issue is discussed later in the report.

#### Clause 52.27 – Licensed Premises

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

A permit is required where the applicant is seeking to extend the floor area where liquor can be served. This application seeks approval for an increase in the floor area to be covered by the existing general liquor licence. The current general liquor licence provides for an overall maximum of 150 patrons for the existing hotel and the trading hours for consumption on the licensed premises are:

|                                |                                                                                  |
|--------------------------------|----------------------------------------------------------------------------------|
| Sunday                         | between 10am and 11pm                                                            |
| Good Friday                    | between 12 noon and 11pm                                                         |
| Anzac Day (not being a Sunday) | between 12 noon and 1am the following morning                                    |
| On any other day               | between 7am and 1am the following morning except for the morning of Good Friday. |

It is proposed to expand the licensed area into the adjoining property (53-57 Main Street, Birregurra) by approximately 582m<sup>2</sup>. The proposed licensed area will cover the east courtyard area between the hotel and proposed wine bar, the proposed wine bar,



the proposed restaurant and the rear grassed courtyard area (approximately 234m<sup>2</sup>) to be used for fine weather dining. The application indicates that it is proposed that both the restaurant and wine bar will close at 11pm. The plan submitted shows that the access for patrons to walk between the two courtyards is not within the proposed licensed area however the applicant has verbally advised that he wishes to license this area therefore permit conditions will require an amended plan.

### **Consideration of the Proposal**

The proposed use of the land for a wine bar and restaurant on C/A 7 is reliant on the land that contains the existing hotel for the provision of car parking and also effluent disposal for the wine bar in the short term. The applicant indicates that the wine bar and restaurant are proposed to complement the existing hotel and provide an alternative service for the community and visitors of Birregurra.

The use of the land for both the restaurant and wine bar will enhance the commercial area of Birregurra and provide a variety of entertainment opportunities.

Some relevant issues have been raised by the neighbour to the west of the subject site with concerns that the proposed use will affect their residential amenity and privacy. These concerns have been resolved and were discussed earlier in this report. Permit conditions have been included in the recommendation to reflect this agreement.

A reduction of 18 car spaces is also being sought as part of this application. The applicant has indicated that the car park at the rear of the hotel enables access into the hotel and the wine bar through both the rear and central courtyards and that the hotel's opening hours will be later than the restaurant and wine bar. It is further indicated that access through the hotel will always remain available whilst the restaurant and wine bar are open.

The applicant provided the following comments in support of their justification for a reduction in car parking requirements:

- There is no parking precinct plan for Birregurra.
- Ample parking is always available within the Main Street (excluding special events such as the annual festival) and that the use does not appear to be in competition for occupancy of spaces from other businesses at any time of the day or evening.
- The mix of businesses currently in the town does not require visitors to park and stay for extended periods of time, unless visiting cafes or the hotel, which ensures regular vacancy rates for spaces.
- The availability of parking in Main Street is increased by the presence of the service lane on the north side of the road.
- Residents and visitors within the town of Birregurra are easily able to walk to the premises and, if consuming liquor, are likely to do so.
- In consideration of the amenity impact of residents living to the rear of the buildings in Main Street and on Jenner street, the applicant advocates that it is more desirable to saturate parking availability in the Main street and adjacent to the park, before directing vehicles into Jenner street.
- From a visual amenity perspective, again it is desirable to limit the number and intensity of car spaces provided to the rear of 53-57 Main Street, which will enable the retention of vegetation and the use of a gravel all weather surface, which is consistent with the character of this area of Jenner Street.

The comments provided by the applicant are relevant and provide a reasonable argument for reducing the number of car spaces. Currently no formal car parking is provided on-site

for the hotel which is able to service 150 patrons and generally no complaints are received in relation to lack of parking in the area. It is considered that the proposed parking will adequately cater for the restaurant and wine bar area as well as providing additional parking facilities for the hotel, therefore providing a shared parking arrangement located away from the Main Street. On-street parking is available in Main Street and is used but would not be used to capacity at all times particularly in the evening.

Land is still available at the southern portion of the 53-57 Main Street to provide further car parking; however the applicant raised relevant amenity concerns regarding the visual aspect from Jenner Street if more car parking was provided. The objector also verbally indicated that she did not wish to see more parking (than what was shown on the proposal) provided off Jenner Street as she considered that it would further affect the residential amenity. This section of land is currently garden with scattered established gum trees. This area also provides for a walkway from the car park to the restaurant.

The State Government Advisory Committee Review of Parking Provisions in the Victoria Planning Provisions (August 2007) discusses a range of matters including a review of land use terms and car parking requirements. The report recommends the following parking rates applicable to the proposal;

- Restaurant – 0.4 car space to each patron permitted
- Tavern – 0.4 car space to each patron permitted.

If the rates proposed by the Advisory Committee Report were applied in this instance, the proposal would generate a car parking requirement for the restaurant of 28.4 car spaces and no waiver of car parking would be required.

Although the State Government has not 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 lesser rates recommended by the Advisory Committee are generally more appropriate.

It is considered appropriate that the car parking and driveway area be sealed to reduce offsite amenity impacts. The objector also raised issues with the increase in traffic using Jenner Street and the amenity on the surrounding residential properties. It is considered appropriate, given the expected increase in traffic along Jenner Street, that the applicant is required to construct and provide a sealed pavement in Jenner Street from the Strachan Street intersection to five metres past the proposed driveway entrance to the car park.

Currently whilst the reticulated sewerage system is being constructed in Birregurra, it is proposed that the wine bar will commence operating and utilise the existing amenities in the hotel and only nine car spaces be provided to service the wine bar. As the existing septic tank system servicing the hotel is located where it is proposed to locate the car park, it is not possible to commence the restaurant use due to site constraints relating to car parking and effluent disposal. When the site is connected to the reticulated sewer system, the car parking area can be constructed and the restaurant use can commence. If approved, permit conditions will stipulate the varying time frames.

Generally, the proposal is considered to be consistent with the Colac Otway Planning Scheme and considered appropriate for this site given its location in the 'commercial' area of Birregurra.

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

Planning policies relevant to this application have been discussed earlier in the report. The Birregurra Structure Plan has been drafted and is currently on hold whilst a Neighbourhood

Character Study for Birregurra is prepared. This proposal is generally consistent with the draft Structure Plan which encourages the expansion of dining, restaurant and café facilities on the southern side of Main Street assisting in consolidating the town centre.

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

There are no financial implications arising from this report.

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

There are no risk management or compliance issues arising from this report.

#### **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. All parties will be advised of the decision and will have the opportunity to seek a review of Council's decision at the Victorian Civil and Administrative Tribunal.

As noted earlier in the report, officers have liaised with the applicant and objector to discuss issues of concern, resulting in withdrawal of the objection.

#### **Conclusion**

This application proposes to use the existing building for a restaurant and wine bar together with associated works and a reduction in the required number of car parks to be provided on the site. It is considered that the proposal is generally consistent with the Colac Otway Planning Scheme and conditional consent would provide an outcome that meets the community needs whilst also respecting the neighbourhood amenity and adequately providing onsite car parking to meet the expected demand created by the new uses. Permit conditions will also control the timing of the activities hereby permitted ensuring that the restaurant use does not commence prior to the connection of the reticulated sewerage. It is recommended that a Planning Permit be issued subject to conditions.

#### **Attachments**

Nil

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

***That Council's Planning Committee resolve to issue a planning permit for the use of the land as a wine bar and restaurant, associated works including signage and iron gates, alteration to the existing general liquor licence area, and a reduction in the number of car spaces to be provided onsite at 49 and 53-57 Main Street, Birregurra subject to the following conditions:***

- 1. Prior to the commencement of the use of the wine bar, amended plans 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 be generally in accordance with the plans submitted with the application, but modified to show:***
  - a) A fully detailed floor plan with dimensions and drawn to scale clearly indicating a maximum of 50 patrons in the restaurant and rear courtyard area and a maximum of 21 patrons in the wine bar and front courtyard area.***
  - b) A detailed plan showing design, size, dimensions and siting of signage directing traffic to the rear car park.***

- c) *An elevation plan showing the proposed signage to be hung from the verandah. The plan must show the siting, design, size and dimensions of the sign including the clearance under the sign.*
  - d) *A plan clearly delineating the proposed licensed area to be marked in red with dimensions including an extension (of approximately 11 metres to the south) to the wine bar courtyard to allow for patron access through to the rear courtyard.*
- 2. *Prior to the commencement of the use of the restaurant or the development of the kitchen area for the restaurant, the applicant must liaise with Council's Health Department to ensure that the design and layout of kitchen area is appropriate and satisfies Building and Health Regulations to the satisfaction of the Responsible Authority.*
- 3. *Prior to the commencement of the use of the land for a restaurant, the fence on the western boundary must be altered to the satisfaction of the Responsible Authority. All costs associated with the fence will be at the applicant's expense. The fence must be of solid iron to a height of 2.5 metres and a length of 25 metres along the western boundary of 53-57 Main Street, Birregurra. The 2.5m high fence will start at the verandah wall of the existing building and continue south for a length of 25 metres along the western boundary.*
- 4. *Within four months of the date of this permit, the applicant must plant black bamboo plants (or an appropriate alternative planting approved by the responsible authority) along the western boundary of 53-57 Main Street commencing at the verandah wall of the existing building for a length of 25 metres to the south. The vegetation is to be planted at a maximum width of 1 metre apart and at a density that will provide an effective visual screen to the neighbouring western property. The plants are to be planted and maintained to the satisfaction of the Responsible Authority.*
- 5. *Within two months of the date of this permit or prior to the commencement of the wine bar use, whichever is the earliest, the land described as Crown Allotment 7 and 8 Section I, Parish of Birregurra, must be consolidated under the provisions of the Subdivision Act, 1988. A copy of the Certificate of Title must be submitted to the Responsible Authority.*
- 6. *The restaurant use must not commence prior to reticulated sewerage being available and connected to the site and before the car park is fully constructed to the satisfaction of the Responsible Authority.*
- 7. *The layout of the site and the size of the proposed works as shown on the endorsed plans must not be altered or modified without the written consent of the Responsible Authority.*
- 8. *The use as shown on the endorsed plans must not be altered with the written consent of the Responsible Authority.*
- 9. *If it is shown that the extra waste waters from the wine bar cannot be catered by the existing septic system to the satisfaction of the Responsible Authority, the wine bar must modify its hours of operation until such time as the site is connected to the reticulated sewer.*

10. *The grassed courtyard area to the south of the proposed restaurant is to be a designated non-smoking area.*
11. *The use must be managed so that the amenity of the area is not detrimentally affected through the emission of noise and amplification of music to the satisfaction of the Responsible Authority.*
12. *Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of Music Noise from Public Premises), No. N-2 .*
13. *External lighting must be designated, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.*
14. *The provision and/or consumption of liquor hereby permitted must be subject to the issue of a Liquor Licence, pursuant to the provisions of the Liquor Control Reform Act 1988, as amended.*
15. *This permit provides that the additional area to be covered by the liquor licence is to be limited to the following hours for the serving of alcohol:*

|                                       |                                                      |
|---------------------------------------|------------------------------------------------------|
| <i>Good Friday</i>                    | <i>between 12 noon and 11pm</i>                      |
| <i>Anzac Day (not being a Sunday)</i> | <i>between 12 noon and 1am the following morning</i> |
| <i>On any other day</i>               | <i>between 11am and 11pm</i>                         |

*and must not be altered without the written consent of the Responsible Authority.*
16. *All loading and unloading of goods associated with the wine bar and restaurant must be carried out onsite at the rear of the existing buildings to the satisfaction of the Responsible Authority.*
17. *The nine car spaces to be provided in conjunction with the wine bar operation and the associated driveway access must not interfere with the existing septic system to the satisfaction of the Responsible Authority.*
18. *The nine car spaces to be provided in conjunction with the wine bar operation must be constructed and drained to the satisfaction of the Responsible Authority.*
19. *Prior to the construction of the sealed car park, 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. The stormwater management plan must include detailed drainage calculations for the permanent car park construction arrangements.*
20. *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.*
21. *Vehicles under the control of the operator of the use or the operator's staff must not be parked on Main Street or Jenner Street.*

22. *Prior to the commencement of the restaurant use, the pedestrian walkway as shown on the endorsed plans must be constructed in an all weather surface to the satisfaction of the Responsible Authority.*
23. *Prior to the commencement of the use of the restaurant, no fewer than 33 car parking spaces must be provided on the land for the development including one space clearly marked for the disabled.*
24. *The advertising sign shall not be illuminated unless with the written consent of the responsible authority.*

**Conditions for temporary car park (Stage 1 – Wine bar Car park)**

25. *Prior to the commencement of use of the wine bar, the car park area must be constructed to a minimum of gravel pavement and surface to the satisfaction of the Responsible Authority.*
26. *Prior to commencement of the use, the temporary car park area set aside for parked vehicles and access lanes as shown on the endorsed 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 an all-weather sealcoat or surfaced with crushed rock or gravel 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 (only where temporary sealcoat is used).*
  - f) *Clearly marked to show the direction of traffic along access lanes and driveways (only where temporary sealcoat is used).*

*Parking areas and access lanes must be kept available for these purposes at all times.*

27. *The surface of the car park area must be treated to the satisfaction of the Responsible Authority to minimise dust causing loss of amenity to the neighbourhood.*

**Conditions for permanent car park (Stage 2 – Wine bar and restaurant car park)**

28. *Prior to the commencement of the use of the restaurant, the car park and vehicular access to the car park 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.*
29. *Concrete kerbs or other barriers must be provided to the satisfaction of the Responsible Authority to prevent direct vehicle access to an adjoining road other than by a vehicle crossing.*
30. *Prior to commencement of the construction of the sealed car park, 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) *Detailed layout plan*
  - b) *Cross section plan*
  - c) *Lighting detail*
  - d) *Drainage layout including long sections*
  - e) *Line marking and signage detail*
31. *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*
32. *Prior to the commencement of the use of the restaurant, Jenner street (between the edge of the pavement of Strachan Street and 5 metres west of the proposed driveway to the subject site) must be constructed and sealed in accordance with an "Access Street" as detailed within the Infrastructure Design Manual, Section 12, Table 2 to the satisfaction of the Responsible Authority. All works associated with the use will be at the applicant's expense.*
33. *Prior to commencement of the construction of Jenner Street, 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) *Detailed layout plan*
  - b) *Cross section plan*
  - c) *Lighting detail*
  - d) *Drainage layout including long sections*
  - e) *Line marking and signage detail*

#### ***Expiry***

34. *This permit will expire if one of the following circumstances applies:*
- a) *The use of the wine bar is not commenced within two years of the date of this permit*
  - b) *The use of the restaurant is not commenced within four years of the date of this permit*
  - c) *The development (works associated with the restaurant use) 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.*

- 35. The permit as it relates to the advertising sign will expire fifteen years from the date of the permit.**

**Notes -**

- 1. The Health Department does not recognise any agreement between the shop proprietors and the hotel proprietors for them to use the hotel toilet facilities. Such agreement is purely between the proprietors and if the joint use of such toilets were to impact adversely upon the hotel facilities then other toilet facilities would have to be provided. Likewise if the shop was sold, sublet further, or somehow otherwise developed, then the health department would not recognise any pre-existing agreement between the proprietors or right of use of the hotel toilets by the shop proprietors / patrons.**
- 2. A building permit may be required for a change of use to wine bar and restaurant.**
- 3. The number of toilets provided for staff and patrons may not be sufficient for the purpose and should be clarified with the relevant Building Surveyor.**

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PC110903-3**AMENDMENT TO EXISTING PLANNING PERMIT SEEKING
RETROSPECTIVE APPROVAL FOR SIX PELLET SILOS AT
152 POUND ROAD, ELLIMINYT (PP269/2004-2)**

| | | | |
|-------------|---------------------------------------|-----------|--------------|
| AUTHOR: | Carl Menze | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning
& Development | FILE REF: | PP269/2004-2 |

Location: 152 Pound Road, Elliminyt**Zoning:** Residential 1 Zone**Overlay controls:** Nil**Proposed Amendments:** Nil**Abuts:** Business 3 Zone (B3Z), opposite Public Conservation Zone 5 (PUZ5)**Restrictive Covenants:** No**Purpose:**

The application is before Council for consideration as the proposed structures exceed 8m in height. It is recommended that the application be approved subject to a condition requiring amended plans to be submitted re-locating the proposed silos to address amenity concerns.

Declaration of Interests

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

Summary

- Three pellet silos were established under planning permits issued in 2003 and 2004 on the western boundary of a site that is currently used as a farm supplies business. Six additional silos have since been established on that boundary without a planning permit, resulting in nine silos.
- The application seeks to amend the existing planning permit to obtain retrospective approval for the six silos.
- All six of the proposed silos are currently located along the western boundary, however the application plans show three of the silos to remain in that location, and three of them relocated further within the site.
- The application was advertised and received two objections, although one of these has been withdrawn. The remaining objector is the owner of the residential units that abut the site.
- The proposed new silos directly abut residential properties and would have an unreasonable visual impact on the amenity of those properties. There is significant area within the site for relocation of the silos to reduce the visual intrusion, and it is therefore appropriate that they be relocated more centrally within the site.

- The application was deferred from the February Planning Committee meeting to facilitate an on-site meeting with Councillors and the other parties, which proved useful for those who attended to better appreciate the potential amenity impact of the silos.
- It is recommended that a notice of decision to grant an amended planning permit be issued subject to conditions requiring the re-siting of all six of the silos away from the site boundary, and for establishment of a landscape buffer along the boundary.

Background

The land has been used as a farm supplies business for a number of years, and has been the subject of a number of planning permits as follows:

- Planning Permit PP269/2004 was issued on 7 September 2004 for a 'Pellet Silo'. The approved silo was sited adjacent to two silos approved in April 2003 by planning permit PP52/2003.
- Planning permit PPA072/99 was issued on 16 March 1999 for a storage shed.

Three silos were established along the western boundary at the rear of the buildings in accordance with the 2003 and 2004 permits.

The land owner has subsequently constructed six new silos on the site over the past few years without a planning permit, resulting in nine silos currently situated along the western boundary of the property.

The current planning permit application seeking to authorise the six additional silos not approved by the original permit was lodged following a planning enforcement investigation that responded to a complaint from one of the residents of properties abutting the site who was concerned about the amenity impact.

Council is only able to consider the six additional silos that are the subject of this application. It is important to note that whilst all six silos are currently adjacent to the boundary, the application plans show three of these at the southern end being relocated to a position more central within the site.

Issues / Options

Council has the options of:

- a) Supporting the application through the issue of a Notice of Decision to Grant an Amended Planning Permit subject to conditions.
- b) Supporting the application with changes.
- c) Refusing to grant an amendment to the permit.

The key issue is the proximity of the silos to adjoining residential properties to the west. This is discussed further in the report below.

Should Council not support the proposal, the land owner will be required to remove the six silos from the site, or would have the option of lodging a fresh application seeking approval for them in an alternative location on the site.

Proposal

The proposal seeks retrospective planning approval for the erection of six silos comprising:

- Three 8.1m high x 3.7m diameter silos located adjacent to the three approved silos setback 3.6m from the site's western property boundary; and

- Three 8.5m high x 4.45m diameter silos setback 22m from the rear of the existing shed and 20m from the western property boundary.

The silos are located to the rear of a building fronting Pound Road in the north-western corner of the site. It is noted that the three larger silos proposed to be within the site are currently located on the western boundary and would be moved under the proposal.

It is further noted that the submitted plans incorrectly show the three larger diameter silos as having a maximum height of 6.0m. This error can be corrected through conditions on a permit if issued.

Site & Surrounds

The site is located on the south side of Pound Road, Elliminyt, close to the intersection with Gravesend Street (Main Road). The site is rectangular in shape with a width of 87.1m and a length of 147.59m, and with a total area of 1.3 hectares. The site is currently used for the purposes of 'Farm Supplies' (Trade Supplies) and incorporates a large storage building and office at the front of the site. The rear of the site is used for the open storage of materials and as a delivery area. The three approved silos are located to the rear of the storage building adjacent to the western property boundary.

The adjacent property to the east (140 Pound Road) is used as the Colac Otway Shire Depot (COSWORKS). A row of storage buildings abut the shared property boundary.

The adjoining property to the south (2/104 Main Street, Elliminyt) is used for the purposes of Trade Supplies and contains several large storage buildings.

The majority of properties adjoining the site's western boundary are used for residential purposes. The rear yards of 92 and 6/94 Main Street immediately abut the existing and proposed silos, and the structures are highly visible from within the broader unit development at 94 Main Street.

Public Notice

Public notice of the amendment application was given in accordance with Section 52 of the *Planning and Environment Act* by sending letters to adjoining owners/occupiers. The applicant has provided a statutory declaration stating that the advertising has been carried out in accordance with Council's requirements.

Two (2) objections were received raising the following concerns:

- The proposal would cause an unreasonable loss of amenity currently enjoyed by the occupants of the rear units of 94 Main Street, Elliminyt.
- The development would block an unreasonable amount of sunlight entering the habitable rooms of some units.
- The development would substantially reduce the available sunlight currently enjoyed in the court yards of some of the units.
- The level of traffic noise (trucks) and dust is barely tolerable.
- The proposal would result in the increase of both dust and truck traffic.

One of these objections has been withdrawn. The issues raised in the remaining objection are discussed later in this report.

Referrals

The application was referred to Council's Building and Infrastructure Departments, neither of which raised any concerns with the proposal.

Planning Controls

a. State and Local Planning Policy Framework

The State and Local Planning Policy Frameworks seek to ensure the objectives of planning in Victoria are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social, and economic factors in the interests of net community benefit and sustainable development. The following policies are relevant to the consideration of this application.

- Clause 11.05 – Regional Development
- Clause 15.01-2 – Urban Design Principles
- Clause 17.01 – Business
- Clause 21.03-2 – Colac

The proposal is consistent with the aims and objectives of the relevant State and Local Planning Policies in that the new silos support an existing agricultural based industry in Colac that services a significant agricultural sector in the surrounding region. The following strategies are relevant from the clause relating to Colac:

- *“Promote Colac as a location for industry.*
- *Facilitate the diversification and expansion of employment opportunities by encouraging the clustering of related industries and services and the development of niche market.; and*
- *Encourage the establishment of industries and businesses that seek to add value to existing primary producers of the region.”*

The clause also contains however, the following strategy:

- *“Assist industries within the main urban area of Colac to develop while minimising off-site effects.”*

This strategy highlights the need to ensure that whilst supporting industries to develop within Colac, it is important that amenity impacts where relevant are minimised for residential and other sensitive uses. The subject land, along with adjoining land, is within a Residential 1 Zone and in the longer term would best be located in an industrial zone, and it is critically important to ensure that any new development or change in use appropriately respects the amenity of nearby housing. The proposed silos in their current form on the western boundary would cause significant detriment to the adjoining residential properties through visual impact, and would not be consistent with the above strategy. This impact could be avoided however by placing a condition on any permit issued requiring that these silos be relocated to a more appropriate position more centrally within the site.

b. Zone provisions

The site is included in the Residential 1 Zone (R1Z). The objectives of the Residential 1 Zone are outlined below:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

- *To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households.*
- *To encourage residential development that respects the neighbourhood character.*
- *In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.*

The proposed use is defined as 'Trade Supplies' which is prohibited under the Residential 1 Zone. The use however has been conducted from the site for a number of years and enjoys 'Existing Use' rights under Clause 63 of the Planning Scheme that allow it to continue operating despite the current controls that apply.

Pursuant to Clause 63.05 of the Planning Scheme a use in Section 2 or 3 of a zone for which an existing use right is established may continue provided:

- *No building or works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other building or works requirement in this scheme.*
- *Any condition or restriction to which the use was subject continues to be met. This includes any implied restriction on the extent of the land subject to the existing use right or the extent of activities within the use.*
- *The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right.*

The current application for buildings and works associated with the existing use can therefore be considered, provided that the amenity of the area is not adversely affected by the proposal (refer to the last dot point above).

c. Overlay Provisions

No overlays affect the subject site.

Consideration of the Proposal

The land is used as a 'Farm Supplies' outlet which specialises in the retail and wholesale sale of agricultural related products such as grain, fertilisers and hardware. The use holds 'Existing Use' rights as it commenced when the land was zoned industrial under the old format planning scheme.

It is a long held VCAT principle that an application for a retrospective permit must be assessed on its individual merits and that any existing elements should neither be a positive or negative influence in the decision making policy. Therefore this assessment and recommendation has not taken into account the fact that the six silos have already been erected on-site.

The relocation of the six silos proposed by this application from the western boundary to the centre of the site is considered appropriate as their current location represents the greatest amenity impact upon adjoining residential properties to the west, especially the units at 94 Main Street.

The silos directly abut the rear yard of 92 Main Street which is occupied by a single storey dwelling setback approximately 40m from its rear property boundary, and whilst they are largely screened at the ground level by existing vegetation, are highly visible when viewed

from the first floor of the dwelling. The silos are particularly dominant from Main Street and within the unit development at 94 Main Street, looming high above the low level of these units when viewed from anywhere within the development including the common property driveway area. They are particularly prominent and visually intrusive when viewed from the secluded private open space of the rear units on that property, presenting as dominant structures. Whilst the southern most three silos which are directly opposite the units at 94 Main Street (which the application proposes to move into the centre of the property) have the greatest impact, the other three silos would still be highly visible from the units.

Whilst one option would be to support the application as proposed and only require the three most dominant silos to be relocated (leaving the three silos with a lesser visual impact adjacent to the boundary), there is considerable scope within the site for these tall and bulky structures to be sited elsewhere where they would have a reduced impact. It is considered appropriate that all of the six silos be relocated to ensure they are not highly visible from residential properties.

Councillors at the previous meeting raised the possibility of landscaping being planted within the setback between the six existing silos and the fence at the western boundary should the silos all remain in their current location. There is real concern however that the setback area would be insufficient to enable the establishment of vegetation that would be capable of adequately screening the structures from 94 Main Street, and that even if vegetation did grow to such a height, the vegetation itself would add to the loss of sunlight being experienced in the rear yard of the adjoining units.

Both the subject land and adjoining properties to the west are zoned 'Residential 1 Zone'. The following Clause 65 Decision Guidelines are relevant in the consideration of this application;

- *The purpose of the zone, overlay or other provision.*
- *The orderly planning of the area.*
- *The effect on the amenity of the area.*

It is considered that the three proposed silos along the west property boundary respond poorly to the aforementioned decision guidelines. The location of the silos does not respect the purpose of the R1Z which is to provide for residential development. The amenity of adjoining residential properties will be detrimentally affected due to the size, proximity and overall visual dominance of the structures. Considering the overall size of the subject land, the location of the silos does not represent orderly planning of the area, as more appropriate locations exist on the site which would reduce the amenity impacts on the adjoining residential properties. Given the conditions relating to existing uses under Clause 63 as described above, the proposal in its current form could not be supported based on amenity impacts.

It is important to recognise that whilst the business has rights under the Planning Scheme to continue to operate despite its residential zoning, there needs to be significant emphasis on protection of residential amenity given the objectives of the zone which affects both the subject land and adjoining property. Different emphasis on residential amenity would be considered in this situation if the subject land and/or residential properties were in a business zoning, but this is not case for this application.

Whilst none of the occupiers of the units abutting the silos have objected to the application, the owner has objected and represents the interests of that property. It is important to acknowledge that regardless of the number and source of objections to the application, or whether an objection is from a land owner who does not reside in the location, Council has a responsibility to consider the amenity of all nearby properties when determining the

application, and to consider not only the amenity for current occupiers of the property, but those of future occupiers as well.

It is noted that the three previously approved silos about 90 Main Street which is used for commercial purposes and that residential amenity issues were not significant for that proposal.

Objectors Concerns

Some of the objectors' concerns have been addressed above, however the following is a more detailed assessment of the specific amenity issues relating to loss of sunlight to habitable rooms and rear court yards of some of the adjoining units. The applicant has provided shadow diagrams for the three additional silos located on the western property boundary. It is appropriate to assess the shadows against the relevant Recode Standard being Standard A14 which states:

'Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September.'

If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.'

The shadows cast by the three silos proposed along the western boundary comply with the above standard. Additional shadows will be cast in the morning, however the adjoining private open space will still receive in excess of 5 hours of sunlight between the hours of 9am to 3pm. If the Committee were to consider allowing all of the six proposed silos to be located along the boundary, this would create additional overshadowing, and possibly create a higher level of overshadowing than this standard.

In respect of the objector's concern relating to dust and noise from trucks, the use enjoys existing use rights as a 'Farm Supplies' premises and it is noted that the site was previously used as a transport depot which would have had more truck movements per day than associated with the present use. There is therefore little that can be done to address these existing issues, however movement of the proposed silos as referred to above would limit the noise and dust impacts from their use in addition to reducing the visual impacts. It is proposed that landscaping be established on the boundary within the subject land to further visually screen the structures – this planting would have the added benefit of limiting dust impacts from the site.

Corporate Plan / Other Strategies / Policy

Planning policies relevant to this application have been discussed earlier in the report. It is noted that the Colac Structure Plan 2007 does not identify or set a strategic direction for the subject site and adjoining land, aside from recognising that industrial uses should be encouraged to relocate to the industrial zones in the longer term.

Financial & Other Resource Implications

There are no financial implications arising from this report.

Risk Management & Compliance Issues

There are no risk management or compliance issues arising from this report.

Environmental Consideration / Climate Change

There are no environmental or climate change implications arising from this proposal, aside from the amenity issues already discussed.

Communication Strategy / Consultation Period

Public notice of the application was required. All parties will be advised of the decision and will have the opportunity to seek a review of Council's decision at the Victorian Civil and Administrative Tribunal.

A site meeting was held on 22 February with Councillors, officers and the applicant to discuss the amenity issues. The objector was unable to attend.

Conclusion

The six silos along the western boundary have an inappropriate amenity impact on nearby dwellings, however there is substantial scope for them to be relocated more centrally within the site where they would have negligible impact given the size of the property. The application plans show three of them on the western boundary and three of them in the centre of the property. It is recommended that all the silos be relocated to the more central position to reduce their visual dominance to an acceptable level. The issue of a Notice of Decision to Grant an Amended Planning Permit is recommended, subject to a condition requiring the silos to be relocated.

Attachments

Nil

Recommendation(s)

That Council's Planning Committee resolves to issue a Notice of Decision to Grant an Amended Planning Permit for the Use and Development of a Pellet Silo at 152 Pound Road, Elliminyt subject to the following conditions:

1. Within three (3) months of the issue of the permit, 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:
 - a) All six silos relocated to a more central position within the site, with a minimum setback of 10m from the west property boundary and in a position where they would result in minimal visual intrusion to adjoining residential properties.
 - b) The accurate height of each of the silos.
 - c) Details of a 3m wide landscape strip along the western property boundary to visually screen the structures from view of the adjoining residential properties. The species shall be a mix of trees and shrubs that achieve an effective visual screen, but of a height that would not cause unreasonable overshadowing of the adjoining properties. The plans must show the species type and height at time of planting and maturity.

2. The layout of the site and the size of the proposed buildings and works as shown on the endorsed plans shall not be altered or modified without the prior written consent of the Responsible Authority.
3. The silos must be relocated, and landscaping shown on the approved plans must be established within three (3) months of the date of this amended permit.
4. Landscaping established along the western property boundary must be maintained, and any dead plants replaced, to the satisfaction of the responsible authority.
5. The 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
 - appearance of any building, works or materials
 - emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil presence of vermin
6. All run off from storm water, including overflow from water storage, shall be taken to a legal point of discharge to the satisfaction of the Responsible Authority.
7. The three northernmost silos must not be located closer than 3.6 metres to the western property boundary.
8. This permit will expire if one of the following circumstances applies:
 - a) The development is not started within two (2) years of the date of this permit.
 - b) The development is not completed within four years of the date of this permit.

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

| Date of amendment | Brief description of amendment |
|-------------------|---|
| 9 February 2011 | <ul style="list-style-type: none"> • Approval of additional six (6) silos. • Condition 1 amended to require amended plans to be submitted. • Conditions 3 and 4 added, and the balance of conditions renumbered. • Condition 7 added to clarify that it relates to the three silos at the northern end closest to the building. |

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**PC110903-4**

**CONSTRUCTION OF A SHED (STORAGE), RELOCATION OF EXISTING TOILETS AND WAIVER OF NINE (9) CAR SPACES. AT 21-23 NELSON STREET, APOLLO BAY (PP298/2010)**

|             |                                    |           |            |
|-------------|------------------------------------|-----------|------------|
| AUTHOR:     | Ros Snaauw                         | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning & Development | FILE REF: | PP298/2010 |

**Location:** 21-23 Nelson Street, Apollo Bay

**Zoning:** Residential 1 Zone

**Overlay controls:** Design Development Overlay Schedule 6  
Heritage Overlay (24)

**Proposed Amendments:** Nil

**Purpose:**

This application is before Council for consideration as the proposed development seeks a waiver of car parking. It is recommended that a Planning Permit is issued subject to conditions.

**Declaration of Interests**

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

**Summary**

- The site is currently used as a church and it is proposed to construct a small shed for storage containing toilets that replace an existing toilet block on the site.
- The site does not provide car spaces for its current use and off-site parking is utilised. A waiver of nine spaces for the proposed building would be required.
- The application was advertised and received no objections.
- The use of the shed for storage is unlikely to generate additional demand for car parking, and it is considered that the waiver of car parks is justified given that the purpose of the shed will be for the storage of play equipment used by the child care group and other church paraphernalia currently stored in the hall.
- It is therefore recommended that a planning permit be issued subject to conditions.

**Background**

There have been no previous applications for this site.

**Issues / Options**

Council has the options of:

- a) Supporting the application through the issue of a planning permit subject to conditions.
- b) Supporting the application with changes.
- c) Refusing to grant a permit.

The key issue is whether the waiver of car parking is justified. It is recommended that Option (a) be supported.

### **Proposal**

The current use of the land is for a church. The proposal seeks approval for the construction of a shed with dimensions of 9.292m x 3.21m and with a height no greater than 3m. The total floor area of the shed is 30sqm. The walls are to be autoclaved cement weatherboards painted "white" to match the existing church. The roof will be constructed of colorbond corrugated steel in the colour "woodland grey" with a corrugated steel roof. The shed will provide extra storage of play equipment and other church paraphernalia. Internally the shed will also contain two toilets. The development will be to the southeast of the existing church with the shed being along the south east and south boundary. An existing toilet block and shed will be removed for the proposal.

The application seeks to waive nine car spaces required by the Planning Scheme for the additional floor area proposed.

### **Site & Surrounds**

The site is located on the south side of the Great Ocean Road, Apollo Bay. The site contains a church and a hall on a lot that also encompasses a corner allotment which contains a shop which is heritage listed. Land to the west contains a residential dwelling with land to the east containing a shop. Land to the south contains the Apollo Bay Mechanics Institute Hall. The land to the north is part of the Apollo Bay foreshore containing a car park and public toilet block.

### **Public Notice**

Public notice of the application was undertaken in accordance with Section 52 of the *Planning and Environment Act* by sending letters to adjoining land owners and occupiers and by placing a sign on site. The applicant has provided a Statutory Declaration stating that the advertising has been carried out in accordance with Council's requirements. No objections were received.

### **Referrals**

The application was referred internally to the Building and Infrastructure Departments. No objections were received subject to conditions being placed in a planning permit if granted.

### **Planning Controls**

#### **a. State and Local Planning Policy Framework**

The State and Local planning policy frameworks seek 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 12.02-2 Appropriate development of coastal areas
- Clause 12.02-6 The Great Ocean Road region
- Clause 15.03 Heritage
- Clause 21.02-2 Land Use Vision
- Clause 21.03-3 Apollo Bay and Marengo
- Clause 21.04-9 Cultural Heritage
- Clause 22.01 Heritage Places and Areas
- Clause 22.01-16 References

The proposal is considered to be in keeping with the objectives of the above policies. The proposal does not alter the primary use of the site as a Church and Hall and does not adversely affect the heritage significance of the site.

b. Zone provisions

The site is zoned Residential 1 Zone (R1Z). The purpose of the Residential 1 Zone is outlined below:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households.
- To encourage residential development that respects the neighbourhood character.
- In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.

A permit is required for buildings and works associated with a Section 2 use pursuant to Clause 32.05-8. The existing use of the land for a church and hall falls within the 'Place of Assembly' definition of the planning scheme which requires a permit.

c. Overlay Provisions

The site is affected by the Design Development Overlay Schedule 6 (DDO6) and the Heritage Overlay – HO24. The objectives of the (DDO6) are outlined below:

- To protect the existing low scale coastal character and identity of Apollo Bay.
- To achieve a graduated density of residential development between the town centre and the lower density residential areas.
- To ensure that development density is consistent with the coastal town character.
- To ensure that permeable space is available between dwellings to sustain vegetation.
- To ensure that new development maintains space between buildings so that views to the surrounding landscape are retained.

A permit is required to construct a building under this overlay. The shed will be of a simple building design and will blend with the existing structure on site thereby meeting the objectives of the control. The land is within Precinct 5 of the Apollo Bay and Marengo Neighbourhood Character Study 2003 which directs that new development sits within the landscape setting of the town and retains views to the surrounding landscape form within and around the town. The site is void of vegetation however the proposed works will be set back to the rear of the site. To the south is the Apollo Bay Mechanics Hall and the proposal will not impact on any sharing of views.

The site is also affected by the Heritage Overlay (24), the purpose of which is to:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To conserve and enhance heritage places of natural or cultural significance.

- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

An application is required to demolish or remove a building and to construct and carry out works. The significance of this site relates to the Frederick Augustus Lee Memorial Stone which is situated along the north elevation of the Church. The removal of the toilet block and small shed and the proposed development will not adversely affect the significance of the heritage place. The development will use materials that will reflect the current character of the existing Church and Hall.

d. Particular Provisions – Clause 52.06 – Car Parking

Pursuant to Clause 52.06 of the Colac Otway Planning Scheme, a 'Place of Assembly' attracts a car parking rate of 0.3 car spaces to each seat or to each sqm of net floor area, whichever is greater. The proposed shed will be 30sqm which equates to 9 car spaces to be made available on site. The applicant has requested a waiver of this requirement. Discretion is available in accordance with Clause 52.06 to waive car parking requirements.

The State Government Advisory Committee Report (Review of Parking Provisions in the Victoria Planning Provisions, August 2007) discusses a range of matters including a review of land use terms and car parking requirements. The report recommends a rate of 0.3 spaces to each patron catered for, without reference to the floor area. If this rate was applied, the proposal would not generate a need to waive car parking as the proposed development does not increase patron numbers.

Although the State Government has not incorporated the recommendations of the Advisory Committee Report into planning schemes it is widely accepted through VCAT determinations that the car parking requirements are unrealistic and that the lesser rates recommended by the Advisory Committee are generally more appropriate.

Whilst the subject site does not offer any on site car parking, there is substantial on-street parking available within the area for the majority of the day, most notably to the north in the foreshore parking area. In addition, the current toilet block being demolished would create a parking credit that if considered in this application, would reduce the number of spaces effectively being waived.

### **Consideration of the Proposal**

The proposed shed containing new toilets is of a form and style consistent with existing infrastructure on site. The shed will be behind the existing Hall and will not be a prominent feature on the site. The shed will be clad in autoclaved cement weatherboards painted in white to match the Church and Hall.

The land has been used as a Place of Assembly for a considerable time and retrospective consideration cannot be applied to this use in determining whether the current supply of car parking is adequate. As the proposed use of the shed will not generate demand for car parking it is considered that a waiver of nine (9) car parks is justified and can be supported.

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

The Apollo Structure Plan 2007 contains some reference with respect to parking within the Apollo Bay Township. The Plan recognises that parking availability varies throughout the year with high capacity and limited availability during the summer months.

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

There are no financial or other resource implications arising from this report.

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

There are no risk management or compliance implications arising from this report.

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

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

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

Community consultation in the form of public notification has been undertaken as part of this assessment process.

### **Conclusion**

Planning approval is required for the buildings and works and the waiver of car spaces. Overall the proposal is considered to be a positive outcome and will not result in any detriment to the amenity of the surrounding area or any persons. The waiver of car parking is acceptable given the level of activity or patronage on the site will not be increased.

### **Attachments**

Nil

### **Recommendation(s)**

***That Council's Planning Committee resolves to issue a Planning Permit for buildings and works associated with construction of a storage shed for the church and hall, demolition of the existing toilet block, and a waiver of car parking at 21-23 Nelson Street, Apollo Bay subject to 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. 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.***
- 3. This permit will expire if one of the following circumstances applies:***
  - a) The development is not started within two (2) years of the date of this permit.***
  - b) The development is not completed within four (4) 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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**USE AND DEVELOPMENT OF THE LAND FOR
EXTRACTIVE INDUSTRY (EXTRACTION OF BASALT) AT
320 MOOLERIC ROAD, BIRREGURRA (PP80/2010-1)**

AUTHOR:	Anne Sorensen	ENDORSED:	Jack Green
DEPARTMENT:	Sustainable Planning & Development	FILE REF:	PP80/2010-1

Location: 320 Mooleric Road, Birregurra (Lots 1 and 2, PS372519Q, Parish of Birregurra)

Zoning: Farming Zone

Overlay controls: Nil

Proposed Amendments: Nil

Purpose:

An application has been submitted for the use and development of the land for extractive industry (extraction of basalt). The application is before Council as thirty objections have been received. It is recommended that a Notice of Decision to Grant a Planning Permit be issued.

Declaration of Interests

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

Summary

- An application has been submitted for extractive industry (basalt rock) in the farming area to the west of Winchelsea.
- A draft Work Plan has been endorsed by the Department of Primary Industry, enabling the applicant to submit a planning permit application for consideration. If a planning permit is issued, the applicant must apply to the relevant Minister for a Work Authority. Extraction on the land cannot commence without a Work Authority being granted.
- Public notice of the proposal was given and thirty objections were received that raised issues relating to traffic and safety impacts, surface and underground water impacts, noise and vibration from blasting and flora and fauna impacts. A mediation meeting was held in June 2010 to discuss matters raised in objections. Draft conditions were circulated to objectors and the applicant, providing an opportunity for comment. Where considered appropriate, some modifications have been made to the draft conditions.
- This proposal raises competing objectives as the State planning policy supports the protection of agricultural land and stone resources for extraction. On considering these objectives, it is considered that the current proposal strikes a satisfactory balance of the various policies. The site location offers a minimum 2km buffer to the nearest dwelling and conditions contained on a planning permit and Work Authority would provide strict guidelines for the operation of the activity.

- Many of the concerns raised in the objections can be addressed by conditions and therefore, it is recommended that a Notice of Decision to Grant a Planning Permit be issued.

Background

A number of pre-application meetings were held prior to the submission of the planning application with the applicant, applicant's technical advisors and Council officers. Officers provided advice in relation to the level of information required to satisfy the provisions of the planning scheme and a site inspection was undertaken early in the process that involved a range of stakeholders, including representatives from Department of Primary Industries (DPI) and Department of Sustainability and Environment (DSE).

In accordance with the planning scheme, the applicant must obtain endorsement of a draft Work Plan before a planning application can be submitted to Council. The draft Work Plan is developed in consultation with DPI and DSE and involves consultation with landowners and other key stakeholders.

Issues / Options

Council has the options of:

- a) Supporting the application through the issue of a notice of decision to grant a planning permit subject to conditions; or
- b) Refuse to grant a planning permit.

The key issues relate to planning policy support, traffic and safety, surface and groundwater, amenity and blasting as a result of the proposal.

It is recommended that Option (a) be supported for the reasons outlined later in the report.

Proposal

The application is for extractive industry to quarry basalt stone from the north-west portion of the land described as Lot 1 and 2, PS372519, which combined has a total area of 63 hectares. The proposal includes the extraction of basalt stone over five stages, with Stage 1 commencing in the north-west portion of the land, abutting Mooleric Road. The subsequent four stages of the development extend the extraction area to the east and south with Stages 2, 3 and 4, and then west, back to Mooleric Road with Stage 5. A vegetation buffer of 20 metres is generally proposed around the boundary of the Work Plan area. The existing dwelling on this site is proposed to be used as an office in association with the operation of the quarry.

Works for Stage 1 are proposed to commence in the south-east corner of the area designated as Stage 1 on the staging plan and progress in a westerly direction, terminating 28 metres from Mooleric Road, then continuing in a northerly direction. Topsoil and overburden shall be stripped and stockpiled on the land nearby.

It is proposed that portable plant will be brought to the site and will typically comprise of a primary jaw crusher linked to two or more secondary (gyratory) crushers and screens. The crushing/screening plant will initially be set up outside the excavation area in Stage 1, as designated on the Work Plan, but will be relocated to the floor of the quarry when space and drainage permit.

The applicant estimates that the extractable resource may exceed 5,000,000 cubic metres in total with the area of Stage 1 producing a volume of 1,500,000 cubic metres extractable above RL115. It has been indicated that the target output is 50,000 tonnes during the first full year; rising 20% per year to 80,000 by year five.

The applicant has advised that the product will be transported by trucks of various sizes, ranging from B-doubles to small tippers and has calculated traffic generation by using an average loading of 23.8 tonnes per truck.

The traffic report accompanying the application states that: *“....it is planned that quarry operations will involve the entry and exit of ten truck and trailer units per day from the first day of the operation of the quarry and that it is subject to growth. Hence, it could be expected that the road will be subject to say 15 trucks per day each way.”*

The applicant advises that the product will be trucked from the quarry south to Princes Highway then directed either to Geelong or Colac and district. It is anticipated that more of the product will go to the east than the west but the product split is still unknown at this stage.

The proposed hours of operation are Monday to Friday, 7.00am to 6.00pm and on Saturday, 7.00am to 1.00pm. It is proposed that the quarry will not operate on Sunday or public holidays.

In the report provided by Orica Mining Services, it is stated that a target of approximately 120,000 tonnes of blasted rock per year would require four blasting events per year, as one Orica Mobile Manufacturing Unit delivery is capable of providing enough bulk explosives to blast in excess of 30,000 tonnes of rock per visit. The report advises that additional small blasts may be required.

The applicant has advised that Mooleric Road would be closed to traffic for short periods during blasting and residents along Mooleric Road would be advised at least 24 hours prior to blasting.

It is proposed that drainage will be directed to a settling pond on the quarry floor where practicable and may also be directed from the treatment area to one of the farm dams. Extraction is not to exceed ground water levels which are understood to be below 29 metres (RL 98).

The proposed rehabilitation plan provides for rehabilitation of the quarry floor to a pastoral environment accompanied by rehabilitation of the in-filled terminal faces to a combination of indigenous tree/shrub species with pasture grasses. Wetlands will be created wherever the surface waters accumulate. Native rushes and wetland species are to be planted. Rehabilitation of the site will take place progressively in line with the staging of the operation.

Subsequent to a request by Council Officers, the following additional reports were received in support of the application:

- Drainage Investigation Report prepared by Reed and Reed Surveying;
- Letter from Orica Mining Services dated 25 October 2010;
- Traffic Management Plan prepared by Project Delivery Pty Ltd, October 2010;
- Hydrogeological Report prepared by Paul Larkin, 20 October 2010.

A draft Work Plan has been endorsed by the Department of Primary Industries.

Site & Surrounds

The property at 320 Mooleric Road has a total area of 283 hectares and comprises a number of separate titles, two of which are subject of the application for extractive industry. The land subject of the extractive industry proposal is described as Lot 1 and 2, PS372519, with a frontage of 786 m to Mooleric Road, a depth of 809 m, and a total area of 63 hectares.

The property is situated on the east side of Mooleric Road, 2.5 km north of the intersection of Mooleric Road and Princes Highway, Birregurra and extends in an easterly direction to Prices Lane. There is an unconstructed government road on the northern boundary and southern boundary of the land.

The existing dwelling and shedding is generally contained on Lot 1 and 2 with farm access from the southern corner of the property off Mooleric Road.

The land has been used for cropping and grazing activities, similar to the agricultural activities undertaken on the adjoining and surrounding properties. The area contains scattered vegetation but is otherwise generally clear of any substantial stands of native vegetation.

The nearest dwellings to the proposed quarry are located 2.5 km away, near the intersection of Mooleric Road and Princes Highway. All other dwellings in the area are in excess of 3 km from the quarry site.

Public Notice

Public notice of the application was given in accordance with Section 52 of the Planning and Environment Act.

All owners and occupiers of land within a 500 metre radius were given a letter, a sign was placed on site for a minimum period of 14 days and a public notice was placed in the Colac Herald on 26 May, 2010.

At the conclusion of the public notice period 30 objections have been received. The issues raised in the submissions generally relate to:

- Surface and ground water impacts;
- Traffic Management;
- Blasting;
- Amenity issues;
- Flora and Fauna impacts.

Objector concerns will be addressed under the section 'consideration of the proposal' in this report.

Referrals

The table below provides the relevant information in relation to the referral of the application under Sections 52 and 55 of the Planning and Environment Act to the following external authorities: Department of Primary Industries, Department of Sustainability and Environment, Southern Rural Water, VicRoads, Corangamite Catchment Management Authority, Powercor, Barwon Water and Environment Protection Authority.

Internal referrals were also given to Council's Infrastructure and Environment Departments.

Referral Authority	Section 52/55 of P & E Act	Comments
Dept of Primary Industries (DPI)	S.55	No objection subject to conditions
Dept of Sustainability and Environment (DSE)	S.52	No objection
VicRoads	S.55	No objection subject to conditions relating to intersection treatment at the Princes Highway and Mooleric Road intersection.

Southern Rural Water	S.55	No objection. Confirmed approval of a licence to extract up to 20ML of groundwater per annum as part of the proposed quarry use. Application approved as a de-watering licence which is a necessity in quarry projects given that the excavation sometimes encounters groundwater and it is necessary to remove it in order to successfully operate the quarry.
CCMA	S.52	No comments regarding the proposal.
Powercor	S.52	No objection
Barwon Water	S.52	Land is currently remote from water and sewerage services. No objection
EPA	S.52	No objection. Recommended compliance with a range of water, air and noise quality guidelines established by the EPA.
Infrastructure Dept	N/A	No objections subject to conditions.
Environment Dept	N/A	No objections subject to conditions.

Planning Controls

The site and surrounding land is located within the Farming Zone. No overlays apply to this site. Planning approval is required to use and develop land for extractive industry.

a. State and Local Planning Policy Framework

The State Planning Policy Framework contains a number of clauses that are relevant to extractive industry.

Clause 14 – Natural Resource Management states that: *“Planning is to assist in the conservation and wise use of natural resources including energy, water, land, stone and minerals to support both environmental quality and sustainable development.”*

Clause 14.01-1 – deals with the protection of agricultural land and contains a number of strategies that are aimed at protecting farmland which is of strategic significance in the local or regional context.

Some of the more relevant strategies to this proposal are identified below:

- Ensure that the State’s agricultural base is protected from the unplanned loss of productive agricultural land due to permanent changes of land use.
- Consult with the Department of Primary Industries and utilise available information to identify areas of productive agricultural land.
- Take into consideration regional, state and local issues and characteristics in the assessment of agricultural quality and productivity.
- Permanent removal of productive agricultural land from the State's agricultural base must not be undertaken without consideration of its economic importance for the agricultural production and processing sectors.
- In considering a proposal to subdivide or 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.
- In assessing rural development proposals, planning and responsible authorities must balance the potential off-site effects of rural land use proposals (such as degradation of soil or water quality and land salinisation) which might affect productive agricultural land against the benefits of the proposals.

Clause 14.03 Mineral and Stone Resources and sub-clauses 14.03-1 and 14.03-2 emphasise the need for long term protection of mineral and stone resources and the need to prevent these types of uses from being prohibited under planning schemes. Clause 14.03-2 requires that planning schemes *“must not prohibit extractive industries in non urban zones, except if it is prohibited by an Act of Parliament”*.

Clause 14.03-2 Stone resources, contains the following objective: *“to identify and protect stone resources accessible to major markets and to provide a consistent planning approval process for extraction in accordance with acceptable environmental standards”*.

Any new proposals for extractive industries are to provide appropriate buffers to sensitive land uses (i.e. dwellings) and performance standards for the buffer area are set in accordance with requirements of the *Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010* or a work authority or a permit and have regard to the zoning of the land surrounding the extractive industry.

Planning must consider as relevant the *Mineral Resources (Sustainable Development) Act 1990*, any relevant *State Environment Protection Policy*; and a number of geographic *“supply areas”* including Ballarat, Geelong and Bendigo.

The subject site is not located within any of the above Extractive Industry Interest Areas – Geological Survey of Victoria Technical Records.

The Department of Sustainability and Environment VPP Practice Note, April 2006 on Extractive Industry Proposals provides guidance to applicants and responsible authorities with respect to process and assessment of extractive industry proposals.

The practice note clearly identifies the two step process that requires an applicant to prepare a draft work plan for endorsement by Department of Primary Industries before a planning application for extractive industry can be submitted to Council for consideration.

The next step in the process is to obtain planning approval for extractive industry and only once this has been obtained can a Work Authority be granted by the relevant Minister.

The Local Planning Policy Framework provides direction at Clause 21.05-1 for the protection of agricultural land but contains no specific policy directions in relation to extractive industry.

b) 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.

Mineral, stone, or soil extraction is a permit required use under Clause 35.07-1. Extractive Industry is defined as: *“Land used for the extraction or removal of stone from land for commercial use, or to use the stone for building, construction, road or manufacturing works, it includes the treatment of stone or the manufacture of bricks, tiles, pottery, or cement products on, or adjacent to, the land from which the stone is extracted”*.

Approval for building and works associated with a Section 2 use is triggered under clause 35.07-4. 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.

c) Particular provisions

Clause 52.09 – Extractive Industry and Extractive Industry Interest Areas contains particular provisions that relate to this type of activity. The clause requires a buffer setback of 20 metres from the boundaries of the land, vegetation planting to screen the activity and provision of suitable parking areas, and consideration of the following matters:

- The effect of the proposed extractive industry on any native flora and fauna on and near the land.
- The impact of the extractive industry operations on sites of cultural and historic significance, including any effects on Aboriginal places.
- The effect of the extractive industry operation on the natural and cultural landscape of the surrounding land and the locality generally.
- The ability of the extractive industry operation to contain any resultant industrial emissions within the boundaries of the subject land in accordance with the Regulations associated with the Mineral Resources (Sustainable Development) Act 1990 and other relevant regulations.
- The effect of vehicular traffic, noise, blasting, dust and vibration on the amenity of the surrounding area.
- The ability to rehabilitate the affected land to a form or for a use which is compatible with the natural systems or visual appearance of the surrounding area.
- The ability to rehabilitate the land so it can be used for a purpose or purposes beneficial to the community.
- The effect of the proposed extractive industry on groundwater and quality and the impact on any affected water uses.
- The impact of the proposed extractive industry on surface drainage and surface water quality.
- Any proposed provisions, conditions or requirements in a ‘Work Authority’ to be issued under the Mineral Resources (Sustainable Development) Act 1990.

Consideration of the Proposal

Policy consideration

This proposal calls up competing policy objectives at the State and local level, as the relevant policies recognise that at the broader level there is a need to protect rural land for productive agricultural activities and mineral and stone resources for future extraction for the benefit of the wider community.

In assessing the competing policy objectives, Clause 14.01-1 contains a number of strategies that provide guidance when assessing proposals that will have the potential to remove rural land from productive agricultural use.

In response to these strategies, the land subject of this proposal is included in the area identified in the Rural Land Study 2007 as “medium agricultural capability”. This classification is derived from the land’s agricultural capability based on soil type and slope. The area generally in the north-west portion of the shire is classified as “high agricultural capability” which could be considered an area that has the greatest strategic significance at the local context for this Shire and to a lesser degree the area classified as “medium agricultural capability”. The study notes that the mapping is very broad scale and that there is room for variation within each mapped soil unit at an individual farm scale. The Rural Land Study identified that one of the most significant industries in the Shire was agriculture, with an estimated economic contribution of \$250 million in 2001/2002. Dairy and beef industries are the most significant in terms of land use and economic contribution in this industry sector.

The land comprising the extractive industry proposal is 63 hectares and forms part of a larger farm holding of over 280 hectares. The applicant intends to continue to farm the balance of the land for grazing activities while extracting basalt from the smaller parcel. The rehabilitation of the site will take place progressively and is designed to provide suitable rehabilitation for agricultural production for the grazing of animals.

While there will be a loss of productive agricultural land the area of the land in context of the broader area available for agricultural use is minimal. The loss of this land from agricultural production is unlikely to have a major impact on the current economic contribution of agriculture to the shire. Economic benefit will also be derived from the proposed rock extraction activity on the site. In the longer term the land will be rehabilitated to allow some form of agricultural use in the future.

The State Policy framework provides strong support for extractive industry providing it can demonstrate that the activity can satisfactorily address the specific matters listed at Clause 52.09 of the planning scheme. The matters identified under this clause are discussed below together with the concerns raised in objections received by Council.

Surface and ground water impacts

Many of the objections raised concerns regarding the potential of the proposal to impact on surface and ground water, particularly the aquifer and existing bores. As the Works Plan did not go into sufficient detail to satisfactorily address the concerns raised in objections, a further report was provided by the applicant in October 2010 to address specific matters requested in correspondence from Council officers. A Drainage Investigation Report, prepared by Reed and Reed Surveying and a Hydro geological Report, prepared by Paul Larkin were submitted and circulated to all objectors.

The issues raised in objections specifically related to the potential for impact on existing bores, effects on the water table, contamination of bore water, management of overland surface water and drainage across nearby properties.

An inspection of the area was undertaken by Council officers after heavy rainfall in August/September 2010 and photographic evidence was provided by objectors that shows water lying across the road and in many of the adjoining paddocks. The rain event was described by the CCMA as a 1:10 year flood event.

The Drainage Investigation Report identified that the culverts along Mooleric Road were not operating properly and if they were working efficiently most of the water flowing along the road would have drained into the adjoining paddocks. The report also identifies that the drain along the unused road reserve abutting the north boundary of the Work Plan is not working efficiently and if this drain was maintained and upgraded, or alternatively a new drain constructed along the northern boundary of the work plan area, this would address surface water issues across the site and adjoining land.

While the existing drains require some maintenance, undertaking maintenance work alone will not resolve the issue that the drainage is inadequate to cater for all weather seal access which will be required for the commercial operation of the quarry, therefore, a condition on any permit issued should require an appropriate drainage analysis to be undertaken to determine the location and capacity required for culverts under the road to meet a design requirement of 1:10 years flood event.

The Hydro geological Report provides detail on the local geology, the aquifers, ground and surface water and discusses potential impacts of the quarry. The report arrives at the following conclusions:

1. There are thought to be two aquifers at the site, an upper unconfined minor aquifer and a lower confined main aquifer albeit low yielding.
2. Only minor groundwater inflows are expected within the quarry.
3. The radius of influence of the cone of depression surrounding the quarry will be in the range of 70 to 400m from the quarry.
4. Yields of existing bores may be reduced if they fall within the radius of influence of the quarry and extract water from the upper aquifer.
5. No impacts are anticipated on any surface water features.
6. There is a low risk of damage to the aquifer and properly constructed bores near the quarry.
7. There is potential for the quarry to introduce pollutants to the underlying aquifers. However, this risk is no greater than any other basalt quarry and can be minimised by commonly employed good management practices.

The report relies on the data from the test bore holes drilled recently and the stock bore in estimating underground water levels. Based on this information, the recorded water strikes in the series of bores indicate that there is an aquifer at about 109 to 114-115m AHD, whereas the water bore shows that the main aquifer is about 102m AHD. The report states that it is intended that the floor of the quarry will be at 115m AHD and that there is little risk of large scale groundwater inflow to the quarry as, out of a total of 15 bores drilled on the site, only 1 or 2 have intersected water at or above the projected floor of the quarry.

The report at Section 4.6 discusses contingency plans in the event that the quarry floor intersects the aquifer and states that:

“If there should be an unanticipated discharge of groundwater into the quarry, it should be pumped out into surface water drains sufficiently far from the quarry to prevent recycling through the basalt aquifer and back into the quarry. Should there be a very large unanticipated flow, it can be controlled by interception of the flow with dewatering bores around the quarry with similar disposal of the groundwater”.

Southern Rural Water (SRW) has confirmed that a licence has been granted to the applicant to extract up to 20ML of groundwater per annum as part of the proposed quarry. SRW has advised that this is a dewatering licence which is a necessity in quarry projects given that the excavation sometimes encounters groundwater and it is necessary to remove it in order to successfully operate the quarry.

SRW advises that this licence is a pre-requisite for the benefit of DPI and that the act of dewatering is not seen as an extraction of water in the same sense as a bore taking groundwater for domestic and stock purposes. SRW also advises that the licence issued contains requirements that the activity must not effect properly constructed and well maintained bores on neighbouring properties and that SRW would investigate if there is a perceived interference and may require the licence holder to make good any loss of water. SRW advises that the licence will only come into effect if approval is given for the quarry by the relevant authorities.

Further advice was received from SRW in December 2010 in response to the additional reports prepared by the applicant. SRW advised that based on a field inspection, it was determined that there were no waterways present within the Work Plan area or in the immediate vicinity and that a construction licence would not be required in accordance with S67 of the Water Act 1989. The applicant is also required to comply with other relevant sections of the Water Act 1989 and the response from SRW contained further advice on this matter.

SRW is the lead agency in relation to surface and groundwater matters and has not objected or raised any concerns with the proposal.

Traffic and Safety

Many of the objections raised concerns with the impact the proposal may have on the condition and safety of Mooleric Road by the increase in the generation of heavy vehicles required for the transportation of the basalt from the quarry. Concerns have also been raised that vehicles associated with the quarry may use other road networks to access the Hamilton Highway to the north.

The traffic report submitted with the application indicated that there could be up to 15 trucks accessing the quarry per day and that the existing conditions of the road should cater for the increase in traffic based on the existing traffic volumes recorded in 2000 of 85 vehicles per day with 10% being commercial vehicles.

Further information was sought from the applicant in relation to traffic management and potential impacts on Mooleric Road and an updated report was received in October 2010.

While the report submitted in October 2010 did not respond adequately to all matters raised by Council officers it was considered that permit conditions could deal with the deficiencies in the report.

A number of conditions have been included in the recommendation should the proposal be supported that relate to the upgrading and future maintenance of Mooleric Road. These conditions generally require an initial upgrading of the road before the use can commence and within three years following the commencement of the use, the road must be constructed to a sealed pavement to just beyond the entrance to the quarry. The proposed conditions require the permit holder to maintain the standard of the road thereafter for the life of the quarry at the cost of the permit holder.

A condition has also been included that identifies a designated route for the trucks involved in the transportation of the material from the quarry and restricts access to Hamilton Highway from the northern section of Mooleric Road. In addition, no access to the quarry will be permitted from Prices Lane.

The concerns raised by the objectors in relation to potential impacts of the quarry of traffic generation and management are relevant and the conditions proposed have been designed to address these concerns.

VicRoads is responsible for traffic management accessing the Princes Highway and has required conditions that relate to the upgrading of the intersection of Mooleric Road with the highway to ensure safe access to and from the highway onto Mooleric Road. VicRoads requires these works to be undertaken prior to the commencement of the use.

Blasting Impacts

The information presented in the Work Plan and a subsequent letter from Orica Mining Services in October 2010 indicates that there will be approximately four blasts per year. This is based on achieving a target of 120,000 tonnes of blasted rock per year. It has been estimated that each blast would produce in excess of 30,000 tonnes of rock per visit. Additional smaller blasts may be required.

Blasting will be undertaken by Orica Mining Services and is required to meet a range of legislative and safety standards.

The applicant has advised that blasts during the initial 12 months will be monitored for ground vibration and air blast overpressure at the two nearest residences and the results will be made available to the landowners.

As a safety precaution, it is proposed to close Mooleric Road to traffic during blasting by posting sentries 500m north and south of the quarry.

Landowners and the wind farm operator will be given notice of blasting events prior to the event to ensure that they have sufficient notice to implement any contingency plans, as necessary.

Amenity issues

There is a range of legislation and regulations that apply to the operation of a quarry that regulate the potential for off-site amenity impacts. Clause 52.09 requires a minimum buffer of 20 metres from the boundaries of the land and vegetation planting to screen the activity. The land subject of this proposal is bounded on the southern and eastern boundaries of the work plan area by land in the same ownership as the applicant, providing additional buffer distances to adjoining properties.

The nearest dwelling is situated over 2 km to the south of the work plan area and beyond that dwellings are in excess of 3 km.

The quarry is required to comply with the regulations associated with the Mineral Resources (Sustainable Development) Act 1990 and the Environment Protection Authority's Interim Guidelines for Control of Noise from Industry in Country Areas in N3/89, EPA publication Recommended Buffer Distances for Industrial Residual Air Emissions 1990 and DSE's Environmental Guidelines – Ground Vibration and Air blast Limits for Blasting in Mines and Quarries and the Water Act 1988, to name a few.

It is likely that blasting activities may have the greatest potential to impact on existing farm practices of neighbouring properties, particularly with the management of livestock. In regard to this, the applicant would be required to provide adequate notice to surrounding landowners of any blasting event.

There are a range of conditions proposed, should planning approval be supported, that aim to address any unreasonable material detriment being caused as a result of the operation of the quarry.

It is also proposed to establish a Consultative Committee to meet on a regular basis to consider matters raised by committee representatives that reasonably relate to the operation of the quarry. This type of committee is often implemented for quarry operations to act as a forum to resolve disputes and ensure on-going compliance with permit conditions, and would comprise representatives of Council and DPI, local residents and any other agencies considered relevant (eg SRW). A similar type arrangement that has operated for the Ondit Quarry at Potters Road, Ondit for a number of years.

Flora and Fauna impacts

Issues relating to impacts on flora and fauna were raised in a number of objections. The applicant advised in the Work Plan that the site has no remnant indigenous trees and that the area has been grazed and cropped over many years. The Work Plan indicates that the type of native vegetation that would occur on the land is EVC 132_61:Heavier-soils Plains Grassland. The Work Plan also contains an email from DSE to DPI dated March 2009 indicating that the site is very degraded and lacks the cover of native vegetation that would trigger the need for further flora studies.

Council's Environmental Officer provided similar advice after undertaking a site inspection, advising that the biodiversity value of the subject land is minimal and that other impacts on biodiversity from noise from blasting and dust from basalt processing are also considered to be minor as they are sporadic in nature and their occurrence will be limited to an area confined to within the boundaries of the land.

No Market Demand

The issue of "need" has been discussed in a relevant VCAT determination Giles & Ors v Baw Baw SC [2009] VCAT61. The Tribunal expressed the view that: *"lack of need is not a strong argument against a particular development. In any event, the Tribunal is of the view that quarry stone is a high demand, low cost material that is needed for a variety of community activities including road building"* and *".....although there are elements of uncertainty with respect to the extraction rate from the proposed quarry, there is a need for the product..."*

Rehabilitation

The applicant proposes to rehabilitate the site progressively as the stages are completed. The Work Plan provides details on the manner in which the rehabilitation process will take place. Council's Environment Officer has indicated that the proposed rehabilitation program appears to be sound but has recommended that all species selected should be indigenous to the Shire and that a mix of native and pasture grasses should be used to assist in re-establishing some of the habitat values associated with the plains grasslands of the volcanic plains bioregion in the rehabilitation of the quarry floor/slopes. A condition has been included that addresses these comments.

Work Plan

In accordance with the DSE Practice Note on Extractive Industry Proposals a three step process is required before land can be used for extractive industry. The first step in the process is to prepare and obtain endorsement of a draft Work Plan by DPI. As part of this process, DPI, DSE, Council and other relevant government agencies are engaged in the development of the plan. The matters to be addressed in the work plan are extensive. Once a draft work plan has been endorsed by DPI, an application can be submitted to Council for planning approval.

The final step in the process, once planning approval has been obtained, is the granting of a Work Authority under the Mineral Resources (Sustainable Development) Act 1990. A Work Authority is generally issued with a range of conditions similar to the draft conditions endorsed as part of the draft Work Plan. The operation of a quarry must be in accordance with any Work Authority and planning permit conditions and any non-compliances can be addressed by relevant authorities.

CHMP

The draft Work Plan endorsed by DPI states that: *"the area proposed for extraction does not fall within a designated area of aboriginal sensitivity, nor contains listed heritage sites"*. The applicant advises that if aboriginal artefacts are found during quarry operations, work is to cease in that vicinity until the find is evaluated.

Council officers have confirmed that the work plan area is not in an area of cultural sensitivity in accordance with Aboriginal Heritage Regulations.

Mt Gellibrand Wind Farm

In June 2006 the State Government issued planning approval for a wind farm subject to 42 conditions of up to 116 turbines on land that includes the property directly to the north of the Work Plan area and land generally to the west of Mooleric Road around the base of Mt Gellibrand.

Planning is currently underway in terms of meeting the conditions on the permit issued and it is expected that construction of the wind farm will commence in the second half of this year.

Conditions relating to traffic management during the construction phase of the proposal require the permit holder to address Mooleric Road as this will be the primary access for the transportation of construction equipment, concrete and the turbines. Site access to the wind farm is proposed some distance north of the quarry entrance. It is likely that upgrading works will be required for Mooleric Road to the entrance of the wind farm during the construction phase at the cost of the permit holder.

Whilst the current application needs to be assessed as a stand alone proposal, separate to the approved wind farm proposal, officers would encourage co-ordination between the parties concerning any road works in Mooleric Road that may be required for either of the proposals. The extent to which this occurs would depend partly on the timing of commencement of either of the projects.

Corporate Plan / Other Strategies / Policy

The policies and strategies that are relevant to this proposal have been discussed in other sections of this report.

Financial & Other Resource Implications

There are no financial implications arising from this report.

Risk Management & Compliance Issues

There are no risk management or compliance issues arising from this report. Should the proposal be supported, any non-compliance with relevant regulations and legislation can be investigated by the responsible authorities.

Environmental Consideration / Climate Change

Consideration has been given to potential impacts on the natural environment including flora and fauna, water quality and underground water. These matters are discussed in other sections of this report.

Communication Strategy / Consultation Period

Extensive public notice of the application was given in May/June 2010 with Council receiving in the order of 30 written objections to the proposal. Given the level of interest in the proposal it was considered that a meeting should be held to give the applicant and objectors an opportunity to discuss the issues raised in the objections. As a result a meeting was held on 30 June 2010 which was attended by the Applicant and a number of technical experts engaged in the project, Council officers and the majority of objectors. While all issues could not be resolved, the meeting provided an opportunity to explore the key issues raised in objections.

Councillors and Council officers also attended an informal meeting held by objectors in August 2010 at Mooleric Road, Birregurra.

It was agreed at the meeting held in June 2010 that draft conditions would be circulated to all objectors and applicant to provide an opportunity for comment. Draft conditions were prepared and circulated to all parties on 24 January 2011. Feedback has been received from a number of objectors and the applicant. This information has been assessed and some changes sought by the applicant and objectors have been made to the conditions. Not all changes requested to the conditions have been supported.

Conclusion

Extractive Industry is heavily regulated under the *Mineral Resources (Sustainable Development) Act 1990* by DPI and a range of guidelines and legislation apply to the operation of any quarry. The plethora of legislation and guidelines that apply in these circumstances provide standards to protect local amenity from any unreasonable impacts of a quarry from noise, vibration, dust, visual impact and safety, to name a few.

On balance, it is considered that this proposal should be supported as it demonstrates that it can comply with the requirements of the planning scheme and only removes a small area of land from agricultural activities. Many of the issues raised by the objectors can be addressed by permit conditions and should any non-compliance incidents occur they can be investigated by relevant authorities.

The quarry can only operate once a Work Authority has been granted by DPI. Any Work Authority generally contains a range of conditions that must be met in addition to any conditions on a planning permit.

Given the level of controls that govern the operation and that most of the concerns raised in objections have been addressed through conditions, and that the proposal is considered to be consistent with the requirements of the Planning Scheme, it is recommended that a Notice of Decision to Grant a Planning Permit be issued.

Attachments

Nil

Recommendation(s)

That Council's Planning Committee resolve to issue a Notice of Decision to Grant a Planning Permit for the use and development of the land for extractive industry (basalt rock) at 320 Mooleric Road, Birregurra subject to the following conditions:

- 1. Before the use/development starts, the approved work plan and work plan conditions approved by the Responsible Authority which will form part of this permit must include the following amendments to the endorsed work plan and/or the draft work plan conditions submitted with the application:***
 - a) the location and scale of fixed buildings and fixed plant and equipment, elevations of all buildings and a schedule of construction materials, external finishes and colours and signage;***
 - b) location of a sediment settling area;***
 - c) location of surface water diversion drains.***
- 2. The endorsed plan/s shall not be altered or modified (whether or not to comply with any statute, rule or local law or for any other reason) without the consent of the Responsible Authority.***
- 3. Prior to the commencement of works the land comprising CA43A, Lot 1, TP372519Q (Vol. 10991 Fol.356) and CA44A, Lot 2, TP372519Q (Vol. 10991 Fol.355) must either be consolidated into one parcel or the owner of the land must enter into an Agreement with the responsible authority pursuant to [Section 173](#) of the [Planning and Environment Act 1987](#) that neither lot can be disposed of separately during the life of the quarry operations and/or permit.***

The reasonable cost of enforcement, removal or other dealing associated with the Agreement shall be borne totally by the owner of the land. The Agreement must be registered on the certificate of title for the land. Evidence of the registration of the Agreement must be provided to the Responsible Authority prior to the commencement of any use, buildings or works authorised by this permit.
- 4. The use and development of the subject land must not commence until the Work Authority is granted in accordance with the requirements of the Mineral Resources (Sustainable Development) Act 1990. The use and development of the subject land must at all times be in accordance with the Work Authority, including the Approved Work Plan, issued pursuant to Mineral Resources (Sustainable Development) Act 1990.***
- 5. Construction works on the site must only occur between 7.00am and 6.00pm Monday-Friday and 7.00am to 1.00pm Saturday (not including public holidays).***

6. **The use hereby permitted must only operate between the following times:**

7.00am – 6.00pm Monday to Friday

7.00am – 1.00pm Saturday

No operation on Sunday or Public Holidays

The Responsible Authority may give its written consent, upon request from the quarry operator, for the quarry to operate at other times for the purpose of managing equipment breakdowns or other unforeseen circumstances.

7. **Blasting is permitted on six occasions per annum and must only be undertaken between 10.00am – 3.00pm Monday to Friday (not including public holidays) unless with the further written consent of the Responsible Authority.**
8. **Rock drills and rock hammers/rock breakers must only be used between the hours of 8.00am – 5.00 pm Monday to Friday (not including public holidays).**
9. **The quarry operator must give written notification of any proposed explosives blast to:**

- a) **all landowners and occupiers of adjoining land and land opposite the site and to any other nearby occupiers who have requested notification. This notification must be given at least three business days before each scheduled blast.**
- b) **The owner/operator of the Mt Gellibrand Wind Farm, pursuant to Planning Permit PL-SP/05/0257, at least seven (7) days before each scheduled blast until the completion of construction of all wind turbines within 2km from the Work Plan area, and one clear business day before each scheduled blast thereafter.**
- c) **During the first 18 months of construction of the Mt Gellibrand Wind Farm pursuant to Planning Permit PL-SP/05/0257, the owner/operator of the wind farm shall have the opportunity to apply for up to ten five day blast exclusion periods provided that 14 days written notice of any exclusion period has been provided by the operator of the wind farm to the Responsible Authority and the permit holder of the quarry.**

10. **All blasting must comply with the following standards:**

Ground Vibration at the base of any dwelling or turbine:	<5mm/s for 95% of blasts within a 12 month period
	<10 mm/s for all blasts
Air Vibration close to any dwelling	<115 dbL for 95% of blasts in a 12 month period
	<120 dbL for all blasts

11. **Air and ground vibration monitoring to ensure compliance with Condition 10 must be undertaken for each blast close to the nearest dwelling and nearest turbine at the quarry boundary. The measured vibration level at the nearest dwelling and the nearest turbine from the Work Plan area must be reported to the Responsible Authority every six months.**
12. **As blast faces reach within 200 metres of roads accessible to the public, traffic must be stopped during the period of pit clearance until after the 'All Clear' is sounded.**

13. **No blasting is to occur within 50 metres of the west boundary of the subject land.**
14. **Other than during construction activities, all machinery and equipment must be operated so as to comply with a noise limit of 45db(A) in accordance with the 'Interim Guidelines for Control of Noise in Country Victoria N3/89' when measured in Mooleric Road 1.2 km north and south of the Work Plan area or any more stringent standard that may be required by legislation. All noise must comply with the requirements of the Work Authority granted pursuant to the [Mineral Resources \(Sustainable Development\) Act 1990](#) and must be operated in accordance with the approved work plan. Towards achieving the above noise limit, the following (not exclusive) techniques should be employed:**
 - a) **fitting all mobile equipment with broadband smart beepers that adjust beeper levels in accordance with the ambient noise environment;**
 - b) **all haul trucks operating on the site to include modification of the trays to reduce the noise contribution of rock impacting on the tray body;**
 - c) **all hydraulic rock drilling must utilise a silenced drill rig and where necessary, localised acoustic shielding;**
 - d) **any rock breaker/rock hammer used on the land must utilise best available noise reducing technology to the satisfaction of the Responsible Authority.**
15. **During construction activities the noise limit for the purpose of Condition 14 is 55db(A) when measured in Mooleric Road at a point 1.2 km north and south of the Work Plan area. For the purpose of this condition 'construction activities' are any activities relating to the construction of access ways, preparatory works on the site that are not part of the primary process of extracting, drilling, moving, processing (including but not limited to rock crushing and breaking) and transporting rock.**
16. **No broadcast or loudspeaker system, telephone ringer or other external alarm may operate on the site except for a warning alarm for blasting or as mandated by WorkSafe.**
17. **Within twelve (12) months of the commencement of operation under Stage 1 under this permit, noise tests are to be carried out when measured in Mooleric Road at a point 1.2 km north and south of the Work Plan area and a report on noise registered is to be provided to the responsible authority, the Department of Primary Industries and the Environment Protection Authority. Any reasonable recommended modifications to operations necessary to achieve compliance with the specified noise limit must be carried out to the satisfaction of the Responsible Authority.**
18. **Prior to the commencement of the use a dust management plan to the satisfaction of the Responsible Authority must be endorsed under this permit. The dust management plan must include:**
 - a) **dust deposition gauges which should be at locations to be determined in consultation with the Department of Primary Industries;**
 - b) **contingency measures to deal with any elevated dust conditions.**
19. **Dust generated by the use must be monitored in accordance with the endorsed plan. Any failure to meet the standards of the State Environmental Management Policy (Air Quality Management) must be notified to the Environment Protection Authority and works/actions specified by that Authority to bring the use into compliance must be carried out to the satisfaction of the Responsible Authority.**

20. *The use and development must be managed so that the amenity of the area is not unreasonably detrimentally affected, through the:*
- a) Transport of materials, goods or commodities to or from the land;*
 - b) Appearance of any building, works or materials;*
 - c) Emission of noise, artificial light, waste products, grit or oil.*
21. *Any outdoor lighting must be designed and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land owners.*
22. *Before the development starts, a landscape plan must be submitted to the satisfaction of the Responsible Authority and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The landscaping plan must be generally in accordance with the landscaping shown on draft work plan submitted, except that the plan must show:*
- a) An indicative survey (including botanical names) of all existing vegetation to be retained and/or removed;*
 - b) A planting schedule for the buffer areas shown on the Work Authority of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;*
 - c) Vegetation is to comprise of a mixture of canopy trees (mixture of one metre tall plants and tub stock maybe used when planted) and shrubs along the external boundaries of each proposed stage;*
 - d) Planting within all buffer areas ensuring the extractive industry will be adequately screened from outside the site;*
 - e) Final site rehabilitation of the quarry floor and slopes using a mixture of indigenous native grassland species in accordance with the EVC 132_61:Heavier-soils Plains Grassland and Pasture species.*
- All species selected must be to the satisfaction of the Responsible Authority.*
23. *Before the use commences the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. The landscaping may be undertaken in stages subject to the written consent of the Responsible Authority.*
24. *Landscaping must be undertaken to achieve an effective visual screen as early as possible in the operational life of the quarry and must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.*
25. *Should approval be given for the landscaping to be undertaken in stages, for any stage not landscaped prior to the commencement of the use, a landscaping bond to the value of 1.5 times of the value of the landscaping works must be lodged with the Responsible Authority for the completion and maintenance of the landscaping works in accordance with the endorsed plan. Three quotes must be obtained to estimate the value of the landscaping works to the satisfaction of the Responsible Authority.*
26. *Upon completion of all the landscaping works for each stage to the satisfaction of the Responsible Authority, the Responsible Authority will refund the value of the works completed from the landscaping bond after receiving a written request from the applicant.*

27. **Prior to commencement of the use the landscape buffer of 20 metres along the frontage of Mooleric Road for Stage 1 and Stage 2 must be established in accordance with the endorsed landscape plan.**
28. **All environmental weeds as outlined in “Environmental Weeds of the Colac Otway shire” brochure must be controlled on the property at all times and prevented from spreading to neighbouring land to the satisfaction of the Responsible Authority.**
29. **No environmental weeds as referred to in “Environmental Weeds of the Colac Otway Shire” brochure will be planted on or allowed to invade the site.**
30. **At the commencement of excavation, the permit holder must ensure that topsoil to a depth of 150mm below the natural surface is removed and placed in stockpiles not exceeding three metres in height. The permit holder must ensure that topsoil stockpiles are protected from erosion and compaction to the satisfaction of the Responsible Authority.**
31. **All disturbed surfaces on the land resulting from the activities authorised by this permit shall be revegetated and stabilised to the satisfaction of the responsible authority so as to prevent any erosion or siltation on or adjacent to the land.**
32. **Use and development must follow sediment control principles outlined in ‘Construction Techniques for Sediment Pollution Control (EPA 1991)’ and must be to the satisfaction of the Responsible Authority. Specifically, the applicant must ensure:**
 - a) **grading, excavation and construction must not proceed during periods of heavy rainfall;**
 - b) **sediment traps must be designed, installed and maintained to maximise the volume of sediment trapped from the site during development and construction;**
 - c) **the extent of earthworks during construction shall be minimised and disturbed areas stabilised and revegetated following the completion of works.**
33. **A rehabilitation plan must be submitted to the satisfaction of the Responsible Authority and Department of Primary Industries prior to the commencement of any rehabilitation works. The rehabilitation of each stage must commence as soon as practical either progressively or on completion of each stage. When the quarry is rehabilitated the bed of the internal edges of the water body must be graded in accordance with the DPI Guidelines on Rehabilitation and in accordance with the work plan to the satisfaction of the responsible authority. The final rehabilitation of the quarry floor and slopes using a mixture of indigenous native grassland species in accordance with the Ecological Vegetation Class (EVC) 132_61:Heavier-soils Plains Grassland and Pasture species.**
34. **External cladding materials of the building(s) must be of finishes with low relative reflectivity levels and in colours selected to blend into the surrounding landscape rather than provide a contrast that highlights the building in the landscape. The selection of materials and colours must be to the satisfaction of the Responsible Authority.**
35. **A transparent security fence to the height of 2.5 metres shall be constructed along the Mooleric Road frontage and the northern boundary of the work plan area to the satisfaction of the Responsible Authority.**

36. *Prior to the commencement of the works the applicant must resheet Mooleric Road from the end of the existing sealed pavement to a point at least 5 metres past the proposed entrance to the quarry in accordance with plans and specifications approved by the Responsible Authority. The resheet material is to be at least Class 3 fine crushed rock material, and be a minimum of 100mm in depth across the full pavement width of 7.8 metre (6m pavement and 0.9m shoulders) and include works associated with roadside table drains and cross road culverts as appropriate. The construction of the road will be inclusive of all signage, guide posts and approved drainage requirements.*
37. *Prior to the commencement of the works the horizontal and vertical road alignment must comply with the Responsible Authority's Engineering Standards to provide a 100km stopping sight distance. The height and level of the road surface is to be constructed to a standard which will provide for access based on 1:20 year flood recurrence interval. Engineering Plans are to be provided that will demonstrate the appropriate levels and drainage requirements, to the satisfaction of the Responsible Authority.*
38. *Within three (3) years following the commencement of the use the permit holder must construct Mooleric Road from the Princes Highway to a point at least 5 metres past the entrance to the quarry in accordance with plans and specifications approved by the Responsible Authority. The works will involve the construction of a 6 metre wide sealed road pavement with 0.9 metre shoulders, roadside table drains and crossroad culverts as appropriate.*
39. *As part of the plans and specification documents to be submitted for approval, a detailed road pavement design is to be carried out and submitted for approval. A certified engineering design plan of the road pavement calculated using equivalent standard axel (ESA) design will be provided to the satisfaction of the Responsible Authority based on a 20 year pavement life. The road pavement design is to consider expected traffic loading during peak production, as detailed within the Works Authority and ensure pavement calculations include provision for heavy vehicle classified vehicles (including 25 tonne B-Doubles) when calculating the axle loadings.*
40. *As part of the road improvement works, advance warning signage is to be installed at locations shown on construction plans, and subsequently approved by the Responsible Authority. Advanced warning signage is to include 'T-Intersection' advance warning signage, and road alignment warning signage as deemed necessary.*
41. *Prior to the commencement of the use the applicant must install new "Truck Entering" signs on Mooleric Road on both approaches to the quarry entrance, and is to be completed as part of the road construction works.*
42. *Property access is to be constructed in accordance with VicRoad's requirements for heavy vehicle access.*
43. *Prior to the commencement of works detailed topography plans and drainage designs are to be submitted for approval by the Responsible Authority. The topography plan is to extend from the north and east of the quarry site to a distance that clearly defines surface water flow directions. The drainage design needs to ensure surface water entering the site from the north and east, and via natural or existing drainage lines from the existing road drainage is diverted around the site. The drainage design is to clearly show drainage lines located within the development site (layout plans), cross sections of drainage (if open drains) and drainage long sections showing invert levels and embankment levels.*

All culverts are to be provided with approved culvert end walls. Notwithstanding the outcome of any drainage design, the actual pipe sizes used shall be no less than 375mm in diameter.

- 44. The permit holder must maintain Mooleric Road to the standards for the road classification as specified in the Responsible Authority's Road Management Plan from the time quarrying operations commence and until the cessation of the quarry operations, with the Responsible Authority to be notified in writing of the date thereof. The cost of the maintenance works shall be fully funded by the permit holder.**
- 45. All cartage trucks travelling to/from the quarry must use the southern end of Mooleric Road to access and exit the site. At no time are vehicles involved in the quarry operations to access the Hamilton Highway or the Princes Highway using the northern section of Mooleric Road beyond the quarry entrance. Truck drivers not directly under the quarry's control must be informed of the required routes and directed to comply to the satisfaction of the Responsible Authority.**
- 46. The operators must adopt and operate a code of conduct for drivers of vehicles involved in the use to the satisfaction of the Responsible Authority, and shall also make drivers of vehicles not under the operator's control aware of this code and encourage their compliance. The code shall address the need for safety and adherence to speed restrictions and safe operating speeds along rural roads traversed in accessing the quarry noting the presence of other road users such as farm vehicles, horse riders, school buses, the potential for stock on the roads at stock crossings or stray animals and wildlife and potential poor driving conditions due to weather.**
- 47. Trucks carrying product from the quarry leaving the site must be covered at all times to limit dust or stone coming off the load to the satisfaction of the Responsible Authority.**
- 48. No access by vehicles associated with the quarry to any stage of the quarry operations will be available from Prices Lane.**

VicRoads Conditions

- 49. Prior to the commencement of the use a right turn treatment (Type BAR) must be provided on the Princes Highway and Mooleric Road intersection in accordance with figure 6.37 of AustRoads publication "Guide to Traffic Engineering Practice – Part 5, Intersections at Grade (2005)".**
- 50. Prior to the commencement of the use, Mooleric Road must be widened where it intersects Princes Highway generally in accordance with the Guidelines for Truck Access to Rural Properties (as per standard drawing 658187 attached) to cater for the turning path of trucks.**
- 51. Detailed design for the roadworks must not proceed until a functional layout of the Princes Highway/Mooleric Road intersection treatment is approved in writing by VicRoads. Intersection design shall be prepared by a designer acceptable to VicRoads and shall be in accordance with AustRoads and VicRoads standards. The design shall provide for the turning paths of trucks.**
- 52. A road safety audit must be carried out for the intersection treatment at the detailed design stage by a suitably qualified auditor in accordance with Austroads "Road Safety Audit" (2002). The findings of the audit must be resolved in writing by the applicant to the satisfaction of VicRoads.**
- 53. Access works in accordance with the approved functional layout must be carried out to VicRoads' satisfaction and at no cost to VicRoads.**

54. *The applicant must contact VicRoads Manager Program Delivery (telephone number 5225 2525) at least 14 days prior to the commencement of works within the Princes Highway reserve.*
55. *The applicant must not commence any works in, on, under or over the Princes Highway reserve without having first applied for and received written consent from VicRoads for those works in accordance with section 63 of the Road Management Act 2004. (Note: When issuing its consent, VicRoads will include requirements that certification auditing of the works is to be undertaken and that a security deposit is to be lodged for the works.)*
56. *Prior to commencing work within the Princes Highway reserve, the permit holder must:*
 - a) *Ensure that detailed design plans for all mitigating works are forwarded to VicRoads' South Western Region Office for approval.*
 - b) *Obtain VicRoads' approval to the proposed pavement design.*
 - c) *Prepare a specification for the works in accordance with relevant sections of the VicRoads Standard Specification for Roadworks.*
 - d) *Ensure that any consultants and or contractors engaged in the design or construction process are prequalified by VicRoads at Level R1.*
 - e) *Provide evidence that the applicant/applicant's contractor has public liability insurance acceptable to VicRoads for the duration of the proposed works.*
 - f) *Demonstrate that all works will be administered in accordance with quality assurance principles, including but not limited to Safety, Environmental and Quality.*
 - g) *Ensure that work site practices are in accordance with the Road Management Act 2004, Worksite Safety – Traffic Management, Code of Practice.*

Environment

57. *Sewage, sullage and other liquid wastes to arise from the development shall be treated and retained on site by a septic tank system in accordance with the requirements of the [Environment Protection Act 1970](#), the current Septic Tank Code of Practice 2003 and the Colac Otway Shire Council or otherwise managed to the satisfaction of the Responsible Authority.*
58. *All wastewater generated on the site must be retained and treated on the site.*
59. *No chemical dust suppressant shall be used on the subject land without the prior written permission of the Responsible Authority.*
60. *Measures to prevent contaminated water or sediment leaving the site or entering drainage lines must be implemented before earthworks begin on site.*
61. *Prior to the commencement of works the permit holder shall develop and have approved in writing by the Responsible Authority a contingency plan for the storage or removal of contaminated water in the event that proposed storage capacity/retention ponds become full during any period of abnormally high rainfall events.*
62. *The operator must ensure that any excess flows of water diverted from the site to any existing drainage line do not detrimentally impact upon the drainage line by causing erosion or any other damage.*

63. *Prior to the commencement of the use groundwater monitoring bores must be drilled on the site to the satisfaction of Southern Rural Water. The bores must be tested quarterly and the results from the groundwater monitoring bores must be reported to the Responsible Authority and to Southern Rural Water every 12 months. Where evidence is provided that the quarry has impacted upon existing bores on neighbouring land, the permit holder will make good any damage caused as a result of the operations of the quarry, to the satisfaction of Southern Rural Water and the Responsible Authority.*
64. *A contaminants spill containment kit must be available at all times that machinery is being used in the quarry pit.*
65. *The quality of any water discharged from the work plan area must be tested and maintained to the satisfaction of the responsible authority, Southern Rural Water and Corangamite Catchment Management Authority. The testing must include the following:*
- a) routine groundwater and surface water sampling of the sump, two dams, and drainage line, should be undertaken to assess water quality during quarry operation and two years after rehabilitation. The samples should be analysed for major ions, pH, EC, turbidity and hydrocarbons by an accredited NATA laboratory;*
 - b) confirm the groundwater beneficial use based upon the analytical results;*
 - c) undertake further modelling to optimise the settling dam and farm dam (top dam) capabilities. This may require a deepening of the settling dam to provide for a suitable freeboard;*
 - d) prepare a contour drain section and level design based upon peak flow estimates at various locations along the drain;*

Consultation

66. *A Consultative Committee shall be established prior to the commencement of the operation of the quarry and shall establish a "Terms of Reference", record and consider all matters raised by representatives which reasonably pertain to the impact of the quarry operations and the permit holder shall have regard to the recommendations of the Consultative Committee, to the satisfaction of the Responsible Authority. The Responsible Authority shall provide for secretarial support for a Quarry Consultative Committee, which shall comprise:*
- a) A Convenor and one person (who may be the Secretary) nominated by and representing the Responsible Authority;*
 - b) One or two representatives of the permit holder;*
 - c) A representative of the Department of Primary Industries;*
 - d) Two representatives of local residents/landowners;*
 - e) Representatives of other agencies if deemed appropriate.*
67. *Meetings of the Quarry Consultative Committee shall be convened on a regular basis and at least twice per year by the Responsible Authority, and shall be attended by at least one representative of the Responsible Authority and at least one representative of the permit holder to the satisfaction of the Responsible Authority.*

68. *The local resident/land owner representatives of the Consultative Committee shall be elected at a public meeting held every three years arranged by the Responsible Authority. Invitations to the meetings shall be via a Public Notice posted in the relevant local newspaper at least two weeks prior to the meeting date.*
69. *The reasonable costs of the Consultative Committee shall be borne by the permit holder to the satisfaction of the Responsible Authority.*
70. *There shall be available at all times for the use of residents of neighbouring properties a telephone number or numbers ("the Hotline") so that they can call to register any complaint or comment about the operation of the site. A permanent register of all calls to this Hotline shall be maintained by the permit holder which register shall be available at all times for inspection by the Responsible Authority.*

Expiry

71. *This permit will expire if:*
- a) *The Work Authority for the use issued under the provisions of the [Mineral Resources \(Sustainable Development\) Act 1990](#) is cancelled in accordance with Section 770 of that Act; or*
 - b) *The use and development has not commenced within a period of two years from the date of this permit.*

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