



Colac Otway
SHIRE

AGENDA

PLANNING COMMITTEE MEETING
OF THE
COLAC-OTWAY SHIRE
COUNCIL

10 APRIL 2013

at 10:30 AM

COPACC Meeting Rooms

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

10 APRIL 2013

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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 Rooms on 10 April 2013 at 10.30am.

AGENDA

1. OPENING PRAYER

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

AMEN

2. PRESENT

3. APOLOGIES

4. MAYORAL STATEMENT

Colac Otway Shire 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 community input and participation in Council decisions.

Council meetings enable Councillors to debate matters prior to decisions being made. I ask that we all behave in a courteous manner.

An audio recording of this meeting is being made for the purpose of ensuring the minutes of the meeting are accurate. 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. It is an offence to make an unauthorised recording of the meeting.

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 13/03/13.

Recommendation

That Council confirm the above minutes.

OFFICERS' REPORTS

Sustainable Planning and Development

PC131004-1 PLANNING & BUILDING STATISTICAL REPORT
PC131004-2 CHANGE OF USE TO ADULT SEX BOOKSHOP AT 52C RAE STREET,
COLAC (PP262/2012-1)

Rob Small
Chief Executive Officer

PC131004-1

PLANNING & BUILDING STATISTICAL REPORT

AUTHOR:	Katrina Kehoe	ENDORSED:	Jack Green
DEPARTMENT:	Sustainable Planning & Development	FILE REF:	F11/2683

Summary

This report provides statistics relating to the month of March 2013.

Planning Statistics

30 Planning Permit Applications were received for the period 1 March 2013 - 31 March 2013.
 20 Planning Permit Applications were considered for the period 1 March 2013 - 31 March 2013.

Building Statistics

Please note that the Building Commission website has been up dated to January 2013.

Attachments

1. Planning Building Statistical Report - Agenda Copy - March 2013 0 Pages

Recommendation(s)

That Council's Planning Committee note the statistical report for March 2013.

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**PLANNING STATISTICAL REPORT – MARCH 2013 – (DETERMINATIONS)**

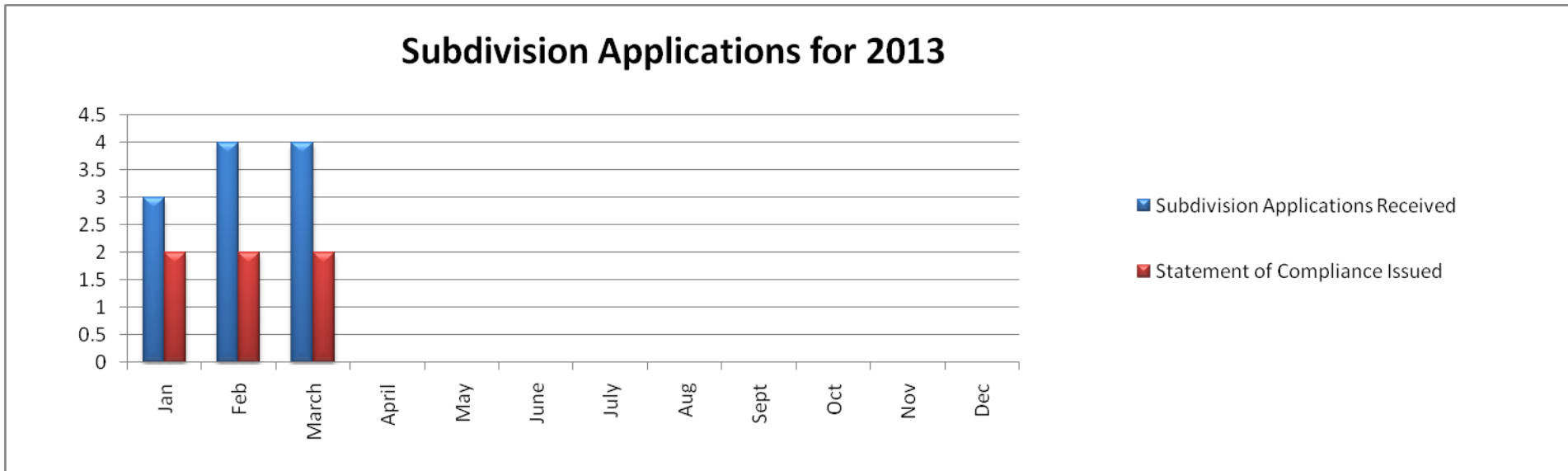
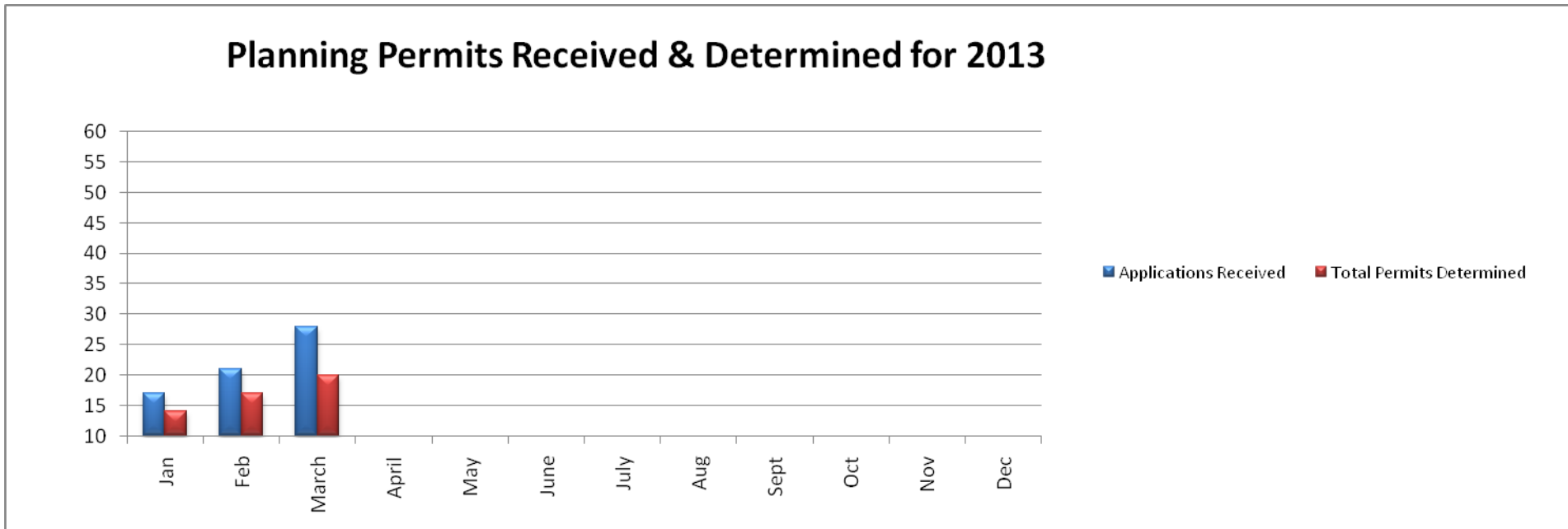
| APPLICATION NUMBER | DATE RECEIVED | LOCATION                         | PROPOSAL                                                                                                                                                    | ACTUAL TIME | DATE DETERMINED | DETERMINATION & AUTHORITY                               |
|--------------------|---------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------|---------------------------------------------------------|
| 438/2008-2         | 16 JAN 2013   | 90 TRIGGS ROAD IRREWARRA         | DEVELOPMENT OF A DWELLING, GARAGE & SHED – AMENDMENT                                                                                                        | 56          | 13 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 18/2011-1          | 28 JAN 2011   | 20 KARINGAL DRIVE WYE RIVER      | CONSTRUCTION OF TWO STOREY DWELLING, ASSOCIATED SITE WORKS AND REMOVAL OF NATIVE VEGETATION                                                                 | 180         | 12 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 57/2011-1          | 11 MAR 2011   | 29 GELLIBRAND STREET COLAC       | PROPOSED NEW DOUBLE (TANDEM) CARPORT                                                                                                                        | 124         | 18 MAR 2013     | NOTICE OF DECISION TO GRANT A PERMIT<br><b>DELEGATE</b> |
| 154/2011-1         | 16 JUN 2011   | 2 CHAPEL STREET COLAC            | TWO (2) LOT SUBDIVISION                                                                                                                                     | 633         | 14 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 180/2011-1         | 15 AUG 2012   | 47 KARINGAL DRIVE WYE RIVER      | EXTENSION & ALTERATIONS TO EXISTING DWELLING                                                                                                                | 210         | 20 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 265/2012-1         | 17 DEC 2012   | 17 DUVERNEY STREET CRESSY        | USE OF THE LAND AS A FOOD AND DRINK PREMISES (TEAROOM) AND ART GALLERY, REDUCTION IN CAR PARKING REQUIREMENT AND DISPLAY OF BUSINESS IDENTIFICATION SIGNAGE | 79          | 13 MAR 2013     | PERMIT ISSUED<br><b>COUNCIL</b>                         |
| 8/2013-1           | 15 JAN 2013   | 595 CORAGULAC BEEAC ROAD WARRION | BUILDINGS AND WORKS ASSOCIATED WITH RELOCATED DWELLING AND CREATION OF ACCESS                                                                               | 59          | 15 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 10/2013-1          | 17 JAN 2013   | 319 MURRAY STREET COLAC          | CREATION OF CARRIAGEWAY EASEMENT                                                                                                                            | 47          | 8 MAR 2013      | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 266/2012-1         | 17 DEC 2012   | 2015 COLAC BALLARAT ROAD BEEAC   | CONSTRUCTION OF AN EXTENSION TO AN EXISTING DWELLING                                                                                                        | 100         | 27 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 11/2013-1          | 21 JAN 2013   | 150 IRREWILLIPE ROAD ELLIMINYT   | USE & DEVELOPMENT OF THE LAND FOR A DWELLING & SHED                                                                                                         | 28          | 22 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 21/2013-1          | 11 FEB 2013   | 20 SLADEN STREET BIRREGURRA      | CONSTRUCTION OF A SECOND DWELLING                                                                                                                           | 14          | 27 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 23/2013-1          | 12 FEB 2013   | 73 DENNIS STREET COLAC           | CONSTRUCTION OF A DWELLING                                                                                                                                  | 15          | 22 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 41/2013-1          | 1 MAR 2013    | 211 QUEEN STREET ELLIMINYT       | CONSTRUCTION OF A CARPORT                                                                                                                                   | 24          | 25 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 46/2013-1          | 13 MAR 2013   | 4 MURRAY STREET COLAC            | REPAINTING OF BUILDING                                                                                                                                      | 9           | 22 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |
| 47/2013-1          | 13 MAR 2013   | 235 COLAC FORREST ROAD YEO       | CONSTRUCTION OF A SHED                                                                                                                                      | 9           | 22 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b>                        |

| APPLICATION NUMBER | DATE RECEIVED | LOCATION                       | PROPOSAL                                                                             | ACTUAL TIME | DATE DETERMINED | DETERMINATION & AUTHORITY        |
|--------------------|---------------|--------------------------------|--------------------------------------------------------------------------------------|-------------|-----------------|----------------------------------|
| 51/2013-1          | 1 MAR 2013    | 415 PRINCES HIGHWAY COLAC WEST | EXTENSION & ALTERATION TO THE EXISTING DWELLING                                      | 28          | 22 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b> |
| 246/2012-1         | 18 OCT 2012   | 14 GRANT STREET FORREST        | BUILDINGS & WORKS COMPRISING EXTENSION, ROOF OVER EXISTING DECK, GAZEBO & WATER TANK | 105         | 28 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b> |
| 258/2012-1         | 3 DEC 2012    | 117 DIVISION ROAD MURROON      | USE AND DEVELOPMENT OF A DWELLING                                                    | 64          | 28 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b> |
| 268/2012-1         | 18 DEC 2012   | 205 ARMSTRONG STREET ELLIMINYT | USE AND DEVELOPMENT OF A DWELLING                                                    | 60          | 28 MAR 2013     | PERMIT ISSUED<br><b>DELEGATE</b> |
|                    |               |                                |                                                                                      |             |                 |                                  |

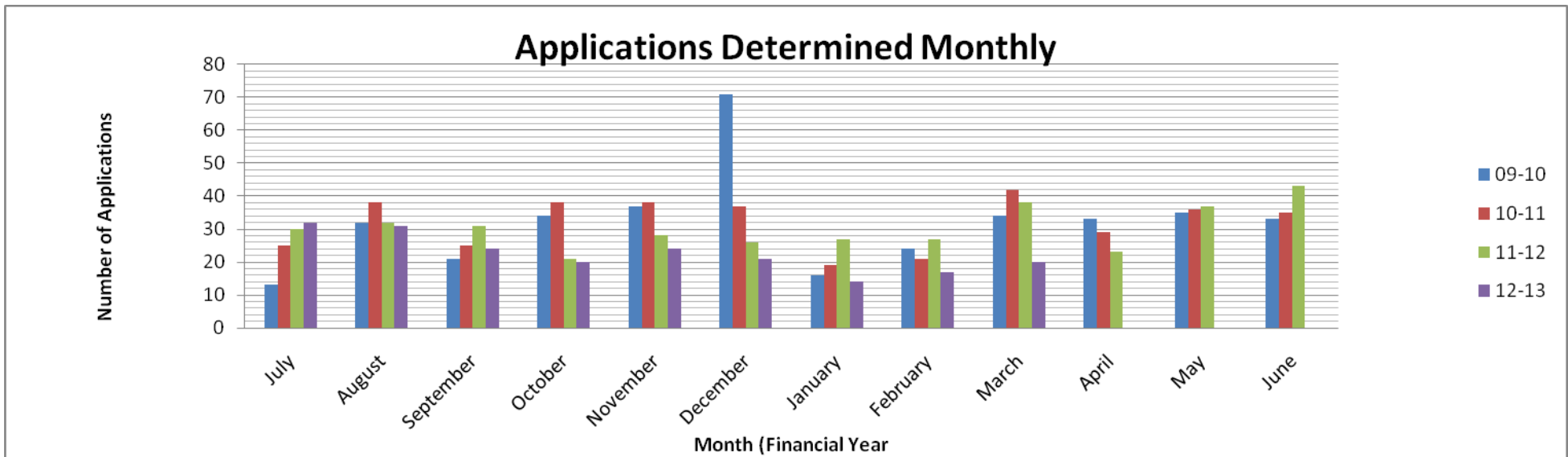
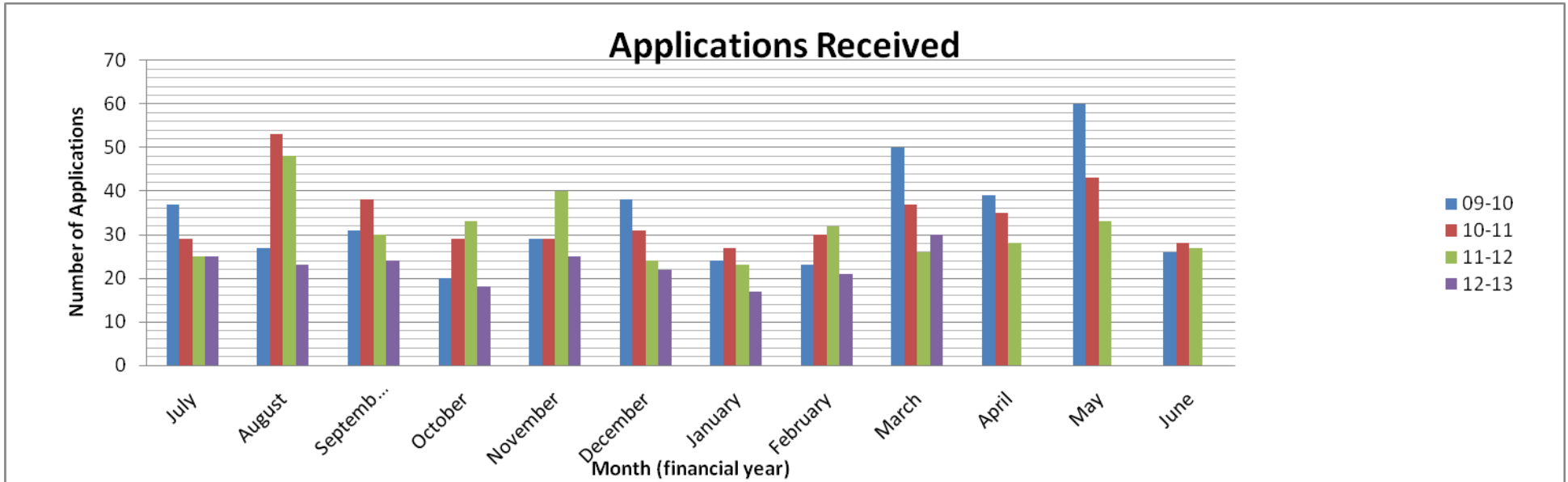
**PLANNING STATISTICAL REPORT – MARCH 2013 (PERMIT NOT REQUIRED, WITHDRAWN & LAPSED APPLICATIONS)**

| APPLICATION NUMBER | DATE RECEIVED | LOCATION                    | PROPOSAL                                                                                   | ACTUAL TIME | DATE DETERMINED | DETERMINATION & AUTHORITY |
|--------------------|---------------|-----------------------------|--------------------------------------------------------------------------------------------|-------------|-----------------|---------------------------|
| 254/2010-2         | 9 AUG 2012    | 255 KENTS ROAD BARWON DOWNS | BUILDINGS & WORKS FOR THE PURPOSE OF CONSTRUCTING A DWELLING AND SWIMMING POOL - AMENDMENT | 221         | 18 MAR 2013     | APPLICATION WITHDRAWN     |
|                    |               |                             |                                                                                            |             |                 |                           |

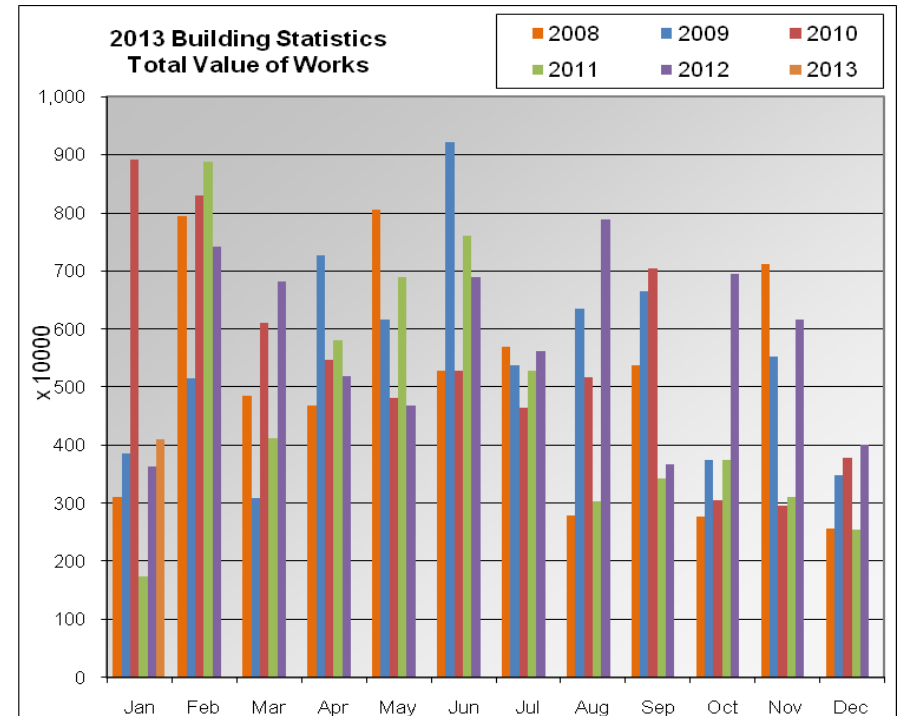
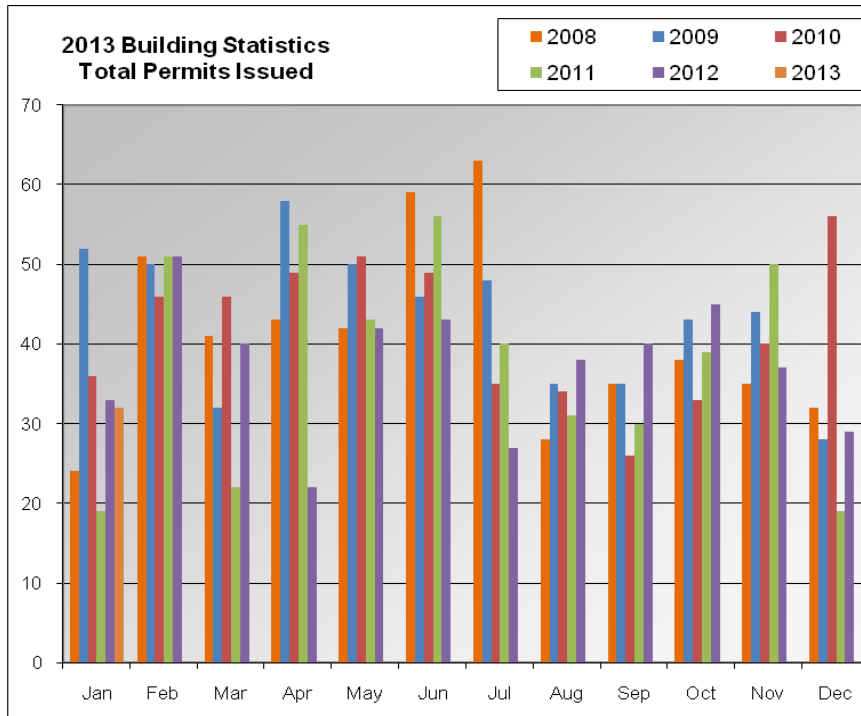
|                                               |     |  |
|-----------------------------------------------|-----|--|
| AVERAGE DAYS TO PROCESS PLANNING APPLICATIONS | 103 |  |
|-----------------------------------------------|-----|--|







|               | 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           | 21        | 3,757,719        | 0            | 0          | 5          | 117,068        | 1        | 2,000        | 1          | 39,745        | 0                   | 0          | 4                | 177,495        | 32               | 4,094,027        |
| Feb           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| Mar           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| Apr           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| May           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| Jun           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| Jul           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| Aug           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| Sep           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| Oct           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| Nov           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| Dec           |           |                  |              |            |            |                |          |              |            |               |                     |            |                  |                |                  |                  |
| <b>Totals</b> | <b>21</b> | <b>3,757,719</b> | <b>0</b>     | <b>0</b>   | <b>5</b>   | <b>117,068</b> | <b>1</b> | <b>2,000</b> | <b>1</b>   | <b>39,745</b> | <b>0</b>            | <b>0</b>   | <b>4</b>         | <b>177,495</b> | <b>32</b>        | <b>4,094,027</b> |



**PC131004-2 CHANGE OF USE TO ADULT SEX BOOKSHOP AT 52C RAE STREET, COLAC (PP262/2012-1)**

|             |                                    |           |            |
|-------------|------------------------------------|-----------|------------|
| AUTHOR:     | Blaithin Butler                    | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning & Development | FILE REF: | F12/10539  |

**Location:** 52C Rae Street, Colac

**Zoning:** Business 2 Zone

**Overlay controls:** None

**Proposed Amendments:** Planning Scheme Amendment C72 – Design & Development Overlay (Schedule 8) and Parking Overlay (Schedule 1)

**Purpose:**

This application seeks a permit to use the premises at 52C Rae Street as an Adult Sex Bookshop. The application is before Council as more than 3 objections have been received, and also due to the public interest in the proposal.

**Declaration of Interests**

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

**Summary**

The application seeks a planning permit to use the premises at 52C Rae Street as an Adult Sex Bookshop. The key planning issues are as follows:

- The proposed use is a Section 2 use (permit required) in the Business 2 Zone, which is the only permit trigger in this case. The condition specified in the Planning Scheme that such a use must meet has been satisfied (i.e. the site is not within 200m of a residential zone).
- The application site is located away from the main retail core of Colac which has the highest levels of pedestrian activity, and it is also located away from residential uses.
- A Business 2 Zone is one of the few zones where an Adult Sex Bookshop is not prohibited and a permit can potentially be issued.
- An Adult Sex Bookshop falls within the definition of a shop and it is considered that the proposed use would operate in a similar manner to any shop in a business area.
- The car parking provided at the site would satisfy the Planning Scheme requirements for a shop. It is not considered that there would be any detrimental impacts as a result of traffic and parking.
- The signage proposed in association with the use is considered acceptable and would not require consent under Clause 52.05 of the Planning Scheme (Advertising Signs). It is recommended that in the event a planning permit is issued, permit conditions should require that no sexually explicit material be displayed so as to be visible from outside the premises.

- At the time this report was drafted, 19 objections had been received to the proposal. Most objections received were made on moral grounds. It is not considered that a refusal on such grounds could be substantiated, having regard to numerous discussions in VCAT decisions about objections to Adult Sex Bookshops.
- Of note is the proximity of the proposed use to two community organisations at 52B Rae Street (Glastonbury Community Services) and 50 Rae Street (Skills Connection). Both of these organisations have objected to the proposal.
- When providing guidance on assessing applications for Adult Sex Bookshops, the Planning Scheme makes reference to separation distances to primary and secondary schools, as well as residential areas, but does not expand this to include other educational, training or social facilities. As such it is not considered, on balance, that the proposal could be resisted on the grounds of its proximity to the aforementioned community service organisations.
- It is not considered that it has been demonstrated that the proposed use would cause significant adverse social effects, or that it would have any significant impact on the amenity of this commercial area.
- As such, it is considered that the proposal would produce an acceptable planning outcome in terms of the zoning provisions and relevant policies of the Planning Scheme.

### **Background**

There are no previous planning permit applications on record for the subject land.

### **Issues / Options**

Council has the options of:

- a) Supporting the application by issuing a Notice of Decision to Grant a Planning Permit subject to conditions;
- b) Supporting the application with changes; or
- c) Refusing to grant a permit.

The key issues in this case are whether the proposed use would be acceptable in this location, taking account of the nature of the use, the location of the site, the nature of adjacent uses and the objections received. Having reviewed the provisions of the Planning Scheme and former VCAT decisions relating to Adult Sex Bookshops, it is considered that the use would be acceptable in this location.

It is recommended that Option (a) be supported.

### **Proposal**

The application seeks a permit for the use of the subject site as an Adult Sex Bookshop, as described below:

- An adult store intended for over 18 year olds and selling lingerie, costumes, lubricants, oils and creams, DVDs, magazines and novelty goods for occasions such as hen's nights.
- The proposed operating hours are 12pm to 10pm, 6 days a week.
- There would be two staff. The business would initially be operated by the owners, with the possibility of other persons being employed in the future.
- Two (2) existing car spaces are allocated to the shop and located at the rear of the premises.

- Two (2) signs are proposed, in positions where existing signage is located. A fascia sign proposed on the front façade would have an area of 4.84 square metres, whilst a proposed fascia sign on the western façade would measure 2.59 square metres. The total area of signage would be 7.43 square metres. The advertisements would not be illuminated and would show the business name 'Love 'n Lace'. There would be no graphics. The signage would be of a size that would not trigger a requirement for a planning permit.
- No other external buildings and works are proposed.

### **Site & Surrounds**

The site is located on the southern side of Rae Street, Colac, between the intersections with Hesse Street and Queen Street. It is legally described as Lot PT 2, PS 323561, Parish of Colac.

The site has an area of 1,061sqm and contains a single storey brick building containing offices and shops in three separate tenancies. The shop that forms the subject of this application has an internal area of approximately 53.5 square metres, and was formally used as the shopfront for a business selling signs and graphic images. Customer access to the premises is via a set of stairs located on the north-western corner. There are two existing car parking spaces (sealed and line-marked) associated with the shop, which are located at the rear of the premises in the south-west corner of the site.

Directly adjoining the site to the east, at 52B Rae Street, is the Colac office of Glastonbury Community Services, which provides social care services. A trade supply business (electrical) operates from the shop at 52A Rae Street. The land further east is also in commercial use. Land to the west comprises commercial and office uses, with associated car parking in the front setback. The premises at 50 Rae Street is owned and occupied by Skills Connection, a community organisation that provides training.

The subject site is in the Business 2 Zone, as is land to the north, east and west.

To the south is the Geelong to Warrnambool railway line and the Old Beechy Rail Trail. Further south of the railway line, land is zoned Residential 1 Zone (R1Z) and contains residential uses, the Colac Bowling Club and an aged care facility.

### **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 by posting a sign on-site.

At the time this report was drafted, 19 objections had been received (which included one without a contact address and two addressed to specific councillors) and a petition signed by 26 people (one without contact details).

Two of these objections were from neighbouring not for profit community organisations, which objected on the following grounds:

*Glastonbury Community Services, 52B Rae Street, Colac (adjoining to the east); objection summarised below:*

- Glastonbury Community Services provides social care services to vulnerable children, young people and their families. The proposed establishment would not fit with the organisation's vision and values for the community, would jeopardise accessibility to its services by our clients, and is not a complementary combination.

*SkillsConnection Inc, 50 Rae Street, Colac (adjoining to the west) objection summarised below:*

- Skills Connection Inc. has been located at 50 Rae Street in excess of 15 years and has been landowner for approximately 9 years. It provides training and disability support services to clientele (school aged adolescents, people with disability and mental illness, vulnerable people and their families), who frequent the facility on a daily basis. The proposed establishment does not fit with the organisation's visions and values, would jeopardise accessibility to our services by our clients and is not a complementary combination.

The reasons for objection in the other letters received were as follows:

- Do not feel that this type of shop will in any way enhance the moral fabric of our town and its family lifestyle.
- This sort of shop promotes promiscuity.
- Already a business in Colac that provides this service more discretely, and several shops in Geelong, as well as the internet.
- Location is inappropriate as it is flanked by Glastonbury Childrens Services and Colac Skills Connection, both of which have vulnerable people using their services.
- No matter where it is placed, people (including children) would walk past it on a daily basis as Colac is such a small town.
- The owners have said they will staff it themselves, so would not be providing employment opportunities for any local people.
- How would this shop help promote Colac and further employment for the town?
- Concept of such places is crude and somewhat sleazy.
- Would need to find alternative route to walk to work if application is successful - lighting at night is bad enough without having to worry about bumping into customers.
- As Christians, do not approve of a sex shop opening in Colac.
- Teenagers already face many extreme challenges - a sex shop in Colac would indicate that adults condone sexual exploration.
- Would damage the reputation of Colac and lower the moral image.
- Sex has enough publicity and is promoted via TV, films, newspapers, billboards, books and magazines.
- Sex related issues can be better dealt with by health and medical professionals.
- Colac already struggles with the problems of crime, drug abuse and alcohol abuse, and introducing this element into society is not a positive one.
- If Colac is to grow and flourish it will be families that bring this about – families will not want to set up home in a region promoting such a venue.

### **Referrals**

The application was referred to the Council's Building Department which advised that no building permits would be required, as the building is already used as a shop.

## Planning Controls

### a. State and Local Planning Policy Frameworks

The State and Local Planning Policy Frameworks seek to ensure that 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:

- 11 Settlement
- 17 Economic Development
- 21.03-1 General
- 21.03-2 Colac

There is no local planning policy in the Colac Otway Planning Scheme specifically relating to the type of use proposed.

The proposal is considered consistent with the objectives and strategies of the relevant State and Local Planning Policy Frameworks. The proposed use would be located in one of the few zones in which an Adult Sex Bookshop is not prohibited and should not materially affect other commercial uses in the vicinity, especially if appropriate conditions are imposed to control the presence of the premises in the streetscape, and its use.

### b. Zone provisions

Under Clause 34.02-1 a permit is required to use the land for an Adult Sex Bookshop in the Business 2 Zone, provided the use meets the section 2 use (permit not required) condition.

The section 2 use condition under Clause 34.02-1 of the zoning table is a requirement for use of any premises as an Adult Sex Bookshop. This condition states that the use:

“Must be at least 200 metres (measured by the shortest route reasonably accessible on foot) from a residential zone or Business 5 Zone, land used for a hospital, primary school or secondary school or land in a Public Acquisition Overlay to be acquired for a hospital, primary school or secondary school.

The combined leasable floor area for all shops must not exceed any amount specified in the schedule to this zone.”

The site is not within 200 metres of a residential zone or Business 5 Zone, land used for a hospital, primary school or secondary school or land in a Public Acquisition Overlay to be acquired for a hospital, primary school or secondary school. Residential areas are located a minimum of 208m away, whilst the Colac Area Health hospital is located approximately 400 metres to the west of the site. The Schedule to the Business 2 Zone does not specify a combined leasable floor area for all shops.

As such, the use is not prohibited on the site and the proposal must be assessed on its merits.

## Consideration of the Proposal

As noted above, the proposed Adult Sex Bookshop is a use for which a permit is required in the Business 2 Zone. The use is not prohibited in this zone, which is one of the few zones in which an Adult Sex Bookshop can be allowed.

There is a level of public concern about the proposed use, and these concerns are considered in detail later in this report, after discussion about the Planning Scheme provisions.

#### Zone (Clause 34.02)

To be a section 2 use (permit required), a proposed Adult Sex Bookshop must be at least 200m from specified uses (as outlined earlier in this report). The applicant has submitted detail satisfactorily demonstrating that the proposed use would be located just over 200 metres (approximately 208 metres) from the nearest residential zone (south side of railway land zoned PUZ4 in Queen Street), measured by the shortest route reasonably accessible on foot. The applicant has confirmed that the distance has been measured using a scaled aerial map, a tape measure and a measuring wheel. It is therefore considered that the section 2 use condition has been met.

Given the above, the use must be assessed on its merits against the decision guidelines for applications in the Business 2 Zone, as outlined below. In addition, regard should be had to the objections received, and consideration given to the weight that can be given to each of these objections taking account of relevant VCAT decisions, which help guide how applications for Adult Sex Bookshops should be assessed.

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

The Colac Otway Planning Scheme does not have a specific policy relating to uses such as that proposed. It is considered that the proposal meets any relevant State and local policies under the Planning Scheme, notably those relating to economic development.

*The effect that existing uses may have on the proposed use.*

Uses in the surrounding area would not have any adverse impact on the proposed use. The subject land has most recently been used as a shop front for a business selling signage and graphic images. Existing uses and the proposed use would continue to be of a commercial nature, with no material impact on the current level of amenity.

The drainage of the land.

No external buildings and works are proposed. The proposed use would not alter the existing drainage on the property.

The availability of and connection to services.

The site has access to all services.

*The effect of traffic to be generated on roads.*

The proposal would have the same car parking requirement as the previous shop use. There are two (2) existing car spaces located at the rear of the site, which are allocated to the premises. There is also car parking available off-site, including on Rae Street in front of the building. As such, it is not considered that there would be any adverse traffic impacts relating to this proposal. The issue of the car parking requirement is addressed in further detail later in this report.

*The interim use of those parts of the land not required for the proposed use.*



There are no such areas on the subject land.

It is also noted that the zone objectives include encouraging the development of offices and associated commercial uses. The proposal for this type of shop is considered to be consistent with the zoning and potentially acceptable in this commercial location. The proposed use is not expected to have any adverse amenity impacts on the surrounding commercial area. The business would not open before midday and its proposed operation until 10pm daily is considered to be acceptable given the business zoning of the area.

There is no requirement for a permit triggered for buildings and works under the zoning provisions, as the proposal does not involve any buildings or works.

#### Advertising signs (Clause 52.05)

The subject land falls within Category 2 (Office and Industrial) under this Planning Scheme provision. The provision allows for the erection of business identification signage totalling 8 square metres in area without a planning permit.

As noted above, it is proposed to install two (2) business identification signs in locations where there is existing signage on the building. The proposed signage would total 7.43 square metres in area, and would therefore not require a planning permit.

The signage is not considered excessive and would not exceed that currently displayed on the building. From the details submitted, it is considered that the signage would not draw undue attention to the shop and the nature of the use.

#### Car Parking (Clause 52.06)

Clause 52.06-1 includes the following requirements:

*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.*

*A permit may be granted to reduce or to waive the number of car spaces required by the table.*

The parking requirement for the proposed use is 4 car spaces per 100 sqm of leasable floor area. This equates to a requirement for 2 car spaces being provided for the application site.

The proposal includes the retention of two (2) existing car parking spaces allocated to the premises, located at the rear of the site. Clause 52.06-3 of the car parking provisions also states that:

*Unless a schedule to the Parking Overlay or the schedule to Clause 52.06 specifies otherwise, a permit is not required if the required number of car parking spaces for a new use under this clause is less than or equal to the required number of car parking spaces for the existing use and the existing number of car parking spaces is or has not been reduced.*

In this case, there is no change of parking requirement between the previous shop use and the proposed use (i.e. the previous use as a shop would have had the same car parking requirement).

It is noted that Planning Scheme Amendment C72 is currently on public exhibition and proposes to introduce a Parking Overlay (Schedule 1) over all land in the Colac commercial area including the subject land. The overlay gives statutory effect to the outcomes of the *Colac and Apollo Bay Car Parking Strategy 2011* by reducing some of the State standard parking rates at Clause 52.06. The proposed overlay would reduce the requirement for a shop from 4 spaces per 100sqm floor area to 3 spaces per 100sqm floor area. This amendment would have no impact on the current proposal.

The proposal is therefore considered to meet the required car parking requirements under the Planning Scheme. It should also be noted that the premises has on-street parking in close proximity to the site.

#### Loading and Unloading of Vehicles (Clause 52.07)

Loading is expected to be from the rear car parking area via a rear door to the premises.

#### Other Issues

As mentioned earlier in this report, there is a level of public concern about the proposal.

Of note when considering this application are numerous VCAT decisions that provide guidance on the assessment of Adult Sex Bookshops. It has been established in these decisions that there is not a blanket restriction on such uses in the Planning Scheme, and that such proposals must be considered on their planning merits and not be resisted on moral grounds.

The following are some of the relevant VCAT decisions considered when assessing the current proposal and the grounds of objection received:

#### Deblu's v Campaspe SC & Ors [2012] VCAT 556 (3 May 2012)

This decision related to an adult sex bookshop in a Business 1 Zone in Echuca. The Member commented as follows in that case:

*"...adult sex bookshops are legal in Victoria and are permitted within the Business 1 Zone and it is not the role of the Tribunal to consider the merits of this. Moral and religious views are not matters for a planning decision, outside of their expression through planning legislation including the planning scheme. I consider that the proposal for the adult sex bookshop complies overall with the planning scheme, and there was no substantive empirical evidence put to me that the proposal will have a negative net community impact. While I have carefully considered the positions of the Campaspe Shire and the other objectors that this would be the case, I find that their positions were not balanced against other considerations...*

*I can therefore find no basis to refuse the permit application based on broader issues of social moral impact. I also cannot ignore the fact that proposed use is lawful and is permitted under the Business 1 Zone conditional upon satisfying exclusion zone criteria."*

#### Johnson v Greater Shepparton CC (Red Dot) [2005] VCAT 1432 (21 July 2005)

*Johnson v Greater Shepparton CC (21 July 2005)* is a red dot decision relating to an application for the use and development of a building for the purpose of an adult sex bookshop with associated signage in a Business 4 Zone in Shepparton.

This decision acknowledged that social and economic effects of the proposed adult sex bookshop should be considered under Section 60(1A) of the Planning and Environment Act, which provides that:

*“60(1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider –*

- (a) any significant social and economic effects of the use or development for which the application is made.”*

In this instance, the Tribunal found that it is not appropriate to simply apply philosophical, moral or religious values when considering such matters. It did not accept the contention by objectors that the proposed use would cause significant net adverse social effects, given that underage persons would not legally be exposed to explicit products as a result of the premises. The decision also found that although the proposed shop would increase access to pornography in Shepparton, the effect would be marginal, given that direct access to those under 18 years would not be permitted, and that pornography is readily and freely available on the internet.

The following is an extract from this decision:

*“In light of these factors, we are not satisfied that the proposed adult sex bookshop will cause harm to the community by increasing the availability of pornography to minors. Nor do we uphold the contention that the proposed shop would cause adverse social effects because it would create an avenue for the permit applicant to pursue its agenda on sex into the community without collaboration with schools, parents and family organisations. Obviously the operator of the proposed shop will pursue the agenda of seeking to make a profit from the sale of pornography. This is a lawful activity. It is not made any less lawful by reason of the fact that pornography is sold to individuals, and is not presented in the context of some school, parental or family agenda. We must remember that, in assessing social effects in the context of town planning, we live in a society where certain activities are regulated by laws of general application. It is unlikely that the Parliament intended that such laws might be negated by the exercise of planning discretion in the absence of some particular spatial consideration that warranted some different outcome.”*

This approach is reflected in numerous other VCAT decisions on Adult Sex Bookshops, where it is made clear that the use of premises as an Adult Sex Bookshop is permitted (subject to other material planning considerations) in specified zones and that moral objections are not material to the planning consideration of a proposal. In *Sexyland Australia Pty Ltd v Kingston CC* [2009] VCAT 1309 (10 July 2009), the Member noted:

*“Whilst the Planning and Environment Act indicates that social issues can be taken into account, again this does not include moral and ethical issues. It matters not what my personal view is or the views of advocates and objectors are; this matter must be clearly determined in relation to where it sits within the planning process.”*

As such, whilst the concerns of residents are noted and acknowledged, the majority of these objections have not been made on planning grounds. In terms of objections not made on moral grounds, it is considered that the site is appropriately located for the use in terms of being outside the core retail area; the availability of items from other sources (such as the internet, shops in other towns, or in Colac itself) is not a planning reason to refuse the proposal; the location of the site adjacent to community services to vulnerable people is considered below; and the proposed Adult Sex Bookshop would potentially provide the same employment opportunities as any other shop that may locate at this site.

As noted earlier in this report, the application site does abut two community service organisations. Detailed consideration has been given to the objections raised by these bodies, given the nature of the uses. As noted earlier in this report, the use of a premises as an Adult Sex Bookshop can only be permitted in the Business 2 Zone if it is, inter alia, a specified minimum distance from primary or secondary schools.

Consideration was given to whether this could reasonably be expanded to include the types of uses run by Glastonbury Community Services and Skills Connection. Whilst noting the concerns raised by the community organisations, on balance it is not considered that the Planning Scheme condition can be taken to include these types of uses. In *HGC Administrative Services Pty Ltd v Darebin*, where an Adult Sex Bookshop was proposed next to a Music Shop that provided tuition to students of all ages, Senior Member Marsden quoted the following extract from the planning officer's report to Council Committee:

“... the Scheme requirements are quite specific in defining the type of school that must be buffered from the proposed use, that being a primary or secondary school.

In trying to determine whether the location of the Adult Sex Bookshop next to an establishment where children may congregate, the following information may provide some assistance in interpreting the Planning Scheme requirements.

When considering an Application for a Brothel, the Responsible Authority must consider whether the land is within 200 metres of a school, kindergarten, children services centre or any other facility or place regularly frequented by children for recreational or cultural activities and if so the effect on the community of a brothel being located within that distance of that facility or place.

The above.....section is absent in the requirement for determining the location of Adult Sex Bookshop. By its absence, we can interpret that for an Adult Sex Bookshop, the restriction is quite specific in relation to primary and secondary schools, not simply where children frequent.

In addition, it should be noted that there is a difference between a premises that offers tuition to students and a primary and secondary school in terms of supervisions while other children are attending the premises. When children of primary school age attend classes at the Music Shop, they will usually be in a class until picked up by a parent or guardian. The situation is different in schools, particularly secondary schools.”

Senior Member Marsden then stated:

“The Tribunal believes the above analysis to be both perceptive and accurate. The ‘classes’ conducted on Mr Wells’ premises are occasional and generally of a nature where a parent delivers and collects his or her child. That situation is quite different to that applying to a traditional school.”

On balance, it is therefore considered that the proximity to Glastonbury Community Services and Skills Connection is not a reason to refuse this application. It is acknowledged that the proposal would be a substantially different type of use to the community organisations currently in the premises adjoining the application site. Whilst these community uses may be of a sensitive nature, they are located within a Business 2 Zone which is one of only a few zones where Adult Sex Bookshops can be considered. In planning terms, the proposed use would operate no differently to any other shop in a commercial area, despite the nature of the products to be sold. Products cannot legally be sold to persons under 18 years of age. The signage proposed on the outside of the shop would not be excessive and would not overtly draw attention to the nature of the products on sale. In addition, it is recommended that permit conditions be imposed on any permit issued, to prevent sexually explicit material being displayed so as to be visible from outside the premises.

On balance, therefore, it is considered that no detriment would be likely to occur as a result of clients of these community organisations being in the vicinity of the proposed shop. Similarly, it is not expected that access to these services would be jeopardised in any way by the proposed use.

In light of the above, it is considered that the proposal would not produce any significant social or economic effects, or result in an unacceptable outcome in terms of the amenity of the area.

#### **Council Plan / Other Strategies / Policy Land Use Planning and Development**

Council will engage, plan and make decisions about land use and development that takes into account the regulatory role of Council, its diverse geography, social, community, economic and environmental impacts for current and future generations.

It is considered that the proposal is in accordance with the above objective.

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

There are no financial 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 proposal.

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

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

#### **Conclusion**

The proposal is generally considered consistent with the State and Local Planning Policy Frameworks, the zone provisions, and Clause 65 of the Planning Scheme. It is noted that the majority of objections are based on moral grounds, but that it has been established in numerous VCAT decisions that this type of use must be considered on its planning merits and cannot be refused because of a moral objection to the use. Whilst the application site is adjacent to premises used by two community organisations, on balance it is not considered that the proposal can be resisted because of this. It is considered that conditions placed on any permit issued can address any concerns about the visibility and potential impacts of the proposed use. Therefore it is considered that the application is acceptable, and that a Notice of Decision to Grant a Permit could reasonably be issued subject to appropriate conditions.

**Attachments**

Nil

**Recommendation(s)**

***That Council's Planning Committee resolves to issue a Notice of Decision to Grant a Planning Permit for an Adult Sex Bookshop 52C Rae Street, Colac subject to the following conditions:***

*Amended Plans*

- 1. Prior to the commencement of the use hereby permitted, 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 substantially in accordance with the plans submitted with the application, but modified to show:***
  - a) details of the treatment to the windows of the premises to ensure that goods on sale/display in the interior of the building are not visible from outside the building.***

*Endorsed Plans*

- 2. The use as shown on the endorsed plans must not be altered without written consent of the Responsible Authority.***

*Use*

- 3. The use, when established, must at all times comply with the definition of 'Adult Sex Bookshop' which at the date of this permit is defined as land used to sell or hire sexually explicit material, including:***
  - a) publications classified as restricted under the Classification (Publications, Film and Computer Games) (Enforcement) Act 1995; and***
  - b) materials and devices (other than contraceptives and medical treatments) used in conjunction with sexual behaviour.***
- 4. No person under the age of eighteen (18) years is to be allowed in the Adult Sex Bookshop hereby permitted.***
- 5. Unless otherwise approved in writing by the Responsible Authority, no sexually explicit entertainment, including internet booth shows or the like, may be carried out on the premises at any time.***

*Hours of Operation*

- 6. Unless otherwise approved in writing by the Responsible Authority, the use hereby permitted must only operate during the following times:***
  - 12:00pm to 10:00pm, Monday to Saturday.***

*Explicit Displays*

7. **No “indecent or obscene word, figure or representation” or “objectionable publication” or “objectionable advertisement” as defined in the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995, or any Act amending or re-enacting that Act, may be displayed in such a manner so as to be observable from outside the premises. Sexually explicit advertisements, goods and products (including materials, words or figures of a sexually explicit nature) must only be displayed internally within the Adult Sex Bookshop to the satisfaction of the Responsible Authority.**

*Amenity*

8. **Goods, materials, equipment and the like associated with the use of the land must not be displayed or stored outside the building.**
9. **Any window display offering goods for sale must be to the satisfaction of the Responsible Authority.**
10. **All outdoor lighting must be designed, baffled and located to ensure that no loss of amenity is caused to adjoining and nearby land to the satisfaction of the Responsible Authority.**
11. **The external appearance of the Adult Sex Bookshop must be maintained in good order and appearance to the satisfaction of the Responsible Authority.**
12. **Bins or other receptacles for any form of rubbish or refuse must be located on the land and screened from public view to the satisfaction of the Responsible Authority.**
13. **The amenity of the area must not be detrimentally affected by the use, including 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, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; and/or**
  - d) **in any other way;****to the satisfaction of the Responsible Authority.**

*Signage*

14. **All wording, colouring, and form of signage must be generally in accordance with that submitted with the permit application.**
15. **External signage associated with the use must not contain any sexually explicit or lewd content, whether in written or pictorial form.**
16. **Signs must not be illuminated by external lights except with the written consent of the Responsible Authority.**

*Parking*

17. **The two parking spaces shown on the endorsed plans must be kept available, without obstruction, solely for use as parking spaces for No. 52C Rae Street.**

*Expiry*

- 18. This permit will expire if the use is not commenced within two (2) years of the date of this permit. The Responsible Authority may extend this period if a request is made in writing before the permit expires or within three months afterwards.**

Note

- 1. Prior to the commencement of the use, the applicant is advised to check compliance of the existing building with the Building Code of Australia with Council's Building Department.**

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CONSTRUCTION OF A DWELLING AT 1 SARSFIELD STREET SEPARATION CREEK PP203/2011-1

| | | | |
|-------------|------------------------------------|-----------|------------|
| AUTHOR: | Bernadette McGovern | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning & Development | FILE REF: | F11/1616 |

Location: 1 Sarsfield Street, Separation Creek

Zoning: Township Zone (TZ)

Overlay controls: Neighbourhood Character Overlay Schedule 1 (NCO1)
Significant Landscape Overlay Schedule 1 (SLO1)
Erosion Management Overlay Schedule 1 (EMO1)
Bushfire Management Overlay/Wildfire Management Overlay (BMO/WMO)
Design and Development Overlay & Schedule 4 (DDO4)

Proposed Amendments: None applicable

Purpose:

An application has been submitted for the construction of a dwelling and removal of native vegetation at 1 Sarsfield Street, Separation Creek.

This application is before Council for consideration as the proposed dwelling exceeds 8 metres in height (a maximum height of 8.2 metres above natural ground level is proposed).

The report has been added as a late item to the agenda due to the potential delay which would have been incurred to the applicant had the item waited for the May meeting, given the delays caused to date when the matter previously missed a deadline for the March meeting agenda. All of the parties have been notified of the meeting date and should not be disadvantaged.

It is recommended that the application be approved as the proposal generally meets the requirements of the Colac Otway Planning Scheme.

Declaration of Interests

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

Summary

- The proposal is to demolish an existing dwelling, construct a new dwelling and to remove vegetation (1 native tree and noxious weed species).
- The applicant was advised that the original proposal would not be supported due to its height, bulk, setbacks, and site coverage.

- The proposal was significantly redesigned to achieve a reduced height and site coverage, and increased setbacks.
- Notice of the original application was undertaken and four (4) objections were received. Following notice of the revised proposal, one (1) objection was withdrawn and two (2) original objections were reiterated, resulting in three (3) objections remaining.
- The key concerns raised by objectors are building height, setbacks, overlooking, loss of views and inadequate effluent field.
- Referral of the application was undertaken and conditional consent was received from all of the relevant internal and external parties.
- The key planning considerations relate to the building height, visual impact within the significant landscape setting of the Great Ocean Road environs, and potential impacts on neighbours.
- Overall the revised design is considered to provide an appropriate outcome against key planning considerations contained in the Preferred Character Statement for Separation Creek, Precinct 1 (Clause 21.03-6) and the Landscape Character objectives of Clause 21.04-8.
- The requirements of SLO2 and NCO1 overlays have also been satisfied as detailed below. The height and site coverage has been reduced, the setbacks increased and the design is consistent with the neighbourhood character of the area. The dwelling may be partially visible from the Great Ocean Road, however it will be screened by surrounding development and nestled amongst vegetation.
- The application satisfactorily addresses the application requirements of the Erosion Management Overlay and the Bushfire Management Overlay and these matters will be enforced through permit conditions.
- Further it is considered that objectors' concerns can be generally addressed through permit conditions.
- On this basis, it is recommended that the application be approved.

Background

No previous planning applications have been lodged 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 to the recommendation.
- c) Refusing to grant a planning permit.

It is recommended that Option (a) is supported.

Proposal

The application seeks approval for a two storey detached dwelling. The proposal involves the following:

- Demolition of the existing dwelling, bungalow and water tank;
- A two storey dwelling with entry at lower level;
- Three bedrooms, two on the lower floor and one on the upper floor;

- Open plan kitchen, dining and living on the upper level with three decks along the east elevation;
- Rumpus room at lower level with deck facing south;
- Fire resistant timber cladding to external walls with low pitched iron roofing;
- Elevated construction on posts with excavation limited to a depth of approximately 1.3 metres in the northeast corner of the dwelling;
- Height mostly under 8 metres above natural ground level with some small central areas reaching a maximum height of 8.2 metres;
- Water tanks (4 x 9560 litres) and septic system located underneath the lower level;
- Landscaped terraced effluent disposal seepage beds to the north and west sides of the dwelling;
- Use of the existing driveway for access from Sarsfield Street;
- Car parking area for two cars on the driveway;
- Removal of five (5) trees from the site and two (2) trees from the road reserve (1 native Eucalyptus ovata tree and noxious weed species (Willow)).

Site & Surrounds

The subject site is located on the south side of Sarsfield Street in Separation Creek. It has a triangular shape and comprises of two lots: a larger lot totalling 501 square metres in area and legally described as Lot 6 LP33710 C/T 8259, and a smaller lot totalling 137 square metres in area and legally described as Lot 1 TP943110V. The lot totals 638 square metres in area.

The smaller lot (Lot 1, TP943110V), previously formed part of the road reserve and was acquired by the owner of 1 Sarsfield Street as a result of an adverse possession claim in January 2009. The existing dwelling, bungalow and water tank are partially constructed over this lot. This parcel remains encumbered with an easement for carriageway and drainage, but does not contain any drainage infrastructure. (It is noted that Council's Infrastructure Department has provided consent on 12 December 2011 to allow the proposed dwelling to be partially built over this easement, but not to contain any foundations or support structures). The proposal also relies on access across this lot to the dwelling.

A 1.61 metre wide drainage easement also exists along part of the southeast boundary of the larger lot (Lot 6 LP33710).

The site currently contains a fibro cement, split level dwelling with a rear deck area, a bungalow and a water tank. The dwelling and bungalow are in a poor state of repair. There is an existing driveway from Sarsfield Street in the northeast corner of the site. There are many mature trees along the street frontage, within the site and along the road reserve. The balance of the site is largely covered in weeds (including blackberries).

The site has a significant fall (approximately 5 metres) from Sarsfield Street to the rear boundary, and is steepest adjacent to the street frontage.

The surrounding area comprises residential development being generally detached single and two storey dwellings, nestled amongst the treed landscape. The Great Ocean Road is located approximately 50 metres to the south of the site.

Public Notice

Public Notice of the application was required in accordance with Section 52 of the Planning and Environment Act 1987.

The applicant undertook public notification by means of letters to adjoining and surrounding owners/occupiers and has provided a Statutory Declaration in relation to notification. The revised design was readvertised to adjoining owners and previous objectors.

It is considered that the advertising has been carried out in accordance with Council's requirements.

At the conclusion of the first round of notification there were four (4) objections. After the second round of public notice, two (2) original objections were reiterated and one was withdrawn, resulting in a total of three (3) objections. The objections were from two properties on the north side of Sarsfield Street opposite the site (4 Sarsfield Street and 8-10 Sarsfield Street), and a property to the south (19 Great Ocean Road).

The grounds of the three (3) objections are summarised as follows:

- Inaccuracies in application documents and plans; incorrectly stated that no boundary fencing to the south (paling and galvanised iron fencing exist);
- Inadequate street setback;
- Excessive height of the dwelling;
- Overlooking of the properties to the south; opaque balustrade to balconies omitted from revised plans;
- Proposed planting of tall trees along street frontage will impact on objectors views, potentially damage road paving and be a fire risk;
- Inadequate size of effluent field given sloping block.

These matters are addressed below.

Referrals

The application was referred internally to the Environment, Infrastructure, Building and Health Departments and externally to the Country Fire Authority. No objections have been raised to the proposal subject to the inclusion of appropriate conditions. A Permit to Install a Septic Tank System was approved for the dwelling by Council's Environmental Health Department on 11 February 2010.

It should be noted that the application benefits from the transitional provisions under Clause 44.06-8 (Transitional arrangements) of the Bushfire Management Overlay (BMO) as it was received before 18 November 2011. The CFA therefore issued conditions on the basis of the former Wildfire Management Overlay (WMO) provisions that applied prior to gazettal of the BMO.

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

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

- Clause 11.05-5 – Coastal Settlement
- Clause 12.02-2 – Appropriate development of coastal areas
- Clause 12.02-6 – Great Ocean Road region
- Clause 12.04-2 – Landscapes
- Clause 13.03-2 – Erosion and landslip
- Clause 13.05 - Bushfire
- Clause 15 – Built Environment & Heritage
- Clause 16.01 – Residential Development for Single Dwellings
- Clause 19.03 – Design and Built Form
- Clause 21.02 – Land Use Vision
- Clause 21.03 – 6 – Kennett River, Wye River and Separation Creek
- Clause 21.04-3 - Vegetation
- Clause 21.04-5 – Erosion
- Clause 21.04-8 – Landscape Character

It is considered that the proposal meets the objectives of the above State and Local planning policies.

In particular, it is considered that the development can comply with the Preferred Character Statement for Separation Creek Precinct 1 of Clause 21.03-6, which encourages coastal style dwellings to use muted colours and be set amongst tree canopies for minimal visual impact. Similarly, Clause 21.04-8, Landscape Character seeks to retain existing indigenous and native trees and understorey wherever practical, to use finishes and colours that complement those found naturally, and to screen buildings with vegetation to minimise their visibility from main roads and key viewing locations. The proposal can satisfy the objectives of these policies. These matters will be addressed through permit conditions.

b. Zone Provisions

The site is zoned **Township Zone (TZ)**. A permit is not required for the use of a single dwelling pursuant to Clause 32.05 of the Colac Otway Planning Scheme. Similarly, planning approval is not required to undertake building and works associated with a single dwelling under the zone provisions.

c. Overlay Provisions

The site is covered by the **Significant Landscape Overlay Schedule 2 - Coastal towns: Skenes Creek, Kennett River, Wye River and Separation Creek (SLO2)**. A permit is required under Clause 42.03-2 for buildings and works and to remove, destroy or lop a tree.

The Landscape Character Objectives of Schedule 2 are as follows:

- *To protect and enhance the valued characteristics of the nationally significant Great Ocean Road Region landscape.*
- *To ensure that the dominance of vegetation over built form is retained as an element of township character by encouraging retention of existing trees and planting of new indigenous vegetation.*

- *To increase the use of indigenous vegetation to highlight natural features within the precinct.*
- *To retain the contrasts between landscape elements within the precinct.*
- *To ensure that development that occurs on hill faces or in other prominent locations is not highly visible.*
- *To minimise the visual impact of signage and other infrastructure, particularly in coastal areas, hill faces and ridges.*
- *To protect the clear, sweeping views to the ocean available from the precinct.*
- *To retain the dominance of an indigenous natural landscape in coastal areas, between townships, particularly from the Great Ocean Road.*
- *To ensure that fence styles and heights reflect the predominant and preferred character of the townships.*

Whilst the dwelling is elevated, its height is not excessive, being largely under 8 metres above ground level. It will be set amongst a treed back drop and will not be unacceptably visible from the nationally significant Great Ocean Road Region landscape.

The removal of five (5) trees is proposed from the site and two (2) trees from the road reserve (1 native tree and noxious weed species). The extent of vegetation removal and the landscaping proposed are acceptable to Council's Environment Department. There will still be many mature native trees along the Sarsfield Street frontage to screen the dwelling and to provide a vegetated back drop. Additional plantings are also proposed within the site. Permit conditions will require that landscaping effectively blends and screens the dwelling from the Great Ocean Road. Muted, non-reflective external colours will also be required. The proposal will provide an appropriate outcome against this overlay.

The site is covered by the **Design and Development Overlay (DDO4)**. This overlay relates to subdivision and a planning permit is not required for buildings and works or vegetation removal.

The site is covered by the **Neighbourhood Character Overlay Schedule 1 - Coastal towns: Skenes Creek, Kennett River, Wye River and Separation Creek (NCO1)**. A planning permit is triggered under Clause 43.05-2 to construct and carry out works and to remove, destroy or lop trees.

Relevant Schedule 1 Neighbourhood Character Objectives are as follows:

- To ensure that new buildings and works respect the nationally significant Great Ocean Road Region landscape.
- To ensure that new buildings and works achieve the preferred character for the townships as stated above and in Clauses 21.03-5 (Skenes Creek), 21.03-6 (Kennett River, Wye River and Separation Creek).
- To encourage the siting of buildings within the vegetation and landform, and below the predominant tree canopy height.
- To ensure new buildings reflect and complement the scale, setback, siting, materials and overall form of existing buildings.
- To ensure the townships retain an informal, open, spacious character created by the dominance of vegetation, low scale buildings and a lack of solid fencing.

The overall intent of this Overlay is to ensure that new development respects the preferred neighbourhood character of the site and surrounds. The proposal is generally considered to be consistent with the neighbourhood character of the area as it retains the predominant treed features of the site and will not dominate views. The proposal includes a landscape plan which will assist to integrate the dwelling into the landscape and to screen it from view from the Great Ocean Road.

It is considered that the proposed dwelling meets the objectives of NCO1 and while there are some variations to the standards under the NCO1, these are considered to be of a minor nature. The proposal is assessed against relevant Clause 54 standards as modified by the NCO1 below.

Street Setback – Modified Standard A3

Standard A3 requires a minimum front setback of 7m. The proposed front setback will be 4m. The proposed front setback represents a variation to the setback requirement of the standard but is considered to be appropriate for the following reasons:

- The reduced setback is acceptable given the irregular shape of the subject lot.
- The proposed setback is greater than the existing dwelling which has a street setback of approximately 3 metres.
- Given the slope of the land away from the road the height of the dwelling will appear reduced from the road.
- The dwelling will be well screened from the street by existing mature trees.
- Existing dwellings to the east have minimal street setbacks.
- The reduced front setback enables the dwelling to be better sited in terms of topography of the site.
- The reduced front setback achieves a large rear garden area and will allow for greater landscaped area.

Building Height – Modified Standard A4

Modified Standard A4 requires that the maximum building height should not exceed 8 metres or two storeys, whichever is the lesser. The proposed building height was significantly reduced when the dwelling was redesigned, and will now be 8.2 metres at its maximum. This height will be reached on small sections of the roofed areas only. The majority of the dwelling will be within the height 8 metre height limit. The 8.2 metre height is considered to be acceptable as it represents a minor increase above the recommended maximum 8 metre height, and will result in no additional visual detriment.

Site Coverage - Modified Standard A5

This modified standard requires that the site coverage respects the existing or preferred neighbourhood character and responds to the features of the site. The site is located in Precinct 1 of Separation Creek which has a maximum site coverage of 25%.

The total building footprint including balconies will be 160 square metres. The site area is 639.95 square metres. This equates to a site coverage of approximately 25%, consistent with this standard.

Side and Rear Setbacks – Modified Standard A10

Standard A10 requires a side setback of 3m to boundaries plus an additional 0.3m for every 1m over 3.6m up to 6.9m in height, and a rear setback of 5m plus an additional 0.3m for every 1m over 3.6m up to 6.9m. The purpose of this modified standard is to ensure that the building height and setbacks respect the character and limit amenity impacts.

All side and rear setbacks of the revised design are considered to satisfy the requirements of this standard.

Walls on boundaries - Modified Standard A11

This standard requires that no walls be constructed on a boundary. There will be no walls built on boundaries.

Design Detail - Modified Standard A19

This standard requires proposals to respect the character of an area. The design is appropriate and is considered to be in keeping with the character of the area. It will allow for the retention of dominant trees at the front area of the site and in the road reserve and a good sized rear garden area. On this basis, and in view of the detailed assessment of the proposal above, the proposal is considered to meet the objective of this standard.

Landscaping - Modified Standard B13

The proposal satisfies this standard as it provides for the retention of existing trees and vegetation and adequate space for the planting of new indigenous shrubs and trees. The area of the site covered by buildings and hard surfaces will not exceed 35%, consistent with Separation Creek Precinct 1 of this standard.

The site is also covered by the **Erosion Management Overlay Schedule 1 (EMO1)**. A planning permit is required by Clause 44.01-1 for buildings and works and to remove, destroy or lop any vegetation under this overlay. The application was lodged prior to gazettal of Amendment C68 on 31 January 2013 and therefore benefits from the transitional provisions under the provisions of the overlay.

The applicant provided a geotechnical assessment of landslide risk as required by this overlay, prepared by PJ Yttrup & Associates, Report No. 15353, dated February 2002. A further letter was provided from the engineer, dated 22 January 2013, which stated that the revised plans had been viewed and are appropriate if the following suggestions are incorporated in the design:

- The gap between the residence and the ground shown in Section AA be provided at all locations at the north side of the residence. The retaining structure should not be up against the residence.

The engineer also makes specific recommendations in relation to the engineering of the piers. These matters will be addressed by a permit condition requiring an amended plan.

The site is also covered by the **Bushfire Management Overlay/Wildfire Management Overlay**. A planning permit is required under Clause 44.06 of this overlay for works associated with a dwelling.

Given that the application was lodged prior to 18 November 2011, the application benefits from the transitional provisions of Clause 44.06-8 of the BMO, and as such, was assessed under the previous WMO provisions.

The CFA provided conditional consent advising that it was an Option 1 WMO application. CFA conditions will be included on the permit, and the amended landscape plan will be required to have regard to CFA vegetation management requirements.

d. Particular Provisions

Clause 52.06 – Car Parking:

The Clause requires two car parking spaces to each three or more bedroom dwelling (with studies or studios that are separate rooms counted as a bedroom). The proposal includes parking for two cars within the driveway. This is acceptable and meets the requirements of the provision.

Clause 54 – One Dwelling on a Lot:

The proposal is considered to meet the modified standards of NCO1 as discussed above. It also satisfies the other requirements of Clause 54, as addressed below.

- *Solar Access Standards - Standard A7 (Energy efficiency), Standard A12 (Daylight to Existing Windows), Standard A13 (North facing windows), Standard A14 (Overshadowing open space), Standard A16 (Daylight to New Windows) and Standard A18 (Solar access to open space of subject site)*

All these standards seek to achieve adequate solar access and reduce shadow impacts of new dwellings on existing development. The dwelling has a good north aspect and solar access is appropriate, and shadow diagrams have been provided which demonstrate shading of adjoining lots is within the acceptable range. Given the orientation of the dwelling and the relationship with surrounding dwellings, the proposal meets the objectives of these provisions.

- *Overlooking - Standard A15*

This standard seeks to limit views into existing secluded private open space and habitable room windows of adjoining dwellings. Overlooking diagrams have been provided which demonstrate no overlooking of private open space areas or habitable room windows within 9 metres of the dwelling. As loss of privacy is a major concern of the objector to the south (19 Great Ocean Road) permit conditions will require amended plans to show measures to prevent looking down into open space of properties to the south. Screen planting along these boundaries will also be required.

- *Private Open Space - Standard A17*

This standard requires that a dwelling should have private open space consisting of an area of 80 square metres or 20 per cent of the area of the lot, whichever is the lesser, but not less than 40 square metres. At least one part of the private open space should consist of secluded private open space with a minimum area of 25 square metres and a minimum dimension of 3 metres at the side or rear of the dwelling with convenient access from a living room.

The proposed dwelling will have private open space areas on decks and at ground level with access from living areas, satisfying this requirement.

e. General Provisions

Decision Guidelines of Clause 65:

The proposal provides an acceptable outcome in light of the following relevant decision guidelines:

- The matters set out in Section 60 of the Act.
- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

Consideration of the Proposal

As discussed above, the proposed dwelling has been significantly redesigned to achieve a high level of compliance with relevant planning requirements. Key planning considerations relate to the building height and bulk, visual impact within the significant landscape setting of the Great Ocean Road environs, and potential impacts on neighbours.

Following ongoing consultations with Council officers, the height, setbacks and site coverage were all revised to provide a more appropriate design response on this site. The revised design now provides an appropriate outcome against key planning considerations contained in the Preferred Character Statement for Separation Creek, Precinct 1 (Clause 21.03-6) and the Landscape Character objectives of Clause 21.04-8. The height of the dwelling was reduced to be largely under 8 metres above natural ground level (small areas reach a maximum height of 8.2 metres), the revised setbacks are considered to be appropriate and the design is consistent with the neighbourhood character of the area. The dwelling may be partially visible from the Great Ocean Road, however it will be screened by surrounding development and nestled amongst vegetation. The requirements of SLO2 and NCO1 overlays are therefore also considered to be satisfied, as detailed above.

The key concerns raised by objectors related to building height, setbacks, overlooking, loss of views from proposed plantings and inadequate effluent field. The building height has been significantly reduced and is not excessive, with the majority of the dwelling now under 8 metres. Sufficient justification has been provided for a reduced street setback, and all other setbacks meet the requirements of NCO1. Permit conditions will address concerns relating to overlooking and loss of views from landscaping, and the septic system and effluent field are satisfactory to Council's Environmental Health Department.

The application satisfactorily addresses the application requirements of the Erosion Management Overlay and the Wildfire Management Overlay and these matters will be enforced through permit conditions. Referral of the application was undertaken and conditional consent was received from all relevant internal and external parties.

On this basis, it is recommended that the application be approved.

Council Plan / Other Strategies / Policy

Land Use & Development

Council will engage, plan and make decisions about land use and development that takes into account the regulatory role of Council, its diverse geography, social, community, economic and environmental impacts for current and future generations.

It is considered that the proposal is in accordance with the above objective.

Financial & Other Resource Implications

There are no financial 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 proposal.

Communication Strategy / Consultation Period

A pre-application meeting was held with the applicant prior to lodgement of the application. Public notice of the application was given in accordance with statutory requirements, and objectors were provided a copy of amended plans submitted by the applicant following the receipt of objections, as described earlier in the report.

Conclusion

The revised proposal embraces the key planning considerations and provides an appropriate outcome against State and Local policies, relevant overlays and particular provisions. Objectors concerns can be largely addressed by permit conditions. As such, it is recommended that the proposal is supported.

Attachments

Nil

Recommendation(s)

That Council's Planning Committee issue a Notice of Decision to Grant a Permit to construct a dwelling and remove vegetation at 1 Sarsfield Street, Separation Creek subject to the following conditions:

Amended/Endorsed Plans

- 1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the exhibited plans date stamped 30 July 2012, 2 October 2012 and 4 October 2012, but modified to show:***

- a) *effective measures to prevent overlooking into private open space areas and habitable room windows of properties adjoining to the south (19, 21 and 23 Great Ocean Road).*
 - b) *the position of foundations and footings for the revised design in relation to Easement E-1 on Lot 1 TP943110V. No supporting structures or piers for the dwelling are to be constructed within this easement.*
 - c) *sufficient area between the dwelling and the retaining structure along the northern elevation as required by the geotechnical recommendations of Yttrup & Associates, dated 22 January 2013. The retaining structure must not be up against the dwelling.*
 - d) *a schedule of all external colours and finishes which must be muted and non-reflective to complement those found naturally and effectively blend the building with the surrounds.*
2. *Before the development starts, a revised landscape plan to the satisfaction of the Responsible Authority must be submitted to 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 exhibited landscape plans date stamped 15 September 2011, except that the plan must show:*
- a) *trees to be planted along the Sarsfield Street frontage must not exceed a mature height of existing trees along this frontage, in order to preserve views from properties on the north side of Sarsfield Street;*
 - b) *effective landscaping to the southeast boundary to prevent overlooking into properties adjoining to the south (19, 21 and 23 Great Ocean Road) and to effectively blend and screen the dwelling from the Great Ocean Road;*
 - c) *The revised landscaping plan must have regard to CFA vegetation management requirements and is to be submitted to the CFA for consent prior to endorsement by the Responsible Authority.*
 - d) *a survey (including botanical names) of all existing vegetation to be retained and/or removed;*
 - e) *a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;*
 - f) *appropriate landscaping and planting within all open areas of the site.*
- All plants selected must be native species suited to the locality to the satisfaction of the Responsible Authority.*
3. *Prior to occupation of the dwelling hereby permitted, all landscaping works must be completed in accordance with the endorsed plan.*
 4. *Prior to the occupation of the dwelling hereby permitted, evidence must be submitted to the Responsible Authority to demonstrate that the two (2) titles comprising the subject site have been consolidated.*
 5. *The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.*

Geotechnical

6. **All excavation works upon the subject land must be kept to the absolute practicable minimum and to the satisfaction of the responsible Authority.**
7. **All development and works associated with this permit must be carried out in strict conformity with the recommendations of Geotechnical Engineers Report prepared by PJ Yttrup & Associates, Report No. 15353, dated February 2002 and subsequent letter dated 22 January 2013.**

Drainage

8. **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.**

Tree Protection

9. **Significant protection measures must be undertaken to protect all the remaining native vegetation (including barricading of the trees to protect root structure from compaction of heavy vehicles) during construction of the dwelling to the satisfaction of the Responsible Authority.**

CFA Conditions**Water Supply Requirements****10. A static water supply must meet the following requirements:**

- **a minimum of 10,000 litres on-site static storage must be provided on the lot and be maintained solely fire fighting;**
- **the water supply must be located within 60 metres of the dwelling;**
- **fire brigade vehicles must be able to get to within four metres of the water supply outlet;**
- **the water supply must be readily identifiable from the building or appropriate signage (see Appendix A: Figure 1) must point to water supply. All below-ground water pipelines must be installed to the following depths:**
 - **subject to vehicle traffic – 300 mm**
 - **under houses or concrete slabs – 75 mm**
 - **all other locations - 225 mm**
 - **all fixed above-ground water pipelines and fittings, including water supply, must be constructed of non-corrosive and non-combustible materials or protected from the effects of radiant heat and flame.**

11. If the static water supply is above ground the following additional standards must apply:

- **all above-ground static water supply must provide at least one 64 mm. 3 thread/25 mm x 50 mm nominal bore British Standard Pipe (BSP), round male coupling (see Appendix A: Figure 2);**

- *all pipe work and valving between the water supply and the outlet must be no less than 50 mm nominal bore;*
- *if less than 20 metres from the building, each outlet must face away from the building to allow access during emergencies.*

Access Requirements

12. Access to the dwelling must be designed to allow emergency vehicles access.

The minimum design requirements are as follows:

- *curves in driveway must have a minimum inner radius of ten metres;*
- *the average grade must be no more than 1 in 7 (14.4%) (8.1°) with a maximum of no more than 1 in 5 (20%) (11.3°) for no more than 50 metres;*
- *dips must have no more than a 1 in 8 (12.5%) (7.1°) entry and exit angle.*

Vegetation Management Requirements

13. A distance of 30 metres around the proposed dwelling or to the property boundary (whichever is the lesser) must be maintained to the following requirements during the declared 'Fire Danger Period' to the satisfaction of the responsible authority.

- *Grass must be no more than 100mm in height*
- *Leaf litter must be less than 10mm deep*
- *There must be no elevated fuel on at least 50% of the area. On the remaining 50% the elevated fuel must be at most, sparse, with very little dead material.*
- *Dry shrubs must be isolated in small clumps more than ten metres away from the dwelling.*
- *Trees must not overhang the roofline of the dwelling.*

Time Expiry

14. 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.

Permit Notes:

- 1. Building approval is required prior to commencement of construction.**
- 2. Whilst Council's Infrastructure Department has granted consent to build over Easement E-1 on Lot 1 TP943110V, no supporting structures or piers for the dwelling are to be constructed within this easement.**

3. CFA Notes:

This is Option 1 WMO application.

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

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

Buildings and Works Requirements:

Under r.804 of the Victorian Building Regulations 2006 if a site assessment for the purpose of determining the bushfire attack level for the site has been considered as part of the planning application, a relevant building surveyor must accept this site assessment. The planning site assessment is currently undertaken using the Wildfire Management Overlay Applicant's Workbook 2010. This BAL level is the minimum construction standard CFA believes necessary to achieve an adequate level of wildfire safety for the prescribed vegetation management conditions.

Construction of buildings must be to a minimum Bushfire Attack Level (BAL) of BAL – 12.5 in accordance with the relevant sections of AS3959-2009.

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