



Colac Otway  
SHIRE

**AGENDA**

PLANNING COMMITTEE MEETING  
OF THE  
COLAC-OTWAY SHIRE  
COUNCIL

12 SEPTEMBER 2012

at 10:30 AM

COPACC, Gellibrand Street Colac

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

# COLAC-OTWAY SHIRE PLANNING COMMITTEE MEETING

12 SEPTEMBER 2012

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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, Gellibrand Street Colac on 12 September 2012 at 10.30 am.

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## **AGENDA**

### **1. OPENING PRAYER**

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

**AMEN**

### **2. PRESENT**

### **3. APOLOGIES**

### **4. MAYORAL STATEMENT**

Colac Otway Shire 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 11/07/12.**

**Recommendation**

***That Council confirm the above minutes.***

**OFFICERS' REPORTS**

**Sustainable Planning and Development**

- PC121209-1 PLANNING & BUILDING STATISTICAL REPORT
- PC121209-2 USE AND DEVELOPMENT OF A TELECOMMUNICATIONS TOWER (35 METRE MONOPOLE) AND ASSOCIATED WORKS AT 266 HAROLDS TRACK WYE RIVER (PP295/2011)
- PC121209-3 REMOVAL OF NATIVE VEGETATION TO ACCOMMODATE AN UPGRADE TO THE EXISTING UTILITY INSTALLATION (PUMP STATION) AT 300 BARHAM RIVER ROAD (PP24/2012-1).
- PC121209-4 USE AND DEVELOPMENT OF LAND FOR A UTILITY INSTALLATION (WATER STORAGE FACILITY) TRANSFER PUMPING STATION AND WATER PIPELINE AND THE REMOVAL OF NATIVE VEGETATION AT 120 BARHAM RIVER ROAD, APOLLO BAY (PP43/2012).
- PC121209-5 DEVELOPMENT OF A SUPERMARKET, REDUCTION IN CAR PARKING, SALE OF PACKAGED LIQUOR & VARIATION TO A CARRIAGEWAY EASEMENT AT 30-32 PASCOE STREET, APOLLO BAY (PP34/2011)
- PC121209-6 CONSTRUCTION OF A DWELLING AND REMOVAL OF NATIVE VEGETATION (ONE TREE) AT 30 RIDGE DRIVE, KENNETT RIVER (PP62/2012-1)

**Rob Small**  
**Chief Executive Officer**

**PC121209-1**

**PLANNING & BUILDING STATISTICAL REPORT**

AUTHOR:	Janole Cass	ENDORSED:	Jack Green
DEPARTMENT:	Sustainable Planning & Development	FILE REF:	F11/2683

**Summary**

This report provides statistics relating to the months of July and August 2012.

**Planning Statistics**

25 Planning Permit Applications were received for the period 1 July 2012 – 31 July 2012.  
 32 Planning Permit Applications were considered for the period 1 July 2012 – 31 July 2012.

23 Planning Permit Applications were received for the period 1 August 2012 – 31 August 2012.  
 31 Planning Permit Applications were considered for the period 1 August 2012 – 31 August 2012.

**Building Statistics**

Please note that the Building Commission website has been updated to June 2012.

**Attachments**

1. Planning Stastical Report - Agenda Copy - July 2012
2. Planning Statistical Report - Agenda Copy - August 2012

**Recommendation(s)**

***That Council's Planning Committee note the statistical reports for July and August 2012.***

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PLANNING STATISTICAL REPORT – JULY 2012

| APPLICATION NUMBER | DATE RECEIVED | LOCATION                                     | PROPOSAL                                                                                                                               | ACTUAL TIME | DATE DETERMINED | DETERMINATION & AUTHORITY                          |
|--------------------|---------------|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------|----------------------------------------------------|
| 428/2002-2         | 21-DEC-11     | 375 FRYSD ROAD KAWARREN                      | CONSTRUCTION OF A SHED AND A TWO (2) CAR GARAGE – AMENDMENT                                                                            | 197         | 5-JUL-12        | AMENDED PERMIT ISSUED<br><b>DELEGATE</b>           |
| 255/2005-2         | 6-MAR-09      | 4-5 MOTTS LANE SKENES CREEK                  | CONSTRUCTION OF A DWELLING - AMENDMENT                                                                                                 | 250         | 3-JUL-12        | REFUSAL OF AMENDMENT TO GRANT<br><b>DELEGATE</b>   |
| 317/2006-2         | 1-NOV-11      | 1570 OLD BEECH FOREST ROAD BEECH FOREST      | USE & DEVELOPMENT OF THE LAND FOR A DWELLING & CARPORT – AMENDMENT                                                                     | 238         | 31-JUL-12       | AMENDED PERMIT ISSUED<br><b>DELEGATE</b>           |
| 152/2008-3         | 13-JUN-12     | 35 GREAT OCEAN ROAD WYE RIVER                | ALTERATIONS & ADDITIONS TO EXISTING CONVENIENCE SHOP & RESTAURANT/CAFÉ - AMENDMENT                                                     | 0           | 6-JUL-12        | APPLICATION WITHDRAWN<br>DECISION REQUIRED BY VCAT |
| 228/2010-1         | 16-AUG-10     | 105 BEECH FOREST MT SABINE ROAD BEECH FOREST | CONSTRUCTION OF ALTERATIONS AND EXTENSIONS TO THE EXISTING DWELLING                                                                    | 174         | 5-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>                   |
| 188/2011-1         | 5-AUG-11      | 1120 IRREWILLIPE ROAD BARONGAROOK WEST       | USE & DEVELOPMENT OF A DWELLING & AN ANIMAL BOARDING FACILITY (CATTERY) AND ASSOCIATED WORKS                                           | 217         | 24-JUL-12       | REFUSAL TO GRANT<br><b>DELEGATE</b>                |
| 207/2011-1         | 22-AUG-11     | 115 MIDDLETONS ROAD LARPENT                  | RE-SUBDIVISION OF THE LAND INTO TWO (2) LOTS (DWELLING EXCISION)                                                                       | 117         | 4-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>                   |
| 240/2011-2         | 27-JUN-12     | 57A TULLOH STREET ELLIMINYT                  | REMOVAL OF CONDITION 11 CREATING A BUILDING RESTRICTION ON TITLE                                                                       | 21          | 18-JUL-12       | AMENDED PERMIT ISSUED<br><b>DELEGATE</b>           |
| 216/2011-1         | 26-AUG-11     | 45 GREAT OCEAN ROAD SKENES CREEK             | EXTENSION TO EXISTING DWELLING                                                                                                         | 321         | 12-JUL-12       | NOTICE OF DECISION<br><b>PLANNING COMMITTEE</b>    |
| 248/2011-1         | 27-SEP-11     | 133 GREAT OCEAN ROAD APOLLO BAY              | DISPLAY OF REPLACEMENT BUSINESS IDENTIFICATION SIGNAGE (INCLUDING CORPORATE COLOURING)                                                 | 9           | 6-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>                   |
| 263/2011-1         | 21-OCT-11     | 350 TUXION ROAD APOLLO BAY                   | USE AND DEVELOPMENT OF THE LAND FOR A DWELLING AND ASSOCIATED WORKS (FARM SHED AND WATER TANKS)                                        | 32          | 2-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>                   |
| 298/2011-1         | 15-NOV-11     | 2 PENGILLEY AVENUE APOLLO BAY                | CHANGE OF USE OF EXISTING BUILDING (AMBULANCE) – CONVERSION OF BUILDING INTO A COMMUNITY GYM                                           | 184         | 18-JUL-12       | NOTICE OF DECISION<br><b>DELEGATE</b>              |
| 321/2011-1         | 14-DEC-11     | 2 YAUGHER ROAD FORREST                       | SUBDIVISION - REALIGNMENT OF BOUNDARY TO CREATE THREE (3) LOTS                                                                         | 0           | 12-JUL-12       | PLANNING APPLICATION WITHDRAWN                     |
| 333/2011-1         | 23-DEC-11     | 6 HART STREET COLAC                          | RETROSPECTIVE APPLICATION FOR THE USE AND DEVELOPMENT OF THE SITE AS A MEDICAL PRACTICE, ASSOCIATED WORKS AND REDUCTION IN CAR PARKING | 65          | 12-JUL-12       | PERMIT ISSUED<br><b>PLANNING COMMITTEE</b>         |

| APPLICATION NUMBER | DATE RECEIVED | LOCATION                             | PROPOSAL                                                                                                              | ACTUAL TIME | DATE DETERMINED | DETERMINATION & AUTHORITY                |
|--------------------|---------------|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-------------|-----------------|------------------------------------------|
| 6/2012-1           | 10-JAN-12     | 100 COLAC LAVERS HILL ROAD ELLIMINYT | CONSTRUCTION OF EARTHWORKS TO ENLARGE AN EXISTING DAM AND INSTALLATION OF THREE (3) RAINWATER TANKS (COLAC TURF CLUB) | 134         | 6-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 11/2012-1          | 20-JAN-12     | 2 ALICE COURT APOLLO BAY             | USE AND DEVELOPMENT OF A DWELLING AND TEMPORARY USE OF THE GARAGE AS A DWELLING                                       | 0           | 20-JUL-12       | PLANNING APPLICATION LAPSED              |
| 12/2012-2          | 20-JUN-12     | 35 HUGH MURRAY DRIVE COLAC EAST      | CONSTRUCTION OF STORE (LIGHT INDUSTRIAL SHED TO BE USED FOR GARAGE MACHINERY AND STORAGE SHED) - AMENDMENT            | 22          | 12-JUL-12       | AMENDED PERMIT ISSUED<br><b>DELEGATE</b> |
| 30/2012-1          | 13-FEB-12     | 160 PARKES LODGE ROAD BARONGAROOK    | USE AND DEVELOPMENT OF THE LAND FOR A DWELLING                                                                        | 0           | 19-JUL-12       | PLANNING APPLICATION LAPSED              |
| 32/2012-1          | 15-FEB-12     | 6 MULLER ROAD SKENES CREEK           | CONSTRUCTION OF A NEW DWELLING                                                                                        | 80          | 4-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 33/2012-1          | 15-FEB-12     | 330 BUSTY ROAD APOLLO BAY            | CONSTRUCTION OF AN EXTENSION TO EXISTING DWELLING & REMOVAL OF VEGETATION                                             | 71          | 31-JUL-12       | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 52/2012-1          | 13-MAR-12     | 790 CORANGAMITE LAKE ROAD CORAGULAC  | USE AND DEVELOPMENT OF THE LAND FOR A DWELLING AND SHED                                                               | 53          | 3-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 53/2012-1          | 13-MAR-12     | 143 GREAT OCEAN ROAD APOLLO BAY      | CHANGE OF USE TO AMUSEMENT PARLOUR                                                                                    | 72          | 4-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 64/2012-1          | 27-MAR-12     | 65 OLD COACH ROAD SKENES CREEK       | CARPORT AND EXTENSION TO VERANDAH                                                                                     | 87          | 27-JUL-12       | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 72/2012-1          | 5-APR-12      | 110-116 MURRAY STREET COLAC          | ALTERATION TO LIQUOR LICENCE TRADING HOURS                                                                            | 57          | 24-JUL-12       | PLANNING APPLICATION WITHDRAWN           |
| 104/2012-1         | 10-MAY-12     | 12 ANDERSON STREET BIRREGURRA        | REMOVAL OF A RESTRICTION ON TITLE (BUILDING AND EFFLUENT ENVELOPE)                                                    | 36          | 4-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 120/2012-1         | 22-MAY-12     | 160 SINCLAIR STREET SOUTH COLAC      | CONSTRUCTION OF SHED                                                                                                  | 15          | 26-JUL-12       | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 121/2012-1         | 1-JUN-12      | 10 POUND ROAD ELLIMINYT              | BUILDINGS AND WORKS COMPRISING THE CONSTRUCTION OF A DWELLING                                                         | 39          | 27-JUL-12       | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 130/2012-1         | 12-JUN-12     | 3790 GREAT OCEAN ROAD JOHANNA        | CONSTRUCTION OF DAM (RETROSPECTIVE)                                                                                   | 30          | 12-JUL-12       | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 136/2012-1         | 19-JUN-12     | 435 YEO YEODENE ROAD YEODENE         | DISPLAY OF BUSINESS IDENTIFICATION SIGNAGE IN ASSOCIATION WITH HOME OCCUPATION                                        | 24          | 13-JUL-12       | PERMIT ISSUED<br><b>DELEGATE</b>         |
| 137/2012-1         | 19-JUN-12     | 150 DRAPERS ROAD COLAC EAST          | CONSTRUCTION OF AN EXTENSION TO AN EXISTING STORAGE SHED                                                              | 14          | 3-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b>         |

| APPLICATION NUMBER | DATE RECEIVED | LOCATION                       | PROPOSAL                                                                                                  | ACTUAL TIME | DATE DETERMINED | DETERMINATION & AUTHORITY        |
|--------------------|---------------|--------------------------------|-----------------------------------------------------------------------------------------------------------|-------------|-----------------|----------------------------------|
| 141/2012-1         | 26-JUN-12     | 92-98 FOREST STREET COLAC EAST | BUILDINGS AND WORKS COMPRISING THE CONSTRUCTION OF A CANTILEVERED CANOPY ATTACHED TO AN EXISTING BUILDING | 4           | 2-JUL-12        | PERMIT ISSUED<br><b>DELEGATE</b> |
| 144/2012-1         | 26-JUN-12     | 115 DIVISION ROAD MURROON      | CREATION OF CARRIAGEWAY EASEMENT                                                                          | 0           | 27-JUL-12       | PLANNING APPLICATION WITHDRAWN   |
|                    |               |                                |                                                                                                           |             |                 |                                  |
|                    |               |                                | AVERAGE DAYS TO PROCESS PLANNING APPLICATIONS                                                             | 80          |                 |                                  |

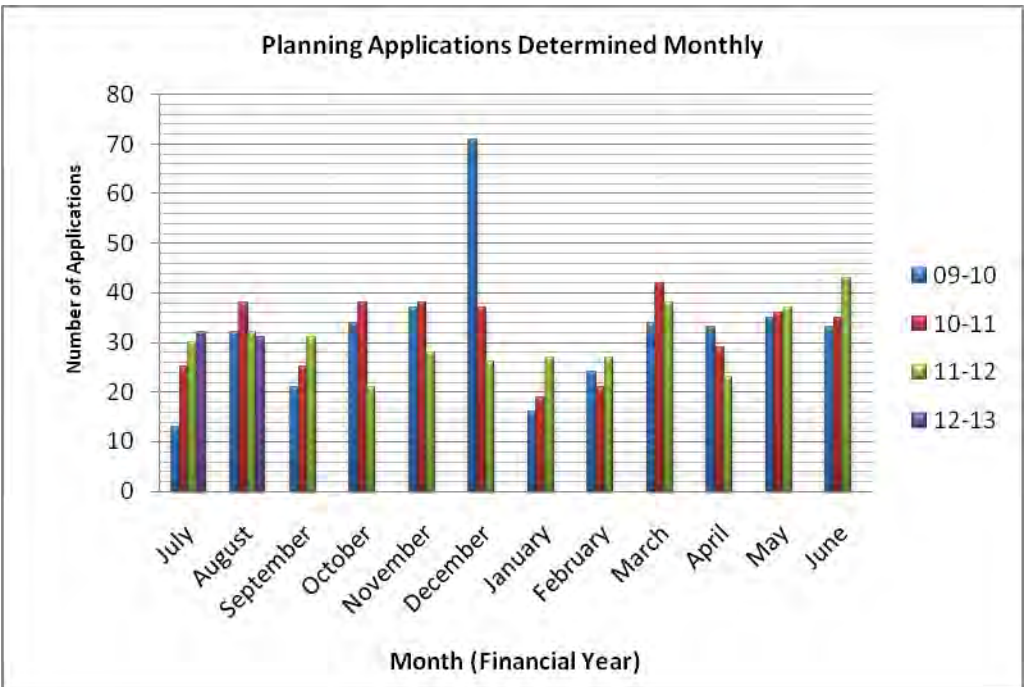
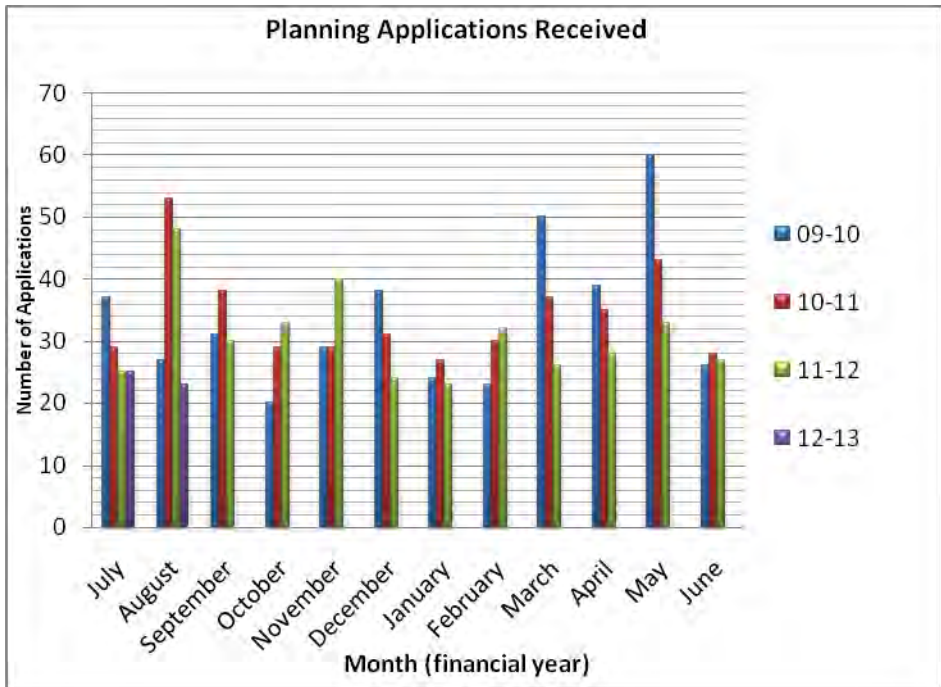
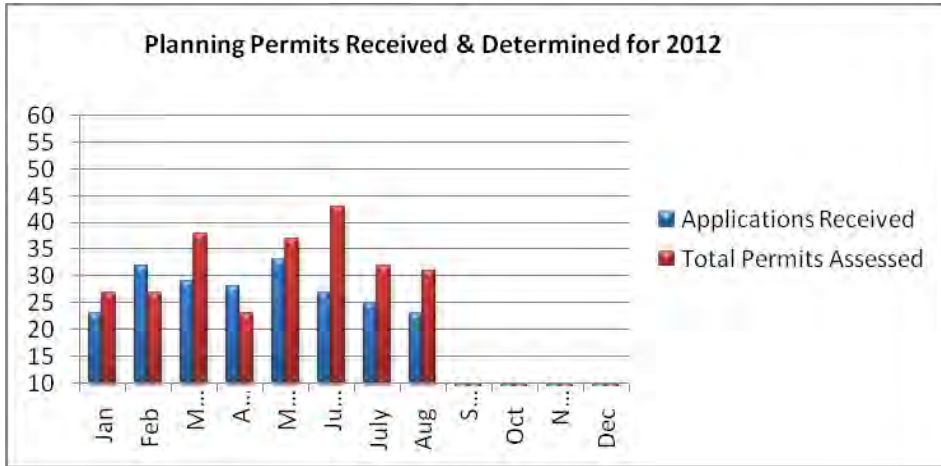


## PLANNING STATISTICAL REPORT – AUGUST 2012

| APPLICATION NUMBER | DATE RECEIVED | LOCATION                            | PROPOSAL                                                                                                                                                           | ACTUAL TIME | DATE DETERMINED | DETERMINATION & AUTHORITY                    |
|--------------------|---------------|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------------|----------------------------------------------|
| 27/1994-3          | 13-AUG-12     | 65-71 GREAT OCEAN ROAD APOLLO BAY   | LIQUOR LICENCE - AMENDMENT TO RED LINE AREA                                                                                                                        | 7           | 20-AUG-12       | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 33/2007-3          | 6-JUL-12      | 275 ROBINSON ROAD BARONGAROOK       | USE & DEVELOPMENT OF A TWO (2) STOREY DWELLING & REMOVAL OF TWELVE (12) TREES & OTHER VEGETATION – AMENDMENT                                                       | 35          | 10-AUG-12       | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 118/2009-4         | 17-MAY-12     | 5 BELVERDERE DRIVE ELLIMINYT        | FIVE (5) LOT SUBDIVISION - AMENDMENT                                                                                                                               | 40          | 7-AUG-12        | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 72/2010-2          | 3-JUL-12      | 251 CANTS ROAD ELLIMINYT            | DEVELOPMENT OF A DWELLING & SHED - AMENDMENT                                                                                                                       | 38          | 17-AUG-12       | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 16/2011-1          | 20/01/2011    | 10 MCLELLAN COURT WYE RIVER         | CONSTRUCTION OF AN EXTENSION TO THE EXISTING BUILDING (WYE RIVER SURF LIFESAVING CLUB)                                                                             | 460         | 31-AUG-12       | REFUSAL TO GRANT A PERMIT<br><i>DELEGATE</i> |
| 79/2011-2          | 16-AUG-12     | 9/186-190 MURRAY STREET COLAC       | DISPLAY OF REPLACEMENT SIGNAGE -AMENDMENT                                                                                                                          | 14          | 30-AUG-12       | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 191/2011           | 9-AUG-11      | 5 PARKINSON STREET COLAC EAST       | CONSTRUCTION OF ADDITIONS TO AN EXISTING BUILDING AND VARIATION OF THE CARRIAGEWAY EASEMENT                                                                        | 38          | 6-AUG-12        | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 208/2011-1         | 23-AUG-11     | 140 OLD YEO ROAD YEO                | RE-SUBDIVISION OF THE LAND INTO TWO (2) LOTS                                                                                                                       | 60          | 6-AUG-12        | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 66/2012-1          | 28-MAR-12     | 111-117 GREAT OCEAN ROAD APOLLO BAY | AMENDMENT TO CARRIAGEWAY EASEMENT                                                                                                                                  | 45          | 20-AUG-12       | PLANNING APPLICATION WITHDRAWN               |
| 78/2012-1          | 16-APR-12     | 29-39 MARRINER STREET COLAC EAST    | USE AND DEVELOPMENT OF THE SITE FOR MATERIALS RECYCLING (CAR DISMANTLING BUSINESS), MOTOR REPAIRS AND THE SALE OF VEHICLE PARTS AND USED CARS AND ASSOCIATED WORKS | 52          | 10-AUG-12       | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 84/2012-1          | 27-APR-12     | 20 ENNIS STREET BIRREGURRA          | TWO (2) LOT SUBDIVISION                                                                                                                                            | 29          | 29-AUG-12       | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 88/2012-1          | 30-APR-12     | 22 QUEEN STREET COLAC               | CONSTRUCTION OF A DWELLING & GARAGE                                                                                                                                | 54          | 3-AUG-12        | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 94/2012-1          | 1-MAY-12      | 213 AIREYS STREET ELLIMINYT         | THREE (3) LOT SUBDIVISION                                                                                                                                          | 56          | 20-AUG-12       | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 97/2012-1          | 4-MAY-12      | 158-160 QUEEN STREET COLAC          | TWO (2) LOT SUBDIVISION                                                                                                                                            | 72          | 20-AUG-2012     | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 98/2012-1          | 9-MAY-12      | 4285 CAPE OTWAY ROAD BIRREGURRA     | USE AND DEVELOPMENT OF THE LAND FOR A DWELLING AND CREATION OF AN ACCESS TO A ROAD ZONE - CATEGORY 1                                                               | 47          | 23-AUG 12       | PERMIT ISSUED<br><i>DELEGATE</i>             |
| 103/2012-1         | 9-MAY-12      | 1 MULLER ROAD SKENES CREEK          | CONSTRUCTION OF A GARAGE                                                                                                                                           | 96          | 20-AUG-12       | PERMIT ISSUED<br><i>DELEGATE</i>             |

| APPLICATION NUMBER | DATE RECEIVED | LOCATION                                   | PROPOSAL                                                                                                            | ACTUAL TIME | DATE DETERMINED | DETERMINATION & AUTHORITY        |
|--------------------|---------------|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-------------|-----------------|----------------------------------|
| 111/2012-1         | 18-MAY-12     | 87 HARRIS ROAD ELLIMINYT                   | TWO (2) LOT SUBDIVISION                                                                                             | 38          | 2-AUG-12        | PERMIT ISSUED<br><b>DELEGATE</b> |
| 113/2012-1         | 22-MAY-12     | 31-33 MURRAY STREET COLAC                  | USE OF LAND AS A TAVERN                                                                                             | 48          | 8-AUG-12        | PERMIT ISSUED<br><b>DELEGATE</b> |
| 122/2012-1         | 1-JUN-12      | 17 ROADKNIGHT STREET BIRREGURRA            | CREATION OF ACCESS TO ROAD ZONE CATEGORY 1 (RDZ1)                                                                   | 73          | 10-AUG-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
| 126/2012-1         | 8-JUN-12      | 51-53 HESSE STREET COLAC                   | EXPANSION OF THE EXISTING MEDICAL CENTRE BY THE ADDITION OF ONE MEDICAL PRACTITIONER AND A REDUCTION OF CAR PARKING | 0           | 6-AUG-12        | PLANNING APPLICATION WITHDRAWN   |
| 127/2012-1         | 8-JUN-12      | 41 CEMETERY ROAD WHOOREL                   | USE AND DEVELOPMENT OF THE LAND FOR A DWELLING                                                                      | 50          | 27-AUG-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
| 131/2012-1         | 13-JUN-12     | 27 THOMSON STREET APOLLO BAY               | CONSTRUCTION OF TWO (2) DWELLINGS                                                                                   | 0           | 2-AUG-12        | PLANNING APPLICATION WITHDRAWN   |
| 134/2012-1         | 14-JUN-12     | 45 TALBOT STREET ELLIMINYT                 | CONSTRUCTION OF AN OUTBUILDING (SHED) WITHIN 10 METRES OF BOUNDARY                                                  | 36          | 13-AUG-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
| 138/2012-1         | 22-JUN-12     | 10 TREETOPS TERRACE SKENES CREEK           | CONSTRUCTION OF AN EXTENSION TO THE EXISTING DWELLING                                                               | 11          | 21-AUG-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
| 140/2012-1         | 25-JUN-12     | 210 BIRREGURRA DEANS MARSH ROAD BIRREGURRA | CONSTRUCTION OF AN EXTENSION TO THE EXISTING DWELLING                                                               | 14          | 16-AUG-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
| 143/2012-1         | 28-JUN-12     | 82 AIREYS STREET ELLIMINYT                 | CONSTRUCTION OF STORAGE SHED AND TACK ROOM                                                                          | 16          | 30-AUG-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
| 151/2012-1         | 13-JUL-12     | 55 BELVERDERE DRIVE ELLIMINYT              | CONSTRUCTION OF GARAGE AND WORKSHOP                                                                                 | 0           | 1-AUG-12        | PERMIT NOT REQUIRED              |
| 158/2012-1         | 20-JUL-12     | 299 FOREST STREET ELLIMINYT                | CONSTRUCTION OF AN EXTENSION TO THE EXISTING DWELLING FOR AN OUTDOOR ENTERTAINMENT AREA                             | 33          | 22-AUG-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
| 164/2012-1         | 26-JUL-12     | 40 KARINGAL DRIVE WYE RIVER                | CONSTRUCTION AND REMOVAL OF PIERS IN ROAD RESERVE                                                                   | 18          | 13-AUG-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
| 174/2012-1         | 8-AUG-12      | 2 BREAKWATER ROAD APOLLO BAY               | REMOVAL OF THE EXISTING ASBESTOS ROOF AND INSTALLATION OF A REPLACEMENT 'COLORBOND' ROOF                            | 7           | 15-AUG-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
| 178/2012-1         | 14-Aug-12     | 455 SWAN MARSH ROAD SWAN MARSH             | CONSTRUCTION OF AN OUTBUILDING (SHED) ASSOCIATED WITH THE EXISTING DWELLING                                         | 15          | 29-Aug-12       | PERMIT ISSUED<br><b>DELEGATE</b> |
|                    |               |                                            |                                                                                                                     |             |                 |                                  |

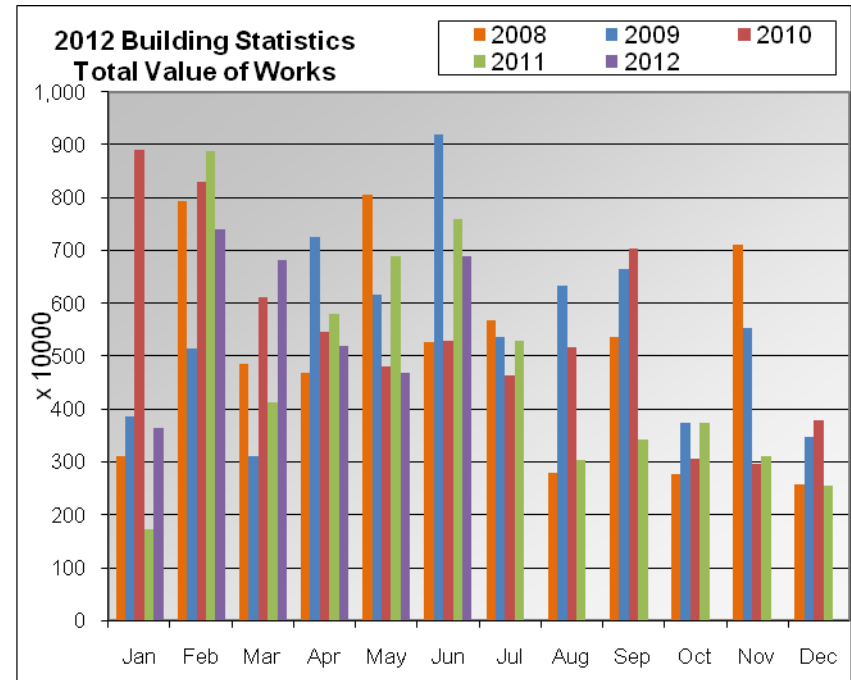
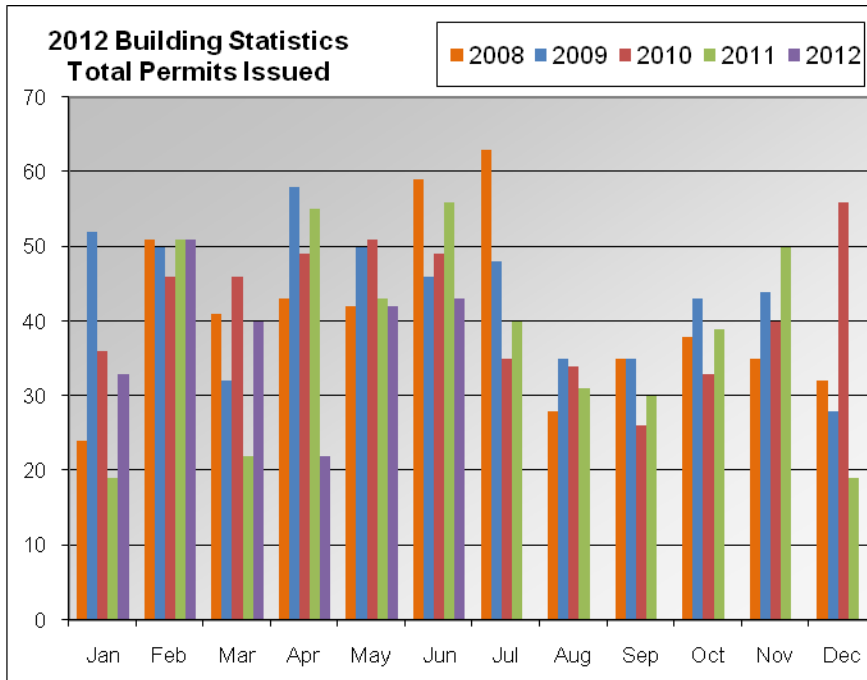
| APPLICATION NUMBER | DATE RECEIVED | LOCATION | PROPOSAL                                      | ACTUAL TIME | DATE DETERMINED | DETERMINATION & AUTHORITY |
|--------------------|---------------|----------|-----------------------------------------------|-------------|-----------------|---------------------------|
|                    |               |          | AVERAGE DAYS TO PROCESS PLANNING APPLICATIONS | 48          |                 |                           |



Note: Current year is Year to Date only.

Pulse

|               | 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           | 23       | 2,632,772  | 0            | 0          | 4          | 356,809    | 2        | 410,000    | 1          | 27,000     | 0                   | 0          | 3                | 210,173    | 33               | 3,636,754  |
| Feb           | 36       | 4,147,416  | 0            | 0          | 7          | 229,380    | 2        | 66,500     | 4          | 2,910,222  | 0                   | 0          | 2                | 56,000     | 51               | 7,409,518  |
| Mar           | 30       | 4,901,928  | 0            | 0          | 4          | 143,000    | 2        | 30,000     | 2          | 520,000    | 0                   | 0          | 2                | 1,217,137  | 40               | 6,812,065  |
| Apr           | 18       | 1,600,096  | 1            | 15,666     | 2          | 368,000    | 0        | 0          | 1          | 3,200,000  | 0                   | 0          | 0                | 0          | 22               | 5,183,762  |
| May           | 29       | 3,543,672  | 2            | 135,000    | 3          | 152,362    | 2        | 161,500    | 3          | 328,554    | 0                   | 0          | 3                | 368,000    | 42               | 4,689,088  |
| Jun           | 35       | 4,637,580  | 1            | 1,200,000  | 4          | 1,008,450  | 1        | 10,000     | 0          | 0          | 0                   | 0          | 2                | 26,200     | 43               | 6,882,230  |
| Jul           |          |            |              |            |            |            |          |            |            |            |                     |            |                  |            |                  |            |
| Aug           |          |            |              |            |            |            |          |            |            |            |                     |            |                  |            |                  |            |
| Sep           |          |            |              |            |            |            |          |            |            |            |                     |            |                  |            |                  |            |
| Oct           |          |            |              |            |            |            |          |            |            |            |                     |            |                  |            |                  |            |
| Nov           |          |            |              |            |            |            |          |            |            |            |                     |            |                  |            |                  |            |
| Dec           |          |            |              |            |            |            |          |            |            |            |                     |            |                  |            |                  |            |
| <b>Totals</b> | 171      | 21,463,464 | 4            | 1,350,666  | 24         | 2,258,001  | 9        | 678,000    | 11         | 6,985,776  | 0                   | 0          | 12               | 1,877,510  | 231              | 34,613,417 |



**PC121209-2                    USE AND DEVELOPMENT OF A TELECOMMUNICATIONS TOWER (35 METRE MONOPOLE) AND ASSOCIATED WORKS AT 266 HAROLDS TRACK WYE RIVER (PP295/2011)**

|             |                                    |           |            |
|-------------|------------------------------------|-----------|------------|
| AUTHOR:     | Helen Evans                        | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning & Development | FILE REF: | F11/4786   |

**Location:** 266 Harolds Track (Bird Track), Wye River  
(C/A 2001 Parish of Wongarra)

**Zoning:** Public Conservation and Resource Zone (PCRZ)

**Overlay controls:** Erosion Management Overlay Schedule 1 (EMO1)  
Bushfire Management Overlay (BMO)  
Heritage Overlay Schedule 242 (HO242)

**Proposed Amendments:** Nil

**Purpose:**

This application is seeking approval for the use of the land and the development of a telecommunication facility and associated buildings and works which include the erection of a 38 metre tall monopole and associated antennas, equipment shelter, fencing, upgraded access track and associated earthworks.

This application is before the Planning Committee as the proposed structure is in excess of eight (8) metres in height. One (1) objection has been received to the application.

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

**Declaration of Interests**

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

**Summary**

- The application seeks approval for the use and development of a 38 metre high monopole telecommunications tower and associated works.
- The site is located within Public Conservation and Resource Zone land (part of the Great Otway National Park) and is located on the southern side of Harold's Track (also known locally as Bird Track) west/southwest of the Wye River township.
- The site is also subject to Erosion Management Overlay Schedule 1, Heritage Overlay Schedule 242 and the Bushfire Management Overlay.
- The application was widely advertised throughout Wye River. One objection was received which supported the installation of a telecommunications facility in Wye River, but raised issues relating to the visual impact of the tower, possible co-location with an existing telecommunications facilities and seeking a reduction of height to below the tree line.
- The objector's property is located some 740 metres to the north of the subject site.

Whilst the top of the tower may be visible in the distance above the existing tree line from objector's property, it is considered that the use of a streamlined, single vertical structure and muted colours will ensure that the visual impact is minimal.

- The facility will achieve Optus coverage objectives by improving phone and data services for the Wye River area. It has been identified that there is a gap in the availability of telecommunications in the Wye River area and given the high fire risk for this area it is important that effective telecommunications is available.
- It is considered that the overall community benefit of providing improved telecommunication service coverage in this area is greater than the potential visual amenity impact.
- It is further considered that the proposal generally complies with the Planning Scheme provisions and achieves an appropriate outcome in a Public Conservation and Resource Zone.
- It is therefore recommended that a Notice of Decision to Grant a Permit be issued.

### **Background**

The application was lodged on 7 November 2011. An inspection of the site confirmed that no vegetation removal is required as the site is in a cleared area adjacent to the existing track.

There is an existing telecommunication facility on the north side of the track, which is similar to that now proposed (monopole approximately 22 metres high and brick building within a fenced compound). The site inspection confirmed that the visual impact of the existing facility is minimal. Both sides of the track are lined with mature canopied trees (approximately 12 metres high) which assist to screen the existing facility, and will also screen the lower portion of the proposed tower and associated works.

Following a request from Council, photomontages were provided to demonstrate the likely visual impact of the proposed tower from various locations in Wye River, being the front of 3 McRae Road, the Wye River bridge, the intersection of The Boulevard and Riverside Drive and 24 Riverside Drive. These photomontages demonstrate that the visual impacts of the proposed tower are likely to be minimal.

A satisfactory Land Stability Assessment Report was also provided to Council as requested, prior to advertising of the proposal.

### **Issues / Options**

Council has the options of:

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

Key issues relate to the visual impact of the development and the need for such a facility in Wye River. As noted above, there is a critical need for improved mobile telecommunications in the Wye River area from a fire and emergency management point of view, and the proposed Optus tower would be of significant benefit to the local community from a net community benefit point of view.

**Proposal**

Planning approval is sought for use and development of the land for a telecommunications facility including buildings and works associated with the use.

Proposed works include the erection of a 35 metre high monopole, installation of three 2.8m high panel antennas mounted to the top of the monopole in a turret headframe (total combined height of 38 metres), and construction of a standard equipment shelter (3m x 2.5m x 2.8m). The facility will be housed within a compound measuring 9.4m x 6.4m with 2.4m high chainwire security fencing. The proposal will also involve upgrading the access track and associated minor earthworks.

The monopole and fence will be constructed of a concrete grey colour, whilst the shelter shed will be constructed of 'pale eucalypt' Colorbond steel.

Power to the facility will be via a new underground connection extending approximately 90m east of the site location. Connection to the existing overhead power will occur through negotiations with the power authority.

The development is proposed to be located approximately 5 metres from the existing Bird Track and 12.5m south of the existing monopole (Emergency Altering System) located on the north side of Bird Track. The subject site is generally flat providing a good location to site the tower. The tower is proposed approximately 210m from the crest of the hill. No vegetation removal is required to facilitate the erection of the tower and associated works.

The facility will achieve Optus coverage objectives by improving coverage in the broader area of Wye River and will improve the depth of wireless broadband coverage and capacity into the residential area of Wye River.

**Site & Surrounds**

The site of the proposed works is on the south side of Bird Track, approximately 310 metres west of the closest edge of the Wye River township. The area of the lot is 521ha and the proposed tower is to be located adjacent to the northern boundary of the lot. The site is heavily treed and undulating to steep. The proposed tower will be sited amongst large mature eucalypt trees which will provide screening to the equipment shelter and the base of the monopole. As discussed above, there is an existing monopole (Emergency Altering System) located on the north side of Bird Track approximately 12.5 metres to the north of the proposed tower.

Land abutting the site to the north and south is generally included in the Public Conservation and Resource Zone and is also within the Great Otway National Park. A site adjoining to the west is zoned Rural Conservation and is also heavily treed. Areas further north on the outskirts of Wye River and further south on the outskirts of Kennett River are also within the Rural Conservation Zone and heavily treed.

**Public Notice**

Notice of the application was given pursuant to Section 52 of the *Planning and Environment Act*, by way of the following:

- A notice placed on-site;
- A notice at the Wye River Store (with a copy of the application available for viewing);
- Notices posted to all owners and occupiers on the north side of Wye River and on nearby sites along Morley Avenue and McRae Road (509 owners/occupiers in total);
- A notice of the application was also placed in the Colac Herald and the Echo.



At the conclusion of the notification period, one objection was received. The objection supported the installation of a telecommunications facility in Wye River, but raised issues relating to the visual impact of the tower, possible co-location with an existing telecommunications facilities and a suggested reduction of height to below the tree line. These grounds are discussed in the consideration of the proposal below.

### **Referrals**

The application was referred to the Department of Sustainability and Environment (DSE) pursuant to Section 52 which did not respond within the fourteen day timeframe, however written consent from the public land manager was submitted as part of the application as required for applications in the PCRZ.

Council's Infrastructure Department provided conditional consent requiring a construction management plan to include details of heavy vehicle movements to the site; expected timing of the proposed works; details of any over-dimensional vehicles required to travel to the site and traffic management associated with the works; and the location of the construction site boundary.

### **Planning Controls**

The land is included in the Public Conservation and Resource Zone (PCRZ) and is subject to the Bushfire Management Overlay (BMO) and the Erosion Management Overlay Schedule 1 (EMO1). A small portion in the southwest corner of the site (0.1%) is also subject to Heritage Overlay Schedule 242 (Armistead's Sawmill Wye River).

A planning permit is required for the use, buildings and works in the Public Conservation and Resource Zone (Clause 36.03-1 and Clause 36.03-2); for buildings and works in accordance with Erosion Management Overlay (Clause 44.01-1); and to construct a building or construct or carry out works for a Telecommunications Facility in accordance with Clause 52.19-2.

### State and Local Planning Policy

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 12.02-6 – The Great Ocean Road Region
- Clause 13.03-2 – Erosion and Landslip
- Clause 19.03-4 – Telecommunications
- Clause 21.03-6 – Kennett River, Wye River and Separation Creek
- Clause 21.04-5 – Erosion
- Clause 21.04-8 – Landscape Character

Clause 19.03-4 states that '*planning decisions should reflect a reasonable balance between the provision of important telecommunications services and the need to protect the environment from adverse impacts arising from telecommunications infrastructure.*'

The proposal is considered to accord with the principles of the State and Local Planning Policy Framework. The applicant has investigated other possible communication sites for co-location in the Wye River area, and found that existing facilities were unable to provide the service required to the area. The applicant has provided appropriate and reasonable justification to demonstrate that the proposed site is optimal for the provision of this service.

It is considered there will be no significant detriment to the environment by way of this proposal. With regard to the potential visual impact, it is acknowledged that the top of the proposed tower may be visible at a distance from properties on the north side of the river. The facility will be a streamlined, single vertical pole constructed of muted colours, will be well separated from any dwellings and well screened by existing mature vegetation. The visual impacts of the proposed tower are therefore likely to be minimal, as demonstrated by the photomontages submitted.

### Zoning

The land is zoned Public Conservation and Resource Zone (PCRZ). The purpose to the zone is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To protect and conserve the natural environmental and natural processes for their historic, scientific, landscape, habitat or cultural values.
- To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.
- To provide for appropriate resource based uses.

Planning approval is required to use the land for a telecommunications facility and associated buildings and works as the exemptions listed in Clause 52.19 have not been met. The proposed telecommunication facility is considered to be consistent with the purpose of the zone as it provides for improved telecommunications which will be beneficial to the Wye River community and surrounds. The proposed tower facility is located so as to provide the level of service coverage required, and is sited so as to provide the least impact on the surrounding area, utilising the existing vegetation in the area to assist in screening. The grey/concrete colouring to be used in the tower construction will assist in blending the structure in with the natural background and the footprint required to develop the facility is minimal. It is considered that the proposed telecommunication facility will not unduly impact on any surrounding properties and will not detract from the use of the land for national park purposes.

### Overlays

This site is included in the Bushfire Management Overlay (BMO). Under the BMO, no permit is triggered for buildings and works associated with a Telecommunications Facility.

A small portion in the southwest corner of the allotment is included in the Heritage Overlay Schedule 242 (HO242 - Armistead's Sawmill Wye River). The area included in this overlay is approximately 3 kilometres from the proposed telecommunications facility, therefore no permit is triggered under this overlay.

This site is subject to the Erosion Management Overlay Schedule 1 (EMO1). The purpose of this overlay is to protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development. A permit is required for buildings and works under Clause 44.01-1. A geotechnical report was provided with the application prepared by A.S. James Pty Limited, dated 1 May 2012. The report concludes that the risk to property is low (post construction) and the risk to life is within acceptable limits. Permit conditions will require development in accordance with recommendations of this report.

Relevant Particular Provisions**Clause 52.19 Telecommunications Facility**

The purpose of this provision is:

- To ensure that telecommunications infrastructure and services are provided in an efficient and cost effective manner to meet community needs;
- To ensure the application of consistent provisions for telecommunications facilities;
- To encourage an effective state wide telecommunications network in a manner consistent with the economic, environmental and social objectives of planning in Victoria as set out in Section 4 of the Planning and Environment Act 1987; and
- To encourage the provision of telecommunications facilities with minimal impact on the amenity of the area.

A permit is required to construct a building or construct or carry out works for a Telecommunications Facility.

The Decision guidelines of Clause 52.19 state that before deciding on an application, consideration should be given to:

- The principles for the design, siting, construction and operation of a Telecommunications Facility set out in A Code of Practice for Telecommunications Facilities in Victoria;
- The effect of the proposal on the adjacent land;
- Decision guidelines of relevant overlays.

The principles in the Code of Practice are:

- A telecommunications facility should be sited to minimize visual impact.
- Telecommunications facilities should be co-located wherever practical.
- Health Standards for exposure to radio emissions will be met.
- Disturbance and risk relating to siting and construction should be minimized. Construction activity and site location should comply with State environmental protection policies and best practice environmental management guidelines.

The applicant's assessment of how the proposal meets those stated principles was submitted with the application. In summary, the following points are made:

- The facility is located within the Great Otway National Park and has been located amongst a relatively well vegetated area to minimise visual impacts to the nearest residential areas.
- The site is well separated from residential zoned land with the nearest residential zoned land a distance of approximately 310 metres to the east.
- Existing communication sites were investigated and it was found that no such facilities were available in the Wye River area that would provide adequate service.
- The maximum cumulative radio frequency electromagnetic energy (EME) levels at 1.5m above ground level, is estimated to be 0.042% of the ARPANSA public exposure limit.
- Disturbance to the site is expected to be minimal and construction will be undertaken in accordance with the relevant OH&S guidelines.

The applicant has investigated other current communications sites for possible co-location. A Telstra facility is located at 3765 Great Ocean Road and is highly visible. This facility is not feasible as it is outside Optus' search area, the height is unsuitable from a radio frequency perspective, and Telstra has reserved positions on the existing pole and above the pole for future expansion.

The existing monopole (Emergency Altering System) located on the north side of Bird Track was also considered but is unsuitable as the position available to Optus on the tower does not meet the required coverage objectives. The proposed new monopole will provide for a greater coverage area.

It is considered that the proposed facility has satisfactorily addressed the principles for design, siting, construction and operation of the Telecommunications facility as set out in the Code of Practice.

### **Consideration of the Proposal**

The key consideration in assessing this application is to weigh up the visual impact of the proposal against the need for such a facility in Wye River.

As noted above, there is a critical need for improved mobile telecommunications in the Wye River area from a fire and emergency management point of view. The proposed tower would provide significant net community benefit by providing access to the most up to date telecommunication services, including mobile phone and internet services.

It is acknowledged that the top of the proposed tower may be visible at a distance from properties on the north side of the river. With respect to the visual impact, the applicant advised that careful consideration had been given to the siting and design of the facility to minimise the impact on the surrounds. In the VCAT decision *Telstra Limited v Bass Coast SC [2004] VCAT 1324 (2 July 2004)*, Member Hewitt stated:

*'With respect to the visual impact of the proposed facility, there is nothing in the planning scheme which requires these facilities to be completely screened from all view, and such an outcome would be clearly unrealistic. The fact that the structure will be visible is not in itself sufficient for me to form the view that its visual impact has not been minimised or that it will have an unacceptable impact. The fact that the structure will be visible must be balanced against the policy provisions of the planning scheme which support the provision of this form of infrastructure and the wider community benefit to be derived from the development of a comprehensive telecommunication network.*

*It is necessary however, to ensure that such facilities are appropriately located and that an assessment is made of the extent to which their visual impact contributes to a loss of amenity. In this case, I am satisfied that appropriate consideration has been given to the siting and design of this facility and that, while it will be at least partly visible from particular vantage points within the local environs, it will not be a dominant structure in the landscape.'*

The facility will be well separated from any dwellings (the objector's property is approximately 740 metres to the north); existing mature vegetation will provide substantial screening; and as discussed above, photomontages from various locations specified by Council were provided to demonstrate the likely visual impact of the proposed tower. These photomontages confirm that the visual impacts of the proposed tower are likely to be minimal. In addition, the use of a streamlined, single vertical pole design and muted colours (concrete grey) are proposed to further reduce visual detriment.

The objector suggested co-location with several existing telecommunications facilities. In response, the applicant provided background information with respect to the site selection process (potential sites must meet planning, engineering and radio frequency/coverage requirements and it must be possible to secure a lease), and addressed each suggested location. As noted earlier, adequate evidence has been presented that co-location cannot be achieved.

The applicant advised that locating the facility below the treeline as suggested by the objector was not feasible as it would block the network and fail to meet coverage objectives.

It is considered that each of the objector's concerns has been satisfactorily addressed and that the overall community benefit offered by the proposal is greater than any visual impact likely to occur.

#### **Council Plan / Other Strategies / Policy**

The Council Plan contains a strategy to: "*Facilitate the development of infrastructure for business investment, growth and liveability.*" Within this strategy there is an action to: "*Lobby for improved telecommunications in the Colac Otway Shire for broadband and mobile coverage*". There is also a strategy to: "*Meet our statutory obligations for community safety, security and responses to emergency situations*". As noted in this report, the proposal would assist in achieving these outcomes for the community.

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

The proposal raises no financial or resourcing implications for Council.

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

If the proposal was to proceed, it would contribute significantly to enhancing the capacity of the local community and fire agencies to communicate in emergency situations which is particularly important for this area given its high wildfire risk.

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

Any relevant environmental considerations have been addressed within this report.

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

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

#### **Conclusion**

Planning approval is required for the use and development of the land for a telecommunications facility. Support for the proposal will improve the Optus phone and broadband internet service coverage in the Wye River area. The proposal is generally consistent with the State and Local Planning Policy Framework, zoning requirements, current local policies and overlay requirements. Having given due regard to the matters discussed above, it is considered that the application should be approved, subject to conditions.

#### **Attachments**

Nil

**Recommendation(s)**

***That Council's Planning Committee resolve to issue a Notice of Decision to Grant a Permit for the use and development of a Telecommunications Facility (38 metre high monopole) and associated buildings and works at 266 Harolds Track, Wye River (C/A 2001, Parish of Wongarra) subject to the following conditions:***

- 1. The layout of the site and the size of the proposed buildings and works as shown on the endorsed plans must not be altered or modified without the written consent of the Responsible Authority.***
- 2. The underground cable route must avoid root systems of existing remnant native vegetation to the satisfaction of the Responsible Authority.***
- 3. All telecommunications and power connections (where by means of cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.***
- 4. The works hereby permitted must not result in the loss of native vegetation.***
- 5. All development and works associated with this permit must be carried out in strict conformity with the recommendations of the Geotechnical Engineers Report Number 103810/Rev A, prepared by A.S. James Pty Limited, dated 1 May 2012.***
- 6. Prior to the commencement of works, a construction management plan must be submitted to the Responsible Authority for approval. This plan must include details of heavy vehicle movements to the site, expected timing of the proposed works, details of any over-dimensional vehicles required to travel to the site, traffic management associated with the works and the location of the construction site boundary.***
- 7. The nature and colour of building materials employed in the construction of the buildings and works hereby permitted must be harmonious and blend into the surrounding environment to the satisfaction of the Responsible Authority. The tower is to be constructed in natural grey/concrete colouring and the associated shedding will be constructed in "Pale Eucalypt".***
- 8. Stormwater discharged from the buildings and works hereby permitted must only be distributed across the property by sheet flow (i.e. along a contour) or to a legal point of discharge as approved by the Responsible Authority. No sheet flow discharge point must be permitted within five (5) metres of the lowest property boundaries and any discharge point must not be located so as to surcharge any septic effluent disposal system to the satisfaction of the Responsible Authority.***
- 9. All excavation works upon the subject land must be kept to the absolute practicable minimum and to the satisfaction of the Responsible Authority.***
- 10. Vehicle access to the telecommunications compound must be constructed to an all weather surface to the satisfaction of the Responsible Authority.***

- 11. ***If the use of the site as a Telecommunications facility ceases all associated infrastructure must be removed within three months of the use ceasing, to the satisfaction of the Responsible Authority.***
  
- 12. ***The use must not detrimentally affect the amenity of the neighbourhood, to the satisfaction of the Responsible Authority including through the:***
  - ***Transportation of any material, goods or commodity to or from the land.***
  - ***Appearance of any stored goods and material.***
  - ***Emission of noise, artificial light, vibration, odour, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste product, grit and oil.***
  
- 13. ***The telecommunications facility must comply to the satisfaction of the responsible authority with the ARPANSA ‘Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300 GHz (2002)’, or such other standard as is adopted from time to time by the Australian Communications Authority.***

***Expiry***

- 14. ***This permit will expire if one of the following circumstances applies:***
  - ***The development is not started within two years of the date of this permit.***
  - ***The development is not completed within four years of the date of this permit.******The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.***

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**PC121209-3                    REMOVAL OF NATIVE VEGETATION TO ACCOMMODATE AN UPGRADE TO THE EXISTING UTILITY INSTALLATION (PUMP STATION) AT 300 BARHAM RIVER ROAD (PP24/2012-1).**

|             |                                    |           |            |
|-------------|------------------------------------|-----------|------------|
| AUTHOR:     | Ian Williams                       | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning & Development | FILE REF: | F12/1212   |

**Location:** 300 Barham River Road, Apollo Bay

**Zoning:** Public Conservation and Resource Zone (PCRZ)

**Overlay controls:** Environmental Significance Overlay (ESO2 & ESO5)  
Land Subject to Inundation Overlay (LSIO)  
Erosion Management Overlay (EMO1)  
Bushfire Management Overlay (BMO)

**Proposed Amendments:** Nil

**Purpose:**

Planning permission is sought for the removal of native vegetation to accommodate an upgrade to the existing *utility installation* (pumping station). The proposed pumping station forms part of a wider plan by Barwon Water to provide increased capacity in the local water supply system which also involves the construction of a new pipeline and storage basin on land at 120 Barham River Road. A separate application for the water storage basin is also before the Planning Committee.

Consideration of this application by the Planning Committee is required as nine (9) objections have been received.

**Declaration of Interests**

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

**Summary**

- Planning permission is sought for the removal of native vegetation to accommodate an upgrade to the existing utility installation (pumping station).
- The proposal includes the removal of five native trees and seven non-native trees. The native trees comprise two small eucalypts and three scattered native trees on the northern boundary. The majority of the proposed trees to be removed are located within the vicinity of the off-take structure.
- The use of the land does not require a permit and the buildings and works associated with the utility installation are exempt under Clause 62.02-1.



- The upgrade is required as Barwon Water needs to provide an additional annual yield of 220 ML a year to meet predicted potable water growth demands in Apollo Bay, Marengo and Skenes Creek to the year 2055.
- The amount of water extracted from the river is dependent on flows in the river, the month of the year and the rate of population growth in Apollo Bay, Marengo and Skenes Creek. Under the Bulk Entitlement Agreement, the extraction rate of water from the Barham River will vary from a maximum of 10 million litres per day to a minimum of 0 litres per day during low river flows.
- Nine (9) objections have been received to the application. The issues raised in the objections are primarily concerned with potential adverse impacts on the environment as a result of noise and visual appearance and reduced river levels. The objectors submit that alternative water sources should be explored. These are not issues that can be considered in this application because no planning permit is required for the use or development – consideration can only be given to the removal of native vegetation.
- The application was referred under Section 55 of the Planning and Environment Act to the Department of Sustainability and Environment (DSE) and to Aboriginal Affairs Victoria under Section 52 of the Planning and Environment Act. None of these authorities objected to the application.
- The proposal seeks to ensure that the development would not adversely affect the environmental values of the site, and that the removal of vegetation is kept to a minimum.
- It is therefore recommended that the application be supported subject to conditions.

### **Background**

Both this application and a separate application for land at 120 Barham River Road, also listed for decision by the Planning Committee, are to provide for an upgrade to the water supply system as part of Barwon Water's capital works program to provide an additional annual yield of 220 ML of potable water a year to meet predicted growth demands in Apollo Bay, Marengo and Skenes Creek to the year 2055.

The current system operates with water being drawn up from a weir by a pump station off Barham River Road. Water is then transferred, stored and filtered at the 125ML Marengo basin and the filtered water is pumped to a 600KL storage tank which feeds the reticulation system by gravity. Barwon Water has a bulk entitlement (a legal right) approved by the Minister for Water under Section 43 of the Water Act 1989 to water being extracted from Barham River. The entitlement has no term but defines how much water the water corporation can harvest from a water source and the conditions to be adhered to when extracting water - for example the minimum volume of passing flows and periods of environmental flows. Barwon Water cannot extract all the water from the Barham River so that there is no flow downstream to the sea. The bulk entitlement ensures that Barwon Water only takes a share of the flow in the river. The amount of water extracted from the river is dependent on flows in the river, the month of the year and the rate of population growth in Apollo Bay, Marengo and Skenes Creek. Under the bulk entitlement, the minimum flow required to be passed will be 6.6 ML per day from November to April inclusive, and 24 ML per day from May to October inclusive. This river flow is measured at the Paradise stream gauge on the Barham River (East Branch).

Barwon Water also has a licence issued by Southern Rural Water (SRW) which provides the ability to extract water from Barham River when drought conditions apply, when the Bulk Water Entitlement would otherwise not allow extraction to occur based on river flow.

Drought conditions are defined by the volume of water stored in the Marengo Basin, the level of water restrictions in place at Apollo Bay and the minimum river flow in Barham River. During normal operation, water is extracted according to the Bulk Entitlement.

When the SRW license is activated according to the drought conditions, extraction of water under the bulk entitlement ceases. When activated, the SRW licence volume is 633 million litres per year from 1 July to 30 June.

Under a separate planning application before the Planning Committee planning permission is sought to develop the land at 120 Barham River Road as a utility installation (water storage basin), associated transfer pumping station, water pipeline and removal of native vegetation along Barham River Road. The key aspects of the water storage basin proposal are set out as follows:

- *Construction of a 250 ML water storage basin at 120 Barham River Road.*
- *Construction of an associated transfer pump station at 120 Barham River Road.*
- *Vegetation removal and lopping at 120 Barham River Road.*
- *Construction of a dual water supply transfer pipeline between 120 Barham River Road and the existing water main at Conns Lane.*

Prior to the submission of both these applications, Barwon Water undertook a review of other available options which included thirteen (13) off stream storage options and six (6) on stream storage options. Barwon Water also reviewed a number of alternative options which include a) raising the embankment of the Marengo Basin to increase capacity, b) introduce a third pipe recycled water system, c) construct tanks above or below ground, d) facilitate installation of tanks for domestic rainwater in all existing houses, e) desalination plant, f) groundwater extraction, g) piped water from nearby townships, and h) aquifer storage and recovery. The applicant has advised that due to the potential high risk of landslip and the difficulty with constructing vehicle access, a dam large enough cannot safely be built on the West and East Barham River and as such, an off stream storage system is preferred rather than on stream storage. It is also considered that the sensitive environment upstream of the existing weir and along the river restricts the ability to work within this area.

### **Issues / Options**

Council has the options of:

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

The key issues relating to the application are the environmental impacts associated with the removal of native vegetation for the pump station. As noted earlier, issues raised by objectors concerning the visual and amenity impacts cannot be considered or addressed as the use / development doesn't require a planning permit.

### **Proposal**

Planning permission is sought for the removal of native vegetation to accommodate an upgrade to the existing *utility installation* (pumping station). The proposal specifically involves:

- The removal of five native trees and seven non-native trees. The native trees comprise two small eucalypts and three scattered native trees on the northern boundary.  
The majority of the proposed trees to be removed are located within the vicinity of the off-take structure.
- The replanting of vegetation on the site which would include the landscaping of native vegetation along the riverbank and all boundaries of the site to ensure ongoing stability.

Whilst no permit is required for the use / development associated with the construction of a pump station to replace the existing which is operational on the land (and has been since prior to 2002), the proposal is described as follows:

- A new vehicle access is proposed via a security gate and new entrance point off Barham River Road formed with a crushed rock driveway and car parking area approximately 7m from the site frontage.
- A section of the site 15m x 17m would be filled and elevated by 900mm to accommodate the housing structure – being 300mm above the flood level of the site.
- A crushed rock footpath would be constructed around the batter.
- The proposed pumping station would be set back 23m from the site frontage, 9m from the eastern boundary, 11m from the western boundary and 20m from the river bank. The pumping station would be 6m wide, 7.25m long with a wall height of 3.32m and finished in brick with pale eucalypt colorbond roofing.

The provision of an off-take structure would allow water to be drawn from the Barham River, into a well from which the pump station draws water for transfer. This structure would replace the pipe that is currently winched down from the side of the bridge adjacent to the site.

### **Site & Surrounds**

The application site is located on the southern bank of the Barwon River, on the north side of the Barham River Road, approximately 2.8km south west of Apollo Bay, at a height of 11.5m AHD. The application site forms part of a land parcel licensed to Barwon Water by the Department of Sustainability and Environment, for the purpose of a pumping station (Licence number 2012297). The site is known as Crown Allotment 6A, Section 1 in the Parish of Krambruk. The land forms part of the Barwon River stream side reserve which is a permanent reservation.

The site currently contains a pumping station which would be replaced by the pumping station under this application. Vehicle access to the site would be maintained via the existing arrangement from a gate off Barham River Road within the site's south-western corner. A shared driveway runs adjacent to the site's western boundary and provides access to the river and equipment associated with the operation of the existing pumping station and access to the dwellings at 308 and 310 Barham River Road.

The site contains scattered trees adjacent to the existing pumping station and planted trees adjacent to the eastern boundary. To the north of the site, on the south bank of the river is a stand of Manna Gums. Existing dwellings are located approximately 140m to the north of the site and 125m to the south. Land to the east of the site is undeveloped and used for grazing.

### **Public Notice**

Public notice of the application was given during June 2012 in accordance with Section 52 of the Planning and Environment Act by sending notice to all adjoining and opposite owners and occupiers. One sign was also displayed for a period of 14 days at the entrance to the site on Barham River Road.

The *'use of the land as a pump station'* originally formed part of the advertised application description, however it has since been determined that the use does not require a permit and the buildings and works associated with the utility installation are exempt under Clause 62.02-1.

At the conclusion of the notification period, nine (9) letters of objection were received. The grounds of objection are summarised below. Although Council is unable to consider or address most of these issues (ie those not relating to vegetation removal), comments are provided for Councillor's information.

- The noise associated with the pumping station would result in a loss in the value of adjacent properties.

*The pump station has been designed in accordance with the Environment Protection Authority (EPA) Victoria guideline, Noise from Industry in Regional Victoria 2011 (NIRV – EPA publication 1411). This guideline provides guidance on industry noise levels and limits in regional Victoria. The guideline recommends that the maximum noise level from the pump station to the nearest sensitive receivers is 33 dB. Design investigations indicate that the highest noise levels from the pump station will meet this requirement and is predicted to be less than 25 dB. A number of measures have been incorporated into the design of the pump station to reduce noise. These measures include a brick building construction, acoustic insulation into the ceiling and walls, solid doors with acoustic seals and acoustic rated plasterboard. No permit condition has been recommended, as the use / development component of the proposal does not require a permit.*

*Operation of the pump station will be dependent on the river flow in the Barham River and the water quality of the river. During periods of high flows and good water quality, the pump station may operate for up to 22 hours a day to maximise the opportunity to fill the water storages.*

- The proposal would present as a harmful visual impact.

*The pump station will be housed in a brick building with a Colorbond roof finished in Pale Eucalypt and of a size similar to a double garage. The proposal includes a crushed rock driveway to provide parking for staff off Barham River Road and a security fence around the site boundary. The pump station site and the area along the riverbank will be landscaped with vegetation to soften the development and blend this in with the surrounding environment, whilst assisting with ongoing stability of the riverbank.*

- How will water levels in the Barham River be affected?

*The amount of water extracted from the river is dependent on the available river flows and corresponding extraction rates as per the existing Bulk Entitlement. The extraction rates defined in the Bulk Entitlement consider the minimum river flow requirements for the summer period with respect to passing flows and summer fresh flushes. The Bulk Entitlement was issued to Barwon Water by the Minister for Water in accordance with Section 43 of the Water Act 1989. The extraction rates and passing river flows were developed to protect the health of the river and agreed to in consultation with the Corangamite Catchment Management Authority. The Bulk Entitlement is developed to ensure natural river flow features, such as high flows are provided and will contribute to maintaining the health of the Barham River. Under the Agreement, the extraction rate will vary from a maximum of 10 million litres per day to a minimum of 0 litres per day during low river flows. Barwon Water can only extract water if the river flows exceed 6.6 million litres per day from November to April and 24 million litres per day from May to October.*

- There is a permanent cost of electricity in pumping water to fill the dam and as such what is the greenhouse impact of pumping water to the dam?

*The pump station has been designed to minimise energy consumption by selecting energy efficient pumps and assessing the most energy efficient operating regime.*

- Does this project change the area required for the water supply catchment?

*This project does not change the catchment area.*

- Does the road network in the Barwon Water catchment come under the control of Barwon Water?

*Barwon Water is not responsible for the road network through the area.*

- The Barham River is a small stream compared to most rivers and water should be sourced from a more permanent and reliable water source and provided via an upgrade to the weir on the West and East Barham River.

*Additional storage is required to meet the needs of existing Barwon Water customers and projected future growth in the area. To provide this additional storage, a total of 26 options were investigated and evaluated, including upgrading the existing weir and pipeline, on stream storage sites along the West and East Barham River, off stream storage sites near the Barham River, enlarging the Marengo basin and groundwater extraction. The preferred option was selected based on a Triple Bottom Line analysis. Barwon Water advises that upgrading the existing weir and pipeline is not feasible on the following grounds:*

- *The high risk of landslides limits the height that the existing weir could be raised or a new dam wall can be safely constructed.*
  - *A safe height at the existing weir is 10 metres and at this height, only a fraction of the total volume of water needed to supply Apollo Bay could be stored.*
  - *The area at the weir and along the existing pipeline is extremely difficult to provide safe access for construction equipment and materials.*
  - *The weir is located in the Great Otway National Park, which is a highly sensitive environment particularly upstream of the existing weir and along the river. This sensitivity significantly restricts the ability to construct and operate in the area.*
- Why is logging permitted in any water catchment?

*The Barham River catchment is the primary water source for Apollo Bay and consists of two sub catchments; the East Barham River and the West Barham River. In the West Barham River catchment, land uses include softwood timber production on private property. These activities were approved and have continued over recent decades before the water supply catchment was developed by Barwon Water. Due to prior approval, Barwon Water cannot control such logging activities however, Barwon Water monitors logging activities to ensure water quality is preserved within the catchment. This issue is not relevant to the application.*

- The location of the pumping station on the flood plain is a preposterous idea especially if the flood plain floods.

*This issue relates to the water storage basin and is therefore not relevant to this application.*

- The proposal would impact on natural habitat and result in a reduction in the number of protected species, such as the platypus.

*Significant investigation work has been undertaken by Barwon water to understand the local environment. To minimise potential environmental impacts before, during and after construction, a Project Environmental Management Plan has been developed which includes the management of waterways, fauna, erosion and vegetation. The management plan has been developed to manage potential impacts to Platypus during construction and operation of the new pump station. These measures include:*

- *A monitoring program prior to, during and after construction to locate Platypus and possible burrows;*
- *Developing controls during construction to mitigate impacts, for example physically separating the worksite from aquatic fauna and working with a qualified wildlife specialist to move Platypus if found within the construction area;*
- *Designing the inlet structure to avoid impact, for example designing for a slow flow rate into the pump station; and*
- *Reinstating the river bank area and its vegetation as quickly as possible after construction.*

- The existing pumping station is adequate and has been in situ for a temporary 20 year period and as such, this should not be considered a permanent solution.

*Off stream storage is required due to the reasons discussed above. The new pump stations are required to pump water from the river into the off-stream storage and then to transfer water from this storage to Marengo. The existing storage basin does not provide adequate supply for Apollo Bay, Marengo and Skenes Creek. Significant summer demand along with projected growth in the region requires an additional 220 million litre storage over and above the existing 125 million litre Marengo basin. Investigations found there is not enough room to extend the existing Marengo basin and therefore a new storage facility is required.*

- The proposal would inhibit growth of Apollo Bay and the hinterland.

*The proposal is not considered to inhibit any future growth of Apollo Bay. The upgrade to the existing pump station is required as part of Barwon Water's Capital Works program to provide an additional annual yield of 220 ML a year to meet predicted growth demands in Apollo Bay, Marengo and Skenes Creek, to the year 2055.*

- The dam could be filled by a larger pipe or by gravity feed from the West Barham and maintaining the existing method therefore reducing the electricity cost.

*Options for an on-stream storage that would not require pumping were investigated. Investigations found that a dam wall approximately 50m high would be required and the storage area would extend back approximately 2.5 kilometres upstream.*

*Any dam wall smaller than this would require a new pump station to transfer water to the Marengo basin. This size of dam is not feasible based on the limitations to safe construction and operation of such a facility.*

- There will be a loss in income due to the disruption for the 'Burrum River Retreat'(sic).

*Construction impacts will be managed in accordance with a Project Environmental Management Plan. The prepared management plan would include the following key controls:*

- *Noise and vibration: Works will be undertaken in accordance with EPA Victoria guidelines. Noisy activity will be scheduled for the least sensitive times of the day, such as mid-morning to mid-afternoon. Noise suppression devices will be used for equipment such as mufflers on heavy machinery and acoustic enclosures around noisy equipment, and dilapidation studies will be completed on properties next to the construction site.*
- *Dust and Air Quality: Weather forecasts will be monitored to provide information on likely strong windy days and schedule activities to minimise dust generation, Speed restrictions will be implemented on the works sites, Loads will be covered during transportation of material, Exposed surfaces of stockpiles will be compacted, Areas will be reinstated and revegetated after construction, and Water carts will be used to wet down trafficked areas as required.*

### **Referrals**

The application was referred under Section 55 of the Planning and Environment Act to the Department of Sustainability and Environment (DSE) and to Aboriginal Affairs Victoria under Section 52 of the Planning and Environment Act. The application was also referred internally to Council's Infrastructure and Environment Departments.

### **Planning Controls**

The land is included in the Public Conservation and Resource Zone (PCRZ) and is subject to the Environmental Significance Overlay (ESO2 & ESO5), the Land Subject to Inundation Overlay (LSIO), the Erosion Management Overlay (EMO1) and the Bushfire Management Overlay (BMO). A planning permit is not required for the use of the land or the associated buildings and works, but is required for the removal of native vegetation pursuant to the following Clauses of the Colac Otway Planning Scheme:

- Clause 44.01-2 – Erosion Management Overlay – Schedule 1 (Vegetation removal)
- Clause 42.01-2 - Environmental Significance Overlay (ESO) (Vegetation removal)
- Clause 52.17 – Native vegetation removal

#### a) State and Local Planning Policy Framework

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

- Clause 12 – Environmental and Landscape Values
- Clause 12.02 – Coastal areas
- Clause 12.02-6 – The Great Ocean Road Region
- Clause 13 – Environmental Risks

- Clause 13.3-2 – Erosion and Landslip
- Clause 14.02 – Water
- Clause 19 – Infrastructure
- Clause 21.02 – Vision
- Clause 21.03-3 – Apollo Bay and Marengo
- Clause 21.04 – Environment
- Clause 21.04-1 – Catchment Management
- Clause 21.04-3 – Vegetation
- Clause 21.04-5 – Erosion
- Clause 21.04-8 - Landscape character

The proposal is considered to accord with the principles of the State and Local Planning Policy Framework. The proposal seeks to ensure the continued availability of clean, high-quality drinking water to assist in meeting water demands to reflect predicted growth demands in Apollo Bay, Marengo and Skenes Creek to the year 2055. The proposal is considered to protect the health of the surrounding ecological systems and the coastal biodiversity they support whilst conserving the identified environmental, ecological, coastal and cultural values of the Great Ocean Road region. It is considered that the applicant has adopted a best practice environmental management and risk management approach which aims to avoid or minimise environmental degradation and hazards and ensure that the proposed works near the Barham River provides for the protection and enhancement of the environmental qualities of the waterway and its in-stream users.

b) Zoning Provisions

The site is located within the **Public Conservation and Resource Zone (PCRZ)**.

The purpose of this zone is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.*
- *To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.*
- *To provide for appropriate resource based uses.*

Under Clause 36.03-1, a permit is not required to use the land for a 'utility installation' provided the use is being carried out by or *on behalf of* a public land manager or Parks Victoria. The proposed use is a utility installation as defined by the Planning Scheme. Whilst the Department of Sustainability and Environment ultimately manage the Crown land, they also licence the application site to Barwon Water. The 'Practice Note' on 'Public Land Zones' identifies that the words '*on behalf of*' indicate that the use or development must be undertaken by the public land manager itself or by some other person or entity having a direct representative interest or relationship with the public land manager.



The existing pump station at 300 Barham River Road has been in operation at this site since January 2002 when the initial ten year licence was granted for the use by the Department of Sustainability and Environment (DSE). On 1 January 2012 a further ten year licence for the use of the land as a pump station was granted by DSE. In view of the existing ongoing relationship between Barwon Water and the Department of Sustainability and Environment in the form of the licence agreement it is considered that the use of the land for a pump station is a Section 1 use and therefore does not require a planning permit.

Under Clause 62.02-1, a planning permit is not required for buildings and works associated with a minor utility installation. Under Clause 74, the definition of a minor utility installation includes land used for 'a *pumping station required to serve a neighbourhood*'.

c) Overlay Provisions

The site is covered by the **Environmental Significance Overlay (ESO5 36% and ESO2 100%)**. The purpose of this overlay is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To identify areas where the development of land may be affected by environmental constraints.*
- *To ensure that development is compatible with identified environmental values.*

Under Clause 42.01-2, a permit is required to remove, destroy or lop any vegetation, including dead vegetation. Under Clause 62.02-1, a planning permit is not required for buildings and works associated with a minor utility installation, and the overlay requirements do not apply.

The schedule to the Overlay is specific to the Barham River catchment, being a potable water supply for Apollo Bay and Skenes Creek. The Environmental objectives to be achieved under ESO2 relate to the following:

- To maintain the ability of streams and watercourses to carry natural flows.
- To prevent erosion of banks, streambeds and adjoining land and the siltation of watercourses, drains and other features.
- To consider the intensity of the development of environmentally sensitive land.
- To promote environmental solutions in siting and design in preference to modification of natural systems through technical and engineering measures.

The site is covered by the **Land Subject to Inundation Overlay (LSIO)**. Under Clause 44.04-1, a permit is required to construct a building or construct or carry out works unless the schedule specifies otherwise. Under Clause 62.02-1, a planning permit is not required for buildings and works associated with a minor utility installation, and the overlay requirements do not apply.

The site is covered by the **Erosion Management Overlay (EMO1)**. The purpose of this overlay is:

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

- *To protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development.*

Under Clause 44.01-2, a permit is required to remove, destroy or lop any vegetation.

The site is covered by the **Bushfire Management Overlay (BMO)**. A permit is not triggered under the requirements of this overlay.

d) Relevant Particular Provisions

Clause 52.17 – Native Vegetation

The purpose of this Clause is;

- *To protect and conserve native vegetation to reduce the impact of land and water degradation and provide habitat for plants and animals.*
- *To achieve the following objectives:*
  - *To avoid the removal of native vegetation.*
  - *If the removal of native vegetation cannot be avoided, to minimise the removal of native vegetation through appropriate planning and design.*
  - *To appropriately offset the loss of native vegetation.*
- *To provide for the management and removal of native vegetation in accordance with a property vegetation plan.*
- *To manage vegetation near buildings to reduce the threat to life and property from bushfire.*

Under Clause 52.17-2, a permit is required to remove, destroy or lop native vegetation. An application to remove, destroy or lop native vegetation must be accompanied by a written explanation of the steps that have been taken to:

- Avoid the removal of native vegetation, where possible.
- Minimise the removal of native vegetation.
- Appropriately offset the loss of native vegetation, if required.

**Consideration of the Proposal**

As noted earlier in the report, no planning permit is required for the use or buildings and works associated with the proposal. Council can only consider and impose conditions on those aspects of the proposal relating to native vegetation. The following discussion however aims to address broader issues raised by the broader proposal for Council information.

The proposal includes raising a section of the site (15m x 17m) by 900mm to accommodate the housing structure, being 300mm above the flood level of the site and finished with a pale eucalypt colorbond roof. Whilst the pump station would be elevated, this aspect would be softened within the landscape by the existing vegetation cover to the southern side along Barham River Road. The proposal also includes additional landscaping on all sides, which potentially would result in only the small driveway section being visible from the road.

The appropriate permit conditions have been included within the recommendation to ensure that the level of cover and species selected is to the satisfaction of Council. This application has been referred to DSE as part of the application process and no objection was raised.

With regard to the requirements of the Erosion Management Overlay, the application has been submitted with a Geotechnical Assessment Report dated November 2011.

The report makes a number of recommendations which have been included in the design of the pump station and the inlet/off-take structure. The report also considers the associated vegetation removal along the riverbank. The report results indicate that all the hazards associated with the construction of the pump station and inlet structure identified have an initial risk rating of 'high' or 'very high', although with mitigation measures, this level of risk is reduced to 'medium to low'. The report makes a number of recommendations and as such, the appropriate condition has been included within the recommendations of this report.

With regards to the proposed removal of vegetation and the requirements of Clause 52.17, the applicant has submitted a Flora, Fauna Aquatic Ecological Assessment dated June 2011. The report notes that there are no threatened flora or fauna species within the subject site area. The proposal includes the appropriate steps to *avoid*, *minimise* and *offset* the removal of native vegetation associated with the proposed pumping station. The applicant has calculated the required 'offsets' based on the unavoidable loss of two trees on the river bank.

The applicant has engaged an ecologist to identify any impacts associated with the construction activity. To avoid the removal of vegetation, the pump station would be located on crown land that has been previously cleared of native vegetation.

The applicant has further advised that locating the pump station within the clearing dominated by non-native vegetation would allow for the minimal removal of surrounding native vegetation. To minimise the disturbance to native vegetation within the proposed river pump station site, the planted vegetation to be retained will be fenced off as a '*no-go zone*' during the construction phase of the project.

The removal of the three small scattered trees within the study area will trigger a total offset requirement of 93 new plants. The applicant has suggested that these new plants be planted at the pump station site.

#### Cultural Heritage

The site is located within an area of Cultural Sensitivity. With regard to the requirement for a 'Cultural Heritage Management Plan' (CHMP), the applicant has submitted a 'Due Diligence Assessment' dated September 2011. The Assessment concluded that there are no registered cultural heritage places located within 50m of the proposed pump station upgrade site. The report also identifies that the Barham River Road Pump Station site is located on land which has previously been subject to significant ground disturbance caused by the existing pump station construction, associated pipe work, the grading and machinery to prepare a surface and the construction of a crushed rock pavement.

The report concludes that a CHMP under Section 46 of the Aboriginal Heritage Act 2006 should not be required for any part of the Barham River Road pump station prior to upgrade. The report also makes a number of recommendations and these have been included as permit conditions. The 'Due Diligence Assessment' dated September 2011 was referred to Aboriginal Affairs Victoria on 28 May 2012 under Section 52 of the Planning and Environment Act. To date, no response has been received, however, the appropriate permit conditions have been recommended within this report.

#### **Council Plan / Other Strategies / Policy**

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

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

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

**Risk Management & Compliance Issues**

This proposal raises no risk management or compliance implications for Council.

**Environmental Consideration / Climate Change**

The environmental and climate change implications arising from this proposal have been addressed within this report.

**Communication Strategy / Consultation Period**

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

**Conclusion**

The proposed native vegetation removal is considered to be appropriate and the proposed replacement planting of native vegetation will result in a positive outcome. The use/development of the land for a pump station is established and does not require planning approval. The proposal is required as Barwon Water needs to provide an additional annual yield of 220 ML a year to meet predicted growth demands in Apollo Bay, Marengo and Skenes Creek to the year 2055. It is therefore recommended that the application be supported by Council.

**Attachments**

Nil

**Recommendation(s)**

***That Council's Planning Committee resolve to issue a Notice of Decision to Grant Planning Permit PP24/2012-1 for the removal of native vegetation associated with the use/development of the land for a pump station at 300 Barham River Road APOLLO BAY (C/A: PT.6A SEC: 1 Parish of Krambruk) subject to the following conditions:***

- 1. Prior to the commencement of the development, an amended landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies provided. The plans must generally be in accordance with the landscape plan submitted with the application and should be focused on erosion protection measures, in line with the recommendations made in the Flora, Fauna and Aquatic Ecological Assessment Report, but modified to show a planting schedule of all proposed trees, shrubs, and ground covers, including botanical names, common names, pot sizes, sizes of maturity and quantities of each plant. The plan must provide a suitable vegetation cover to screen the building and works from the surrounding properties and Barham River Road.***
- 2. The layout of the site and the size of the proposed buildings and works as shown on the endorsed plans must not be altered or modified without the written consent of the Responsible Authority.***
- 3. The landscaping shown on the endorsed plans shall be established within 12 months of commencement of the use hereby permitted and must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced. All species selected must be to the satisfaction of the Responsible Authority.***

4. ***The vegetation removal hereby approved must be undertaken in accordance with the requirements of the Due Diligence Study dated September 2011 submitted with the application. In the event that items of Aboriginal or historic cultural heritage are uncovered during the course of development, all work within 50m of the find must cease and the developer, or its contractors must immediately contact the Cultural Heritage Advisor, the Heritage Services Branch of AAV or Heritage Victoria for further advice.***
5. ***All excavation works upon the subject land must be kept to the absolute practicable minimum and to the satisfaction of the Responsible Authority.***
6. ***All vegetation removal associated with this permit must be carried out in strict conformity with the recommendations of the Geotechnical Engineers Report dated November 2011 approved by D Evans on 30 November 2011.***
7. ***All environmental weeds as outlined in "Environmental Weeds of the Colac Otway Shire" brochure must be controlled on the property at all times and prevented from spreading to neighbouring land to the satisfaction of the responsible authority.***
8. ***No environmental weeds as referred to in "Environmental Weeds of the Colac Otway Shire" brochure will be planted on or allowed to invade the site.***
9. ***The clearing of native vegetation must be in accordance with the endorsed plan.***
10. ***Vegetation removal and disposal must not cause damage to vegetation stands to be retained and to drainage lines to the satisfaction of the Responsible Authority.***

**Department of Sustainability and Environment Conditions**

11. ***Before the development starts, an Environmental Management Plan to the satisfaction of the Responsible Authority upon the advice of the Department of Sustainability and Environment 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 Environmental Management Plan must include:***
  - a) ***overall environmental objectives for the operation of the use and techniques for their achievement,***
  - b) ***procedures to ensure that no significant adverse environmental impacts occur as a result of the development and use,***
  - c) ***identification of possible risks of operational failure and response measures to be implemented,***
  - d) ***day to day management requirements for the use,***
  - e) ***an annual review or audit to the satisfaction of the Responsible Authority and any consequential changes to the plan submitted to and approved by the Responsible Authority,***
  - f) ***appropriate measures to address the impacts and recommendations outlined in the report 'Apollo Bay Skenes Creek Water Supply Upgrade – Flora, Fauna and Aquatic Ecological Assessment June 2011',***
  - g) ***a Platypus Management Plan specifying actions to mitigate impacts on existing populations, if identified.***

**12. The use/development must be conducted in accordance with the endorsed plan at all times. All actions specified in the endorsed plan must be implemented within the specified timeframes to the satisfaction of the Responsible Authority and the Department of Sustainability and Environment.**

**Expiry of the permit**

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

- a) The native vegetation removal is not started within two years of the date of this permit.**
- b) The native vegetation removal is not completed within four years of the date of this permit.**

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

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**PC121209-4 USE AND DEVELOPMENT OF LAND FOR A UTILITY INSTALLATION (WATER STORAGE FACILITY) TRANSFER PUMPING STATION AND WATER PIPELINE AND THE REMOVAL OF NATIVE VEGETATION AT 120 BARHAM RIVER ROAD, APOLLO BAY (PP43/2012).**

|             |                                    |           |            |
|-------------|------------------------------------|-----------|------------|
| AUTHOR:     | Ian Williams                       | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning & Development | FILE REF: | F12/1970   |

**Location:** 120 Barham River Road, Apollo Bay, and the road reserve adjacent to 120 Barham River Road

**Zoning:** Rural Conservation Zone

**Overlay controls:** Erosion Management Overlay (EMO1)  
Significant Landscape Overlay (SLO3)

**Proposed Amendments:** Nil

**Purpose:**

This application seeks planning permission to use and develop the land for a *utility installation* (water storage facility), transfer pumping station, water pipeline and the associated removal of native vegetation.

Consideration of this application by the Planning Committee is required as the basin wall to the southern side would be eight (8) metres in height above natural ground level and twelve (12) objections have been received to this application.

**Declaration of Interests**

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

**Summary**

- Planning permission is sought to use and develop the land for a *utility installation* incorporating a water storage facility, transfer pumping station, water pipeline and for the associated removal of native vegetation. The proposed basin pump station and pipeline would transfer water from the water storage basin to the existing plant at Marengo.
- The proposal would require the removal of three (3) native trees and the trimming of three (3) native trees for the purposes of constructing an access track at the site entrance and the removal of ten (10) exotic planted trees for the purposes of constructing a section of access and section of pipeline.
- The proposal also requires the removal of 0.05 hectares of treeless native vegetation within the section where the basin is proposed.
- The proposal is required as Barwon Water needs to provide an additional annual yield of 220 ML of potable water a year to meet predicted growth demands in Apollo Bay, Marengo and Skenes Creek to the year 2055. It is also required to avoid the need for water restrictions which are currently in place each summer due to the inability of the current storage to cater for the peak demand.

- Prior to the submission of this application, Barwon Water undertook a review of other available site options. These included thirteen (13) off stream storage options and six (6) on stream storage options.
- Public notification of the application was undertaken and twelve (12) objections were received. The grounds of objection generally relate to impact on the landscape, cross contamination from the water treatment plant, land instability, and that an upgrade to the existing facilities should occur.
- The application has been referred to Barwon Water, Wannon Water and Corangamite Catchment Management Authority (CCMA) under Section 55 of the *Planning and Environment Act*, and to the Environment Protection Authority (EPA) and Department of Sustainability and Environment (DSE) under Section 52. The application was also referred internally to Council's Infrastructure and Environment Departments. At the conclusion of the referral period no objection was raised to the proposal subject to the inclusion of permit conditions which have been recommended within this report.
- The proposed use and associated works are considered to be consistent with the environmental and landscape values of the immediate and surrounding area and should not have unreasonable amenity impacts. Further, the facility is key infrastructure that will address both the existing and long term water supply needs for Apollo Bay.
- Given the above, it is recommended that a Notice of Decision to Grant a Permit be issued subject to conditions.

### **Background**

Both this application and a separate application for the removal of native vegetation on land at 300 Barham River Road for a new pump station, are to provide for an upgrade to the water supply system for Apollo Bay, aimed at yielding an additional 220 ML of potable water a year to meet predicted growth demands in Apollo Bay, Marengo and Skenes Creek to the year 2055.

The current system operates with water being drawn up from a weir by a pump station off Barham River Road. Water is then transferred, stored and filtered at the 125ML Marengo basin and the filtered water is pumped to a 600KL storage tank which feeds the reticulation system by gravity. Barwon Water have a bulk entitlement (a legal right) approved by the Minister for Water under Section 43 of the Water Act 1989 to water being extracted from Barham River. The entitlement has no term but defines how much water the water corporation can harvest from a water source and the conditions to be adhered to when extracting water - for example the minimum volume of passing flows and periods of environmental flows. Barwon Water cannot extract all the water from the Barham River so that there is no flow downstream to the sea. The bulk entitlement ensures that Barwon Water only takes a share of the flow in the river. The amount of water extracted from the river is dependent on flows in the river, the month of the year and the rate of population growth in Apollo Bay, Marengo and Skenes Creek. Under the bulk entitlement, the minimum flow required to be passed will be 6.6 ML per day from November to April inclusive, and 24 ML per day from May to October inclusive. This river flow is measured at the Paradise stream gauge on the Barham River (East Branch).

Barwon Water also has a licence issued by Southern Rural Water (SRW) which provides the ability to extract water from Barham River when drought conditions apply, when the Bulk Water Entitlement would otherwise allow extraction to occur based on river flow.

Drought conditions are defined by the volume of water stored in the Marengo Basin, the level of water restrictions in place at Apollo Bay and the minimum river flow in Barham River. During normal operation, water is extracted according to the Bulk Entitlement.



When the SRW license is activated according to the drought conditions, extraction of water under the bulk entitlement ceases. When activated, the SRW licence volume is 633 million litres per year from 1 July to 30 June.

Prior to the submission of this application, Barwon Water undertook a review of other available options which included thirteen (13) off stream storage options and six (6) on stream storage options. Barwon Water also reviewed a number of alternative options which include a) raising the embankment of the Marengo Basin to increase capacity, b) introduce a third pipe recycled water system, c) construct tanks above or below ground, d) facilitate installation of tanks for domestic rainwater in all existing houses, e) desalination plant, f) groundwater extraction, g) piped water from nearby townships, and h) aquifer storage and recovery. The applicant has advised that due to the potential high risk of landslip and the difficulty with constructing vehicle access, a dam large enough cannot safely be built on the West and East Barham River and as such, an off stream storage system is preferred rather than on stream storage. It is also considered that the sensitive environment upstream of the existing weir and along the river restricts the ability to work within this area. The applicant has advised that the area selected is the preferred location because the site is outside of the floodplain and the ground is firmer in the proposed location with easier construction methods and costs.

The Environment Protection Authority (EPA) Victoria guidelines state that a buffer distance between the Apollo Bay water reclamation plant and sensitive uses of 300 metres is required. This distance is based on the treatment capacity and treatment processes at the Apollo Bay plant. The proposed water storage basin is more than 400 metres from the water reclamation plant.

Under a separate planning application before the Planning Committee planning permission is also sought for the removal of native vegetation associated with the upgrade of the existing utility installation (pumping station) at 300 Barham River Road (PP24/2012). The proposed pumping station upgrade is also part of a wider plan to provide increased capacity in the local water supply system. The application identifies that increased capacity is urgently required to meet the population growth demands of Apollo Bay. The proposed works associated with the upgrade to the existing pump station specifically include the:

- Construction of a new pumping station to replace the existing facility which is still operational on the land and has been since prior to 2002.
- Provision of an off-take structure which would allow water to be drawn from the Barham River (during winter and spring when flows are higher) into a well from which the pump station draws water for transfer. This structure would replace the pipe that is currently winched down from the side of the bridge adjacent to the site.
- Removal of five native trees and seven non-native trees.
- Replanting of native vegetation on the site along the riverbank and all boundaries of the site to ensure ongoing stability.

### **Issues / Options**

Council has the options of:

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

The key issues relating to the application are the potential adverse visual amenity and environmental impacts associated with the water storage basin. These are discussed in the report below.

### **Proposal**

Planning permission is sought to use and develop the land for a water storage facility (*utility installation*), the provision of a transfer pumping station, a water pipeline and for the removal of native vegetation. Water is currently pumped from the existing pump facility (300 Barham River Road) via the existing water main to the junction with Conns Lane then onto Marengo. Under this application an additional transfer and storage inlet pipeline would transfer water from the Conns Lane junction to the east along Barham River Road (via the existing bridge crossing) to the west side of the proposed water storage basin at 120 Barham River Road. When required the water would leave the storage basin via the outlet pipe within the south eastern corner, travelling via the proposed pump station through the transfer pipeline to Conns Lane and then onto Marengo, where the water would be treated until required.

Approval is sought for an associated transfer pumping station on the site, a pipeline connecting the proposed pumping station to existing infrastructure and a river pumping station to the west of the site. These facilities will transfer water to and from the proposed water storage facility. The proposed water storage facility is part of a wider plan to provide increased capacity in the local water supply system. This increased capacity is intended to meet demand until 2055. The key aspects of the proposal are set out as follows;

- *Construction of a 250 ML water storage basin at 120 Barham River Road.* The proposed water storage basin would be located to the south western quarter of the site and would cover an area of approximately 250m by 250m. The basin would be setback 45m from the boundary with 140 Barham River Road, 14m from the boundary with 170 Barham River Road and 10m from the site's western property boundary. The proposed basin walls would rise to a height of 17.5m AHD and these would be planted with grass. A security fence approximately 2m high would be constructed around the perimeter of the basin.
- *Formation of a borrow / spoil area towards the eastern part of the site backfilled with spoil from the basin excavation.* The borrow and spoil area is a section of land where soil will be removed from and added to, to facilitate the water basin excavation. The borrow spoil area would be located 120m to the east of the proposed water basin site and 50m to the east of the existing dwelling at 140 Barham River Road. The borrow/spoil area would extend 160m north/south and 145m east/west. The maximum increase above natural ground level would be within the south east slope facing the eastern site boundary (Barham River Road frontage) to a height of 6.5m. To the southern slope, the increase above natural ground level would be reduced to 5.5m. The increase above natural ground level is considerably less to the northern side, being 1m. In an east to west direction, the proposed borrow and spoil level would add approximately 8m to the topography and 7m to the north south orientation.
- *Formation of a smaller borrow / spoil area to the north and south of the proposed water store.* The spoil area to the north would extend beyond the width of the storage basin being 280m by 65m.
- *Construction of an associated transfer pump station at 120 Barham River Road.* The proposed transfer pump station would be located to the south east corner of the proposed basin site, back approximately 5m from the property boundary and the road reserve and 60m from the Barham River Road at a height of approximately 10m AHD.  
The pump station housing is proposed to be recessed into the hillside by approximately 2m with 1.5m projecting above natural ground level and would be finished in brick with non reflective surfaces with muted tones and a eucalypt colorbond roof.

The purpose of the pumping station is to pump water from the proposed water storage basin to the water storage basin at Marengo.

- *Vegetation removal and lopping at 120 Barham River Road.* In support of the application the applicant has completed a 'Native Vegetation Applicants form'. The vegetation removal comprises the following:
  - The removal of 0.05 hectares of treeless native vegetation in the section where the basin is proposed,
  - The removal of three (3) native trees and the trimming of three (3) native trees for the purposes of constructing an access track at the site entrance within the road reserve adjacent to 120 Barham River Road.
  - The removal of ten (10) exotic planted trees for the purposes of constructing a section of access and section of pipeline.
- *Construction of a dual water supply transfer pipeline between 120 Barham River Road and the existing water main at Conns Lane.* The proposed pipelines outside 120 Barham River Road would follow an alignment beginning at the connection to the existing water main adjacent to Conns Lane, running north along Conns Lane and east along Barham River Road before connecting to the proposed water storage facility. The proposed pipelines would supply water to the proposed water storage basin and will also transfer water via the proposed transfer station, from the water storage facility to the Marengo Basin. The inlet pipeline will carry up to 140 litres per second or 10ML per day to the proposed water storage basin and the outlet transfer pipeline will be capable of carrying 5ML per day from the Apollo Bay storage to the Marengo Basin.

The proposed pipeline alignment runs between Conns Lane (to the west of the site) and parallel with the Barham River Road before connecting to the subject site. The pipeline alignment has been modified since its original submission and includes two 45 degree bends to contain the pipe at the edge of the road pavement.

Upon completion of the project the balance of the site would be maintained by Barwon Water.

The purpose of the catch drain is to intercept surface runoff from above the proposed pump station site and access track and divert it under the proposed access track to the Council drain on the north side of Barham River Road. The discharge location would be the same Council drain that currently receives the surface runoff from this part of the site. The catch drain has been extended upstream of the pump station to join to an existing drain within the site and to divert this around the pump station site to avoid the need for two drainage crossings under the proposed access track. Where the grade of the surface catch drain is excessive a pipe (adjacent to the pump station) and pit system has been added to reduce the risk of scouring due to high velocities and to divert the surface flows in the box culvert under the proposed access track. The roof and surface drainage at the pump station is also connected to the pipe drainage system.

As part of the proposal, the applicant has identified within the Construction Management Plan that site facilities, including site office, lunch room, first aid room, toilets, staff parking area and the like are to be located within the Barwon Water owned land at 120 Barham River Road, to the north and south of the existing dwelling at 140 Barham River Road.

### **Site & Surrounds**

The site (no. 120 Barham River Road), is located on the north side of Barham River Road, approximately 2km west of the Apollo Bay township.

The application site comprises four titles (Lot 1 LP13765, Lot 2 LP13765, Lot 1 PS408749 and Lot 2 PS440381) with a combined area of 39.2 hectares. Vehicle access to the site is obtained from Barham River Road via gated access adjacent to the access with 140 Barham River Road. The property at 140 Barham River Road contains a small dwelling with outbuildings and is located to the east of the application site. To the north of the application site is 1-19 Costin Street which is an industrial estate. Two hundred (200) Barham River Road is situated 215m from the western boundary of the application site and is currently used and developed for agricultural purposes containing a dwelling with associated agricultural outbuildings. Number 170 Barham River Road is positioned 50m to the south of the application site and contains a dwelling and shed.

The existing vegetation on the site is limited to grass and some planted shelterbelt vegetation. The topography of the site is undulating and falls between the west and east of the site and towards the floodplain to the north. The current landscape at the proposed basin site and across the surrounding area is cleared land with surrounding land being open grassland used for grazing. Tree cover in these areas is minimal and is typically confined to short sections along watercourses and roadsides.

Barham River is situated approximately 200m south of the project site. The area has defined valleys and drainage channels through the site that run into Anderson Creek which connects into the Barham River. The Barham River rises as an east and west branch in the Otway ranges behind Apollo Bay. Shortly after the confluence of the branches, the river leaves the narrow Barham Valley to enter a broad flood plain before discharging into the sea on the edge of the Apollo Bay township. The floodplain is almost 200ha and is known locally as the Barham River Flats. The estuary provides an opportunity for the movement of migratory fish species into the freshwater environments of both Anderson Creek and Barham River.

The project site is bordered by the Barham River Road to the south, which closely follows the Barham River. The eastern side of the site consists of a relatively flat area which is in the Barham River floodplain. The ground surface slopes steeply from the floodplain to form a relatively flat topped 'peninsula' approximately 15m above the floodplain. An occupied farm house and sheds exist in the middle of the peninsula. A small ephemeral creek divides the site and forms the northern side of the peninsula.

The Barham River Lagoon is located adjacent to the estuary and is a site of State Geomorphological significance as it has the largest abandoned tidal meanders of any stream in Western Victoria. The Department of Sustainability and Environment (DSE) mapping indicates that in the past the area is likely to have consisted of Swamp Scrub (EVC 53). Swamp Scrub is a low vegetation assemblage consisting of an upper canopy of medium shrubs and dominated by herbs, sedges and reeds.

### **Public Notice**

Public notice of the application was given during July and August 2012 in accordance with Section 52 of the Planning and Environment Act by sending notice to all adjoining and opposite owners and occupiers. Two signs were also placed on site and public notice of the application was placed in the Colac Herald and the Apollo Bay News Sheet.

As part of the community consultation, on Saturday 4 August 2012 Barwon Water Alliance held an information kiosk at the Apollo Bay market. The purpose of the information kiosk was to provide information about the proposed water storage basin, the upgraded river pump station, the new transfer pump station and the connecting pipeline. During the market Barwon Water spoke with permanent residents, holiday home owners, local businesses and visitors to Apollo Bay.

At the conclusion of the notification period, twelve (12) objections were received. The grounds of objection are summarised as follows:

- The site is not suitable for the proposed use, impacting on landscaping of the area.

*Computer generated simulations presented as photo montages of the proposed development have been produced. These photo montages have been generated to assist in the assessment of the visual impact of the project. These photo montages show a basin with minimal impact on the visual amenity of a gently sloping area. The site is located above and out of the view of the Great Ocean Road. The view from the site and behind the site presents a vista across this landscape towards Bass Strait. The shaping of the basin walls suits the gently undulating nature of the surrounding landscape. Further, the photomontages show that, even from angles where it is most visible, the storage does not seem incongruous with the viewscape of the surrounding area. The extent to which the basin will blend into the surrounding landscape is further demonstrated by the artist's impressions generated through a 3D model for the project.*

*These images, depicting elevated positions above the basin, show how the grassed basin wall and insignificant changes in topography will ensure the basin has minimal visual impact on the surrounding area. The transfer pump station will be housed in a brick building with Colorbond roofing (Pale Eucalypt) and will be a similar size to a double garage. There will be a crushed rock access track to provide access for staff from Barham River Road to the transfer pump station and the new basin. The transfer pump station is surrounded on all four sides by existing trees and the location of the pump station will be cut into and screened by the hill to the west. A detailed Land Management Plan will be developed in consultation with the surrounding landowners and local Landcare group. This plan will include landscaping for the basin and transfer pump station site.*

- The proposed weight of water on the basin walls will cause seepage and ultimately land slip and erosion within a medium to high risk landslip area and the reports suggest this is an inappropriate area.

*The design and siting of the basin is based on extensive geotechnical and land stability investigations. These investigations have reviewed and assessed landslip risks on the site in accordance with the Erosion Management Overlay (EMO) and the Australian Geomechanics Practice Guidelines for Landslip Risk Management. A number of measures to mitigate and manage landslip risks have been developed and incorporated into this project to ensure safe construction and operation of the storage basin. These measures include:*

- *The basin is designed in accordance with the Australian National Committee on Large Dams (ANCOLD) guidelines.*
- *During construction a qualified geotechnical engineer will be on site to assess materials as they are excavated.*
- *Soft materials in the landslip areas considered unsuitable for the basin will be removed and replaced with materials to provide a more secure foundation for the basin.*
- *A HDPE liner (high density polyethylene) will line the inside of the basin to prevent water leaking out of the basin.*
- *A drainage system will be installed around the basin to guide water flows around the site into existing waterways located north and south of the storage basin.*
- *An underground drainage system will be built underneath the storage basin to intercept groundwater flows and guide flows around the basin.*

- *Post construction, the site will be subject to regular monitoring and inspections.*

- Is there a risk that the basin will break open in a flood?

*The basin will be built above the flood level applicable to the site. The basin is designed and will be operated in accordance with the Australian National Committee on Large Dams (ANCOLD) guidelines. In addition, by locating the storage off-stream, floodwaters from the upstream catchment are not directed via the storage and therefore the overflow spillway only needs to be sized for direct rainfall into the storage and not for the floodwaters from the entire water catchment. This significantly reduces the risk category of the storage.*

- The proposed water store should be within an alternative location such as on the West Barham River and gravity fed which would result in cleaner water.

*Additional storage is required to meet the needs of existing Barwon Water customers and projected future growth in the area. To provide this additional storage, a total of 26 options were investigated and evaluated, including upgrading the existing weir and pipeline, on stream storage sites along the West and East Barham River, off stream storage sites near the Barham River, enlarging the Marengo basin and groundwater extraction. The preferred option was selected based on a Triple Bottom Line analysis. Two options for an on-stream storage that would not require pumping were investigated including upgrading the existing weir and pipeline, and a site further downstream. Upgrading the existing weir and pipeline is not feasible on the following grounds:*

- *The high risk of landslips limits the height that the existing weir could be raised or a new dam wall can be safely constructed. A safe height at the existing weir is 10 metres. At this height, only a fraction of the total volume of water needed to supply Apollo Bay could be stored.*
- *The area at the weir and along the existing pipeline is extremely difficult to provide safe access for construction equipment and materials.*
- *The weir is located in the Great Otway National Park, which is a highly sensitive environment particularly upstream of the existing weir and along the river. This sensitivity significantly restricts the ability to construct and operate in the area.*

*Investigations found that a second site further downstream required a dam wall approximately 50m high and the storage area would extend back approximately 2.5 kilometres upstream. Any dam wall smaller than this would require a new pump station to transfer water to the Marengo basin. This size dam is not feasible based on the limitations to safely construct and operate such a facility as discussed above. As a result, off-stream storage is required. The new pump stations are required to pump water from the river into the off-stream storage and then to transfer water from this storage to Marengo.*

- The proposal may result in cross contamination from the sewerage treatment plant which would be located 400 metres from the site.

*A detailed independent assessment has been undertaken on the potential risks to drinking water safety from possible cross contamination from the water reclamation plant to the proposed water storage basin site.*

*This process is part of Barwon Water's Risk Management Plan as required under the Victorian Safe Drinking Water Act 2003. The independent assessment found that there will be no significant risk to public health associated with location of this proposed water storage basin in relation to the water reclamation plant.*

*The existing sewerage treatment plant is located at 125 Montrose Avenue and would be more than 400m from the proposed water storage basin at the 20m contour and to the northern side of the floodplain. The buffer distance between the water reclamation plant and the water storage basin is greater than 400 metres, which is comfortably above the EPA Victoria guideline. The guideline recommends a buffer distance between the water reclamation plant and the storage basin of 300 metres.*

- Will the water reclamation plant be upgraded due to these works?

*The water reclamation plant is currently operating at approximately 50% of its total capacity. The water reclamation plant has sufficient capacity to meet projected flows to beyond 2024. There are no plans to upgrade the facility in the near future.*

- Skenes Creek has been added to the sewerage system and any expansion of this system should be addressed before the water basin application.

*As noted above, the water reclamation plant is currently operating at approximately 50% of its total capacity including sewerage from Skenes Creek. The water reclamation plant has sufficient capacity to meet projected flows to beyond 2024. There are no plans to upgrade the facility in the near future.*

- The water supplied will be filtered and chemically cleaned and the water intake point is likely to be affected by chemicals and poisons used in tree farming activities and burning.

*Barwon Water advises that there will be no noticeable change in the taste, smell or appearance of the drinking water. The quality of the treated water supplied to customers will continue to comply with the Safe Drinking Water Act 2003 and Australian Drinking Water Guidelines (2011). To comply with these guidelines, water treatment is required for water extracted at any location along the Barham River. The existing treatment process is suitable for the proposed extraction point.*

*Barwon Water has further advised that Chlorine is added to drinking water in small amounts to ensure safe, clean drinking water is delivered and that the addition of chlorine ensures that any disease causing pathogens cannot survive. Based on health considerations, according to the Australian Drinking Water Guidelines, chlorine can be dosed up to 5mg/l. Barwon Water have indicated however that the water it treats is of a high quality and therefore does not require high doses of chlorine. Chlorine residuals in the distribution system usually range from 0.2-0.6mg/L. Some people are sensitive to detecting fluctuations in chlorine and can start to identify its taste and odour as low as 0.2mg/l. Barwon Water advises it will always endeavour to keep chlorine levels to a minimum whilst maintaining adequate disinfection.*

- The proposed works are not required and the cost of maintaining such a transfer pump station is significant with the double pumping and chemical cleaning of water which will be reflected in rates rises for Apollo Bay residents.

*Barwon Water has advised that significant summer demand along with projected growth in the region requires an additional 250 million litres of storage over and above the existing 125 million litre Marengo basin. Investigations found there is not enough room to extend the existing Marengo basin. Therefore a new storage facility is required.*

*Barwon Water's draft 2013 Water Plan was released for public comment in May, 2012. Conscious of cost-of-living pressures in the community, Barwon Water's draft plan proposes an annual price increase of 1 per cent a year, excluding CPI, from 2013 to 2018. All customers across Barwon Water's 8,100 square kilometre service area pay the same price for water.*

- How would water levels in the river be affected by this project?

*The amount of water extracted from the river is dependent on the available river flows and corresponding extraction rates as per the existing Bulk Entitlement. The extraction rates defined in the Bulk Entitlement consider the minimum river flow requirements for the summer period with respect to passing flows and summer fresh flushes. The Bulk Entitlement was issued to Barwon Water by the Minister for Water in accordance with Section 43 of the Water Act 1989. The extraction rates and passing river flows were developed to protect the health of the river and agreed to in consultation with the Corangamite Catchment Management Authority. The Bulk Entitlement is designed to ensure natural river flow features, such as high flows, are provided and will contribute to maintaining the health of the Barham River. Under the Agreement, the extraction rate will vary from a maximum of 10 million litres per day to a minimum of 0 litres per day during low river flows. Barwon Water can only extract water if the river flows exceed 6.6 million litres per day from November to April and from May to October if stream flows exceed 24 million litres per day. The licence by Southern Rural Water allows extraction of water beyond this under 'drought conditions' as referred to earlier in the report.*

- Barwon Water should consider water saving measures, such as provision of rainwater tanks for Apollo Bay to avoid the need for this water supply upgrade project.

*The forecast future demands for Apollo Bay have already taken into account projected water savings derived from water conservation programs. The use of rainwater tanks as an option to supplement drinking water was investigated and modelled in 2008. It was found that retro-fitting all properties with rainwater tanks would not provide the additional yield required to negate the need for larger augmentation options. This was due to the fact that most of the water would be required at low rainfall times of the year where rainwater tanks would have little impact/benefit due to their small storage compared to consumption.*

- The community engagement has not been sufficient.

*In addition to fulfilling its statutory public notice requirements the Barwon Water Alliance has a Community and Stakeholder Engagement team who have taken an active role in consulting stakeholders and community members. To date Barwon Water have had a good level of correspondence with the local stakeholders through:*

- *Consultation with landowners via letters and face to face meetings, including the Apollo Bay Golf Club.*
- *Two Apollo Bay information kiosks held at the community markets in July 2011 and August 2012.*
- *Publication of Information bulletins.*
- *Correspondence via letter and telephone calls.*
- *Media releases and responses to letters to the editor.*
- *Briefings of agency and community groups including the Colac Otway Shire, the Corangamite Catchment Management Authority, the Department of Sustainability and Environment and the Otway Barham Community Reference Group*



- *Feedback from various stakeholders has helped shape the design of the infrastructure including the site of the transfer pump station and the landscaping solutions, as well as the height of the embankment.*
- The pumping of the water from the Barham River would be noisy and could be disastrous, disrupting local tourism businesses.

*Operation of the river pump station will be dependent on the flow in the Barham River and the water quality of the river. During time of high flows and good water quality, the pump station may operate for up to 22 hours a day to maximise the opportunity to fill the water storages. Operation of the transfer pump station is dependent on the daily transfer requirements to meet the town water supply demands and maintain the Marengo Basin at, or near to, full capacity when water is available. The pump stations have been designed in accordance with the EPA Victoria guideline, Noise from Industry in Regional Victoria 2011 (EPA publication 1411). This guideline provides guidance on industry noise levels and limits in regional Victoria. The guideline recommends that the maximum noise level from the pump station to the nearest sensitive receivers is 33 dB. Design investigations indicate that the highest noise levels predicted from the river pump station are less than 25 dB and from the transfer pump station are less than 24 dB. Therefore, the pump stations will meet the EPA requirement. A number of measures have been incorporated into the design of the pump stations to reduce noise. These measures include brick building construction, acoustic insulation into the ceiling and walls, solid doors with acoustic seals and acoustic rated plasterboard. Landscaping is to be established between the pump station and the neighbouring dwelling to the east as part of the noise attenuation response.*

*Construction impacts will be minimised through a Project Environmental Management Plan. This plan includes the following key controls:*

*Noise and vibration:*

- *Works will be undertaken in accordance with EPA Victoria guidelines,*
- *Noisy activity will be scheduled for the least sensitive times of the day, such as mid-morning to mid-afternoon,*
- *Noise suppression devices will be used for equipment such as mufflers on heavy machinery and acoustic enclosures around noisy equipment, and*
- *Dilapidation studies will be completed on properties next to the construction site.*

*Dust and air quality:*

- *Weather forecasts will be monitored to provide information on likely strong windy days and schedule activities to minimise dust generation,*
- *Speed restrictions will be implemented on the works sites,*
- *Loads will be covered during transportation of material,*
- *Exposed surfaces of stockpiles will be compacted,*
- *Areas will be reinstated and revegetated after construction, and*
- *Water carts will be used to wet down trafficked areas as required.*

- Have sea levels been considered in design?

*A coastal hazard vulnerability assessment was completed for the proposed storage site as is required for all developments that are a) abutting the coastline or a coastal reserve; and/or b) less than five (5) metres Australian Height Datum (AHD) within one kilometre of the coastline. The coastal hazard vulnerability assessment considers factors such as sea level rise, storm tide and surge, coastal processes, river inundation, local topography and geology. The report found that the site is not at risk from recession of the adjacent coastline and that while parts of the Barwon Water's site in the flood plain are at risk of inundation due to the combined 1 in 100 year ARI storm conditions and sea level rise, the proposed works are at a higher elevation and are not at risk.*

- What is the greenhouse impact of the pump stations?

*Barwon Water advises that the river pump station and transfer pump station have both been designed to minimise energy consumption by selecting energy efficient pumps and assessing the most energy efficient operating regime to meet the daily transfer volume requirements.*

- Does this project change the area required for the water supply catchment?

*This project does not change the size or location of the catchment area.*

- The proposal would impact on the platypus within the Barham River.

*The applicant has provided a response to the management of platypus at the Apollo Bay Pump Station and Barham River site. The controls include the construction of a coffer dam structure in part of the river to isolate the work area. The construction area will be monitored and if fauna are identified these will be relocated by a local Wildlife carer.*

- The proposal will restrict future activities on adjacent land.

*The proposal is not considered to restrict any existing rural enterprise on adjacent land.*

### **Referrals**

The application was referred to Barwon Water, Wannon Water and the Corangamite Catchment Management Authority (CCMA) under Section 55 of the Planning and Environment Act and to the Environment Protection Authority (EPA), Department of Sustainability and Environment (DSE) and Aboriginal Affairs Victoria (AAV) under Section 52 of the Planning and Environment Act. The application was also referred internally to Council's Infrastructure and Environment Departments. The following is a summary of the feedback received:

- Barwon Water has not objected to the application.
- Wannon Water has not objected to the application and has confirmed that the proposed works are not within their water supply catchment or serviced area.
- Corangamite Catchment Management Authority has not objected to the application subject to the inclusion of permit conditions which have been recommended within this report.
- The Department of Sustainability and Environment has not raised any objection to the application but has recommended Barwon Water follows the State guidelines in relation to Potential Acid Sulphate Soils (PASS).

- The Environment Protection Authority has not objected to the application but reinforces that buildings and works must comply with *State Environment Protection Policy (Waters of Victoria) 2003* and the *State Environment Protection Policy (Ground waters of Victoria) 1997*. The appropriate conditions have been recommended within this report.
- Aboriginal Affairs Victoria has not objected to the proposal as the Cultural Heritage Management Plan submitted with the application has previously been approved by Aboriginal Affairs Victoria.
- Council's Infrastructure Department has considered the application and has advised that initial concerns regarding storm water outflow from the site have been alleviated by the submission of an addendum response detailing a reduction in the site discharge to the existing table drains and culverts servicing the Barham River Road. Council's Infrastructure Department advises that the dam overflow has been established as draining away from the road towards the flood plain and that the adjacent dwelling is to be protected by the proposed earth bund. The Department has consented to the use of the Barham River Bridge as support for the water supply infrastructure provided assurances are in place within the addendum report regarding maintenance costs which are enforceable and can be legally enacted. The appropriate permit conditions have been recommended within this report.
- Council's Environment Department has not raised any objection to the application and has advised that the proposed works will require significant landscape disturbance and this is where the greatest environmental risks will apply. The Department has advised that the documents prepared by the applicant require specific '*actions*' to ensure that on site ground disturbances do not allow acid sulphate soils to mobilise and as such, no objection is raised to the proposal subject to conditions recommended within this report.

### Planning Controls

The land is included in the Rural Conservation Zone and is subject to the Erosion Management Overlay Schedule 1 and the Significant Landscape Overlay Schedule 3. A planning permit is required for the use of the land as a *utility installation*, the associated buildings and works and the removal of native vegetation pursuant to the following Clauses of the Colac Otway Planning Scheme:

- Clause 35.06-1 – Rural Conservation Zone (use of the land for a utility installation)
- Clause 35.06-5 - Rural Conservation Zone (Buildings and works)
- Clause 44.01-1 – Erosion Management Overlay (Buildings and works)
- Clause 44.01-2 – Erosion Management Overlay (Vegetation removal)
- Clause 42.03-2 – Significant Landscape Overlay (Buildings and works)
- Clause 42.03-2 – Significant Landscape Overlay (Vegetation removal)
- Clause 44.04-1 - Land Subject to Inundation Overlay (Buildings and works)
- Clause 52.17 – Native vegetation removal

#### a) State and Local Planning Policy Framework

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

- Clause 12 – Environmental and Landscape Values
- Clause 12.02 – Coastal areas

- Clause 12.02-6 – The Great Ocean Road Region
- Clause 13 – Environmental Risks
- Clause 13.3-2 – Erosion and Landslip
- Clause 14.02 – Water
- Clause 19 – Infrastructure
- Clause 21.02 – Vision
- Clause 21.03-3 – Apollo Bay and Marengo
- Clause 21.04 – Environment
- Clause 21.04-1 – Catchment Management
- Clause 21.04-3 – Vegetation
- Clause 21.04-5 – Erosion
- Clause 21.04-8 - Landscape Character

b) Zoning Provisions

The site is located within the **Rural Conservation Zone (RCZ)**. The purpose of this zone is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To conserve the values specified in the schedule to this zone.*
- *To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.*
- *To protect and enhance natural resources and the biodiversity of the area.*
- *To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.*
- *To provide for agricultural use consistent with the conservation of environmental and landscape values of the area.*
- *To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes.*

Under Clause 35.06-1 and Clause 35.06-5 a permit is required for the use of the land for a *utility installation* and for *buildings and works*. Before deciding on an application to construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate the requirements of Clause 35.06-6 which includes *general issues, rural issues, environmental issues* and *design and siting issues*.

The pipeline alignment within the road reserve adjacent to Barham River Road is located within the **Public Conservation and Resource Zone (PCRZ)**. The purpose of this zone is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.*

- *To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.*
- *To provide for appropriate resource based uses.*

The pipeline alignment adjacent to the Barham River Road is located outside of 120 Barham River Road and is within crown land. A planning permit is required within this zone for a *minor utility installation*, however under the exemptions listed within Clause 62.02-1, buildings and works associated with the pipeline are exempt. The proposed pipeline along the Barham River is associated with the pump station upgrade at 300 Barham River Road and the proposed pump station at 120 Barham River Road and is therefore exempt from requiring a planning permit.

c) Overlay Provisions

The site is covered by the **Erosion Management Overlay (EMO1)**. The purpose of this overlay is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To protect areas prone to erosion, landslip or other land degradation processes, by minimising land disturbance and inappropriate development.*

Under Clause 44.01-1 and Clause 44.01-2, a permit is required to construct a building or carry out works and to remove, destroy or lop any vegetation. Under the Schedule to this overlay, an application must be accompanied by a *Land Stability Assessment Report* prepared by a professionally qualified consultant and must contain all required information and be prepared in accordance with the framework detailed in the *Land Stability Assessment Guidelines and Procedures 2001 – Requirements for Land Stability Assessment Reports*.

The site is covered by the **Land Subject to Inundation Overlay (LSIO)**. The purpose of this overlay is:

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

Under Clause 44.04-1, a permit is required to construct a building or carry out works. Under the requirements of this overlay, an application must be referred to the relevant floodplain management authority (Corangamite Catchment Management Authority) under Section 55 of the Act unless in the opinion of the responsible authority, the proposal satisfies the requirements or conditions previously agreed in writing between the responsible authority and the floodplain management authority. Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider the decision guidelines of Clause 44.04-6 which include:

- *Any comments from the relevant floodplain management authority.*
- *Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside this overlay.*
- *The susceptibility of the development to flooding and flood damage.*
- *The potential flood risk to life, health and safety associated with the development.*
- *Flood risk factors to consider include:*
- *The frequency, duration, extent, depth and velocity of flooding of the site and access way.*
- *The flood warning time available.*
- *The danger to the occupants of the development, other floodplain residents and emergency personnel if the site or access way is flooded.*
- *The effect of the development on redirecting or obstructing floodwater, stormwater or drainage water and the effect of the development on reducing flood storage and increasing flood levels and flow velocities.*
- *The effect of the development on river health values including wetlands, natural habitat, stream stability, erosion, environmental flows, water quality and sites of scientific significance.*

The site is covered by the **Significant Landscape Overlay (SLO3)**. The purpose of this overlay is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To identify significant landscapes.*
- *To conserve and enhance the character of significant landscapes.*

Under Clause 42.03-2 a permit is required for buildings and works and for vegetation removal. The schedule to this overlay is specific to the *'Apollo Bay Coastal Valley and Hills Precinct'* which is a location where a number of different landscape elements intersect in a dramatic manner. The edges and interrelationships between the landscape elements create a landscape setting of national significance. The *"preferred character"* of this precinct is the retention of the dramatic intersection of landscape 'edges' which is further emphasised by increasing indigenous planting for subtle emphasis. The schedule identifies that inappropriate development on hill faces should be limited. The schedule further specifies the preferred landscape character to be achieved including:

- *The use of indigenous vegetation to highlight natural features within the precinct.*
- *To consider 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 and sensitively designed.*
- *To protect the clear sweeping views to and from the ocean available from the precinct.*
- *To consider the dominance of an indigenous natural landscape in coastal areas, between townships, particularly from the Great Ocean Road and avoid ribbon development.*

The decision guidelines to the schedule identify that the Responsible Authority must consider the overview, objectives and strategies at Clause 21.04-8 and the 'Apollo Bay Coastal Valley and Hills Precinct Development Principles Incorporated Plan' from the Great Ocean Road Region Landscape Assessment Study (GORRLAS) at Clause 81.

d) Relevant Particular Provisions

Clause 52.17 – Native Vegetation

The purpose of this Clause is:

- *To protect and conserve native vegetation to reduce the impact of land and water degradation and provide habitat for plants and animals.*
- *To achieve the following objectives:*
  - *To avoid the removal of native vegetation.*
  - *If the removal of native vegetation cannot be avoided, to minimise the removal of native vegetation through appropriate planning and design.*
  - *To appropriately offset the loss of native vegetation.*
- *To provide for the management and removal of native vegetation in accordance with a property vegetation plan.*
- *To manage vegetation near buildings to reduce the threat to life and property from bushfire.*

Under Clause 52.17-2, a permit is required to remove, destroy or lop native vegetation. An application to remove, destroy or lop native vegetation must be accompanied by a written explanation of the steps that have been taken to:

- Avoid the removal of native vegetation, where possible.
- Minimise the removal of native vegetation.
- Appropriately offset the loss of native vegetation, if required.

**Consideration of the Proposal**

The proposal is considered to accord with the principles of the State and Local Planning Policy Framework. The proposal seeks to ensure the continued availability of clean, high-quality drinking water to assist in meeting water demands to reflect predicted growth demands in Apollo Bay, Marengo and Skenes Creek to the year 2055. The proposal is considered to protect the health of the surrounding ecological systems and the coastal biodiversity they support whilst conserving the identified environmental, ecological, coastal and cultural values of the Great Ocean Road region. The proposal seeks to ensure that the proposed change in land use and associated development would not adversely affect the habitat values whilst also protecting the existing drainage patterns, catchments, waterways, soil and biodiversity from degradation. The proposal seeks to minimise the disturbance of coastal acid sulphate soils and the removal and fragmentation of native vegetation.

The proposal considers the risks associated with climate change and responds appropriately to potential coastal hazard risks whilst avoiding detrimental impacts on coastal processes and where possible landscape areas which are identified as coastal hazard areas. The applicant has adopted best practice for environmental management and risk management which aims to avoid or minimise environmental degradation and hazards whilst ensuring that the proposed works near the Barham River provides for the protection and enhancement of the environmental qualities of the waterway and its in-stream users.

The capacity of the land to accommodate the proposed use has been considered by the applicant through an extensive site selection process. As noted earlier within the 'background' section to this report, Barwon Water has undertaken a review of other available sites including thirteen (13) off stream storage options and six (6) on stream storage options. As part of the site selection analysis, Barwon Water has considered upgrading the existing weir and pipeline which was determined to be an unfeasible option due to the high risk of landslide which limits the height that the existing weir could be raised or a new dam wall could be safely constructed to. A safe height at the existing weir is 10 metres and at this height, only a fraction of the total volume of water needed to supply Apollo Bay could be stored. The site of the weir and along the existing pipeline is extremely difficult to provide safe access for construction equipment and materials. Furthermore, the weir is located in the Great Otway National Park, which is within a highly sensitive environment that restricts the ability to construct and operate in the area. Officers accept the proposition by Barwon Water that due to environmental difficulties and the potential high risk of landslip and the difficulty with construction vehicle access, a dam large enough cannot safely be built on the West and East Barham River and as such, an off stream storage system is preferred rather than on stream storage.

The application site is outside of the floodplain on firmer ground, with less environmental and construction method constraints and costs. This proposed location has been sited and designed to minimise the extent of native vegetation removal required, whilst avoiding any potential impact on the adjacent flood plain and existing surrounding flora and fauna, and considering the visual impact on adjoining residential dwellings. The visual impact of the water storage basin has been evaluated by the applicant as part of the application submission and detailed within a '*visual impact assessment*' considered later within this report.

Given the rehabilitation works proposed and the topography of the landscape setting it is considered that the selected site will present a minimal impact on the surrounding natural landscape setting and values.

On balance, given the constraints of the natural landscape setting surrounding the site and following the investigation of other water storage options, it is considered that the selected location has been sited and designed to minimise amenity and environmental impacts.

It is considered that the proposed use of the land as a '*utility installation*' would not have a detrimental impact on the health of the natural environment within the immediate and surrounding area, in particular the ecological processes such as the functioning of the adjacent floodplain. The proposal is considered to provide an essential resource to the benefit of the local community which would ensure the ongoing viability of the surrounding Apollo Bay and Marengo townships. Fundamentally, the economic viability of the local community relies on the provision of essential infrastructure such as a sustainable water supply to ensure long term demands for water supply are met.

In response to the State and Local Planning Policy, the applicant has submitted reports on Coastal Hazard Vulnerability, Acid Sulphate Soils, Hydro Geological investigations and a Flora and Fauna Aquatic Ecological Assessment. The following is a summary of all issues arising from the proposal:



### Coastal Hazard Vulnerability Assessment

The application site is low lying in nature and as such consideration of vulnerability to coastal hazards including erosion, storm surges, tides and sea level rise, river inundation, local topography and geology has been provided. The site is located approximately 1km from the coastline however in part, the site has an elevation of less than 5m AHD.

Clause 13.01 'Environmental Risks' of the Colac Otway Planning Scheme identifies that:

*'Planning should adopt a best practice environmental management and risk management approach which aims to avoid or minimise environmental degradation and hazards. Planning should identify and manage the potential for the environment, and environmental changes, to impact upon the economic, environmental or social well-being of society.'*

The objective of this Clause seeks to plan for and manage the potential coastal impacts of climate change. The Clause then provides a list of strategies which includes the following:

- In planning for possible sea level rise, an increase of 0.2 metres over current 1 in 100 year flood levels by 2040 may be used for new development in close proximity to existing development (urban infill).
- Plan for possible sea level rise of 0.8 metres by 2100, and allow for the combined effects of tides, storm surges, coastal processes and local conditions such as topography and geology when assessing risks and coastal impacts associated with climate change.
- Consider the risks associated with climate change in planning and management decision making processes.
- For new greenfield development outside of town boundaries, plan for not less than 0.8 metre sea level rise by 2100.
- Ensure that land subject to coastal hazards are identified and appropriately managed to ensure that future development is not at risk.
- Ensure that development or protective works seeking to respond to coastal hazard risks avoids detrimental impacts on coastal processes.
- Avoid development in identified coastal hazard areas susceptible to inundation (both river and coastal), erosion, landslip/landslide, acid sulphate soils, bushfire and geotechnical risk.

In support of the application, the applicant has submitted a 'Coastal Hazard Vulnerability Assessment' dated February 2012. The report responds to topography (coastal morphology), coastal processes, wave climate, water levels, astronomical tides, storm surge, wave setup, wave run-up, currents and sediment transport and potential climate change impacts, sea level rise and previous coastal climate change vulnerability reports. The report focuses on 'Coastal Vulnerability' and identifies that the 1 in 100 year ARI flood event is likely to cause significant inundation of the low lying land, particularly to the north surrounding the application site. This modelling has taken into account the projected sea level rise and storm tide scenarios. On this basis, the potential water level at the site for a 100 year ARI storm event is 1.63m AHD by the year 2030, 2.04m AHD by the year 2070 and 2.46m AHD by the year 2100. The report also identifies options for managing the impacts of coastal hazards in the vicinity of the proposed Apollo Bay water storage facility should the facility be located within the expected inundation area.

Elevations in the vicinity of the proposed water supply works range from approximately 1.8m to 3m AHD in the north east corner and rise to approximately 17m AHD.

The Coastal Hazard Vulnerability report adds that other than at the mouth, it is unlikely that the changes to coastal processes as a result of climate change will have a significant impact on the Barham River. The report adds that as the site for the proposed water storage facility is approximately 1km inland from the beach, coastline recession of the site is not considered to be a risk.

#### Acid Sulphate Soils

Mapping within the Victorian Coastal Acid Sulphate Soils Strategy 2008 identifies the area around Apollo Bay as potentially containing acid sulphate soils. Under natural conditions, if left undisturbed and below the surface these do not generally pose any risk to the environment. However, when these soils are exposed to oxygen through excavation or lowering of the water table, the metal sulphates have the potential to oxidise and form sulphuric acid and acid sulphate soils. Under acidic conditions, inorganic contaminants such as aluminium, arsenic and iron may be mobilised from the soil through infiltrating water. This may lead to mobilisation of metals in waterways and ultimately impacting on marine and freshwater ecosystems and result in corrosion to pipes and bridges and other infrastructure.

In support of this application, the applicant has submitted an Acid Sulphate Soil Management Plan (ASSMP) which sets out the general requirements for management of issues associated with the identified soil conditions at the site. Approximately 40 locations were used to assess the basin footprint and surrounding areas and 120 samples were analysed for Acid Sulphate Soil (ASS). In addition to the soil assessments, groundwater and surface water investigations were conducted both at the site of the proposed storage water basin and the surrounding areas. The investigation concluded that the site is split into two main areas:

- The elevated areas across the southern portion of the site, which includes the area proposed for the basin and borrow / spoil area and,
- The low lying flood plain, which is located within a majority of the north eastern portion of the site.

The results indicate that ASS and potential ASS were identified in the flood plain.

Soil within this area reported a low pH and had a high potential to produce further acidity should it be disturbed. Soil in the elevated areas (including the proposed basin site) reported consistently low pH throughout the soil profile but presented no indication of potential acid sulphate soils should the soil be disturbed. The applicant has prepared a procedure for the management and mitigation for impacts associated with Potential Acid Sulphate Soils (PASS). The report identifies the following requirements:

- Define the extent of the area to be disturbed by excavations.
- Store excavated acid soils in designated bunded areas and have appropriate sediment control measures in place to prevent sediment erosion from rainfall events and a runoff collection system installed within the stockpiled area to capture water leached through the stockpiled material.
- Stockpile the material during the construction of the storage basin with adequate erosion and runoff controls in place.
- If any material is identified to be PASS then this will be stored separately and stockpiled in black plastic and covered to form an air tight seal.
- Erosion control measures implemented to prevent runoff of water from stockpiles to surrounding sites.
- Disposal of PASS material off site to an approved licensed facility.

The applicant has advised that a management plan is required for all construction activities, to comply with the "Alliance Project ASS Management Plan" guidelines.

Discussions have taken place with the Department of Sustainability and Environment (DSE) on ASS which has confirmed that a management plan must be submitted to Council and DSE prior to the commencement of works to ensure compliance with the Victorian Best Practice guidelines. It is anticipated that the plan will provide a higher level of detail to reflect the construction activities undertaken with suitable controls to ensure the separation of material, containment / bunding requirements, monitoring and testing. The application has been referred through to the Department of Sustainability and Environment and as such, the appropriate permit condition has been recommended within this report to ensure that all works are undertaken in accordance with the endorsed Acid Sulphate Soil Management Plan.

#### Groundwater

Groundwater investigations have been undertaken at the site and it has been identified that groundwater flow is from the north-east across the site and from the southern gully which is partially spring fed. The groundwater investigations have identified that there is potential for the basin to obstruct the identified flow directions. Engineering controls have been identified to maintain the existing groundwater flow direction and prevent groundwater build up and pressure on the western face of the basin. Whilst acidic soils have been identified as discussed above, it is considered that further acid generation is not expected if the soil is disturbed or the water table lowered. The hydro geological report identifies options for disposal of groundwater recovered during the temporary construction activities and concludes that the groundwater would remain suitable for irrigation use i.e. disposal onto vegetation / pasture, for stock watering purposes and for discharge to any nearby farms. The report also concluded that pre-treatment or filtering of the groundwater may be required to reduce the levels of nitrogen and suspended solids, prior to discharge to local waterways. The appropriate condition has been recommended within this report.

Construction activities involving excavations also have the potential to interact with groundwater.

This interaction can give rise to changes to groundwater flow regimes and / or groundwater pollution. The applicant has advised that a procedure shall be developed to manage and dispose of groundwater as follows:

- A permanent drainage system is proposed to be constructed to direct groundwater away from the construction area and into the surrounding drainage paths.
- The methodology to manage groundwater within the construction site can only be established at the commencement of construction as water may be required either within the basin or in the borrow pit area to achieve suitable moisture content. Groundwater may also be used for dust suppression on site. This will provide two benefits – reduction in use of potable or carted water for construction management and reduced groundwater volume for disposal.
- In addition, a temporary storage dam or water tanker shall form part of the method to transfer and reuse groundwater. The location shall be determined once construction works have commenced and as such, the appropriate permit condition has been recommended within this report.

#### Flora and Fauna Aquatic Ecological Assessment

The Flora, Fauna and Aquatic Ecological Assessment report advises that a botanist, zoologist and river health engineer have inspected the site to identify ecological values present. The report identifies that the proposed project area is located within the Otway Plains (Otp) bioregion, and that within areas for the water storage basin and pump station no native vegetation has been mapped. Native vegetation was however mapped in patches along the Barham River within the proposed impact area for the pipeline.

This native vegetation is mapped as Swamp Scrub (EVC 53) which is listed as 'Vulnerable' within the Otway Plain bioregion. The study did not identify the occurrence of any threatened ecological communities listed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) within 10km of the study area. The Swamp Scrub EVC identified along Barham river is not consistent with any threatened flora communities listed under the Victorian Flora and Fauna Guarantee Act 1988 (FFG Act).

The Atlas of Victorian Wildlife (AVW) search results determined that 223 fauna species (42 mammals, 163 birds, 10 reptiles, 4 amphibians and 4 invertebrates (excluding fish)) are documented within 10km of the study area. The EPBC Act predicts that an additional 33 fauna species could potentially occur or have habitat that occurs within 10km of the study area, with 43 listed as threatened.

The field investigation has revealed that the proposed construction area is mostly a grazed paddock sown with introduced pasture grasses. There are some channels and swampy areas that cross the property to the north, some planted exotic trees and some native eucalypts that may be remnant. No patches of native vegetation are identified within the area identified for the water storage basin. The report advises that the existing grassland provides limited habitat value to native fauna species. Within the drainage channel and swampy area some native and aquatic riparian plants are present whilst these areas provide a frog habitat and act as a 'stepping stone' for fauna. The report adds that the proposed drainage line diversion around the basin is unlikely to have a significant impact on species that use the grassy wetland habitat.

With regard to the proposed pipeline along the Barham River Road, the report identifies that the road reserves are mostly highly modified and consist of exotic grasses and herbs with some planted trees.

To minimise any impact on the environment and the local community associated with fauna, the applicant has developed a Fauna Management Program which provides management measures to be implemented onsite during construction. The plan identifies that 'no go zones' will be established for all areas of significant vegetation and fauna habitat, including protective fences, minimising the area of the construction zone and ensuring appropriate handling techniques for native fauna. The appropriate permit condition has been recommended within this report.

#### Waterways and Aquatic Habitats report

Barham River is considered to be a high value waterway. The river is of high environmental and economic significance due to its recreational and tourism values. There is potential for the Eastern Dwarf Galaxias and Australian Grayling (native) fish to be found within the upper reaches of the Barham River. These species are listed as threatened under the Environmental Protection and Biodiversity Conservation Act. Grayling has been found in the Barham River (1999), however no records of the Dwarf Galaxias are found. If not managed appropriately, runoff during rain events from disturbed areas during the construction period has the potential to make its way into receiving drainage paths and waterways downstream. Sedimentation structures (consisting of earthy dams or spoon drains) are proposed to be incorporated onsite during construction activities to provide a level of retention and treatment of runoff and to manage and contain runoff from disturbed areas so that the discharge does not impact on the receiving water quality in the waterway downstream. To address any potential runoff, spoil and disturbed soils will be stockpiled 10m from the watercourse or drainage gully lines and all on site processes undertaken away from the river, and an ongoing water quality monitoring program will be developed prior to construction to ensure that runoff does not impact on the Barham River.

A number of drainage lines also traverse the site area. These gullies flow into the Barham River at two locations. Suitable erosion controls have been developed to continually manage runoff and to minimise any erosion or sediment laden run-off to the surrounding gullies. The applicant has advised that the reinstatement of the area shall occur immediately after construction.

#### Air Quality

The generation of dust from construction activities has the potential to result in detrimental effects on the health and amenity of neighbours and employees, reducing visibility and impacting on water quality and vegetation through the deposition of dust. The construction area is surrounded by a number of rural properties and is within close proximity to the Barham River. The proposed access track would be constructed in rock to minimise dust generated from construction plant movement. To suppress dust on the site, the applicant has proposed the use of water carts (away from the site entrance) and the staging of construction activities to minimise the total cleared area that is exposed at any one time, with revegetation undertaken to minimise exposed areas. In addition, vehicle movements would be restricted to defined haul roads with clearly defined access routes. The applicant has advised that the use of chemical dust suppressants shall only be considered if the measures listed are not effective during construction. Any suppressants used by the contractor will require approval from Barwon Water Alliance and further approval from the Environment Protection Agency (EPA). It is likely that the use of suppressants would need to comply with EPA Environmental Guidelines for Major Construction Sites. (Vic) 1995. The appropriate permit conditions have been recommended within this report.

The applicant has advised that crushed rock, as required for the construction works, will be sourced locally from a quarry or rock supplier. Whilst the actual source has not been confirmed, it is anticipated that all rock transported to the site would come from a local registered business that specialises in supply of crushed rock.

#### Contaminated Land

Generation of solid waste from construction activities has the potential to result in detrimental effects on the health and amenity of site staff, the public and the environment. The *Contaminated Land Management Program* identifies site specific mitigation measures to be undertaken to ensure that pre-existing areas of potentially contaminated land and/or groundwater encountered during construction works are appropriately dealt with in order to minimise risk to public safety, contamination of land and/or groundwater. The applicant has developed a '*Waste Management Program*' to identify and minimise the hazards associated with any form of general, prescribed, controlled, hazardous and dangerous wastes generated or found during the works. The report identifies a number of management and mitigation measures for contaminated land. Such measures include no refuelling within 50m of the waterway, contaminated land contained or bagged, leaving material where possible undisturbed, engaging a hazardous material specialist to provide advice on possible treatment options and fencing out potentially contaminated soils to prevent disturbance.

#### Noise and vibration

The construction site is located over 1km away from Apollo Bay, however there are two residential properties within close proximity to the site, the closest residential property being less than 100m from the site. To reduce any potential conflict management, mitigation measures are proposed to be implemented on-site during construction. These include undertaking the works during normal working hours, regular consultation with neighbours on the nature of the works, the duration and when vibratory works will be occurring.

### Landscape

A primary consideration in the determination of this application is the effect of this proposal on the character and appearance of the significant natural landscape setting when viewed from surrounding properties and the public realm. As noted earlier within this report, the site is covered by the Significant Landscape Overlay and as such, the key directions seek to ensure that development that occurs on hill faces or in other prominent locations is not highly visible and sensitively designed to protect the clear sweeping views to and from the ocean.

In response to the decision guidelines, the objectives and strategies at Clause 21.04-8 and the *'Apollo Bay Coastal Valley and Hills Precinct Development Principles Incorporated Plan'* from the *Great Ocean Road Region Landscape Assessment Study (GORRLAS)* at Clause 81, the applicant has undertaken a detailed *'visual impact assessment'* to identify the potential impact of the proposed water storage basin and associated infrastructure from surrounding public vantage points including the Barham River Road, the Great Ocean Road, Seymour Crescent and Gambier Crescent to the east. To assist in this assessment and to ensure accuracy, the applicant has provided computer generated photomontage images which present a three dimensional representation of the proposed development referenced to both Australian Height Datum (AHD) and Australian Map Grid data.

Following a site inspection and review of these documents it is considered that the proposal would not be detrimental to the appearance of the coastal landscape setting of Apollo Bay when viewed from the surrounding properties or the public realm.

Along the north to south axis, the proposed basin walls would be 6.5m above the existing topography of the landscape and 8m to the southern section. It is accepted that the proposed basin would be visible from Seymour Crescent, however given the proposed grassed banks and existing topography and vegetation cover, and the setback distance of 1100m, any proposed impact from this location is considered to be almost unnoticeable by the human eye. The visual impact from Gambier Crescent is considered to be similar to that from Seymour Crescent, with views blocked by a greater vegetation cover.

The proposed south facing basin walls would be approximately 130m from Barham River Road, infilling the existing natural drainage channel to the south west, rising to a height of 8m above natural ground level and would present as a grassed wall and to the naked eye, not dissimilar to the existing land topography. Similarly from other public vantage points along Barham River Road and Montrose Avenue to the north, it is also considered that the level of visibility to the naked eye would be even less discernable.

In a west to east direction, the proposed basin walls would also be planted with grass and would rise to a height of 17.5m AHD. At a height of 17.5m AHD, the basin walls would be 1.5m higher than the existing topography. The proposed basin would require excavation of an approximate maximum depth of 4m, although this does decrease to 0.5m in certain locations. Adjacent to the eastern boundary, the basin walls would be at a height of 17.5m AHD which would be 3.5m above the existing level. The proposed diversion berm adjacent to the dwelling at 140 Barham River Road would rise 2m above the height of the existing topography level and would also be covered with grass presenting a similar appearance to the existing landscape.

The borrow and spoil area is proposed to be located 120m to the east of the proposed water basin site and 50m to the east of the existing dwelling at 140 Barham River Road. The borrow/spoil area would extend 160m north/south and 145m east/west. The maximum increase above natural ground level would be 6.5m and considerably less to the northern side being 1m.

The proposed borrow and spoil level would add approximately 8m to the topography in an east to west direction, and 7m to the north south orientation with the most visible impact viewed along Barham River Road, although given the sloping topography of the land in this location, the grassed walls of the borrow and spoil are considered to be almost un-noticeable within the rising topography of the land behind.

The proposal also includes the provision of a pump station (6m by 7.25m with a height of 3.2m) required to pump water from the proposed water storage basin to the existing water storage basin at Marengo. The existing vegetation cover adjacent to the road reserve which provides the access to 140 Barham River Road and the vegetation cover along Barham River Road would assist in providing a suitable screen from public vantage points along Barham River Road. Additional planting is requested through proposed permit conditions.

Overall it is considered that the proposed water storage basin with associated infrastructure would present as a limited detrimental impact on the surrounding natural landscape setting of the Apollo Bay and the Great Ocean Road region. The basin and borrow area would not be visible from the Great Ocean Road, but would sit comfortably within the natural landscape with the shape of the basin walls following the undulating nature of the landscape. The existing topography and vegetation cover in conjunction with additional vegetation is considered to ensure the basin and associated works compliment the surrounding landscape rather than dominating it.

#### Landscaping

Taking into account the context of the existing landscape, it is considered that any potential rehabilitation and landscaping of the land post construction must be undertaken in a manner which is sensitive to the current landscape character and appearance. The current landscape comprises trees to the boundaries with open sections of grassland and as such, significant planting of vegetation has the potential to not only screen the water storage basin, but to inhibit views of the rolling low lying hills which form the backdrop to Apollo Bay from the surrounding residential properties. As such, any potential further landscaping must strike an acceptable balance between the two.

Taking into account the context of the surrounding landscape setting, the applicant has proposed to initially create a grassland area on the storage embankment, which would maintain the visual continuity with the surrounding area, whilst improving the soil conditions to provide an opportunity for further re-vegetation. No additional tree planting is proposed for the proposed pumping station due to the existing trees on all four sides and the hill to the west.

To assist in the reinstatement of vegetation at the site post construction, the applicant has advised that consultation will occur between surrounding landowners and Council. The appropriate permit conditions have been recommended within this report for further details to be provided on landscaping prior to the commencement of the development as part of a Land Management Plan. In addition to a landscaping plan, the applicant has developed a '*Reinstatement Management Plan*' which includes land shaping, topsoil management, weed management, seeding, mulching and landscaping. The proposed plan will be refined following consultation with the adjacent land owners and Council. The plan advises that any topsoil required to be brought onto the site must meet the requirements of EPA publication 448 – Classification of Wastes as 'Fill Material'. Following the application of any topsoil the disturbed areas will be re-seeded using an evenly distributed mix of grass seeds via hydro-mulching (or hydro-seeding - a process which utilises a slurry of seed and mulch). The slurry is sprayed over the prepared ground in a uniform layer to achieve 90% coverage.

In support of the application, the applicant has developed a Native Vegetation Management Program which identifies the specific measures required to be undertaken to avoid and/or minimise disturbance to Environment Protection and Biodiversity Conservation (EPBC) Act 1999 and Flora and Fauna Guarantee (FFG) Act 1988 listed flora species. The applicant has also completed a *'Native Vegetation Applicants form'* which specifically details the vegetation to be removed. To ensure that no additional vegetation is removed, the management plan seeks to ensure that all construction works are kept to a minimum with no-go zones established (enclosed by picket fences) for all significant vegetation to be retained. Two declared noxious weeds have been found within the project site - Spear Thistle and Blackberry. Suitable management techniques are proposed to be used to ensure that construction activities do not spread weeds offsite. The applicant has also advised that any noxious weeds encountered shall be removed, stockpiled separately and managed in accordance with *'best practice guidelines'*. The appropriate permit conditions have been recommended within this report.

#### Pipeline under bridge

The proposal had originally included using Barham River Bridge as a support structure for the pipeline connection to Conns Lane, however officers have advised the applicant during discussions that this may cause undue difficulties in performing maintenance on the bridge. Barwon Water have investigated boring options for the pipeline under the river, however due to constraints of the site, this is not considered possible. Following discussions with Council, Barwon Water have proposed to construct a separate structure for the pipelines independent of the existing bridge - still attached to the bridge beams but not the bridge deck. Following extensive discussions, Council's Infrastructure Department have consented to the use of the Barham River Bridge as a support structure for the water supply infrastructure. This is dependent on assurances that Council will not be liable for any disruption caused to Barwon Water Alliance infrastructure as part of bridge maintenance works including a bridge rebuild. The appropriate permit conditions have been recommended within this report.

#### Geotech / Land Stability

In response to the requirements of the Erosion Management Overlay the applicant has submitted a Geotechnical Risk Assessment Report (prepared by Barwon Water Alliance) dated February 2012 and revised during July 2012. The report identifies that the major geotechnical features of the proposed works include the following:

- Excavation of the existing poor soils under the embankment footprint to form suitable foundations.
- Excavation of the internal reservoir footprint to approximately RL 11.0m, resulting in cuts up to 6m.
- Excavation of soft organic soils in the base of an existing gully beneath the reservoir footprint and infilling of the gully to form the reservoir base an approximately RL11.0m.
- Construction of compacted embankments ranging from 0.5m high in the north western corner to 10.5m along the southern embankment.
- Placement of spoil material against the northern embankment and extending to the gully floor below.
- Placement of excess spoil east of the reservoir site on elevated land above the floodplain;
- Earthworks consisting of small cuts and fills to construct the pump station, access roads and surface drainage features;
- Trenching and backfilling of the existing slope to install pipelines and construct subsurface drainage along the western boundary.



As part of the geotech report a qualitative slope stability and geotechnical risk assessment was carried out which considered the potential damage to property post construction of the project in accordance with AGS (2007) Guidelines. The site was reviewed to determine all potential geohazards. The hazard analysis took into account pre-existing features and potential hazards caused by the proposed works. The hazard analysis reviewed the following primary failure mechanisms: a) Natural Landslide, b) Cut Excavations, c) Fill Embankments, and d) Rockfall.

The risk associated with the collapse of trench walls and excavation sides during construction works is considered to be greatest during the new water main construction at the river pump station and as such, trench shields will be required in trenches greater than 0.5m in depth. At the other water main locations, it is expected that trenches of 1.2m will be sufficiently stable for the water pipes to be installed.

Given the close proximity of the proposed water pipes to the Barham River Road, the potential instability caused to the Barham River Road construction is a consideration under this application. To ensure the installation of water pipes adjacent to the Barham River Road do not undermine the road pavement a minimum distance between the trench edge and the road edge of 2m is proposed. The submitted Geotech Report addresses the earthworks proposed and the removal of vegetation and as such makes a number of recommendations which have been adopted in the overall design and siting of the facility. Following initial concerns raised by Council's Engineering Consultant, the applicant submitted a revised Geotechnical Land Stability Assessment Report dated 25 June 2012.

With regard to the potential *risk to property* and based on the mitigation measures implemented in the design the geotech report identifies that the risk to and from the proposed Water Storage basin has been assessed as 'Low' for all reviewed geohazards. The risk to the existing property at 140 Barham River Road, due to a large earth slide within Landslide Zone 5 (zone 5 is identified as the bowl shaped feature to the east of the dwelling a 140 Barham River Road), undermining and causing extensive damage to the property has been qualitatively assessed as 'Medium'. The report adds that any construction or permanent works to be completed will be designed so that the risk to this property is not increased. No other properties within or adjacent the site are likely to be impacted by geohazards resulting from the works.

With regard to the '*risk to life*', potential persons at risk due to the proposed development are the occupiers of 140 Barham River Road and any vehicles using the Barham River Road. The report adds that there does not appear to be a credible landslide which could result in significant run-out onto the road. Other properties in the vicinity of the site are at a higher elevation than the proposed development and not within or adjacent to assessed landslide zones. As the risk to and from the proposed water storage has been assessed qualitatively as 'Low' for all the reviewed geohazards, the individual risk to life is also assessed as being less than the AGS (2007) recommended tolerable limits for risk to an individual. The risk to the dwelling at 140 Barham River Road is currently assessed as being *Medium* due to potential earth slides from Landslide Zone 5. The current risk to life associated with this landslide zone is assessed as being less than the AGS (2007) suggested tolerable limit to an individual from an existing slope. The report concludes that any temporary or permanent works to be completed within this zone will be required to be reviewed by a suitable geotechnical engineer so as this risk is not increased. Mitigation measures will be put in place to ensure that the risk after construction will be the same or lower than the current situation.

The only other potential geohazard associated with the project is the probability of temporary works triggering a landslide that could lead to undermining the dwelling at 140 Barham River Road. The geotech report adds that the risk from the existing slope to the east of 140 Barham River Road (landslide Zone 5) is to be managed throughout construction so it is not exacerbated by the works. As such, based on the design and specification requirements adopted for this project, the Barwon Water Alliance has assessed the risk to the project and areas neighboring the site from geohazards as being *acceptable* based on the recommendations of the AGS (2007) guidelines.

To review the geotechnical information submitted with the application, Council engaged the services of an independent consulting engineer. The final report submitted for review entitled '*Land Stability Geotechnical Risk Assessment Report – Apollo Bay Raw Water Storage – Project ID-W1009 dated 6/07/2012 by Barwon Water Alliance*' satisfies the requirements of the Erosion Management Overlay (EMO1). Following this review it was concluded that there are no risks which have unacceptable or intolerable risk levels for the development and construction sequences as specified in the report and associated plans. Council officers have queried drainage provisions on the west side of the basin and possible effects on stability for the property at 170 Barham River Road and further discussions occurred. Following these discussions it was confirmed that surface flows from the high ground to the west of the proposed basin, which are currently directed into the gully located within the basin footprint, will be appropriately catered for by the construction of a surface swale located at the base of the western embankment. Flows will be directed to the north and south where flows will be channelled into a collection pit and then piped to an outlet and back into the extension of the natural drainage gully located to the south of the proposed basin site. In conclusion, it has been confirmed that there is not expected to be any additional surface flows to the property at 170 Barham River Road and levels of risk will remain unchanged from those already existing at this site.

#### Floodplain

With regard to works proposed and the close proximity to the floodplain, the application has been referred to the Corangamite Catchment Management Authority (CCMA). The CCMA have considered the proposal and have advised that Barham River flood levels for the 1% Annual Exceedance Probability (AEP) flood event under current climatic conditions have been estimated for the area.

The 1% AEP flood event means that a flood of that magnitude (or greater) has a 1% chance of occurring in any given year. The proposed water storage basin would be constructed on a ridge outside of the Barham River Flood plain. The excess fill from the storage construction is proposed to be placed in three areas, which are areas mostly outside the 1% AEP flood event on the fringe of the Barham River Floodplain. In light of the proposal, CCMA does not raise any objection to the proposal provided no permanent fill is placed in the 1% AEP flood extent. This requirement has been included as a permit condition within this report. CCMA have also advised that the applicant must notify the CCMA before any temporary fill is placed within the 1% AEP flood extent.

#### Cultural Heritage

The site is located within an area designated as being one of Cultural Sensitivity. In light of this, a Cultural Heritage Management Plan (CHMP) was submitted with the application. The submitted plan has been approved by Aboriginal Affairs Victoria, such that Council can make a decision on this application.

The CHMP (reference plan number 11770) for the bulk water storage was considered by the Acting Deputy Director, Aboriginal Affairs Victoria and received approval on 10 April 2012. The plan was prepared to meet the requirements of the Aboriginal Heritage Act 2006.

At present there is no Registered Aboriginal Party (RAP) to evaluate the CHMP, although the RAP applicant for the area was consulted. In lieu of a RAP, Aboriginal Affairs Victoria (AAV) has evaluated the CHMP which is mandatory under the Aboriginal Heritage Regulations 2007.

The CHMP advises that according to the Victorian Aboriginal Heritage Register (VAHR) kept by AAV, no Aboriginal sites have been located previously in the Apollo Bay (Barwon Water Storage) proposed activity area. However, 42 Aboriginal sites are known within 3km of the proposed activity area, the closest being within 200m. The closest artefact sites are located on elevated ground overlooking the Barham River and its tributaries. During the detailed assessment four Aboriginal Cultural Heritage places and historic sites were uncovered.

In accordance with Section 61 of the Aboriginal Heritage Act 2006, it is concluded that the construction of the Apollo Bay water storage facility and associated infrastructure will affect Aboriginal cultural heritage contained within the place events of 7620-0211, 0214 and 0212 (VAHR). The identified areas are represented within Figure 26 to the CHMP on page 95 and are as follows 7620-0211 – spoil area to the north, 0214 – to the west of the borrow area and 0212 – to the south of the spoil and water storage basin. Accordingly, it is the view of the Cultural Heritage Advisor that the proposed activity should proceed providing that 7620-0211 and parts of 7620-0214 and 0212 (VAHR) are salvaged before construction of the water storage basin.

In conclusion, it is considered that construction of the Apollo Bay water storage basin and associated infrastructure should proceed provided the specific management measures identified within the CHMP are undertaken prior to any works that are likely to affect any of the three Aboriginal sites recorded in the proposed activity area.

The appropriate permit conditions have been recommended within this report to ensure works are carried out in accordance with the recommendations of the approved plan.

During the preparation of the Cultural Heritage Management Plan, Barwon Water Alliance commissioned an archaeologist to overlay historic charts onto the current landscape to ascertain if the site might in the past have been accessible from the sea. The conclusion drawn was that the site had been accessible and that the site could possibly be one of the oldest permanent settlements at Apollo Bay. Further site investigation revealed that the site was associated with one of the earliest sawmills in the Apollo Bay area and was recorded within the Victorian Department of Land Survey in 1866 (Country of Polwarth Map). During August 2011 a compact layer of historic artefacts were uncovered which potentially indicates that the application site is the place where the Apollo Bay Sawmill Company housed its employees in the mid 19<sup>th</sup> century. The findings of this report were forwarded to Heritage Victoria along with an application for consent to excavate the site. Consent was granted on the 24 July 2012. The appropriate permit condition has been recommended within this report.

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

Any relevant policy issues have already been addressed earlier in this report. It is noted that the 2007 Apollo Bay Structure Plan identified the need for augmentation to the town's water supply, and that development of the Mariners Vue site north of Mariner's Lookout Road cannot proceed until this water storage is complete.

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

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

**Risk Management & Compliance Issues**

This proposal raises no risk management or compliance implications for Council. As noted earlier, officers engaged the services of a consulting engineer to peer review the land instability assessment given the scale of the project.

**Environmental Consideration / Climate Change**

The environmental and climate change implications arising from this proposal have been addressed within this report.

**Communication Strategy / Consultation Period**

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

**Conclusion**

The proposal is required as Barwon Water needs to provide an additional annual water yield of 220 ML a year to meet predicted growth demands in Apollo Bay, Marengo and Skenes Creek to the year 2055. The proposal is considered to protect the health of the surrounding ecological systems and the coastal biodiversity they support whilst conserving the identified environmental, ecological, coastal and cultural values of the Great Ocean Road region. The proposal is considered to ensure that the proposed land use and associated development would not adversely affect the habitat values whilst also protecting the existing drainage patterns, catchments, waterways, soil and biodiversity from degradation. The applicant has adopted the best practice for environmental management and risk management which aims to avoid or minimise environmental degradation and hazards whilst ensuring that the proposed works near the Barham River provides for the protection and enhancement of the environmental qualities of the waterway and its in-stream users. It is on this basis that it is recommended that the application is supported.

**Attachments**

Nil

**Recommendation(s)**

***That Council's Planning Committee resolve to issue a Notice of Decision to Grant a Planning Permit (PP43/2012) for the use of the land and the buildings and works for a utility installation (water storage facility), transfer pumping station and water pipeline and the removal of native vegetation at 120 Barham River Road, APOLLO BAY (Lot: 1 LP: 13765 Parish of Krambruk) and in the road reserve, subject to the following conditions:***

- 1. The use and layout of the site and the size of the proposed buildings and works as shown on the endorsed plans must not be altered or modified without the written consent of the Responsible Authority.***
- 2. The fence enclosing the water storage basin must be coloured black and this shall be so maintained unless agreed in writing by the Responsible Authority.***
- 3. The roof and exterior walls of the pump station structure and associated pipework must be constructed of a non-reflective material which will effectively blend the development in with the natural colours of the surrounding landscape (ie. not white, off-white, beige, cream, fawn, light yellow or similar colour, galvanised or zincalume, gull grey or any other unsuitable colour as determined by the Responsible Authority).***

4. ***The pump station design must be in accordance with the Environment Protection Authority (EPA) Victoria guideline, Noise from Industry in Regional Victoria 2011 (NIRV – EPA publication 1411). The maximum noise level from the pump station to the nearest noise sensitive receivers must not exceed 33dB at any time. In the event that the pump station exceeds 33dB to the nearest noise sensitive receiver, the pump station must cease operation until such a time that it can comply.***
5. ***All security alarms or similar devices installed on the land must be of a silent type in accordance with any current standard published by Standards Australia International Limited and be connected to a security service.***
6. ***The use and development must be managed so that the amenity of the area is not detrimentally affected through the:***
  - a) ***Transport of materials, goods or commodities to or from the land.***
  - b) ***Appearance of any building, works or materials.***
  - c) ***Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.***
7. ***The applicant must regularly consult with owners and occupiers of neighbouring properties to advise of the nature and duration of works which will generate excessive noise (i.e. drilling / sheet piling) and times when vibratory works will occur.***
8. ***All development and works associated with this permit must be carried out in strict conformity with the recommendations of Cultural Heritage Management Plan (CHMP No. 11770) by Dr Tim Stone dated 5 April 2012 approved by Aboriginal Affairs Victoria on 10 April 2012.***
9. ***All excavation works upon the subject land must be kept to the absolute practicable minimum and to the satisfaction of the Responsible Authority.***
10. ***All development and works associated with this permit must be carried out in strict conformity with the recommendations of Geotechnical Engineers Report Number W1009 by Barwon Water dated 6 July 2012 comprising parts 1 and 2.***
11. ***All historical archaeological investigation and excavation works must be undertaken in accordance with the conditions contained within the consent granted by Heritage Victoria on 24 July 2012 – Reference H7620-0017, Consent number C821.***
12. ***Any temporary or permanent works within Zone 5 (east of 140 Barham River Road) must be reviewed by a suitable geotechnical engineer so as the level of risk to life is not increased. Mitigation measures must be put in place to ensure that the risk to life after construction will be the same or lower than the current level of risk.***
13. ***Following completion of the development, the proponent's geotechnical engineer must inspect the site and confirm in writing to the Responsible Authority that the stability of the land under the conditions of its intended use is acceptable as defined in the Australian Geomechanics Society Landslide Risk Management Guidelines dated March 2000.***

14. ***Prior to commencement of construction, details of the location and area of the temporary onsite water storage dam or mobile water tanker must be submitted to and approved in writing by the Responsible Authority.***
15. ***A diversion drain must be constructed around the dam to provide for environmental water flows. The diversion drain must be maintained to ensure that flow is not impeded by silt or debris.***
16. ***Sediment movement, erosion and control must be controlled on site at all times and shall not have the opportunity to move off site or away from the immediate construction area and must be managed in accordance with Environment Protection Authority (EPA) Publication Construction Techniques for Sediment Pollution Control.***
17. ***The use of chemical dust suppressants on the site must only be considered if the proposed watering dust suppression measures are not effective during construction. Prior to the use of chemical dust suppressants written approval must be obtained from Barwon Water Alliance and from the Environment Protection Agency (EPA).***
18. ***The use of chemical dust suppressants must comply with the Environmental Guidelines for Major Construction Sites (Environment Protection Authority) EPA (Vic), 1995.***
19. ***All development and works associated with this permit must be carried out in strict conformity with State Environment Protection Policy (Waters of Victoria) 2003 and the State Environment Protection Policy (Groundwaters of Victoria) 1997.***
20. ***Construction activities should be managed in accordance with the Environment Protection Authority (EPA) Publication Environmental Guidelines for Major Construction Sites.***
21. ***The owner/applicant must ensure that all construction waste is managed and disposed of appropriately in accordance with the Environment Protection (Industrial Waste Resource) Regulations 2009.***
22. ***Prior to the commencement of the works, a site specific revised and up to date Project Environmental Management Requirements (PEMR) is required to be submitted and approved to the satisfaction of Council. This document must include the recommendations of other associated reports (e.g. Flora, Fauna and Aquatic Assessment Report).***
23. ***All works conducted on site to be in strict accordance with the work methods outlined in the approved PEMR.***

#### **Weed Management**

24. ***All environmental weeds as outlined in "Environmental Weeds of the Colac Otway Shire" brochure must be controlled on the property at all times and prevented from spreading to neighbouring land to the satisfaction of the responsible authority.***
25. ***No environmental weeds as referred to in "Environmental Weeds of the Colac Otway Shire" brochure shall be planted on or be allowed to invade the site.***

26. *All vermin and pests must be controlled on the site at all times to the satisfaction of the responsible authority and upon the advice of the Department of Sustainability and Environment.*

#### **Water and Sediment Management**

27. *The site must be developed and managed to minimise the risks of stormwater pollution through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants in accordance with Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control (EPA) to the satisfaction of the Responsible Authority.*
28. *All stored wastes must be kept in designated areas or covered containers to prevent escape into the stormwater system to the satisfaction of the Responsible Authority.*
29. *All construction vehicle fuels, oils and greases and all stockpile material must be stored in bunded areas and kept remote from the waterways.*
30. *All measures for stormwater quality must be in place prior to the start of construction and the applicant must notify Council's Environment Unit to confirm compliance.*
31. *A Spills Contingency Plan must be prepared prior to commencement of the use to prevent any spilled chemicals or waste entering the stormwater drainage system. This plan must include methods and access to materials to contain the spill, to clean up the spill and to dispose of or reuse the recovered residues. The plan must contain key contacts at appropriate agencies to contact in case of chemical spillage and must be to the satisfaction of the Responsible Authority. This plan can be incorporated in to the PERMR and EMP.*
32. *The disturbed ground surfaces on site must be successfully re-established immediately after construction is completed. This includes the removal of accumulated sediment in sediment traps on and around the site and within adjoining stormwater drains. It also includes the reinstatement of topsoil and seeding of grasses or other vegetation suitable to reduce erosion from the site to the satisfaction of the Responsible Authority.*
33. *All battered areas must be covered in topsoil and grassed or planted with other vegetation suitable to reduce erosion control to the satisfaction of the Responsible Authority.*

#### **Vegetation Management**

34. *The clearing of native vegetation must be in accordance with the endorsed plan.*
35. *Vegetation removal and disposal must not cause damage to vegetation stands to be retained and to drainage lines to the satisfaction of the Responsible Authority.*
36. *No clearing or pruning of roadside vegetation shall be undertaken without further planning approval from the Responsible Authority*

**Land Management Plan**

37. ***Prior to the commencement of the works, an agreed time line for the development and implementation of a Land Management Plan will be completed to the satisfaction of the Responsible Authority. The Land Management Plan must address how the balance of the property will be managed into the future and must contain a detailed landscaping plan based on the landscape concept plan submitted with the application.***
38. ***The Land Management Plan shall be developed in consultation with the Southern Otway Landcare Network and contain the relevant information identified in the Colac Otway Shire "Planning Information – Land Management Plan" checklist.***
39. ***Within 6 months of the issue of this permit, the owner of the land must enter into an agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act to the satisfaction of the Responsible Authority which provides that all land will be managed in accordance with the approved Land Management Plan prepared by a suitably qualified professional as endorsed under planning permit PP43/2012-1 or any subsequent permit issued by the Responsible Authority, unless otherwise agreed in writing by the Responsible Authority. The owner must pay the costs of preparation, execution and registration of the agreement. The Section 173 Agreement may be ended by the Responsible Authority at the written request of the owner and at no cost to the Responsible Authority.***
40. ***The landscaping plan approved must be consistent with the Reinstatement Management Plan approved under this permit and must demonstrate that the landscaping will not adversely affect the visual amenity of the area.***
41. ***Prior to the commencement of the development a more detailed and site specific Acid Sulphate Soil Management Plan must be developed to the satisfaction of the Responsible Authority. All works must be undertaken in accordance with the recommendations of the approved plan unless agreed in writing by the Responsible Authority.***
42. ***No vehicular or pedestrian access, trenching or soil excavation is to occur within the identified protection zones without the written consent of the Responsible Authority. No storage or dumping of tools, equipment or waste is to occur within the Tree Protection Zone.***
43. ***All works associated with this permit must follow the recommended actions of the 'Fauna Management Program' endorsed under this permit.***
44. ***All works must follow the recommendations of the Contaminated Land Management Program endorsed under this permit to minimise risk to public safety, contamination of land and/or groundwater and to ensure that pre-existing areas of potentially contaminated land and/or groundwater is appropriately dealt with.***
45. ***All works associated with this permit must follow the recommendations of the 'Waste Management Program' endorsed under this permit.***
46. ***Any topsoil required to be brought onto the site must meet the requirements of EPA publication 448 – Classification of Wastes as 'Fill Material'.***



47. ***Prior to commencement of construction a detailed Water Quality Monitoring Program must be submitted to and approved in writing by the Responsible Authority. The Water Quality Monitoring Program must detail how runoff from the site will not impact on the Barham River.***
48. ***Prior to commencement of use of the site, the developer is to submit to the Responsible Authority for approval a traffic management plan which will form part of the planning permit. The traffic management plan is to show routes and operating times of vehicles associated with the construction of the water storage facility.***
49. ***Prior to commencement of use of the site, an access plan is to be submitted to the Responsible Authority for approval and this access plan will form part of the planning permit. The access plan is to be clearly dimensioned showing access dimensions including splay, gate set back and construction material. The site access is to be sealed so that loose material does not affect Barham River Road. The splay and gate set back are to be appropriately designed for the expected vehicle use so that vehicles may safely and completely leave the road while the access gate is closed.***
50. ***During the construction phase of the development, the following conditions must be met:***
  - a) ***Vehicle borne material from the site must not accumulate on the roads abutting the site.***
  - b) ***All machinery and equipment must be cleaned (if required) on site and not on adjacent footpaths or roads;***
  - c) ***Any fencing installed must ensure safe access for vehicles.***
  - d) ***All litter must be contained on the site.***
51. ***Barwon Water will be required to repair and reinstate any damage caused to Council Infrastructure determined by Council to be caused by contractors as part of the development of the site.***
52. ***Within 6 months of the issue of this permit, the owner of the land must enter into an agreement with the Responsible Authority pursuant to Section 173 of the Planning and Environment Act to the satisfaction of the Responsible Authority which provides that Council will not be liable for any disruption caused to Barwon Water Alliance infrastructure as part of bridge maintenance works including a bridge rebuild, nor any costs associated with the pipe during bridge maintenance/reconstruction works. The owner must pay the costs of preparation, execution and registration of the agreement. The Section 173 Agreement may be ended by the Responsible Authority at the written request of the owner and at no cost to the Responsible Authority.***
53. ***Any new pipework to be placed under Barham River Road must be bored to the satisfaction of the Responsible Authority.***
54. ***Barwon Water must ensure that all road surfaces and road related infrastructure along nominated haulage routes is maintained and kept in a safe and trafficable condition suitable for light vehicle travel for the duration of the construction period. All maintenance, repair and reinstatement costs are to be borne by Barwon Water and carried out to the satisfaction of Council.***

- 55. *All haulage routes are to be nominated and approved by Council prior to the commencement of any works, after which all haulage traffic associated with the works are only permitted along the nominated and approved routes. Where haulage traffic does not use approved routes, Barwon Water will be responsible for any repair and reinstatement works required to the road asset.*
- 56. *A pre asset condition assessment and report is to be prepared by Barwon Water, in conjunction with Council prior to the commencement of works, but following the approval of nominated haulage routes. Haulage can only commence once this pre asset condition assessment has been approved by Council. Once approved this asset condition assessment report will be endorsed and form part of the permit.*
- 57. *If damage is identified along the approved haulage routes, Barwon Water is to immediately carry out repair or remedial works as soon as practicable, and immediate action will be required to ensure road user safety.*

**Corangamite Catchment Management Authority Condition**

- 58. *No permanent fill is to be placed in the 1% AEP flood extent.*

**Expiry of the permit**

- 59. *This permit will expire if one of the following circumstances applies:*
  - *The development and use are not started within two (2) years of the date of this permit.*
  - *The development is not completed within four years of the date of this permit.*

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

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**PC121209-5                    DEVELOPMENT OF A SUPERMARKET, REDUCTION IN  
CAR PARKING, SALE OF PACKAGED LIQUOR &  
VARIATION TO A CARRIAGEWAY EASEMENT AT 30-32  
PASCOE STREET, APOLLO BAY (PP34/2011)**

|             |                                       |           |            |
|-------------|---------------------------------------|-----------|------------|
| AUTHOR:     | Carl Menze                            | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning<br>& Development | FILE REF: | F12/6537   |

**Location:** 30-32 Pascoe Street, Apollo Bay

**Zoning:** Business 1 Zone (B1Z)

**Overlay controls:** Design and Development Overlay Schedule 5 (DDO5)

**Proposed Amendments:** Nil

**Purpose:**

The proposal seeks approval for establishment of a supermarket including sale of packaged liquor, which requires a reduction in car parking requirement, as well as to vary a carriageway easement through the property.

The application is before Council for consideration as the proposal seeks a reduction of the car parking requirement of seven (7) spaces.

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

**Declaration of Interests**

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

**Summary**

- An application has been submitted for the development of the site for an IGA Supermarket, a reduction in the car parking requirement, the selling of packaged liquor and a variation to the carriageway easement. The site currently contains a vacant building previously used for storage purposes which is to be utilised as the supermarket.
- Public notification of the application was undertaken with three (3) objections being received.
- The reduction of seven (7) parking spaces is considered acceptable given the number of on-site parking spaces proposed, the likely parking demand generated by the proposal and its compliance with the parking rate proposed in the adopted Colac and Apollo Bay Car Parking Strategy.
- The use of the site as a shop (supermarket) is as of right under the provisions of the Business 1 Zone.
- The variation to the carriageway easement will not restrict vehicular access to the land benefitting from the easement at present, and will facilitate a far better outcome on the supermarket site in terms of parking provision and layout.

- Given the above, it is recommended that the application be supported subject to conditions.

### **Background**

The land appears to have been subject to several planning permit applications in the past. The land at 30 Pascoe Street has most recently been used as a Fun Parlour until around 2009 and since as a warehouse, although planning permission was never granted for such use.

The land at 32 Pascoe Street was at one time used as a Caravan Park until around 2001. In recent times the land has remained unused and vacant except for a small shed located on the rear property boundary.

### **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;
- c) Refusing to grant a permit.

The key issues are whether a reduction of car parking spaces is justified and whether a variation to the current carriageway easement is justified or appropriate.

It is recommended that Option (a) is supported.

### **Proposal**

The proposal comprises several elements which require planning approval in order for the use of the site as a supermarket to proceed. Specifically, the proposal comprises:

- Development (Buildings and Works) associated with converting the building into a supermarket which includes the creation of new entrances/exits, additional windows, the erection of a verandah and works associated with constructing the car parking and access areas on the northern side of the building comprising of 31 spaces.
- A reduction of seven (7) car parking spaces from the requirement to provide 38 spaces.
- The selling of packaged liquor.
- A variation to the carriageway easement which is located on 32 Pascoe Street. The easement is currently located on the northern property boundary, extending from the street frontage to the rear of the site. The proposed variation will locate the carriageway easement 8.2m south of the northern property boundary. The carriageway easement will maintain a width of 3660mm for the full depth of the site.
- Provision of a 19m long loading bay at the rear of the existing building.
- Landscaping areas within the frontage and throughout the proposed car parking area.
- Business Identification Signage on the verandah fascias.

It is noted that the proposal has undergone significant changes since it was originally lodged. The original proposal only included 17 on-site parking spaces necessitating a reduction of 21 spaces, and loading facilities for a 7.7m x 3.6m vehicle.

Through a process of public notification and ongoing negotiations with Council the proposal was amended to its current form.

### Site & Surrounds

The subject land is located on the east side of Pascoe Street, Apollo Bay, and comprises of two (2) separate allotments being:

- Lot 1 PS309031 (30 Pascoe Street) which has dimensions measuring 46.0m x 20.12m (925sqm). The site contains a shed with dimensions measuring 20.12m x 37m (744sqm) located on the front and south property boundaries.
- Lot 1 TP683180 (32 Pascoe Street) which has dimensions measuring 50.29m x 20.12m (1012sqm). The land is vacant except for a small concrete block shed located on the rear property boundary. The site contains dense vegetation of a moderate height along the front boundary.

Surrounding properties comprise of:

- 34 Pascoe Street (adjacent north) developed with a single storey dwelling which includes a brick garage located on the common property boundary.
- 28 Pascoe Street (adjacent south) developed with a building used as the Apollo Bay CFA Station.
- 123A Great Ocean Road (adjacent east) developed with a two (2) storey building used as a pharmacy at ground floor level and residential units at the upper floor level.
- 119 Great Ocean Road (adjacent east) developed with a single storey building used as a food and drink premises (Apollo Bay Seafood Cafe).
- 111-117 Great Ocean Road (adjacent east) developed with a single storey building used as a cafe/restaurant (Georges Food Court).
- 103-109 Great Ocean Road (adjacent south east) developed with a single storey building currently occupied by the IGA Supermarket.

### Public Notice

Public notice of the application was given twice in accordance with Section 52 of the Planning and Environment Act by sending letters to adjoining owners/occupiers and by placing a sign on-site.

The application first underwent public notification in August 2011. At the time the proposal was described as:

*"IGA Supermarket (Building & Works), reduction in Car Parking, Sale of Packaged Liquor and Use of 32 Pascoe Street, Apollo Bay for Car Parking."*

At the conclusion of the notification period, two (2) objections were received. The grounds of objection are summarised as follows:

- Detrimental impact on parking accessibility and availability of car parking spaces within Apollo Bay.
- Insufficient on-site parking provided.
- Reliance on adjoining land for parking without a formal/legal agreement in place.
- Reliance on on-street parking.
- All reference of carriageway easement removed from application.
- Inappropriate use of carriageway easement.
- Risks associated with delivery vehicles backing up laneway and using Great Ocean Road for access.
- All access and deliveries should be from Pascoe Street.
- Application is misleading.

The application underwent public notification for a second time in August 2012 following changes to the proposal, in particular referring to the variation proposed to the carriageway easement. The revised proposal was described as:

*“Development of the land for a Shop (IGA Supermarket), a reduction to the car parking and loading requirements, the selling of packaged liquor, a variation to the carriageway easement & use of 32 Pascoe Street for carparking.”*

During the public notification period it became apparent that the proposal description was incorrect in making reference to a reduction in the loading requirements. As clarified later in this report, the loading facilities are provided in accordance with Clause 52.07 of the Planning Scheme. A new notice was not considered warranted given the minor nature of the discrepancy.

The applicant has provided a Statutory Declaration stating that the advertising has been carried out in accordance with Council's requirements.

At the conclusion of the second notification period, three (3) further objections were received, two (2) of which were from the same parties which lodged objections to the original proposal. The grounds of objection are generally in keeping with previous objections and do not raise any additional matters which require further attention.

The objector's concerns are addressed later in this report however the following require further discussion:

- *Inappropriate use of carriageway easement*

The objector is referring to the carriageway easement which is located on the property known as 111-117 Great Ocean Road. The property includes a carriageway easement which runs along its north property boundary. The beneficiary of the easement is 30 Pascoe Street. The application does not provide reference to this carriageway easement as the proposal does not propose nor is it reliant on vehicular access from the easement in question.

Furthermore, the proposal itself does not propose to vary this carriageway easement.

- *Application is misleading.*

The application proposed vehicular and pedestrian access from Pascoe Street which has been assessed and deemed suitable. The proposal is not reliant in any way on access via the carriageway easement at the rear of 30 Pascoe Street leading to the Great Ocean Road.

It is therefore not necessary for the applicant to demonstrate their intentions with regard to the carriageway easement as part of the planning permit proposal. The proposal is therefore not considered to be in any way misleading from a planning perspective.

- *Relocating the Carriageway Easement to the centre of the proposed car park will make it difficult for deliveries to occur to the property at 119 Great Ocean Road.*

The relocation of the carriageway easement will still allow for delivery vehicles to pass over the subject land to gain access to 119 Great Ocean Road. A carriageway easement does not dictate how land can be used other than ensuring beneficiaries can utilise that part of the land for access.

## **Referrals**

The application was referred under Section 52 of the Planning and Environment Act to the Apollo Bay Police with no response being received.

The application was also referred to Council's Building and Health Departments which raised no concerns with the proposal.

Council's Infrastructure Department had concerns with the original proposal in relation to on-street loading and on-site manoeuvrability, however following changes to the application to include on-site loading facilities for a 19m articulated vehicle, has now consented to the proposal with requirements for several conditions to be placed on any approval issued.

### **Planning Controls**

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

The State and Local Planning Policy Framework seeks 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.

- Clause 11.05 – Regional Development
- Clause 15.01-1 – Urban Design
- Clause 17.01-1 – Business
- Clause 18.02-5 – Car Parking
- Clause 21.02-2 – Land Use Vision
- Clause 21.03-3 – Apollo Bay and Marengo
- Clause 21.05-4 – Tourism

The above policies and the Apollo Bay Structure Plan, encourage the concentration of retail, commercial, accommodation, administration and entertainment activities in the Apollo Bay Town Centre.

These policies also support the co-location, multiple use and sharing of facilities, and seek to minimise the effects of commercial development on the amenity of the neighbouring area. The policies encourage the efficient provision of car parking and promote high quality urban design outcomes.

The proposal is considered to accord with the principles of the State and Local Planning Policy Framework. The proposed use assists in meeting the community's need for commercial facilities. It also assists in further consolidating an existing commercial enterprise increasing its long term viability. The site is appropriately located within the town centre being within walking distance to other commercial, recreational and commercial facilities.

#### **b. Zone provisions**

The purpose of the Business 1 Zone is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To encourage the intensive development of business centres for retailing and other complementary commercial, entertainment and community uses.*

A supermarket (Shop) is a Section 1 Use (Permit not required) under the Business 1 Zone provisions.

Planning approval is required to construct a building or to construct or carry out works pursuant to Clause 34.01-4 of the Colac Otway Planning Scheme.

c. Overlay Provisions

The objectives of the Design and Development Overlay Schedule 5 are:

- *To protect the existing low scale coastal character and identity of Apollo Bay.*
- *To ensure that new development in Apollo Bay is consistent with and acts to consolidate the character of Apollo Bay as a coastal town.*
- *To ensure that upper levels are well articulated to respect the character of the area.*

A permit is required to construct a building or construct or carry out works pursuant to Clause 43.02-2 of the Colac Otway Planning Scheme.

d. Particular Provision – Clause 52.02 Easements, Restrictions and Reserves

Pursuant to Clause 52.02 a permit is required before a person proceeds under Section 23 of the *Subdivision Act 1988* to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.

e. Particular Provisions – Clause 52.05 Advertising Signs

Pursuant to Clause 52.05 planning approval is required for business identification signage where the total advertisement area to each premise exceeds 8sqm in area.

The proposal incorporates 7.5sqm of advertising signage and therefore does not require planning approval.

f. Particular Provisions – Clause 52.06 Car Parking

Pursuant to Clause 52.06, a permit is required to:

- *“Reduce (including reduce to zero) the requirement to provide the number of car parking spaces required under this clause,*
- *Allow some or all of the required number of car parking spaces to be provided on another site.”*

A supermarket attracts a car parking rate of 5 spaces per 100sqm of leasable floor area. Therefore on the basis of the proposed supermarket floor area (756sqm) the proposal will generate a car parking requirement of 38 spaces. The proposal provides 31 spaces which will therefore require approval for a car parking reduction of seven (7) spaces.

g. Particular Provisions – Clause 52.07 Loading and Unloading of Vehicles

Pursuant to Clause 52.07:

*“No building or works may be constructed for the manufacture, servicing, storage or sale of goods or materials unless:*

- *Space is provided on the land for loading and unloading vehicles as specified in the table below.*
- *The driveway to the loading bay is at least 3.6 metres wide. If a driveway changes direction or intersects another driveway, the internal radius at the change of direction or intersection must be at least 6 metres.*
- *The road that provides access to the loading bay is at least 3.6 metres wide.”*



The proposal provides on-site loading facilities for a 19m articulated vehicle which exceeds the minimum requirements of this clause.

h. Particular Provisions – Clause 52.27 Licensed Premises

Pursuant to Clause 52.27 a permit is required to use land to sell or consume liquor if a licence is required under the Liquor Control Reform Act 1998. This includes packaged liquor.

i. Particular Provisions – Clause 52.34 Bicycle Facilities

Pursuant to Clause 52.34, a new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities and associated signage has been provided on the land. A retail premise attracts the following bicycle parking rate:

- 1 to each 300 sqm of leasable floor area for each employee
- 1 to each 500 sqm of leasable floor area for each shopper/visitor

On the basis of the proposed supermarket floor area (756sqm) the proposal will generate a bicycle parking requirement of three (3) spaces. The proposal provides a total of 10 on-site bicycle spaces, therefore a reduction is not required.

### **Consideration of the Proposal**

#### Development (Buildings and Works)

The additions to the existing building include the creation of new entry/exits, additional windows and the erection of a verandah along the north, west and part of the east elevation. The proposed additions will provide much needed articulation to the facade of the existing building which will improve its visual appearance from the streetscape.

The Apollo Bay Settlement Boundary and Urban Design Review was adopted by Council in June 2012. Part 3 (Urban Design Initiatives) of the report indicates several opportunities exist to:

- *Improve the pedestrian and visual amenity and function of Pascoe Street as a priority.*
- *Improve the amenity and function of adjacent side streets linking to the Great Ocean Road (Thomson, Whelan and Moore Streets, and McLaren Place).*

The proposed alterations to the existing building and construction of the proposed car park will make a positive contribution in achieving the above opportunities. The proposal will improve the visual appearance of the site by adding visual articulation to the existing building and by providing areas of landscaping within the car park. Furthermore, the proposal will not limit the future potential for a pedestrian linkage through to the Great Ocean Road.

#### Car Parking Provision

As noted earlier, a supermarket attracts a car parking rate of 5 spaces per 100sqm of leasable floor area under the provisions of Clause 52.06. Therefore on the basis of the proposed supermarket floor area (756sqm) the proposal will generate a car parking requirement of 38 spaces. The proposal provides 31 on-site spaces which will therefore require approval for a car parking reduction of seven (7) spaces.

The Colac and Apollo Bay Parking Strategy 2011 summaries the key issues relating to parking supply in Apollo Bay as:

- *Peak demand for parking at the most popular locations in the township (i.e. Great Ocean Road and the Surf Club car parks) exceeds supply.*
- *Searching for parking spaces by visitors can contribute to congestion and negatively impact on the safety of other road users.*
- *Visitor numbers and the resident population of Apollo Bay significantly decreases during non-seasonal periods resulting in a much lower demand for parking.*

It is also noted that the Strategy finds that whilst on-street parking along the Great Ocean Road is busy at peak times, Pascoe Street is less utilised. It recommends that more space can be provided along Pascoe Street by converting parallel spaces into angle spaces. The Strategy adopts a policy of requiring a cash contribution of \$13,000 per space when the car parking rate recommended by the Strategy cannot be met.

With respect to car parking rates, the report states:

*“Given the often unique circumstances associated with different new developments, it is not always the case that one parking rate fits all developments in all locations. As an alternative, Clause 52.06-6 of the Colac Otway Shire Planning Scheme enables Parking Precinct Plans to be prepared. These are locally prepared strategic plans that contain parking provisions for an area or ‘precinct’. They allow all the parking issues arising in a precinct to be considered and a strategy to be implemented to address them.*

*Specifically, this approach would allow the adoption of parking rates which recognise that the likely demand for parking for shops in the Apollo Bay Commercial Centre is lower than the rate specified by the Victorian Government.”*

In relation to supermarkets the following finding is made:

*“The demand based empirical rates for supermarket land uses in the Apollo Bay Commercial Centre is 3 spaces per 100m<sup>2</sup>. This rate reflects the small nature of supermarkets in the commercial centre in comparison to supermarkets in urban centres. In recognition of this and the need to avoid an oversupply of parking, it is recommended that a parking rate in line with the measured demand for supermarkets in the commercial centre (i.e. a minimum of 3 spaces per 100m<sup>2</sup>) be adopted.”*

The Apollo Bay Car Parking Strategy recommends a rate of 3 spaces per 100sqm for a supermarket, based on empirical data for Apollo Bay. Applying this rate to the proposal would result in a car parking requirement of 23 spaces, which is less than the 31 provided.

The application includes a Traffic Impact Assessment Report (Ratio Consultants, March 2012) which assesses the traffic and parking implications of the proposed IGA Supermarket. It is noted that the Traffic Report incorrectly calculates the required parking rates on a floor area of 925sqm which is actually the site area. Nevertheless, the findings of the report with respect to parking demand and likely trip generations are based on empirical data collected through surveys and observations in the vicinity of the site and of previous studies from similar developments elsewhere in Melbourne and regional Victoria.

The traffic report makes the following conclusions in relation to the current proposal:

*“The proposed on-site parking provision will accommodate the expected customer and staff parking demands of the proposed supermarket. As currently occurs, it is expected that staff from the existing IGA Express Supermarket will continue to utilise the on-street unrestricted parking along Pascoe Street and will not generate additional car parking demands along Pascoe Street.*

*It is estimated that up to 44 vehicular trips will occur during the PM peak hour for the proposed supermarket. The surrounding road network has the capacity to accommodate the additional traffic volumes generated by the proposed supermarket development in a satisfactory manner.*

*Overall the proposed development is not expected to create adverse traffic or parking impacts in the precinct.”*

The provision of 31 on-site parking spaces resulting in a reduction of seven (7) spaces is considered acceptable in this instance given the likely parking demand generated by the proposal and that the parking rate adopted for Apollo Bay under the Parking Strategy is met. Officers are currently preparing an amendment to the Planning Scheme to apply a Parking Overlay which would then introduce the parking rates recommended by the Strategy. It is noted that this application would not require planning approval for a reduction in car parking spaces if the Parking Overlay were already in place, nor would a requirement to make a cash-in-lieu contribution apply.

#### Parking Layout and Access

The parking layout and access arrangements have been assessed by Council's Infrastructure Department and are considered to be acceptable. All parking spaces have sufficient dimensions being 2.6m x 5.4m with a forecourt depth of 6.9m. This will allow all vehicles to enter and exit the site in a forward motion.

Two (2) disabled car parking spaces are provided on-site, both of which have access to a 2.6m x 5.4m shared area in accordance with disability access requirements.

Bicycle parking facilities are provided in the frontage of the site for 10 bicycles. These spaces are easy accessible and highly visible which will promote their use.

The proposed parking layout incorporates several areas of landscaping which will help break up the visual appearance of the area. The proposed parking layout and access is considered to meet the requirements of the planning scheme and is appropriate.

#### Loading and Unloading of Vehicles

The proposal includes a 19m x 3.5m loading bay at the rear of the existing building which is accessed via the proposed car parking area. The applicant has provided swept path diagrams for a variety of delivery vehicles from an 8.8m medium rigid vehicle to a 19m articulated vehicle. These diagrams demonstrate that entry and exit to the loading bay is achievable in a forward motion for all vehicles, including the 19m articulated vehicle.

Access to the loading bay for vehicles in excess of 8.8m in length is dependent on movements over some of the car parking spaces, therefore deliveries for these vehicles will not be able to occur whilst the supermarket is in operation.

It is envisaged that several conditions can be placed on any permit issued requiring:

- All loading and unloading from vehicles in excess of 8.8m in length to occur outside the trading hours of the supermarket.
- All car parking spaces are kept clear outside operating hours to allow for loading to occur from vehicles in excess of 8.8m in length.

The applicant has indicated these conditions can be met and are acceptable. It is considered that sufficient loading provision is made on-site which can be managed through conditions on any approval granted. This would allow smaller trucks to make deliveries during the day.

#### Variation to Carriageway Easement

The proposed variation to the carriageway easement will not have any detrimental impacts upon the beneficiaries of the easement.

The carriageway easement is to be shifted off the northern property boundary to the south by 8.2m. The carriageway easement will maintain a width of 3660mm as per the current easement, and will still link up with the right of way adjoining properties at 123A & 119 Great Ocean Road.

The applicant has provided details of all beneficiaries of the carriageway easement which was prepared by *Feigl & Newell Professional Title Searches* and states:

*"We have searched back to the unencumbered fee in Crown Grant Volume 1006 Folio 069 and abutting Titles and can advise that the legal beneficiaries are all the land coloured yellow on plan attached, being all lots and roads on LP64695 and PS601932.*

*My methodology that was used to establish the beneficiaries are that: Instrument of Transfer and Creation of Easement No.2391977 reserved for the registered proprietors or proprietors for the time being of the land coloured purple and green or any part thereof a right of carriage way over the land coloured brown....."*

The application underwent public notification where all owners and occupiers of LP64695 (119 Great Ocean Road) and PS601932 (123A Great Ocean Road) were sent copies by mail.

In *K J Barge and Associates v Prahran City Council & Anor (1992) 10 AATR 345 (Barge)*, the Administrative Appeals Tribunal considered the removal of part of a carriageway easement and established a two part test.

The Tribunal stated:

*"How then does the Tribunal decide whether or not to grant a permit? The Tribunal is of the view that the following questions should be asked:*

- (i) Does the current use of or the current state or condition of the dominant and servient lands (tenements) indicate a need or requirement for the continued existence of the easement; and*
- (ii) Would the owners of the dominant land suffer any material detriment in the use and enjoyment of that land if the easement were removed or varied?*

*If the answer to either of these questions is in the affirmative then the Tribunal should not grant the Permit".*

Relevant considerations in assessing 'need' under the first part of the Barge test include *recent use* and *current available alternatives*. In assessing material detriment under the second part, there is no detriment if the future use or development is speculative or hypothetical. The following is a comment in response to these points of Barge:

- *'Does the current use of or the current state or condition of the dominant and servient lands (tenements) indicate a need or requirement for the continued existence of the easement'*

The proposed variation will still allow for the use of the carriageway easement by the beneficiaries being the owners of 123A and 119 Great Ocean Road, Apollo Bay. Therefore the proposal passes the first test as the proposal will continue the existence of the easement.

- *'Would the owners of the dominant land suffer any material detriment in the use and enjoyment of that land if the easement were removed or varied'?*

The proposed variation to the carriageway easement will not cause any material detriment to the owners of 123A and 119 Great Ocean Road as the carriageway easement will still be accessible, albeit in a slightly different location.

In *Osanrae Holdings Pty Ltd v Stonnington CC & Anor [2011] VCAT 1559* Senior Member Rickards when considering a proposal which included the removal of a carriageway easement stated:

*'I do not think it is appropriate to lightly extinguish or modify an existing property right, or indeed any legal right. There needs to be a good reason for doing so.*

*In the most recent Tribunal decision relating to this issue the Tribunal in Hocking v Cardinia SC made extensive statements indicating the two steps in Barge remain the most relevant and helpful benchmarks, whilst recognising the comment in Jordan that the two factors do not exclude other possible relevant considerations and stated:*

*Rather, we see the correct position being that the two step approach from Barge still need to be applied, but beyond that the Tribunal (at a holistic level) needs to be satisfied that the proposed removal of the relevant easement will be an "acceptable" planning outcome. In taking this approach, we rely on the Prizac Investments decision and also the Victorian Supreme Court decision of Knox City Council v Tulcan Pty Ltd No 9067 of 2003.'*

In applying the same 'holistic approach' to the current proposal to vary the carriageway easement, Council needs to be satisfied that the proposal variation will be an "acceptable" planning outcome.

The proposal will vary the location of the carriageway easement, however vehicular access to the subject land and all benefitting land will still be capable of being accessed in an unrestricted manner.

Whilst the proposal will alter the use of the land from a vacant site to a car park, the easement will still be in place to protect the access right of the beneficiaries. It is unrealistic for beneficiaries of the easement to expect that the site would remain unchanged given its location within the town centre and the zoning of land as Business 1 Zone.

Therefore the variation to the carriageway easement is considered acceptable and should be supported.

#### Liquor Licence

The proposal seeks approval for the sale of packaged liquor from the supermarket. Approval is not sought for the on-site consumption of liquor. The sale of packaged liquor is strongly controlled through State Legislation which will require the applicant to gain approval from Liquor Licensing Victoria. It is considered that the sale of packaged liquor from the premises will not cause material detriment to any persons.

### **Council Plan / Other Strategies / Policy Leadership and Governance**

#### Council Plan – 3. Land Use and Development

##### *Objective:*

*“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.”*

The Apollo Bay Structure Plan’s objective for commercial and retail activity in Apollo Bay is:

*“Intensify commercial and business land uses within the commercial area of Apollo Bay and ensure a future supply of Business Zoned land to meet demand.”*

The proposal relocates a successful commercial business into a currently vacant premises further solidifying the Apollo Bay Commercial Precinct and ensuring the long term viability of an existing commercial enterprise.

#### **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 will not cause detriment to the existing streetscape and general amenity of the site and surrounds and is supported. The waiver of seven (7) additional car parking spaces is considered appropriate given the likely parking demand generated by the proposal and the substantial on-site parking provided. The proposal will meet the rate of parking adopted for Apollo Bay under the recent Colac and Apollo Bay Car Parking Strategy.

#### **Attachments**

Nil

**Recommendation**

***That Council's Planning Committee resolves to issue a Notice of Decision to Grant a Planning Permit for development of the site for a Supermarket, a reduction in the car parking requirement, the selling of packaged liquor and a variation to the carriageway easement at 30-32 Pascoe Street, Apollo Bay subject to the following conditions:***

- 1. Prior to the commencement of the development, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies provided. The plans must generally be in accordance with the plans submitted 30 July 2012 but modified to show:***
  - a) A storage and collection area for all rubbish bins.***
  - b) The position of external lighting within the car park and loading area.***
  - c) Removal of the planter boxes shown at the building line on the Pascoe Street frontage.***
  - d) Footpath abutting the front façade (west elevation) of the supermarket building.***
  - e) Removal of the landscaping strip along the façade (west elevation) of the supermarket building.***
  - f) 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.***
- 2. The use and layout of the site and the size of the proposed buildings and works as shown on the endorsed plans must not be altered or modified without the written consent of the Responsible Authority.***
- 3. Prior to the supermarket commencing operation, the owner must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987 to the effect that:***
  - a) The land known as 32 Pascoe Street, Apollo Bay (Lot 1 TP683180) must be made available at all times for car parking in conjunction with the supermarket at 30 Pascoe Street, Apollo as shown on the plans endorsed under Planning Permit PP34/2011.***
  - b) The supermarket use must cease if the car parking at 32 Pascoe Street as shown on the plans endorsed under Planning Permit PP34/2011 is no longer available for car parking purposes.***

***Evidence of lodging the agreement with the Registrar of Titles in accordance with Section 181 of the Act must be submitted to the Responsible Authority. All costs associated with the agreement/covenant must be met by the owner.***
- 4. The loading and unloading of all delivery vehicles must occur within the designated loading bay on the site.***
- 5. The loading and unloading of delivery vehicles in excess of 8.8m in length must occur outside the trading hours of the supermarket.***
- 6. All car parking spaces must be kept free outside the supermarket trading hours to allow for loading and unloading to occur.***

7. ***The car park must be appropriately signed indicating all parking spaces must be kept clear outside supermarket trading hours to the satisfaction of the Responsible Authority.***
  
8. ***The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:***
  - a) ***transport of materials, goods or commodities to or from the land;***
  - b) ***appearance of any building, works or materials;***
  - c) ***emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;***
  - d) ***presence of vermin; or***
  - e) ***any other reason.***
  
9. ***The landscaping as shown on the endorsed plans must be established within three (3) months of the commencement of the supermarket use and must be maintained to the satisfaction of the Responsible Authority.***
  
10. ***The external lighting must be baffled to ensure no negative impact on neighbouring properties.***
  
11. ***The disused vehicle crossing must be removed and reinstated to the satisfaction of the Responsible Authority.***
  
12. ***The supply of liquor hereby approved must be subject to the issue of a licence under the Liquor Control Reform Act 1988.***
  
13. ***The supply of liquor hereby approved must be managed so that the amenity of the area is not detrimentally affected to the satisfaction of the responsible authority.***
  
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.***
  - c) ***The plan submitted under the Subdivision Act for variation to the easement is not certified within two (2) years of the date of this permit.***
  - d) ***The Statement of Compliance is not issued within five (5) years of the certified plan.***

***The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within three (3) months afterwards***

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**CONSTRUCTION OF A DWELLING AND REMOVAL OF  
NATIVE VEGETATION (ONE TREE) AT 30 RIDGE DRIVE,  
KENNETT RIVER (PP62/2012-1)**

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|-------------|---------------------------------------|-----------|------------|
| AUTHOR:     | Kim Linden                            | ENDORSED: | Jack Green |
| DEPARTMENT: | Sustainable Planning<br>& Development | FILE REF: | F11/4786   |

- Location:** 30 Ridge Drive, Kennett River
- 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.

**Purpose:**

An application has been submitted for the construction of a dwelling and removal of native vegetation at 30 Ridge Drive, Kennett River.

This application is before Council for consideration as the proposed dwelling exceeds 8m in height.

It is recommended that the application be refused as the CFA has objected to the proposal on the basis that the proposal fails to meet bushfire safety 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 application seeks approval for the construction of a dwelling and the removal of one tree.
- The site is located within the Township Zone and is located in a subdivision located to the north of the Kennett River township.
- The site is also subject to a Neighbourhood Character Overlay Schedule 1 (NCO1), Erosion Management Overlay Schedule 1 (EMO1), Significant Landscape Overlay Schedule 1 (SLO1), the Bushfire Management Overlay (BMO) and the Design and Development Overlay Schedule 4 (DDO4).
- The application was advertised and no objections have been received.

- The proposed dwelling will have a maximum height of 8.3m at one point of the dwelling, at the rear and will have a front setback of 5m. The proposal will also have a site coverage of 22.1%. While these aspects represent minor departures from the standards, the proposal is generally considered to be appropriate as it is considered to meet the objectives that the controls seek to achieve in relation to built form and neighbourhood character.
- The CFA has objected to the proposal on bushfire safety grounds. Given the CFA's status as a referral authority under Section 55 of the Act, Council is obligated to refuse the application. The application is therefore recommended for refusal on the basis of the CFA objection.

### **Background**

The application was lodged on 22 March 2012. It includes a Bushfire Management Statement prepared by Ecotide and dated 15 March 2012.

Further information was requested on 27 March 2012, including a request for a land capability assessment of wastewater management on the site, revised plans showing the location of the water tank and further detail in relation to the increase in the site coverage. The applicant was also recommended to reduce the height so it complies with the 8m sought under the planning controls. No revised plans in relation to the height of the dwelling were received. All other issues raised in the letter were addressed by further information received on 10 May 2012.

### **Issues / Options**

Pursuant to Section 61 (2) of the *Planning and Environment Act*, Council must decide to refuse to grant a permit if a relevant referral authority objects to the grant of the permit. As the CFA has objected to this application, Council must refuse the application.

### **Proposal**

The proposal involves the construction of a three bedroom two storey detached dwelling with the following features:

- The ground floor will comprise of a carport, entry area via a porch, family room, two bedrooms, laundry and bathroom.
- The first floor will comprise of a main bedroom with ensuite, kitchen, meals/living area and deck to front of dwelling facing Ridge Drive and a deck located on the eastern side of the dwelling above the carport.
- The dwelling will be 8.3m at its highest point at the rear of the dwelling.
- The materials will comprise of a Colourbond roof, Hardies Scyon Axon wall cladding and aluminium and sliding door and window frames.
- The proposal also involves the removal of one (1) large eucalypt tree at the front of the site.

### **Site & Surrounds**

The subject site is located on the north eastern side of Ridge Drive in Kennett River. It is legally described as Lot 39 on Plan of Subdivision 061188. It has a total area of approximately 555.6 square metres. The site is currently vacant and contains several large trees. The site slopes relatively steeply down toward the rear of the site, toward the east.

The immediately adjoining lots to the north and the south are located within the Township Zone and contain dwellings. The property directly abutting the site, to the north-west contains a two storey dwelling.

The property to the south east of the site is a single storey fibro dwelling. The site to the rear, at 18 Cassidy Drive, is vacant and heavily vegetated with large trees.

The land opposite the site, to the south west, is zoned Rural Conservation Zone and is heavily vegetated. The subject land forms part of an old (1960s) residential subdivision located to the north of the township of Kennett River. This subdivision is physically isolated from the main township by a ridge and steep gully. The Great Otways National Park is located to the north and west of the subdivision. There is also a gully known as Hitchcock Gully, to the north of the subdivision.

### **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. It is considered that the advertising has been carried out in accordance with Council's requirements. No objections have been received to date.

### **Referrals**

The application was referred internally to Council's Environment, Infrastructure, Building and Health Departments none of which raised any objections to the proposal. The application was also referred externally to the CFA. The CFA has objected to the proposal on bushfire safety grounds. The CFA reasons for the objection are detailed further in the report below.

### **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

Overall the proposal meets the objectives of the above State and Local planning policies that relate to neighbourhood character and built form. On the basis of the CFA objections, the proposal would not meet the bushfire objectives under Clause 13.05. The CFA has stated that the proposal fails to comply with Clause 13.05 – **Bushfire** for the following reasons:

*“The land is located in an area of extreme bushfire risk at both the local and broader scale and these risks cannot be reduced to an acceptable level through the implementation of bushfire protection measures:*

- *the required bushfire protection measures, including the siting, design and construction of buildings, vegetation management and access and egress cannot be readily implemented and managed within the property;*
- *there is no assurance that vegetation on adjoining land will be managed on an ongoing basis in a condition that will reduce the spread and intensity of fire;*
- *the proposed dwelling is likely to be immersed in flames in a major bushfire event;*
- *there is no safe egress to the established township area as a fire is likely to directly impact on the full length of Ridge Drive.*

*Consequently the risk to human life and property from bushfire cannot be reduced to an acceptable level.”*

In summary, the CFA is not satisfied that the proposal complies with the bushfire safety objectives of Clause 13.05.

b. Zone provisions

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

c. Overlay Provisions

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 of the NCO1 to construct and carry out works on the site. The Preferred Character Statement for Precinct 1 (Kennett River) under Clause 21.03-6 states the following:

*“This precinct will be dominated by continuous native bush, with dwellings set below and amongst remnant canopy trees. Frontages will be open and consist of diverse native understorey that screens views of buildings from roads. The low scale dwellings will avoid prominent locations and ridgelines, and will be sited to provide for the reasonable sharing of views to the coast where available. Vegetation will be retained or replaced with any new developments to screen buildings when viewed from the Great Ocean Road. Innovative house styles will be encouraged of a scale, materials and colours that blend with the bush character and follow the topography. The informal bush character of the precinct will be assisted by the streetscape planting and lack of formal kerbing.”*

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 bush features of the site and the area and will not dominate views.

The proposal includes a landscape plan which will assist integrating the dwelling into the streetscape. While the water tank is large it does not dominate the streetscape.

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 minor.

The proposal is assessed against the 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 5m. It should be noted that a water tank will also be located within the front setback and will be partially cut into the site. This tank does not represent additional floor area but also needs to be considered when assessing front setbacks.

The proposed front setback represents a variation to the setback requirement of the standard but is considered to be appropriate for the following reasons:

- Dwellings on immediately adjoining lots at 28 and 32 Ridge Drive Kennett River are both setback approximately 5m. The proposed setback will therefore be consistent with existing setbacks.
- The proposed setback results in a rear building line which is consistent with surrounding dwellings and reduces amenity impact on those dwellings.
- The proposed reduced setback reduces the need for further tree removal and further impact on trees on surrounding properties.
- The reduced front setback enables the less steep part of the property to be utilised for the siting of the dwelling and allows the dwelling to be better sited in terms of topography of the site.
- The reduced front setback achieves a large rear garden area and retains the dominance of existing trees over the proposed built form.
- The proposed water tank will be within the front building line but will be partially cut into the site and landscaped. This will assist in integrating the tank into the streetscape.

#### *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 will be 8.3m at its maximum. This height will be reached on a small section of the north eastern side of the dwelling, at the rear. The height is considered to be acceptable as it represents a minor increase above the maximum of 8m. It is also only for a small section of the dwelling. The majority of the height of the dwelling will be within the height limit of 8m.

#### *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 Kennett River which has a maximum site coverage of 20%.

The total floor area of the dwelling will be 229 square metres. The building footprint area will be 123.3 square metres, which equates to a site coverage, based on a site area of 555.6 square metres, of approximately 22.1%.

While this is above the maximum recommended in the modified standard, the increase is considered to be acceptable as the proposal still meets the objectives in terms of maintaining dominance of the bush and openness and the built form is still considered to respect the character of the area. It should also be noted that dwellings on surrounding properties have similar site coverage, and some even greater than 22%. The proposed site coverage is considered to be in keeping with the character of the area.

### *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. Standard A10 requires 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.

The side setback required on the north west side of the building is 3.78m. A side setback of 3.7m is achieved on this side. This is generally considered to be within the required setback and represents a minor reduction. The side setback still allows for gaps between dwellings and views to be shared and bushland features to remain dominant.

The side setback required on the south east side of the site is 3m for the lower section of the building and 5.39m for the upper section. The south east setback will be 2.9m for the lower (carport) section and 5.3m for the upper section not including the deck/balcony component at upper level. The proposal is generally considered to meet these setback requirements. The reduction in the setback is very minor and is considered to result in negligible impact in terms of built form and amenity on adjoining properties.

The required rear setback is 7m. The rear setback proposed is approximately 12m which meets the rear setback requirement.

### *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 for the area and is considered to be in keeping with the character of the area. It will allow for the retention of bushland and a large 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.

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 of SLO2. The overlay seeks to achieve the following general landscape objectives:

- *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.*

The proposal seeks to retain the majority of trees on the site. It only involves the removal of one (1) tree, a large eucalypt located on the north western side of the property, toward the front. Council's Environment officer has raised no concerns in relation to the removal of the tree. The proposed landscape plan includes extensive planting with indigenous species. The subject site is not visible from the Great Ocean Road. The proposed dwelling is therefore considered to be consistent with the objectives of the SLO2.

The site is covered by the Erosion Management Overlay 1 (EMO1). A planning permit is required by Clause 44.01-1 for buildings and works under this overlay. The applicant has provided a geotechnical assessment of landslide risk prepared by Provincial Geotechnical dated 29 February 2012 (report no. B2041) in accordance with the requirements of this overlay provision. The assessment concludes that there is a low risk of landslide and a Landslip Stability Assessment is not required.

The site is 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. An applicant is required under Clause 44.06-3 to demonstrate that the proposal complies with Particular Provision Clause 52.47 – Bushfire Protection: Planning Requirements. The CFA has stated that the proposal fails to comply with the objectives and provisions of the BMO/WMO provisions. The CFA has therefore objected to the proposal. This objection is dealt with in detail below under the Clause 52.47 discussion.

The site is covered by the Design and Development Overlay (DDO4). A planning permit is not triggered under this overlay for this proposal.

d. Particular Provisions - Clause 52.47 – Bushfire Protection: Planning Requirements:

As required by the provisions, a Bushfire Management Statement addressing the standards of this clause has been submitted with the application. The statement has been prepared by Ecotide and is dated 15 March 2012. The application was referred to the CFA as required under Section 55 of the *Planning and Environment Act*.

The Bushfire Management Statement states that the vegetation type is forest. The statement suggests a construction level of BAL 40 is required and total defendable space around the dwelling of 73m is required. The statement however states that the mandatory standard in relation to defendable space cannot be met and proposes an alternative solution.

The justification for the alternative solution in the statement is as follows:

- *“The lot was created prior to 18 November 2011 and is located within an established residential area listed as a Township Zone.*
- *There are significant siting constraints on the site and defendable space for a BAL 40 cannot be achieved.*
- *Additional bushfire measures have been incorporated into the proposal.*
- *Standard BF6.2 has been implemented to the fullest extent on the property.*
- *The dwelling is sited no closer to the bushfire hazard than the dwellings on neighbouring properties.*

- *The design and siting of the dwelling does not increase the risk from bushfire to other habitable structures in the surrounding area.”*

The solution in the statement included a recommendation that construction be carried out in accordance with the rating of Flame Zone as specified in ‘AS3959-2009 – Construction of buildings in bushfire prone areas.’

As already noted, the CFA has objected to the proposal. The CFA has raised concern in relation to the siting of the dwelling within the subdivision and the isolation of this subdivision from the township of Kennett River, the lack of adequate defendable space provision around the dwelling, the location of defendable space being dependent on areas outside the lot that cannot be guaranteed to be managed in a condition that minimises spread and intensity of bushfire and is not satisfied that there is safe access and egress to the site for emergency and other vehicles.

The CFA has specifically stated that the proposal falls short of the total defendable space requirement on the north east and south west sides of the dwelling/property. The CFA states that the required defendable space on the north west side is 73m (both inner and outer zones). The proposal provides for 63m on this side. The required defendable space for the south west side is also 73m in total. The proposal achieves 15m defendable space on that side.

In summary, the CFA objects to the proposal on the basis that it fails to meet the standards under Clause 52.47 and therefore fails to meet bushfire risk management objectives under Clause 44.06-3 of the BMO. On the basis of the CFA objection, the application is recommended for refusal. As the CFA is a Section 55 referral authority, Council is obligated to refuse the application under the Planning and Environment Act.

e. Particular Provisions - Clause 54 – One dwelling on a lot:

The proposal is considered to meet the requirements of Clause 54. Other relevant standards are 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 A18 (Solar access to open space of subject site)*

All these standards seek to achieve adequate solar access and reduce shadow impacts of new development on existing development and on the new development. Given the orientation of the dwelling and the relationship with surrounding dwellings, the dwelling will meet the objectives of these standards.

- *Parking – Standard A9*

The proposal includes parking for two cars. One space will be located in a carport and the other will be a tandem space located behind the carport space on the driveway. The proposed driveway will be relatively consistent with the streetscape. The proposed car parking for two cars provided on site is considered to be acceptable and meets the requirements of the standard.

- *Overlooking Standard A15*

This standard seeks to limit views into existing secluded private open space and habitable room windows.



No adverse overlooking is anticipated, therefore the proposal is not considered to have any adverse impact on habitable rooms or open space on adjoining properties as there are no direct views into open space areas or to habitable room windows. There is no overlooking discernable within a 45 degree plane of the proposed windows.

### **Consideration of the Proposal**

While the proposal includes minor departures from standards in relation to built form, the proposal is generally considered to be appropriate as it is considered to meet the objectives that the controls seek to achieve in relation to built form and neighbourhood character.

However, the CFA has objected to the proposal on bushfire safety grounds. Given the CFA's status as a referral authority under Section 55 of the Act, Council is obligated to refuse the application. The application is therefore recommended for refusal on the basis of the CFA objection.

### **Council Plan / Other Strategies / Policy Leadership and Governance**

Council Plan Leadership & governance

*Meet our statutory obligations for community safety, security and responses to emergency situations.*

Council Plan 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.*

Council Plan Environmental management

*Council will protect and enhance the environment entrusted to us, demonstrate efficient use of natural resources and minimise climate change impacts.*

While the proposal generally satisfies built form and character objectives for the coastal townships, the proposal does not meet Council's obligations under the Council Plan to consider environmental risks and fire safety. As has already been noted in this report, the CFA has raised objection to the proposal.

Council is guided in its decision making in relation to land use and bushfire by the CFA. As the CFA is a Section 55 referral authority, Council must take their advice into account.

### **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 to be consistent with the planning scheme requirements in terms of the design and other built form aspects and neighbourhood character objectives. However, the CFA has advised that the proposal will not meet the objectives or scheme provisions in relation to bushfire safety.

The application is therefore recommended for refusal on the basis of the CFA grounds of objection, as required by the *Planning and Environment Act*, given the status of the CFA as a Section 55 referral authority.

#### **Attachments**

Nil

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

**That Council's Planning Committee resolves to issue a refusal to grant the permit for the following reasons:**

1. ***The proposal fails to comply with the State Planning Policy Framework Clause 13.05 – Bushfire as:***
  - ***the land is located in an area of extreme bushfire risk at both the local and broader scale and these risks cannot be reduced to an acceptable level through the implementation of bushfire protection measures;***
  - ***the required bushfire protection measures, including the siting, design and construction of buildings, vegetation management and access and egress cannot be readily implemented and managed within the property;***
  - ***there is no assurance that vegetation on adjoining land will be managed on an ongoing basis in a condition that will reduce the spread and intensity of fire;***
  - ***the proposed dwelling is likely to be immersed in flames in a major bushfire event;***
  - ***there is no safe egress to the established township area as a fire is likely to directly impact on the full length of Ridge Drive.***

***Consequently the risk to human life and property from bushfire cannot be reduced to an acceptable level.***
2. ***The proposal fails to comply with the objective of Clause 52.47-1 (Location objective) and Standard BF3 as:***
  - ***the land is located in an area of extreme bushfire risk at both the local and broader scale;***
  - ***the topography of the land surrounding the site will significantly increase the intensity and severity of bushfire; and***
  - ***there is no safe access and egress to the site as a bushfire will directly impact on the full length of Ridge Drive and the site is not located in immediate proximity to an established urban or township area.***
3. ***The proposal fails to comply with the objective of Clause 52.47-6 (Defendable space for dwellings and dependent person's units objective) and the requirements of Standard BF6.2 and Mandatory Standard 6.3 as:***
  - ***it has not been provided with defendable space and construction for a BAL-29 or less or BAL-40 as specified in Table 1 to Clause 52.47;***
  - ***the building is likely to be immersed in flames during a significant bushfire event;***

- *the land is not located in an established urban area that might otherwise provide an opportunity to egress to a safer place in the immediate vicinity of the subject site; and*
  - *the landscape risk beyond the site presents a bushfire risk which would warrant development not proceeding.*
4. *The proposal fails to comply with the objective of Clause 52.47-9 (Defendable space location objective) and the requirements of Mandatory Standard BF9 as the area of defendable space required by Mandatory Standard BF6.1 and Standard BF6.2 and which falls onto adjoining land:*
- *requires management to minimise the spread and intensity of bushfire; and*
  - *there is no reasonable assurance that the adjoining land will remain or continue to be managed in a condition that minimises the spread and intensity of bushfire consistent with the purpose of providing defendable space.*
5. *The proposal fails to comply with the objective of Clause 52.47-10 (Water supply and access objectives) and the requirements of Mandatory Standard BF10 as:*
- *safe access cannot be provided for emergency and other vehicles at all times.*

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