

ORDINARY COUNCIL MEETING

AGENDA

24 AUGUST 2016

at 4:00 PM

COPACC COLAC



Our Vision

A sustainable community with a vibrant future.

Our Mission

Council will work with our community and partners to provide:

- Innovative leadership, good governance and financial accountability
- Value for money, accessible and appropriately targeted services
- A strong advocacy and engagement approach to achieve a truly liveable community

Our Values

Council will achieve its Vision and Mission by acting with:

- Respect
- Integrity
- Goodwill
- Honesty
- Trust

Our Strategic Direction

The four pillars of our Council Plan indicate our key strategic direction for 2013-2017.

An underlying principle in the development of the Council Plan was to more effectively integrate service delivery.

Pillar 1: Good Governance

Pillar 2: A Planned Future

Pillar 3: A Place to Live and Grow

Pillar 4: A Healthy Community and Environment

Our Councillors

Cr Frank Buchanan (Mayor), Cr Brian Crook, Cr Michael Delahunty, Cr Stephen Hart, Cr Lyn Russell, Cr Chris Smith, Cr Terry Woodcroft (Deputy Mayor).



Ordinary Meeting of Council

Welcome

Welcome to this Meeting of the Colac Otway Shire Council

Council Meetings are an important way to ensure that your democratically elected representatives are working for you in a fair and transparent way. They also allow the public to be involved in the decision making process of Council

About this meeting

There are a few things to know about tonight's meeting. The agenda itemizes all the different parts to the meeting. Some of the items are administrative and are required by law. In the agenda you will also find a list of all the items to be discussed this evening.

Each report is written by a Council officer outlining the purpose of the report, all relevant information and a recommendation. Council will consider the report and either accept the recommendation or make amendments to it. All decisions of Council are adopted if they receive a majority vote from the Councillors present at the meeting.

In accordance with Local Law 4, agenda items will be considered as follows:

- The item is introduced by the Mayor and Councillors are invited to ask questions of relevant officers
- A mover and a seconder of a motion is called for and if there is any Councillor who wishes to oppose the motion.
- The mover will then be invited to speak to the motion, followed by the seconder and then, if required, the Councillor who opposed the motion.
- Remaining Councillors will be given the opportunity to speak for or against the motion.
- If any Councillor speaks against the motion, the mover will be given the right of reply.
- There will be no further discussion of the item once the vote has been declared.

Public Question Time

Provision is made at the beginning of the meeting for general question time from members of the public. Matters relating to routine Council works should be taken up with Council's Customer Assist Staff.

Up to thirty minutes may be provided for Question Time. This is at the discretion of the Mayor.

Residents are encouraged to lodge questions in advance so that a more complete response can be given.

Questions can be submitted in writing up until 5.00pm on the Monday prior to each Council meeting. There is also provision for questions to be asked from the gallery. If you would like to ask a question during Question Time, it would be appreciated if you could please fill in the blue "Public Question Time – Council Meetings" form located in the meeting rooms and hand to the COPACC Duty Supervisor.

Questions relating to a topic on the agenda may be taken on notice and responded to after the meeting. Responses to questions taken on notice will be tabled at the following meeting and included in the minutes of that meeting.

Hearing of Submissions

Any person who has made a written submission on an item and requested that she or he be heard in support of that written submission pursuant to section 223 of the *Local Government Act 1989* will be entitled to address Council.

When the relevant item is listed for discussion, the Mayor/Chairperson will call your name and ask you to address the Council. The length of time available to each speaker is five minutes.

Recording of Meetings

All Council and Committee meetings are audio recorded, with the exception of matters identified as confidential items in the Agenda. This includes the public participation sections of the meetings. Audio recordings of meetings are taken to facilitate the preparation of the minutes of open Council and Committee meetings and to ensure their accuracy. In some circumstances a recording will be disclosed to a third party. Those circumstances include, but are not limited to, circumstances, such as where Council is compelled to disclose an audio recording because it is required by law, such as the Freedom of Information Act 1982, or by court order, warrant, or subpoena or to assist in an investigation undertaken by the Ombudsman or the Independent Broad-based Anti-corruption Commission.

Council will not use or disclose the recordings for any other purpose. It is an offence to make an unauthorised recording of the meeting.

COLAC-OTWAY SHIRE COUNCIL MEETING

24 AUGUST 2016

TABLE OF CONTENTS

OM162408-1	APOLLO BAY HARBOUR EXPRESSION OF INTEREST PROCESS	9
OM162408-2	STAGED DEVELOPMENT PLAN - KINGDOM HALL OF JEHOVAH'S WITNESSES AT 117 MAIN STREET, ELLIMINYT - PP122/2016-1.....	19
OM162408-3	SECTION 96A COMBINED PLANNING SCHEME AMENDMENT C92 AND PLANNING PERMIT APPLICATION NO. PP82/2016-1 - REZONING AND SUBDIVISION OF LAND AT 120 POUND ROAD, ELLIMINYT	29
OM162408-4	SECTION 96A COMBINED PLANNING SCHEME AMENDMENT C91 AND PLANNING PERMIT APPLICATION NO. PP58/2016-1 - REZONING AND RE-SUBDIVISION OF LAND AT 120 BARHAM RIVER ROAD, APOLLO BAY AND REZONING OF LAND AT 200 BARHAM RIVER ROAD, APOLLO BAY	73
OM162408-5	KINDERGARTEN SERVICE LICENCE AGREEMENTS WITH COLAC EAST, WINIFRED NANCE AND WYDINIA.....	95
OM162408-6	KINDERGARTEN SERVICE LICENCE AGREEMENT FOR APOLLO BAY	201
OM162408-7	COUNCIL SUPPORT FOR CO-LOCATION OF APOLLO BAY KINDERGARTEN ON APOLLO BAY P-12 COLLEGE LAND	239
OM162408-8	GREAT OCEAN ROAD REGIONAL TOURISM FUNDING AGREEMENT	245
OM162408-9	CONTRACT 1607 - PROVISION OF BUILDING SURVEYING AND INSPECTION SERVICES	295
OM162408-10	CONTRACT 1609 - BITUMINOUS SEALING WORKS	299
OM162408-11	LAVERS HILL TO CROWES AND MELBA GULLY OFF-ROAD TRAIL - DRAFT REPORT AND CONCEPT PLANS	303
OM162408-12	COUNCIL WASTE DROP OFF FACILITIES - FEES AND CHARGES.....	339
OM162408-13	LOCAL GOVERNMENT ACT REVIEW SUBMISSION	341
OM162408-14	PROPOSED AMENDMENTS TO COUNCIL MEETING DATES - 2016	353
OM162408-15	MINUTES OF THE OLD BEECHY RAIL TRAIL COMMITTEE	357
OM162408-16	ASSEMBLY OF COUNCILLORS.....	365
OM162408-17	NOTICE OF MOTION - AMBULANCE SERVICES SUMMIT	377

COLAC OTWAY SHIRE COUNCIL ORDINARY MEETING OF COUNCIL

NOTICE is hereby given that the next **ORDINARY COUNCIL MEETING OF THE COLAC-OTWAY SHIRE COUNCIL** will be held in COPACC COLAC on 24 August 2016 at 4:00pm.

1. I DECLARE THIS MEETING OPEN

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. APOLOGIES

3. DECLARATION OF INTEREST

Pursuant to Sections 77, 78 and 79 of the Local Government Act 1989, direct and indirect conflict of interest must be declared prior to debate on specific items within the agenda; or in writing to the Chief Executive Officer before the meeting. Declaration of indirect interests must also include the classification of the interest (in circumstances where a Councillor has made a Declaration in writing, the classification of the interest must still be declared at the meeting), ie:

- a) direct financial interest
- b) indirect interest by close association
- c) indirect interest that is an indirect financial interest
- d) indirect interest because of conflicting duties
- e) indirect interest because of receipt of an applicable gift
- f) indirect interest as a consequence of becoming an interested party
- g) indirect interest as a result of impact on residential amenity
- h) conflicting personal interest.

A Councillor who has declared a conflict of interest, must leave the meeting and remain outside the room while the matter is being considered, or any vote is taken.

Councillors are also encouraged to declare circumstances where there may be a perceived conflict of interest.

4. WELCOME & ACKNOWLEDGEMENT OF COUNTRY

Colac Otway Shire acknowledges the traditional custodians and law makers of this land, their elders past and present and welcomes any descendants here today.

Colac Otway Shire encourages community input and participation in Council decisions. Council meetings provide an opportunity for the community to ask Council questions, either verbally at the meeting or in writing.

Please note that Council may not be able to answer some questions at the meeting. These will be answered later.

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

All Council and Committee meetings are audio recorded, with the exception of matters identified as confidential items in the Agenda. This includes the public participation sections of the meetings.

Audio recordings of meetings are taken to facilitate the preparation of the minutes of open Council and Committee meetings and to ensure their accuracy.

In some circumstances a recording will be disclosed to a third party. Those circumstances include, but are not limited to, circumstances, such as where Council is compelled to disclose an audio recording because it is required by law, such as the Freedom of Information Act 1982, or by court order, warrant, or subpoena or to assist in an investigation undertaken by the Ombudsman or the Independent Broad-based Anti-corruption Commission.

Council will not use or disclose the recordings for any other purpose. It is an offence to make an unauthorised recording of the meeting.

5. QUESTION TIME

A maximum of 30 minutes is allowed for question time. To ensure that each member of the gallery has the opportunity to ask questions, it may be necessary to allow a maximum of two questions from each person in the first instance. Once everyone has had an opportunity to ask their initial questions, and if time permits, the Mayor will invite further questions.

Please remember, you must ask a question. If you do not ask a question you will be asked to sit down and the next person will be invited to ask a question. Question time is not a forum for public debate or statements.

1. Questions received in writing prior to the meeting (subject to attendance and time),
2. Questions from the floor.

6. TABLING OF RESPONSES TO QUESTIONS TAKEN ON NOTICE AT PREVIOUS MEETINGS

These responses will not be read out but will be included in the minutes of this meeting.

7. PETITIONS/JOINT LETTERS (if required)

8. CONFIRMATION OF MINUTES

As per Governance Local Law No 4, clause 34:

- **Ordinary Council Meeting held on the 27/07/16.**

Recommendation

That Council confirm the above minutes.

34. Objection to Confirmation of Minutes

- (1) If a Councillor is dissatisfied with the accuracy of the minutes, then he or she must:
 - (a) state the item or items with which he or she is dissatisfied; and
 - (b) propose a motion clearly outlining the alternative wording to amend the minutes.
- (2) Except where sub-clause (1) applies, no vote shall be recorded against a motion to adopt the minutes.

OM162408-1 APOLLO BAY HARBOUR EXPRESSION OF INTEREST PROCESS

AUTHOR:	Vige Satkunarajah	ENDORSED:	Brydon King
DEPARTMENT:	Development & Community Services	FILE REF:	F16/6696

Purpose

To seek Council's approval to undertake a market sounding exercise for the Apollo Bay Harbour precinct.

Declaration of Interests

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

Background

The history of the Apollo Bay Harbour precinct is significant. Redevelopment of the harbour, to provide improved boating and recreational facilities for residents and visitors whilst protecting the heritage, landscape and public realm assets that make the harbour attractive, has been a long term goal for Council and the community.

Council has for many years sought to develop a strategic plan to facilitate the redevelopment of the Apollo Bay Harbour precinct.

A draft Master Plan and Urban Design Principles were developed by Meinhardt in 2007. This was followed by an Enquiry by Design (EbD) process funded by State Government which led to the development of a concept plan adopted by Council in October 2008. In February 2012, Council resolved to remove the hotel and health and wellbeing components of the plan in response to community feedback.

Amendment C73 to the Colac Otway Shire Planning Scheme

Amendment C73 to the Colac Otway Shire Planning Scheme sought to facilitate the redevelopment of the Apollo Bay Harbour by rezoning the harbour from part Public Park and Recreation Zone (PPRZ) and Public Conservation and Resource Zone (PCRZ) to Special Use Zone, with Schedule 2 (SUZ2) giving specific direction on how such redevelopment should occur.

Amendment C73 was initially exhibited in late 2013, with a Master Plan for the harbour to be an Incorporated Document and the harbour being rezoned to SUZ2. In response to submissions received to that exhibition, Amendment C73 was significantly revised and re-exhibited for six weeks from August to September 2014. Following consideration of submissions, Council changed the amendment to remove reference to the Master Plan, delete the potential for accommodation, allow greater flexibility within the Special Use Zone (with capacity to consider a swimming pool, and health and wellbeing uses), and to require the preparation of a Development Plan detailing how the precinct would be developed.

Thirty-five submissions supported the re-exhibited amendment and/or requested a change, and five objected to it. It was clear from the submissions that there was widespread community support for the re-exhibited amendment on the basis it maintained the prohibition on the hotel/accommodation and allowed Council to consider the possibility of an indoor pool and health and wellbeing facility in the future (i.e. it would no longer be prohibited).

The amendment was adopted by Council at its meeting in March 2015, and was approved by the Planning Minister and gazetted on 13 August 2015.

Indoor Pool Concept

The Apollo Bay community has been pursuing the development of a heated indoor swimming pool for several years.

The community, sponsored by the Bendigo Community Bank, undertook a study in 2009 which examined the feasibility of an indoor heated pool, including sites at the school and the harbour. The study concluded that the capital cost of a pool at the harbor would be in excess of \$10 million, compared to approximately \$4.5 million at the school site. Council resolved at that time to support the recurrent running costs of operating a new pool if the community could obtain the funding for the pool's construction.

The Otway Forum has developed its own plan over recent years for a form of development at the harbour which it considers appropriate and which was the subject of their submission to the planning scheme amendment.

The Apollo Bay Aquatic Committee Inc which is pursuing the option of a swimming pool being incorporated into a harbour redevelopment has also drafted concepts of what development of a pool and associated development could look like at the harbour. These concepts have been developed to assist the groups in advocating their various positions concerning the harbour (ie to demonstrate what might be possible).

It is understood that generally there is an expectation in the community that any future planning for the harbour precinct will give consideration to the inclusion of an indoor swimming pool and associated health and wellbeing facilities in the plans.

What is a Development Plan?

Following approval of Planning Scheme Amendment C73 by the Minister for Planning there is an expectation that a Development Plan will be prepared which details how the harbor will be developed and used. None of the former plans developed by Council have any status – whilst they are useful inputs into the development of a plan, a new plan needs to be prepared which meets the Special Use Zone 2 requirements.

For the Apollo Bay Harbour, an endorsed Development Plan would need to detail how the land will be developed by determining the specific locations and types of land uses planned, the layout of any buildings or works, building envelopes (including heights, elevations and building footprint), site plans, and allocation of car parking, setbacks and detailed floor plans.

Until a Development Plan is approved, Council cannot consider any proposal for use and/or development which requires a planning permit (it is noted that there are some works which can occur without a development plan such as routine harbor management operations and minor works).

Challenges

A significant challenge for the preparation of the Development Plan relates to the community's current expectation that any Development Plan endorsed for the Harbour will include an indoor heated swimming pool. It is critical to recognize that this will be difficult to achieve in the current context, as in order to do this, it will be necessary to have a detailed understanding of what the requirements for an indoor heated swimming pool will be (i.e. size, building envelope, operating method, associated amenity requirements). To determine these parameters it is necessary to have a clear understanding of the project budget. The community desire appears to be to use a Development Plan to leverage funding from government and/or private sector investment to construct the pool.

It is not known at this time whether the inclusion of a pool proposal at the harbour is a financially feasible outcome and further, whether it would form a viable component of any future harbour redevelopment. If the concept of a pool at the harbor is based on the proposition that the establishment/construction costs would be offset by other commercial uses within the development then the financial viability needs to be rigorously tested at the outset.

Part of this testing would need to include an analysis of the degree of any other associated commercial development that would be required to be included for the private sector to support an investment in a public facility such as a pool. It would also need to be understood whether the scale of investment required to make a pool viable as a component of a development is/was acceptable to the community. For example, an investor may indicate that the viability of a project which included a pool would be dependent on obtaining permission for greater floor area than considered appropriate to meet the objectives of the Development Plan. Alternatively an investor may indicate that the viability of a project which included a pool would be dependent on the inclusion of land uses previously rejected by the Council and the community. It is considered that the best way to test the likely viability and any potential impacts affecting viability is to seek a response from the private sector.

Alternatively, if the concept of a pool at the harbor is based on the proposition that the establishment/construction costs would be publicly funded by grants from Government then this also should be carefully tested at the outset. It is likely to be extremely challenging that the pool project would attract enough government funding to build the project.

Torquay, a coastal town of over 12,000 people and experiencing significant growth, has struggled to attract government or Council funding for an aquatic facility despite significant community demand. This demonstrates the challenge facing the Apollo Bay community, particularly in an environment where all levels of government are under significant financial pressure. The scale of public funding required to construct a heated indoor swimming pool in Apollo Bay is unlikely to compete successfully with other infrastructure demands in the region. Council officers have not received any indication from other levels of government that funding programs would support such a proposal.

A New Approach

In November 2015 Council considered options regarding the Development Plan process.

Two key options were presented;

- **Council led/driven**

Council continues to take the lead in developing the plans for the Harbour by engaging an external multi-disciplinary consultancy to undertake further investigations and preparation of detailed plans, including further community engagement and feasibility assessment of an aquatic facility. It was noted that this could be very costly and time consuming and would place the responsibility for arriving at an acceptable outcome on Council.

- **Seek interest from Private Sector (eg EoI)**

A different option is to test the feasibility of the planning controls and place responsibility for developing a plan for the precinct with the private sector. This could be achieved through an Expression of Interest (EoI) process, which would test ideas from the private sector subject to staying within the parameters of the current planning scheme controls and seek clarification on the appetite for private sector involvement in funding facilities which include aquatic and health and well being uses (and subsequently the gap between cost and funding).

The November 2015 report to Council advised;

"In order to ensure that any process to prepare a Development Plan includes a realistic assessment of the feasibility of a swimming pool and to overcome the challenges associated with the management of the process, a new approach is proposed.

As the history of harbour planning initiatives demonstrates, there is a significant variation of views in the community about how the harbour should be developed, ranging from no development at all, to a small scale of development with limited commercial use, to more significant redevelopment with a greater degree of commercial activity. No matter what plan has been produced, the process has always drawn significant criticism and caused concern with in the community.

Officers consider that there is the opportunity to take a different approach to the development of a plan which would aim to maximize the benefits as well as change the traditional dynamic between community and the Council as the lead proponent/applicant.

The following is the recommended approach:

- **Stage 1 - Market Sounding**

(Based on inclusion of a publicly accessible aquatic & well being centre, no accommodation and consistent with the provisions of the Special Use Zone)

The purpose of Stage 1 would be to conduct an independent market assessment of the permissible and as-of-right uses allowable under the SUZ.

This would provide an understanding of the likelihood of such development occurring, having regard for typical commercial considerations and expected returns. In undertaking this assessment, the requirements of the Special Use Zone (e.g.

preparation of a Development Plan) will be considered in the context of broader commercial imperatives and how the zone requirements may affect these. To inform the assessment, a broad cost estimate of constructing an Aquatic and Well-Being Centre (using standard costs) would be developed for the construction of such a facility. The process would include contact being made with a range of private sector investors with a possible interest in the harbour's redevelopment.

The key output of this task will be a clearly defined development scope which would in turn, underpin the following EOI documentation. It is estimated that this stage would take approximately 6 months following the appointment of Project Control Group.

- **Stage 2 – Expression of Interest Process - Development Plan Preparation**

(Based on inclusion of a publicly accessible aquatic & well-being centre, no accommodation and consistent with the provisions of the Special Use Zone)

Once clear parameters are defined based on the commercial considerations established through the market sounding process, the Project Control Group could then move to Stage 2.

The purpose of Stage 2 would be to invite the private sector to prepare Development Plan(s) consistent with the provisions of the Special Use Zone (as per the direction set by Planning Scheme Amendment C73) and which also includes a pool.

This process would establish whether there is a likelihood of a development proceeding and whether there is any genuine and viable opportunity to achieve the Council and community's aspirations for development of the precinct (as expressed in the current planning controls).

To do this the following steps would need to be undertaken:

- *Develop and release an Expression of Interest (Eoi) document calling for the preparation of a Development Plan based on the requirements of the Special Use Zone and which includes a pool. The development of the Eoi would occur in partnership with the community (see later discussion) to help ensure the right context and questions are asked and ensure the process is designed to achieve the effective input from the market.*
- *In addition there would need to be on-going involvement from State Government representatives to ensure their support for the process.*
- *Responses from the market would be formally reviewed by a Project Control Group and then Council.*

- **Stage 3 – Review of options**

The responses received in the Stage 2 Eoi process would inform the development and analysis of the options for the harbour redevelopment relevant to market feedback.

This process has been discussed with representatives of Regional Development Victoria (RDV) and Tourism Victoria who have given their support to a market based approach.

Their view is that an Eoi process to determine commercial interest in the harbour redevelopment would benefit strongly from an initial market sounding, which would assist

Council in developing a more definitive proposition for the market to respond to. The feedback was that market interest in an EOI would be less than optimal if the uncertainty about what outcome was sought was too great. This stage has been incorporated into the process above as Stage 1, ensuring that the EOI process in Stage 2 provides sufficient guidance to the market."

At the November 2015 Ordinary Council Meeting, Council resolved to commence the EOI process in Stage 1 to inform the Stage 2 Development Plan process but resolved not to undertake market testing. (It is noted that a further resolution was to request a further report to Council regarding the appointment of community representatives to a Project Control Group).

On 16 December 2015 Council resolved the makeup of the PCG and adopted the Terms of Reference (TOR) for the PCG. The following community members were appointed to the PCG on the 27 April 2016:

- Andrew Buchanan
- Tim Cobb
- Peter Fillmore
- Jane Gross
- John Riches
- John Verey

The first PCG meeting was held on Monday 30 May 2016. The meeting was attended by the appointed community representatives, representatives from the Department of Environment, Land Water and Planning (DEWLP), Department of Economic Development, Jobs, Transport and Resources (DEDJTR), Regional Development Victoria (RDV) and Council officers. It is worth noting that PCG meetings provide the opportunity for officers to have detailed discussions with State agencies on matters relating to leasing Crown land for commercial purposes and the State agencies to get a better understanding of Council's intention and the requirements within the planning scheme for the precinct.

At the first PCG meeting, State agencies raised concerns regarding the proposed process adopted by Council and strongly recommended that market testing be included.

In particular, the DELWP representative informed the PCG that prior to undertaking an involved EOI process, approval from the Minister for Energy, Environment and Climate Change (the Minister) for leasing Crown land is required. In order to obtain Minister's approval amongst other things, a business case should also be prepared and submitted to the Minister. It was highlighted that a market testing exercise would enable the Council to collect the necessary information required to develop the business case on potential future projects.

As a result of this advice, it is recommended that Council reconsider its decision not to include/conduct market testing as part of the process for the Apollo Bay Harbour project.

Council Plan / Other Strategies / Policy Good Governance

The market sounding exercise, EOI and the subsequent Development Plan process are transparent, and encourage democratic participation of the community in the decision making.

Further, the ultimate purpose of the Development Plan is to respond to the community needs and expectations of redeveloping the harbour precinct in a format consistent with the Special Use Zone.

A Planned Future

The Development Plan process aims to achieve Council's goals of facilitating growth, livability and development, and encouraging innovation and efficiency in the local and regional economy.

A Place to Live and Grow

The Council Plan, Apollo Bay Structure Plan and Colac Otway Planning Scheme all provide underpinning support for the redevelopment of the Apollo Bay Harbour precinct. Further, redevelopment of the harbour is recognised as a Regional Priority Project within G21.

Development in the precinct will result in improved services and facilities as well as economic and employment opportunities at local and regional levels.

Issues / Options

The Minister for Energy, Environment and Climate Change is responsible for the administration of the *Crown Land (Reserves) Act 1978* (CLRA), the *Forest Act 1958* and *Land Act 1958*.

These Acts enable leases to be granted over Crown land. CLRA in particular enables reservation of land for a range of public purposes, and a wide range of leases for commercial and non-commercial purposes on reserved Crown land that could attract investments, create employment and promote tourism and economic return to the State or land manager.

Leasing Policy for Crown Land in Victoria, 2010 (Leasing Policy) outlines the aims and purpose of leasing Crown land and the need to ensure consistency and transparency in the arrangements and managing Crown land in an ecologically sustainable manner.

The Minister may approve a lease of a Crown land for 21 years or more up to 65 years.

Crown Land Leasing Guidelines: Leasing Legislation, 2012 (by former Department of Sustainability and Environment), recognises the need for a longer term lease for projects that are funded by tenants "...to enable the tenant to amortise that investment or to allow a development to proceed". It also indicates prior to the approval the Minister must be satisfied "...the purpose for which the lease is to be granted is not detrimental to the purpose which the land is reserved". As such, in order to obtain the maximum and lasting benefit from the private sector investments and to enable return from such investments it is appropriate to consider long term investments.

To enable the Minister to determine if a proposal is in the public interest the Leasing Policy requires a business case to be submitted for leases longer than 21 years with comprehensive information including:

- the strategic importance (project of state or regional significance, or provision of essential services) of the proposal
- the environmental, social and economic costs and benefits associated with the lease proposal
- the capital outlays proposed and term proposed to amortise investment
- reasons demonstrating why the investment cannot be amortised within a 21 year, and
- any other matters relevant to the Minister's assessment.

In order to satisfy the Minister and to obtain leasing approval for future proposals in the precinct it is likely that a market sounding exercise would be required.

Whilst it is acknowledged that Council has previously resolved not to conduct market testing, strong advice from the State Government is that the project may stall if market testing is not undertaken.

A market testing exercise is considered to be beneficial as a cost effective approach to gauge the interest of prospective investors. Incorporating market testing into the process is recommended and supported by the participating State agencies DELWP, DEDTJR and RDV and the community representatives of the PCG.

Proposal

It is proposed that Council endorses a market testing approach to collect the necessary information required to prepare the business case for Minister's approval leasing Crown land.

Should Council support the market testing approach, officers will advise the PCG of Council's decision and prepare a project brief incorporating the PCG's comments on the aims and objectives of the project brief to engage suitable consultants to undertake the market testing. It is expected that officers would appoint a consultant by end of September 2016. Consultants may require a minimum of 8-10 weeks to conduct the market sounding.

Council will be briefed on the outcome with consultant's recommendations in early 2017.

It is noted that the PCG members have commented on the draft aims and objectives of the market testing process. Their comments will be incorporated in the final project brief to engage consultants should Council support the undertaking of the market testing. PCG would continue to be involved in the EOI process upon completion of the market testing, however PCG will be kept informed via email updates at key milestones of the market testing process. Updates will also be published at Council website.

Financial and Other Resource Implications

The market testing process would involve specialist consultant assistance. It is anticipated that this consultancy could cost at least a minimum of \$40,000.00. The 2016/17 financial year has budget allocation to cover the cost associated with the market testing and the subsequent EOI process.

Risk Management and Compliance Issues

As discussed in this report market testing is an important input before progressing to an EOI process and preparing a business case for the Minister's approval for leasing Crown Land. This approach will assist to assess the suitability of potential investments meeting the requirements of the Leasing Policy.

Market sounding will also inform the PCG and Council about the interest, needs and views of the private sector in investing within the precinct. It is a cost effective way to identify and understand the effectiveness of the current planning requirements in the real market.

Environmental and Climate Change Considerations

Undertaking the market sounding exercise will not have any environmental impacts.

However, impacts of climate change and future sea level rise would be a key issue for any redevelopment of the precinct. Preliminary studies have already been undertaken in this regard. A more detailed assessment of sea level rise impacts would need to be undertaken on proposals arising from the market sounding exercise should they pursued to the Development Plan stage.

Community Engagement

Market sounding aims to target the prospective investors at local, national and international levels. Outcome of this process will inform the EOI process and subsequently the preparation of the Development Plan. Undertaking the market sounding has been supported by the PCG.

Community engagement for the Development Plan will follow the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower. The methods selected will be ‘consult’ ‘collaborate’ and ‘involve’.

Implementation

If market testing is supported, Officers will engage a suitable consultant to undertake the market sounding by end of September 2016 in consultation with the PCG. Consultants may require a minimum of 8-10 weeks to conduct the market sounding. A report will be submitted to Council with the outcomes in early 2017.

Conclusion

A market testing exercise is recommended to inform the preparation of a business case to obtain Minister’s approval for leasing Crown Land within the Apollo Bay Harbour precinct. Market testing will also test the feasibility of private sector investment within the current planning controls and identify private sector expectations for investment within the precinct.

Attachments

Nil

Recommendation

That Council:

- a. Engage a suitable consultant to undertake the Market Testing for the Apollo Bay Harbour precinct.***
- b. On completion of the market testing process, submit a report to Council with the outcomes.***

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**OM162408-2 STAGED DEVELOPMENT PLAN - KINGDOM HALL OF JEHOVAH'S  
WITNESSES AT 117 MAIN STREET, ELLIMINYT - PP122/2016-1**

|             |                                  |           |             |
|-------------|----------------------------------|-----------|-------------|
| AUTHOR:     | Francis Wong                     | ENDORSED: | Brydon King |
| DEPARTMENT: | Development & Community Services | FILE REF: | F16/5122    |

**Purpose**

The purpose of this report is to consider the proposed staged Development Plan for the Kingdom Hall of Jehovah's Witnesses at 117 Main Street, Elliminyt, to facilitate redevelopment of the site.

**Declaration of Interests**

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

**Background**

The subject land at 117 Main Street, Elliminyt has a lot size of 4047 square metres and is currently used as a Place of Worship, containing an existing building and car parking.



The subject land is within the General Residential Zone (GRZ1) and is affected by the Development Plan Overlay Schedule 2 (DPO2).

The surrounding land to the north, west and south are within the GRZ, whilst land to the east is within the Commercial 2 Zone (C2Z).

The proposal is to demolish the existing building and construct a new building within the same footprint, to construct a new car park and to replace the signage. The proponent has advised that the existing building cannot be used due to excessive mould issues.

However, the DPO2 prohibits use and development (other than a single dwelling) until a Development Plan has been prepared to the satisfaction of Council. Therefore, the proponent has submitted a staged Development Plan to meet the requirements of the DPO2 (Attachment 1). If the Development Plan is approved, this would allow the redevelopment planning permit application to be assessed by Council.

It is noted that a proposed Development Plan prepared by Council for this area (DPO2 Site 3) was abandoned after the community expressed concerns with it (Attachment 3).

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

#### A Planned Future

*Creates an attractive shire with quality buildings and spaces, accessible travel and transport, and a community that has the services and facilities it needs now and in the future; supports a prosperous economy where trade, manufacturing and business activity flourishes.*

#### *Our Goal:*

*Facilitate the growth, liveability and development of the shire and encourage innovation and efficiency in the local economy.*

The proposed staged Development Plan would enable the redevelopment of the communal building which is currently in an unsafe state that cannot be used by the Jehovah's Witnesses community. Further it facilitates improvements to the use of the land particularly in terms of a formal car park with adequate car parking spaces available.

The State and Local Planning Policy Frameworks, as set out in the Colac Otway Planning Scheme, seek to ensure the objectives of planning in Victoria are fostered through appropriate land use and development policies and practices, which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development. It is considered that the proposed staged Development Plan would meet the objectives and strategies of the relevant State and local planning policies, and would allow for future planning applications on the subject land to accord with relevant requirements.

### **Issues / Options**

Council has the following options:

- a) Approve the proposed staged Development Plan.
- b) Refuse to approve the proposed staged Development Plan.

### **Proposal**

#### Planning justification for the staged Development Plan

As discussed above, the DPO stipulates that a permit must not be granted for use or development of land (other than a single dwelling) until a Development Plan is prepared to the satisfaction of Council.

As the proposal is for use and development of the land for a Place of Worship, a Development Plan would need to be prepared and approved by Council before a planning permit may be considered.

It is considered that the proposed staged Development Plan would allow the established use to continue on the subject land, and would enable urban regeneration of the site, especially in terms of a new building and associated infrastructure, such as car parking, signage, landscaping and lighting.



The proposed staged Development Plan specifically states that it would only allow for the existing 'Place of Worship' use to occur on the subject land, and therefore would not allow for a change of use. If a change of use were proposed, the staged Development Plan would need to be amended prior to consideration of a planning permit application.

Furthermore, the method of staging the Development Plan would allow flexibility for future development or subdivision of other land in the DPO2 Site 3 area to be staged. The proposed staged Development Plan would not compromise the orderly planning and development of the DPO2 Site 3 area, particularly as the subject land was not involved in the abandoned Development Plan in terms of subdivision, road networks or public open space.

#### Development Plan Overlay requirements

*The development plan must address the following matters:*

- *Internal road network.*
- *Public open space.*
- *Connectivity to other residential land and public open space.*
- *Diversity of lot sizes and proposed lot density.*
- *Provision of community facilities.*
- *Impact of development on flora, fauna and cultural heritage.*

The subject land and proposed staged Development Plan would not compromise the potential for future road networks through the area. The proposal would leave the rear portion of the lot vacant (approximately 1400sqm), which could be made available for use as public open space and/or residential purposes in the future (subject to future staged Development Plan). The proposal and staged Development Plan would not include or require vegetation removal.

#### **Financial and Other Resource Implications**

There are no financial or resource implications for Council associated with the proposed staged Development Plan.

#### **Risk Management and Compliance Issues**

The risks associated with refusing the staged Development Plan would result in the continued use of an unsafe building, which may have major health risks due to the mould issues.

#### **Environmental and Climate Change Considerations**

There are no environmental and climate change considerations for this proposed staged Development Plan.

#### **Community Engagement**

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected for this staged Development Plan is 'to inform'. It should be noted that there is no statutory provision for the public notification of Development Plans. The opportunity for public involvement in the Development Plan process is at the time of the Planning Scheme Amendment that applied the Development Plan Overlay to land.

However, notification letters were sent on 20 July 2016 to the adjoining landowners of this staged Development Plan. No submissions were received.

It is also noted that should any submissions be received, they would not have any statutory weight or appeal rights. The decision of approving or refusing the proposed staged Development Plan must be made on the basis of whether it meets the requirements of DPO2.

### **Implementation**

If Council approves the proposed staged Development Plan for the land, the landholder will be provided with a degree of certainty about the future development of the land. The land currently cannot be redeveloped due to the requirements of DPO2. An approved Development Plan would enable Council to consider a planning application for the land. Council would also have a clear direction on how the land can develop, and would be in a position to consider whether a development is consistent with the approved Development Plan as required.

### **Conclusion**

It is considered that the proposed staged Development Plan for the Kingdom Hall of Jehovah's Witnesses responds to the requirements of DPO2. The proposed staged Development Plan would facilitate future redevelopment of the land. Therefore, it is recommended that the proposed staged Development Plan be approved.

### **Attachments**

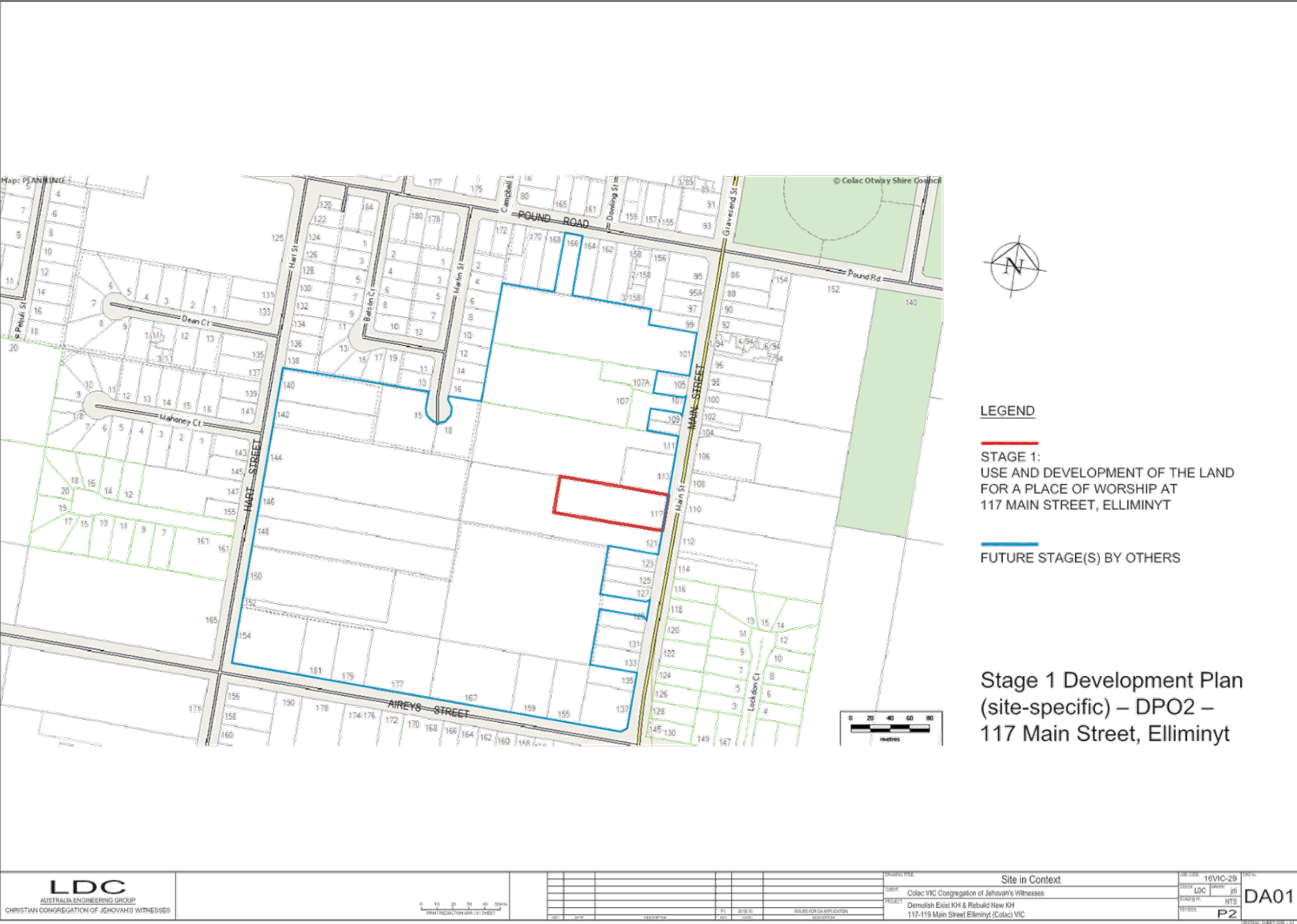
1. Stage 1 Development Plan
2. Proposed Construction Plans
3. Abandoned DPO2 Site 3 Development Plan

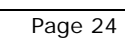
### **Recommendation**

#### ***That Council:***

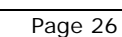
- 1. Approves the staged Development Plan for Kingdom Hall of Jehovah's Witnesses at 117 Main Street, Elliminyt.***
- 2. Notifies the landowner, and adjoining landowners, of the approval of the staged Development Plan.***

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Wallaby

Dune

11

ROOFING:
Colorbond = Wallaby
Corrugated Iron roof, fascia and gutters

**EXTERNAL WINDOWS AND
EXTERNAL DOORS:**
Colorbond - Dune

VE SOFFITS:
1/2 x White Duck Quarter

BRICK:
Midland - Eian Range, Hardlands Bricks
Mid grey mortar joints

SIDE FENCING:
1800mm high Good Neighbour Fence
Colour : Domain

GUTTER DOWN PIPES:
90mm dia. PVC
Select paint colour to suit wall substrate

BOLLARDS:
Steel as shown. HD

CARPARK LIGHTS:
Height as specified by engineers.
Steel with HDG finish.

SIGNAGE:
Sample as shown

CROSS SECTION

SCALE 1:100 (1"=10')

WEST ELEVATION

SCALE 1:500 (@AT)

EAST ELEVATION

SCALE 1:100 (3A)

SOUTH ELEVATION

SCALE 1:100 (8A1)

NORTH ELEVATION

SCALE 1:100 (SEE 21)

PROPOSED FLOOR PLAN

SCALE 1:100 (5X1)

LDC

AUSTRALIA ENGINEERING GROUP

CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES

Copyright © 2014

Proposed Floor Plan & Elevations, Colour Schedule

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| | Cuentas |
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Melbourne Congregation of Jehovah's Witnesses Trust

10

Demolish Exist KH & Rebuild New KH
117-119 Main Street Elliminyt (Colac) VIC

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| JOB CODE | 16V/C-29 | ENGINE |
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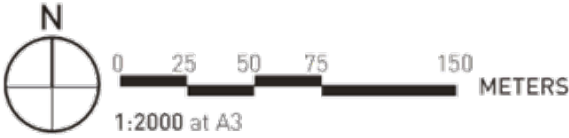
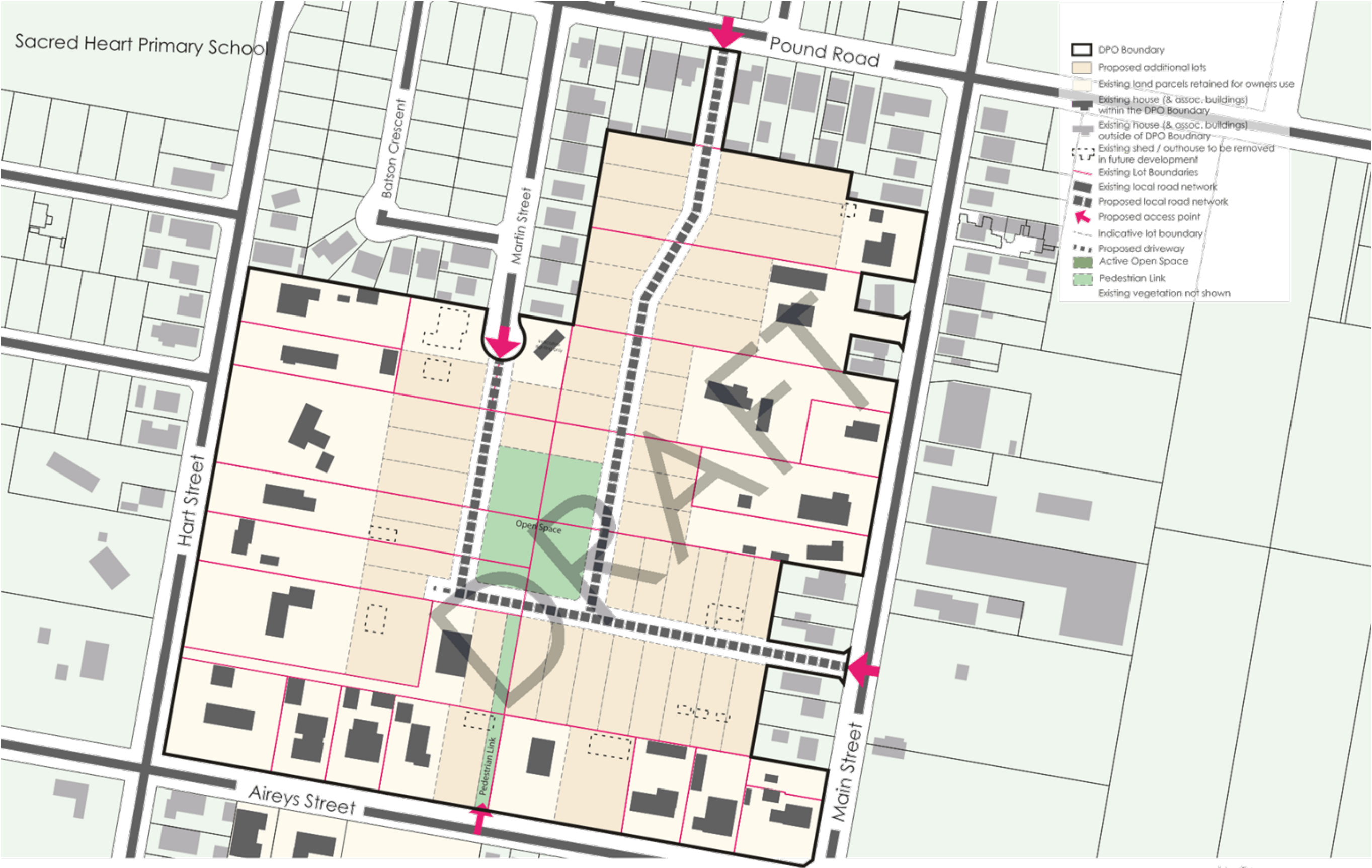
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DA05

OPERATING SPEED: 1500 RPM



February 2014
COLAC DRAFT DEVELOPMENT PLAN
DPO Site 3
Level 1, 6 Riverside Quay Southbank, VIC 3006
t 9675 3025 f 9675



OM162408-3 SECTION 96A COMBINED PLANNING SCHEME AMENDMENT C92 AND PLANNING PERMIT APPLICATION NO. PP82/2016-1 - REZONING AND SUBDIVISION OF LAND AT 120 POUND ROAD, ELLIMINYT

| | | | |
|-------------|----------------------------------|-----------|-------------|
| AUTHOR: | Francis Wong | ENDORSED: | Brydon King |
| DEPARTMENT: | Development & Community Services | FILE REF: | F16/3154 |

Purpose

The purpose of this report is to seek Council's support to prepare and exhibit Planning Scheme Amendment C92, which proposes to rezone and subdivide the land at 120 Pound Road, Elliminyt under Section 96A of the Planning and Environment Act 1987.

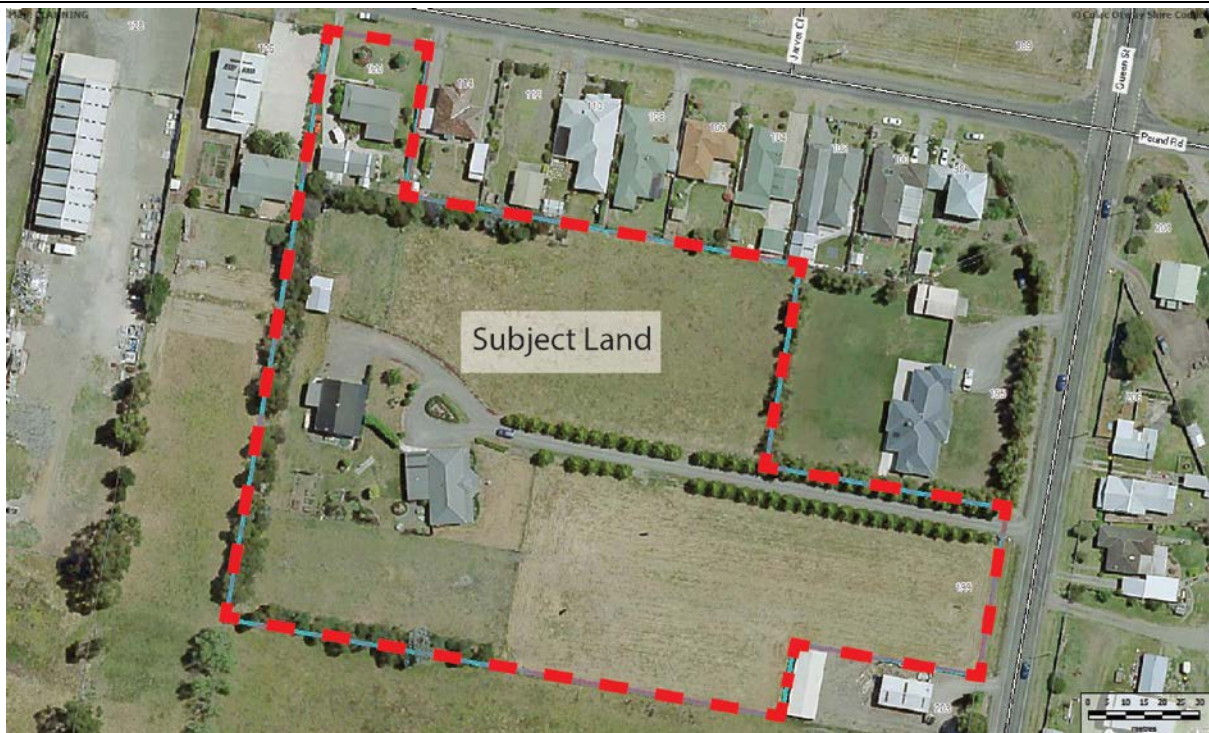
Declaration of Interests

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

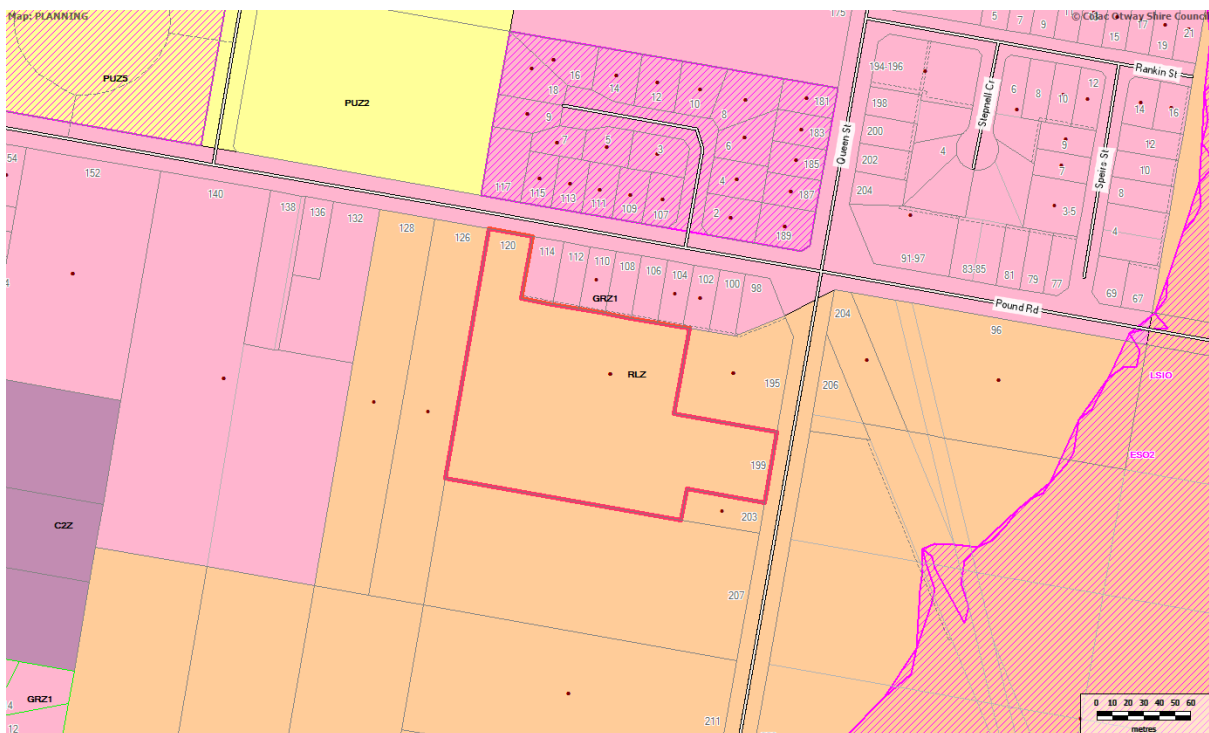
Background

On behalf of the landowner, Rod Bright & Associates have submitted a combined rezoning and subdivision proposal, under Section 96A of the *Planning and Environment Act 1987* (the Act), to Council for consideration. The proposal concerns the land known and described as Lot 2 PS537971, commonly known as 120 Pound Road, Elliminyt. The whole of the land is currently zoned as Rural Living Zone (RLZ), with no overlays affecting the land. The land contains two dwellings, with one dwelling fronting Pound Road to the north and the other dwelling fronting Queen Street to the east. The dwelling which fronts Pound Road sits within an existing residential streetscape to the west and north. The land to the north (including the lots fronting Pound Road) is within the General Residential Zone (GRZ) and used for residential purposes, whilst land to the east, south and west is within the Rural Living Zone (RLZ). Land to the northwest is within the Public Use Zone Schedule 2 (PUZ2), which is for education purposes and is currently vacant.

The land is close to existing services: the Colac Community Library and Learning Centre, and Colac Secondary College are located approximately 150 metres to the north and there is a childcare centre located approximately 130 metres to the northeast. The Colac Cemetery is located approximately 190 metres to the northwest, and the Colac CBD is located approximately 1.4 kilometres to the north.



Above: Aerial image taken in December 2014 showing two dwellings on the subject land.



Above: Current lot layout, zones and overlays in the surrounding area, including the nearby Land Subject to Inundation Overlay (LSIO) to the east.

The proponent is seeking to subdivide the land into two lots so that each of the existing dwellings can occupy one lot, with independent access to their respective road frontages being retained. This would be achieved by subdividing off the northwest rectangular part of the land, which would generally reflect the adjoining residential lot layout to the east. The two lot subdivision would result in the proposed Lot 1 having a lot size of 1068 square metres and proposed Lot 2 having a lot size of 1.963 hectares. However, the subdivision is not possible under the current zone, as the RLZ has a minimum subdivision area in Elliminyt of 1.2 hectares. The only option to achieve the subdivision is through a planning scheme amendment to rezone the proposed Lot 1 to the GRZ, with the balance lot remaining in the RLZ consistent with the existing land use.

Furthermore, should the rezoning be supported, the Colac Framework Plan at Clause 21.03-2 of the Colac Otway Planning Scheme would need to be amended to reflect the proposed rezoning, and to also fix an anomaly on the Plan to include the adjoining GRZ lots to the northeast into the long term settlement boundary.

Council Plan / Other Strategies / Policy

A Planned Future

Creates an attractive shire with quality buildings and spaces, accessible travel and transport, and a community that has the services and facilities it needs now and in the future; supports a prosperous economy where trade, manufacturing and business activity flourishes.

Our Goal:

Facilitate the growth, liveability and development of the shire and encourage innovation and efficiency in the local economy.

A Place to Live and Grow

Is a community where people feel cared for and supported; where buildings and spaces facilitate creativity, social activity and enrichment of life, and people have access to gain the skills and education needed to reach their potential.

Our Goal:

Improve access to buildings, spaces, services and education to support and enable quality of life.

This amendment would apply the most appropriate zone (GRZ) to the proposed Lot 1, which would be consistent with the current use and development of that land.

Issues / Options

Strategic justification for rezoning

It is considered that the rezoning is strategically justified and would appropriately reflect the current use and development occurring on the land. The rezoning would formalise the existing use and development of proposed Lot 1, matching the use and development of adjoining land to the east fronting Pound Road.

The rezoning would not alter the planning controls, or existing use and development of the proposed Lot 2, which should remain within the RLZ. Proposed Lot 1 would utilise the existing access onto Pound Road whilst the proposed Lot 2 would continue to utilise the access onto Queen Street. The proposal would not change the neighbourhood character, as it is not proposed to modify the existing dwellings, and no additional buildings are proposed. It is considered that the proposal is essentially a mapping change which reflects existing conditions.

It is also considered that the existing planning controls are overly restrictive and would potentially require planning permission for buildings and works associated with the dwelling fronting Pound Road pursuant to the Rural Living Zone due to the setback triggers within the zone (i.e. 20 metres from a road, 10 metres from a

boundary, or 20 metres from a dwelling not in the same ownership). This is considered to be an unnecessary requirement and does not serve any strategic purpose.

By allowing the rezoning and subdivision, the lots proposed to be created would enable each property to reflect the existing and preferred neighbourhood character of the area, particularly in terms of settlement pattern, lot layout, lot sizes, setbacks and the number of dwellings on a lot in the RLZ. Proposed Lot 1, with an area of 1068 square metres, would have an area comparable to properties to the east (which range in lot size between 674 and 823 square metres).

Whilst it is arguably unusual to create larger lots (of 1,068 square metres in the case of proposed Lot 1) in the General Residential Zone (which would be capable of further subdivision in the future), in this case the proposal is considered acceptable as it would reflect the current use of the land, and would ensure that the existing dwelling and ancillary buildings and works are on the same title.

Strategic justification for amendment of the long term settlement boundary

The Colac Framework Plan at Clause 21.03-2 indicates the future strategic direction for Colac and contains a long term settlement boundary which designates where existing or future residential development should occur. To appropriately reflect the strategic intent for the area, the Colac Framework Plan would need to be amended as part of this process to include the proposed GRZ lot within the long term settlement boundary. Moreover, the adjoining lots to the east fronting Pound Road, which currently contain a row of dwellings on 700 square metre lots, are excluded from the long term settlement boundary. This is anomalous with the existing zoning, and use and development of those lots and should be corrected.

Options

Council may support or refuse the request for authorisation and exhibition of Amendment C92 being made to the Minister for Planning. If Council resolves to support the request, it must obtain the Minister for Planning's authorisation to prepare and exhibit the amendment. If Council resolves to refuse the request, it must notify the proponent of its decision.

Proposal

It is recommended that Council support the request for authorisation and exhibition of the Amendment, and proceed to obtain the Minister for Planning's authorisation to prepare and exhibit the amendment in accordance with the relevant provisions of the *Planning and Environment Act 1987*.

Financial and Other Resource Implications

The financial cost of the amendment is being borne by the proponent.

Risk Management and Compliance Issues

The risk to Council of not proceeding with the Amendment is that the land owner would be unable to subdivide the land and would be unnecessarily burdened with planning permission requirements. The strategic intent for the immediate area would also be inaccurately reflected in the Colac Framework.

Environmental and Climate Change Considerations

There are no direct environmental or climate change considerations associated with the amendment.

Community Engagement

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected for this amendment is to inform. This would include public exhibition of the amendment. If any submissions are received, these would be considered by Council and if unable to be resolved, an independent panel.

Implementation

The subdivision and rezoning would be implemented via a combined subdivision permit application and Planning Scheme Amendment C92. In order to proceed with the amendment, authorisation must be sought from the Minister for Planning to prepare and exhibit the Amendment.

Conclusion

Amendment C92 seeks to rezone and subdivide land at 120 Pound Road, Elliminyt and update the Colac Framework Plan to reflect the current use and development of the subject land and adjoining lots.

It is recommended that authorisation and exhibition of the amendment be supported by Council.

Attachments

1. Amendment C92 – 120 Pound Road ELLIMINYT - Figure 1 - Rezoning
2. Amendment C92 – 120 Pound Road ELLIMINYT - Figure 2 - Amended Colac Framework Plan
3. Amendment C92 – 120 Pound Road ELLIMINYT - Clause 21.03 tracked changes
4. Amendment C92 – 120 Pound Road ELLIMINYT - Explanatory Report
5. Amendment C92 – 120 Pound Road ELLIMINYT - Draft Planning Permit PP82/2016-1

Recommendation

That Council:

- ***Pursuant to section 4B of the Planning and Environment Act 1987, seek authorisation from the Minister for Planning to prepare Amendment C92 which seeks to:***
 - ***Subdivide 120 Pound Road Elliminyt into two lots subject to conditions.***
 - ***Rezone part of the land from Rural Living Zone to General Residential Zone Schedule 1.***
 - ***Amend Clause 21.03 Settlement – Colac Framework Plan to include Nos. 98, 100, 102, 104, 106, 108, 110, 112, and 114 Pound Road Elliminyt within the town's long term settlement boundary.***
- ***Exhibit Amendment C92 for a minimum period of six weeks seeking written submissions.***
- ***Authorise Council officers to make minor changes to the Amendment documentation.***

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Figure 1: Proposed rezoning from Rural Living Zone (RLZ) to General Residential Zone (GRZ).



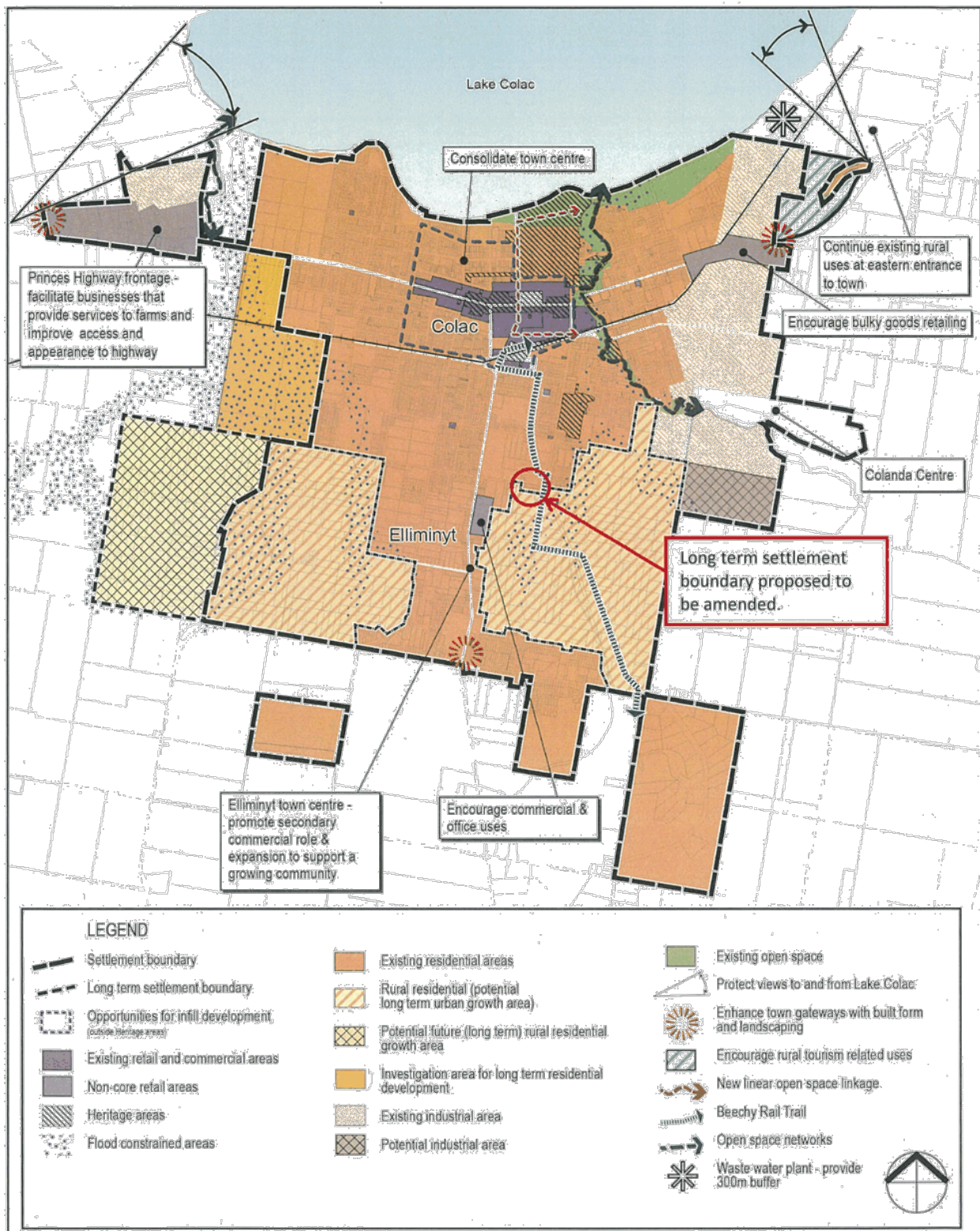


Figure 2: Amended Colac Framework Plan

COLAC OTWAY PLANNING SCHEME

**21.03 SETTLEMENT**

19/02/2015  
C74

**21.03-1 General**

11/09/2014  
C75

**Overview**

- Colac is the major regional centre in the Shire for residential, service and manufacturing industry, retail, office services, recreation and education facilities.
- Apollo Bay is the major coastal urban centre in the Shire. It is experiencing high rates of development for both permanent and short-term (tourist) accommodation. It also provides a range of entertainment and recreational related facilities, including swimming, fishing, golf, cafes and restaurants.
- Colac and the coastal townships are experiencing increased rates of development.
- The management of residential, tourism and infrastructure development pressures is required, particularly in coastal areas.
- The development of the major towns in the Shire should take place in accordance with the recently completed Structure Plans for Colac and Apollo Bay.
- Smaller coastal settlements occur at Kennett River, Marengo, Separation Creek, Skenes Creek and Wye River, where development is expected to occur within current settlement boundaries due to various environmental constraints to growth.
- Other townships are located at Alvie, Barwon Downs, Beeac, Beech Forest, Birregurra, Carlisle River, Coragulac, Cororooke, Cressy, Forrest, Gellibrand, Lavers Hill, Pirron Yallock, Swan Marsh and Warrion.
- The future development of other townships in the Shire should proceed in a manner that contributes to the economic development of these townships, acknowledges and responds to environmental constraints and protects the broader landscapes within which these townships are located.
- Effluent disposal is a major problem in the smaller settlements, particularly in the peak periods with high tourist numbers.
- Rural residential living provides a desirable lifestyle for a number of residents and if appropriately located can reduce land use conflict in farming areas and contribute toward the economic development of small townships.
- The Rural Living Strategy 2011 has identified and designated suitable locations for rural living areas which do not take up high quality agricultural land and where an adequate level of services can be provided.
- The Rural Living Strategy highlights the role of small townships in accessing rural living land.
- A number of settlements have been identified with potentially suitable locations for additional rural living and township development subject to further investigation including Beech Forest, Gellibrand, Forrest, Alvie, Cororooke and Beeac.
- A number of de facto rural living areas have developed over a number of years on old subdivisions within the localities of Barongarook – Bushby's Road, Barongarook – Robinson Road, Barongarook – Everett Crescent, Barramunga, Bungador, Cororooke – Langdons Lane, Grey River, Irrewarra – Pyles Road, Johanna, Kawarren, Marengo – Alice Court, Petticoat Creek, Warncoort and Weeaprounah.
- A number of largely undeveloped, old and inappropriate subdivisions unsuitable for development are found within the Shire abutting the township boundaries of Cressy and



COLAC OTWAY PLANNING SCHEME

Pirron Yallock and in the localities of Gerangamete and Irrewillipe – Swan Marsh-Irrewillipe Road.

- There is a need to encourage excellence in the design of new development, including the layout of subdivisions and the recognition of cultural heritage.
- New urban development should be supported by the provision of or upgrade of public open space to meet the needs of the community it is to serve.

**Objectives**

- To facilitate the development of the various settlements in the Shire in accordance with the needs of each local community.
- To facilitate a range of developments in an environmentally sensitive way to provide greater residential choice.
- To direct rural residential and small town development to preferred locations.
- To provide limited opportunities for rural living development where these do not detract from the key environmental qualities of the region and do not cause land use conflict in farming areas.
- To minimise ad hoc development of unserviced old and inappropriate subdivision in the Farming Zone.
- To provide for and improve public open space to meet the needs of the community.

**Strategies**

- Ensure that there is sufficient fully serviced residential land to meet the needs of the existing and future population.
- Encourage future residential development into existing zoned and serviced areas to avoid an oversupply of residential zoned land and to make the most effective use of infrastructure services.
- Provide opportunities for the provision of a wide range of housing choices for residents, short-term holiday residents and tourists.
- Development within rural living areas should be contained within the existing Rural Living Zone land and further subdivision, other than in Elliminyt, should be discouraged.
- Restructure existing lots in old and inappropriate subdivisions in Cressy, Gerangamete, Pirron Yallock and Irrewillipe in order to minimise development, retain the land in agriculture, prevent further servicing problems and avoid ad hoc development outside designated settlement boundaries.
- Ensure that development incorporates Environmentally Sustainable Development (ESD) practises.
- Promote a pattern of settlements in the coastal strip that balances between opportunity for growth and retention of environmental and cultural qualities.
- Restrict the expansion of other coastal settlements in accordance with environmental constraints.
- Ensure that development of the Colac and Apollo Bay airfields is not prejudiced by encroaching urban development.
- Ensure the provision of public open space meets the needs of the communities it is to serve by improving access, facilities and presentation.

COLAC OTWAY PLANNING SCHEME

**21.03-2 Colac**

11/09/2014

**C92**  
Proposed C92

**Overview**

A Structure Plan for Colac was adopted by Council (February 2007) and articulates the preferred development future for this key centre of the municipality and broader region. Key issues to emerge from the Structure Plan include the need for:

- A township boundary to clearly identify the extent of future development and enable the protection of valuable farming land that surrounds the township.
- Consolidation around the town centre and activity nodes taking into account heritage constraints.
- Provision of a secondary commercial node to cater for the growing area of Elliminyt.
- Retention and enhancement of Colac's heritage assets.
- Protection of Lake Colac from inappropriate industrial development.
- Provision of an adequate supply of industrial land consolidated in east Colac.
- An increase in the amount of public open space (both linear and non-linear) and development of policy direction supporting future open space provision for residential development.
- Better integration between Colac and Lake Colac through design features and foreshore development.
- Increased opportunity for recreational linkages between key activity areas including Lake Colac.
- Urban design improvements for the enhancement of the Colac Town Centre and main street.
- Improved traffic management in Colac.
- Strategies to create a precinct to focus community learning through a multi-purpose education, recreation and community precinct.
- There is a need to identify a heavy vehicle by-pass of the Murray Street retail centre.

The *Colac CBD and Entrances Project (2012)* outlines proposals for the enhancement of Colac's CBD and its eastern and western entrances which focus on the design of buildings and spaces.

The Plan's key recommendations are to:

- Develop Colac as a 'Botanic Garden City' with thematic tree planting throughout the CBD, linking the Botanic Gardens, Beechy Precinct and Barongarook Creek corridor.
- Improve the eastern entrance to the CBD with enhanced landscaping and views to heritage buildings, widened pedestrian pathways over the Barangarook Creek bridge and improved visibility to the Visitor Information Centre.
- Enhance priority streetscapes: Improve Murray Street West's streetscape with tree planting and other works, continuing the design theme of the central part of Murray Street. Improve Bromfield Street's streetscape with new tree planting, improved pedestrian access, bicycle lanes and the redevelopment of underused land at the rear of Murray Street shops with improved pedestrian links through to Murray Street. Upgrade Memorial Square's western edge with refurbished amenities and a shared space where pedestrians have priority which could ultimately be extended around the park and south along Gellibrand Street to the Station. Improve Murray Street East's streetscape with road side tree planting, upgraded footpath pavement, pedestrian crossings and street furniture, and infill planting where gaps exist.

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COLAC OTWAY PLANNING SCHEME

- Improve the outer approaches to Colac with new landscaping, framing views to the Lake and emphasis on reducing the visual clutter of advertising signage.
- Improve the laneway network.
- Provide new and improved bicycle lanes.
- Apply built form guidelines to the CBD with emphasis on the inner retail areas to maintain the 'fine grain' character of these areas and to ensure a high quality of new architecture and the protection of heritage buildings.

**Objectives**

- To manage the growth of Colac consistent with its role as the major urban centre of the Shire.
- To enhance the built and natural environment of Colac.
- To develop a unifying design theme for Colac – 'Colac Botanic Garden City' – as a memorable and identifying feature of the town.
- To create landscape links between the main activity areas of the CBD and its principal open spaces.
- To improve the amenity and appearance of Colac's main pedestrian streets and town entrances.
- To create a pedestrian-focussed, accessible and well-connected public realm, particularly for those with limited mobility.
- To promote sustainable methods of transport, supporting walking and cycling as viable alternatives to car travel.
- To manage the road network to optimise its safety, efficiency and amenity for all road users.

**Strategies**

- Ensure that the development of Colac occurs generally in accordance with the strategic directions outlined in the Colac Framework Plan and the Colac CBD Framework Plan attached to this Clause.
- Encourage medium density development in the existing Colac town centre and ensure that infill housing proposals demonstrate that they are designed in a manner that is compatible and appropriate for the prevailing character and heritage values of the precinct.
- Create additional residential opportunities close to the Colac town centre.
- Provide adequate car parking to cater for commercial development consistent with the Colac Commercial Centre Parking Precinct Plan 2011, recognising that opportunity exists to take advantage of underutilised street parking and shared off street parking.
- Ensure new development in the hospital precinct of the CBD provides on site parking to meet projected demand and does not contribute further to on street parking pressures.
- Retain heritage places and areas as significant components of Colac's character and attractiveness and encourage their adaptive re-use and restoration including by supporting innovative uses that attract visitors and customers into disused retail areas.
- Designate areas of rural land between Elliminyt and Colac (east and west of Colac - Lavers Hill Road) as rural lifestyle opportunities.
- Support an increase in the amount of usable public open space (both linear and non-linear) to support recreational land uses and linkages between activities.

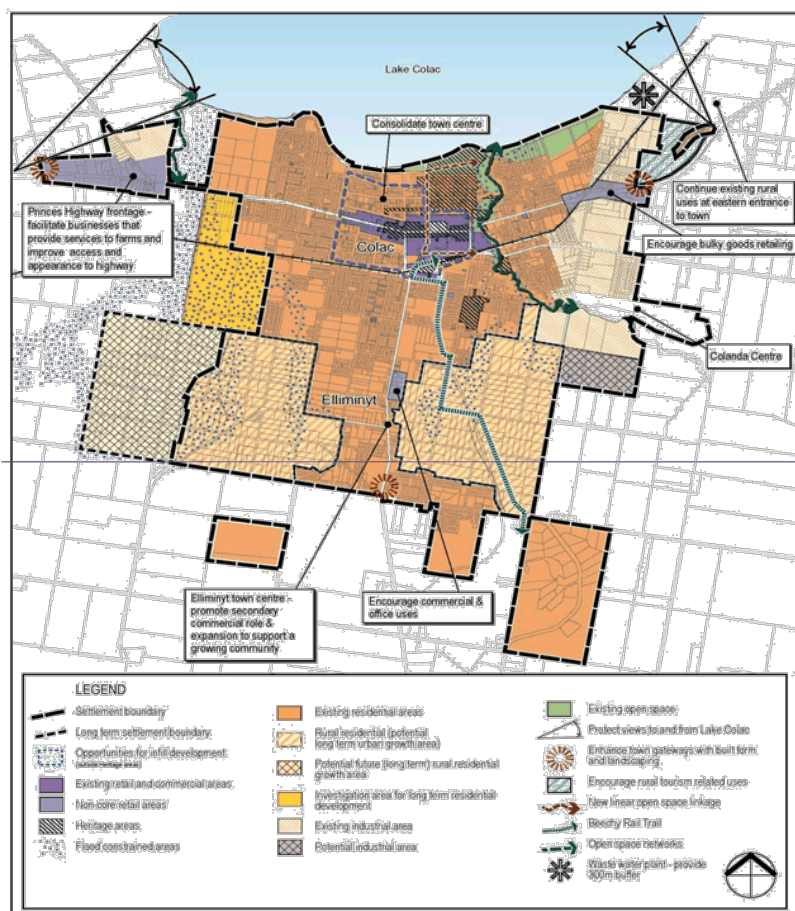
COLAC OTWAY PLANNING SCHEME

- Discourage any additional or new industrial development adjacent to Lake Colac.
- Encourage the relocation of existing 'inappropriate' industrial uses out of the town centre.
- Identify new industrial opportunities in Colac East which provide areas suited to a diverse range of light to general industrial activities.
- Improve the appearance of existing industrial development in Colac to provide more attractive and inviting entrances to the town.
- Designate land in Elliminyt for a community / commercial node.
- Provide for commercial type uses on Colac-Lavers Hill Road.
- Provide opportunities for expansion of the east Colac Highway Commercial area.
- Ensure major retail and commercial developments locate within the Colac CBD (Commercial 1 Zoned land only) rather than outside the town centre
- Minimise the impact of the Colac Water Reclamation Plant on development on nearby land.
- Ensure that future use and development of the Colac Water Reclamation Plant is not detrimentally affected by allowing inconsistent and potentially conflicting development to occur within its buffer area.
- Create a multi-purpose education, recreation and community precinct to focus community learning.
- Investigate options for a heavy vehicle by-pass of the Murray Street retail centre.
- Encourage redevelopment of underused or vacant sites (e.g. surface car parks, vacant land at the rear of buildings, upper levels of single storey buildings) in the CBD.
- Encourage the upgrading of shopfronts and building facades in the CBD, particularly on Murray Street and around Memorial Square.
- Support innovative uses that attract visitors and customers in disused areas in the Colac CBD.
- Encourage the removal of excessive roof top, above verandah and free standing signs, and other visually dominant signs, as sites are redeveloped.
- Develop a permeable network of active laneways and arcades in the CBD, including
  - improved pedestrian thoroughfares between Murray and Bromfield Streets.
- Encourage and facilitate a high quality of architecture within the CBD through the implementation of building design guidelines.
- Encourage new development to provide an active frontage to the streetscapes and car parks, including the provision of active frontages to Bromfield Street for buildings fronting Murray Street.
- Encourage the reinstatement of verandahs on older buildings and encourage verandahs on new buildings for weather protection.
- Encourage planting on properties along the eastern and western entrances to Colac, particularly where it has potential to screen industrial activities.
- Undertake and implement a strategy for the co-ordination and design of all signage along the eastern and western entrance corridors to Colac.
- Encourage new development within the CBD to incorporate Environmentally Sustainable Design (ESD) initiatives.
- Maintain the 'fine grain' character of inner retail areas.

COLAC OTWAY PLANNING SCHEME

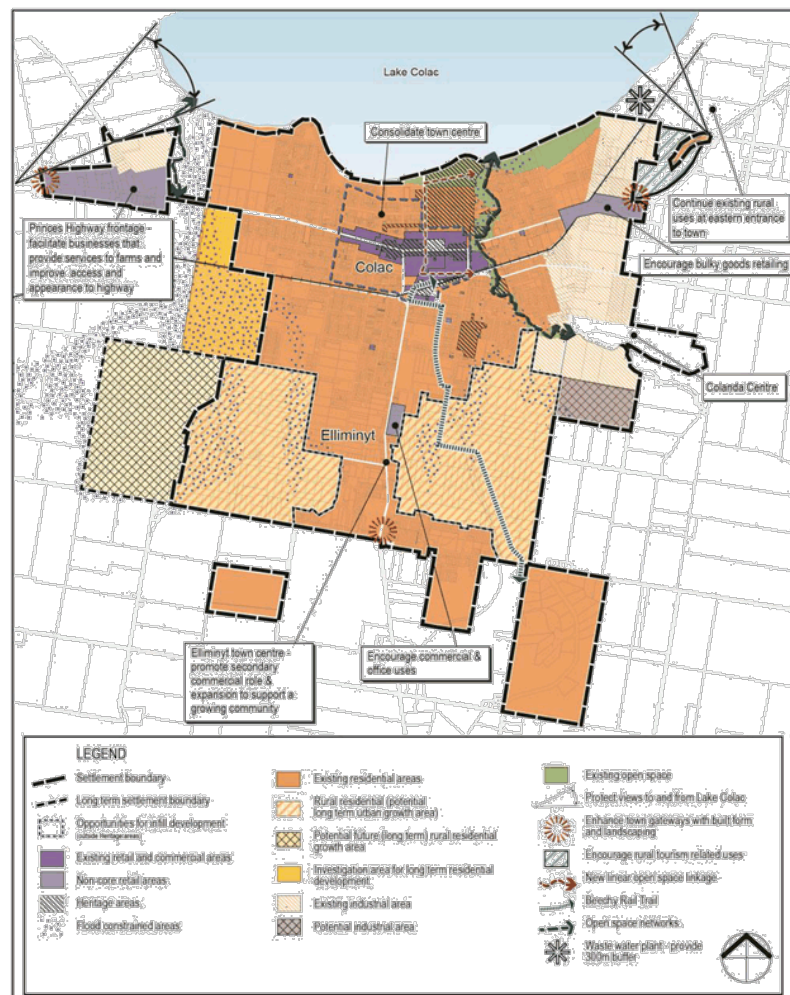
- Explore the potential of developing a neighbourhood park on the Irrewillipe Road Basin Reserve.
- Improve and enhance the pathways along Barongarook Creek.
- Improve and expand organised sports facilities at the Golf Club/Turf Club site.
- Investigate opportunities for open space at the former High School site.

**Colac Framework Plan**



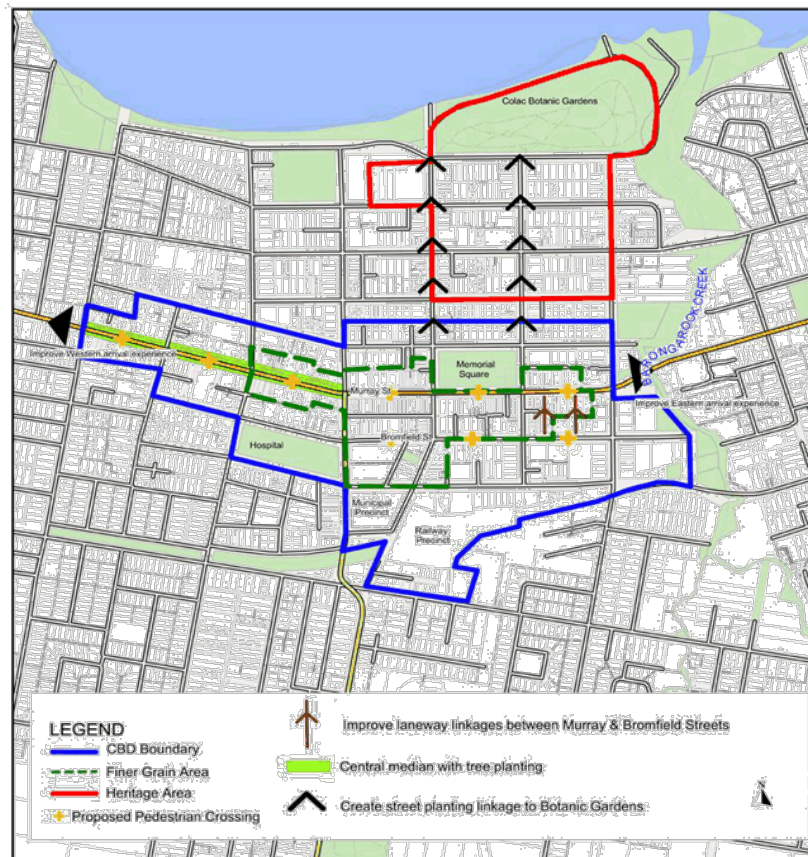


COLAC OTWAY PLANNING SCHEME



COLAC OTWAY PLANNING SCHEME

Colac CBD Framework Plan



COLAC OTWAY PLANNING SCHEME

**21.03-3 Apollo Bay and Marengo**

19/02/2015  
C74

**Overview**

A Structure Plan for Apollo Bay (including Marengo and Skenes Creek) was adopted by Council (April 2007) and articulates the preferred development future for this key coastal centre. Key issues to emerge from the Structure Plan were that:

- Apollo Bay, Marengo and Skenes Creek are to remain as distinct coastal settlements with development to be contained within coastal settlement boundaries.
- Each settlement has a separate identity and local character;
- A key role of Apollo Bay is to provide a diversity of housing opportunities consistent with its identity and local character;
- The natural beauty of the area, with its unspoilt beaches set against a dramatic backdrop of rolling hills, providing the overarching character which unites the settlements, to be reflected in new development;
- The seaside fishing village character of Apollo Bay, focused around a robust working harbour, is highly valued and this character should be preserved and strengthened by new development;
- Change in Apollo Bay, Marengo and Skenes Creek should take place with a demonstrated commitment to healthy lifestyles and ecological sustainability, and be responsive to the natural environment;
- The settlements should continue to provide for high quality living, offering improved community facilities and services, as well as economic development opportunities, for a self sustaining lifestyle.
- Water supply is a potential constraint to the future growth of Apollo Bay which can only proceed subject to the demonstrated availability of an adequate water supply.
- A settlement boundary and urban design review was completed in 2012. This reviewed a number of urban investigation areas. The settlement boundary now allows for sufficient urban development to cater for growth to 2030.

**Objectives**

- To develop Apollo Bay as an attractive residential community which provides a high quality environment as a significant tourist centre.
- To retain Apollo Bay, Marengo and Skenes Creek as distinct coastal settlements with their own local character.
- To ensure that the natural beauty of the area is reflected in new development.
- To preserve the seaside village character of Apollo Bay.
- To ensure that change demonstrates a commitment to sustainability and is responsive to the natural environment.

**Strategies**

- Ensure that the development of Apollo Bay and Marengo occurs generally in accordance with the strategic directions outlined in the Apollo Bay Framework Plan attached to this Clause.



COLAC OTWAY PLANNING SCHEME

**Settlement Character and Form**

- Consolidate the town centre of Apollo Bay, limit building heights and provide a greater diversity of accommodation at higher densities within and in close proximity to the commercial area.
- Improve pedestrian linkages in the town centre with new mid-block links between the Great Ocean Road and Pascoe Street.
- In the residential areas outside the town centre of Apollo Bay, limit building heights and ensure upper levels are well articulated to respect the character of the area and provide for a more traditional dwelling density to contribute to a diversity of housing choice.
- Require new development and streetscape works in the Apollo Bay town centre to build on and reinforce the fishing village coastal character of the township, and contribute to the creation of a vibrant public realm.
- Reinforce and improve the informal character, accessibility and amenity of streetscapes in the residential areas of Apollo Bay, Marengo and Skenes Creek, reflecting the distinct existing and preferred future character of each settlement in new improvements.
- Achieve excellent architectural quality in new development or improvements to existing buildings in the town centre, drawing on the existing valued qualities of the centre and setting a new direction in the use of innovative, high quality design.
- Promote Apollo Bay and Marengo as leaders in environmental sustainability within the Great Ocean Road Region and improve the ecological integrity of environmental features within and around settlements.
- Conserve and enhance heritage places as a significant factor in developing tourism.
- Upgrade Pascoe Street in the town centre to improve pedestrian and visual amenity and function.

**The Size of Settlements**

- Utilise natural boundaries, where appropriate, to define settlement edges and set limits to urban expansion.
- Define and maintain a hard edge to the urban area of each of these settlements, particularly when viewed from the Great Ocean Road.
- Ensure that urban development results in the efficient utilisation of existing infrastructure and minimises the requirements for new infrastructure.
- Encourage infill development of medium density housing and accommodation within walking distance of the commercial area of Apollo Bay, to reduce the pressure to expand the urban area, and provide alternative housing choice.

**Activities: Business, Tourism, Community and Recreation**

- 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.
- Develop the Apollo Bay Harbour Precinct with a tourism, fishing, boating, commercial and recreational focus strengthening links to the town centre of Apollo Bay and providing net community benefits.
- Encourage future recreation facilities to be located together with other community facilities in a central and accessible location.
- Ensure that community, health, education and recreation facilities are provided to meet the needs of current and projected future residents and visitors to the area.

COLAC OTWAY PLANNING SCHEME

- Support the growth of tourism as a major employer for the region.
- Provide for future industrial development while minimising offsite impacts on surrounding residential uses, the environment (particularly local waterways) and views from residential areas and the Great Ocean Road.
- Improve the provision and quality of neighbourhood parks in the urban residential areas.
- Establish a future use for the Heathland Estate Reserve.

**Landscape Setting and Environment**

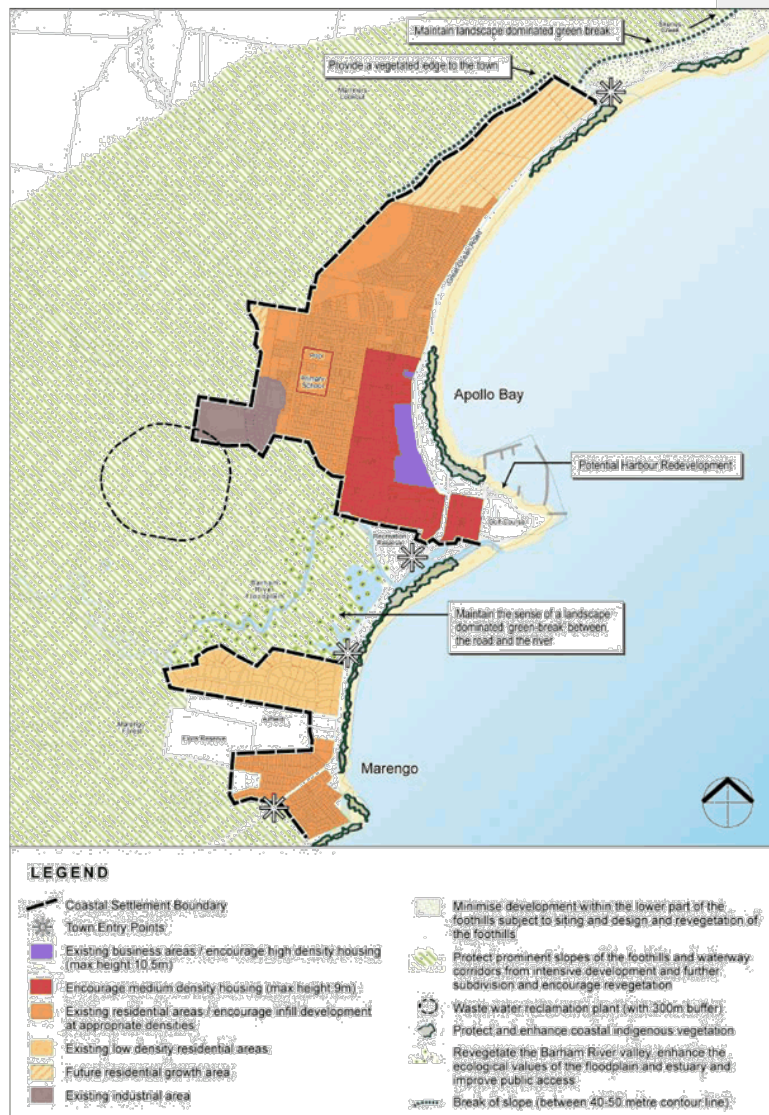
- Maintain the 'green-breaks' and landscape dominance between the settlements to ensure that each settlement remains distinct.
- Protect the Otway foothills as a scenic, undeveloped backdrop to Apollo Bay and Marengo.
- Recognise and protect ecological values and avoid development in areas at risk from the effects of flooding, wildfire, acid sulphate soil disturbance, erosion, landslip and salinity.
- Reinforce and enhance the identity and the sense of arrival and departure at the entrances to Apollo Bay and Marengo.
- Improve the appearance and amenity of the foreshore reserve in Apollo Bay and reduce the impact of the existing and future structures on the naturalness of the setting.
- Achieve improved visual and physical links between the Apollo Bay town centre and the beach.
- Protect and enhance the significant views and vistas available from the settlements, the beach and the harbour, as well as views available from key vantage points in the hills.

**Access and Parking**

- Strengthen the pedestrian and cyclist connections between Marengo, Apollo Bay and Skenes Creek.
- Create a highly walkable town centre in Apollo Bay with safe and convenient access to shops, community facilities and recreational activities.
- Manage the orderly flow of traffic at all times of the year and enhance pedestrian safety and movement.
- Ensure the future parking needs of Apollo Bay are met and parking congestion in the Great Ocean Road is minimised, with car parking for commercial development in the CBD to comply with the Apollo Bay Parking Precinct Plan (2011).
- Upgrade and provide new mid-block pedestrian linkages in the town centre to improve the utilisation of parking to the rear of shops.
- Consolidate and formalise car parking areas to the rear of the main shops in the town centre.
- Encourage greater use of car parks by improved signage.
- Improve the safety of pedestrian access across the Great Ocean Road to the foreshore reserve at key locations.
- Support, promote and improve public transport.
- Ensure continued and improved air access to the Apollo Bay region.

COLAC OTWAY PLANNING SCHEME

Apollo Bay, Marengo and Skenes Creek Framework Plan



COLAC OTWAY PLANNING SCHEME

**21.03-4 Birregurra**

25/09/2014  
C76

**Overview**

The township of Birregurra is located approximately 20 kilometres east of Colac and approximately 6 kilometres to the south of the Princes Highway. Birregurra is a small town offering a village lifestyle in an attractive rural setting to its diverse and active community. The town has a relatively compact urban form based on an attractive and connected network of grid streets and open space links, and sits discretely within its rural surrounds.

Development pressures, high costs of accommodation for tourists and workers and an increase in tourist numbers in Lorne and other coastal communities has seen more people exploring Birregurra for permanent living, holiday accommodation and recreation.

Birregurra is an attractive town for many reasons including for:

- The built form of the town and the many heritage buildings throughout the town and in particular along the south side of Main Street with attractive shop fronts many with verandahs.
- The consolidated commercial town core and community node that provides retail, community and health services that cater for resident's local needs and provides support for surrounding farming areas. The Church precinct located on the elevated land to the south of the town.
- The extent and variety of exotic and native vegetation existing throughout the town. The extent of the vegetation is clearly seen due to the elevated nature of the land, particularly on the southern side of the town.
- The topography of the land surrounding the town including the Barwon River valley and associated tributaries and undulating farming land.

The Birregurra Structure Plan 2013 and Birregurra Neighbourhood Character Study 2012 identify urban design and built form opportunities to improve the presentation of this important centre in the municipality. The Birregurra Structure Plan 2013 encourages infill development to accommodate growth within Birregurra without the need to expand the existing defined township boundary.

**Settlement and Housing**

**Objectives**

- To manage modest growth and development in Birregurra in a coordinated and sustainable manner that ensures Birregurra retains its rural township character.
- To retain and protect the township's significant and contributory heritage places and articulate Birregurra's history in the public realm.
- To encourage consolidation of commercial uses in the core town centre of Birregurra on Main Street and broaden the commercial, retail and tourism opportunities in the township.

**Strategies**

- Contain urban development within the existing defined township boundary.
- Encourage sensitive infill development on vacant lots and support further subdivision of larger developed lots within the existing township boundary.
- Control the density of development and apply development standards as recommended by the Neighbourhood Character Study 2012 to preserve character.

COLAC OTWAY PLANNING SCHEME

- To encourage a mix of housing types and styles that provide diversity, affordability and respond to the community's life cycle needs.
- Support new commercial uses and re-development of existing premises on both sides of Main Street between Roadknight Street / Austin Street to the west and the unnamed watercourse / Strachan Street to the east and encourage active street frontages.
- Ensure any new commercial development to the rear of properties on Main Street has regard to sensitive residential interfaces.
- Support an increase and diversification of tourist based activities and accommodation in Birregurra.
- Encourage adaption and re-use of heritage buildings, especially in Main Street, and ensure new development provides a sympathetic design response to existing heritage buildings.
- Retain low building heights throughout the township and the single storey built form of Main Street.
- Consolidate civic, community and health facilities in a community node on the north-east edge of the town centre.
- Support retirement/aged care living in proximity to the community and health node, and Main Street.
- Direct any potential petrol station to locate in or close to the town centre, away from the heritage core and identified township gateways.
- Protect the ongoing integrity of industrial activities in the Industrial 1 zoned land and encourage consolidation of industrial uses in this area.
- Ensure any new development in the Industrial 1 Zone reflects the rural township character of Birregurra and has regard to visual amenity.
- New subdivisions should include a grid-based road network that easily integrates with the existing surrounding road network. Avoid cul-de-sacs and battleaxe driveways as a means of providing access to new residential lots.
- Ensure roads provide safe access for all users and that road upgrades retain and enhance the character of Birregurra and the informal nature of road reserves.
- Ensure an efficient and cost effective provision of physical infrastructure that addresses the ongoing needs of the community, whilst protecting the landscape and township character values of Birregurra

**Landscape, Environment and Open Space**

**Objectives**

- Protect and extend areas of native vegetation, including endangered EVCs along waterways.
- Protect and enhance the landscape character and view lines of township entrances as defining elements of the north, east and west gateways.
- To preserve and enhance the Barwon River corridor and connected waterways.
- To establish a connected network of accessible public open space and recreation facilities that provide a range of passive and active recreation opportunities.
- To provide safe and improved opportunities for walking and cycling throughout the town and encourage walkable neighbourhood design in new developments.

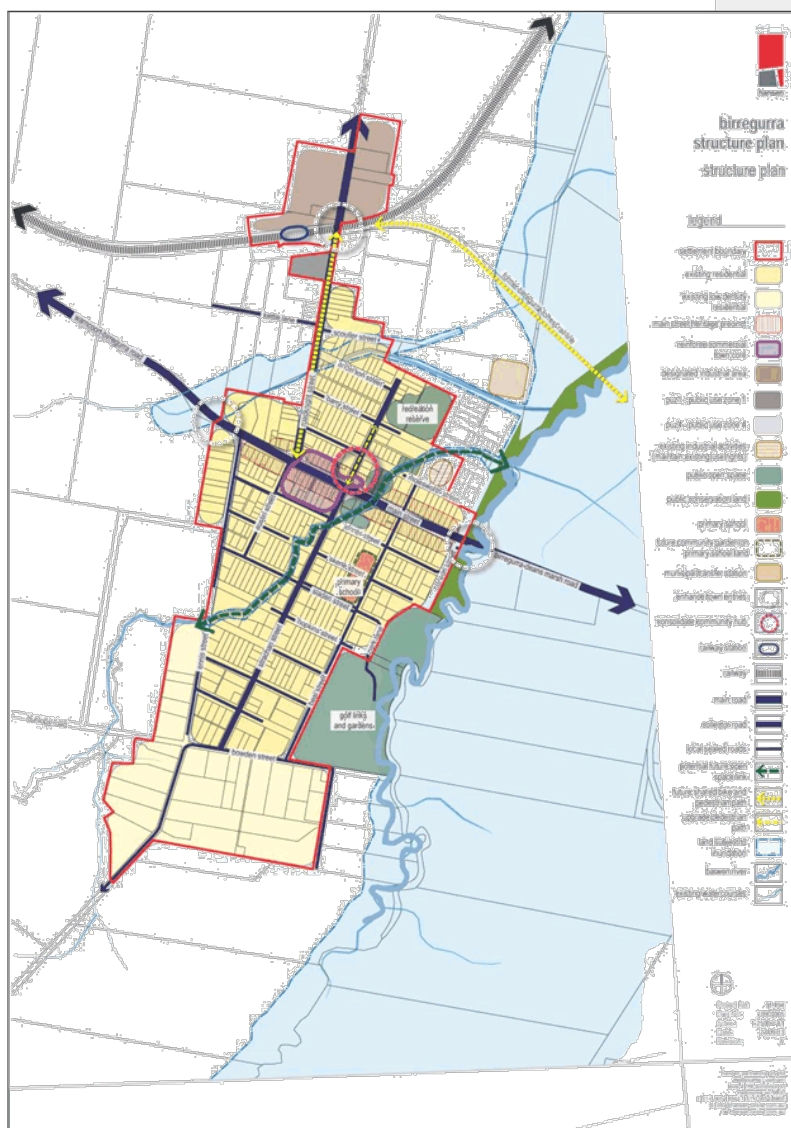
COLAC OTWAY PLANNING SCHEME

**Strategies**

- Investigate the potential public open space corridor along the unnamed waterway running south-west to north-east through the middle of the town and the development of a linear shared pedestrian /cycle path connecting to parkland adjoining the Barwon River.
- Encourage built form along this open space corridor to:
  - Be appropriately set back from the waterway in accordance with Corangamite CMA requirements.
  - Provide an active interface through the avoidance of solid fencing to this boundary.
  - Provide pedestrian access to the corridor where possible.
- To encourage the retention of trees where possible and the planting of new canopy trees and understorey vegetation.
- Require the use of building envelopes or tree protection zones to protect vegetation on lots that contain significant trees.
- Encourage the dominance of landscape over built form in residential areas.
- Improve open space provision as the community expands and improve linkages between key destinations.
- Investigate development of the Tiger Rail Trail from Birregurra to Barwon Downs and Forrest.



## Birregurra Framework Plan





COLAC OTWAY PLANNING SCHEME

**21.03-5 Skenes Creek**

18/07/2013  
C69

**Overview**

Skenes Creek is a coastal hamlet set on rolling topography at the base of the Otway Ranges. There is a sense of openness to the town created by the spacious siting of buildings and expansive views to the coast and hillsides. A green wedge corridor through the centre of the township links the town with a vegetated hillside backdrop and is enhanced by regeneration of indigenous and appropriate coastal shrubs around dwellings and public areas.

**Objective**

- To protect the nationally significant Great Ocean Road Region landscape and the distinctive landscape qualities and coastal setting of Skenes Creek township.

**Strategies**

- Ensure new development responds to the above key issues and achieves the following Preferred Character Statement for the Character Areas identified at Schedule 4 to Clause 43.02.

**Skenes Creek Precinct 1 – Preferred Character Statement**

This precinct provides a native ‘green wedge’ for the whole township, extending from the hill slopes behind the town to the Great Ocean Road. The character of the precinct will be strengthened by the planting and regeneration of indigenous and native vegetation. Dwellings will be set far enough apart to accommodate substantial native bush areas including canopy trees, and will be set substantially below the vegetation canopy. The semi-rural feel of the area will be retained by the lack of fencing and frequent unmade roads. Views to the dwellings will be softened by native vegetation in frontages to major roads and in the public domain along road verges.

**Skenes Creek Precinct 2 – Preferred Character Statement**

This precinct will continue to be characterised by diverse coastal dwellings set amongst established coastal gardens. The sense of openness will be maintained by setting the buildings apart, minimising intrusive front fencing, and encouraging building forms that respect views to the surrounding hills and coast. The precinct will be united by consistent mature plantings of native and exotic coastal species in the public and private domains.

**21.03-6 Kennett River, Wye River and Separation Creek**

18/07/2013  
C69

**Overview**

The structure plan for Kennett River, Wye River and Separation Creek articulates the preferred development future for these coastal townships. Key issues to emerge from the structure plan were that:

- Kennett River, Wye River and Separation Creek will remain as distinct coastal townships nestled in the foothills of the Otway Ranges.
- The primary roles of the townships will be to provide housing for permanent and part time residents and to provide a diverse range of holiday accommodation.

COLAC OTWAY PLANNING SCHEME

- The existing and preferred character of the townships is characterised by low scale buildings which respond to the constraints of the topography in their coastal location and generally sit below the predominant tree canopy height.
- The informal, open and spacious character of the townships is highly valued and should be preserved and strengthened by new development.
- The impact of the townships on the natural environment will be as minimal as possible with water and wastewater being sustainably managed and vegetation acknowledged and valued.
- Future development within the townships should respond appropriately to a range of acknowledged environmental constraints including land slip, wildfire threat, coastal inundation and erosion, storm water management, water supply and effluent disposal.
- The townships have a low growth capacity and all future growth will be contained within existing urban or appropriately zoned land.

**Objectives**

- To protect and maintain the nationally significant Great Ocean Road Region landscape and the distinctive landscape qualities and coastal setting of Kennett River, Wye River and Separation Creek.
- To support limited tourist, commercial and retail services to the townships.
- To limit the growth of the coastal townships and discourage development outside of existing settlement boundaries.
- To preserve and enhance the environmental qualities of the townships and ensure development responds to the preferred neighbourhood character.
- To ensure that waste water from existing and proposed development is managed in a way that minimises its impact on the environment.
- To ensure that stormwater drainage systems respond to the constraints posed by the townships unique climatic, geological and environmental setting.
- To improve pedestrian access between the hamlets and the foreshores.
- To plan for the impacts of future climate change.

**Strategies**

- Maintain the existing settlement boundaries as identified on the framework plans forming part of this clause.
- Ensure that future growth of the townships is limited to infill development and renewal contained within existing settlement boundaries.
- Encourage any infill development within the townships, particularly tourist accommodation, to locate in the flatter, less vegetated areas near the centre of the townships (as identified on the framework plans forming part of this clause) but taking into account the need to respond to climate change induced coastal hazards.
- Ensure that any development outside the settlement boundaries is low scale and sensitively sited with minimal impact on the landscape and meets the criteria of the Great Ocean Road Region Landscape Assessment Study.
- Restrict commercial and retail development to small, incremental changes to existing facilities.
- Maintain and preserve the natural setting of the foreshores by minimising new structures in these areas.

COLAC OTWAY PLANNING SCHEME

- Create or enhance safe pedestrian access from all parts of the townships to the foreshores.
- Encourage opportunities to improve the general store and cafe of Kennett River, including incorporating an outdoor dining area and improved car parking areas to be more landscaped and pedestrian friendly.
- Encourage more diverse accommodation in Separation Creek with small scale projects.
- Collaborate with State Government in developing and implementing new initiatives to manage the impacts of climate change in the future.
- Ensure all new development achieves the following Preferred Character Statement for the Character Precincts identified at Schedule 4 to Clause 43.02:

**Kennett River Precinct 1 – Preferred Character Statement**

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.

**Kennett River Precinct 2 – Preferred Character Statement**

This precinct will consist of coastal style dwellings set amongst gardens of native species. A spacious garden character will be maintained by setting buildings apart and encouraging landscaping between dwellings. Dwellings will be carefully designed, sited and landscaped to be unobtrusive when viewed from roads and to provide for a sharing of views to the coast where available. Trees in both public and private domains will provide a sense of continuity through the precinct and visually link with the adjacent bushland areas.

**Wye River Precinct 1 – Preferred Character Statement**

This precinct will continue to be characterised by dominant native bush that forms a consistent canopy, linking to the adjacent bushland. Dwelling scale, bulk and siting will respond to the site and topography, allowing space and setbacks to maintain native bush, both as canopy and understorey. Buildings will be set beneath the canopy, and appropriately sited and designed so as to allow for the sharing of views to the coast where available, and to be hidden from view from the Great Ocean Road. The informality of the streetscapes will be retained by the lack of front fencing, frequent unmade roads and remnant vegetation.

**Wye River Precinct 2 – Preferred Character Statement**

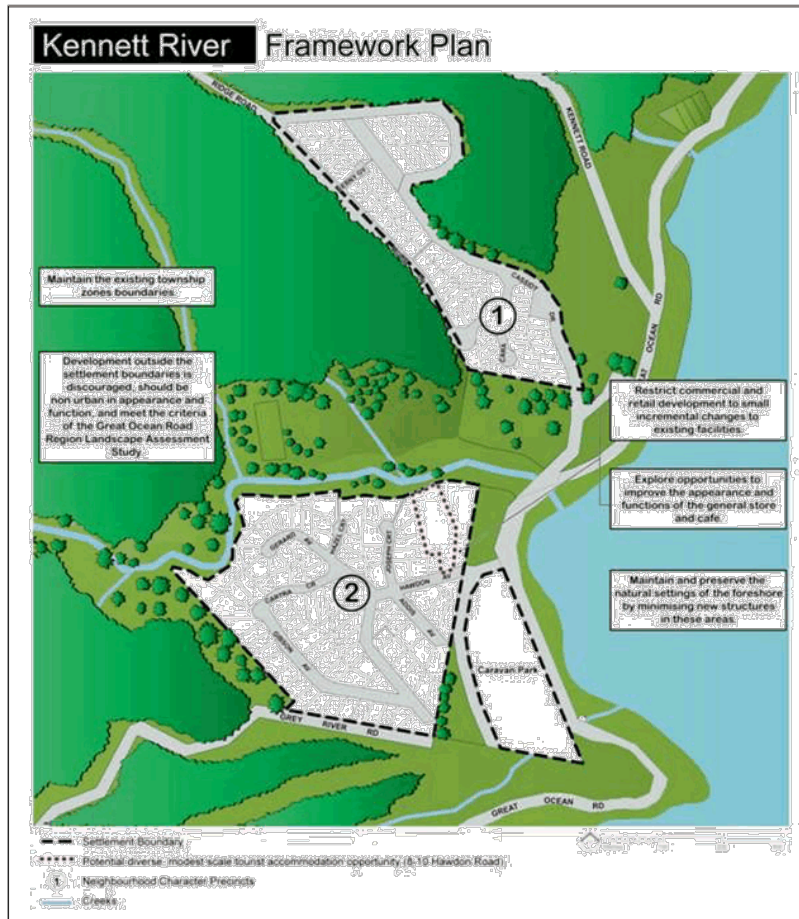
This precinct will achieve a more consistent native vegetation coverage to provide a unifying feature throughout. Space around dwellings will be sufficient to maintain trees and understorey, and minimises the appearance of building bulk and density. On hill slopes, buildings will relate to topography and be set amongst and beneath a dominant, native tree canopy. Buildings and structures in prominent locations when viewed from the Great Ocean Road will be designed to reduce their visual intrusion. Retention and planting of canopy trees in the public domain and around dwellings will be encouraged to establish a consistent tree canopy.

COLAC OTWAY PLANNING SCHEME

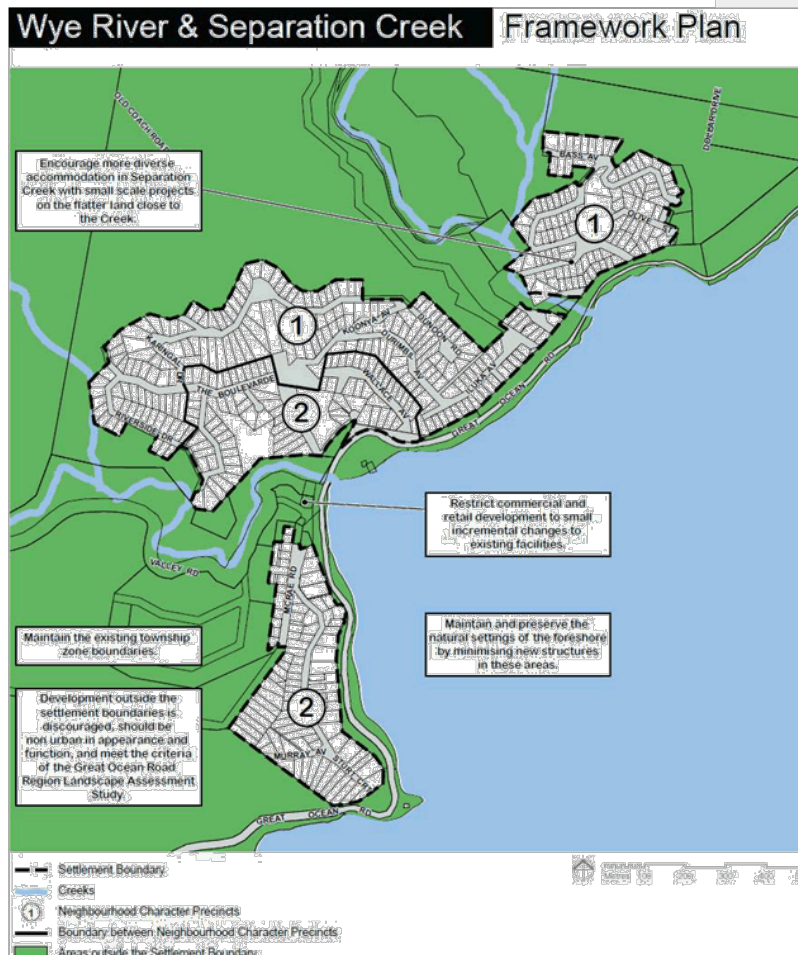
**Separation Creek Precinct 1 – Preferred Character Statement**

This precinct will consist of a mix of low, coastal style dwellings and newer coastal styles, in established gardens and amongst native canopy trees in the vegetated hillfaces. Dwellings will be of materials and colours that reflect the coastal setting, and be designed and sited so as to minimise intrusion into views from roads, public spaces and adjacent dwellings and impact on the topography. Establishment of native and coastal trees in public and private gardens will unite the precinct and provide visual links to the surrounding bushland and creek environs.

COLAC OTWAY PLANNING SCHEME



COLAC OTWAY PLANNING SCHEME





COLAC OTWAY PLANNING SCHEME

**21.03-7 Forrest**

18/07/2013  
C69

**Overview**

Forrest is located 32.6 kilometres from Colac and is placed at the foothills of the Otways approximately 161 kilometres from Melbourne and 76 kilometres from Geelong.

A Structure Plan for Forrest was adopted by Council (August 2011) and articulates the preferred development future for Forrest. Key issues to emerge from the Structure Plan were that:

- The role of Forrest as an outdoor recreation and tourism destination has been well established over recent years along with an emerging trend for rural lifestyle residential development.
- Forrest's tourism functions will continue to play a primary role in the town's growth and development into the future.
- There are significant environmental constraints within Forrest including bushfire, flooding and landslip risks that impact on future potential for expansion of the town.

**Objectives**

- To support Forrest's role within the Otways as a key destination for tourism and recreational pursuits and as a small town with limited potential for residential growth.

To limit residential development to the existing urban area contained within Forrest's settlement boundary, subject to the outcome of further investigation into the viability of development adjoining the north west edge of the town in accordance with the Forrest Framework Plan attached to this Clause.

- To encourage the development of accommodation facilities which contribute to the viability of tourism and recreation-based activities.
- To promote Grant Street as the primary location for future commercial activities within Forrest.
- To encourage development and activities which add commercial and recreational diversity to the Forrest Township.
- To ensure that the various cultural and environmental heritage assets of the township are protected, maintained and continue to be articulated within Forrest's private and public realm.
- To ensure new residential and commercial development is responsive to the environmental, biodiversity, conservation and landscape values of the local region.
- To ensure that development within Forrest responds to and mitigates any identified bushfire risks.
- To improve pedestrian access and movement along Grant Street.
- To facilitate the provision of community services and social infrastructure within Forrest which promote the town's liveability and increase social equity.

**Strategies**

- Maintain settlement boundaries shown on the Framework Plan in this Clause pending detailed strategic assessment of bushfire risks and potential measures to manage bushfire risk for the town and broader area.
- Ensure that future growth of the township maximises infill development.

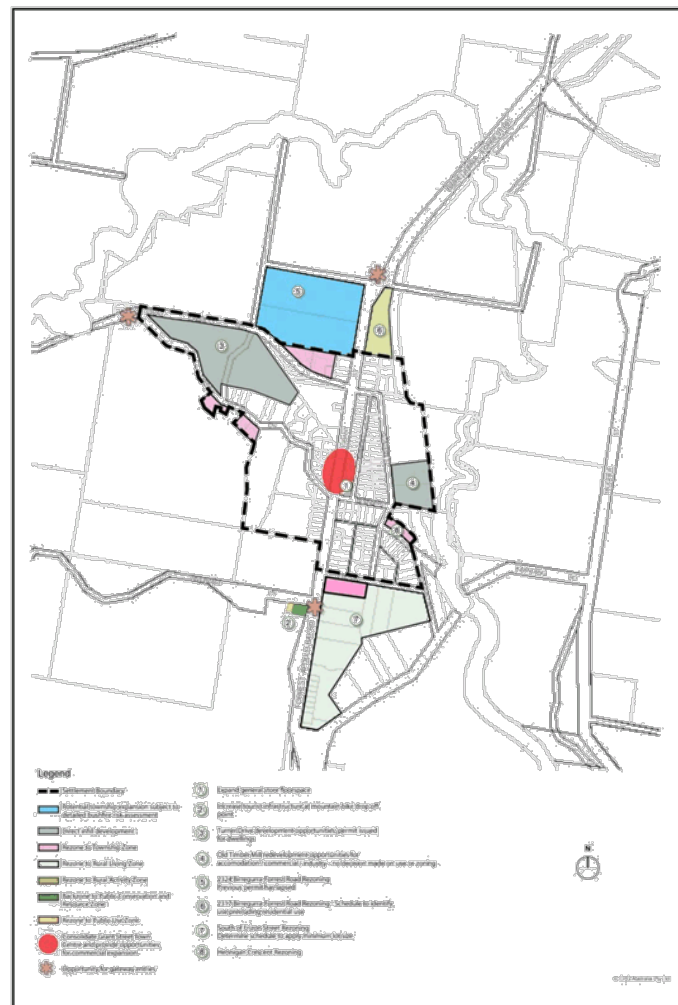


COLAC OTWAY PLANNING SCHEME

- Concentrate small scale businesses and commercial uses (such as retail premises, shop, restaurant, industry and accommodation) along Grant Street between the Community Hall and Turner Drive/Blundy Street.
- Encourage some commercial development, particularly accommodation, to locate on Rural Activity Zoned land taking into account the need to respond to bushfire risks and the environmental values of the surrounding landscape.
- Encourage the re-development of the existing general store to provide additional floor space, an active street front and expanded provision of commercial services.
- Encourage and consolidate street based retailing in the form of cafes and outdoor seating on the eastern side of Grant Street.
- Upgrade existing pedestrian infrastructure including new footpaths along the eastern side of Grant Street to accommodate pedestrian access, seating and bicycle parking and ensure any new development is designed to activate the streetscape.
- Ensure land use and development does not detrimentally impact upon identified significant flora and fauna habitats, including areas of roadside vegetation.
- Support tourism related use and development within the town boundary taking into account the need to respond to bushfire risks and environmental values and to protect the amenity of nearby residential uses.

COLAC OTWAY PLANNING SCHEME

Forrest Framework Plan



COLAC OTWAY PLANNING SCHEME

**21.03-8**  
18/07/2013  
C69

**Smaller Townships**

**Overview**

It is important to protect the character of the smaller townships within the Shire, particularly those located along the spectacular Great Ocean Road and nestled within the majestic and beautiful Otway Ranges.

Township Master Plans (focussing on public infrastructure improvements) have been prepared for Carlisle River, Gellibrand, Forrest, Barwon Downs and Beech Forest. Urban Design Frameworks have been prepared for Becac, Cressy, Lavers Hill and Swan Marsh. The Master Plans and Urban Design Frameworks identify urban design and built form opportunities to improve the presentation of these important centres in the municipality.

So as to improve the viability of small townships it is acknowledged that future planning needs to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, community facilities and related infrastructure.

The Rural Living Strategy 2011 highlights the role of small towns and settlements in supporting tourism and rural lifestyle demand.

The Rural Living Strategy 2011 also provides a strategic basis for future land use studies to investigate opportunities for small scale expansion within some of the Shire's small towns, including Alvie, Becac, Cororooke, Gellibrand and Beech Forest. Gellibrand and Beech Forest's growth potential will be subject to an investigation into fire risk and effluent management issues.

**Objectives**

- To provide an attractive and safe residential environment within the smaller communities of the Shire.
- To encourage development of smaller townships in the Shire that contributes to their economic development, acknowledges and responds to environmental constraints and protects the broader landscapes within which these townships are located.
- To facilitate the ongoing economic future of small communities.
- To recognise the different roles of smaller townships and centres containing a range of community and other facilities.
- To maintain and enhance the environmental quality of small communities.

**Strategies**

- Ensure that development of the Shire's small communities occurs generally in accordance with relevant township masterplans, structure plans and other strategies.
- Encourage the development of small-scale economic activity which complements the resources and industries of the region.
- Encourage the location of tourist accommodation facilities within small communities in the region.
- Retain heritage places as significant components of the character and attractiveness of smaller townships.
- Encourage high quality design input to development in small communities.
- Maintain existing township zonings in Alvie, Cororooke and Becac pending the preparation of town plans.

COLAC OTWAY PLANNING SCHEME

- Maintain existing township zonings in Gellibrand and Beech Forest pending further strategic assessment of the potential for expansion having regard to bushfire risk and effluent management.
- Otherwise generally restrict the expansion of communities in potable water supply areas and areas subject to or at risk of landslip, high fire risk and flooding.
- Encourage the implementation of landscape features that recognise indigenous flora and fauna.

**Specific Implementation**

**Policy guidance**

Assess proposals in townships (other than Colac, Apollo Bay and Marengo) against the following criteria:

- Development should not exceed 8 metres in height, unless special characteristics of the site justify a higher structure and no off-site detriment is caused.
- Building site coverage should not exceed 50 per cent, except on business zoned land.
- The slope of the roof should relate to the topography of the surrounding landform. Dominant or multiple angular roof slopes and designs should be avoided.
- External building material colours should be of muted toning and roofing material should be non-reflective.
- External materials should be in harmony with the surrounding landscape of the settlement.
- Landscaping should enable development to blend into the surrounding area. This may be achieved by:
  - Using a mixture of low, medium and high growing native trees and shrubs, including some species of trees with a growing height above the roof level of the proposed building.
  - Providing replacement planting for vegetation that is removed.

When deciding on the design, siting, mass and scale of new development in townships (other than Colac, Apollo Bay and Marengo) consider, as appropriate:

- Whether it is a major development node or a settlement with limited development potential and only serving the immediate community.
- The visual character of the particular settlement and the likely impact of the development on that visual character.
- The view of the site from the Great Ocean Road and major viewing points in the Otway Ranges and the likely impact of the development on these views.

**21.03-9**

18/07/2013  
C69

**Rural Living**

**Overview**

Council prepared and adopted a Rural Land Strategy (September 2007) which identified a range of issues affecting rural land use in the Shire, and has since adopted the Rural Living Strategy 2011. The Rural Living Strategy provides the basis for policy on the use and development of land for dwellings and subdivisions in rural areas. It identified the following in regards to rural living development within the Shire:

COLAC OTWAY PLANNING SCHEME

- Rural land traditionally used for farming is being used for lifestyle purposes in the absence of land which can accommodate rural lifestyle demand. This is causing problems associated with increasing property values inhibiting farm growth, servicing, provision of infrastructure and conflict with adjoining land uses which has the potential to undermine the objective of protecting the agricultural base of the Shire.
- The greatest opportunities to accommodate rural living development are around Colac where there is greatest supply and fewest constraints for development.
- There are sufficient levels of services and infrastructure to accommodate demand for rural lifestyle development in Coragulac.
- There is scope to conduct investigations into the potential development of some smaller towns in the Shire to accommodate some moderate township expansion, which may contribute to the overall supply of land desirable for rural living purposes.

**Objectives – Rural living**

- To provide opportunities for rural residential style development in appropriate locations that do not negatively impact on the ability to farm.
- To recognise the function of already-developed old and inappropriate rural subdivisions as 'de facto' rural living developments;
- To restrict the intensification of existing old and inappropriate subdivisions and prevent the further encroachment of rural living development on surrounding farming land.

**Strategies – Rural living**

- Direct future rural living development to nominated areas where there are fewer economic, environmental, social, land use and servicing constraints for settlement.
- Recognise the function of already-developed old and inappropriate rural subdivisions as 'de facto' rural living developments.
- Restrict the development of existing old and inappropriate subdivisions through the implementation of lot sizes which limit further subdivision and prevent the further encroachment of rural living development on surrounding farming land.



*Planning and Environment Act 1987*

## **COLAC OTWAY PLANNING SCHEME**

### **SECTION 96A COMBINED AMENDMENT C92 & PLANNING APPLICATION NO. PP82/2016-1**

#### **EXPLANATORY REPORT**

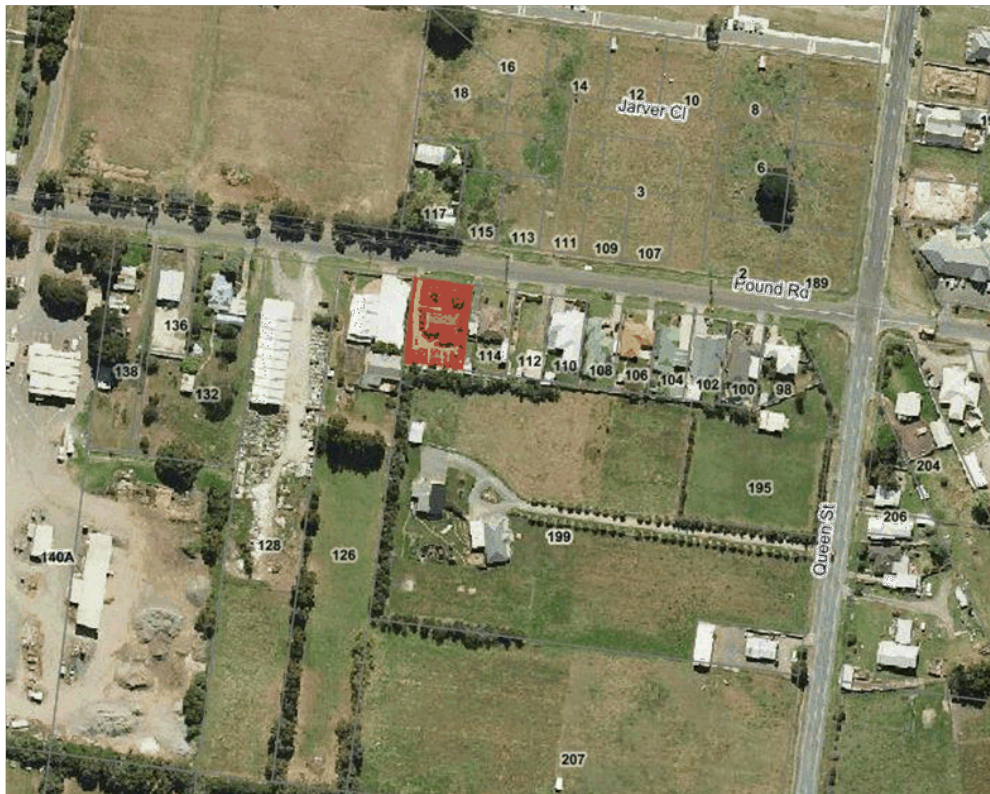
##### **Who is the planning authority?**

The Amendment has been made at the request of Rod Bright & Assoc. Pty Ltd on behalf of the landowners Damian & Jenny Gatens. This amendment has been prepared by the Colac Otway Shire Council which is the planning authority for this amendment.

##### **Land affected by the Amendment**

The Amendment applies to 120 Pound Road, Elliminyt, being part of Lot 2 PS537971S contained in Certificate of Title V/F 10928/014. The land contains two dwellings with two separate addresses – 120 Pound Road and 199 Queen Street (as shown in Figures 1 and 2).

The amendment also applies to the land known as 98 Pound Road, 100 Pound Road, 102 Pound Road, 104 Pound Road, 106 Pound Road, 108 Pound Road, 110 Pound Road, 112 Pound Road, 114 Pound Road all located within Elliminyt

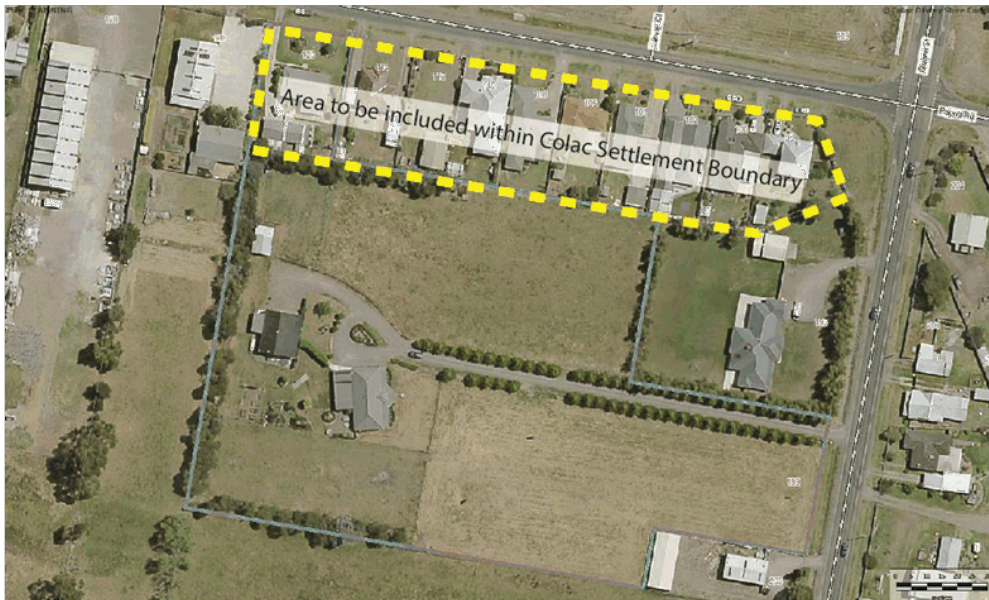


**Figure 1: Area affected by amendment highlighted red.**





**Figure 2: Land affected by the amendment forms part of a larger title including 199 Queen Street which is proposed to be subdivided.**



**Figure 3 Land proposed to be included within the long term settlement boundary in the Colac Framework Plan at Clause 21.03 of the Colac Otway Planning Scheme**

### **The combined permit and amendment process**

The amendment has been prepared under Section 96A of the *Planning and Environment Act 1987* (the Act) to facilitate the combined planning permit and amendment process.

### **What the permit application does**

Concurrent to the preparation of the planning scheme amendment, an application for a planning permit (PP82/2016-1) has been made under Section 96A(1) of the Act. The application proposes a two (2) lot subdivision with the new title boundary aligning with the new proposed zone boundary to create two titles each containing an existing dwelling.

### **What the amendment does**

The amendment proposes to:

- Rezone 1068m<sup>2</sup> of land fronting Pound Road (proposed Lot 1 on PS745316R) from Rural Living Zone (RLZ) to General Residential Zone Schedule 1 (GRZ1), and
- Amend the long term settlement boundary of the Colac Framework Plan within Clause 21.03-2 of the Municipal Strategic Statement to include part of 120 Pound Road, Elliminyt, and 98 Pound Road, 100 Pound Road, 102 Pound Road, 104 Pound Road, 106 Pound Road, 108 Pound Road, 110 Pound Road, 112 Pound Road, 114 Pound Road.

### **Strategic assessment of the Amendment**

#### **Why is the Amendment required?**

The planning scheme amendment is required to:

- (a) Recognise the existing residential use and development of 120 Pound Road, consistent with adjoining land;
- (b) Update the Colac Framework Plan long term settlement boundary in this location to reflect the existing and proposed residential zoning, and existing residential use and development; and
- (c) Enable the subdivision of the 120 Pound Road from the parent title into lots less than 1.2 hectares (which is currently prohibited under the Rural Living Zone).

The proposed rezoning would allow for 120 Pound Road to be subdivided and the two existing dwellings to be located on separate lots. The proposed larger lot would remain within the RLZ.

The settlement boundary within the Colac Framework Plan at Clause 21.03 currently incorrectly excludes the GRZ1 zoned land fronting the south side of Pound Road as shown in Figure 4. The amendment is therefore required to amend the Colac Framework Plan to include these properties and the proposed new lot at 120 Pound Road within the settlement boundary as shown in Figure 5.



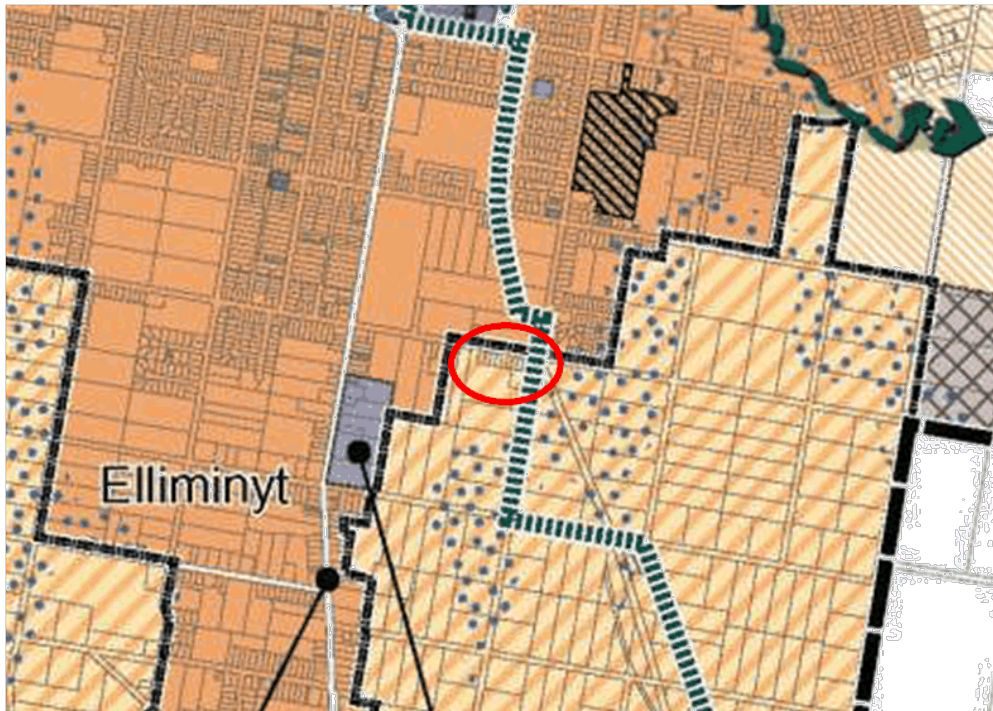


Figure 4 Extract from current Colac Framework Plan at Clause 21.03 which shows existing area of residential zoned land outside of the long term settlement boundary

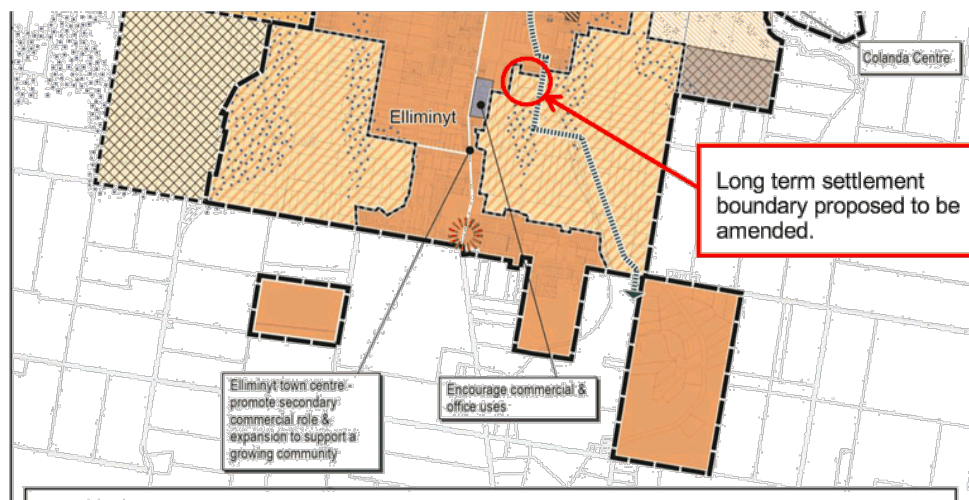


Figure 5 Extract from proposed Colac Framework Plan at Clause 21.03 with adjusted long term settlement boundary

### How does the Amendment implement the objectives of planning in Victoria?

The amendment implements the objectives of Planning in Victoria as specified within Section 4 of the *Planning and Environment Act 1987* by:

- Providing for the fair and orderly use and development of the land, by rezoning the land to reflect the current use and development of the land;
- Facilitating a (subdivision) development which will also provide for the fair and orderly use and development of the land.

**How does the Amendment address any environmental, social and economic effects?**

There are no adverse environmental, social or economic effects anticipated as part of this amendment.

All reticulated infrastructure services are available and connected to the land, preventing any potential for adverse environmental impacts.

**Does the Amendment address relevant bushfire risk?**

The land subject to the amendment is not within a Bushfire Prone Area.

**Does the Amendment comply with the requirements of any Minister's Direction applicable to the amendment?**

The amendment complies with the requirements of the Ministerial Direction on the Form and Content on Planning Schemes under Section 7(5) of the Act.

The amendment is consistent with Ministerial Direction No 11 in relation to the Strategic Assessment of Amendments.

**How does the Amendment support or implement the State Planning Policy Framework and any adopted State policy?**

The amendment and application support and implements policy and strategies relating to:

- the intensification of urban land supply and efficient infrastructure provision, in particular:
  - Clause 11.02-1 – Supply of Urban Land
  - Clause 11.07-1 Geelong (G21 Regional Growth – Planning for Growth) which targets Colac for regional growth.
- neighbourhood and subdivision design, in particular Clause 15.01-3 – Neighbourhood and Subdivision Design

**How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

The Amendment supports and implements the Local Planning Policy and the Municipal Strategic Statement. Specifically the following:

- Clause 21.02-2 – Land Use Vision
- Clause 21.03-2 – Colac to manage the growth of Colac consistent with its role as the major urban centre of the Shire.

**Does the Amendment make proper use of the Victoria Planning Provisions?**

The amendment makes proper use of the Victorian Planning Provisions through the application of the General Residential Zone Schedule 1 to land which is currently being used for residential purposes within an existing residential area.

**How does the Amendment address the views of any relevant agency?**

The amendment will be placed on public exhibition and referred to relevant servicing authorities as part of the combined permit application process.

**Does the Amendment address relevant requirements of the Transport Integration Act 2010?**

The amendment will not have any impact on the transport system.

**Resource and administrative costs**

- **What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?**

There are no significant resource or administrative cost implications for the responsible authority arising from the proposed amendment.

**Where you may inspect this Amendment**

The Amendment is available for public inspection, free of charge, during office hours at the following places:

|                                                                                                                             |                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>Colac Otway Shire Council</b><br>Development and Community Service Centre<br>101-105 Gellibrand Street<br>COLAC VIC 3250 | <b>Colac Otway Shire Council</b><br>Apollo Bay Customer Service Centre<br>69-71 Nelson Street<br>APOLLO BAY VIC 3233 |
|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|

Website: [www.colacotway.vic.gov.au](http://www.colacotway.vic.gov.au)

The Amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at [www.delwp.vic.gov.au/public-inspection](http://www.delwp.vic.gov.au/public-inspection).

**Submissions**

Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions about the Amendment must be received by **[insert date]**.

A submission should be titled "Amendment C92 and PP82/2016-1 Submission" and emailed to [inq@colacotway.vic.gov.au](mailto:inq@colacotway.vic.gov.au) or mailed to:

Strategic Planning  
Colac Otway Shire Council  
PO Box 283  
COLAC VIC 3250

**Panel hearing dates**

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: **[insert directions hearing date]**
- panel hearing: **[insert panel hearing date] ]**

Planning and Environment Regulations 2015 - Form 9, Section 96J

# PLANNING PERMIT

GRANTED UNDER SECTION 96I OF THE  
PLANNING AND ENVIRONMENT ACT 1987

Permit No.: PP82/2016-1

Planning scheme: Colac Otway

Responsible authority: Colac Otway Shire

**ADDRESS OF THE LAND:** 120 Pound Road ELLIMINYT, 199 Queen Street ELLIMINYT  
Lot: 2 PS: 537971 V/F: 10928/014 Parish of Elliminyt

**THE PERMIT ALLOWS:** Two (2) Lot Subdivision in accordance with the endorsed plans.

**THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**

## Endorsed plan

1. The layout and site dimensions of the subdivision hereby permitted, as shown on the endorsed plan/s, must not be altered or modified without the written consent of the Responsible Authority. There are no requirements to alter or modify the endorsed plan if a plan is certified under the provisions of the Subdivision Act 1988 that is generally in accordance with the endorsed plan.

## Expiry

2. This permit will expire if one of the following circumstances applies:
  - a) The plan of subdivision is not certified within two years of the date of the permit.
  - b) A statement of compliance is not issued within five years of the date of certification of the Plan.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be made to the Responsible Authority to extend the periods referred to in this condition.

Date issued:

Date permit comes into  
operation:

(or if no date is specified, the permit  
comes into operation on the same day as  
the amendment to which the permit  
applies comes into operation)

Signature for the responsible  
authority:

Permit No.:

Page 1 of 1



## **IMPORTANT INFORMATION ABOUT THIS PERMIT**

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### **WHAT HAS BEEN DECIDED?**

The Responsible Authority has issued a permit. The permit was granted by the Minister under section 96I of the **Planning and Environment Act 1987** on approval of Amendment No. C92 to the Colac Otway Planning Scheme.

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### **WHEN DOES THE PERMIT BEGIN?**

The permit operates from a day specified in the permit being a day on or after the day on which the amendment to which the permit applies comes into operation.

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### **WHEN DOES A PERMIT EXPIRE?**

1. A permit for the development of land expires if—
  - the development or any stage of it does not start within the time specified in the permit; or
  - the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of a permit, unless the permit contains a different provision; or
  - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.
2. A permit for the use of land expires if—
  - the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
  - the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if—
  - the development or any stage of it does not start within the time specified in the permit; or
  - the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
  - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
  - the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—
  - the use or development of any stage is to be taken to have started when the plan is certified; and
  - the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

---

### **WHAT ABOUT REVIEWS?**

- In accordance with section 96M of the **Planning and Environment Act 1987**, the applicant may not apply to the Victorian Civil and Administrative Tribunal for a review of any condition in this permit.

**OM162408-4 SECTION 96A COMBINED PLANNING SCHEME AMENDMENT C91 AND  
PLANNING PERMIT APPLICATION NO. PP58/2016-1 - REZONING AND RE-  
SUBDIVISION OF LAND AT 120 BARHAM RIVER ROAD, APOLLO BAY AND  
REZONING OF LAND AT 200 BARHAM RIVER ROAD, APOLLO BAY**

|             |                                  |           |             |
|-------------|----------------------------------|-----------|-------------|
| AUTHOR:     | Francis Wong                     | ENDORSED: | Brydon King |
| DEPARTMENT: | Development & Community Services | FILE REF: | F16/2913    |

**Purpose**

The purpose of this report is to seek Council's support to prepare and publicly exhibit Planning Scheme Amendment C91, which aims to rezone and subdivide the land at 120 Barham River Road, Apollo Bay, and rezone land at 200 Barham River Road, Apollo Bay under Section 96A of the Planning and Environment Act 1987.

**Declaration of Interests**

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

**Background**

On behalf of Barwon Water, SMEC has submitted a combined rezoning and re-subdivision application to Council for consideration. The proposal concerns a total of six lots (Attachment 1).



Figure 1 – Subject land

All lots other than Lot 1 TP95752 are in the ownership of Barwon Water, and have an address of 120 Barham River Road. Lot 1 TP95752 is in private ownership, with an address of 200 Barham River Road. Most of the land concerned is within the Rural Conservation Zone (RCZ), whilst parts of Lot 1 TP95752 and the whole of Lot 1 TP243582 are within the Public Use Zone 1 (PUZ1 – Service and Utility). The lots are completely covered by the Significant Landscape Overlay Schedule 3 (SLO3), partially by the Erosion Management Overlay Schedule 1 (EMO1), and partially by the Land Subject to Inundation Overlay (LSIO).





Figure 2 – Area covered by EMO1



Figure 3 – Area covered by LSIO

Lot 1 TP95752 contains an existing dwelling, whilst Lot 1 PS408749 and Lot 2 PS440381 contain a large water storage basin owned by Barwon Water. Lots 1 and 2 LP13765 are currently vacant. According to information provided by SMEC on behalf of Barwon Water, the land within the PUZ1 (Lot 1 TP243582) currently comprises a concrete lined basin, which previously acted as a pressure holding point for pumped water before being gravity fed to the Apollo Bay Township. The easements connecting to the basin (the zigzag PUZ1-zoned land within Lot TP95752) comprise disused pipelines associated with the water holding basin and carriageway easements. As such, Lot 1 TP95752 contains land in two zones: PUZ1 for the easements and RCZ for the balance of the lot.

There are currently two Section 173 agreements under the Planning and Environment Act 1987 (the Act) attached to Lot 1 PS408749, Lot 2 PS440381, Lot 1 LP13765 and Lot 2 LP13765:

- AK987461V (26/03/2014), which requires land to be managed in accordance with the Land Management Plan.
- AK987508V (26/03/2014), which indemnifies the Responsible Authority (Colac Otway Shire Council) against liability, costs, etc. regarding infrastructure and water assets.

The intention of the proposal is to have the large water storage basin on one lot, with the balance of the land to be on a separate lot and the land rezoned to a more appropriate zoning. Therefore, the proposal comprises of the following:

- Re-subdivide four lots (Lot 1 PS408749, Lot 2 PS440381, Lot 1 LP13765 and Lot 2 LP13765) into two lots (Lot 1 PS743873 and Reserve No. 1).
- Rezone proposed Reserve No. 1 from RCZ to PUZ1 (which would be the Barwon Water storage basin, and would reflect the use of the land for public purposes).
- Rezone Lot 1 TP243582 and part of Lot 1 TP95752 (the zigzag easements) from PUZ1 to RCZ. The actual easements are proposed to remain on title. It is not proposed to consolidate Lot 1 TP243582 (which is in the ownership of Barwon Water) with Lot 1 TP95752 (which is in private ownership).
- End the Section 173 agreement AK987508V on proposed Lot 1 PS743873, which would become a single lot in the RCZ (but retain it on proposed Reserve No. 1).

It is noted that the ending of the Section 173 agreement would occur as a separate process to this Section 96A combined application process.

It is not proposed to amend any of the overlays which apply to the land.

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

#### A Planned Future

*Creates an attractive shire with quality buildings and spaces, accessible travel and transport, and a community that has the services and facilities it needs now and in the future; supports a prosperous economy where trade, manufacturing and business activity flourishes.*

#### *Our Goal:*

*Facilitate the growth, liveability and development of the shire and encourage innovation and efficiency in the local economy.*

This amendment would apply the most appropriate zone to the land, which would be consistent with the current use and development of the land.

### **Issues / Options**

#### Strategic justification for rezoning

It is considered that the proposed rezoning and re-subdivision is strategically justified and would not cause material detriment to the surrounding area, as the intention of the proposal is to reflect the existing use and development on the land. The rezoning would formalise the use and development of the land for the Barwon Water storage basin, and would place the basin in the appropriate zone of PUZ1 (Service & Utility). Similarly, the rezoning of Lot 1 TP243582 and part of Lot 1 TP95752 from PUZ to RCZ would place the privately owned land in an appropriate zone, and would match the zoning, and use and development of the balance of Lot 1 TP95752.

The relationship of the Barwon Water storage basin to adjoining land would not alter, as the current use would remain the same and the proposal does not include any buildings or works. Both of the proposed lots would retain independent access to Barham River Road.

Strategic justification for rezoning of the Barwon Water storage basin

As it currently stands, any buildings or works that Barwon Water require for their water storage basin would trigger planning permission due to the RCZ zoning. The land use term for the water storage basin would be 'Utility installation', which has the following definition:

*Land used:*

- a) For telecommunications;*
- b) To transmit or distribute gas, oil, or power;*
- c) To collect, treat, transmit, store, or distribute water; or*
- d) To collect, treat, or dispose of storm or flood water, sewage, or sullage.*

A 'Utility installation' is a Section 2 Use (Permit required) in the RCZ and would therefore trigger a planning permit for buildings and works. Furthermore, there are setback triggers within the RCZ that would trigger planning permission, particularly the setback triggers from a waterway or from a designated floodplain (i.e. LSIO). This is considered to be an unnecessary requirement and does not serve any strategic planning purpose.

By allowing the rezoning and subdivision, the water storage basin would be placed within the appropriate zone of PUZ1, which would not trigger planning permission for any buildings or works associated with 'Service and Utility'.

Strategic justification for partial rezoning of Lot 1 TP95752 from PUZ1 to RCZ

The partial PUZ1 zoning of Lot 1 TP95752 is seen as inappropriate in terms of private land being burdened by a public use zoning (PUZ1), which would trigger planning permission for any buildings or works that are not undertaken by a public land manager associated with 'Service and Utility'.

By allowing the rezoning from PUZ1 to RCZ, this would bring the whole of Lot 1 TP95752 into one contiguous zone that would appropriately reflect the existing use and development of the lot.

Strategic justification for rezoning of Lot 1 TP243582 from PUZ1 to RCZ

Barwon Water has advised that this lot is no longer required for its business and contains remnant infrastructure. It is considered that the land could be reinstated and put to pasture, with the RCZ consistent with the adjoining land use and allowing for a variety of rural uses, as opposed to the PUZ1 that would only allow a 'Service and Utility' use.

Strategic justification for re-subdivision

To provide for the strategic justification, four of the lots would need to be re-subdivided to form two lots to allow for appropriate rezoning of the land. The Barwon Water storage basin is currently within two lots, which includes a large parcel of land to the north that is not currently being used by Barwon Water.

It is therefore considered appropriate to allow the re-subdivision so that the Barwon Water storage basin would be within one contiguous 10.79 hectare lot, with the balance of the land to be within another contiguous 28.35 hectare lot, which could then be made available for other more appropriate uses within the RCZ. Both lots would continue to have independent access to Barham River Road.

### Options

Council may support or refuse the request for authorisation and exhibition of Amendment C91 being made to the Minister for Planning (Minister). If Council resolves to support the request, it must obtain authorisation from the Minister to prepare and exhibit the amendment. If Council resolves to refuse the request, it must notify the proponent of its decision.

### **Proposal**

It is recommended that Council support the request for authorisation, and proceed to obtain authorisation from the Minister to prepare and exhibit the amendment in accordance with the requirements of the Act.

### **Financial and Other Resource Implications**

The financial cost of the amendment is being borne by the proponent.

### **Risk Management and Compliance Issues**

The risks associated with refusing authorisation of this Amendment would be related to the inappropriate zones, which could unintentionally allow undesirable uses and developments or restrict desirable uses and developments.

### **Environmental and Climate Change Considerations**

It is noted that the land is partially affected by the LSIO. However, the proposed rezoning and re-subdivision would not cause any detrimental impacts on flooding in the area. There would be sufficient land available outside the LSIO on proposed Lot 1 PS743873 to allow for future development of that lot.

It is also noted that the land is partially affected by the EMO1. The proponent has lodged a geotechnical assessment with the planning application in accordance with the requirements of the EMO1.

### **Community Engagement**

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected for this amendment is to inform. This will include public exhibition of the amendment. If any submissions are received, these will be considered by Council and if unable to be resolved, an independent panel.

### **Implementation**

The subdivision and rezoning would be implemented via a combined subdivision permit application and Planning Scheme Amendment C91. In order to proceed with the amendment, authorisation must be sought from Council and the Minister to prepare and exhibit the Amendment.



### **Conclusion**

Amendment C91 seeks to rezone and re-subdivide land at 120 Barham River Road, Apollo Bay and rezone land at 200 Barham River Road, Apollo Bay.

It is recommended that Council supports the request to seek authorisation from the Minister to prepare and exhibit the amendment.

### **Attachments**

1. Amendment C91 - 120 Barham River Road APOLLO BAY - Figure 1 - Subject Lots
2. Amendment C91 - 120 Barham River Road APOLLO BAY - Figure 2 - Proposed Subdivision page 1
3. Amendment C91 - 120 Barham River Road APOLLO BAY - Figure 2 - Proposed Subdivision page 2
4. Amendment C91 - 120 Barham River Road APOLLO BAY - Figure 3 - Proposed Rezoning
5. Amendment C91 - 120 Barham River Road APOLLO BAY - Explanatory Report
6. Amendment C91 - 120 Barham River Road APOLLO BAY - Draft Planning Permit PP58/2016-1

### **Recommendation**

#### ***That Council:***

- ***Pursuant to section 4B of the Planning and Environment Act 1987, seek authorisation from the Minister for Planning to prepare and exhibit Amendment C91 which seeks to:***
  - ***Re-subdivide four lots (Lot 1 PS408749, Lot 2 PS440381, Lot 1 LP13765 and Lot 2 LP13765) into two lots (Lot 1 PS743873 and Reserve No. 1).***
  - ***Rezone proposed Reserve No. 1 from RCZ to PUZ1.***
  - ***Rezone Lot 1 TP243582 and part of Lot 1 TP95752 from PUZ1 to RCZ.***
- ***Exhibit Amendment C91 for a minimum period of six weeks seeking written submissions.***
- ***Authorise Council officers to make minor changes to the Amendment documentation prior to exhibition.***

~~~~~U~~~~~



Figure 1 – Subject Lots

| | | | |
|---|---------------------------|--|--|
| PLAN OF SUBDIVISION | | LV USE ONLY
EDITION | PLAN NUMBER
PS 743873Q |
| LOCATION OF LAND

PARISH: KRAMBRUK

TOWNSHIP: ----

SECTION: 1

CROWN ALLOTMENT: 5 (PART)

CROWN PORTION: ----

TITLE REFERENCES: Vol.5881 Fol.025, Vol.6137 Fol.288,
Vol.10579 Fol.241 & Vol.10453 Fol.057

LAST PLAN REFERENCE/S: LP13765 (Lots 1 & 2), PS440381E (Lot 2) &
PS408749Q (Lot 1)

POSTAL ADDRESS: 120 BARHAM RIVER ROAD,
(At time of subdivision) APOLLO BAY, 3233

MGA94 Co-ordinates E 730 620
(of approx centre of N 5 706 080
land in plan) ZONE 54 | | COUNCIL NAME: COLAC OTWAY SHIRE COUNCIL REF: | |
| VESTING OF ROADS AND/OR RESERVES


Roads and reserves vest in the council/body/person named upon registration of this plan.

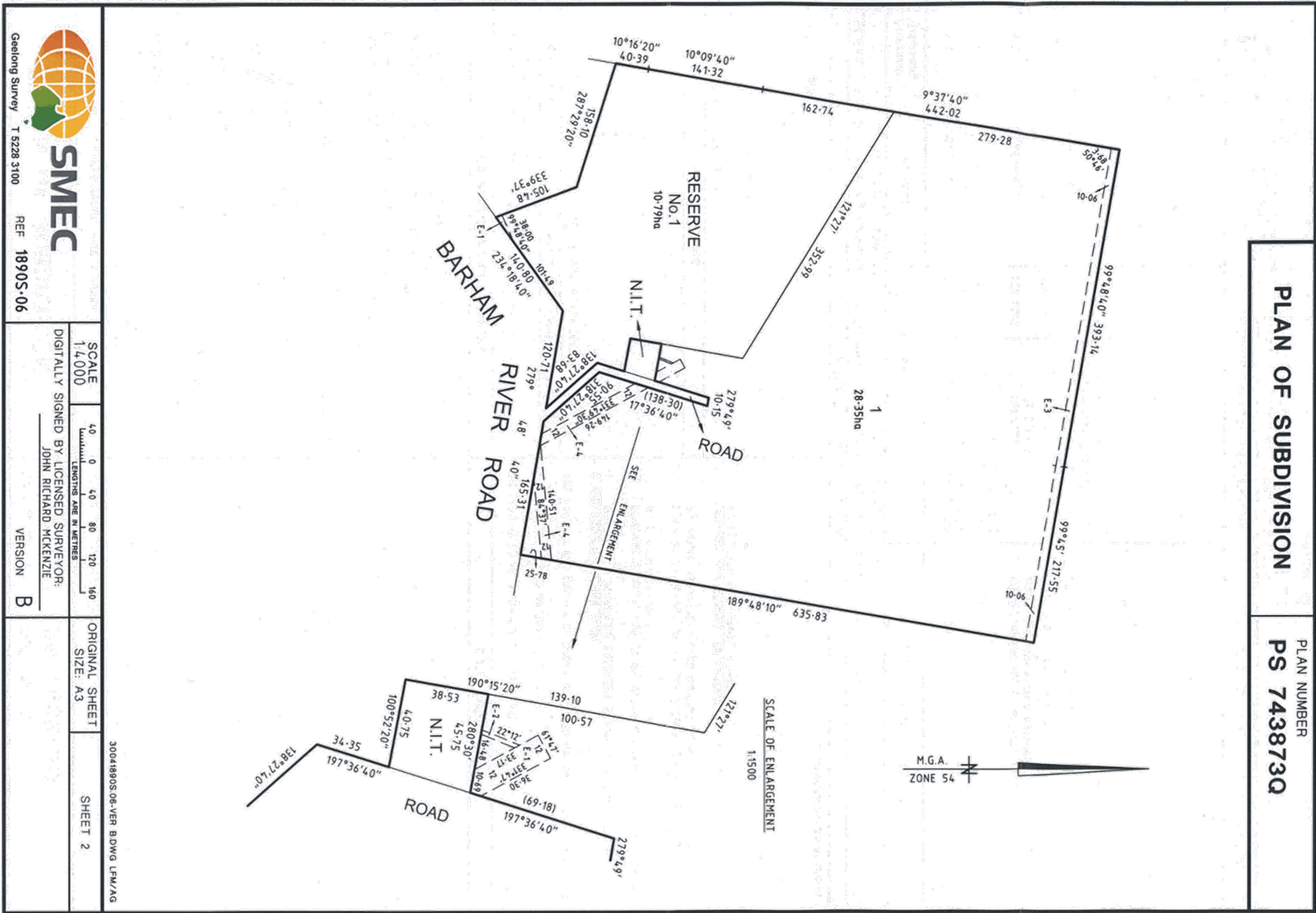
IDENTIFIER COUNCIL/BODY/PERSON

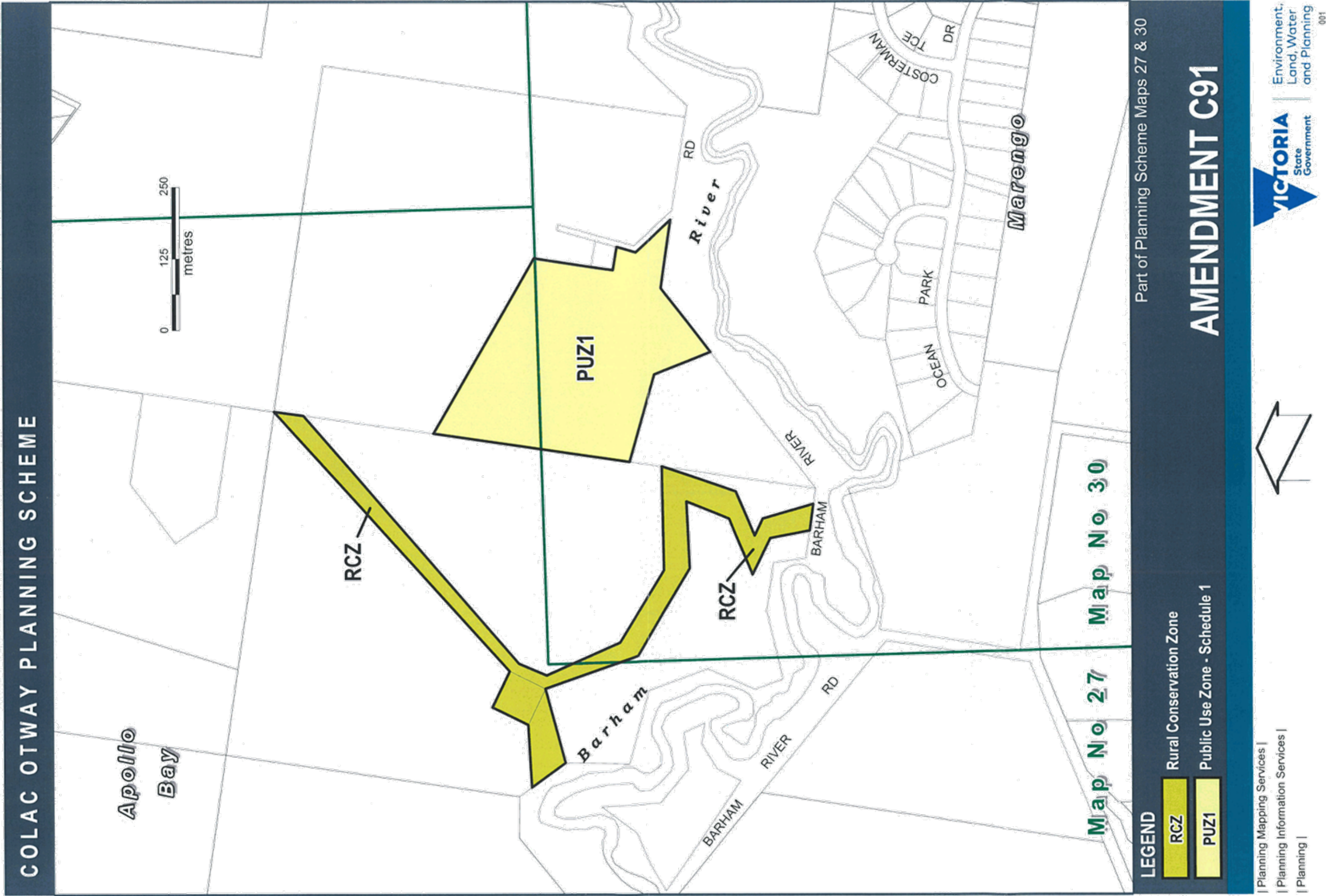
RESERVE No.1 BARWON REGION WATER CORPORATION | | NOTATIONS

NO LAND IS TO BE ACQUIRED BY THIS PLAN
THIS PLAN IS BASED ON SURVEY
THE LAND IN THE SURVEY IS SHOWN ENCLOSED BY THICK CONTINUOUS LINES.
<u>OTHER PURPOSE OF THE PLAN:</u>
1. REMOVAL OF POWERLINE EASEMENT SHOWN AS E-2 ON PS440381E.
2. REMOVAL OF WAY, SUPPLY OF WATER & DRAINAGE EASEMENT SHOWN AS E-3 ON PS440381E.
3. REMOVAL OF SUPPLY OF WATER EASEMENT SHOWN AS E-5 ON PS440381E AS AFFECTS LAND ON THIS PLAN.
<u>GROUNDS FOR REMOVAL OF EASEMENT:</u>
AS DIRECTED IN PLANNING PERMIT | |
| DEPTH LIMITATION: DOES NOT APPLY

STAGING This -is-/is not a staged subdivision.

THIS IS A SPEAR PLAN. | | 30041890S.06-VER B.DWG LFM/AG | |
| EASEMENT INFORMATION | | | |
| LEGEND E = Encumbering Easement or Condition in Crown Grant in the Nature of an Easement
A = Appurtenant Easement R = Encumbering Easement (Road) | | | |
| Easement Reference | Purpose | Width (Metres) | Origin |
| E-1 | POWERLINE | SEE DIAG | PS 408749Q (SECTION 44 OF THE ELECTRICITY INDUSTRY ACT 1993) |
| E-2 | POWERLINE | 2 | PS 440381E (SECTION 44 OF THE ELECTRICITY INDUSTRY ACT 1993) |
| E-3 | SEWERAGE | SEE DIAG | U601235U
PS 408749Q
2494824 |
| E-4 | WATER SUPPLY
POWERLINE | SEE DIAG
12 | THIS PLAN
(SECTION 88 ELECTRICITY ACT 2000) |
| Land Benefited/In Favour Of | | POWERCOR
POWERCOR
OTWAY REGION WATER AUTHORITY
BARWON REGION WATER AUTHORITY
APOLLO BAY WATERWORKS TRUST
POWERCOR AUSTRALIA LIMITED | |
| SURVEYOR REF: 1890S.06 | | ORIGINAL SHEET SIZE: A3 | SHEET 1 OF 2 |
| DIGITALLY SIGNED BY LICENSED SURVEYOR:
JOHN RICHARD MCKENZIE | | VERSION B | |
| 
Geelong Survey T 5228 3100 | | | |





Planning and Environment Act 1987

COLAC OTWAY PLANNING SCHEME

AMENDMENT C91

EXPLANATORY REPORT

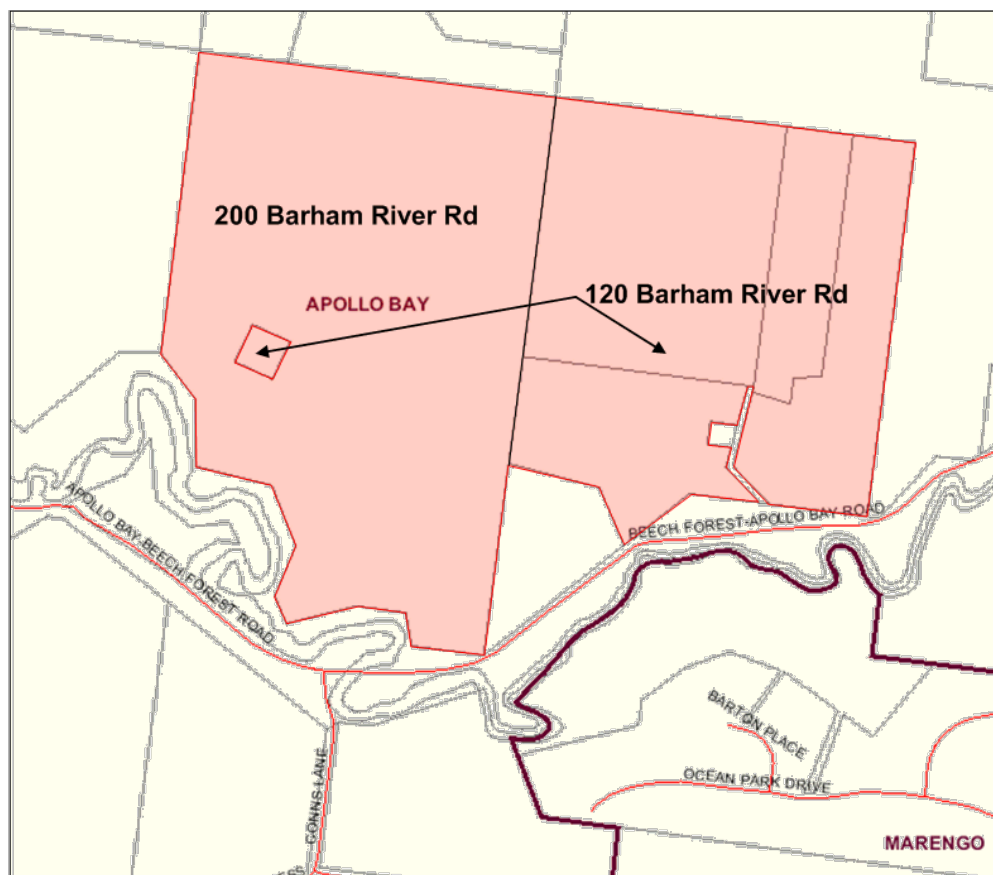
Who is the planning authority?

This amendment has been prepared by the Colac Otway Shire, which is the planning authority for this amendment.

The Amendment has been made at the request of SMEC on behalf of the Barwon Region Water Corporation.

Land affected by the Amendment

The Amendment applies to 120 Barham River Road, Apollo Bay (Lot 1 TP243582, Lot 2 PS440381, Lot 1 PS408749, and Lot 1 & 2 LP13765), and 200 Barham River Road, Apollo Bay (Lot 1 TP95752) as shown on the map below.



What the amendment does

The Amendment will rezone part of the land at 200 Barham River Road (Lot 1 TP95752) and the detached island parcel of 120 Barham River Road (Lot 1 TP243582), from the Public Use Zone 1 (PUZ1) to the underlying Rural Conservation Zone (RCZ), consistent with the surrounding area. The detached landholding of 120 Barham River Road is considered surplus to Barwon Water requirements, while the privately owned land at 200 Barham River Road is not currently used for the purposes specified under PUZ1. The amendment seeks to rezone the land for its underlying purpose.

The Amendment will also rezone part of 120 Barham River Road (Lot 2 PS440381, and Lot 1 PS408749), from the Rural Conservation Zone (RCZ) to the Public Use Zone 1 (PUZ1). This land comprises a Barwon Water-owned water storage basin and the amendment seeks to rezone the land for its ongoing public-use purpose.

Concurrent with the preparation of the planning scheme amendment, a planning permit application is also made pursuant to Section 96A of the *Planning and Environment Act 1987* (Planning Application PP58/2016-1). This application is to subdivide the four lots comprising 120 Barham River Road to create one separate title for the Barwon Water-owned storage basin and consolidate all other titles to create one lot (the balance lot) that can be divested.

The Amendment makes the following changes:

- Rezone land at 200 Barham River Road currently zoned Public Use Zone 1 - Service and Utility (PUZ1) to the Rural Conservation Zone (RCZ). This comprises Lot 1 TP95752 and the detached island parcel of 120 Barham River Road (Lot 1 TP243582);
- Rezone part of 120 Barham River Road (Lot 2 PS440381, and Lot 1 PS408749), Apollo Bay from the Rural Conservation Zone (RCZ) to the Public Use Zone 1 - Service and Utility (PUZ1); and
- Amend Planning Scheme Map 27 and 30.

Concurrent with the amendment, a planning permit application (Planning Application PP58/2016-1) has been made for a two lot subdivision to individually title the Barwon Water storage basin. Parts of the eastern parcels (Lot 2 PS440381, and Lot 1 PS408749) contain the basin site.

The amendment will change the planning scheme maps. No changes to policy clauses will occur.

The amendment is relatively minor and will generally serve to enable a private entity to purchase land surplus to Barwon Water's needs.

Strategic assessment of the Amendment

Why is the Amendment required?

Barwon Water has completed an extensive review of its property assets throughout the region to identify land that is surplus to its current and future operational needs. Zoning anomalies have been identified and it is sought to rectify these.

The land at 200 Barham River Road is currently partly in the Public Use Zone 1 - Service and Utility (PUZ1), however is privately owned. The 120 Barham River Road 'island lot' is owned by Barwon Water however is not used for public purposes. Application of the Rural Conservation Zone (RCZ) is proposed to reflect the underlying zoning of the local area and rectify a planning anomaly.

Part of the land at 120 Barham River Road comprises an existing Barwon Water asset (water storage basin) and Barwon Water wishes to rezone the land to reflect its ongoing use for this purpose. The land is currently within the Rural Conservation Zone (RCZ) and the application of the Public Use Zone 1 (PUZ1) is proposed to facilitate this current use.

The permit application accompanying the amendment will separate the land required for the water storage basin from that which has been identified as being surplus to Barwon Water's

needs. This will enable Barwon Water to divest the surplus land and enable ongoing use for rural residential purposes. The subdivision will define the lot that is to be rezoned to PUZ that will contain Barwon Water's assets.

How does the Amendment implement the objectives of planning in Victoria?

The amendment implements the objectives of planning in Victoria as set out in Section 4(1) of the *Planning & Environment Act 1987* by:

- *Providing for the fair, orderly, economic and sustainable use and development of the land*

The amendment implements this objective by applying appropriate zones to enable the site to be used to its full potential. The amendment will enable the orderly provision of public utilities for the benefit of the community, while also enabling land not required for public use to be divested and used for purposes consistent with surrounding land.

- *Protecting natural and man-made resources, ecological processes and genetic diversity.*

The amendment will not impact significant flora and fauna habitats or ecological processes. While significant environmental attributes are present at the site and in the surrounding area, the amendment proposes to rezone agricultural and public use land that is largely altered from its natural state.

The amendment is predicted to result in improved land practices and it is important to note that development is not proposed. Once sold, the surplus land will predictably be subject to a greater level of management consistent with surrounding land uses and the natural environment.

- *Securing a pleasant, efficient, safe working, living and recreational environment.*

The amendment will facilitate Barwon Water to provide public utilities more efficiently. Divesting surplus land will allow Barwon Water to consolidate operations at the site and remain focused on service provision rather than managing land that is agricultural in nature.

- *Conserving and enhancing places of historic interest and cultural value*

Parts of the subject site have been identified as having historical interest and cultural value. The amendment will not impact these values with no new development proposed.

- *Protecting and enabling the orderly provision and coordination of public utilities and other facilities*

The amendment will facilitate improved provision of public utilities consistent to the planning scheme controls and policy objectives. As discussed previously, the amendment will allow Barwon Water to divest surplus land and focus on providing public utility provision rather than managing agricultural land.

- *Facilitating development in accordance with the above objectives*

Development is not proposed as part of the amendment.

- *Balancing the present and future needs of all Victorians*

The amendment will ensure that the planning controls are sufficiently appropriate for the underlying land uses that are currently occurring at the site. Appropriate zoning regimes assist with the future needs of Victorians.

Barwon Water has now spoken to the owners of the property surrounding the 'island lot' (Mr Nathan Telford) about the proposed rezoning of the land, which he has no objections toward. This PSA has been put forward to address a planning scheme anomaly, not

because Barwon Water are wanting to sell the isolated lot. Having said that, Mr. Telford has expressed his interest in reincorporating the concrete basin title into his property at a later date. Barwon Water has processes in place to facilitate the transfer of land-locked land to surround properties.

How does the Amendment address any environmental, social and economic effects?

The amendment will have no adverse environmental, social or economic effects. The site is located within the Erosion Management Overlay (EMO1), Land Subject to Inundation Overlay (LSIO), and Significant Landscape Overlay (SLO3), and while altered for agricultural and service provision uses, has significant environmental values. The SLO3 in particular relates to the *Apollo Bay Coastal Valley and Hills Precinct*, providing an intersection of differing landscape elements which produce a '*landscape setting of national significance*'.

The proposed amendment and subdivision would not adversely affect or constrain these values, as it proposes to introduce zoning controls that are responsive to the existing conditions of the land, and allow its appropriate use. The amendment will apply the underlying zoning controls to 200 Barham River Road (privately owned) and the surplus Barwon Water land at 120 Barham River Road, whilst simultaneously removing these zoning controls from the existing water storage basin asset to facilitate its ongoing service and utility use.

An assessment of the site's Aboriginal cultural heritage significance identified no additional areas of significance located within the subject site. Previous assessments have identified four (4) registered cultural heritage places. Additionally, an approved CHMP applies to the heritage places within the site in relation to the construction and ongoing management of the Barwon Water asset on the land. Based on the findings of this CHMP assessment, it is considered that the proposed subdivision of the land would not detrimentally impact the identified heritage places within the property.

Does the Amendment address relevant bushfire risk?

The land is located within a Bushfire Prone Area. The future use and development of the land will provide the necessary infrastructure to support the strengthening of community resilience to bushfire, in accordance with Clause 13.05 'Bushfire'. The application of the underlying zoning and overlay controls would not result in an increased risk to life, property and community infrastructure from bushfire, nor would it result in inappropriate or over development of bushfire prone land (noting again that no development is proposed).

Does the Amendment comply with the requirements of any Minister's Direction applicable to the amendment?

The amendment complies with applicable Minister's Directions. The amendment is consistent with the Minister's Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act, which directs that planning schemes may only include land in a Public Use Zone if the land is Crown land, or is owned by, vested in or controlled by a Minister, government department, public authority or municipal council. As the land will be released/on sold and obtained/used by Barwon Water, it is appropriate to remove and apply the PUZ to the land respectively as proposed.

Ministerial Direction 1

The purpose of Ministerial Direction 1 (Potentially Contaminated Land) is to ensure that potentially contaminated land is suitable for a use which is proposed to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by any contamination.

Table 1 of the *Potentially Contaminated Land Practice Note* lists the type of land uses that may have potential for contaminating land. Utility depots are listed in the medium potential category. The assessment matrix in the Practice Note indicates that including the land within the Rural Conservation Zone would result in a 'C' score for addressing potential

contamination. Rezoning agricultural land to a Public Use Zone similarly results in a 'C' score (agriculture is in the low potential category).

The 'C' scores requires an assessment consideration of 'General duty under Section 12(2)(b) and Section 60(1)(a)(iii) of the *Planning and Environment Act 1987*'. Given, the assessment score, an Environmental Site Assessment is not necessary for the site in order to support the amendment.

Ministerial Direction 11

Ministerial Direction No.11 (Strategic Assessment of Amendments) is the relevant Minister's Direction with regard to the proposed amendment. This section of the report outlines the proposed amendment's compliance with the Strategic Assessment Guidelines. The amendment documents also comply with the Ministerial Direction on the Form and Content of Planning Schemes.

How does the Amendment support or implement the State Planning Policy Framework and any adopted State policy?

The amendment will achieve an appropriate balance between the various needs and expectation of society in terms of their economic, environmental and social well-being. Improved utility provision facilitated by the amendment will provide economic benefits to the community and will promote the sustainable growth of the municipality. This will not occur at the unreasonable expense of the environment and the social fabric of the community.

The amendment will not pose an unreasonable impact to the environment. The site has been historically used for agricultural and public utilities uses. The Amendment will not alter this situation, and will primarily serve to enable a private owner to purchase part of the site and continue agricultural uses.

The amendment implements Clause 11.07 Geelong (G21) Regional Growth, by enabling the land to be used consistent with established planning for the surrounding area. The amendment supports:

- Clause 11.07-4 Environmental Assets, by protecting, restoring and enhancing the region's unique environment.
- Clause 11.07-5 Agricultural Productivity, by securing food, water and energy resources.
- Clause 12.01-1 Protection of Biodiversity, by assisting the protection and conservation of Victoria's biodiversity, including important habitat for Victoria's flora and fauna and other strategically valuable biodiversity sites.
- Clause 13.03-1 Use of Contaminated and Potentially Contaminated Land, by ensuring that potentially contaminated land is suitable for its intended future use and development, and that contaminated land is used safely.
- Clause 14.02-3 Water Conservation, by ensuring that water resources are managed in a sustainable way.
- Clause 19.03-2 Water Supply, Sewerage and Drainage, by planning for the provision of water supply, sewerage and drainage services that efficiently and effectively meet State and community needs and protect the environment.

How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?

The amendment supports:

- Clauses 21.04-1 Catchment Management, by promoting a co-operative regional approach to natural resource management.
- Clause 21.04-2 Water, by protecting water catchments, and retaining and improving water quality and water yield.

- Clause 21.04-5 Erosion, by ensuring that use and development has regard to the potential for landslip.
- Clause 21.04-6 Flooding, by minimising environmental hazards.
- Clause 21.04-9 Cultural Heritage, by protecting places and areas of cultural heritage significance and encourage development and adaption where appropriate that does not detract from their significance.

Does the Amendment make proper use of the Victoria Planning Provisions?

The amendment makes proper use of the Victoria Planning Provisions, applying relevant zones consistent with the underlying land uses, relevant environmental considerations and the zoning and controls applying to surrounding land.

The amendment is consistent with the *Ministerial Direction on the Form and Content of Planning Schemes* which directs that planning schemes may only include land in a Public Use Zone if the land is Crown land, or is owned by, vested in or controlled by a Minister, government department, public authority or municipal council. The inclusion of relevant Barwon Water land within the Public Use Zone 1 is also consistent with *Planning Practice Note No.2 – Public Land Zones*.

The amendment is also consistent with the newly introduced Fast Track Government Land (FTGL) Service, which seeks to facilitate the orderly management of government or publically owned land, including the rezoning and on selling of surplus land holdings in accordance with the zoning and overlay controls applicable to the local area and future use and development.

How does the Amendment address the views of any relevant agency?

This amendment has been prepared in consultation with affected agencies. The amendment will incorporate, where appropriate, the views and requirements of other relevant agencies.

Colac Otway Shire

The Colac Otway Shire has been consulted throughout the preparation of this amendment request and is supportive of Barwon Water with this amendment. Consultation with Council has included a pre-application meeting held with relevant Council officers on 4 February 2016 and 29 April 2016, which suggested that officers were generally supportive of the amendment and associated subdivision.

Department of Environment, Land, Water and Planning (DELWP)

The Department will provide strategic and statutory input into the amendment process and its merits. DELWPs role will be to authorise exhibition of the amendment and to make recommendations to the Minister for Planning on whether the amendment should be approved. In addition, the land is also affected by the Significant Landscape Overlay (SLO3) which will require DELWP involvement and consideration.

In relation to agriculture, planning authorities are encouraged to contact the relevant State Authority on the suitability of the land for its intended agricultural use.

Corangamite Catchment Management Authority (CCMA)

The view of the Corangamite Catchment Management Authority (CCMA) will be considered during the amendment process due to the subject site being affected by the Land Subject to Inundation Overlay (LSIO).

Department of Transport

The views of the Director General of Transport will be considered during the amendment process due to the requirements of Practice Note 11 'Strategic Assessment Guidelines', specifically Question 9.

Country Fire Authority

The views of the Country Fire Authority will be considered during the amendment process due to the requirements of Practice Note 11 'Strategic Assessment Guidelines', specifically Question 3.

Does the Amendment address relevant requirements of the Transport Integration Act 2010?

The amendment will not create a significant impact on the existing transport system as defined by Section 3 of the *Transport Integration Act 2010*. Appreciable increases in private vehicle traffic volumes are not expected as a result of the amendment.

There are no requirements of the Transport Integration Act that apply to this amendment.

What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?

It is expected that the new planning scheme provisions will have a limited impact on the resource and administrative costs of the Colac Otway Shire. Council planning officer resources will be required to assess and implement the amendment. However, the resource and administrative costs to council will not be in excess of the costs typically associated with planning scheme amendments.

Where you may inspect this Amendment

The Amendment is available for public inspection, free of charge, during office hours at the following places:

| Colac Otway Shire Council | Colac Otway Shire Council |
|--|------------------------------------|
| Development and Community Service Centre | Apollo Bay Customer Service Centre |
| 101-105 Gellibrand Street | 69-71 Nelson Street |
| COLAC VIC 3250 | APOLLO BAY VIC 3233 |

Website: www.colacotway.vic.gov.au

The Amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection.

Submissions

Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions about the Amendment must be received by **[insert date]**.

A submission should be titled "Amendment C91 and PP58/2016-1 Submission" and emailed to inq@colacotway.vic.gov.au or mailed to:

Strategic Planning
Colac Otway Shire Council
PO Box 283
COLAC VIC 3250

Panel hearing dates

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: **[insert directions hearing date]**
- panel hearing: **[insert panel hearing date]]**

Planning and Environment Regulations 2015 - Form 9, Section 96J

PLANNING PERMIT

GRANTED UNDER SECTION 96I OF THE
PLANNING AND ENVIRONMENT ACT 1987

Permit No.: PP58/2016-1

Planning scheme: Colac Otway

Responsible authority: Colac Otway Shire

ADDRESS OF THE LAND:

120 Barham River Road APOLLO BAY

Lot: 1 LP: 13765 V/F: 5881/025, Lot: 2 LP: 13765 V/F: 6137/288, Lot: 2 PS: 440381 V/F: 10579/241, Lot: 1 PS: 408749 V/F: 10453/057 Parish of Krambruk

THE PERMIT ALLOWS:

Re-Subdivision of the Land from Four (4) Lots to Two (2) Lots in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Endorsed plan

1. The layout and site dimensions of the subdivision hereby permitted, as shown on the endorsed plan/s, must not be altered or modified without the written consent of the Responsible Authority. There are no requirements to alter or modify the endorsed plan if a plan is certified under the provisions of the Subdivision Act 1988 that is generally in accordance with the endorsed plan.

Compliance with Geotechnical Assessment

2. Prior to the issue of statement of compliance under the *Subdivision Act 1988*, a Geotechnical Assessment to the satisfaction of the Responsible Authority by a suitably qualified professional and in accordance with the requirements of Schedule 1 to the Erosion Management Overlay in the Colac Otway Planning Scheme, must be submitted to the Responsible Authority.
3. The approved subdivision must be carried out on the site in accordance with the recommendations of the Geotechnical Assessment submitted in accordance with condition 2 of this permit, or any Geotechnical Practitioner engaged to review the assessment submitted with the application.

Access

4. Prior to the issue of statement of compliance under the *Subdivision Act 1988*, vehicular access from the roadway to the property boundary must be constructed to the satisfaction of the Responsible Authority.

Date issued:

Date permit comes into
operation:

(or if no date is specified, the permit
comes into operation on the same day
as the amendment to which the permit
applies comes into operation)

Signature for the
responsible authority:

Planning and Environment Regulations 2015 - Form 9, Section 96J

Servicing Authorities

5. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
6. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
7. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.

Expiry

8. This permit will expire if one of the following circumstances applies:
 - a) The plan of subdivision is not certified within two years of the date of the permit.
 - b) A statement of compliance is not issued within five years of the date of certification of the Plan.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be made to the Responsible Authority to extend the periods referred to in this condition.

Date issued:

Date permit comes into operation:

(or if no date is specified, the permit comes into operation on the same day as the amendment to which the permit applies comes into operation)

Signature for the responsible authority:

Planning and Environment Regulations 2015 - Form 9, Section 96J

IMPORTANT INFORMATION ABOUT THIS PERMIT

WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit. The permit was granted by the Minister under section 96I of the **Planning and Environment Act 1987** on approval of Amendment No. **C91** to the **Colac Otway Planning Scheme**.

WHEN DOES THE PERMIT BEGIN?

The permit operates from a day specified in the permit being a day on or after the day on which the amendment to which the permit applies comes into operation.

WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if—
 - the development or any stage of it does not start within the time specified in the permit; or
 - the development requires the certification of a plan of subdivision or consolidation under the **Subdivision Act 1988** and the plan is not certified within two years of the issue of a permit, unless the permit contains a different provision; or
 - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.
2. A permit for the use of land expires if—
 - the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
 - the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if—
 - the development or any stage of it does not start within the time specified in the permit; or
 - the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
 - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
 - the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—
 - the use or development of any stage is to be taken to have started when the plan is certified; and
 - the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT REVIEWS?

- In accordance with section 96M of the **Planning and Environment Act 1987**, the applicant may not apply to the Victorian Civil and Administrative Tribunal for a review of any condition in this permit.

Date issued:

Date permit comes into operation:

(or if no date is specified, the permit comes into operation on the same day as the amendment to which the permit applies comes into operation)

Signature for the responsible authority:

**OM162408-5 KINDERGARTEN SERVICE LICENCE AGREEMENTS WITH COLAC EAST,
WINIFRED NANCE AND WYDINIA**

| | | | |
|-------------|----------------------------------|-----------|-------------|
| AUTHOR: | Greg Fletcher | ENDORSED: | Brydon King |
| DEPARTMENT: | Development & Community Services | FILE REF: | F16/6763 |

Purpose

To seek Council's approval for 10 year Licence agreements for the Colac East, Winifred Nance and Wydinia kindergartens with their cluster manager Barwon Child Youth and Family (BCY&F).

Declaration of Interests

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

Background

There are two Licences that kindergartens on Council land need to hold. The first is with Council to operate from a Council premises. The second is to be licenced with the Department of Education and Training (DET) to be able to operate as a kindergarten Licensee. Council has agreed to and supported BCYF to be the cluster manager for its three Colac based kindergartens.

To ensure that BCY&F continues to be recognised by Council as the Licensee for operating these three kindergartens, a new property Licence has been developed for each kindergarten to meet specific and unique property licence requirements. They also document the roles and responsibilities of Council and BCY&F.

BCY&F, as the cluster manager, continues to operate as the Licensee for these kindergartens and is responsible for negotiating any future service provider licensing arrangements with the Department of Education and Training (DET). Other duties undertaken by BCY&F include the employment of staff, including all staff related activities, and financial management. BCY&F has been especially active in gaining State Government funds for the redevelopment of Colac East and Wydinia kindergartens and is currently in discussion with Council about a potential redevelopment of Winifred Nance to ensure it has sufficient room to accommodate 33 children, instead of being limited at 29.

This has removed the administrative and improvement pressures previously on voluntary committees of management and better ensures compliance with regulations and national frameworks.

Council Plan / Other Strategies / Policy

A Place to Live and Grow

Is a community where people feel cared for and supported; where buildings and spaces facilitate creativity, social activity and enrichment of life, and people have access to gain the skills and education needed to reach their potential.

Our Goal:

Improve access to buildings, spaces, services and education to support and enable quality of life.

Issues / Options

The three kindergarten properties have been considered under our *Council Property Leasing Policy 4.2 (the Policy)* and satisfy the definitions and conditions of a Licence. Each Licence will give the Licensee a right to occupy the property (not exclusively), but it does not create any interest in that land to the Licensee. This promotes the greatest community benefit and value from a Council facility through encouraging multi-use of facilities and tailoring the services provided by tenants to best suit the community.

The main reason to issue a Licence instead of a lease is to allow for potential opportunities for the facility to be shared, thereby creating greater use of a Council facility. Examples of this could include a maternal and child health service or various paediatric providers.

The Licensee under *the Policy* is considered a Group 1 - Community Service category, which receives the greatest discount or subsidy.

The renewals of these Licences in this report are very specific and have been developed to meet unique service requirements.

In early 2016, during negotiations with the Victorian Department of Education and Training (DET) on funding for the Colac East kindergarten, it became a requirement from DET that a Licence from Council to BCY&F be extended from 3 to 10 years to provide surety that the building would continue to be used as a kindergarten.

Clause 8.3 of the Policy indicates that the optimum term of 3 years can be negotiated to a longer term where a community organisation is making or has made a substantial contribution to the construction, improvement or maintenance of the property. This has been the case for Wydinia and Colac East where BCY&F has successfully obtained substantial funding (\$180,000 and \$288,464 respectively) and will contribute \$46,369 towards the Colac East improvement.

As prescribed under section 190 of the *Local Government Act 1989*, Council is required to publish a public notice for property Leases when it is for period of 10 years or more. Although this recommendation is for Licences Council is proposing complete transparency and consistency by treating the proposed agreements the same as a Lease Agreement by advertising for public consultation for 4 weeks.

BCY&F is currently discussing with council staff potential improvements for Winifred Nance and the potential funding required to upgrade and optimise building to meet current standards and ratio requirements. It is most probable that any request to DET in future funding rounds for renovations at Winifred Nance will also require it to have a 10 year licence to obtain the funding. Therefore, it is appropriate that Council, in support of BCY&F undertaking preliminary architectural works and future preparation of a funding application for Council to submit to DET for consideration. It is assumed that the funding to be sought would be similar to Colac East. It is also likely that Council will be asked to contribute, together with BCY&F, a similar amount each to complete this future project.

Due to the proposal that these three kindergartens will be transitioning to 10 year property Licences, a public notice will need to be advertised to report this intention, following approval by Council to grant the 10 years Licenses.

Each Licence in this report has a Service Agreement in addition to the Licence Agreement. The difference between these agreements can be described as:

- A Licence Agreement outlines the Occupier's and Council's responsibilities for the facility, and external playgrounds/gardens.
- A Service Agreement outlines the Occupier's and Council's responsibilities in relation to service provision and expectations.

The Service Agreement for kindergartens outlines Council's responsibilities in early years planning and its expectations of the Licensee to provide space for other early year's services, meeting requirements around compliance and participating in the development of the local early year's sector.

The proposed Licencing arrangement would not prejudice future discussion in relation to an early years hub in Colac.

Proposal

It is proposed that Council adopt the recommendations within this report.

Financial and Other Resource Implications

As a Group 1 - Community Service category, this licence is subsidised with a nominal rate set at \$1.00 per annum payable in advance upon signing of the Licence.

BCY&F, as cluster manager for these three kindergartens, has provided considerable funding and in-kind support into improving their services to the community; the planning and structural improvements of buildings; and addressing key safety issues for children, families and staff.

Risk Management & Compliance Issues

Current Licences for these kindergartens expire in November 2016. To ensure that renewal takes place prior to the expiration date this report is presented to Council at its August meeting.

Preparing these Licences for a 10 year period satisfies the requirements of the funding body, DET.

Environmental and Climate Change Considerations

There are no significant environmental issues associated with the proposal in this report.

Community Engagement

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

Consultation has been held with BCY&F on the renewal of these Licences and the extension of them to a 10 year period.

Implementation

It is proposed that following Council's adoption of the recommendations in this report adopt the requirements under section 190 of the *Local Government Act 1989* to publish a public notice for the proposed 10 year property Licences.

Conclusion

This Licence agreement ensures that kindergarten facilities, on Council land, at 19 Dunoon Street, Colac (Wydinia), 5 Gilmartin Street, Colac (Winifred Nance) and 1 Polwarth Street, Colac (Colac East) are used in a manner consistent with the intention of *the Policy*.

In recognition of the contribution that BCY&F has made or is making to improvement these kindergartens and the need to satisfy the requirements of the main funder, DET, it is both appropriate and necessary to grant 10 year Licences.

Attachments

1. Correct Licence Agreement - Wydinia Kindergarten - BCYF - 2016 final
2. Licence Agreement - Winifred Nance Kindergarten - BCYF - 2016 final
3. Licence Agreement - Colac East Kindergarten - BCYF - 2016 final

Recommendations

That Council:

1. ***In accordance with Local Government Act 1989 sections 190(3)(b) enter into licence agreements with Barwon Child Youth and Family for land situated 19 Dunoon Street,***

Colac, 5 Gilmartin Street, Colac and 1 Polwarth Street, Colac on the following terms and conditions:

| | |
|-----------------------|--|
| Agreement Type | Community Services Licence
(kindergarten and early years services) |
| Rent | \$1.00 per annum (incl. GST) |
| Licence Term | 10 years |
| Further Term | Nil |
| Rent Review | Nil |
| Maintenance | In accordance with Annexure B,
Maintenance Schedule 1 (contained
within each Licence) |

2. ***Authorise Council officers to prepare and give public notice of the proposed licences in accordance with sections 190 and 223 of the Act for a period of four weeks;***
3. ***In accordance with section 223 of the Act;***
 - 3.1 ***consider any written submissions received in relation to the proposed licences.***
 - 3.2 ***gives seven days' notice by placing a public notice in the local print media of its intention to consider any submissions received at an Ordinary Council Meeting to be held on 23 November 2016. Formal advice of the time and location of the meeting will be provided to those parties wishing to be heard in support of their submission.***
 - 3.3 ***if written submissions are received, report back with recommendations to Council.***
4. ***In the event that no submissions are received, execute the proposed under delegation in accordance with the terms and conditions specified in paragraph 1 above.***

~~~~~\) ~~~~~

**Date**

## **Community Services Licence**

**Licensed Area: 19 Dunoon Street, Colac (Wydinia Kindergarten & Early Learning Centre)**

**Colac-Otway Shire Council**

**and**

**Barwon Child Youth & Family**



## Contents

|                                                       |          |
|-------------------------------------------------------|----------|
| <b>Schedule.....</b>                                  | <b>1</b> |
| <b>1. Definitions .....</b>                           | <b>2</b> |
| <b>2. Licence .....</b>                               | <b>3</b> |
| <b>3. Payments by the Licensee.....</b>               | <b>3</b> |
| 3.1 Payment of Licence Fee .....                      | 3        |
| 3.2 Rates and Taxes .....                             | 3        |
| 3.3 Services .....                                    | 3        |
| 3.4 Costs and Duty .....                              | 4        |
| 3.5 Interest on Late Payments .....                   | 4        |
| 3.6 No Deduction or Right of Set-off .....            | 4        |
| <b>4. GST .....</b>                                   | <b>4</b> |
| 4.1 Definitions .....                                 | 4        |
| 4.2 GST Exclusive .....                               | 4        |
| 4.3 Increase in Consideration .....                   | 4        |
| 4.4 Payment of GST .....                              | 4        |
| 4.5 Tax Invoice .....                                 | 4        |
| 4.6 Reimbursements .....                              | 4        |
| 4.7 Adjustment events .....                           | 5        |
| <b>5. Repairs, Alterations and Damage.....</b>        | <b>5</b> |
| 5.1 Repairs and Maintenance .....                     | 5        |
| 5.2 Failure to Repair and Maintain .....              | 5        |
| 5.3 Alterations and Works .....                       | 5        |
| 5.4 Defacing Licensed Area .....                      | 6        |
| 5.5 Occupational health and safety .....              | 6        |
| 5.6 Notice of Damage .....                            | 6        |
| <b>6. Insurance .....</b>                             | <b>6</b> |
| 6.1 Insurances to be effected by the Licensee .....   | 6        |
| 6.2 Licensee's Property .....                         | 6        |
| 6.3 Condition in Policies .....                       | 6        |
| 6.4 Payment and Production of Policies .....          | 7        |
| 6.5 Not Invalidate Policies .....                     | 7        |
| 6.6 Other Insurance .....                             | 7        |
| <b>7. Community Services Use.....</b>                 | <b>7</b> |
| 7.1 Permitted Use and Permitted Hours .....           | 7        |
| 7.2 Illegal Purpose .....                             | 7        |
| 7.3 No Warranty .....                                 | 7        |
| 7.4 Hours of Use .....                                | 7        |
| 7.5 Compliance with Laws .....                        | 8        |
| 7.6 Nuisance and Noise .....                          | 8        |
| 7.7 Licences and Permits .....                        | 8        |
| 7.8 Security .....                                    | 8        |
| 7.9 Keys .....                                        | 8        |
| 7.10 Signs .....                                      | 9        |
| 7.11 Heavy Equipment and Inflammable Substances ..... | 9        |
| 7.12 No Smoking .....                                 | 9        |
| 7.13 Vehicles .....                                   | 9        |
| 7.14 Emergency Procedures .....                       | 9        |
| 7.15 Playground Equipment .....                       | 10       |
| 7.16 Television and Radio .....                       | 10       |
| 7.17 Endanger Licensed Area .....                     | 10       |

|            |                                                                |           |
|------------|----------------------------------------------------------------|-----------|
| 7.18       | Licensee's Employees.....                                      | 10        |
| 7.19       | Liquor Licence.....                                            | 10        |
| 7.20       | Gambling.....                                                  | 10        |
| 7.21       | Gaming Licence .....                                           | 10        |
| 7.22       | Reporting Requirements.....                                    | 10        |
| 7.23       | Licensee Membership .....                                      | 11        |
| 7.24       | Animals .....                                                  | 11        |
| 7.25       | Auction Sales .....                                            | 11        |
| <b>8.</b>  | <b>Release and Indemnity.....</b>                              | <b>11</b> |
| 8.1        | Release.....                                                   | 11        |
| 8.2        | Indemnity .....                                                | 11        |
| <b>9.</b>  | <b>Assignment and Sub-Licensing .....</b>                      | <b>11</b> |
| <b>10.</b> | <b>Entry by the Council .....</b>                              | <b>11</b> |
| <b>11.</b> | <b>Council's Consent.....</b>                                  | <b>12</b> |
| <b>12.</b> | <b>Licensee's obligations at the end of this Licence .....</b> | <b>12</b> |
| 12.1       | Licensee's Obligations.....                                    | 12        |
| 12.2       | Licensee's Property Left in Licensed Area .....                | 12        |
| <b>13.</b> | <b>Determination of Licence.....</b>                           | <b>12</b> |
| 13.1       | Re-entry .....                                                 | 12        |
| 13.2       | Damages following Determination .....                          | 13        |
| 13.3       | Essential Terms .....                                          | 13        |
| <b>14.</b> | <b>Destruction or Damage of Licensed Area .....</b>            | <b>13</b> |
| 14.1       | Reduction in Licence Fee .....                                 | 13        |
| 14.2       | Reinstatement of Licensed Area.....                            | 13        |
| 14.3       | Licensee's Right of Termination.....                           | 13        |
| <b>15.</b> | <b>Overholding.....</b>                                        | <b>13</b> |
| <b>16.</b> | <b>Grant of Licence only.....</b>                              | <b>14</b> |
| <b>17.</b> | <b>General .....</b>                                           | <b>14</b> |
| 17.1       | Incorporated Associations .....                                | 14        |
| 17.2       | Notices.....                                                   | 14        |
| 17.3       | Entire Understanding.....                                      | 14        |
| 17.4       | Waiver.....                                                    | 15        |
| 17.5       | Additional Clauses.....                                        | 15        |
| <b>18.</b> | <b>Interpretation.....</b>                                     | <b>15</b> |
| 18.1       | Governing Law and Jurisdiction .....                           | 15        |
| 18.2       | Persons.....                                                   | 15        |
| 18.3       | Joint and Several.....                                         | 15        |
| 18.4       | Legislation.....                                               | 15        |
| 18.5       | Clauses and Headings .....                                     | 15        |
| 18.6       | Severance.....                                                 | 16        |
| 18.7       | Number and Gender.....                                         | 16        |
|            | <b>Execution Page .....</b>                                    | <b>17</b> |
|            | <b>Annexure A: Additional Clauses .....</b>                    | <b>18</b> |
|            | <b>Annexure B: Maintenance Schedule .....</b>                  | <b>23</b> |
|            | <b>Annexure C: Service Agreement .....</b>                     | <b>27</b> |
|            | <b>Annexure D: Map of Licenced Area .....</b>                  | <b>28</b> |

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## Schedule

|     |                                |                                                                                          |
|-----|--------------------------------|------------------------------------------------------------------------------------------|
| 1.  | <b>Date of this Licence:</b>   | The day of 2016                                                                          |
| 2.  | <b>Council:</b>                | Colac-Otway Shire Council (ABN 32 430 819 755) of<br>2-6 Rae Street, Colac 3250          |
| 3.  | <b>The Licensee:</b>           | Barwon Child Youth & Family<br>(ABN 98 057 582 733) of 222 Malop Street, Geelong<br>3220 |
| 4.  | <b>Land:</b>                   | The whole of the land contained in certificate of title<br>volume 08438 folio 453        |
| 5.  | <b>Licensed Area</b>           | The whole of the Land and buildings known as 19<br>Dunoon Street, Colac                  |
| 6.  | <b>Term:</b>                   | Ten (10) years (as consistent with Council's Property<br>Leasing Policy 4.2)             |
| 7.  | <b>Commencement Date:</b>      |                                                                                          |
| 8.  | <b>Community Services Use:</b> | Kindergarten and Child Care                                                              |
| 9.  | <b>Licence Fee:</b>            | \$1.00 per annum payable in advance upon signing of<br>the licence                       |
| 10. | <b>Hours of Use</b>            | As determined by Planning Guidelines                                                     |
| 11. | <b>Additional Clauses</b>      | As set out in Annexure A                                                                 |

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## Community Services Licence

### Dated

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### Parties

The Council

The Licensee

### The Parties Agree

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#### 1. Definitions

In this Licence, unless expressed or implied to the contrary:

**Additional Clauses** means the clauses (if any) specified in Item 11.

**Annexure** means an annexure to this Licence.

**Commencement Date** means the date specified in Item 7.

**Community Services Use** means the use specified in Item 8 of the Schedule.

**Council** means the Council specified in Item 2 and includes the Council's successors and assigns and where it is consistent with the context includes the Council's employees and agents.

**Council's Fixtures** includes all those fittings, fixtures, and chattels contained in the Licensed Area at the Commencement Date (if any) or installed by the Council during the Term.

**Hours of Use** means the hours of use specified in Item 10, or such other hours of use as the Council and the Licensee agree in writing from time to time.

**Item** means an item in the Schedule.

**Land** means the land specified in Item 4.

**Licence Fee** means the amount specified in Item 9.

**Licensed Area** means the land specified in Item 5 including any buildings and pavilions on the land and the Council's Fixtures.

**Licensee** means the Licensee specified in Item 3 and includes the Licensee's successors and assigns and where it is consistent with the context includes the Licensee's employees, agents, invitees and persons the Licensee allows on the Licensed Area.

**Maintenance Schedule** means the maintenance schedule attached to this Licence as Annexure C.

**OHS Act** means the *Occupational Health and Safety Act 2004* (Vic).

**OHS Law** means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Licensed Area.

**OHS Regulations** means the *Occupational Health and Safety Regulations 2007* (Vic).

**Principal Contractor** means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

**Schedule** means the Schedule at the front of this Licence.

**Service Agreement** means the service agreement attached to this Licence as Annexure D.

**Term** means the term specified in Item 6 and includes any extension or overholding.

---

## 2. Licence

The Council grants a licence to the Licensee to use the Licensed Area in common with the Council and persons authorised by the Council for the Term starting on the Commencement Date, subject to the terms of this Licence.

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## 3. Payments by the Licensee

### 3.1 Payment of Licence Fee

The Licensee must pay the Licence Fee to the Council in the manner specified in Item 9.

### 3.2 Rates and Taxes

The Licensee must pay all rates, taxes (including land tax assessed on the basis that the Licensed Area is the only land owned by the Council) and all other charges and levies separately assessed in connection with the Licensed Area (Rates and Taxes). If the Rates and Taxes are not separately assessed for the Licensed Area, the Licensee must pay or refund to the Council the proportion of the Rates and Taxes that the area of the Licensed Area bears to the total lettable area assessed within 14 days of receipt of a written notice from the Council.

### 3.3 Services

The Licensee must pay for all services in connection with the Licensed Area including electricity, gas, water, garbage collection and telephone (**Services**). Where the Licensed Area is not separately metered, the Licensee must at the discretion of the Council pay to the Council the proportion of the charges for the Services that the area of the Licensed Area bears to the total area assessed within 14 days of receipt of a written notice from the Council.



### 3.4 Costs and Duty

The Licensee must pay to the Council within 7 days of demand the Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Licence by the Licensee.

### 3.5 Interest on Late Payments

The Licensee must pay to the Council on demand interest at the rate per annum equal to the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on any money payable by the Licensee under this Licence and remaining unpaid for 7 days. Interest will be computed from the date on which such payment became due.

### 3.6 No Deduction or Right of Set-off

The Licensee must pay all amounts due under this Licence to the Council without deduction or right of set-off.

---

## 4. GST

### 4.1 Definitions

In this clause:

- 4.1.1 words and expressions that are not defined in this Licence but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 4.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

### 4.2 GST Exclusive

Except as otherwise provided by this clause, all consideration payable under this Licence in relation to any supply is exclusive of GST.

### 4.3 Increase in Consideration

If GST is payable in respect of any supply made by a supplier under this Licence (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

### 4.4 Payment of GST

Subject to clause 4.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Licence.

### 4.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 4.4.

### 4.6 Reimbursements

If this Licence requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

4.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

4.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

#### **4.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Licence:

4.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

4.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

---

### **5. Repairs, Alterations and Damage**

#### **5.1 Repairs and Maintenance**

5.1.1 The Licensee must carry out the obligations which are described in the Maintenance Schedule (Annexure B) as being the responsibility of the Licensee.

5.1.2 Council must carry out the obligations which are described in the Maintenance Schedule (Annexure B) as being the responsibility of the Council.

#### **5.2 Failure to Repair and Maintain**

If the Licensee does not carry out any repairs, maintenance or other works required under this Licence within 14 days of receiving written notice from the Council, the Council may enter the Licensed Area to carry out such repairs, maintenance and works at any reasonable time after giving the Licensee reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Licensee to the Council on demand.

Typically, Council will respond to requests for building maintenance within 2 days excluding weekends and public holidays. The Licensee may organise emergency maintenance outside of normal business hours. All after hours call outs for emergency works are to be reported to Council the next working day. In such situations preference should be given to using Council approved suppliers. With reference to Annexure B, should the emergency maintenance relate to item which is Council's responsibility, the Licensee will be entitled to reimbursement of reasonable costs. Any such claim will need to be supported by all relevant documentation.

#### **5.3 Alterations and Works**

The Licensee must obtain the prior written consent of the Council before carrying out any alterations or works on the Licensed Area (including but not limited to the removal of trees or shrubs). The Licensee must ensure that any alterations or works on the Licensed Area are carried out:

5.3.1 strictly in accordance with plans and specifications approved by the Council (and such approval may be given or withheld at Council's absolute discretion);

5.3.2 in a proper and workmanlike manner;

5.3.3 to the Council's reasonable satisfaction and in accordance with the Council's reasonable requirements; and

- 5.3.4 in accordance with all rules and requirements of any authorities having jurisdiction over the Licensed Area.

**5.4 Defacing Licensed Area**

The Licensee must not deface or damage the Licensed Area (including drilling holes in the Licensed Area) except where approved by the Council in accordance with clause 5.3.

**5.5 Occupational health and safety**

For the purposes of the OHS Law, the Licensee agrees that:

- 5.5.1 the Licensee has sole management and control of the Licensed Area and has sole responsibility for ensuring that the Licensed Area and the means of entering and leaving them are safe and without risks to health;
- 5.5.2 Council appoints the Licensee as Principal Contractor in respect of any works to be carried out by the Licensee in the Licensed Area to which an OHS Law applies;
- 5.5.3 the Licensee must carry out such works in accordance with the requirements of the OHS Law; and
- 5.5.4 Council authorises the Licensee to exercise whatever authority is necessary for the Licensee to discharge the responsibilities of the appointment under clause 5.5.2.

**5.6 Notice of Damage**

The Licensee must give the Council prompt written notice of any material damage to the Licensed Area or anything likely to be a risk to the Licensed Area or any person in the Licensed Area.

---

**6. Insurance**

**6.1 Insurances to be effected by the Licensee**

- 6.1.1 The Licensee must maintain insurance, in the name of the Licensee, and noting the interest of the Council with an insurer approved by the Council for public liability for the amount of \$20 million concerning one single event (or such greater sum as required by the Council).
- 6.1.2 The Licensee acknowledges that the insurance set out in clause 6.1.1 must extend to volunteers engaging in duties directly related to the Licensee's activities.

**6.2 Licensee's Property**

The Licensee must maintain insurance for its fixtures and fittings for the full replacement value.

**6.3 Condition in Policies**

The Licensee must ensure that the insurance policies effected by the Licensee contain a condition that the insurer will notify the Council at least 14 days before the policies lapse.

**6.4 Payment and Production of Policies**

The Licensee must pay all insurance premiums at least 14 days before the due date for payment and produce to the Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

**6.5 Not Invalidate Policies**

The Licensee must not do anything which may make any insurance effected by the Licensee or the Council invalid or which may increase the insurance premiums. If the insurance premium increases, the Licensee must pay that increase.

**6.6 Other Insurance**

The Licensee must, at its cost, effect and maintain:

6.6.1 workers' compensation insurance for its employees; and

6.6.2 if required by Council, professional indemnity, and directors and officers liability, insurance,

to the reasonable satisfaction of Council.

---

**7. Community Services Use**

**7.1 Permitted Use and Permitted Hours**

The Licensee must use the Licensed Area for the Community Services Use specified in Item 8 and must not use the Licensed Area for any other purpose without the prior written consent of Council which may be granted or withheld by Council in its sole discretion.

**7.2 Illegal Purpose**

The Licensee must not use the Licensed Area for any illegal purpose or carry on a noxious or offensive activity on the Licensed Area.

**7.3 No Warranty**

The Licensee:

7.3.1 acknowledges that the Council does not represent that the Licensed Area is suitable for the Community Services Use; and

7.3.2 must make its own enquiries as to the suitability of the Licensed Area for the Community Services Use.

**7.4 Hours of Use**

7.4.1 The Licensee must only use the Licensed Area for the Community Services Use during the Hours of Use.

7.4.2 The Licensee may use the Licensed Area for the purpose of taking deliveries, cleaning, maintenance and meetings only outside of the Hours of Use.

## 7.5 Compliance with Laws

The Licensee must comply with all laws and any requirements of any authority in connection with the Licensed Area and the Licensee's use and occupation of the Licensed Area.

## 7.6 Nuisance and Noise

7.6.1 The Licensee must not do anything in connection with the Licensed Area which may:

- (a) cause a nuisance or interfere with any other person; or
- (b) be dangerous or offensive in the Council's reasonable opinion.

7.6.2 The Licensee must ensure that the level of noise emanating from the Licensed Area:

- (a) does not cause a nuisance to other people; and
- (b) is kept at a level that complies with all laws and regulations, including without limitation the *Environment Protection (Residential Noise) Regulations 2008*.

## 7.7 Licences and Permits

The Licensee must maintain all licences and permits required for the Licensee's use of the Licensed Area and obtain the Council's prior written consent before varying any licence or permit or applying for any new licence or permit.

## 7.8 Security

The Licensee must keep the Licensed Area secure at all times when the Licensed Area is not being used by the Licensee.

## 7.9 Keys

7.9.1 If a key is required to access the Licensed Area, the Council's maintenance co-ordinator will provide the Licensee with the key to access the Licensed Area.

7.9.2 The Licensee may request in writing for extra keys to be issued. However, the Council has absolute discretion to decide on the number of keys that are ultimately issued to the Licensee.

7.9.3 The Licensee must:

- (a) not make any copies of the keys issued to the Licensee;
- (b) notify the Council within 24 hours of it becoming aware of any lost or stolen keys; and
- (c) not install or remove any key cylinders or padlocks in the Licensed Area without obtaining the prior written consent of the Council.

7.9.4 The Licensee will be responsible for the cost incurred to install or remove any key cylinders or padlocks and to issue any new keys when at fault.

7.9.5 The Council may remove or install, at the Licensee's expense, and at any time, any key cylinders or padlocks that have been installed or removed without the Council's prior consent.



7.9.6 All keys need to be compatible with the master set held by Council's Infrastructure and Services Department.

7.9.7 The Licensee must pay to the Council on demand, when at fault:

- (a) the costs incurred by the Council to replace any lost, stolen or damaged keys and lock barrels for the Licensed Area; and
- (b) the costs incurred by the Council to issue any extra keys.

**7.10 Signs**

7.10.1 The Licensee must seek the prior written consent of the Council before displaying or affixing any signs, advertisements or notices to any part of the Licensed Area unless the signs, advertisements or notices relate to the Licensee's activities carried on at the Licensed Area.

7.10.2 The Licensee:

- (a) allows the Council to enter onto the Licensed Area to inspect the condition of any signs, advertisements or notices displayed or affixed to any part of the Licensed Area under this clause; and
- (b) must comply, at its own cost, with all reasonable directions of Council in relation to the maintenance, removal or replacement of such signs, advertisements or notices.

**7.11 Heavy Equipment and Inflammable Substances**

The Licensee must obtain the Council's prior written consent before bringing any heavy equipment or inflammable substances into the Licensed Area except to the extent to which it is consistent with the Community Services Use.

**7.12 No Smoking**

The Licensee must:

- 7.12.1 not permit the sale of tobacco products or tobacco related products;
- 7.12.2 not permit any smoking in the Licensed Area; and
- 7.12.3 display 'no smoking' signs in the Licensed Area if requested by the Council.

**7.13 Vehicles**

The Licensee must not permit any vehicles to be driven, parked or stopped at any place or time on any part of the Licensed Area except at such places and at such times for the purpose of services or works, or an educational activity.

**7.14 Emergency Procedures**

The Licensee must:

- 7.14.1 keep a first aid kit at the Licensed Area and replenish it when required;
- 7.14.2 establish and display an evacuation plan, and test the utility of any such evacuation plan, at regular intervals during each year; and

7.14.3 keep all emergency equipment fully replenished.

**7.15 Playground Equipment**

7.15.1 The Licensee must not construct or erect any fixed playground equipment at the Licensed Area without Council's prior written consent.

7.15.2 Any playground equipment on the Licensed Area must comply with Australian Standards AS1924.1 – 1981 and AS1924.2 – 1981, and industry best practice in design, provision and maintenance, including the undersurfacing component contained in AS/NSZ4422-1996.

**7.16 Television and Radio**

The Licensee must not install any televisions, radios, music systems or other equipment in the Licensed Area which can be heard outside the Licensed Area without obtaining the prior written consent of the Council.

**7.17 Endanger Licensed Area**

The Licensee must not do or permit anything to be done in connection with the Licensed Area which in the opinion of the Council may endanger the Licensed Area or be a risk to any person or property.

**7.18 Licensee's Employees**

The Licensee must use all reasonable endeavours to ensure that the Licensee's employees, agents, contractors and invitees observe and comply with the Licensee's obligations under this Licence, where appropriate.

**7.19 Liquor Licence**

The Licensee must not apply for any licence or permit under the *Liquor Control Reform Act* 1998 (Vic) unless approved by Council for a single event.

**7.20 Gambling**

The Licensee must not apply for a licence or permit pursuant to the *Gambling Regulation Act* 2003 (Vic).

**7.21 Gaming Licence**

The Licensee must seek the prior written consent of the Council before applying for any licence under the *Gaming Machine Control Act* 1991 (Vic). The Council may withhold its consent or give its consent subject to such terms and conditions as Council may determine in its absolute discretion.

**7.22 Reporting Requirements**

The Licensee must give to the Council within 14 days of the Licensee's annual general meeting, a written report detailing:

7.22.1 the office bearers appointed to the Licensee, their duties and the length of term of the office of each office bearer; and

7.22.2 the activities conducted by the Licensee during the preceding year.

**7.23 Licensee Membership**

The Licensee will:

- 7.23.1 permit residents and ratepayers of the municipality to become members of the Licensee upon satisfying the Licensee's reasonable requirements for membership;
- 7.23.2 upon demand, inform Council of the number of members of the Licensee; and
- 7.23.3 within 7 days of demand, provide all necessary documents to the Council to verify the membership of the Licensee.

**7.24 Animals**

The Licensee must not allow any animals other than guide dogs, or for curriculum activities reasonably expected within an early years setting, to enter the Licensed Area.

**7.25 Auction Sales**

The Licensee must not conduct or allow to be conducted any auctions, garage sales, car boot sales, fetes or similar activities without the prior written consent of Council (which consent must not be unreasonably withheld).

---

**8. Release and Indemnity**

**8.1 Release**

The Licensee uses and occupies the Licensed Area at its own risk and releases the Council from all claims resulting from any damage, loss, death or injury in connection with the Licensed Area except to the extent that the Council is negligent.

**8.2 Indemnity**

The Licensee must indemnify and hold harmless the Council against all claims resulting from any damage, loss, death or injury in connection with the Licensed Area and the use and occupation of the Licensed Area by the Licensee except to the extent that the Council is negligent.

---

**9. Assignment and Sub-Licensing**

The Licensee must not deal with its interest in the Licensed Area including assigning this Licence to a new licensee or sub-licensing the Licensed Area to a new licensee without the prior written consent of the Council.

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**10. Entry by the Council**

- 10.1 Subject to clause 10.3, the Council may enter the Licensed Area at any reasonable time after giving the Licensee reasonable notice to:

- 10.1.1 inspect the Licensed Area;
- 10.1.2 rectify any default by the Licensee under this Licence; or

- 10.1.3 carry out any inspection, repairs, maintenance, works or alterations in the Licensed Area which the Council decides, or is required, to carry out by any law or authority.
- 10.2 The Council must use all reasonable endeavours to cause as little disruption as possible to the Licensee's use of the Licensed Area in exercising the Council's rights under this clause.
- 10.3 The Council may enter the Licensed Area at any time without giving notice to the Licensee in an emergency.

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## **11. Council's Consent**

Where consent is requested to be granted by the Council under this Licence, the Council may withhold its consent at its absolute discretion and, if it gives its consent, it may impose conditions as it deems necessary in its absolute discretion.

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## **12. Licensee's obligations at the end of this Licence**

### **12.1 Licensee's Obligations**

At the end of this Licence, the Licensee must:

- 12.1.1 vacate the Licensed Area and give it back to the Council in a condition consistent with the Licensee having complied with its obligations under this Licence;
- 12.1.2 remove the Licensee's chattels and if required by the Council, remove all of the Licensee's fixtures and make good any damage caused by their removal; and
- 12.1.3 give to the Council all keys and other security devices for the purposes of obtaining access to the Licensed Area.

### **12.2 Licensee's Property Left in Licensed Area**

Anything left in the Licensed Area at the end of this Licence will become the property of the Council and may be removed by the Council at the Licensee's cost and at the Licensee's risk.

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## **13. Determination of Licence**

### **13.1 Re-entry**

The Council may re-enter the Licensed Area and determine this Licence if:

- 13.1.1 any part of the Licence Fee is in arrears for 14 days (whether or not the Council has demanded payment); or
- 13.1.2 the Licensee breaches this Licence and does not remedy the breach within 14 days of receipt of written notice from the Council; or
- 13.1.3 the Licensee is a corporation, and:
  - (a) an order is made or resolution is passed to wind up the Licensee;

- (b) an order is made or a meeting is called for the appointment of an administrator, provisional administrator, liquidator or provisional liquidator, receiver, receiver and manager, or an inspector to the Licensee; or
- (c) an administrator, provisional administrator, liquidator, provisional liquidator, receiver, receiver and manager, or inspector is appointed to the Licensee; or
- (d) any act or event mentioned in section 461(1)(a) to (k) of the *Corporations Act* 2001 (Cth) occurs in relation to the Licensee.

### 13.2 Damages following Determination

If this Licence is determined by the Council, the Licensee agrees to compensate the Council for any loss or damage the Council suffers arising in connection with the Licensee's breach of this Licence including the loss of the benefit of the Licensee performing its obligations under this Licence up to the expiration of the Term.

### 13.3 Essential Terms

The essential terms of this Licence are clauses 3.1, 3.2, 3.5, 4, 5.1, 5.3, 6.1, 7.1, 7.5, 7.22, 7.23, 9, and 12 and any Additional Clause that is expressed to be an essential term. The breach of an essential term is a repudiation of this Licence.

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## 14. Destruction or Damage of Licensed Area

### 14.1 Reduction in Licence Fee

If the Licensed Area, or any part of the Licensed Area is destroyed or damaged to the extent that the Licensee cannot use or have access to the Licensed Area (except if the Licensee causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Licensed Area because the Licensee caused or contributed to the destruction or damage) then the Council will reduce the Licence Fee by a reasonable amount depending upon the nature and extent of destruction or damage until the Licensee can use or have access to the Licensed Area.

### 14.2 Reinstatement of Licensed Area

If the Licensed Area, or any part of the Licensed Area is destroyed or damaged, the Council may, within 6 months from the date of such damage or destruction, give notice to the Licensee:

- 14.2.1 terminating this Licence, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 14.2.2 that the Council will commence reinstatement of the Licensed Area to a condition where the Licensee can use or have access to the Licensed Area.

The Council does not have to reinstate the Licensed Area.

### 14.3 Licensee's Right of Termination

The Licensee may give written notice to the Council terminating this Licence where:

- 14.3.1 the Council does not give notice to the Licensee pursuant to clause 14.2; or
- 14.3.2 the Council does not commence reinstatement within 6 months of the date of damage or destruction.



The Council does not have to reinstate the Licensed Area and will not be liable to pay the Licensee any compensation.

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**15. Overholding**

If the Licensee continues in occupation of the Licensed Area after the end of the Term, without objection by the Council:

- 15.1 the Licensee occupies the Licensed Area subject to the same terms and conditions as contained in this Licence;
- 15.2 the Council or the Licensee may end this Licence during any period of overholding by giving 30 days written notice to the other party expiring at any time; and
- 15.3 the Council may increase the monthly licence fee by giving the Licensee 1 month's written notice.

---

**16. Grant of Licence only**

The Licensee agrees with the Council that:

- 16.1 the Licensee is not entitled to exclusive occupation of the Licensed Area;
- 16.2 the Council may use, or permit other parties to use, the Licensed Area following consultation with the Licensee;
- 16.3 this Licence does not create any estate or interest in the Licensed Area, other than a contractual right;
- 16.4 this Licence does not constitute a lease at law and the Licensee will not claim before a court or tribunal that this Licence constitutes a lease at law; and
- 16.5 in the event that a court or tribunal determines that this Licence is a lease at law, the Council may, at its option, terminate this Licence by written notice to the Licensee.

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**17. General**

**17.1 Incorporated Associations**

If the Licensee is an incorporated association, the Licensee warrants that it is incorporated under the *Associations Incorporation Act 1981* (Vic) and will at all times comply with the requirements of that Act.

**17.2 Notices**

Any notice required to be served under this Licence must be in writing and must be served by post, facsimile transmission or hand delivered to:

- 17.2.1 the Licensee at its address set out in this Licence, the Licensee's registered office address, the Licensed Area, or the last known address of the Licensee; and
- 17.2.2 the Council at its address set out in this Licence or any other address notified in writing to the Licensee by the Council.

**17.3 Entire Understanding**

This Licence contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Licence and have no effect.

**17.4 Waiver**

If the Council accepts the Licence Fee or any other monies under this Licence (before or after the end of this Licence) or does not exercise or delays exercising any of the Council's rights under this Licence, it will not be a waiver of the breach of this Licence by the Licensee or of the Council's rights under this Licence.

**17.5 Additional Clauses**

This Licence is subject to the Additional Clauses. The Additional Clauses override any inconsistent provisions in this Licence.

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**18. Interpretation**

**18.1 Governing Law and Jurisdiction**

This Licence is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria and waives any right to object to proceedings being brought in those Courts.

**18.2 Persons**

In this Licence, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

**18.3 Joint and Several**

If a party consists of more than one person, this Licence binds them jointly and each of them severally.

**18.4 Legislation**

In this Licence, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

**18.5 Clauses and Headings**

In this Licence:

18.5.1 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Licence; and

18.5.2 headings and sub-headings are inserted for ease of reference only and do not effect the interpretation of this Licence.

**18.6 Severance**

In this Licence:

- 18.6.1 if a provision in this Licence is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and
- 18.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Licence.

**18.7 Number and Gender**

In this Licence, a reference to:

- 18.7.1 the singular includes the plural and vice versa; and
- 18.7.2 a gender includes the other genders.

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## **Execution Page**

This **Licence** is executed by the parties on the date specified in Item 1.

**THE COMMON SEAL of Colac Otway  
Shire Council** (ABN 32 430 819 755) is  
affixed in accordance with its Local Law  
No 4

**THE COMMON SEAL of Barwon  
Child Youth & Family** (ABN 98 057  
582 733)  
In accordance with its constitution

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Signature of Chief Executive Officer

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Signature of Company Secretary

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Signature of Director

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## Annexure A

### Additional Clauses

#### 1. Costs

Each party will be responsible for payment of their own costs in connection with the preparation and execution of this Licence.

#### 2. Service Agreement

The Licensee acknowledges and agrees that:

- 2.1 it will only use the Licensed Area in accordance with the Service Agreement;
- 2.2 the terms of the Service Agreement may be amended annually by the Council provided that the Council consults with the Licensee and gives the Licensee prior written notice of such amendments;
- 2.3 if there is any inconsistency between the terms of this Licence and the Service Agreement, the terms of the Licence shall apply.

#### 3. Approvals and Compliance

##### 3.1 Definitions

In this Additional Clause 2:

**Education and Care Act** means the *Education and Care Services National Law Act 2010* (Vic);

**Education and Care Regulations** means all regulations made under the Education and Care Act;

**Education and Care Service** has the meaning given to that term in the Education and Care Act;

**Nominated Supervisor** has the meaning given to that term in the Education and Care Act;

**Regulatory Authority** has the meaning given to that term in the Education and Care Act. As at the Commencement Date, the Regulatory Authority is the Secretary of the Department of Education and Early Childhood Development;

**Serious Incident** has the meaning given to that term in section 174 of the Education and Care Act; and

**Show Cause Notice** has the meaning given to that term in the Education and Care Act.

Words and expressions that are not defined in this Licence but which have a defined meaning in the Education and Care Act or the Education and Care Regulations have the same meaning as in the Education and Care Act or the Education and Care Regulations.

##### 3.2 Application of Additional Clause

This Additional Clause 2 applies in relation to any Education and Care Service conducted at the Licensed Area as part of the Permitted Use.



3.3 Approval Requirements

Without limiting any of the Licensee's obligations under this Licence, the Licensee must obtain and maintain throughout the Term, all approvals required to engage in the Permitted Use at the Licensed Area, including, without limitation:

- 3.3.1 a provider approval to provide Education and Care Services, as required pursuant to Part 2 of the Education and Care Act (**Provider Approval**); and
- 3.3.2 a service approval to operate a kindergarten, as required pursuant to Part 3 of the Education and Care Act (**Service Approval**).

3.4 Licensee's Obligations

The Licensee must, at all times:

- 3.4.1 provide a copy of the Service Approval and the Provider Approval to the Licensor, on demand;
- 3.4.2 ensure that a Nominated Supervisor is appointed for the Education and Care Service;
- 3.4.3 without limiting clause 7.10, display on a visible part of the Licensed Area, the prescribed information in accordance with section 172 of the Education and Care Act; and
- 3.4.4 comply with the Service Approval, the Provider Approval, the Education and Care Act and the Education and Care Regulations.

3.5 Notification to Council

- 3.5.1 The Licensee must notify the Council of any complaint which the Licensee is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of reporting the complaint to the Regulatory Authority.
- 3.5.2 The Licensee must notify the Licensor of any Serious Incident which the Licensee is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of notifying the Regulatory Authority of the Serious Incident.
- 3.5.3 The Licensee must immediately notify the Licensor if a Show Cause Notice is served on the Licensee by the Regulatory Authority, or if the Licensee's Service Approval or Provider Approval is suspended (even if voluntarily), cancelled or surrendered.

3.6 This Additional Clause 2 is an essential term of this Licence.

4. Working with Children Checks

4.1 Without limiting clause 7.5, the Licensee must:

- 4.1.1 ensure that all employees and volunteers who are required to apply for a Working with Children Check (**WWC**) under the *Working with Children Act 2005* (Vic) (**WWCA**) have done so, before working with children at the Licensed Area;
- 4.1.2 provide a copy of the WWC card of each of the Licensee's employees and volunteers working at the Licensed Area to the Council, on demand;

4.1.3 ensure that any employee or volunteer that is given a negative notice (within the meaning given to that term in the WWCA) does not work with children at the Licensed Area; and

4.1.4 subject to special condition 4.2, ensure that the information in any WWC of the Licensee's employees and volunteers which is provided to the Council, is kept confidential.

4.2 The Licensee agrees that the Council may disclose the information in any WWC of the Licensee's employees and volunteers for the purpose of administering or enforcing this Licence or if required by law.

4.3 This Additional Clause 4 is an essential term of this Licence.

**5. Licensee's Environmental Obligations**

The Licensee acknowledges that the Council is committed to participating in energy saving practices and agrees to act reasonably and responsibly in using water and appliances that consume energy at the Licensed Area.

**6. Council Policy**

The Licensee agrees that Council has the right to require the Licensee to comply with existing or new policies issued or amended by Council from time to time and notified in writing to the Licensee.

**7. Personal Property Securities Act 2009**

**7.1 Definitions**

In this Additional Clause 7:

7.1.1 **Council PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Council; and
- (a) is situated on the Licensed Area or the Land at any time during the term of this Licence;

1.1.2 **Licensee PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Licensee;
- (b) is situated on the Licensed Area or the Land at any time during the term of this Licence; and
- (c) the Council has the right to require the Licensee to transfer ownership of that item to the Council, or the Licensee has the obligation to transfer ownership of that item to the Council, whether before or after the end of the term of this Licence,

but does not include any Council PPS Items;

1.1.3 **PPS Act** means the Personal Property Securities Act 2009 (Cth); and

1.1.4 words and expressions that are not defined in this Licence but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

**7.2 Licensee's obligations**

The Licensee:

- 1.1.5 charges its interest in all Licensee PPS Items situated on the Licensed Area or the Land from time to time in favour of the Council, as security for the performance of the Licensee's obligations under this Licence, including but not limited to the Licensee's obligations to transfer ownership in the whole or any part of the Licensee PPS Items to the Council;
- 1.1.6 acknowledges and agrees that the charge granted by the Licensee under Additional Clause 1.1.5 constitutes the grant of a Security Interest which the Council is entitled to register under the PPS Act;
- 1.1.7 acknowledges that the grant of this Licence also constitutes the grant of a Security Interest in the Council PPS Items in favour of the Council, which interest the Council is entitled to register under the PPS Act; and
- 1.1.8 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Licensee PPS Items and the Council PPS Items so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Licensee PPS Items and the Council PPS Items.

**7.3 Security Interests**

The Licensee:

- 1.1.9 warrants that it has not created a Security Interest in respect of any Council PPS Items on or prior to execution of this Licence; and
- 1.1.10 must not create a Security Interest in respect of any Council PPS Items or Licensee PPS Items in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion.

**7.4 Indemnity for breach of this Additional Clause**

The Licensee must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a consequence of any breach by the Licensee of this Additional Clause.

**7.5 Further obligations**

The Licensee acknowledges and agrees that:

- 1.1.11 it has no right under the PPSA to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPSA); and
- 1.1.12 on the expiration or earlier termination of this Licence, the Licensee must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests under the PPS Act in relation to the Licensee PPS Items and the Council PPS Items.

7.6 This Additional Clause prevails

In the event of any inconsistency between this Additional Clause and any other provision of this Licence, the provisions of this Additional Clause will prevail and that other provision will be read down and interpreted accordingly.

## Annexure B

### Maintenance Schedule 1

Schedule and Responsibilities for Occupier of Kindergarten and Council.

| Item                                            | Occupier's Responsibility                                                                                                                                                                                                                                                                                                                                                                          | Council's Responsibility                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Air Conditioning and Heating Appliances</b>  | <ul style="list-style-type: none"> <li>Service and repair when required</li> </ul>                                                                                                                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>Replacement of unit and any major parts</li> </ul>                                                                                                                                                                                                                                                                                                                          |
| <b>Building</b>                                 | <ul style="list-style-type: none"> <li>Determine and document the specific needs of the building relating to any requests to Council for building alterations.</li> <li>Prepare plans and obtain quotes for requests for minor improvements.</li> <li>Consent is required from Council for any grant or funding that the occupier is seeking to upgrade, extend or modify the building.</li> </ul> | <ul style="list-style-type: none"> <li>Assess all requests submitted.</li> <li>Undertake works required to bring premises and surrounds to appropriate standards to meet the required regulations. This excludes items identified as the lessee's responsibility in this document.</li> <li>Preparation of long-term development plans, design of major building alterations or major structural works.</li> </ul> |
| <b>Cleaning</b>                                 | <ul style="list-style-type: none"> <li>Keep premises in clean, sanitary and fresh condition.</li> </ul>                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                                              |
| <b>Ceilings, Walls and Skylights (internal)</b> | <ul style="list-style-type: none"> <li>Cost of repairs due to major or continual misuse.</li> <li>Regular cleaning</li> </ul>                                                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>Major repair and/or replacement due to structural faults/age.</li> </ul>                                                                                                                                                                                                                                                                                                    |
| <b>Curtains/Drapes/Blinds</b>                   | <ul style="list-style-type: none"> <li>Repairs costs.</li> <li>Replacement costs.</li> <li>Supervision of installation of replacement items.</li> <li>Regular cleaning.</li> </ul>                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                                              |
| <b>Doors (Inc. cupboard doors)</b>              | <ul style="list-style-type: none"> <li>Regular cleaning and repair of internal/external doors due to major or continual misuse.</li> <li>Minor adjustments.</li> </ul>                                                                                                                                                                                                                             | <ul style="list-style-type: none"> <li>Replacement due to age, structural fault.</li> </ul>                                                                                                                                                                                                                                                                                                                        |
| <b>Electrical Wiring, Fittings and Lights</b>   | <ul style="list-style-type: none"> <li>Additional or security lighting.</li> <li>Cost of repair and replacement of electrical wiring if damage is due to major or continual misuse.</li> <li>Repair and replacement of all light globes.</li> <li>Regular cleaning of all light fixtures.</li> </ul>                                                                                               | <ul style="list-style-type: none"> <li>Replacement of all building wiring from main supply to and including the switchboard.</li> <li>Replacement of light fittings.</li> </ul>                                                                                                                                                                                                                                    |



| Item                                                                        | Occupier's Responsibility                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Council's Responsibility                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Essential Safety Measures (e.g. fire extinguishers, exit lights etc.</b> | <ul style="list-style-type: none"> <li>Notification to Council of maintenance or servicing issues.</li> <li>Not to interfere or obstruct essential safety measures elements</li> </ul>                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>Undertake inspections, servicing and maintenance of all specified essential safety measures as required under the relevant Building Regulations.</li> <li>Meet all costs associated with this function.</li> <li>Fill when discharged and replace if stolen.</li> <li>Inspection and replacement of globes.</li> <li>Replacement of fittings.</li> </ul> |
| <b>Fencing</b>                                                              | <ul style="list-style-type: none"> <li>Determine and document the specific need of the fencing relating to any requests to Council for fencing alterations.</li> <li>Provide specifications of fencing alterations required due to changes in standards or regulations.</li> <li>Repair fences where damage is caused by occupier.</li> </ul>                                                                                                                                                                | <ul style="list-style-type: none"> <li>Assess all requests submitted.</li> <li>Replacement of essential/ required fences to appropriate standards to meet the required regulations. This excludes items identified as the lessee's responsibility in this document.</li> <li>Structural repairs or capital works re. fences.</li> </ul>                                                         |
| <b>Floor Surfaces and Coverings</b>                                         | <ul style="list-style-type: none"> <li>All regular cleaning and maintenance of floor coverings such as carpet and tiles.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>Replace to essential areas when excessively worn or dangerous.</li> </ul>                                                                                                                                                                                                                                                                                |
| <b>Fly Screens</b>                                                          | <ul style="list-style-type: none"> <li>Maintain and replace fly wire.</li> <li>Install additional fly screens</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                           |
| <b>Garbage</b>                                                              | <ul style="list-style-type: none"> <li>Normal fee for service waste collection</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                           |
| <b>Glass</b>                                                                | <ul style="list-style-type: none"> <li>Replace broken or cracked windows arising from misuse.</li> <li>Regular cleaning</li> </ul>                                                                                                                                                                                                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>Replace due to breakage arising from structural fault, age.</li> </ul>                                                                                                                                                                                                                                                                                   |
| <b>Grounds</b>                                                              | <ul style="list-style-type: none"> <li>Keep all entry/exit areas clear and sweep regularly.</li> <li>Maintain all grounds associated with building by cutting the grass, minor pruning, garden beds, bushes and flowers if required.</li> <li>Remove dead foliage.</li> <li>Seek Council approval for any modification to the grounds.</li> <li>Maintenance of garden beds.</li> <li>Maintenance of garden hoses and sprinklers etc.</li> <li>Cleaning and weeding of pavement and driveway areas</li> </ul> | <ul style="list-style-type: none"> <li>Repair paths, driveways etc.</li> <li>Replacement of essential pavement, driveway and carpark areas; retaining walls and ramps.</li> </ul>                                                                                                                                                                                                               |
| <b>Internal Appliances eg. Fans, Kettles, Food Processors etc.</b>          | <ul style="list-style-type: none"> <li>Replacement as required of minor kitchen appliances.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                           |

| Item                                                          | Occupier's Responsibility                                                                                                                                                                                                                                                                                                                 | Council's Responsibility                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Vandalism</b>                                              | <ul style="list-style-type: none"> <li>Less than \$1000 (subject to change based on claims history)</li> </ul>                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>More than \$1000 (subject to change based on claims history)</li> </ul>                                                                                                                                                                                                                  |
| <b>Keys and Locks</b>                                         | <ul style="list-style-type: none"> <li>Repair and replacement of locks if damaged through major or continued misuse.</li> </ul>                                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>Replacement of lost or damaged keys as applies to Council's master key system.</li> <li>Supply of keys for user groups.</li> <li>Repair and replacement of locks as applies to Council's master key system.</li> </ul>                                                                   |
| <b>Painting</b>                                               | <ul style="list-style-type: none"> <li>Internal painting if damaged through major or continued misuse or colour scheme changes etc.</li> </ul>                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>Internal and external for structural integrity reasons.</li> </ul>                                                                                                                                                                                                                       |
| <b>Permanent Fixtures</b>                                     | <ul style="list-style-type: none"> <li>Regular cleaning of all fixtures.</li> <li>Repair and/or replace if damaged through major or continual misuse.</li> </ul>                                                                                                                                                                          | <ul style="list-style-type: none"> <li>Replace when required the following items: <ul style="list-style-type: none"> <li>- hot water service</li> <li>- sinks and toilets</li> <li>- verandas attached to the building.</li> </ul> </li> </ul>                                                                                  |
| <b>Pest Control</b>                                           | <ul style="list-style-type: none"> <li>Keep all areas in a clean and hygienic state.</li> <li>All pest control as required both internal and external.</li> </ul>                                                                                                                                                                         | <ul style="list-style-type: none"> <li>Pest control relating to structural items (e.g. woodborer and termites).</li> </ul>                                                                                                                                                                                                      |
| <b>Playground Equipment and Adjacent Grounds</b>              | <ul style="list-style-type: none"> <li>Determine and advise Council if a change to playground equipment and adjacent areas is required.</li> <li>Provide specifications to Council of changes to or which has been deemed required by the occupier.</li> <li>Install and maintain playground equipment to an approved standard</li> </ul> | <ul style="list-style-type: none"> <li>Assess all requests submitted.</li> <li>Undertake a playground equipment and adjacent grounds audit on a scheduled basis.</li> <li>Inform the Occupier of the audit outcome and the works required to maintain to an approved standard.</li> </ul>                                       |
| <b>Plumbing</b>                                               | <ul style="list-style-type: none"> <li>Cost of internal repair due to major or continued misuse.</li> <li>Replacement and repair of internal surface plumbing fittings such as toilet seats, taps and washers etc.</li> </ul>                                                                                                             | <ul style="list-style-type: none"> <li>Replacement of damaged or corroded plumbing fittings, toilet bowls and cisterns.</li> <li>Repairs or works required for drainage purposes, including sewerage, drains, water pipes and pits.</li> <li>Replacement of gas pipes.</li> <li>Structural repairs or capital works.</li> </ul> |
| <b>Roof, Skylight, External Walls, Spouting and Downpipes</b> | <ul style="list-style-type: none"> <li>Cleaning of roof, external walls, spouting, downpipes and guttering.</li> </ul>                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>All maintenance and repair of the structure of the premises as required.</li> </ul>                                                                                                                                                                                                      |
| <b>Signage</b>                                                | <ul style="list-style-type: none"> <li>Maintain and replace all internal/external signs relating to the committee and in accordance with Council's planning requirements.</li> </ul>                                                                                                                                                      | <ul style="list-style-type: none"> <li>Identification signage to be provided by Council where required.</li> </ul>                                                                                                                                                                                                              |

| Item                                                                       | Occupier's Responsibility                                                                                                                                                 | Council's Responsibility                                                                                                               |
|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Smoke Detectors</b>                                                     | <ul style="list-style-type: none"> <li>Install, repair and replacement of battery operated smoke detectors. Includes battery replacement as required.</li> </ul>          | <ul style="list-style-type: none"> <li>Installation and maintenance of hard wire system where required.</li> </ul>                     |
| <b>Telecommunication Systems (e.g. fax, photocopiers, telephones etc.)</b> | <ul style="list-style-type: none"> <li>Purchase, service and maintenance cost.</li> <li>Replacement costs.</li> </ul>                                                     | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                  |
| <b>Trees</b>                                                               | <ul style="list-style-type: none"> <li>Advise Council of trees which are considered dangerous.</li> <li>No trees are to be planted without Council's approval.</li> </ul> | <ul style="list-style-type: none"> <li>Trees lopped/pruned to meet security/safety requirements where considered dangerous.</li> </ul> |
| <b>Whitegoods (e.g. refrigerator, dishwasher etc.)</b>                     | <ul style="list-style-type: none"> <li>Service and maintenance costs.</li> <li>Replacement costs.</li> </ul>                                                              | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                  |

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## Annexure C

### SERVICE AGREEMENT

#### Background

There are 4 early years' facilities operating on Colac Otway Shire premises that house a number of programmes ranging from four year old kindergarten, long day care, playgroups, three year old kindergarten and other early learning services.

#### Service Agreement Rationale

This Service Agreement between Colac Otway Shire and Barwon Child Youth & Family is intended to further develop early years service provision and support for children (including their families) who attend early years services, especially kindergarten programmes.

This can be achieved by networking and working together on initiatives that can be provided to meet the needs of infants, young children and their families.

Council is responsible for developing an Early Years Plan, which does not focus solely on its own services, but recognises the need for optimal early years development throughout childhood. It is intended that kindergartens operating under a license and service agreement with Council have the opportunity to further develop their services and contribute to the early years service industry already operating within the Colac Otway municipality.

#### License and Service Agreements

License and service agreements provide direction, accountabilities and expectations for both parties in the delivery of kindergarten and early year's services. This can be described as:

- The License Agreement outlines the Occupier's and Council's responsibilities for the facility, and external playgrounds/gardens.
- The Service Agreement outlines the Occupier's and Council's responsibilities in relation to service provision and expectations.

#### Services Agreement for Maximizing Use and Access

##### 1. Usage Policy

The Licensee acknowledges and agrees that:

- 1.1. priority for use of the Licensed Area must be given to 4 year-old kindergarten groups and childcare provision. Council will consult and work with the Licensee if there is an opportunity to include additional early years support services within the Licensed Area; and
- 1.2. the Licensee will work with Council to investigate alternative short and long term accommodation options to meet future service needs and demand; and
- 1.3. in addition to 4 year-old kindergarten groups and childcare provision, the Licensed Area may be used for non profit service/groups for children and families from birth to 8 years; and
- 1.4. the Licensed Area must not be used for any other use without the prior written consent of Council (delegation to the Manager Health & Community Services); and

- 1.5. if the Licensee obtains the Council's prior written consent in accordance with clause 1.4 the Licensee must ensure that other groups using the Premises must:
  - 1.5.1 maintain current public liability insurance, which complies with provisions of clause of the Licence; and
  - 1.5.2 otherwise comply with the terms and conditions of the Licence.
- 1.6. the Council agrees and acknowledges that, if the Licensee accommodates another service under clause 1.1 or obtains the Council's prior written consent in accordance with clause 1.4 the Licensee may charge and retain a reasonable fee from such other authorised users of the Premises.

## **2. Childcare and Kindergarten Services**

The Licensee providing an integrated service model must:

- deliver an accredited children's service that meets the requirements of the Australian National Quality Standards; and
- provide a childcare and/or kindergarten service, which operates at, registered capacity. The only exception to this is when the demand for childcare and/or kindergarten places is lower than registered capacity.

## **3. Colac and Southern Otway's KEYS (Kids Early Years Services) Network and other Meetings**

Council will:

- 3.1 help facilitate, attend and keep minutes for the respective KEYS Network Meetings. The purpose of the KEYS Network Meetings is to provide a forum for the consideration and discussion of matters of mutual interest to early years service providers, including kindergartens, and Council; and
- 3.2 through the KEYS, Network Meetings, facilitate consideration and adoption of early years service approaches for the effective operation and management of early years services, including kindergartens, throughout the Municipality; and
- 3.3 through collaboration develop and implement new strategies and projects that aim to improve early years services provision across the municipality; and
- 3.4 Where the need arises, or at least once per year, facilitate, attend and keep minutes of a meeting specifically held with a representative (an authorised representative of Barwon Child Youth & Family).

The Licensee must:

- 3.5 provide a representative in attendance for each local KEYS Network Meeting. In the event of consistent non-attendance of an authorised representative, Council reserves the right to consider the Licensee in breach of the terms and consideration of the Licence and Service Agreement.



#### **4. Reporting Requirements**

The Licensee must give to the Council:

4.1 by 30<sup>th</sup> November in each year a written report detailing:

- (a) The Operating Hours of the Service for the next 12 months: and
- (b) A list of the groups, which will be using the premises for the next 12 months: and
- (c) Quarterly data on the number of childcare places, and other appropriate service/program data that may be useful for Council's planning process.

4.2

- (a) The Licensee will ensure adequate records of income and expenditure are being kept and meet requirements of Council, State and Federal governments in relation to grants and reimbursements received.
- (b) Within 60 days of the Licensee's Annual General Meeting copy of the minutes of the Annual General Meeting, including an audited statement of assets and liabilities (balance sheet) profit and loss statement and cash flows statements.
- (c) A written report detailing the activities conducted by the Licensee during the preceding years and, where applicable, a list of the groups, which have used the licensed area, and a list of times at which the licensed area were used.
- (d) A list of the office bearers appointed to the Licensee, their duties and the length of term of the office of each office bearer.
- (e) The Licensee must provide details of any structural non-compliance, as a result from inspection by a regulatory authority, to Council within 14 days from receiving written notification.

#### **5. Child Safe Standards**

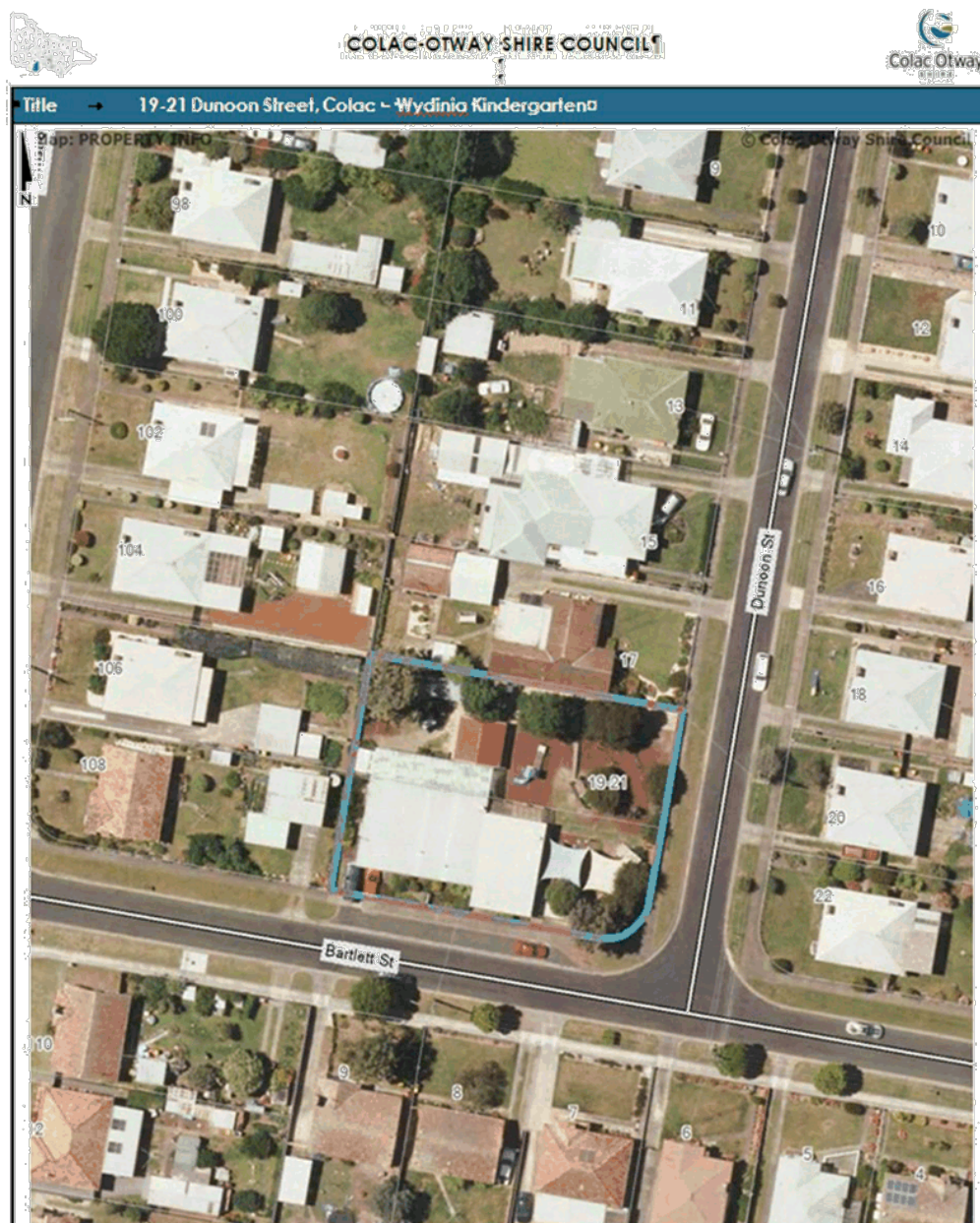
The standards are compulsory for all organisations providing services to children, and aim to drive cultural change in organisations so that protecting children from abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers.

- (a) Council is committed to embedding Child Safe Standards into all aspects of its early childhood programs and its relationships with other Early Years Services.
- (b) The Licensee is to have a mutual commitment and embedded practice into adhering to the Child Safe Standards across all early years programs it facilitates.

## **6. Termination of the Service Agreement**

Either the Licensee or the Council may terminate this service agreement by giving the other party three months' notice in writing, or a shorter notice period if agreed by both parties. In the event of non-compliance with the terms and conditions of this agreement, Council may terminate the agreement. If the Council is considering termination of the agreement due to non-compliance, Council will provide 30 days' notice in writing to the organisation representatives who are signatories to this agreement. If the Service Agreement is terminated, then Council may re-enter the Licensed Area and determine the Licence agreement.

## Annexure D



**Date TO BE DETERMINED**

## **Community Services Licence**

**Licensed Area: 5 Gilmartin Street, Colac (Winifred Nance Kindergarten)**

**Colac-Otway Shire Council**

**and**

**Barwon Child Youth & Family**

## Contents

|                                                       |          |
|-------------------------------------------------------|----------|
| <b>Schedule.....</b>                                  | <b>1</b> |
| <b>1. Definitions .....</b>                           | <b>2</b> |
| <b>2. Licence .....</b>                               | <b>3</b> |
| <b>3. Payments by the Licensee.....</b>               | <b>3</b> |
| 3.1 Payment of Licence Fee .....                      | 3        |
| 3.2 Rates and Taxes .....                             | 3        |
| 3.3 Services .....                                    | 3        |
| 3.4 Costs and Duty .....                              | 4        |
| 3.5 Interest on Late Payments .....                   | 4        |
| 3.6 No Deduction or Right of Set-off .....            | 4        |
| <b>4. GST .....</b>                                   | <b>4</b> |
| 4.1 Definitions .....                                 | 4        |
| 4.2 GST Exclusive .....                               | 4        |
| 4.3 Increase in Consideration .....                   | 4        |
| 4.4 Payment of GST .....                              | 4        |
| 4.5 Tax Invoice .....                                 | 4        |
| 4.6 Reimbursements .....                              | 4        |
| 4.7 Adjustment events .....                           | 5        |
| <b>5. Repairs, Alterations and Damage.....</b>        | <b>5</b> |
| 5.1 Repairs and Maintenance .....                     | 5        |
| 5.2 Failure to Repair and Maintain .....              | 5        |
| 5.3 Alterations and Works .....                       | 5        |
| 5.4 Defacing Licensed Area .....                      | 6        |
| 5.5 Occupational health and safety .....              | 6        |
| 5.6 Notice of Damage .....                            | 6        |
| <b>6. Insurance .....</b>                             | <b>6</b> |
| 6.1 Insurances to be effected by the Licensee .....   | 6        |
| 6.2 Licensee's Property .....                         | 6        |
| 6.3 Condition in Policies .....                       | 6        |
| 6.4 Payment and Production of Policies .....          | 7        |
| 6.5 Not Invalidate Policies .....                     | 7        |
| 6.6 Other Insurance .....                             | 7        |
| <b>7. Community Services Use.....</b>                 | <b>7</b> |
| 7.1 Permitted Use and Permitted Hours .....           | 7        |
| 7.2 Illegal Purpose .....                             | 7        |
| 7.3 No Warranty .....                                 | 7        |
| 7.4 Hours of Use .....                                | 7        |
| 7.5 Compliance with Laws .....                        | 8        |
| 7.6 Nuisance and Noise .....                          | 8        |
| 7.7 Licences and Permits .....                        | 8        |
| 7.8 Security .....                                    | 8        |
| 7.9 Keys .....                                        | 8        |
| 7.10 Signs .....                                      | 9        |
| 7.11 Heavy Equipment and Inflammable Substances ..... | 9        |
| 7.12 No Smoking .....                                 | 9        |
| 7.13 Vehicles .....                                   | 9        |
| 7.14 Emergency Procedures .....                       | 9        |
| 7.15 Playground Equipment .....                       | 10       |
| 7.16 Television and Radio .....                       | 10       |
| 7.17 Endanger Licensed Area .....                     | 10       |



|            |                                                                |           |
|------------|----------------------------------------------------------------|-----------|
| 7.18       | Licensee's Employees.....                                      | 10        |
| 7.19       | Liquor Licence.....                                            | 10        |
| 7.20       | Gambling.....                                                  | 10        |
| 7.21       | Gaming Licence .....                                           | 10        |
| 7.22       | Reporting Requirements.....                                    | 10        |
| 7.23       | Licensee Membership .....                                      | 11        |
| 7.24       | Animals .....                                                  | 11        |
| 7.25       | Auction Sales .....                                            | 11        |
| <b>8.</b>  | <b>Release and Indemnity.....</b>                              | <b>11</b> |
| 8.1        | Release.....                                                   | 11        |
| 8.2        | Indemnity .....                                                | 11        |
| <b>9.</b>  | <b>Assignment and Sub-Licensing .....</b>                      | <b>11</b> |
| <b>10.</b> | <b>Entry by the Council .....</b>                              | <b>11</b> |
| <b>11.</b> | <b>Council's Consent.....</b>                                  | <b>12</b> |
| <b>12.</b> | <b>Licensee's obligations at the end of this Licence .....</b> | <b>12</b> |
| 12.1       | Licensee's Obligations.....                                    | 12        |
| 12.2       | Licensee's Property Left in Licensed Area .....                | 12        |
| <b>13.</b> | <b>Determination of Licence.....</b>                           | <b>12</b> |
| 13.1       | Re-entry .....                                                 | 12        |
| 13.2       | Damages following Determination .....                          | 13        |
| 13.3       | Essential Terms .....                                          | 13        |
| <b>14.</b> | <b>Destruction or Damage of Licensed Area .....</b>            | <b>13</b> |
| 14.1       | Reduction in Licence Fee .....                                 | 13        |
| 14.2       | Reinstatement of Licensed Area.....                            | 13        |
| 14.3       | Licensee's Right of Termination.....                           | 13        |
| <b>15.</b> | <b>Overholding.....</b>                                        | <b>14</b> |
| <b>16.</b> | <b>Grant of Licence only.....</b>                              | <b>14</b> |
| <b>17.</b> | <b>General .....</b>                                           | <b>14</b> |
| 17.1       | Incorporated Associations .....                                | 14        |
| 17.2       | Notices.....                                                   | 14        |
| 17.3       | Entire Understanding.....                                      | 14        |
| 17.4       | Waiver.....                                                    | 15        |
| 17.5       | Additional Clauses.....                                        | 15        |
| <b>18.</b> | <b>Interpretation.....</b>                                     | <b>15</b> |
| 18.1       | Governing Law and Jurisdiction .....                           | 15        |
| 18.2       | Persons.....                                                   | 15        |
| 18.3       | Joint and Several.....                                         | 15        |
| 18.4       | Legislation.....                                               | 15        |
| 18.5       | Clauses and Headings .....                                     | 15        |
| 18.6       | Severance.....                                                 | 16        |
| 18.7       | Number and Gender.....                                         | 16        |
|            | <b>Execution Page .....</b>                                    | <b>17</b> |
|            | <b>Annexure A: Additional Clauses .....</b>                    | <b>18</b> |
|            | <b>Annexure B: Maintenance Schedule .....</b>                  | <b>23</b> |
|            | <b>Annexure C: Service Agreement .....</b>                     | <b>27</b> |
|            | <b>Annexure D: Map of Licenced Area .....</b>                  | <b>31</b> |

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## Schedule

|     |                         |                                                                                                  |
|-----|-------------------------|--------------------------------------------------------------------------------------------------|
| 1.  | Date of this Licence:   | <b>TO BE DETERMINED</b>                                                                          |
| 2.  | Council:                | Colac-Otway Shire Council (ABN 32 430 819 755) of<br>2-6 Rae Street, Colac 3250                  |
| 3.  | The Licensee:           | Barwon Child Youth & Family<br>(ABN 98 057 582 733) of 222 Malop Street, Geelong<br>3220         |
| 4.  | Land:                   | The whole of the land contained in certificate of title<br>volume 9457 folio 502                 |
| 5.  | Licensed Area           | The whole of the Land and buildings known as 5<br>Gilmartin Street, Colac Polwarth Street, Colac |
| 6.  | Term:                   | Ten (10) years (as consistent with Council's Property<br>Leasing Policy 4.2)                     |
| 7.  | Commencement Date:      | <b>TO BE DETERMINED</b>                                                                          |
| 8.  | Community Services Use: | Kindergarten and Child Care                                                                      |
| 9.  | Licence Fee:            | \$1.00 per annum payable in advance upon signing of<br>the licence                               |
| 10. | Hours of Use            | As determined by Planning Guidelines                                                             |
| 11. | Additional Clauses      | As set out in Annexure A                                                                         |

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## Community Services Licence

### Dated

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### Parties

The Council

The Licensee

### The Parties Agree

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#### 1. Definitions

In this Licence, unless expressed or implied to the contrary:

**Additional Clauses** means the clauses (if any) specified in Item 11.

**Annexure** means an annexure to this Licence.

**Commencement Date** means the date specified in Item 7.

**Community Services Use** means the use specified in Item 8 of the Schedule.

**Council** means the Council specified in Item 2 and includes the Council's successors and assigns and where it is consistent with the context includes the Council's employees and agents.

**Council's Fixtures** includes all those fittings, fixtures, and chattels contained in the Licensed Area at the Commencement Date (if any) or installed by the Council during the Term.

**Hours of Use** means the hours of use specified in Item 10, or such other hours of use as the Council and the Licensee agree in writing from time to time.

**Item** means an item in the Schedule.

**Land** means the land specified in Item 4.

**Licence Fee** means the amount specified in Item 9.

**Licensed Area** means the land specified in Item 5 including any buildings and pavilions on the land and the Council's Fixtures.

**Licensee** means the Licensee specified in Item 3 and includes the Licensee's successors and assigns and where it is consistent with the context includes the Licensee's employees, agents, invitees and persons the Licensee allows on the Licensed Area.

**Maintenance Schedule** means the maintenance schedule attached to this Licence as Annexure C.

**OHS Act** means the *Occupational Health and Safety Act 2004* (Vic).

**OHS Law** means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Licensed Area.

**OHS Regulations** means the *Occupational Health and Safety Regulations 2007* (Vic).

**Principal Contractor** means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

**Schedule** means the Schedule at the front of this Licence.

**Service Agreement** means the service agreement attached to this Licence as Annexure D.

**Term** means the term specified in Item 6 and includes any extension or overholding.

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## 2. Licence

The Council grants a licence to the Licensee to use the Licensed Area in common with the Council and persons authorised by the Council for the Term starting on the Commencement Date, subject to the terms of this Licence.

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## 3. Payments by the Licensee

### 3.1 Payment of Licence Fee

The Licensee must pay the Licence Fee to the Council in the manner specified in Item 9.

### 3.2 Rates and Taxes

The Licensee must pay all rates, taxes (including land tax assessed on the basis that the Licensed Area is the only land owned by the Council) and all other charges and levies separately assessed in connection with the Licensed Area (Rates and Taxes). If the Rates and Taxes are not separately assessed for the Licensed Area, the Licensee must pay or refund to the Council the proportion of the Rates and Taxes that the area of the Licensed Area bears to the total lettable area assessed within 14 days of receipt of a written notice from the Council.

### 3.3 Services

The Licensee must pay for all services in connection with the Licensed Area including electricity, gas, water, garbage collection and telephone (**Services**). Where the Licensed Area is not separately metered, the Licensee must at the discretion of the Council pay to the Council the proportion of the charges for the Services that the area of the Licensed Area bears to the total area assessed within 14 days of receipt of a written notice from the Council.

### 3.4 Costs and Duty

The Licensee must pay to the Council within 7 days of demand the Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Licence by the Licensee.

### 3.5 Interest on Late Payments

The Licensee must pay to the Council on demand interest at the rate per annum equal to the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on any money payable by the Licensee under this Licence and remaining unpaid for 7 days. Interest will be computed from the date on which such payment became due.

### 3.6 No Deduction or Right of Set-off

The Licensee must pay all amounts due under this Licence to the Council without deduction or right of set-off.

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## 4. GST

### 4.1 Definitions

In this clause:

- 4.1.1 words and expressions that are not defined in this Licence but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 4.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

### 4.2 GST Exclusive

Except as otherwise provided by this clause, all consideration payable under this Licence in relation to any supply is exclusive of GST.

### 4.3 Increase in Consideration

If GST is payable in respect of any supply made by a supplier under this Licence (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

### 4.4 Payment of GST

Subject to clause 4.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Licence.

### 4.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 4.4.

### 4.6 Reimbursements

If this Licence requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:



4.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

4.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

#### **4.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Licence:

4.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

4.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

---

### **5. Repairs, Alterations and Damage**

#### **5.1 Repairs and Maintenance**

5.1.1 The Licensee must carry out the obligations which are described in the Maintenance Schedule (Annexure B) as being the responsibility of the Licensee.

5.1.2 Council must carry out the obligations which are described in the Maintenance Schedule (Annexure B) as being the responsibility of the Council.

#### **5.2 Failure to Repair and Maintain**

If the Licensee does not carry out any repairs, maintenance or other works required under this Licence within 14 days of receiving written notice from the Council, the Council may enter the Licensed Area to carry out such repairs, maintenance and works at any reasonable time after giving the Licensee reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Licensee to the Council on demand.

Typically, Council will respond to requests for building maintenance within 2 days excluding weekends and public holidays. The Licensee may organise emergency maintenance outside of normal business hours. All after hours call outs for emergency works are to be reported to Council the next working day. In such situations preference should be given to using Council approved suppliers. With reference to Annexure B, should the emergency maintenance relate to item which is Council's responsibility, the Licensee will be entitled to reimbursement of reasonable costs. Any such claim will need to be supported by all relevant documentation.

#### **5.3 Alterations and Works**

The Licensee must obtain the prior written consent of the Council before carrying out any alterations or works on the Licensed Area (including but not limited to the removal of trees or shrubs). The Licensee must ensure that any alterations or works on the Licensed Area are carried out:

5.3.1 strictly in accordance with plans and specifications approved by the Council (and such approval may be given or withheld at Council's absolute discretion);

5.3.2 in a proper and workmanlike manner;

5.3.3 to the Council's reasonable satisfaction and in accordance with the Council's reasonable requirements; and

- 5.3.4 in accordance with all rules and requirements of any authorities having jurisdiction over the Licensed Area.

**5.4 Defacing Licensed Area**

The Licensee must not deface or damage the Licensed Area (including drilling holes in the Licensed Area) except where approved by the Council in accordance with clause 5.3.

**5.5 Occupational health and safety**

For the purposes of the OHS Law, the Licensee agrees that:

- 5.5.1 the Licensee has sole management and control of the Licensed Area and has sole responsibility for ensuring that the Licensed Area and the means of entering and leaving them are safe and without risks to health;
- 5.5.2 Council appoints the Licensee as Principal Contractor in respect of any works to be carried out by the Licensee in the Licensed Area to which an OHS Law applies;
- 5.5.3 the Licensee must carry out such works in accordance with the requirements of the OHS Law; and
- 5.5.4 Council authorises the Licensee to exercise whatever authority is necessary for the Licensee to discharge the responsibilities of the appointment under clause 5.5.2.

**5.6 Notice of Damage**

The Licensee must give the Council prompt written notice of any material damage to the Licensed Area or anything likely to be a risk to the Licensed Area or any person in the Licensed Area.

---

**6. Insurance**

**6.1 Insurances to be effected by the Licensee**

- 6.1.1 The Licensee must maintain insurance, in the name of the Licensee, and noting the interest of the Council with an insurer approved by the Council for public liability for the amount of \$20 million concerning one single event (or such greater sum as required by the Council).
- 6.1.2 The Licensee acknowledges that the insurance set out in clause 6.1.1 must extend to volunteers engaging in duties directly related to the Licensee's activities.

**6.2 Licensee's Property**

The Licensee must maintain insurance for its fixtures and fittings for the full replacement value.

**6.3 Condition in Policies**

The Licensee must ensure that the insurance policies effected by the Licensee contain a condition that the insurer will notify the Council at least 14 days before the policies lapse.

**6.4 Payment and Production of Policies**

The Licensee must pay all insurance premiums at least 14 days before the due date for payment and produce to the Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

**6.5 Not Invalidate Policies**

The Licensee must not do anything which may make any insurance effected by the Licensee or the Council invalid or which may increase the insurance premiums. If the insurance premium increases, the Licensee must pay that increase.

**6.6 Other Insurance**

The Licensee must, at its cost, effect and maintain:

6.6.1 workers' compensation insurance for its employees; and

6.6.2 if required by Council, professional indemnity, and directors and officers liability, insurance,

to the reasonable satisfaction of Council.

---

**7. Community Services Use**

**7.1 Permitted Use and Permitted Hours**

The Licensee must use the Licensed Area for the Community Services Use specified in Item 8 and must not use the Licensed Area for any other purpose without the prior written consent of Council which may be granted or withheld by Council in its sole discretion.

**7.2 Illegal Purpose**

The Licensee must not use the Licensed Area for any illegal purpose or carry on a noxious or offensive activity on the Licensed Area.

**7.3 No Warranty**

The Licensee:

7.3.1 acknowledges that the Council does not represent that the Licensed Area is suitable for the Community Services Use; and

7.3.2 must make its own enquiries as to the suitability of the Licensed Area for the Community Services Use.

**7.4 Hours of Use**

7.4.1 The Licensee must only use the Licensed Area for the Community Services Use during the Hours of Use.

7.4.2 The Licensee may use the Licensed Area for the purpose of taking deliveries, cleaning, maintenance and meetings only outside of the Hours of Use.

**7.5 Compliance with Laws**

The Licensee must comply with all laws and any requirements of any authority in connection with the Licensed Area and the Licensee's use and occupation of the Licensed Area.

**7.6 Nuisance and Noise**

7.6.1 The Licensee must not do anything in connection with the Licensed Area which may:

- (a) cause a nuisance or interfere with any other person; or
- (b) be dangerous or offensive in the Council's reasonable opinion.

7.6.2 The Licensee must ensure that the level of noise emanating from the Licensed Area:

- (a) does not cause a nuisance to other people; and
- (b) is kept at a level that complies with all laws and regulations, including without limitation the *Environment Protection (Residential Noise) Regulations 2008*.

**7.7 Licences and Permits**

The Licensee must maintain all licences and permits required for the Licensee's use of the Licensed Area and obtain the Council's prior written consent before varying any licence or permit or applying for any new licence or permit.

**7.8 Security**

The Licensee must keep the Licensed Area secure at all times when the Licensed Area is not being used by the Licensee.

**7.9 Keys**

7.9.1 If a key is required to access the Licensed Area, the Council's maintenance co-ordinator will provide the Licensee with the key to access the Licensed Area.

7.9.2 The Licensee may request in writing for extra keys to be issued. However, the Council has absolute discretion to decide on the number of keys that are ultimately issued to the Licensee.

7.9.3 The Licensee must:

- (a) not make any copies of the keys issued to the Licensee;
- (b) notify the Council within 24 hours of it becoming aware of any lost or stolen keys; and
- (c) not install or remove any key cylinders or padlocks in the Licensed Area without obtaining the prior written consent of the Council.

7.9.4 The Licensee will be responsible for the cost incurred to install or remove any key cylinders or padlocks and to issue any new keys when at fault.

7.9.5 The Council may remove or install, at the Licensee's expense, and at any time, any key cylinders or padlocks that have been installed or removed without the Council's prior consent.

7.9.6 All keys need to be compatible with the master set held by Council's Infrastructure and Services Department.

7.9.7 The Licensee must pay to the Council on demand, when at fault:

- (a) the costs incurred by the Council to replace any lost, stolen or damaged keys and lock barrels for the Licensed Area; and
- (b) the costs incurred by the Council to issue any extra keys.

**7.10 Signs**

7.10.1 The Licensee must seek the prior written consent of the Council before displaying or affixing any signs, advertisements or notices to any part of the Licensed Area unless the signs, advertisements or notices relate to the Licensee's activities carried on at the Licensed Area.

7.10.2 The Licensee:

- (a) allows the Council to enter onto the Licensed Area to inspect the condition of any signs, advertisements or notices displayed or affixed to any part of the Licensed Area under this clause; and
- (b) must comply, at its own cost, with all reasonable directions of Council in relation to the maintenance, removal or replacement of such signs, advertisements or notices.

**7.11 Heavy Equipment and Inflammable Substances**

The Licensee must obtain the Council's prior written consent before bringing any heavy equipment or inflammable substances into the Licensed Area except to the extent to which it is consistent with the Community Services Use.

**7.12 No Smoking**

The Licensee must:

- 7.12.1 not permit the sale of tobacco products or tobacco related products;
- 7.12.2 not permit any smoking in the Licensed Area; and
- 7.12.3 display 'no smoking' signs in the Licensed Area if requested by the Council.

**7.13 Vehicles**

The Licensee must not permit any vehicles to be driven, parked or stopped at any place or time on any part of the Licensed Area except at such places and at such times for the purpose of services or works, or an educational activity.

**7.14 Emergency Procedures**

The Licensee must:

- 7.14.1 keep a first aid kit at the Licensed Area and replenish it when required;
- 7.14.2 establish and display an evacuation plan, and test the utility of any such evacuation plan, at regular intervals during each year; and



7.14.3 keep all emergency equipment fully replenished.

**7.15 Playground Equipment**

7.15.1 The Licensee must not construct or erect any fixed playground equipment at the Licensed Area without Council's prior written consent.

7.15.2 Any playground equipment on the Licensed Area must comply with Australian Standards AS1924.1 – 1981 and AS1924.2 – 1981, and industry best practice in design, provision and maintenance, including the undersurfacing component contained in AS/NSZ4422-1996.

**7.16 Television and Radio**

The Licensee must not install any televisions, radios, music systems or other equipment in the Licensed Area which can be heard outside the Licensed Area without obtaining the prior written consent of the Council.

**7.17 Endanger Licensed Area**

The Licensee must not do or permit anything to be done in connection with the Licensed Area which in the opinion of the Council may endanger the Licensed Area or be a risk to any person or property.

**7.18 Licensee's Employees**

The Licensee must use all reasonable endeavours to ensure that the Licensee's employees, agents, contractors and invitees observe and comply with the Licensee's obligations under this Licence, where appropriate.

**7.19 Liquor Licence**

The Licensee must not apply for any licence or permit under the *Liquor Control Reform Act* 1998 (Vic) unless approved by Council for a single event.

**7.20 Gambling**

The Licensee must not apply for a licence or permit pursuant to the *Gambling Regulation Act* 2003 (Vic).

**7.21 Gaming Licence**

The Licensee must seek the prior written consent of the Council before applying for any licence under the *Gaming Machine Control Act* 1991 (Vic). The Council may withhold its consent or give its consent subject to such terms and conditions as Council may determine in its absolute discretion.

**7.22 Reporting Requirements**

The Licensee must give to the Council within 14 days of the Licensee's annual general meeting, a written report detailing:

7.22.1 the office bearers appointed to the Licensee, their duties and the length of term of the office of each office bearer; and

7.22.2 the activities conducted by the Licensee during the preceding year.

**7.23 Licensee Membership**

The Licensee will:

- 7.23.1 permit residents and ratepayers of the municipality to become members of the Licensee upon satisfying the Licensee's reasonable requirements for membership;
- 7.23.2 upon demand, inform Council of the number of members of the Licensee; and
- 7.23.3 within 7 days of demand, provide all necessary documents to the Council to verify the membership of the Licensee.

**7.24 Animals**

The Licensee must not allow any animals other than guide dogs, or for curriculum activities reasonably expected within an early years setting, to enter the Licensed Area.

**7.25 Auction Sales**

The Licensee must not conduct or allow to be conducted any auctions, garage sales, car boot sales, fetes or similar activities without the prior written consent of Council (which consent must not be unreasonably withheld).

---

**8. Release and Indemnity**

**8.1 Release**

The Licensee uses and occupies the Licensed Area at its own risk and releases the Council from all claims resulting from any damage, loss, death or injury in connection with the Licensed Area except to the extent that the Council is negligent.

**8.2 Indemnity**

The Licensee must indemnify and hold harmless the Council against all claims resulting from any damage, loss, death or injury in connection with the Licensed Area and the use and occupation of the Licensed Area by the Licensee except to the extent that the Council is negligent.

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**9. Assignment and Sub-Licensing**

The Licensee must not deal with its interest in the Licensed Area including assigning this Licence to a new licensee or sub-licensing the Licensed Area to a new licensee without the prior written consent of the Council.

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**10. Entry by the Council**

- 10.1 Subject to clause 10.3, the Council may enter the Licensed Area at any reasonable time after giving the Licensee reasonable notice to:

- 10.1.1 inspect the Licensed Area;
- 10.1.2 rectify any default by the Licensee under this Licence; or

- 10.1.3 carry out any inspection, repairs, maintenance, works or alterations in the Licensed Area which the Council decides, or is required, to carry out by any law or authority.
- 10.2 The Council must use all reasonable endeavours to cause as little disruption as possible to the Licensee's use of the Licensed Area in exercising the Council's rights under this clause.
- 10.3 The Council may enter the Licensed Area at any time without giving notice to the Licensee in an emergency.

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## **11. Council's Consent**

Where consent is requested to be granted by the Council under this Licence, the Council may withhold its consent at its absolute discretion and, if it gives its consent, it may impose conditions as it deems necessary in its absolute discretion.

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## **12. Licensee's obligations at the end of this Licence**

### **12.1 Licensee's Obligations**

At the end of this Licence, the Licensee must:

- 12.1.1 vacate the Licensed Area and give it back to the Council in a condition consistent with the Licensee having complied with its obligations under this Licence;
- 12.1.2 remove the Licensee's chattels and if required by the Council, remove all of the Licensee's fixtures and make good any damage caused by their removal; and
- 12.1.3 give to the Council all keys and other security devices for the purposes of obtaining access to the Licensed Area.

### **12.2 Licensee's Property Left in Licensed Area**

Anything left in the Licensed Area at the end of this Licence will become the property of the Council and may be removed by the Council at the Licensee's cost and at the Licensee's risk.

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## **13. Determination of Licence**

### **13.1 Re-entry**

The Council may re-enter the Licensed Area and determine this Licence if:

- 13.1.1 any part of the Licence Fee is in arrears for 14 days (whether or not the Council has demanded payment); or
- 13.1.2 the Licensee breaches this Licence and does not remedy the breach within 14 days of receipt of written notice from the Council; or
- 13.1.3 the Licensee is a corporation, and:
  - (a) an order is made or resolution is passed to wind up the Licensee;

- (b) an order is made or a meeting is called for the appointment of an administrator, provisional administrator, liquidator or provisional liquidator, receiver, receiver and manager, or an inspector to the Licensee; or
- (c) an administrator, provisional administrator, liquidator, provisional liquidator, receiver, receiver and manager, or inspector is appointed to the Licensee; or
- (d) any act or event mentioned in section 461(1)(a) to (k) of the *Corporations Act* 2001 (Cth) occurs in relation to the Licensee.

### 13.2 Damages following Determination

If this Licence is determined by the Council, the Licensee agrees to compensate the Council for any loss or damage the Council suffers arising in connection with the Licensee's breach of this Licence including the loss of the benefit of the Licensee performing its obligations under this Licence up to the expiration of the Term.

### 13.3 Essential Terms

The essential terms of this Licence are clauses 3.1, 3.2, 3.5, 4, 5.1, 5.3, 6.1, 7.1, 7.5, 7.22, 7.23, 9, and 12 and any Additional Clause that is expressed to be an essential term. The breach of an essential term is a repudiation of this Licence.

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## 14. Destruction or Damage of Licensed Area

### 14.1 Reduction in Licence Fee

If the Licensed Area, or any part of the Licensed Area is destroyed or damaged to the extent that the Licensee cannot use or have access to the Licensed Area (except if the Licensee causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Licensed Area because the Licensee caused or contributed to the destruction or damage) then the Council will reduce the Licence Fee by a reasonable amount depending upon the nature and extent of destruction or damage until the Licensee can use or have access to the Licensed Area.

### 14.2 Reinstatement of Licensed Area

If the Licensed Area, or any part of the Licensed Area is destroyed or damaged, the Council may, within 6 months from the date of such damage or destruction, give notice to the Licensee:

- 14.2.1 terminating this Licence, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 14.2.2 that the Council will commence reinstatement of the Licensed Area to a condition where the Licensee can use or have access to the Licensed Area.

The Council does not have to reinstate the Licensed Area.

### 14.3 Licensee's Right of Termination

The Licensee may give written notice to the Council terminating this Licence where:

- 14.3.1 the Council does not give notice to the Licensee pursuant to clause 14.2; or
- 14.3.2 the Council does not commence reinstatement within 6 months of the date of damage or destruction.

The Council does not have to reinstate the Licensed Area and will not be liable to pay the Licensee any compensation.

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**15. Overholding**

If the Licensee continues in occupation of the Licensed Area after the end of the Term, without objection by the Council:

- 15.1 the Licensee occupies the Licensed Area subject to the same terms and conditions as contained in this Licence;
- 15.2 the Council or the Licensee may end this Licence during any period of overholding by giving 30 days written notice to the other party expiring at any time; and
- 15.3 the Council may increase the monthly licence fee by giving the Licensee 1 month's written notice.

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**16. Grant of Licence only**

The Licensee agrees with the Council that:

- 16.1 the Licensee is not entitled to exclusive occupation of the Licensed Area;
- 16.2 the Council may use, or permit other parties to use, the Licensed Area following consultation with the Licensee;
- 16.3 this Licence does not create any estate or interest in the Licensed Area, other than a contractual right;
- 16.4 this Licence does not constitute a lease at law and the Licensee will not claim before a court or tribunal that this Licence constitutes a lease at law; and
- 16.5 in the event that a court or tribunal determines that this Licence is a lease at law, the Council may, at its option, terminate this Licence by written notice to the Licensee.

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**17. General**

**17.1 Incorporated Associations**

If the Licensee is an incorporated association, the Licensee warrants that it is incorporated under the *Associations Incorporation Act 1981* (Vic) and will at all times comply with the requirements of that Act.

**17.2 Notices**

Any notice required to be served under this Licence must be in writing and must be served by post, facsimile transmission or hand delivered to:

- 17.2.1 the Licensee at its address set out in this Licence, the Licensee's registered office address, the Licensed Area, or the last known address of the Licensee; and
- 17.2.2 the Council at its address set out in this Licence or any other address notified in writing to the Licensee by the Council.



**17.3 Entire Understanding**

This Licence contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Licence and have no effect.

**17.4 Waiver**

If the Council accepts the Licence Fee or any other monies under this Licence (before or after the end of this Licence) or does not exercise or delays exercising any of the Council's rights under this Licence, it will not be a waiver of the breach of this Licence by the Licensee or of the Council's rights under this Licence.

**17.5 Additional Clauses**

This Licence is subject to the Additional Clauses. The Additional Clauses override any inconsistent provisions in this Licence.

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**18. Interpretation**

**18.1 Governing Law and Jurisdiction**

This Licence is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria and waives any right to object to proceedings being brought in those Courts.

**18.2 Persons**

In this Licence, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

**18.3 Joint and Several**

If a party consists of more than one person, this Licence binds them jointly and each of them severally.

**18.4 Legislation**

In this Licence, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

**18.5 Clauses and Headings**

In this Licence:

18.5.1 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Licence; and

18.5.2 headings and sub-headings are inserted for ease of reference only and do not effect the interpretation of this Licence.

**18.6 Severance**

In this Licence:

- 18.6.1 if a provision in this Licence is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and
- 18.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Licence.

**18.7 Number and Gender**

In this Licence, a reference to:

- 18.7.1 the singular includes the plural and vice versa; and
- 18.7.2 a gender includes the other genders.

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## **Execution Page**

This **Licence** is executed by the parties on the date specified in Item 1.

**THE COMMON SEAL of Colac Otway  
Shire Council** (ABN 32 430 819 755) is  
affixed in accordance with its Local Law  
No 4

**THE COMMON SEAL of Barwon  
Child Youth & Family** (ABN 98 057  
582 733)  
in accordance with its constitution

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Signature of Chief Executive Officer

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Signature of Company Secretary

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Signature of Director

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## Annexure A

### Additional Clauses

#### 1. Costs

Each party will be responsible for payment of their own costs in connection with the preparation and execution of this Licence.

#### 2. Service Agreement

The Licensee acknowledges and agrees that:

- 2.1 it will only use the Licensed Area in accordance with the Service Agreement;
- 2.2 the terms of the Service Agreement may be amended annually by the Council provided that the Council consults with the Licensee and gives the Licensee prior written notice of such amendments;
- 2.3 if there is any inconsistency between the terms of this Licence and the Service Agreement, the terms of the Licence shall apply.

#### 3. Approvals and Compliance

##### 3.1 Definitions

In this Additional Clause 2:

**Education and Care Act** means the *Education and Care Services National Law Act 2010* (Vic);

**Education and Care Regulations** means all regulations made under the Education and Care Act;

**Education and Care Service** has the meaning given to that term in the Education and Care Act;

**Nominated Supervisor** has the meaning given to that term in the Education and Care Act;

**Regulatory Authority** has the meaning given to that term in the Education and Care Act. As at the Commencement Date, the Regulatory Authority is the Secretary of the Department of Education and Early Childhood Development;

**Serious Incident** has the meaning given to that term in section 174 of the Education and Care Act; and

**Show Cause Notice** has the meaning given to that term in the Education and Care Act.

Words and expressions that are not defined in this Licence but which have a defined meaning in the Education and Care Act or the Education and Care Regulations have the same meaning as in the Education and Care Act or the Education and Care Regulations.

##### 3.2 Application of Additional Clause

This Additional Clause 2 applies in relation to any Education and Care Service conducted at the Licensed Area as part of the Permitted Use.

3.3 Approval Requirements

Without limiting any of the Licensee's obligations under this Licence, the Licensee must obtain and maintain throughout the Term, all approvals required to engage in the Permitted Use at the Licensed Area, including, without limitation:

- 3.3.1 a provider approval to provide Education and Care Services, as required pursuant to Part 2 of the Education and Care Act (**Provider Approval**); and
- 3.3.2 a service approval to operate a kindergarten, as required pursuant to Part 3 of the Education and Care Act (**Service Approval**).

3.4 Licensee's Obligations

The Licensee must, at all times:

- 3.4.1 provide a copy of the Service Approval and the Provider Approval to the Licensor, on demand;
- 3.4.2 ensure that a Nominated Supervisor is appointed for the Education and Care Service;
- 3.4.3 without limiting clause 7.10, display on a visible part of the Licensed Area, the prescribed information in accordance with section 172 of the Education and Care Act; and
- 3.4.4 comply with the Service Approval, the Provider Approval, the Education and Care Act and the Education and Care Regulations.

3.5 Notification to Council

- 3.5.1 The Licensee must notify the Council of any complaint which the Licensee is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of reporting the complaint to the Regulatory Authority.
- 3.5.2 The Licensee must notify the Licensor of any Serious Incident which the Licensee is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of notifying the Regulatory Authority of the Serious Incident.
- 3.5.3 The Licensee must immediately notify the Licensor if a Show Cause Notice is served on the Licensee by the Regulatory Authority, or if the Licensee's Service Approval or Provider Approval is suspended (even if voluntarily), cancelled or surrendered.

3.6 This Additional Clause 2 is an essential term of this Licence.

**4. Working with Children Checks**

4.1 Without limiting clause 7.5, the Licensee must:

- 4.1.1 ensure that all employees and volunteers who are required to apply for a Working with Children Check (**WWC**) under the *Working with Children Act 2005* (Vic) (**WWCA**) have done so, before working with children at the Licensed Area;
- 4.1.2 provide a copy of the WWC card of each of the Licensee's employees and volunteers working at the Licensed Area to the Council, on demand;



4.1.3 ensure that any employee or volunteer that is given a negative notice (within the meaning given to that term in the WWCA) does not work with children at the Licensed Area; and

4.1.4 subject to special condition 4.2, ensure that the information in any WWC of the Licensee's employees and volunteers which is provided to the Council, is kept confidential.

4.2 The Licensee agrees that the Council may disclose the information in any WWC of the Licensee's employees and volunteers for the purpose of administering or enforcing this Licence or if required by law.

4.3 This Additional Clause 4 is an essential term of this Licence.

**5. Licensee's Environmental Obligations**

The Licensee acknowledges that the Council is committed to participating in energy saving practices and agrees to act reasonably and responsibly in using water and appliances that consume energy at the Licensed Area.

**6. Council Policy**

The Licensee agrees that Council has the right to require the Licensee to comply with existing or new policies issued or amended by Council from time to time and notified in writing to the Licensee.

**7. Personal Property Securities Act 2009**

**7.1 Definitions**

In this Additional Clause 7:

7.1.1 **Council PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Council; and
- (a) is situated on the Licensed Area or the Land at any time during the term of this Licence;

1.1.2 **Licensee PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Licensee;
- (b) is situated on the Licensed Area or the Land at any time during the term of this Licence; and
- (c) the Council has the right to require the Licensee to transfer ownership of that item to the Council, or the Licensee has the obligation to transfer ownership of that item to the Council, whether before or after the end of the term of this Licence,

but does not include any Council PPS Items;

1.1.3 **PPS Act** means the Personal Property Securities Act 2009 (Cth); and

1.1.4 words and expressions that are not defined in this Licence but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

**7.2 Licensee's obligations**

The Licensee:

- 1.1.5 charges its interest in all Licensee PPS Items situated on the Licensed Area or the Land from time to time in favour of the Council, as security for the performance of the Licensee's obligations under this Licence, including but not limited to the Licensee's obligations to transfer ownership in the whole or any part of the Licensee PPS Items to the Council;
- 1.1.6 acknowledges and agrees that the charge granted by the Licensee under Additional Clause 1.1.5 constitutes the grant of a Security Interest which the Council is entitled to register under the PPS Act;
- 1.1.7 acknowledges that the grant of this Licence also constitutes the grant of a Security Interest in the Council PPS Items in favour of the Council, which interest the Council is entitled to register under the PPS Act; and
- 1.1.8 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Licensee PPS Items and the Council PPS Items so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Licensee PPS Items and the Council PPS Items.

**7.3 Security Interests**

The Licensee:

- 1.1.9 warrants that it has not created a Security Interest in respect of any Council PPS Items on or prior to execution of this Licence; and
- 1.1.10 must not create a Security Interest in respect of any Council PPS Items or Licensee PPS Items in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion.

**7.4 Indemnity for breach of this Additional Clause**

The Licensee must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a consequence of any breach by the Licensee of this Additional Clause.

**7.5 Further obligations**

The Licensee acknowledges and agrees that:

- 1.1.11 it has no right under the PPSA to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPSA); and
- 1.1.12 on the expiration or earlier termination of this Licence, the Licensee must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests under the PPS Act in relation to the Licensee PPS Items and the Council PPS Items.

7.6 This Additional Clause prevails

In the event of any inconsistency between this Additional Clause and any other provision of this Licence, the provisions of this Additional Clause will prevail and that other provision will be read down and interpreted accordingly.

## Annexure B

### Maintenance Schedule 1

Schedule and Responsibilities for Occupier of Kindergarten and Council.

| Item                                            | Occupier's Responsibility                                                                                                                                                                                                                                                                                                                                                                          | Council's Responsibility                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Air Conditioning and Heating Appliances</b>  | <ul style="list-style-type: none"> <li>Service and repair when required</li> </ul>                                                                                                                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>Replacement of unit and any major parts</li> </ul>                                                                                                                                                                                                                                                                                                                          |
| <b>Building</b>                                 | <ul style="list-style-type: none"> <li>Determine and document the specific needs of the building relating to any requests to Council for building alterations.</li> <li>Prepare plans and obtain quotes for requests for minor improvements.</li> <li>Consent is required from Council for any grant or funding that the occupier is seeking to upgrade, extend or modify the building.</li> </ul> | <ul style="list-style-type: none"> <li>Assess all requests submitted.</li> <li>Undertake works required to bring premises and surrounds to appropriate standards to meet the required regulations. This excludes items identified as the lessee's responsibility in this document.</li> <li>Preparation of long-term development plans, design of major building alterations or major structural works.</li> </ul> |
| <b>Cleaning</b>                                 | <ul style="list-style-type: none"> <li>Keep premises in clean, sanitary and fresh condition.</li> </ul>                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                                              |
| <b>Ceilings, Walls and Skylights (internal)</b> | <ul style="list-style-type: none"> <li>Cost of repairs due to major or continual misuse.</li> <li>Regular cleaning</li> </ul>                                                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>Major repair and/or replacement due to structural faults/age.</li> </ul>                                                                                                                                                                                                                                                                                                    |
| <b>Curtains/Drapes/Blinds</b>                   | <ul style="list-style-type: none"> <li>Repairs costs.</li> <li>Replacement costs.</li> <li>Supervision of installation of replacement items.</li> <li>Regular cleaning.</li> </ul>                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                                              |
| <b>Doors (Inc. cupboard doors)</b>              | <ul style="list-style-type: none"> <li>Regular cleaning and repair of internal/external doors due to major or continual misuse.</li> <li>Minor adjustments.</li> </ul>                                                                                                                                                                                                                             | <ul style="list-style-type: none"> <li>Replacement due to age, structural fault.</li> </ul>                                                                                                                                                                                                                                                                                                                        |
| <b>Electrical Wiring, Fittings and Lights</b>   | <ul style="list-style-type: none"> <li>Additional or security lighting.</li> <li>Cost of repair and replacement of electrical wiring if damage is due to major or continual misuse.</li> <li>Repair and replacement of all light globes.</li> <li>Regular cleaning of all light fixtures.</li> </ul>                                                                                               | <ul style="list-style-type: none"> <li>Replacement of all building wiring from main supply to and including the switchboard.</li> <li>Replacement of light fittings.</li> </ul>                                                                                                                                                                                                                                    |

| Item                                                                        | Occupier's Responsibility                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Council's Responsibility                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Essential Safety Measures (e.g. fire extinguishers, exit lights etc.</b> | <ul style="list-style-type: none"> <li>Notification to Council of maintenance or servicing issues.</li> <li>Not to interfere or obstruct essential safety measures elements</li> </ul>                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>Undertake inspections, servicing and maintenance of all specified essential safety measures as required under the relevant Building Regulations.</li> <li>Meet all costs associated with this function.</li> <li>Fill when discharged and replace if stolen.</li> <li>Inspection and replacement of globes.</li> <li>Replacement of fittings.</li> </ul> |
| <b>Fencing</b>                                                              | <ul style="list-style-type: none"> <li>Determine and document the specific need of the fencing relating to any requests to Council for fencing alterations.</li> <li>Provide specifications of fencing alterations required due to changes in standards or regulations.</li> <li>Repair fences where damage is caused by occupier.</li> </ul>                                                                                                                                                                | <ul style="list-style-type: none"> <li>Assess all requests submitted.</li> <li>Replacement of essential/ required fences to appropriate standards to meet the required regulations. This excludes items identified as the lessee's responsibility in this document.</li> <li>Structural repairs or capital works re. fences.</li> </ul>                                                         |
| <b>Floor Surfaces and Coverings</b>                                         | <ul style="list-style-type: none"> <li>All regular cleaning and maintenance of floor coverings such as carpet and tiles.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>Replace to essential areas when excessively worn or dangerous.</li> </ul>                                                                                                                                                                                                                                                                                |
| <b>Fly Screens</b>                                                          | <ul style="list-style-type: none"> <li>Maintain and replace fly wire.</li> <li>Install additional fly screens</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                           |
| <b>Garbage</b>                                                              | <ul style="list-style-type: none"> <li>Normal fee for service waste collection</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                           |
| <b>Glass</b>                                                                | <ul style="list-style-type: none"> <li>Replace broken or cracked windows arising from misuse.</li> <li>Regular cleaning</li> </ul>                                                                                                                                                                                                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>Replace due to breakage arising from structural fault, age.</li> </ul>                                                                                                                                                                                                                                                                                   |
| <b>Grounds</b>                                                              | <ul style="list-style-type: none"> <li>Keep all entry/exit areas clear and sweep regularly.</li> <li>Maintain all grounds associated with building by cutting the grass, minor pruning, garden beds, bushes and flowers if required.</li> <li>Remove dead foliage.</li> <li>Seek Council approval for any modification to the grounds.</li> <li>Maintenance of garden beds.</li> <li>Maintenance of garden hoses and sprinklers etc.</li> <li>Cleaning and weeding of pavement and driveway areas</li> </ul> | <ul style="list-style-type: none"> <li>Repair paths, driveways etc.</li> <li>Replacement of essential pavement, driveway and carpark areas; retaining walls and ramps.</li> </ul>                                                                                                                                                                                                               |
| <b>Internal Appliances eg. Fans, Kettles, Food Processors etc.</b>          | <ul style="list-style-type: none"> <li>Replacement as required of minor kitchen appliances.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                           |



| Item                                                          | Occupier's Responsibility                                                                                                                                                                                                                                                                                                                 | Council's Responsibility                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Vandalism</b>                                              | <ul style="list-style-type: none"> <li>Less than \$1000 (subject to change based on claims history)</li> </ul>                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>More than \$1000 (subject to change based on claims history)</li> </ul>                                                                                                                                                                                                                  |
| <b>Keys and Locks</b>                                         | <ul style="list-style-type: none"> <li>Repair and replacement of locks if damaged through major or continued misuse.</li> </ul>                                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>Replacement of lost or damaged keys as applies to Council's master key system.</li> <li>Supply of keys for user groups.</li> <li>Repair and replacement of locks as applies to Council's master key system.</li> </ul>                                                                   |
| <b>Painting</b>                                               | <ul style="list-style-type: none"> <li>Internal painting if damaged through major or continued misuse or colour scheme changes etc.</li> </ul>                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>Internal and external for structural integrity reasons.</li> </ul>                                                                                                                                                                                                                       |
| <b>Permanent Fixtures</b>                                     | <ul style="list-style-type: none"> <li>Regular cleaning of all fixtures.</li> <li>Repair and/or replace if damaged through major or continual misuse.</li> </ul>                                                                                                                                                                          | <ul style="list-style-type: none"> <li>Replace when required the following items: <ul style="list-style-type: none"> <li>- hot water service</li> <li>- sinks and toilets</li> <li>- verandas attached to the building.</li> </ul> </li> </ul>                                                                                  |
| <b>Pest Control</b>                                           | <ul style="list-style-type: none"> <li>Keep all areas in a clean and hygienic state.</li> <li>All pest control as required both internal and external.</li> </ul>                                                                                                                                                                         | <ul style="list-style-type: none"> <li>Pest control relating to structural items (e.g. woodborer and termites).</li> </ul>                                                                                                                                                                                                      |
| <b>Playground Equipment and Adjacent Grounds</b>              | <ul style="list-style-type: none"> <li>Determine and advise Council if a change to playground equipment and adjacent areas is required.</li> <li>Provide specifications to Council of changes to or which has been deemed required by the occupier.</li> <li>Install and maintain playground equipment to an approved standard</li> </ul> | <ul style="list-style-type: none"> <li>Assess all requests submitted.</li> <li>Undertake a playground equipment and adjacent grounds audit on a scheduled basis.</li> <li>Inform the Occupier of the audit outcome and the works required to maintain to an approved standard.</li> </ul>                                       |
| <b>Plumbing</b>                                               | <ul style="list-style-type: none"> <li>Cost of internal repair due to major or continued misuse.</li> <li>Replacement and repair of internal surface plumbing fittings such as toilet seats, taps and washers etc.</li> </ul>                                                                                                             | <ul style="list-style-type: none"> <li>Replacement of damaged or corroded plumbing fittings, toilet bowls and cisterns.</li> <li>Repairs or works required for drainage purposes, including sewerage, drains, water pipes and pits.</li> <li>Replacement of gas pipes.</li> <li>Structural repairs or capital works.</li> </ul> |
| <b>Roof, Skylight, External Walls, Spouting and Downpipes</b> | <ul style="list-style-type: none"> <li>Cleaning of roof, external walls, spouting, downpipes and guttering.</li> </ul>                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>All maintenance and repair of the structure of the premises as required.</li> </ul>                                                                                                                                                                                                      |
| <b>Signage</b>                                                | <ul style="list-style-type: none"> <li>Maintain and replace all internal/external signs relating to the committee and in accordance with Council's planning requirements.</li> </ul>                                                                                                                                                      | <ul style="list-style-type: none"> <li>Identification signage to be provided by Council where required.</li> </ul>                                                                                                                                                                                                              |

| Item                                                                       | Occupier's Responsibility                                                                                                                                                 | Council's Responsibility                                                                                                               |
|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Smoke Detectors</b>                                                     | <ul style="list-style-type: none"> <li>Install, repair and replacement of battery operated smoke detectors. Includes battery replacement as required.</li> </ul>          | <ul style="list-style-type: none"> <li>Installation and maintenance of hard wire system where required.</li> </ul>                     |
| <b>Telecommunication Systems (e.g. fax, photocopiers, telephones etc.)</b> | <ul style="list-style-type: none"> <li>Purchase, service and maintenance cost.</li> <li>Replacement costs.</li> </ul>                                                     | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                  |
| <b>Trees</b>                                                               | <ul style="list-style-type: none"> <li>Advise Council of trees which are considered dangerous.</li> <li>No trees are to be planted without Council's approval.</li> </ul> | <ul style="list-style-type: none"> <li>Trees lopped/pruned to meet security/safety requirements where considered dangerous.</li> </ul> |
| <b>Whitegoods (e.g. refrigerator, dishwasher etc.)</b>                     | <ul style="list-style-type: none"> <li>Service and maintenance costs.</li> <li>Replacement costs.</li> </ul>                                                              | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                  |

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## Annexure C

### SERVICE AGREEMENT

#### Background

There are 4 early years' facilities operating on Colac Otway Shire premises that house a number of programmes ranging from four year old kindergarten, long day care, playgroups, three year old kindergarten and other early learning services.

#### Service Agreement Rationale

This Service Agreement between Colac Otway Shire and Barwon Child Youth & Family is intended to further develop early years' service provision and support for children (including their families) who attend early years services, especially kindergarten programmes.

This can be achieved by networking and working together on initiatives that can be provided to meet the needs of infants, young children and their families.

Council is responsible for developing an Early Years Plan, which does not focus solely on its own services, but recognises the need for optimal early years development throughout childhood. It is intended that kindergartens operating under a license and service agreement with Council have the opportunity to further develop their services and contribute to the early years service industry already operating within the Colac Otway municipality.

#### License and Service Agreements

License and service agreements provide direction, accountabilities and expectations for both parties in the delivery of kindergarten and early year's services. This can be described as:

- The License Agreement outlines the Occupier's and Council's responsibilities for the facility, and external playgrounds/gardens.
- The Service Agreement outlines the Occupier's and Council's responsibilities in relation to service provision and expectations.

#### Services Agreement for Maximizing Use and Access

##### 1. Usage Policy

The Licensee acknowledges and agrees that:

- 1.1. priority for use of the Licensed Area must be given to 4 year-old kindergarten groups and childcare provision. Council will consult and work with the Licensee if there is an opportunity to include additional early years support services within the Licensed Area; and
- 1.2. the Licensee will work with Council to investigate alternative short and long term accommodation options to meet future service needs and demand; and
- 1.3. in addition to 4 year-old kindergarten groups and childcare provision, the Licensed Area may be used for non-profit service/groups for children and families from birth to 8 years; and
- 1.4. the Licensed Area must not be used for any other use without the prior written consent of Council (delegation to the Manager Health & Community Services); and

- 1.5. if the Licensee obtains the Council's prior written consent in accordance with clause 1.4 the Licensee must ensure that other groups using the Premises must:
- 1.5.1 maintain current public liability insurance, which complies with provisions of clause of the Licence; and
- 1.5.2 otherwise comply with the terms and conditions of the Licence.
- 1.6. the Council agrees and acknowledges that, if the Licensee accommodates another service under clause 1.1 or obtains the Council's prior written consent in accordance with clause 1.4 the Licensee may charge and retain a reasonable fee from such other authorised users of the Premises.

## **2. Childcare and Kindergarten Services**

The Licensee providing an integrated service model must:

- deliver an accredited children's service that meets the requirements of the Australian National Quality Standards; and
- provide a childcare and/or kindergarten service, which operates at, registered capacity. The only exception to this is when the demand for childcare and/or kindergarten places is lower than registered capacity.

## **3. Colac Otway's KEYS (Kids Early Years Services) Network and other Meetings**

Council will:

- 3.1 help facilitate, attend and keep minutes for the respective KEYS Network Meetings. The purpose of the KEYS Network Meetings is to provide a forum for the consideration and discussion of matters of mutual interest to early years service providers, including kindergartens, and Council; and
- 3.2 through the KEYS, Network Meetings, facilitate consideration and adoption of early years service approaches for the effective operation and management of early years services, including kindergartens, throughout the Municipality; and
- 3.3 through collaboration develop and implement new strategies and projects that aim to improve early years services provision across the municipality; and
- 3.4 Where the need arises, or at least once per year, facilitate, attend and keep minutes of a meeting specifically held with a representative (an authorised representative of Barwon Child Youth & Family).

The Licensee must:

- 3.5 provide a representative in attendance for each local KEYS Network Meeting. In the event of consistent non-attendance of an authorised representative, Council reserves the right to consider the Licensee in breach of the terms and consideration of the Licence and Service Agreement.

#### **4. Reporting Requirements**

The Licensee must give to the Council:

4.1 by 30<sup>th</sup> November in each year a written report detailing:

- (a) The Operating Hours of the Service for the next 12 months: and
- (b) A list of the groups, which will be using the premises for the next 12 months: and
- (c) Quarterly data on the number of childcare places, and other appropriate service/program data that may be useful for Council's planning process.

4.2

- (a) The Licensee will ensure adequate records of income and expenditure are being kept and meet requirements of Council, State and Federal governments in relation to grants and reimbursements received.
- (b) Within 60 days of the Licensee's Annual General Meeting copy of the minutes of the Annual General Meeting, including an audited statement of assets and liabilities (balance sheet) profit and loss statement and cash flows statements.
- (c) A written report detailing the activities conducted by the Licensee during the preceding years and, where applicable, a list of the groups, which have used the licensed area, and a list of times at which the licensed area were used.
- (d) A list of the office bearers appointed to the Licensee, their duties and the length of term of the office of each office bearer.
- (e) The Licensee must provide details of any structural non-compliance, as a result from inspection by a regulatory authority, to Council within 14 days from receiving written notification.

#### **5. Child Safe Standards**

The standards are compulsory for all organisations providing services to children, and aim to drive cultural change in organisations so that protecting children from abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers.

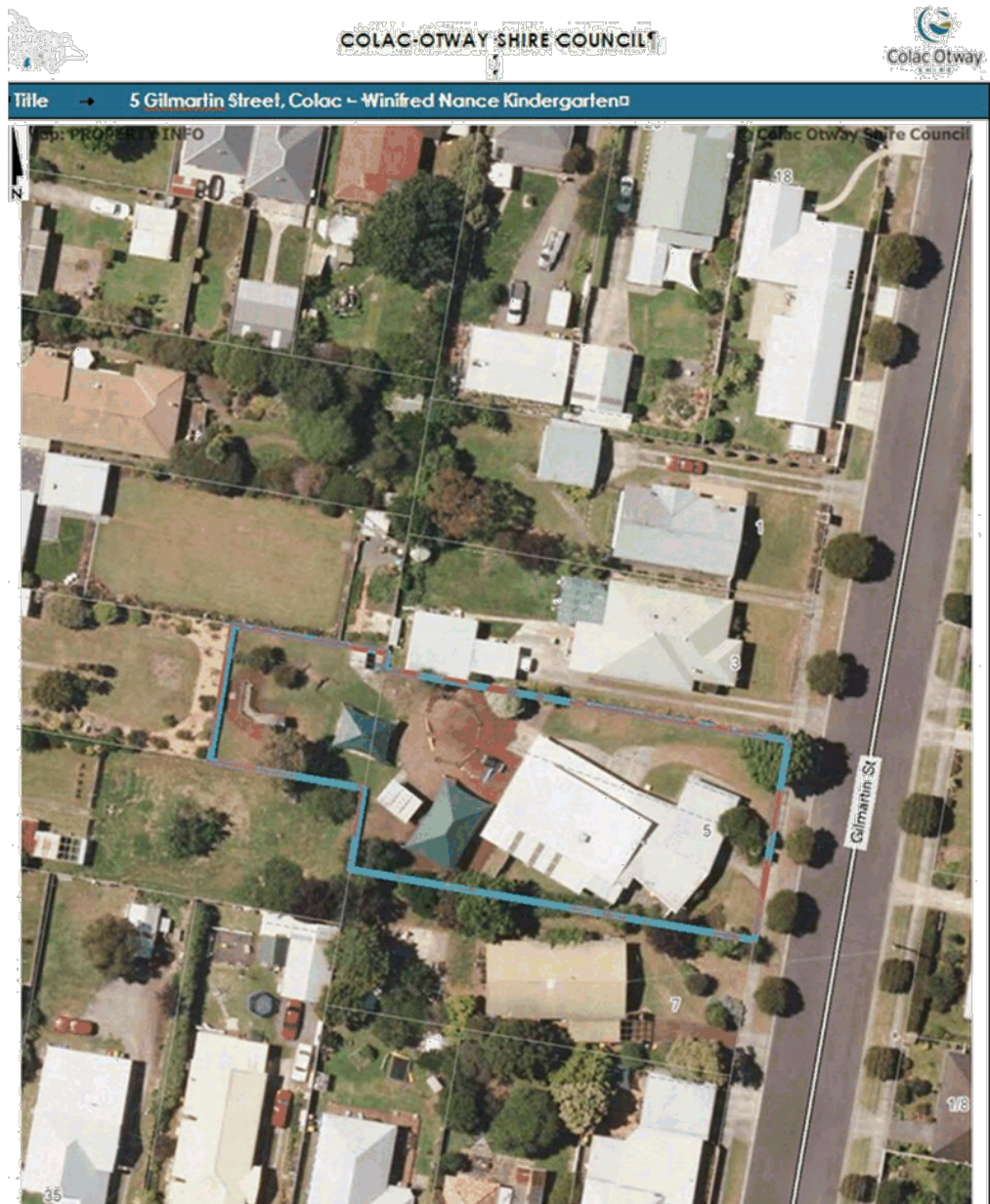
- (a) Council is committed to embedding Child Safe Standards into all aspects of its early childhood programs and its relationships with other Early Years Services.
- (b) The Licensee is to have a mutual commitment and embedded practice into adhering to the Child Safe Standards across all early years programs it facilitates.

## **6. Termination of the Service Agreement**

Either the Licensee or the Council may terminate this service agreement by giving the other party three months' notice in writing, or a shorter notice period if agreed by both parties. In the event of non-compliance with the terms and conditions of this agreement, Council may terminate the agreement. If the Council is considering termination of the agreement due to non-compliance, Council will provide 30 days' notice in writing to the organisation representatives who are signatories to this agreement. If the Service Agreement is terminated, then Council may re-enter the Licensed Area and determine the Licence agreement.



## Annexure D



**Date TO BE DETERMINED**

## **Community Services Licence**

**Licensed Area: 1 Polwarth Street, Colac ( Colac East Kindergarten)**

**Colac-Otway Shire Council**

**and**

**Barwon Child Youth & Family**

## Contents

|                                                       |          |
|-------------------------------------------------------|----------|
| <b>Schedule.....</b>                                  | <b>1</b> |
| <b>1. Definitions .....</b>                           | <b>2</b> |
| <b>2. Licence .....</b>                               | <b>3</b> |
| <b>3. Payments by the Licensee.....</b>               | <b>3</b> |
| 3.1 Payment of Licence Fee .....                      | 3        |
| 3.2 Rates and Taxes .....                             | 3        |
| 3.3 Services .....                                    | 3        |
| 3.4 Costs and Duty .....                              | 4        |
| 3.5 Interest on Late Payments .....                   | 4        |
| 3.6 No Deduction or Right of Set-off .....            | 4        |
| <b>4. GST .....</b>                                   | <b>4</b> |
| 4.1 Definitions .....                                 | 4        |
| 4.2 GST Exclusive .....                               | 4        |
| 4.3 Increase in Consideration .....                   | 4        |
| 4.4 Payment of GST .....                              | 4        |
| 4.5 Tax Invoice .....                                 | 4        |
| 4.6 Reimbursements .....                              | 4        |
| 4.7 Adjustment events .....                           | 5        |
| <b>5. Repairs, Alterations and Damage.....</b>        | <b>5</b> |
| 5.1 Repairs and Maintenance .....                     | 5        |
| 5.2 Failure to Repair and Maintain .....              | 5        |
| 5.3 Alterations and Works .....                       | 5        |
| 5.4 Defacing Licensed Area .....                      | 6        |
| 5.5 Occupational health and safety .....              | 6        |
| 5.6 Notice of Damage .....                            | 6        |
| <b>6. Insurance .....</b>                             | <b>6</b> |
| 6.1 Insurances to be effected by the Licensee .....   | 6        |
| 6.2 Licensee's Property .....                         | 6        |
| 6.3 Condition in Policies .....                       | 6        |
| 6.4 Payment and Production of Policies .....          | 7        |
| 6.5 Not Invalidate Policies .....                     | 7        |
| 6.6 Other Insurance .....                             | 7        |
| <b>7. Community Services Use.....</b>                 | <b>7</b> |
| 7.1 Permitted Use and Permitted Hours .....           | 7        |
| 7.2 Illegal Purpose .....                             | 7        |
| 7.3 No Warranty .....                                 | 7        |
| 7.4 Hours of Use .....                                | 7        |
| 7.5 Compliance with Laws .....                        | 8        |
| 7.6 Nuisance and Noise .....                          | 8        |
| 7.7 Licences and Permits .....                        | 8        |
| 7.8 Security .....                                    | 8        |
| 7.9 Keys .....                                        | 8        |
| 7.10 Signs .....                                      | 9        |
| 7.11 Heavy Equipment and Inflammable Substances ..... | 9        |
| 7.12 No Smoking .....                                 | 9        |
| 7.13 Vehicles .....                                   | 9        |
| 7.14 Emergency Procedures .....                       | 9        |
| 7.15 Playground Equipment .....                       | 10       |
| 7.16 Television and Radio .....                       | 10       |
| 7.17 Endanger Licensed Area .....                     | 10       |

|            |                                                                |           |
|------------|----------------------------------------------------------------|-----------|
| 7.18       | Licensee's Employees.....                                      | 10        |
| 7.19       | Liquor Licence.....                                            | 10        |
| 7.20       | Gambling.....                                                  | 10        |
| 7.21       | Gaming Licence .....                                           | 10        |
| 7.22       | Reporting Requirements.....                                    | 10        |
| 7.23       | Licensee Membership .....                                      | 10        |
| 7.24       | Animals .....                                                  | 11        |
| 7.25       | Auction Sales .....                                            | 11        |
| <b>8.</b>  | <b>Release and Indemnity.....</b>                              | <b>11</b> |
| 8.1        | Release.....                                                   | 11        |
| 8.2        | Indemnity .....                                                | 11        |
| <b>9.</b>  | <b>Assignment and Sub-Licensing .....</b>                      | <b>11</b> |
| <b>10.</b> | <b>Entry by the Council .....</b>                              | <b>11</b> |
| <b>11.</b> | <b>Council's Consent.....</b>                                  | <b>12</b> |
| <b>12.</b> | <b>Licensee's obligations at the end of this Licence .....</b> | <b>12</b> |
| 12.1       | Licensee's Obligations.....                                    | 12        |
| 12.2       | Licensee's Property Left in Licensed Area .....                | 12        |
| <b>13.</b> | <b>Determination of Licence.....</b>                           | <b>12</b> |
| 13.1       | Re-entry .....                                                 | 12        |
| 13.2       | Damages following Determination .....                          | 13        |
| 13.3       | Essential Terms .....                                          | 13        |
| <b>14.</b> | <b>Destruction or Damage of Licensed Area .....</b>            | <b>13</b> |
| 14.1       | Reduction in Licence Fee .....                                 | 13        |
| 14.2       | Reinstatement of Licensed Area.....                            | 13        |
| 14.3       | Licensee's Right of Termination.....                           | 13        |
| <b>15.</b> | <b>Overholding.....</b>                                        | <b>14</b> |
| <b>16.</b> | <b>Grant of Licence only.....</b>                              | <b>14</b> |
| <b>17.</b> | <b>General .....</b>                                           | <b>14</b> |
| 17.1       | Incorporated Associations .....                                | 14        |
| 17.2       | Notices.....                                                   | 14        |
| 17.3       | Entire Understanding.....                                      | 14        |
| 17.4       | Waiver.....                                                    | 15        |
| 17.5       | Additional Clauses.....                                        | 15        |
| <b>18.</b> | <b>Interpretation.....</b>                                     | <b>15</b> |
| 18.1       | Governing Law and Jurisdiction .....                           | 15        |
| 18.2       | Persons.....                                                   | 15        |
| 18.3       | Joint and Several.....                                         | 15        |
| 18.4       | Legislation.....                                               | 15        |
| 18.5       | Clauses and Headings .....                                     | 15        |
| 18.6       | Severance.....                                                 | 16        |
| 18.7       | Number and Gender.....                                         | 16        |
|            | <b>Execution Page .....</b>                                    | <b>17</b> |
|            | <b>Annexure A: Additional Clauses .....</b>                    | <b>18</b> |
|            | <b>Annexure B: Maintenance Schedule .....</b>                  | <b>23</b> |
|            | <b>Annexure C: Service Agreement .....</b>                     | <b>27</b> |
|            | <b>Annexure D: Map of Licenced Area .....</b>                  | <b>31</b> |

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## Schedule

|     |                                |                                                                                                                                                                                          |
|-----|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | <b>Date of this Licence:</b>   | <b>TO BE DETERMINED</b>                                                                                                                                                                  |
| 2.  | <b>Council:</b>                | Colac-Otway Shire Council (ABN 32 430 819 755) of<br>2-6 Rae Street, Colac 3250                                                                                                          |
| 3.  | <b>The Licensee:</b>           | Barwon Child Youth & Family<br>(ABN 98 057 582 733) of 222 Malop Street, Geelong<br>3220                                                                                                 |
| 4.  | <b>Land:</b>                   | A portion of the land contained in certificate of title<br>volume 04211 folio 171                                                                                                        |
| 5.  | <b>Licensed Area</b>           | A portion of the land known as 1 Polwarth Street,<br>Colac that includes the Kindergarten building,<br>Kindergarten playground and adjacent carpark as<br>outlined in map in Annexure D. |
| 6.  | <b>Term:</b>                   | Ten (10) years (as consistent with Council's Property<br>Leasing Policy 4.2)                                                                                                             |
| 7.  | <b>Commencement Date:</b>      | <b>TO BE DETERMINED</b>                                                                                                                                                                  |
| 8.  | <b>Community Services Use:</b> | Kindergarten and Child Care                                                                                                                                                              |
| 9.  | <b>Licence Fee:</b>            | \$1.00 per annum payable in advance upon signing of<br>the licence                                                                                                                       |
| 10. | <b>Hours of Use</b>            | As determined by Planning Guidelines                                                                                                                                                     |
| 11. | <b>Additional Clauses</b>      | As set out in Annexure A                                                                                                                                                                 |

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## Community Services Licence

### Dated

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### Parties

The Council

The Licensee

### The Parties Agree

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#### 1. Definitions

In this Licence, unless expressed or implied to the contrary:

**Additional Clauses** means the clauses (if any) specified in Item 11.

**Annexure** means an annexure to this Licence.

**Commencement Date** means the date specified in Item 7.

**Community Services Use** means the use specified in Item 8 of the Schedule.

**Council** means the Council specified in Item 2 and includes the Council's successors and assigns and where it is consistent with the context includes the Council's employees and agents.

**Council's Fixtures** includes all those fittings, fixtures, and chattels contained in the Licensed Area at the Commencement Date (if any) or installed by the Council during the Term.

**Hours of Use** means the hours of use specified in Item 10, or such other hours of use as the Council and the Licensee agree in writing from time to time.

**Item** means an item in the Schedule.

**Land** means the land specified in Item 4.

**Licence Fee** means the amount specified in Item 9.

**Licensed Area** means the land specified in Item 5 including any buildings and pavilions on the land and the Council's Fixtures.



**Licensee** means the Licensee specified in Item 3 and includes the Licensee's successors and assigns and where it is consistent with the context includes the Licensee's employees, agents, invitees and persons the Licensee allows on the Licensed Area.

**Maintenance Schedule** means the maintenance schedule attached to this Licence as Annexure C.

**OHS Act** means the *Occupational Health and Safety Act 2004* (Vic).

**OHS Law** means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Licensed Area.

**OHS Regulations** means the *Occupational Health and Safety Regulations 2007* (Vic).

**Principal Contractor** means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

**Schedule** means the Schedule at the front of this Licence.

**Service Agreement** means the service agreement attached to this Licence as Annexure D.

**Term** means the term specified in Item 6 and includes any extension or overholding.

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## 2. Licence

The Council grants a licence to the Licensee to use the Licensed Area in common with the Council and persons authorised by the Council for the Term starting on the Commencement Date, subject to the terms of this Licence.

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## 3. Payments by the Licensee

### 3.1 Payment of Licence Fee

The Licensee must pay the Licence Fee to the Council in the manner specified in Item 9.

### 3.2 Rates and Taxes

The Licensee must pay all rates, taxes (including land tax assessed on the basis that the Licensed Area is the only land owned by the Council) and all other charges and levies separately assessed in connection with the Licensed Area (Rates and Taxes). If the Rates and Taxes are not separately assessed for the Licensed Area, the Licensee must pay or refund to the Council the proportion of the Rates and Taxes that the area of the Licensed Area bears to the total lettable area assessed within 14 days of receipt of a written notice from the Council.

### 3.3 Services

The Licensee must pay for all services in connection with the Licensed Area including electricity, gas, water, garbage collection and telephone (**Services**). Where the Licensed Area is not separately metered, the Licensee must at the discretion of the Council pay to the Council the proportion of the charges for the Services that the area of the Licensed Area bears to the total area assessed within 14 days of receipt of a written notice from the Council.

**3.4 Costs and Duty**

The Licensee must pay to the Council within 7 days of demand the Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Licence by the Licensee.

**3.5 Interest on Late Payments**

The Licensee must pay to the Council on demand interest at the rate per annum equal to the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on any money payable by the Licensee under this Licence and remaining unpaid for 7 days. Interest will be computed from the date on which such payment became due.

**3.6 No Deduction or Right of Set-off**

The Licensee must pay all amounts due under this Licence to the Council without deduction or right of set-off.

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**4. GST**

**4.1 Definitions**

In this clause:

- 4.1.1 words and expressions that are not defined in this Licence but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 4.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

**4.2 GST Exclusive**

Except as otherwise provided by this clause, all consideration payable under this Licence in relation to any supply is exclusive of GST.

**4.3 Increase in Consideration**

If GST is payable in respect of any supply made by a supplier under this Licence (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

**4.4 Payment of GST**

Subject to clause 4.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Licence.

**4.5 Tax Invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 4.4.

**4.6 Reimbursements**

If this Licence requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

4.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

4.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

#### **4.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Licence:

4.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

4.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

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### **5. Repairs, Alterations and Damage**

#### **5.1 Repairs and Maintenance**

5.1.1 The Licensee must carry out the obligations which are described in the Maintenance Schedule (Annexure B) as being the responsibility of the Licensee.

5.1.2 Council must carry out the obligations which are described in the Maintenance Schedule (Annexure B) as being the responsibility of the Council.

#### **5.2 Failure to Repair and Maintain**

If the Licensee does not carry out any repairs, maintenance or other works required under this Licence within 14 days of receiving written notice from the Council, the Council may enter the Licensed Area to carry out such repairs, maintenance and works at any reasonable time after giving the Licensee reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Licensee to the Council on demand.

Typically, Council will respond to requests for building maintenance within 2 days excluding weekends and public holidays. The Licensee may organise emergency maintenance outside of normal business hours. All after hours call outs for emergency works are to be reported to Council the next working day. In such situations preference should be given to using Council approved suppliers. With reference to Annexure B, should the emergency maintenance relate to item which is Council's responsibility, the Licensee will be entitled to reimbursement of reasonable costs. Any such claim will need to be supported by all relevant documentation.

#### **5.3 Alterations and Works**

The Licensee must obtain the prior written consent of the Council before carrying out any alterations or works on the Licensed Area (including but not limited to the removal of trees or shrubs). The Licensee must ensure that any alterations or works on the Licensed Area are carried out:

5.3.1 strictly in accordance with plans and specifications approved by the Council (and such approval may be given or withheld at Council's absolute discretion);

5.3.2 in a proper and workmanlike manner;

5.3.3 to the Council's reasonable satisfaction and in accordance with the Council's reasonable requirements; and

- 5.3.4 in accordance with all rules and requirements of any authorities having jurisdiction over the Licensed Area.

**5.4 Defacing Licensed Area**

The Licensee must not deface or damage the Licensed Area (including drilling holes in the Licensed Area) except where approved by the Council in accordance with clause 5.3.

**5.5 Occupational health and safety**

For the purposes of the OHS Law, the Licensee agrees that:

- 5.5.1 the Licensee has sole management and control of the Licensed Area and has sole responsibility for ensuring that the Licensed Area and the means of entering and leaving them are safe and without risks to health;
- 5.5.2 Council appoints the Licensee as Principal Contractor in respect of any works to be carried out by the Licensee in the Licensed Area to which an OHS Law applies;
- 5.5.3 the Licensee must carry out such works in accordance with the requirements of the OHS Law; and
- 5.5.4 Council authorises the Licensee to exercise whatever authority is necessary for the Licensee to discharge the responsibilities of the appointment under clause 5.5.2.

**5.6 Notice of Damage**

The Licensee must give the Council prompt written notice of any material damage to the Licensed Area or anything likely to be a risk to the Licensed Area or any person in the Licensed Area.

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**6. Insurance**

**6.1 Insurances to be effected by the Licensee**

- 6.1.1 The Licensee must maintain insurance, in the name of the Licensee, and noting the interest of the Council with an insurer approved by the Council for public liability for the amount of \$20 million concerning one single event (or such greater sum as required by the Council).
- 6.1.2 The Licensee acknowledges that the insurance set out in clause 6.1.1 must extend to volunteers engaging in duties directly related to the Licensee's activities.

**6.2 Licensee's Property**

The Licensee must maintain insurance for its fixtures and fittings for the full replacement value.

**6.3 Condition in Policies**

The Licensee must ensure that the insurance policies effected by the Licensee contain a condition that the insurer will notify the Council at least 14 days before the policies lapse.

#### **6.4 Payment and Production of Policies**

The Licensee must pay all insurance premiums at least 14 days before the due date for payment and produce to the Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

#### **6.5 Not Invalidate Policies**

The Licensee must not do anything which may make any insurance effected by the Licensee or the Council invalid or which may increase the insurance premiums. If the insurance premium increases, the Licensee must pay that increase.

#### **6.6 Other Insurance**

The Licensee must, at its cost, effect and maintain:

6.6.1 workers' compensation insurance for its employees; and

6.6.2 if required by Council, professional indemnity, and directors and officers liability, insurance,

to the reasonable satisfaction of Council.

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### **7. Community Services Use**

#### **7.1 Permitted Use and Permitted Hours**

The Licensee must use the Licensed Area for the Community Services Use specified in Item 8 and must not use the Licensed Area for any other purpose without the prior written consent of Council which may be granted or withheld by Council in its sole discretion.

#### **7.2 Illegal Purpose**

The Licensee must not use the Licensed Area for any illegal purpose or carry on a noxious or offensive activity on the Licensed Area.

#### **7.3 No Warranty**

The Licensee:

7.3.1 acknowledges that the Council does not represent that the Licensed Area is suitable for the Community Services Use; and

7.3.2 must make its own enquiries as to the suitability of the Licensed Area for the Community Services Use.

#### **7.4 Hours of Use**

7.4.1 The Licensee must only use the Licensed Area for the Community Services Use during the Hours of Use.

7.4.2 The Licensee may use the Licensed Area for the purpose of taking deliveries, cleaning, maintenance and meetings only outside of the Hours of Use.

**7.5 Compliance with Laws**

The Licensee must comply with all laws and any requirements of any authority in connection with the Licensed Area and the Licensee's use and occupation of the Licensed Area.

**7.6 Nuisance and Noise**

7.6.1 The Licensee must not do anything in connection with the Licensed Area which may:

- (a) cause a nuisance or interfere with any other person; or
- (b) be dangerous or offensive in the Council's reasonable opinion.

7.6.2 The Licensee must ensure that the level of noise emanating from the Licensed Area:

- (a) does not cause a nuisance to other people; and
- (b) is kept at a level that complies with all laws and regulations, including without limitation the *Environment Protection (Residential Noise) Regulations 2008*.

**7.7 Licences and Permits**

The Licensee must maintain all licences and permits required for the Licensee's use of the Licensed Area and obtain the Council's prior written consent before varying any licence or permit or applying for any new licence or permit.

**7.8 Security**

The Licensee must keep the Licensed Area secure at all times when the Licensed Area is not being used by the Licensee.

**7.9 Keys**

7.9.1 If a key is required to access the Licensed Area, the Council's maintenance co-ordinator will provide the Licensee with the key to access the Licensed Area.

7.9.2 The Licensee may request in writing for extra keys to be issued. However, the Council has absolute discretion to decide on the number of keys that are ultimately issued to the Licensee.

7.9.3 The Licensee must:

- (a) not make any copies of the keys issued to the Licensee;
- (b) notify the Council within 24 hours of it becoming aware of any lost or stolen keys; and
- (c) not install or remove any key cylinders or padlocks in the Licensed Area without obtaining the prior written consent of the Council.

7.9.4 The Licensee will be responsible for the cost incurred to install or remove any key cylinders or padlocks and to issue any new keys when at fault.

7.9.5 The Council may remove or install, at the Licensee's expense, and at any time, any key cylinders or padlocks that have been installed or removed without the Council's prior consent.



7.9.6 All keys need to be compatible with the master set held by Council's Infrastructure and Services Department.

7.9.7 The Licensee must pay to the Council on demand, when at fault:

- (a) the costs incurred by the Council to replace any lost, stolen or damaged keys and lock barrels for the Licensed Area; and
- (b) the costs incurred by the Council to issue any extra keys.

**7.10 Signs**

7.10.1 The Licensee must seek the prior written consent of the Council before displaying or affixing any signs, advertisements or notices to any part of the Licensed Area unless the signs, advertisements or notices relate to the Licensee's activities carried on at the Licensed Area.

7.10.2 The Licensee:

- (a) allows the Council to enter onto the Licensed Area to inspect the condition of any signs, advertisements or notices displayed or affixed to any part of the Licensed Area under this clause; and
- (b) must comply, at its own cost, with all reasonable directions of Council in relation to the maintenance, removal or replacement of such signs, advertisements or notices.

**7.11 Heavy Equipment and Inflammable Substances**

The Licensee must obtain the Council's prior written consent before bringing any heavy equipment or inflammable substances into the Licensed Area except to the extent to which it is consistent with the Community Services Use.

**7.12 No Smoking**

The Licensee must:

- 7.12.1 not permit the sale of tobacco products or tobacco related products;
- 7.12.2 not permit any smoking in the Licensed Area; and
- 7.12.3 display 'no smoking' signs in the Licensed Area if requested by the Council.

**7.13 Vehicles**

The Licensee must not permit any vehicles to be driven, parked or stopped at any place or time on any part of the Licensed Area except at such places and at such times for the purpose of services or works, or an educational activity.

**7.14 Emergency Procedures**

The Licensee must:

- 7.14.1 keep a first aid kit at the Licensed Area and replenish it when required;
- 7.14.2 establish and display an evacuation plan, and test the utility of any such evacuation plan, at regular intervals during each year; and

7.14.3 keep all emergency equipment fully replenished.

**7.15 Playground Equipment**

7.15.1 The Licensee must not construct or erect any fixed playground equipment at the Licensed Area without Council's prior written consent.

7.15.2 Any playground equipment on the Licensed Area must comply with Australian Standards AS1924.1 – 1981 and AS1924.2 – 1981, and industry best practice in design, provision and maintenance, including the undersurfacing component contained in AS/NSZ4422-1996.

**7.16 Television and Radio**

The Licensee must not install any televisions, radios, music systems or other equipment in the Licensed Area which can be heard outside the Licensed Area without obtaining the prior written consent of the Council.

**7.17 Endanger Licensed Area**

The Licensee must not do or permit anything to be done in connection with the Licensed Area which in the opinion of the Council may endanger the Licensed Area or be a risk to any person or property.

**7.18 Licensee's Employees**

The Licensee must use all reasonable endeavours to ensure that the Licensee's employees, agents, contractors and invitees observe and comply with the Licensee's obligations under this Licence, where appropriate.

**7.19 Liquor Licence**

The Licensee must not apply for any licence or permit under the *Liquor Control Reform Act* 1998 (Vic) unless approved by Council for a single event.

**7.20 Gambling**

The Licensee must not apply for a licence or permit pursuant to the *Gambling Regulation Act* 2003 (Vic).

**7.21 Gaming Licence**

The Licensee must seek the prior written consent of the Council before applying for any licence under the *Gaming Machine Control Act* 1991 (Vic). The Council may withhold its consent or give its consent subject to such terms and conditions as Council may determine in its absolute discretion.

**7.22 Reporting Requirements**

The Licensee must give to the Council within 14 days of the Licensee's annual general meeting, a written report detailing:

7.22.1 the office bearers appointed to the Licensee, their duties and the length of term of the office of each office bearer; and

7.22.2 the activities conducted by the Licensee during the preceding year.

**7.23 Licensee Membership**

The Licensee will:

- 7.23.1 permit residents and ratepayers of the municipality to become members of the Licensee upon satisfying the Licensee's reasonable requirements for membership;
- 7.23.2 upon demand, inform Council of the number of members of the Licensee; and
- 7.23.3 within 7 days of demand, provide all necessary documents to the Council to verify the membership of the Licensee.

**7.24 Animals**

The Licensee must not allow any animals other than guide dogs, or for curriculum activities reasonably expected within an early years setting, to enter the Licensed Area.

**7.25 Auction Sales**

The Licensee must not conduct or allow to be conducted any auctions, garage sales, car boot sales, fetes or similar activities without the prior written consent of Council (which consent must not be unreasonably withheld).

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**8. Release and Indemnity**

**8.1 Release**

The Licensee uses and occupies the Licensed Area at its own risk and releases the Council from all claims resulting from any damage, loss, death or injury in connection with the Licensed Area except to the extent that the Council is negligent.

**8.2 Indemnity**

The Licensee must indemnify and hold harmless the Council against all claims resulting from any damage, loss, death or injury in connection with the Licensed Area and the use and occupation of the Licensed Area by the Licensee except to the extent that the Council is negligent.

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**9. Assignment and Sub-Licensing**

The Licensee must not deal with its interest in the Licensed Area including assigning this Licence to a new licensee or sub-licensing the Licensed Area to a new licensee without the prior written consent of the Council.

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**10. Entry by the Council**

- 10.1 Subject to clause 10.3, the Council may enter the Licensed Area at any reasonable time after giving the Licensee reasonable notice to:

- 10.1.1 inspect the Licensed Area;
- 10.1.2 rectify any default by the Licensee under this Licence; or

- 10.1.3 carry out any inspection, repairs, maintenance, works or alterations in the Licensed Area which the Council decides, or is required, to carry out by any law or authority.
- 10.2 The Council must use all reasonable endeavours to cause as little disruption as possible to the Licensee's use of the Licensed Area in exercising the Council's rights under this clause.
- 10.3 The Council may enter the Licensed Area at any time without giving notice to the Licensee in an emergency.

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## **11. Council's Consent**

Where consent is requested to be granted by the Council under this Licence, the Council may withhold its consent at its absolute discretion and, if it gives its consent, it may impose conditions as it deems necessary in its absolute discretion.

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## **12. Licensee's obligations at the end of this Licence**

### **12.1 Licensee's Obligations**

At the end of this Licence, the Licensee must:

- 12.1.1 vacate the Licensed Area and give it back to the Council in a condition consistent with the Licensee having complied with its obligations under this Licence;
- 12.1.2 remove the Licensee's chattels and if required by the Council, remove all of the Licensee's fixtures and make good any damage caused by their removal; and
- 12.1.3 give to the Council all keys and other security devices for the purposes of obtaining access to the Licensed Area.

### **12.2 Licensee's Property Left in Licensed Area**

Anything left in the Licensed Area at the end of this Licence will become the property of the Council and may be removed by the Council at the Licensee's cost and at the Licensee's risk.

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## **13. Determination of Licence**

### **13.1 Re-entry**

The Council may re-enter the Licensed Area and determine this Licence if:

- 13.1.1 any part of the Licence Fee is in arrears for 14 days (whether or not the Council has demanded payment); or
- 13.1.2 the Licensee breaches this Licence and does not remedy the breach within 14 days of receipt of written notice from the Council; or
- 13.1.3 the Licensee is a corporation, and:
  - (a) an order is made or resolution is passed to wind up the Licensee;

- (b) an order is made or a meeting is called for the appointment of an administrator, provisional administrator, liquidator or provisional liquidator, receiver, receiver and manager, or an inspector to the Licensee; or
- (c) an administrator, provisional administrator, liquidator, provisional liquidator, receiver, receiver and manager, or inspector is appointed to the Licensee; or
- (d) any act or event mentioned in section 461(1)(a) to (k) of the *Corporations Act* 2001 (Cth) occurs in relation to the Licensee.

### 13.2 Damages following Determination

If this Licence is determined by the Council, the Licensee agrees to compensate the Council for any loss or damage the Council suffers arising in connection with the Licensee's breach of this Licence including the loss of the benefit of the Licensee performing its obligations under this Licence up to the expiration of the Term.

### 13.3 Essential Terms

The essential terms of this Licence are clauses 3.1, 3.2, 3.5, 4, 5.1, 5.3, 6.1, 7.1, 7.5, 7.22, 7.23, 9, and 12 and any Additional Clause that is expressed to be an essential term. The breach of an essential term is a repudiation of this Licence.

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## 14. Destruction or Damage of Licensed Area

### 14.1 Reduction in Licence Fee

If the Licensed Area, or any part of the Licensed Area is destroyed or damaged to the extent that the Licensee cannot use or have access to the Licensed Area (except if the Licensee causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Licensed Area because the Licensee caused or contributed to the destruction or damage) then the Council will reduce the Licence Fee by a reasonable amount depending upon the nature and extent of destruction or damage until the Licensee can use or have access to the Licensed Area.

### 14.2 Reinstatement of Licensed Area

If the Licensed Area, or any part of the Licensed Area is destroyed or damaged, the Council may, within 6 months from the date of such damage or destruction, give notice to the Licensee:

- 14.2.1 terminating this Licence, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 14.2.2 that the Council will commence reinstatement of the Licensed Area to a condition where the Licensee can use or have access to the Licensed Area.

The Council does not have to reinstate the Licensed Area.

### 14.3 Licensee's Right of Termination

The Licensee may give written notice to the Council terminating this Licence where:

- 14.3.1 the Council does not give notice to the Licensee pursuant to clause 14.2; or
- 14.3.2 the Council does not commence reinstatement within 6 months of the date of damage or destruction.

The Council does not have to reinstate the Licensed Area and will not be liable to pay the Licensee any compensation.

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**15. Overholding**

If the Licensee continues in occupation of the Licensed Area after the end of the Term, without objection by the Council:

- 15.1 the Licensee occupies the Licensed Area subject to the same terms and conditions as contained in this Licence;
- 15.2 the Council or the Licensee may end this Licence during any period of overholding by giving 30 days written notice to the other party expiring at any time; and
- 15.3 the Council may increase the monthly licence fee by giving the Licensee 1 month's written notice.

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**16. Grant of Licence only**

The Licensee agrees with the Council that:

- 16.1 the Licensee is not entitled to exclusive occupation of the Licensed Area;
- 16.2 the Council may use, or permit other parties to use, the Licensed Area following consultation with the Licensee;
- 16.3 this Licence does not create any estate or interest in the Licensed Area, other than a contractual right;
- 16.4 this Licence does not constitute a lease at law and the Licensee will not claim before a court or tribunal that this Licence constitutes a lease at law; and
- 16.5 in the event that a court or tribunal determines that this Licence is a lease at law, the Council may, at its option, terminate this Licence by written notice to the Licensee.

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**17. General**

**17.1 Incorporated Associations**

If the Licensee is an incorporated association, the Licensee warrants that it is incorporated under the *Associations Incorporation Act 1981* (Vic) and will at all times comply with the requirements of that Act.

**17.2 Notices**

Any notice required to be served under this Licence must be in writing and must be served by post, facsimile transmission or hand delivered to:

- 17.2.1 the Licensee at its address set out in this Licence, the Licensee's registered office address, the Licensed Area, or the last known address of the Licensee; and
- 17.2.2 the Council at its address set out in this Licence or any other address notified in writing to the Licensee by the Council.



**17.3 Entire Understanding**

This Licence contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Licence and have no effect.

**17.4 Waiver**

If the Council accepts the Licence Fee or any other monies under this Licence (before or after the end of this Licence) or does not exercise or delays exercising any of the Council's rights under this Licence, it will not be a waiver of the breach of this Licence by the Licensee or of the Council's rights under this Licence.

**17.5 Additional Clauses**

This Licence is subject to the Additional Clauses. The Additional Clauses override any inconsistent provisions in this Licence.

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**18. Interpretation**

**18.1 Governing Law and Jurisdiction**

This Licence is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria and waives any right to object to proceedings being brought in those Courts.

**18.2 Persons**

In this Licence, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

**18.3 Joint and Several**

If a party consists of more than one person, this Licence binds them jointly and each of them severally.

**18.4 Legislation**

In this Licence, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

**18.5 Clauses and Headings**

In this Licence:

18.5.1 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Licence; and

18.5.2 headings and sub-headings are inserted for ease of reference only and do not effect the interpretation of this Licence.

**18.6 Severance**

In this Licence:

- 18.6.1 if a provision in this Licence is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and
- 18.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Licence.

**18.7 Number and Gender**

In this Licence, a reference to:

- 18.7.1 the singular includes the plural and vice versa; and
- 18.7.2 a gender includes the other genders.

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## **Execution Page**

This **Licence** is executed by the parties on the date specified in Item 1.

**THE COMMON SEAL of Colac Otway  
Shire Council** (ABN 32 430 819 755) is  
affixed in accordance with its Local Law  
No 4

**THE COMMON SEAL of Barwon  
Child Youth & Family** (ABN 98 057  
582 733)  
In accordance with its constitution

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Signature of Chief Executive Officer

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Signature of Company Secretary

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Signature of Director

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## Annexure A

### Additional Clauses

#### 1. Costs

Each party will be responsible for payment of their own costs in connection with the preparation and execution of this Licence.

#### 2. Service Agreement

The Licensee acknowledges and agrees that:

- 2.1 it will only use the Licensed Area in accordance with the Service Agreement;
- 2.2 the terms of the Service Agreement may be amended annually by the Council provided that the Council consults with the Licensee and gives the Licensee prior written notice of such amendments;
- 2.3 if there is any inconsistency between the terms of this Licence and the Service Agreement, the terms of the Licence shall apply.

#### 3. Approvals and Compliance

##### 3.1 Definitions

In this Additional Clause 2:

**Education and Care Act** means the *Education and Care Services National Law Act 2010* (Vic);

**Education and Care Regulations** means all regulations made under the Education and Care Act;

**Education and Care Service** has the meaning given to that term in the Education and Care Act;

**Nominated Supervisor** has the meaning given to that term in the Education and Care Act;

**Regulatory Authority** has the meaning given to that term in the Education and Care Act. As at the Commencement Date, the Regulatory Authority is the Secretary of the Department of Education and Early Childhood Development;

**Serious Incident** has the meaning given to that term in section 174 of the Education and Care Act; and

**Show Cause Notice** has the meaning given to that term in the Education and Care Act.

Words and expressions that are not defined in this Licence but which have a defined meaning in the Education and Care Act or the Education and Care Regulations have the same meaning as in the Education and Care Act or the Education and Care Regulations.

##### 3.2 Application of Additional Clause

This Additional Clause 2 applies in relation to any Education and Care Service conducted at the Licensed Area as part of the Permitted Use.

3.3 Approval Requirements

Without limiting any of the Licensee's obligations under this Licence, the Licensee must obtain and maintain throughout the Term, all approvals required to engage in the Permitted Use at the Licensed Area, including, without limitation:

- 3.3.1 a provider approval to provide Education and Care Services, as required pursuant to Part 2 of the Education and Care Act (**Provider Approval**); and
- 3.3.2 a service approval to operate a kindergarten, as required pursuant to Part 3 of the Education and Care Act (**Service Approval**).

3.4 Licensee's Obligations

The Licensee must, at all times:

- 3.4.1 provide a copy of the Service Approval and the Provider Approval to the Licensor, on demand;
- 3.4.2 ensure that a Nominated Supervisor is appointed for the Education and Care Service;
- 3.4.3 without limiting clause 7.10, display on a visible part of the Licensed Area, the prescribed information in accordance with section 172 of the Education and Care Act; and
- 3.4.4 comply with the Service Approval, the Provider Approval, the Education and Care Act and the Education and Care Regulations.

3.5 Notification to Council

- 3.5.1 The Licensee must notify the Council of any complaint which the Licensee is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of reporting the complaint to the Regulatory Authority.
- 3.5.2 The Licensee must notify the Licensor of any Serious Incident which the Licensee is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of notifying the Regulatory Authority of the Serious Incident.
- 3.5.3 The Licensee must immediately notify the Licensor if a Show Cause Notice is served on the Licensee by the Regulatory Authority, or if the Licensee's Service Approval or Provider Approval is suspended (even if voluntarily), cancelled or surrendered.

3.6 This Additional Clause 2 is an essential term of this Licence.

**4. Working with Children Checks**

4.1 Without limiting clause 7.5, the Licensee must:

- 4.1.1 ensure that all employees and volunteers who are required to apply for a Working with Children Check (**WWC**) under the *Working with Children Act 2005* (Vic) (**WWCA**) have done so, before working with children at the Licensed Area;
- 4.1.2 provide a copy of the WWC card of each of the Licensee's employees and volunteers working at the Licensed Area to the Council, on demand;

4.1.3 ensure that any employee or volunteer that is given a negative notice (within the meaning given to that term in the WWCA) does not work with children at the Licensed Area; and

4.1.4 subject to special condition 4.2, ensure that the information in any WWC of the Licensee's employees and volunteers which is provided to the Council, is kept confidential.

4.2 The Licensee agrees that the Council may disclose the information in any WWC of the Licensee's employees and volunteers for the purpose of administering or enforcing this Licence or if required by law.

4.3 This Additional Clause 4 is an essential term of this Licence.

**5. Licensee's Environmental Obligations**

The Licensee acknowledges that the Council is committed to participating in energy saving practices and agrees to act reasonably and responsibly in using water and appliances that consume energy at the Licensed Area.

**6. Council Policy**

The Licensee agrees that Council has the right to require the Licensee to comply with existing or new policies issued or amended by Council from time to time and notified in writing to the Licensee.

**7. Personal Property Securities Act 2009**

**7.1 Definitions**

In this Additional Clause 7:

7.1.1 **Council PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Council; and
- (a) is situated on the Licensed Area or the Land at any time during the term of this Licence;

1.1.2 **Licensee PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Licensee;
- (b) is situated on the Licensed Area or the Land at any time during the term of this Licence; and
- (c) the Council has the right to require the Licensee to transfer ownership of that item to the Council, or the Licensee has the obligation to transfer ownership of that item to the Council, whether before or after the end of the term of this Licence,

but does not include any Council PPS Items;

1.1.3 **PPS Act** means the Personal Property Securities Act 2009 (Cth); and

1.1.4 words and expressions that are not defined in this Licence but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.



**7.2 Licensee's obligations**

The Licensee:

- 1.1.5 charges its interest in all Licensee PPS Items situated on the Licensed Area or the Land from time to time in favour of the Council, as security for the performance of the Licensee's obligations under this Licence, including but not limited to the Licensee's obligations to transfer ownership in the whole or any part of the Licensee PPS Items to the Council;
- 1.1.6 acknowledges and agrees that the charge granted by the Licensee under Additional Clause 1.1.5 constitutes the grant of a Security Interest which the Council is entitled to register under the PPS Act;
- 1.1.7 acknowledges that the grant of this Licence also constitutes the grant of a Security Interest in the Council PPS Items in favour of the Council, which interest the Council is entitled to register under the PPS Act; and
- 1.1.8 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Licensee PPS Items and the Council PPS Items so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Licensee PPS Items and the Council PPS Items.

**7.3 Security Interests**

The Licensee:

- 1.1.9 warrants that it has not created a Security Interest in respect of any Council PPS Items on or prior to execution of this Licence; and
- 1.1.10 must not create a Security Interest in respect of any Council PPS Items or Licensee PPS Items in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion.

**7.4 Indemnity for breach of this Additional Clause**

The Licensee must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a consequence of any breach by the Licensee of this Additional Clause.

**7.5 Further obligations**

The Licensee acknowledges and agrees that:

- 1.1.11 it has no right under the PPSA to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPSA); and
- 1.1.12 on the expiration or earlier termination of this Licence, the Licensee must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests under the PPS Act in relation to the Licensee PPS Items and the Council PPS Items.

7.6 This Additional Clause prevails

In the event of any inconsistency between this Additional Clause and any other provision of this Licence, the provisions of this Additional Clause will prevail and that other provision will be read down and interpreted accordingly.

## Annexure B

### Maintenance Schedule 1

Schedule and Responsibilities for Occupier of Kindergarten and Council.

| Item                                            | Occupier's Responsibility                                                                                                                                                                                                                                                                                                                                                                          | Council's Responsibility                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Air Conditioning and Heating Appliances</b>  | <ul style="list-style-type: none"> <li>Service and repair when required</li> </ul>                                                                                                                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>Replacement of unit and any major parts</li> </ul>                                                                                                                                                                                                                                                                                                                          |
| <b>Building</b>                                 | <ul style="list-style-type: none"> <li>Determine and document the specific needs of the building relating to any requests to Council for building alterations.</li> <li>Prepare plans and obtain quotes for requests for minor improvements.</li> <li>Consent is required from Council for any grant or funding that the occupier is seeking to upgrade, extend or modify the building.</li> </ul> | <ul style="list-style-type: none"> <li>Assess all requests submitted.</li> <li>Undertake works required to bring premises and surrounds to appropriate standards to meet the required regulations. This excludes items identified as the lessee's responsibility in this document.</li> <li>Preparation of long-term development plans, design of major building alterations or major structural works.</li> </ul> |
| <b>Cleaning</b>                                 | <ul style="list-style-type: none"> <li>Keep premises in clean, sanitary and fresh condition.</li> </ul>                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                                              |
| <b>Ceilings, Walls and Skylights (internal)</b> | <ul style="list-style-type: none"> <li>Cost of repairs due to major or continual misuse.</li> <li>Regular cleaning</li> </ul>                                                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>Major repair and/or replacement due to structural faults/age.</li> </ul>                                                                                                                                                                                                                                                                                                    |
| <b>Curtains/Drapes/Blinds</b>                   | <ul style="list-style-type: none"> <li>Repairs costs.</li> <li>Replacement costs.</li> <li>Supervision of installation of replacement items.</li> <li>Regular cleaning.</li> </ul>                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                                              |
| <b>Doors (Inc. cupboard doors)</b>              | <ul style="list-style-type: none"> <li>Regular cleaning and repair of internal/external doors due to major or continual misuse.</li> <li>Minor adjustments.</li> </ul>                                                                                                                                                                                                                             | <ul style="list-style-type: none"> <li>Replacement due to age, structural fault.</li> </ul>                                                                                                                                                                                                                                                                                                                        |
| <b>Electrical Wiring, Fittings and Lights</b>   | <ul style="list-style-type: none"> <li>Additional or security lighting.</li> <li>Cost of repair and replacement of electrical wiring if damage is due to major or continual misuse.</li> <li>Repair and replacement of all light globes.</li> <li>Regular cleaning of all light fixtures.</li> </ul>                                                                                               | <ul style="list-style-type: none"> <li>Replacement of all building wiring from main supply to and including the switchboard.</li> <li>Replacement of light fittings.</li> </ul>                                                                                                                                                                                                                                    |

| Item                                                                        | Occupier's Responsibility                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Council's Responsibility                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Essential Safety Measures (e.g. fire extinguishers, exit lights etc.</b> | <ul style="list-style-type: none"> <li>Notification to Council of maintenance or servicing issues.</li> <li>Not to interfere or obstruct essential safety measures elements</li> </ul>                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>Undertake inspections, servicing and maintenance of all specified essential safety measures as required under the relevant Building Regulations.</li> <li>Meet all costs associated with this function.</li> <li>Fill when discharged and replace if stolen.</li> <li>Inspection and replacement of globes.</li> <li>Replacement of fittings.</li> </ul> |
| <b>Fencing</b>                                                              | <ul style="list-style-type: none"> <li>Determine and document the specific need of the fencing relating to any requests to Council for fencing alterations.</li> <li>Provide specifications of fencing alterations required due to changes in standards or regulations.</li> <li>Repair fences where damage is caused by occupier.</li> </ul>                                                                                                                                                                | <ul style="list-style-type: none"> <li>Assess all requests submitted.</li> <li>Replacement of essential/ required fences to appropriate standards to meet the required regulations. This excludes items identified as the lessee's responsibility in this document.</li> <li>Structural repairs or capital works re. fences.</li> </ul>                                                         |
| <b>Floor Surfaces and Coverings</b>                                         | <ul style="list-style-type: none"> <li>All regular cleaning and maintenance of floor coverings such as carpet and tiles.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>Replace to essential areas when excessively worn or dangerous.</li> </ul>                                                                                                                                                                                                                                                                                |
| <b>Fly Screens</b>                                                          | <ul style="list-style-type: none"> <li>Maintain and replace fly wire.</li> <li>Install additional fly screens</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                           |
| <b>Garbage</b>                                                              | <ul style="list-style-type: none"> <li>Normal fee for service waste collection</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                           |
| <b>Glass</b>                                                                | <ul style="list-style-type: none"> <li>Replace broken or cracked windows arising from misuse.</li> <li>Regular cleaning</li> </ul>                                                                                                                                                                                                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>Replace due to breakage arising from structural fault, age.</li> </ul>                                                                                                                                                                                                                                                                                   |
| <b>Grounds</b>                                                              | <ul style="list-style-type: none"> <li>Keep all entry/exit areas clear and sweep regularly.</li> <li>Maintain all grounds associated with building by cutting the grass, minor pruning, garden beds, bushes and flowers if required.</li> <li>Remove dead foliage.</li> <li>Seek Council approval for any modification to the grounds.</li> <li>Maintenance of garden beds.</li> <li>Maintenance of garden hoses and sprinklers etc.</li> <li>Cleaning and weeding of pavement and driveway areas</li> </ul> | <ul style="list-style-type: none"> <li>Repair paths, driveways etc.</li> <li>Replacement of essential pavement, driveway and carpark areas; retaining walls and ramps.</li> </ul>                                                                                                                                                                                                               |
| <b>Internal Appliances e.g. Fans, Kettles, Food Processors etc.</b>         | <ul style="list-style-type: none"> <li>Replacement as required of minor kitchen appliances.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                           |

| Item                                                          | Occupier's Responsibility                                                                                                                                                                                                                                                                                                                 | Council's Responsibility                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Vandalism</b>                                              | <ul style="list-style-type: none"> <li>Less than \$1000 (subject to change based on claims history)</li> </ul>                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>More than \$1000 (subject to change based on claims history)</li> </ul>                                                                                                                                                                                                                  |
| <b>Keys and Locks</b>                                         | <ul style="list-style-type: none"> <li>Repair and replacement of locks if damaged through major or continued misuse.</li> </ul>                                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>Replacement of lost or damaged keys as applies to Council's master key system.</li> <li>Supply of keys for user groups.</li> <li>Repair and replacement of locks as applies to Council's master key system.</li> </ul>                                                                   |
| <b>Painting</b>                                               | <ul style="list-style-type: none"> <li>Internal painting if damaged through major or continued misuse or colour scheme changes etc.</li> </ul>                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>Internal and external for structural integrity reasons.</li> </ul>                                                                                                                                                                                                                       |
| <b>Permanent Fixtures</b>                                     | <ul style="list-style-type: none"> <li>Regular cleaning of all fixtures.</li> <li>Repair and/or replace if damaged through major or continual misuse.</li> </ul>                                                                                                                                                                          | <ul style="list-style-type: none"> <li>Replace when required the following items: <ul style="list-style-type: none"> <li>- hot water service</li> <li>- sinks and toilets</li> <li>- verandas attached to the building.</li> </ul> </li> </ul>                                                                                  |
| <b>Pest Control</b>                                           | <ul style="list-style-type: none"> <li>Keep all areas in a clean and hygienic state.</li> <li>All pest control as required both internal and external.</li> </ul>                                                                                                                                                                         | <ul style="list-style-type: none"> <li>Pest control relating to structural items (eg. woodborer and termites).</li> </ul>                                                                                                                                                                                                       |
| <b>Playground Equipment and Adjacent Grounds</b>              | <ul style="list-style-type: none"> <li>Determine and advise Council if a change to playground equipment and adjacent areas is required.</li> <li>Provide specifications to Council of changes to or which has been deemed required by the occupier.</li> <li>Install and maintain playground equipment to an approved standard</li> </ul> | <ul style="list-style-type: none"> <li>Assess all requests submitted.</li> <li>Undertake a playground equipment and adjacent grounds audit on a scheduled basis.</li> <li>Inform the Occupier of the audit outcome and the works required to maintain to an approved standard.</li> </ul>                                       |
| <b>Plumbing</b>                                               | <ul style="list-style-type: none"> <li>Cost of internal repair due to major or continued misuse.</li> <li>Replacement and repair of internal surface plumbing fittings such as toilet seats, taps and washers etc.</li> </ul>                                                                                                             | <ul style="list-style-type: none"> <li>Replacement of damaged or corroded plumbing fittings, toilet bowls and cisterns.</li> <li>Repairs or works required for drainage purposes, including sewerage, drains, water pipes and pits.</li> <li>Replacement of gas pipes.</li> <li>Structural repairs or capital works.</li> </ul> |
| <b>Roof, Skylight, External Walls, Spouting and Downpipes</b> | <ul style="list-style-type: none"> <li>Cleaning of roof, external walls, spouting, downpipes and guttering.</li> </ul>                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>All maintenance and repair of the structure of the premises as required.</li> </ul>                                                                                                                                                                                                      |
| <b>Signage</b>                                                | <ul style="list-style-type: none"> <li>Maintain and replace all internal/external signs relating to the committee and in accordance with Council's planning requirements.</li> </ul>                                                                                                                                                      | <ul style="list-style-type: none"> <li>Identification signage to be provided by Council where required.</li> </ul>                                                                                                                                                                                                              |

| Item                                                                       | Occupier's Responsibility                                                                                                                                                 | Council's Responsibility                                                                                                               |
|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Smoke Detectors</b>                                                     | <ul style="list-style-type: none"> <li>Install, repair and replacement of battery operated smoke detectors. Includes battery replacement as required.</li> </ul>          | <ul style="list-style-type: none"> <li>Installation and maintenance of hard wire system where required.</li> </ul>                     |
| <b>Telecommunication Systems (e.g. fax, photocopiers, telephones etc.)</b> | <ul style="list-style-type: none"> <li>Purchase, service and maintenance cost.</li> <li>Replacement costs.</li> </ul>                                                     | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                  |
| <b>Trees</b>                                                               | <ul style="list-style-type: none"> <li>Advise Council of trees which are considered dangerous.</li> <li>No trees are to be planted without Council's approval.</li> </ul> | <ul style="list-style-type: none"> <li>Trees lopped/pruned to meet security/safety requirements where considered dangerous.</li> </ul> |
| <b>Whitegoods (e.g. refrigerator, dishwasher etc.)</b>                     | <ul style="list-style-type: none"> <li>Service and maintenance costs.</li> <li>Replacement costs.</li> </ul>                                                              | <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                  |



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## Annexure C

### SERVICE AGREEMENT

#### Background

There are 4 early years' facilities operating on Colac Otway Shire premises that house a number of programmes ranging from four year old kindergarten, long day care, playgroups, three year old kindergarten and other early learning services.

#### Service Agreement Rationale

This Service Agreement between Colac Otway Shire and Barwon Child Youth & Family is intended to further develop early years service provision and support for children (including their families) who attend early years services, especially kindergarten programmes.

This can be achieved by networking and working together on initiatives that can be provided to meet the needs of infants, young children and their families.

Council is responsible for developing an Early Years Plan, which does not focus solely on its own services, but recognises the need for optimal early years development throughout childhood. It is intended that kindergartens operating under a license and service agreement with Council have the opportunity to further develop their services and contribute to the early years service industry already operating within the Colac Otway municipality.

#### License and Service Agreements

License and service agreements provide direction, accountabilities and expectations for both parties in the delivery of kindergarten and early year's services. This can be described as:

- The License Agreement outlines the Occupier's and Council's responsibilities for the facility, and external playgrounds/gardens.
- The Service Agreement outlines the Occupier's and Council's responsibilities in relation to service provision and expectations.

#### Services Agreement for Maximizing Use and Access

##### 1. Usage Policy

The Licensee acknowledges and agrees that:

- 1.1. priority for use of the Licensed Area must be given to 4 year-old kindergarten groups and childcare provision. Council will consult and work with the Licensee if there is an opportunity to include additional early years support services within the Licensed Area; and
- 1.2. the Licensee will work with Council to investigate alternative short and long term accommodation options to meet future service needs and demand; and
- 1.3. in addition to 4 year-old kindergarten groups and childcare provision, the Licensed Area may be used for non profit service/groups for children and families from birth to 8 years; and
- 1.4. the Licensed Area must not be used for any other use without the prior written consent of Council (delegation to the Manager Health & Community Services); and

- 1.5. if the Licensee obtains the Council's prior written consent in accordance with clause 1.4 the Licensee must ensure that other groups using the Premises must:
- 1.5.1 maintain current public liability insurance, which complies with provisions of clause of the Licence; and
- 1.5.2 otherwise comply with the terms and conditions of the Licence.
- 1.6. the Council agrees and acknowledges that, if the Licensee accommodates another service under clause 1.1 or obtains the Council's prior written consent in accordance with clause 1.4 the Licensee may charge and retain a reasonable fee from such other authorised users of the Premises.

## **2. Childcare and Kindergarten Services**

The Licensee providing an integrated service model must:

- deliver an accredited children's service that meets the requirements of the Australian National Quality Standards; and
- provide a childcare and/or kindergarten service, which operates at, registered capacity. The only exception to this is when the demand for childcare and/or kindergarten places is lower than registered capacity.

## **3. Colac Otway's KEYS (Kids Early Years Services) Network and other Meetings**

Council will:

- 3.1 help facilitate, attend and keep minutes for the respective KEYS Network Meetings. The purpose of the KEYS Network Meetings is to provide a forum for the consideration and discussion of matters of mutual interest to early years service providers, including kindergartens, and Council; and
- 3.2 through the KEYS, Network Meetings, facilitate consideration and adoption of early years service approaches for the effective operation and management of early years services, including kindergartens, throughout the Municipality; and
- 3.3 through collaboration develop and implement new strategies and projects that aim to improve early years services provision across the municipality; and
- 3.4 Where the need arises, or at least once per year, facilitate, attend and keep minutes of a meeting specifically held with a representative (an authorised representative of Barwon Child Youth & Family).

The Licensee must:

- 3.5 provide a representative in attendance for each local KEYS Network Meeting. In the event of consistent non-attendance of an authorised representative, Council reserves the right to consider the Licensee in breach of the terms and consideration of the Licence and Service Agreement.

#### **4. Reporting Requirements**

The Licensee must give to the Council:

4.1 by 30<sup>th</sup> November in each year a written report detailing:

- (a) The Operating Hours of the Service for the next 12 months: and
- (b) A list of the groups, which will be using the premises for the next 12 months: and
- (c) Quarterly data on the number of childcare places, and other appropriate service/program data that may be useful for Council's planning process.

4.2

- (a) The Licensee will ensure adequate records of income and expenditure are being kept and meet requirements of Council, State and Federal governments in relation to grants and reimbursements received.
- (b) Within 60 days of the Licensee's Annual General Meeting copy of the minutes of the Annual General Meeting, including an audited statement of assets and liabilities (balance sheet) profit and loss statement and cash flows statements.
- (c) A written report detailing the activities conducted by the Licensee during the preceding years and, where applicable, a list of the groups, which have used the licensed area, and a list of times at which the licensed area were used.
- (d) A list of the office bearers appointed to the Licensee, their duties and the length of term of the office of each office bearer.
- (e) The Licensee must provide details of any structural non-compliance, as a result from inspection by a regulatory authority, to Council within 14 days from receiving written notification.

#### **5. Child Safe Standards**

The standards are compulsory for all organisations providing services to children, and aim to drive cultural change in organisations so that protecting children from abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers.

- (a) Council is committed to embedding Child Safe Standards into all aspects of its early childhood programs and its relationships with other Early Years Services.
- (b) The Licensee is to have a mutual commitment and embedded practice into adhering to the Child Safe Standards across all early years programs it facilitates.

## **6. Termination of the Service Agreement**

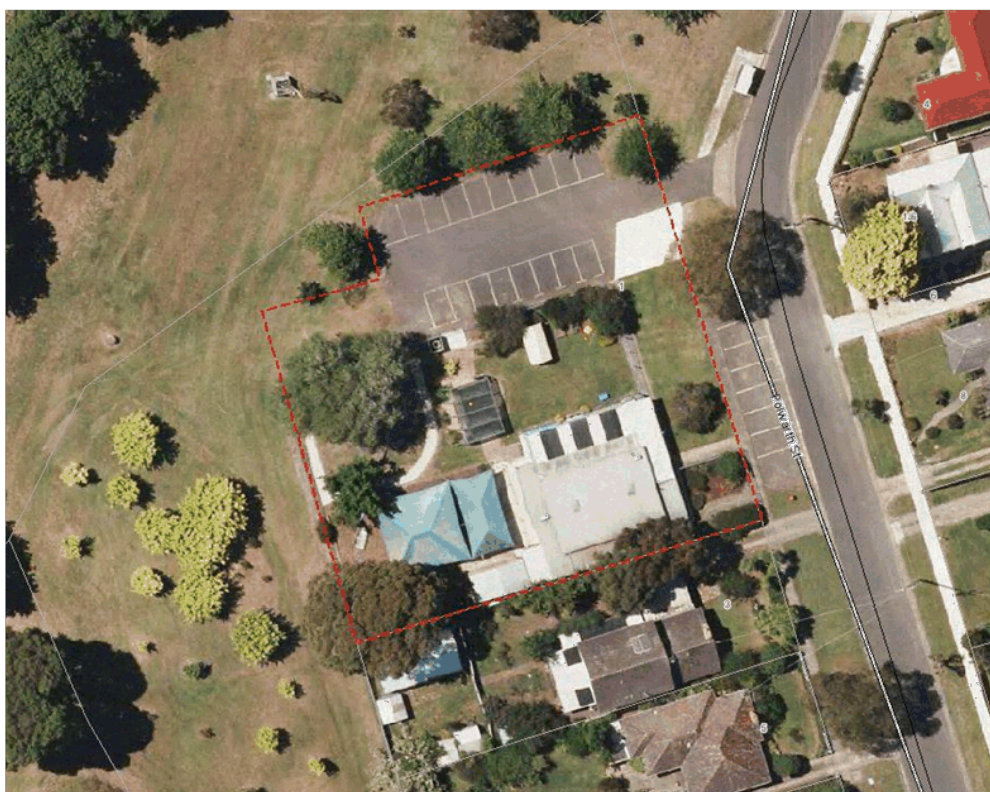
Either the Licensee or the Council may terminate this service agreement by giving the other party three months notice in writing, or a shorter notice period if agreed by both parties. In the event of non-compliance with the terms and conditions of this agreement, Council may terminate the agreement. If the Council is considering termination of the agreement due to non-compliance, Council will provide 30 days notice in writing to the organisation representatives who are signatories to this agreement. If the Service Agreement is terminated, then Council may re-enter the Licensed Area and determine the Licence agreement.

## Annexure D



Title

1 Polwarth Street, Colac - Colac East Kindergarten



20/07/2016

page 31

**OM162408-6 KINDERGARTEN SERVICE LICENCE AGREEMENT FOR APOLLO BAY**

|             |                                  |           |             |
|-------------|----------------------------------|-----------|-------------|
| AUTHOR:     | Greg Fletcher                    | ENDORSED: | Brydon King |
| DEPARTMENT: | Development & Community Services | FILE REF: | F14/3097    |

**Purpose**

To seek Council's approval for a 3 year Licence agreement for the Apollo Bay Pre-School with the Apollo Bay Preschool Incorporated Committee.

**Declaration of Interests**

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

**Background**

There are two licences that kindergartens on Council land need to hold. The first is with Council to operate from Council Land. The second is to be Licenced with the Department of Education and Training (DET) to be able to operate as a kindergarten licensee.

To ensure that the Apollo Bay Pre-School Incorporated Committee is recognised by Council as the Licensee for operating the Apollo Bay Pre-school a property licence has been developed in consultation with the Committee to meet specific and unique property Licence requirements for the kindergarten.

This arrangement between Apollo Bay Pre-school Committee and Council regarding the local pre-school, on Council land, has been tailored to meet the local needs of the service. It also documents the roles and responsibilities of Council and the Committee.

Apollo Bay Pre-School Incorporated Committee will operate as the Licensee for the kindergarten and is responsible for negotiating any future service provider licensing arrangements with the Department of Education and Training (DET). Other duties of the Committee include the employment of staff, including all staff related activities, and financial management.

**Council Plan / Other Strategies / Policy**

**A Place to Live and Grow**

Is a community where people feel cared for and supported; where buildings and spaces facilitate creativity, social activity and enrichment of life, and people have access to gain the skills and education needed to reach their potential.

*Our Goal:*

Improve access to buildings, spaces, services and education to support and enable quality of life.

**Issues / Options**

The pre-school property has been considered under our *Council Property Leasing Policy 4.2 (the Policy)* as satisfying the definitions and conditions of a licence. The licence will give the Licensee a right to occupy the property (not exclusively), but it does not create any interest in that land to the Licensee.

This promotes the greatest community benefit and value from a Council facility through encouraging multi-use of facilities and tailoring the service provided by tenants to best suit the community.

The main reason to issue a Licence instead of a lease is to allow for potential opportunities for the facility to be shared, thereby creating greater use of a Council facility. Examples of this could include a maternal and child health service or various paediatric providers.



The Licensee under *the Policy* is considered a Group 1 - Community Service category, which is fully subsidised.

The Licence in this report is very specific and has been developed to meet unique service requirements. The kindergarten licence has been adapted from a template that is being used by local governments across Victoria.

The Licence in this report has a Service Agreement in addition to the Licence Agreement. The difference between these agreements can be described as:

- A Licence Agreement outlines the Occupier's and Council's responsibilities for the facility, and external playgrounds/gardens.
- A Service Agreement outlines the Occupier's and Council's responsibilities in relation to service provision and expectations.

The Service Agreement for kindergartens outlines Council's responsibilities in early years planning and its expectations of the Licensee to provide space for other early year's services, meeting requirements around compliance and participating in the development of the local early year's sector.

The granting of this Licence does not impact future discussions and actions around a proposal to co-locate an early years facility on the Apollo Bay P-12 College site.

### **Proposal**

It is proposed that Council adopt the recommendations within this report.

### **Financial and Other Resource Implications**

As a Group 1 - Community Service category, this Licence is subsidised with a nominal rate set at \$1.00 per annum payable in advance upon signing of the Licence.

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

There is no current Licence for the pre-school. Therefore, this proposed Licence will formalise an agreement between the Committee and Council for the use of the land.

### **Environmental and Climate Change Considerations**

There are no significant environmental issues associated with the proposal in this report.

### **Community Engagement**

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

Ongoing consultation has been held with representatives from the Committee. A copy of a current Licence, used for other kindergartens within Colac Otway, was provided to the Committee as an example of what their Licence would look like.

Their most significant concern was around any potential problem around a future move to the Apollo Bay P-12 School site.

### **Implementation**

It is proposed that following Council's adoption of the recommendation that the Licence be signed and sealed by both parties.

### **Conclusion**

This Licence agreement ensures that pre-school facilities, on Council Land, at 69 McLachlan Street Apollo Bay are used in a manner consistent with the intention of the Policy.

**Attachments**

1. Licence Agreement - Apollo Bay Kindergarten 2016 final

**Recommendation**

**That Council:**

1. *In accordance with Council Property Leasing Policy Ref. 4.2 (18 December 2013) enters into a Community Services Licence agreement with the Apollo Bay Preschool Incorporated Committee for the Land situated at 69 McLachlan Street Apollo Bay on the following terms and conditions.*

|                       |                                                                                 |
|-----------------------|---------------------------------------------------------------------------------|
| <b>Agreement Type</b> | <b>Community Services Licence<br/>((kindergarten and early years services))</b> |
| <b>Rent</b>           | <b>\$1.00 per annum (incl. GST)</b>                                             |
| <b>Lease Term</b>     | <b>3 years</b>                                                                  |
| <b>Further Term</b>   | <b>Nil</b>                                                                      |
| <b>Rent Review</b>    | <b>Nil</b>                                                                      |
| <b>Maintenance</b>    | <b>In accordance with Annexure C,<br/>Maintenance Schedule 1 of the Licence</b> |

2. *Executes the proposed Licence under delegation in accordance with the terms and conditions specified in the table above.*

~~~~~\) ~~~~~

Date TO BE DETERMINED

Community Services Licence

Licensed Area: 69 McLachlan Street, APOLLO BAY 3233

Colac-Otway Shire Council

and

Apollo Bay Preschool Incorporated Committee

Contents

| | |
|---|----------|
| Schedule..... | 1 |
| 1. Definitions | 2 |
| 2. Licence | 3 |
| 3. Payments by the Licensee..... | 3 |
| 3.1 Payment of Licence Fee | 3 |
| 3.2 Rates and Taxes | 3 |
| 3.3 Services | 3 |
| 3.4 Costs and Duty..... | 4 |
| 3.5 Interest on Late Payments..... | 4 |
| 3.6 No Deduction or Right of Set-off | 4 |
| 4. GST | 4 |
| 4.1 Definitions | 4 |
| 4.2 GST Exclusive..... | 4 |
| 4.3 Increase in Consideration..... | 4 |
| 4.4 Payment of GST..... | 4 |
| 4.5 Tax Invoice..... | 4 |
| 4.6 Reimbursements | 4 |
| 4.7 Adjustment events..... | 5 |
| 5. Repairs, Alterations and Damage..... | 5 |
| 5.1 Repairs and Maintenance..... | 5 |
| 5.2 Failure to Repair and Maintain..... | 5 |
| 5.3 Alterations and Works | 5 |
| 5.4 Defacing Licensed Area..... | 5 |
| 5.5 Occupational health and safety..... | 6 |
| 5.6 Notice of Damage..... | 6 |
| 6. Insurance..... | 6 |
| 6.1 Insurances to be effected by the Licensee | 6 |
| 6.2 Licensee's Property | 6 |
| 6.3 Condition in Policies | 6 |
| 6.4 Payment and Production of Policies..... | 6 |
| 6.5 Not Invalidate Policies | 6 |
| 6.6 Other Insurance | 7 |
| 7. Community Services Use..... | 7 |
| 7.1 Permitted Use and Permitted Hours..... | 7 |
| 7.2 Illegal Purpose | 7 |
| 7.3 No Warranty | 7 |
| 7.4 Hours of Use | 7 |
| 7.5 Compliance with Laws | 7 |
| 7.6 Nuisance and Noise | 7 |
| 7.7 Licences and Permits | 8 |
| 7.8 Security | 8 |
| 7.9 Keys..... | 8 |
| 7.10 Signs..... | 9 |
| 7.11 Heavy Equipment and Inflammable Substances | 9 |
| 7.12 No Smoking | 9 |
| 7.13 Vehicles | 9 |
| 7.14 Emergency Procedures | 9 |
| 7.15 Playground Equipment | 9 |
| 7.16 Television and Radio..... | 10 |
| 7.17 Endanger Licensed Area | 10 |

| | | |
|------------|--|-----------|
| 7.18 | Licensee's Employees..... | 10 |
| 7.19 | Liquor Licence..... | 10 |
| 7.20 | Gambling..... | 10 |
| 7.21 | Gaming Licence | 10 |
| 7.22 | Reporting Requirements..... | 10 |
| 7.23 | Licensee Membership | 10 |
| 7.24 | Animals | 11 |
| 7.25 | Auction Sales | 11 |
| 8. | Release and Indemnity..... | 11 |
| 8.1 | Release..... | 11 |
| 8.2 | Indemnity | 11 |
| 9. | Assignment and Sub-Licensing | 11 |
| 10. | Entry by the Council | 11 |
| 11. | Council's Consent..... | 12 |
| 12. | Licensee's obligations at the end of this Licence | 12 |
| 12.1 | Licensee's Obligations..... | 12 |
| 12.2 | Licensee's Property Left in Licensed Area | 12 |
| 13. | Determination of Licence..... | 12 |
| 13.1 | Re-entry | 12 |
| 13.2 | Damages following Determination | 13 |
| 13.3 | Essential Terms | 13 |
| 14. | Destruction or Damage of Licensed Area | 13 |
| 14.1 | Reduction in Licence Fee | 13 |
| 14.2 | Reinstatement of Licensed Area..... | 13 |
| 14.3 | Licensee's Right of Termination..... | 13 |
| 15. | Overholding..... | 13 |
| 16. | Grant of Licence only..... | 14 |
| 17. | General | 14 |
| 17.1 | Incorporated Associations | 14 |
| 17.2 | Notices..... | 14 |
| 17.3 | Entire Understanding..... | 14 |
| 17.4 | Waiver..... | 15 |
| 17.5 | Additional Clauses..... | 15 |
| 18. | Interpretation..... | 15 |
| 18.1 | Governing Law and Jurisdiction | 15 |
| 18.2 | Persons..... | 15 |
| 18.3 | Joint and Several..... | 15 |
| 18.4 | Legislation..... | 16 |
| 18.5 | Clauses and Headings | 16 |
| 18.6 | Severance..... | 15 |
| 18.7 | Number and Gender..... | 16 |
| | Execution Page | 17 |
| | Annexure A | 18 |
| | Annexure B | 23 |
| | Annexure C | 24 |
| | Annexure D | 28 |

Schedule

| | | |
|-----|--------------------------------|--|
| 1. | Date of this Licence: | The day of |
| 2. | Council: | Colac-Otway Shire Council of 2-6 Rae Street, Colac 3250 |
| 3. | The Licensee: | Apollo Bay Preschool Inc, (ABN: 6251 4200707) of 69 McLachlan St Apollo Bay VIC 3233 |
| 4. | Land: | The whole of the land contained in certificate of title of Lot 1 LP20996 volume 7792 folio 029. |
| 5. | Licensed Area | The whole of the Land and buildings, shown on the plan attached as Annexure B and known as 35 McLachlan Street, APOLLO BAY |
| 6. | Term: | Three (3) years (as consistent with Council's Policy.) |
| 7. | Commencement Date: | TO BE DETERMINED |
| 8. | Community Services Use: | Kindergarten |
| 9. | Licence Fee: | \$1.10 per annum payable in advance upon signing of the licence |
| 10. | Hours of Use | To be determined by Planning Guidelines |
| 11. | Additional Clauses | As set out in Annexure A |

Community Services Licence

Dated / /

Parties

The Council

The Licensee

The Parties Agree

1. Definitions

In this Licence, unless expressed or implied to the contrary:

Additional Clauses means the clauses (if any) specified in Item 11.

Annexure means an annexure to this Licence.

Commencement Date means the date specified in Item 7.

Community Services Use means the use specified in Item 8 of the Schedule.

Council means the Council specified in Item 2 and includes the Council's successors and assigns and where it is consistent with the context includes the Council's employees and agents.

Council's Fixtures includes all those fittings, fixtures, and chattels contained in the Licensed Area at the Commencement Date (if any) or installed by the Council during the Term.

Hours of Use means the hours of use specified in Item 10, or such other hours of use as the Council and the Licensee agree in writing from time to time.

Item means an item in the Schedule.

Land means the land specified in Item 4.

Licence Fee means the amount specified in Item 9.

Licensed Area means the land specified in Item 5 including any buildings and pavilions on the land and the Council's Fixtures.

Licensee means the Licensee specified in Item 3 and includes the Licensee's successors and assigns and where it is consistent with the context includes the Licensee's employees, agents, invitees and persons the Licensee allows on the Licensed Area.

Maintenance Schedule means the maintenance schedule attached to this Licence as Annexure C.

OHS Act means the *Occupational Health and Safety Act 2004* (Vic).

OHS Law means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Licensed Area.

OHS Regulations means the *Occupational Health and Safety Regulations 2007* (Vic).

Principal Contractor means the position of principal contractor referred to in Chapter 5 of the OHS Regulations.

Schedule means the Schedule at the front of this Licence.

Service Agreement means the service agreement attached to this Licence as Annexure D.

Term means the term specified in Item 6 and includes any extension or overholding.

2. Licence

The Council grants a licence to the Licensee to use the Licensed Area in common with the Council and persons authorised by the Council for the Term starting on the Commencement Date, subject to the terms of this Licence.

3. Payments by the Licensee

3.1 Payment of Licence Fee

The Licensee must pay the Licence Fee to the Council in the manner specified in Item 9.

3.2 Rates and Taxes

The Licensee must pay all rates, taxes (including land tax assessed on the basis that the Licensed Area is the only land owned by the Council) and all other charges and levies separately assessed in connection with the Licensed Area (Rates and Taxes). If the Rates and Taxes are not separately assessed for the Licensed Area, the Licensee must pay or refund to the Council the proportion of the Rates and Taxes that the area of the Licensed Area bears to the total lettable area assessed within 14 days of receipt of a written notice from the Council.

3.3 Services

The Licensee must pay for all services in connection with the Licensed Area including electricity, gas, water, garbage collection and telephone (**Services**). Where the Licensed Area is not separately metered, the Licensee must at the discretion of the Council pay to the Council the proportion of the charges for the Services that the area of the Licensed Area bears to the total area assessed within 14 days of receipt of a written notice from the Council.

3.4 Costs and Duty

The Licensee must pay to the Council within 7 days of demand the Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Licence by the Licensee.

3.5 Interest on Late Payments

The Licensee must pay to the Council on demand interest at the rate per annum equal to the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) on any money payable by the Licensee under this Licence and remaining unpaid for 7 days. Interest will be computed from the date on which such payment became due.

3.6 No Deduction or Right of Set-off

The Licensee must pay all amounts due under this Licence to the Council without deduction or right of set-off.

4. GST**4.1 Definitions**

In this clause:

- 4.1.1 words and expressions that are not defined in this Licence but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 4.1.2 GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

4.2 GST Exclusive

Except as otherwise provided by this clause, all consideration payable under this Licence in relation to any supply is exclusive of GST.

4.3 Increase in Consideration

If GST is payable in respect of any supply made by a supplier under this Licence (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

4.4 Payment of GST

Subject to clause 4.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Licence.

4.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 4.4.

4.6 Reimbursements

If this Licence requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

4.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

4.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

4.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Licence:

4.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

4.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

5. Repairs, Alterations and Damage

5.1 Repairs and Maintenance

5.1.1 The Licensee must carry out the obligations which are described in the Maintenance Schedule (Annexure C) as being the responsibility of the Licensee.

5.1.2 Council must carry out the obligations which are described in the Maintenance Schedule (Annexure C) as being the responsibility of the Council.

5.2 Failure to Repair and Maintain

If the Licensee does not carry out any repairs, maintenance or other works required under this Licence within 14 days of receiving written notice from the Council, the Council may enter the Licensed Area to carry out such repairs, maintenance and works at any reasonable time after giving the Licensee reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Licensee to the Council on demand.

5.3 Alterations and Works

The Licensee must obtain the prior written consent of the Council before carrying out any alterations or works on the Licensed Area (including but not limited to the removal of trees or shrubs). The Licensee must ensure that any alterations or works on the Licensed Area are carried out:

5.3.1 strictly in accordance with plans and specifications approved by the Council (and such approval may be given or withheld at Council's absolute discretion);

5.3.2 in a proper and workmanlike manner;

5.3.3 to the Council's reasonable satisfaction and in accordance with the Council's reasonable requirements; and

5.3.4 in accordance with all rules and requirements of any authorities having jurisdiction over the Licensed Area.

5.4 Defacing Licensed Area

The Licensee must not deface or damage the Licensed Area (including drilling holes in the Licensed Area) except where approved by the Council in accordance with clause 5.3.

5.5 Occupational health and safety

For the purposes of the OHS Law, the Licensee agrees that:

- 5.5.1 the Licensee has sole management and control of the Licensed Area and has sole responsibility for ensuring that the Licensed Area and the means of entering and leaving them are safe and without risks to health;
- 5.5.2 Council appoints the Licensee as Principal Contractor in respect of any works to be carried out by the Licensee in the Licensed Area to which an OHS Law applies;
- 5.5.3 the Licensee must carry out such works in accordance with the requirements of the OHS Law; and
- 5.5.4 Council authorises the Licensee to exercise whatever authority is necessary for the Licensee to discharge the responsibilities of the appointment under clause 5.5.2.

5.6 Notice of Damage

The Licensee must give the Council prompt written notice of any material damage to the Licensed Area or anything likely to be a risk to the Licensed Area or any person in the Licensed Area.

6. Insurance**6.1 Insurances to be effected by the Licensee**

- 6.1.1 The Licensee must maintain insurance, in the name of the Licensee, and noting the interest of the Council with an insurer approved by the Council for public liability for the amount of \$20 million concerning one single event (or such greater sum as required by the Council).
- 6.1.2 The Licensee acknowledges that the insurance set out in clause 6.1.1 must extend to volunteers engaging in duties directly related to the Licensee's activities.

6.2 Licensee's Property

The Licensee must maintain insurance for its fixtures and fittings for the full replacement value.

6.3 Condition in Policies

The Licensee must ensure that the insurance policies effected by the Licensee contain a condition that the insurer will notify the Council at least 14 days before the policies lapse.

6.4 Payment and Production of Policies

The Licensee must pay all insurance premiums at least 14 days before the due date for payment and produce to the Council copies of the certificate of currency on or before each anniversary of the Commencement Date.

6.5 Not Invalidate Policies

The Licensee must not do anything which may make any insurance effected by the Licensee or the Council invalid or which may increase the insurance premiums. If the insurance premium increases, the Licensee must pay that increase.

6.6 Other Insurance

The Licensee must, at its cost, effect and maintain:

- 6.6.1 workers' compensation insurance for its employees; and
 - 6.6.2 if required by Council, professional indemnity, and directors and officers liability, insurance,
- to the reasonable satisfaction of Council.

7. Community Services Use**7.1 Permitted Use and Permitted Hours**

The Licensee must use the Licensed Area for the Community Services Use specified in Item 8 and must not use the Licensed Area for any other purpose without the prior written consent of Council which may be granted or withheld by Council in its sole discretion.

7.2 Illegal Purpose

The Licensee must not use the Licensed Area for any illegal purpose or carry on a noxious or offensive activity on the Licensed Area.

7.3 No Warranty

The Licensee:

- 7.3.1 acknowledges that the Council does not represent that the Licensed Area is suitable for the Community Services Use; and
- 7.3.2 must make its own enquiries as to the suitability of the Licensed Area for the Community Services Use.

7.4 Hours of Use

- 7.4.1 The Licensee must only use the Licensed Area for the Community Services Use during the Hours of Use.
- 7.4.2 The Licensee may use the Licensed Area for the purpose of taking deliveries, cleaning, maintenance and meetings only outside of the Hours of Use.

7.5 Compliance with Laws

The Licensee must comply with all laws and any requirements of any authority in connection with the Licensed Area and the Licensee's use and occupation of the Licensed Area.

7.6 Nuisance and Noise

- 7.6.1 The Licensee must not do anything in connection with the Licensed Area which may:
 - (a) cause a nuisance or interfere with any other person; or
 - (b) be dangerous or offensive in the Council's reasonable opinion.

- 7.6.2 The Licensee must ensure that the level of noise emanating from the Licensed Area:
- (a) does not cause a nuisance to other people; and
 - (b) is kept at a level that complies with all laws and regulations, including without limitation the *Environment Protection (Residential Noise) Regulations 2008*.

7.7 Licences and Permits

The Licensee must maintain all licences and permits required for the Licensee's use of the Licensed Area and obtain the Council's prior written consent before varying any licence or permit or applying for any new licence or permit.

7.8 Security

The Licensee must keep the Licensed Area secure at all times when the Licensed Area is not being used by the Licensee.

7.9 Keys

- 7.9.1 If a key is required to access the Licensed Area, the Council's maintenance co-ordinator will provide the Licensee with the key to access the Licensed Area.
- 7.9.2 The Licensee may request in writing for extra keys to be issued. However, the Council has absolute discretion to decide on the number of keys that are ultimately issued to the Licensee.
- 7.9.3 The Licensee must:
- (a) not make any copies of the keys issued to the Licensee;
 - (b) notify the Council within 24 hours of it becoming aware of any lost or stolen keys; and
 - (c) not install or remove any key cylinders or padlocks in the Licensed Area without obtaining the prior written consent of the Council.
- 7.9.4 The Licensee will be responsible for the cost incurred to install or remove any key cylinders or padlocks and to issue any new keys when at fault.
- 7.9.5 The Council may remove or install, at the Licensee's expense, and at any time, any key cylinders or padlocks that have been installed or removed without the Council's prior consent.
- 7.9.6 All keys need to be compatible with the master set held by Council's Infrastructure and Services Department.
- 7.9.7 The Licensee must pay to the Council on demand, when at fault:
- (a) the costs incurred by the Council to replace any lost, stolen or damaged keys and lock barrels for the Licensed Area; and
 - (b) the costs incurred by the Council to issue any extra keys.

7.10 Signs

- 7.10.1 The Licensee must seek the prior written consent of the Council before displaying or affixing any signs, advertisements or notices to any part of the Licensed Area unless the signs, advertisements or notices relate to the Licensee's activities carried on at the Licensed Area.
- 7.10.2 The Licensee:
- (a) allows the Council to enter onto the Licensed Area to inspect the condition of any signs, advertisements or notices displayed or affixed to any part of the Licensed Area under this clause; and
 - (b) must comply, at its own cost, with all reasonable directions of Council in relation to the maintenance, removal or replacement of such signs, advertisements or notices.

7.11 Heavy Equipment and Inflammable Substances

The Licensee must obtain the Council's prior written consent before bringing any heavy equipment or inflammable substances into the Licensed Area except to the extent to which it is consistent with the Community Services Use.

7.12 No Smoking

The Licensee must:

- 7.12.1 not permit the sale of tobacco products or tobacco related products;
- 7.12.2 not permit any smoking in the Licensed Area; and
- 7.12.3 display 'no smoking' signs in the Licensed Area if requested by the Council.

7.13 Vehicles

The Licensee must not permit any vehicles to be driven, parked or stopped at any place or time on any part of the Licensed Area except at such places and at such times for the purpose of services or works, or an educational activity.

7.14 Emergency Procedures

The Licensee must:

- 7.14.1 keep a first aid kit at the Licensed Area and replenish it when required;
- 7.14.2 establish and display an evacuation plan, and test the utility of any such evacuation plan, at regular intervals during each year; and
- 7.14.3 keep all emergency equipment fully replenished.

7.15 Playground Equipment

- 7.15.1 The Licensee must not construct or erect any fixed playground equipment at the Licensed Area without Council's prior written consent.
- 7.15.2 Any playground equipment on the Licensed Area must comply with Australian Standards AS1924.1 – 1981 and AS1924.2 – 1981, and industry best practice in

design, provision and maintenance, including the undersurfacing component contained in AS/NSZ4422-1996.

7.16 Television and Radio

The Licensee must not install any televisions, radios, music systems or other equipment in the Licensed Area which can be heard outside the Licensed Area without obtaining the prior written consent of the Council.

7.17 Endanger Licensed Area

The Licensee must not do or permit anything to be done in connection with the Licensed Area which in the opinion of the Council may endanger the Licensed Area or be a risk to any person or property.

7.18 Licensee's Employees

The Licensee must use all reasonable endeavours to ensure that the Licensee's employees, agents, contractors and invitees observe and comply with the Licensee's obligations under this Licence, where appropriate.

7.19 Liquor Licence

The Licensee must not apply for any licence or permit under the *Liquor Control Reform Act* 1998 (Vic) unless approved by Council for a single event.

7.20 Gambling

The Licensee must not apply for a licence or permit pursuant to the *Gambling Regulation Act* 2003 (Vic).

7.21 Gaming Licence

The Licensee must seek the prior written consent of the Council before applying for any licence under the *Gaming Machine Control Act* 1991 (Vic). The Council may withhold its consent or give its consent subject to such terms and conditions as Council may determine in its absolute discretion.

7.22 Reporting Requirements

The Licensee must give to the Council within 14 days of the Licensee's annual general meeting, a written report detailing:

7.22.1 the office bearers appointed to the Licensee, their duties and the length of term of the office of each office bearer; and

7.22.2 the activities conducted by the Licensee during the preceding year.

7.23 Licensee Membership

The Licensee will:

7.23.1 permit residents and ratepayers of the municipality to become members of the Licensee upon satisfying the Licensee's reasonable requirements for membership;

7.23.2 upon demand, inform Council of the number of members of the Licensee; and

7.23.3 within 7 days of demand, provide all necessary documents to the Council to verify the membership of the Licensee.

7.24 Animals

The Licensee must not allow any animals other than guide dogs, or for curriculum activities reasonably expected within an early years setting, to enter the Licensed Area.

7.25 Auction Sales

The Licensee must not conduct or allow to be conducted any auctions, garage sales, car boot sales, fetes or similar activities without the prior written consent of Council (which consent must not be unreasonably withheld).

8. Release and Indemnity

8.1 Release

The Licensee uses and occupies the Licensed Area at its own risk and releases the Council from all claims resulting from any damage, loss, death or injury in connection with the Licensed Area except to the extent that the Council is negligent.

8.2 Indemnity

The Licensee must indemnify and hold harmless the Council against all claims resulting from any damage, loss, death or injury in connection with the Licensed Area and the use and occupation of the Licensed Area by the Licensee except to the extent that the Council is negligent.

9. Assignment and Sub-Licensing

The Licensee must not deal with its interest in the Licensed Area including assigning this Licence to a new licensee or sub-licensing the Licensed Area to a new licensee without the prior written consent of the Council.

10. Entry by the Council

10.1 Subject to clause 10.3, the Council may enter the Licensed Area at any reasonable time after giving the Licensee reasonable notice to:

10.1.1 inspect the Licensed Area;

10.1.2 rectify any default by the Licensee under this Licence; or

10.1.3 carry out any inspection, repairs, maintenance, works or alterations in the Licensed Area which the Council decides, or is required, to carry out by any law or authority.

10.2 The Council must use all reasonable endeavours to cause as little disruption as possible to the Licensee's use of the Licensed Area in exercising the Council's rights under this clause.

10.3 The Council may enter the Licensed Area at any time without giving notice to the Licensee in an emergency.

11. Council's Consent

Where consent is requested to be granted by the Council under this Licence, the Council may withhold its consent at its absolute discretion and, if it gives its consent, it may impose conditions as it deems necessary in its absolute discretion.

12. Licensee's obligations at the end of this Licence

12.1 Licensee's Obligations

At the end of this Licence, the Licensee must:

- 12.1.1 vacate the Licensed Area and give it back to the Council in a condition consistent with the Licensee having complied with its obligations under this Licence;
- 12.1.2 remove the Licensee's chattels and if required by the Council, remove all of the Licensee's fixtures and make good any damage caused by their removal; and
- 12.1.3 give to the Council all keys and other security devices for the purposes of obtaining access to the Licensed Area.

12.2 Licensee's Property Left in Licensed Area

Anything left in the Licensed Area at the end of this Licence will become the property of the Council and may be removed by the Council at the Licensee's cost and at the Licensee's risk.

13. Determination of Licence

13.1 Re-entry

The Council may re-enter the Licensed Area and determine this Licence if:

- 13.1.1 any part of the Licence Fee is in arrears for 14 days (whether or not the Council has demanded payment); or
- 13.1.2 the Licensee breaches this Licence and does not remedy the breach within 14 days of receipt of written notice from the Council; or
- 13.1.3 the Licensee is a corporation, and:
 - (a) an order is made or resolution is passed to wind up the Licensee;
 - (b) an order is made or a meeting is called for the appointment of an administrator, provisional administrator, liquidator or provisional liquidator, receiver, receiver and manager, or an inspector to the Licensee; or
 - (c) an administrator, provisional administrator, liquidator, provisional liquidator, receiver, receiver and manager, or inspector is appointed to the Licensee; or
 - (d) any act or event mentioned in section 461(1)(a) to (k) of the *Corporations Act* 2001 (Cth) occurs in relation to the Licensee.

13.2 Damages following Determination

If this Licence is determined by the Council, the Licensee agrees to compensate the Council for any loss or damage the Council suffers arising in connection with the Licensee's breach of this Licence including the loss of the benefit of the Licensee performing its obligations under this Licence up to the expiration of the Term.

13.3 Essential Terms

The essential terms of this Licence are clauses 3.1, 3.2, 3.5, 4, 5.1, 5.3, 6.1, 7.1, 7.5, 7.22, 7.23, 9, and 12 and any Additional Clause that is expressed to be an essential term. The breach of an essential term is a repudiation of this Licence.

14. Destruction or Damage of Licensed Area**14.1 Reduction in Licence Fee**

If the Licensed Area, or any part of the Licensed Area is destroyed or damaged to the extent that the Licensee cannot use or have access to the Licensed Area (except if the Licensee causes or contributes to the destruction or damage, or the Council's insurer is not legally required to reinstate the Licensed Area because the Licensee caused or contributed to the destruction or damage) then the Council will reduce the Licence Fee by a reasonable amount depending upon the nature and extent of destruction or damage until the Licensee can use or have access to the Licensed Area.

14.2 Reinstatement of Licensed Area

If the Licensed Area, or any part of the Licensed Area is destroyed or damaged, the Council may, within 6 months from the date of such damage or destruction, give notice to the Licensee:

- 14.2.1 terminating this Licence, where the Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 14.2.2 that the Council will commence reinstatement of the Licensed Area to a condition where the Licensee can use or have access to the Licensed Area.

The Council does not have to reinstate the Licensed Area.

14.3 Licensee's Right of Termination

The Licensee may give written notice to the Council terminating this Licence where:

- 14.3.1 the Council does not give notice to the Licensee pursuant to clause 14.2; or
- 14.3.2 the Council does not commence reinstatement within 6 months of the date of damage or destruction.

The Council does not have to reinstate the Licensed Area and will not be liable to pay the Licensee any compensation.

15. Overholding

If the Licensee continues in occupation of the Licensed Area after the end of the Term, without objection by the Council:

- 15.1 the Licensee occupies the Licensed Area subject to the same terms and conditions as contained in this Licence;
- 15.2 the Council or the Licensee may end this Licence during any period of overholding by giving 30 days written notice to the other party expiring at any time; and
- 15.3 the Council may increase the monthly licence fee by giving the Licensee 1 month's written notice.

16. Grant of Licence only

The Licensee agrees with the Council that:

- 16.1 the Licensee is not entitled to exclusive occupation of the Licensed Area;
- 16.2 the Council may use, or permit other parties to use, the Licensed Area following consultation with the Licensee;
- 16.3 this Licence does not create any estate or interest in the Licensed Area, other than a contractual right;
- 16.4 this Licence does not constitute a lease at law and the Licensee will not claim before a court or tribunal that this Licence constitutes a lease at law; and
- 16.5 in the event that a court or tribunal determines that this Licence is a lease at law, the Council may, at its option, terminate this Licence by written notice to the Licensee.

17. General

17.1 Incorporated Associations

If the Licensee is an incorporated association, the Licensee warrants that it is incorporated under the *Associations Incorporation Act 1981* (Vic) and will at all times comply with the requirements of that Act.

17.2 Notices

Any notice required to be served under this Licence must be in writing and must be served by post, facsimile transmission or hand delivered to:

- 17.2.1 the Licensee at its address set out in this Licence, the Licensee's registered office address, the Licensed Area, or the last known address of the Licensee; and
- 17.2.2 the Council at its address set out in this Licence or any other address notified in writing to the Licensee by the Council.

17.3 Entire Understanding

This Licence contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Licence and have no effect.

17.4 Waiver

If the Council accepts the Licence Fee or any other monies under this Licence (before or after the end of this Licence) or does not exercise or delays exercising any of the Council's rights under this Licence, it will not be a waiver of the breach of this Licence by the Licensee or of the Council's rights under this Licence.

17.5 Additional Clauses

This Licence is subject to the Additional Clauses. The Additional Clauses override any inconsistent provisions in this Licence.

18. Interpretation**18.1 Governing Law and Jurisdiction**

This Licence is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria and waives any right to object to proceedings being brought in those Courts.

18.2 Persons

In this Licence, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

18.3 Joint and Several

If a party consists of more than one person, this Licence binds them jointly and each of them severally.

18.4 Legislation

In this Licence, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

18.5 Clauses and Headings

In this Licence:

18.5.1 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Licence; and

18.5.2 headings and sub-headings are inserted for ease of reference only and do not effect the interpretation of this Licence.

18.6 Severance

In this Licence:

18.6.1 if a provision in this Licence is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

18.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Licence.

18.7 Number and Gender

In this Licence, a reference to:

18.7.1 the singular includes the plural and vice versa; and

18.7.2 a gender includes the other genders.

Execution Page

This **Licence** is executed by the parties on the date specified in Item 1.

THE COMMON SEAL of Colac Otway
Shire Council (ABN 32 430 819 755) is
affixed in accordance with its Local Law
No 4

THE COMMON SEAL of Apollo Bay
Preschool Inc. (ABN: 6251 4200707)
In accordance with its constitution

Signature of Chief Executive Officer

Signature of Pre-school President

Annexure A

Additional Clauses

1. Costs

Each party will be responsible for payment of their own costs in connection with the preparation and execution of this Licence.

2. Service Agreement

The Licensee acknowledges and agrees that:

- 2.1 it will only use the Licensed Area in accordance with the Service Agreement;
- 2.2 the terms of the Service Agreement may be amended annually by the Council provided that the Council consults with the Licensee and gives the Licensee prior written notice of such amendments;
- 2.3 if there is any inconsistency between the terms of this Licence and the Service Agreement, the terms of the Licence shall apply.

3. Approvals and Compliance

3.1 Definitions

In this Additional Clause 2:

Education and Care Act means the *Education and Care Services National Law Act 2010* (Vic);

Education and Care Regulations means all regulations made under the Education and Care Act;

Education and Care Service has the meaning given to that term in the Education and Care Act;

Nominated Supervisor has the meaning given to that term in the Education and Care Act;

Regulatory Authority has the meaning given to that term in the Education and Care Act. As at the Commencement Date, the Regulatory Authority is the Secretary of the Department of Education and Early Childhood Development;

Serious Incident has the meaning given to that term in section 174 of the Education and Care Act; and

Show Cause Notice has the meaning given to that term in the Education and Care Act.

Words and expressions that are not defined in this Licence but which have a defined meaning in the Education and Care Act or the Education and Care Regulations have the same meaning as in the Education and Care Act or the Education and Care Regulations.

3.2 Application of Additional Clause

This Additional Clause 2 applies in relation to any Education and Care Service conducted at the Licensed Area as part of the Permitted Use.

3.3 Approval Requirements

Without limiting any of the Licensee's obligations under this Licence, the Licensee must obtain and maintain throughout the Term, all approvals required to engage in the Permitted Use at the Licensed Area, including, without limitation:

- 3.3.1 a provider approval to provide Education and Care Services, as required pursuant to Part 2 of the Education and Care Act (**Provider Approval**); and
- 3.3.2 a service approval to operate a kindergarten, as required pursuant to Part 3 of the Education and Care Act (**Service Approval**).

3.4 Licensee's Obligations

The Licensee must, at all times:

- 3.4.1 provide a copy of the Service Approval and the Provider Approval to the Licensor, on demand;
- 3.4.2 ensure that a Nominated Supervisor is appointed for the Education and Care Service;
- 3.4.3 without limiting clause 7.10, display on a visible part of the Licensed Area, the prescribed information in accordance with section 172 of the Education and Care Act; and
- 3.4.4 comply with the Service Approval, the Provider Approval, the Education and Care Act and the Education and Care Regulations.

3.5 Notification to Council

- 3.5.1 The Licensee must notify the Council of any complaint which the Licensee is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of reporting the complaint to the Regulatory Authority.
- 3.5.2 The Licensee must notify the Licensor of any Serious Incident which the Licensee is required to report to the Regulatory Authority under the Education and Care Act, within 24 hours of notifying the Regulatory Authority of the Serious Incident.
- 3.5.3 The Licensee must immediately notify the Licensor if a Show Cause Notice is served on the Licensee by the Regulatory Authority, or if the Licensee's Service Approval or Provider Approval is suspended (even if voluntarily), cancelled or surrendered.

3.6 This Additional Clause 2 is an essential term of this Licence.

4. Working with Children Checks

4.1 Without limiting clause 7.5, the Licensee must:

- 4.1.1 ensure that all employees and volunteers who are required to apply for a Working with Children Check (**WWC**) under the *Working with Children Act 2005* (Vic) (**WWCA**) have done so, before working with children at the Licensed Area;
- 4.1.2 provide a copy of the WWC card of each of the Licensee's employees and volunteers working at the Licensed Area to the Council, on demand;

4.1.3 ensure that any employee or volunteer that is given a negative notice (within the meaning given to that term in the WWCA) does not work with children at the Licensed Area; and

4.1.4 subject to special condition 4.2, ensure that the information in any WWC of the Licensee's employees and volunteers which is provided to the Council, is kept confidential.

4.2 The Licensee agrees that the Council may disclose the information in any WWC of the Licensee's employees and volunteers for the purpose of administering or enforcing this Licence or if required by law.

4.3 This Additional Clause 4 is an essential term of this Licence.

5. Licensee's Environmental Obligations

The Licensee acknowledges that the Council is committed to participating in energy saving practices and agrees to act reasonably and responsibly in using water and appliances that consume energy at the Licensed Area.

6. Council Policy

The Licensee agrees that Council has the right to require the Licensee to comply with existing or new policies issued or amended by Council from time to time and notified in writing to the Licensee.

7. Personal Property Securities Act 2009

7.1 Definitions

In this Additional Clause 7:

7.1.1 **Council PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Council; and
- (a) is situated on the Licensed Area or the Land at any time during the term of this Licence;

1.1.2 **Licensee PPS Items** means any item of Personal Property which:

- (a) is owned or leased by the Licensee;
- (b) is situated on the Licensed Area or the Land at any time during the term of this Licence; and
- (c) the Council has the right to require the Licensee to transfer ownership of that item to the Council, or the Licensee has the obligation to transfer ownership of that item to the Council, whether before or after the end of the term of this Licence,

but does not include any Council PPS Items;

1.1.3 **PPS Act** means the Personal Property Securities Act 2009 (Cth); and

1.1.4 words and expressions that are not defined in this Licence but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

7.2 Licensee's obligations

The Licensee:

- 1.1.5 charges its interest in all Licensee PPS Items situated on the Licensed Area or the Land from time to time in favour of the Council, as security for the performance of the Licensee's obligations under this Licence, including but not limited to the Licensee's obligations to transfer ownership in the whole or any part of the Licensee PPS Items to the Council;
- 1.1.6 acknowledges and agrees that the charge granted by the Licensee under Additional Clause 1.1.5 constitutes the grant of a Security Interest which the Council is entitled to register under the PPS Act;
- 1.1.7 acknowledges that the grant of this Licence also constitutes the grant of a Security Interest in the Council PPS Items in favour of the Council, which interest the Council is entitled to register under the PPS Act; and
- 1.1.8 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Licensee PPS Items and the Council PPS Items so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Licensee PPS Items and the Council PPS Items.

7.3 Security Interests

The Licensee:

- 1.1.9 warrants that it has not created a Security Interest in respect of any Council PPS Items on or prior to execution of this Licence; and
- 1.1.10 must not create a Security Interest in respect of any Council PPS Items or Licensee PPS Items in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion.

7.4 Indemnity for breach of this Additional Clause

The Licensee must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a consequence of any breach by the Licensee of this Additional Clause.

7.5 Further obligations

The Licensee acknowledges and agrees that:

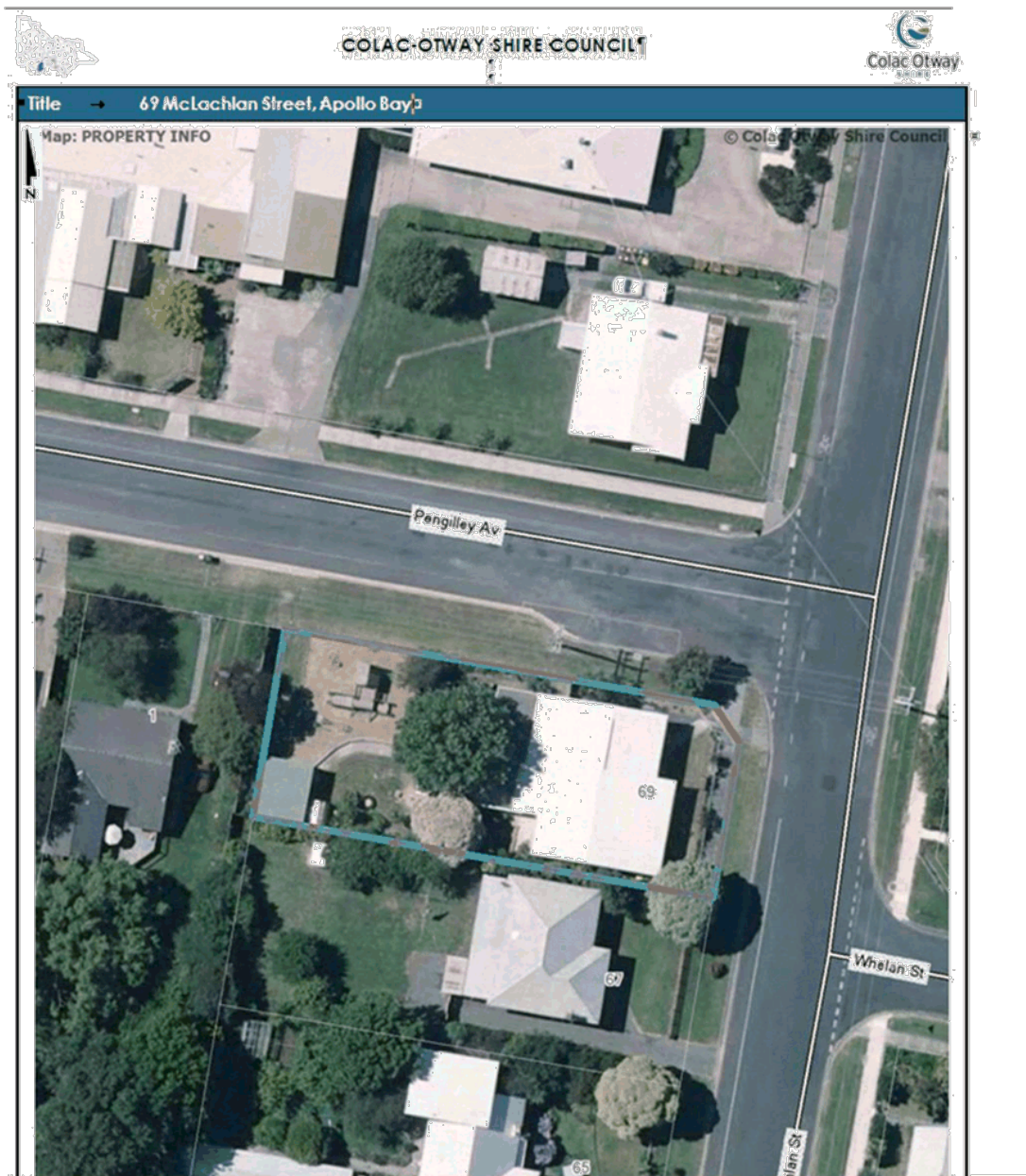
- 1.1.11 it has no right under the PPSA to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPSA); and
- 1.1.12 on the expiration or earlier termination of this Licence, the Licensee must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests under the PPS Act in relation to the Licensee PPS Items and the Council PPS Items.

7.6 This Additional Clause prevails

In the event of any inconsistency between this Additional Clause and any other provision of this Licence, the provisions of this Additional Clause will prevail and that other provision will be read down and interpreted accordingly.

Annexure B

Plan of Licensed Area



Annexure C

Maintenance Schedule 1

Schedule and Responsibilities for Occupier of Kindergarten and Council.

| Item | Occupier's Responsibility | Council's Responsibility |
|---|--|--|
| Air Conditioning and Heating Appliances | <ul style="list-style-type: none"> Service and repair when required | <ul style="list-style-type: none"> Replacement of unit and any major parts |
| Building | <ul style="list-style-type: none"> Determine and document the specific needs of the building relating to any requests to Council for building alterations. Prepare plans and obtain quotes for requests for minor improvements. Consent is required from Council for any grant or funding that the occupier is seeking to upgrade, extend or modify the building. | <ul style="list-style-type: none"> Assess all requests submitted. Undertake works required to bring premises and surrounds to appropriate standards to meet the required regulations. This excludes items identified as the lessee's responsibility in this document. Preparation of long-term development plans, design of major building alterations or major structural works. |
| Cleaning | <ul style="list-style-type: none"> Keep premises in clean, sanitary and fresh condition. | <ul style="list-style-type: none"> Nil |
| Ceilings, Walls and Skylights (internal) | <ul style="list-style-type: none"> Cost of repairs due to major or continual misuse. Regular cleaning | <ul style="list-style-type: none"> Major repair and/or replacement due to structural faults/age. |
| Curtains/Drapes/Blinds | <ul style="list-style-type: none"> Repairs costs. Replacement costs. Supervision of installation of replacement items. Regular cleaning. | <ul style="list-style-type: none"> Nil |
| Doors (Inc. cupboard doors) | <ul style="list-style-type: none"> Regular cleaning and repair of internal/external doors due to major or continual misuse. Minor adjustments. | <ul style="list-style-type: none"> Replacement due to age, structural fault. |
| Electrical Wiring, Fittings and Lights | <ul style="list-style-type: none"> Additional or security lighting. Cost of repair and replacement of electrical wiring if damage is due to major or continual misuse. Repair and replacement of all light globes. Regular cleaning of all light fixtures. | <ul style="list-style-type: none"> Replacement of all building wiring from main supply to and including the switchboard. Replacement of light fittings. |

| Item | Occupier's Responsibility | Council's Responsibility |
|---|--|---|
| Essential Safety Measures (e.g. fire extinguishers, exit lights etc. | <ul style="list-style-type: none"> Notification to Council of maintenance or servicing issues. Not to interfere or obstruct essential safety measures elements | <ul style="list-style-type: none"> Undertake inspections, servicing and maintenance of all specified essential safety measures as required under the relevant Building Regulations. Meet all costs associated with this function. Fill when discharged and replace if stolen. Inspection and replacement of globes. Replacement of fittings. |
| Fencing | <ul style="list-style-type: none"> Determine and document the specific need of the fencing relating to any requests to Council for fencing alterations. Provide specifications of fencing alterations required due to changes in standards or regulations. Repair fences where damage is caused by occupier. | <ul style="list-style-type: none"> Assess all requests submitted. Replacement of essential/ required fences to appropriate standards to meet the required regulations. This excludes items identified as the lessee's responsibility in this document. Structural repairs or capital works re. fences. |
| Floor Surfaces and Coverings | <ul style="list-style-type: none"> All regular cleaning and maintenance of floor coverings such as carpet and tiles. | <ul style="list-style-type: none"> Replace to essential areas when excessively worn or dangerous. |
| Fly Screens | <ul style="list-style-type: none"> Maintain and replace fly wire. Install additional fly screens | <ul style="list-style-type: none"> Nil |
| Garbage | <ul style="list-style-type: none"> Normal fee for service waste collection | <ul style="list-style-type: none"> Nil |
| Glass | <ul style="list-style-type: none"> Replace broken or cracked windows arising from misuse. Regular cleaning | <ul style="list-style-type: none"> Replace due to breakage arising from structural fault, age. |
| Grounds | <ul style="list-style-type: none"> Keep all entry/exit areas clear and sweep regularly. Maintain all grounds associated with building by cutting the grass, minor pruning, garden beds, bushes and flowers if required. Remove dead foliage. Seek Council approval for any modification to the grounds. Maintenance of garden beds. Maintenance of garden hoses and sprinklers etc. Cleaning and weeding of pavement and driveway areas | <ul style="list-style-type: none"> Repair paths, driveways etc. Replacement of essential pavement, driveway and carpark areas; retaining walls and ramps. |

| Item | Occupier's Responsibility | Council's Responsibility |
|--|---|---|
| Internal Appliances eg. Fans, Kettles, Food Processors etc. | <ul style="list-style-type: none"> Replacement as required of minor kitchen appliances. | <ul style="list-style-type: none"> Nil |
| Vandalism | <ul style="list-style-type: none"> Less than \$1000 (subject to change based on claims history) | <ul style="list-style-type: none"> More than \$1000 (subject to change based on claims history) |
| Keys and Locks | <ul style="list-style-type: none"> Repair and replacement of locks if damaged through major or continued misuse. | <ul style="list-style-type: none"> Replacement of lost or damaged keys as applies to Council's master key system. Supply of keys for user groups. Repair and replacement of locks as applies to Council's master key system. |
| Painting | <ul style="list-style-type: none"> Internal painting if damaged through major or continued misuse or colour scheme changes etc. | <ul style="list-style-type: none"> Internal and external for structural integrity reasons. |
| Permanent Fixtures | <ul style="list-style-type: none"> Regular cleaning of all fixtures. Repair and/or replace if damaged through major or continual misuse. | <ul style="list-style-type: none"> Replace when required the following items: <ul style="list-style-type: none"> - hot water service - sinks and toilets - verandas attached to the building. |
| Pest Control | <ul style="list-style-type: none"> Keep all areas in a clean and hygienic state. All pest control as required both internal and external. | <ul style="list-style-type: none"> Pest control relating to structural items (eg. woodborer and termites). |
| Playground Equipment and Adjacent Grounds | <ul style="list-style-type: none"> Determine and advise Council if a change to playground equipment and adjacent areas is required. Provide specifications to Council of changes to or which has been deemed required by the occupier. Install and maintain playground equipment to an approved standard | <ul style="list-style-type: none"> Assess all requests submitted. Undertake a playground equipment and adjacent grounds audit on a scheduled basis. Inform the Occupier of the audit outcome and the works required to maintain to an approved standard. |
| Plumbing | <ul style="list-style-type: none"> Cost of internal repair due to major or continued misuse. Replacement and repair of internal surface plumbing fittings such as toilet seats, taps and washers etc. | <ul style="list-style-type: none"> Replacement of damaged or corroded plumbing fittings, toilet bowls and cisterns. Repairs or works required for drainage purposes, including sewerage, drains, water pipes and pits. Replacement of gas pipes. Structural repairs or capital works. |
| Roof, Skylight, External Walls, Spouting and Downpipes | <ul style="list-style-type: none"> Cleaning of roof, external walls, spouting, downpipes and guttering. | <ul style="list-style-type: none"> All maintenance and repair of the structure of the premises as required. |

| Item | Occupier's Responsibility | Council's Responsibility |
|--|--|--|
| Signage | <ul style="list-style-type: none"> Maintain and replace all internal/external signs relating to the committee and in accordance with Council's planning requirements. | <ul style="list-style-type: none"> Identification signage to be provided by Council where required. |
| Smoke Detectors | <ul style="list-style-type: none"> Install, repair and replacement of battery operated smoke detectors. Includes battery replacement as required. | <ul style="list-style-type: none"> Installation and maintenance of hard wire system where required. |
| Telecommunication Systems (e.g. fax, photocopiers, telephones etc.) | <ul style="list-style-type: none"> Purchase, service and maintenance cost. Replacement costs. | <ul style="list-style-type: none"> Nil |
| Trees | <ul style="list-style-type: none"> Advise Council of trees which are considered dangerous. No trees are to be planted without Council's approval. | <ul style="list-style-type: none"> Trees lopped/pruned to meet security/safety requirements where considered dangerous. |
| Whitegoods (e.g. refrigerator, dishwasher etc.) | <ul style="list-style-type: none"> Service and maintenance costs. Replacement costs. | <ul style="list-style-type: none"> Nil |

Annexure D

Service Agreement

SERVICE AGREEMENT

Background

There are 4 early years' facilities operating on Colac Otway Shire premises that house a number of programmes ranging from four year old kindergarten, long day care, playgroups, three year old kindergarten and other early learning services.

Service Agreement Rationale

This Service Agreement between Colac Otway Shire and Apollo Bay Preschool Incorporated is intended to further develop early years service provision and support for children (including their families) who attend early years services, especially kindergarten programmes.

This can be achieved by networking and working together on initiatives that can be provided to meet the needs of infants, young children and their families.

Council is responsible for developing an Early Years Plan, which does not focus solely on its own services, but recognises the need for optimal early years development throughout childhood. It is intended that kindergartens operating under a license and service agreement with Council have the opportunity to further develop their services and contribute to the early years service industry already operating within the Colac Otway municipality.

License and Service Agreements

License and service agreements provide direction, accountabilities and expectations for both parties in the delivery of kindergarten and early year's services. This can be described as:

- The License Agreement outlines the Occupier's and Council's responsibilities for the facility, and external playgrounds/gardens.
- The Service Agreement outlines the Occupier's and Council's responsibilities in relation to service provision and expectations.

Services Agreement for Maximizing Use and Access

1. Usage Policy

The Licensee acknowledges and agrees that:

- 1.1. priority for use of the Licensed Area must be given to 4 year-old kindergarten groups and childcare provision. Council will consult and work with the Licensee if there is an opportunity to include additional early years support services within the Licensed Area; and
- 1.2. the Licensee will work with Council to investigate alternative short and long term accommodation options to meet future service needs and demand; and
- 1.3. in addition to 4 year-old kindergarten groups and childcare provision, the Licensed Area may be used for non profit service/groups for children and families from birth to 8 years; and

- 1.4. the Licensed Area must not be used for any other use without the prior written consent of Council (delegation to the Manager Community Services); and
- 1.5. if the Licensee obtains the Council's prior written consent in accordance with clause 1.4 the Licensee must ensure that other groups using the Premises must:
 - 1.5.1 maintain current public liability insurance, which complies with provisions of clause of the Licence; and
 - 1.5.2 otherwise comply with the terms and conditions of the License.
- 1.6. the Council agrees and acknowledges that, if the Licensee accommodates another service under clause 1.1 or obtains the Council's prior written consent in accordance with clause 1.4 the Licensee may charge and retain a reasonable fee from such other authorised users of the Premises.

2. Childcare and Kindergarten Services

The Licensee providing an integrated service model must:

- deliver an accredited children's service that meets the requirements of the Australian National Quality Standards; and
- provide a childcare and/or kindergarten service, which operates at, registered capacity. The only exception to this is when the demand for childcare and/or kindergarten places is lower than registered capacity.

3. Colac and Southern Otway's KEYS (Kids Early Years Services) Network and other Meetings

Council will:

- 3.1 help facilitate, attend and keep minutes for the respective KEYS Network Meetings. The purpose of the KEYS Network Meetings is to provide a forum for the consideration and discussion of matters of mutual interest to early years service providers, including kindergartens, and Council; and
- 3.2 through the KEYS, Network Meetings, facilitate consideration and adoption of early years service approaches for the effective operation and management of early years services, including kindergartens, throughout the Municipality; and
- 3.3 through collaboration develop and implement new strategies and projects that aim to improve early years services provision across the municipality; and
- 3.4 Where the need arises, or at least once per year, facilitate, attend and keep minutes of a meeting specifically held with a representative (an authorised representative of Apollo Bay Preschool Incorporated).

The Licensee must:

- 3.5 provide a representative in attendance for each local KEYS Network Meeting. In the event of consistent non-attendance of an authorised representative, Council reserves the right to consider the Licensee in breach of the terms and consideration of the Licence and Service Agreement.

4. Reporting Requirements

The Licensee must give to the Council:

4.1 by 30th November in each year a written report detailing:

- (a) The Operating Hours of the Service for the next 12 months; and
- (b) A list of the groups, which will be using the premises for the next 12 months; and
- (c) Quarterly data on the number of childcare places, and other appropriate service/program data that may be useful for Council's planning process.

4.2

- (a) The Licensee will ensure adequate records of income and expenditure are being kept and meet requirements of Council, State and Federal governments in relation to grants and reimbursements received.
- (b) Within 60 days of the Licensee's Annual General Meeting copy of the minutes of the Annual General Meeting, including an audited statement of assets and liabilities (balance sheet) profit and loss statement and cash flows statements.
- (c) A written report detailing the activities conducted by the Licensee during the preceding years and, where applicable, a list of the groups, which have used the licensed area, and a list of times at which the licensed area were used.
- (d) A list of the office bearers appointed to the Licensee, their duties and the length of term of the office of each office bearer.
- (e) The Licensee must provide details of any structural non-compliance, as a result from inspection by a regulatory authority, to Council within 14 days from receiving written notification.

5. Child Safe Standards

The standards are compulsory for all organisations providing services to children, and aim to drive cultural change in organisations so that protecting children from abuse is embedded in the everyday thinking and practice of leaders, staff and volunteers.

- (d) Council is committed to embedding Child Safe Standards into all aspects of its early childhood programs and its relationships with other Early Years Services.
- (e) The Licensee is to have a mutual commitment and embedded practice into adhering to the Child Safe Standards across all early years programs it facilitates.

6. Termination of the Service Agreement

Either the Licensee or the Council may terminate this service agreement by giving the other party three months notice in writing, or a shorter notice period if agreed by both parties. In the event of non-compliance with the terms and conditions of this agreement, Council may terminate the agreement. If the Council is considering termination of the agreement due to non-compliance, Council will provide 30 days notice in writing to the organisation representatives who are signatories to this agreement. If the Service Agreement is terminated, then Council may re-enter the Licensed Area and determine the Licence agreement.

**OM162408-7 COUNCIL SUPPORT FOR CO-LOCATION OF APOLLO BAY
KINDERGARTEN ON APOLLO BAY P-12 COLLEGE LAND**

| | | | |
|-------------|----------------------------------|-----------|-------------|
| AUTHOR: | Greg Fletcher | ENDORSED: | Brydon King |
| DEPARTMENT: | Development & Community Services | FILE REF: | F16/6696 |

Purpose

To seek Council's in-principle support for the relocation of the Apollo Bay kindergarten to the Apollo Bay P-12 College site and to seek in principle agreement to sell **the current kindergarten land in the event that relocation to the Apollo Bay P-12 school site is supported by the State Government and to making a contribution from the proceeds to the relocation.**

Declaration of Interests

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

Background

The Apollo Bay kindergarten is a Council owned premises that is licensed to a community committee of management. A report for a 3 year renewal of the license of this kindergarten is also scheduled for this August Council meeting.

The kindergarten site at 69 McLachlan Street, Apollo Bay consists of a near sixty year old, cladded building. Over the years there have been ongoing investments by Council on fencing, paths, trees, and general repair and maintenance. Funding has been received in the past from State Government to upgrade toilets and ensuring compliance of safety issues.

Although maintained, the kindergarten has not been refurbished/modernized. It is anticipated that significant improvements will be required in the short to medium term to ensure the facility retains an acceptable standard and meets future needs.

Recent, partial refurbishment of kindergartens in Colac would indicate that a similar refurbishment of the Apollo Bay kindergarten would be in the vicinity of \$320,000+.

A number of meetings have been held with representatives from Colac Otway Shire, the P-12 College, Kindergarten and Otway Health to explore the possibility of relocating the kindergarten to the Apollo Bay P-12 College site.

The P-12 College has recently undergone an extensive upgrade.

There is support to extend this education facility to a K-12 College (meaning Kindergarten to year 12 from the current Prep to year 12 status). The school believes it has suitable vacant land to accommodate a kindergarten facility which has been supported in principle by the Department of Education and Training (DET).

Otway Health provides childcare services which operate at a loss. It is understood that they are currently considering options to curtail this cost from a non-core service. Any opportunity to incorporate a childcare service within the kindergarten located at the school is likely to be supported by Otway Health.

Council Plan / Other Strategies / Policy

<Y:\GOVERNANCE\Council Meetings\CouncilPlan.doc>

A Place to Live and Grow

Is a community where people feel cared for and supported; where buildings and spaces facilitate creativity, social activity and enrichment of life, and people have access to gain the skills and education needed to reach their potential.

Our Goal:

Improve access to buildings, spaces, services and education to support and enable quality of life.

Issues / Options

Current kindergarten infrastructure

Archived records have confirmed that the former Shire of Otway agreed to take over the freehold of the site to enable appropriate funding to be received from the State Government for development of a kindergarten on the site, at its meeting of 13 November 1957. A title search indicated that the Shire of Otway paid two hundred pounds for the site on 30 December 1957. The kindergarten remains a Council owned facility which is maintained by Council.

As there is no schedule of maintenance for the Apollo Bay kindergarten, Council only provides reactive maintenance. A review of reactive works over the last 5 years indicated that at least \$17,386 was spent on damaged fencing, pipework and roofing, new locks and the removal of a dangerous tree.

Funding for improvements to the kindergarten building generally come from the annual State Government grants process. Council has been successful in the past in achieving grants to improve the toilet room and address specific safety needs.

Future early years development opportunities

A challenge exists in Apollo Bay in relation to early years planning in the context that between 2006 and 2011 there was a decline in the percentage of young families and kindergarten and primary school children across the southern area of the Otways (Colac Otway community profile).

Over the last 10 years there have been between 20 and 25 children eligible for kindergarten.

It is understood that, due to teacher/child ratio changes (1:15 down to 1:11), the current kindergarten is now only able to take 22 children for the 2 teachers employed. In planning for the future, an ideal sized kindergarten would be able to accommodate 33 children requiring 3 teachers. The current kindergarten size is well below this capability.

In more recent times additional subdivision and further rezoning of land to the east of Apollo Bay provide some opportunity for increased growth and further data from the 2016 census will be valuable to re-assess future forecasts.

The location of a kindergarten on the P-12 College site offers the following benefits:

- Long term integration of pre-school students with the school environment
- Improved transition strategies between pre-school and primary school teachers.
- Integration of parent's responsibilities on committees rather than spread across two organisations.

The opportunities that a broader kindergarten/early years facility on P-12 College land could provide to the local community are as follows:

- Early years services including childcare, kindergarten, and maternal and child health could be provided from a two room building built for the 0-5 years.
- Although very preliminary, discussions with Barwon Child Youth and Family (BCYF) indicate that the above concept is possible and sustainable for a single operator.

- An entity such as BCY&F could manage wrap-around childhood development services at the facility and thereby relieve the P-12 College, kindergarten committee and Otway Health of ongoing legislative and license requirements.

The potential management model for a co-located kindergarten is not yet determined and will require future consideration. There are a number of options including the engagement of a cluster manager. For example, kindergartens on Council land in Colac are cluster managed by Barwon Child Youth and Family (BCY&F).

Council has been requested to provide in principle support for the relocation and also for in principle support to provide a proportion of the proceedings from the sale of a current kinder property towards to relocation. In order to do this, Council must also determine in principle support for the disposal of the current kindergarten site.

The current kindergarten site was valued at \$238,000 as a vacant site with a Capital Improvement Value of \$397,000 as part of the 16/17 rates process. The P-12 College and kindergarten committee are seeking Council support for funds from the potential sale of the kindergarten/land to be directed to the co-location of the kindergarten on the school site.

Such funds could be used to support funding programs for development of kindergartens and other early years services offered through the DET. These programs allow funding for New Early Learning Facilities. These need to include two rooms with a licensed capacity being at least 66 (unless otherwise agreed with DET) for the delivery of a funded kindergarten program for children in the year before school and provision for at least one other early childhood service from the following:

- Long day care
- Three year old kindergarten
- Maternal and Child Health
- Playgroups.

Eligible organizations can apply for up to 75 per cent of the total project cost, capped at \$650,000 per grant (GST exclusive). In the case of an \$866,666 project this would see the 75% contribution being the capped \$650 000 and the minimum outstanding funds required would be in the order of \$216,666.

It is anticipated that the cost of a new early learnings facility could be \$1,000,000+ which would see the funding shortfall increase; however with some of the proceeds from the sale of the kindergarten site and other local contributions this figure may be achievable.

The kindergarten committee and the school have been active in discussing and agreeing on the proposed co-location. These discussions have resulted in correspondence, signed by both the school and the kindergarten, seeking in principle support from Council to the concept of the co-location and potential funding support from the sale of the current site.

Maintain status quo

If co-location does not eventuate some likely scenarios include:

1. Council continues to maintain the kindergarten which is managed by a community committee, Otway Health stops providing child care services and the P-12 College continues as usual.
2. As above, but the kindergarten is managed within a cluster manager, such as BCY&F.
3. As in 2, but the kindergarten is expanded through DET renewal funding with support from a cluster manager, such as BCY&F, and a form of wrap-around care is provided.
4. Council transfers the kindergarten facility to another entity, thereby relinquishing any further responsibility.

If the kindergarten is ultimately upgraded to a new early learnings facility there will need to be alternative facilities provided during construction, unless a work-around can be provided for both to occur at the same time. BCY&F successfully managed this process during Wydinia's redevelopment.

Proposal

It is proposed that Council agree in principle to the relocation of the Apollo Bay kindergarten from 69 McLachlan St to the Apollo Bay P-12 College site.

It is further proposed that Council **supports in principle the public sale of the land that the current kindergarten at 69 McLachlan St Apollo Bay occupies in the event that relocation of the kindergarten to the Apollo Bay P-12 school site is supported by the State Government and able to be funded.**

It is also recommended that Council supports in principle, making a financial contribution to the construction of a new kindergarten at the Apollo Bay P-12 site from a yet to be determined proportion of the proceeds of the sale of the site at 69 McLachlan Street Apollo Bay, noting that the value of the funds available from the sale of the land at 69 McLachlan St Apollo Bay are not currently known. This would require a future Council resolution.

It is also recommended that a contribution by council be conditional on reaching a formal agreement regarding guaranteed public access to the kindergarten building and repayment of funds in the event that the school site is disposed of by the State Government in the future.

To support this the further development of this proposal, a working group, including as senior Council officer, will be formed to develop a funding submission to be lodged with DET in their 2017 capital funding round.

Financial and Other Resource Implications

Kindergarten Financial Implications

Kindergartens have three funding sources;

1. by the State Government for the number of enrolled children;
2. from fees set by kindergarten management; and
3. from donation support and fund raising activities.

Kindergarten teachers are paid primarily by State Government. The best financial outcome for a kindergarten is having a room size for 33 children. This allows for a maximum of 3 teachers at the 1:11 ratio. Anything below 33 children makes the fee setting more costly for parents and increases the need for fund raising activities. As an example, if the room size is only capable of taking 25 children, 3 teachers are still required. Full child funding is received for 2 teachers, whilst the third teacher is only funded for 3 children, thereby, leaving a shortfall for management to fund from elsewhere.

If a new early learnings facility was provided on the P-12 College site the opportunity to source additional funding through other activities, such as long day care, would help improve service viability and increase early childhood education support for families.

Council Financial Implications

Council currently maintains the kindergarten on a reactive basis, when required. There would be significant building costs to modernise this kindergarten and increase its size to provide for 33 children to economically and sustainably meet the current teacher/child ratio, child/space requirements and cater for growth over the coming decades.

Recent renovations of similar sized kindergarten improvements in Colac have seen the costs around \$320,000+. If successful, Council can receive, at best, 75% of the build cost from the State

Government. Depending on the total cost, Council may be able to cover this cost from the sale of the kindergarten site or at least significantly support the local contribution.

Accurate estimated costings will need to be prepared by a working group prior to the submission for DET funding. Funding rounds occur around July/August each year. Therefore, more accurate costings will be known by the working group early next year. This will allow time for assessing the financial ability to cover local cost contributions.

Risk Management & Compliance Issues

Risks in maintaining the current status quo include:

- Substantial reactive and improvement costs will need to be funded by Council in the future, especially if State funding is not forthcoming when improvements are required.
- The size of the kindergarten land makes it unlikely to be able to build another room to provide for more economies of scale through additional services such as long day care.
- Council is responsible for the only kindergarten facility in Apollo Bay. If through legislative breaches, insufficient funding for teachers or an increase in children numbers Council may be involved in supporting/funding solutions to keep the kindergarten open and responsive to community needs.

Environmental and Climate Change Considerations

Environmental and climate change considerations include:

- Future removal of asbestos from the kindergarten site
- Opportunities to provide solar or other subsidised energy lowering capacity in the new early learnings facility.

Community Engagement

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method on community engagement has been collaborative through ongoing meetings with the P-12 College, Kindergarten and Otway Health. This report recommends that a local working group, including Council, meet regularly to identify the best facility to meet ongoing community needs and prepare a funding application.

Implementation

Provided Council agrees to the recommendations a working group will be formed to prepare a funding application. If Council does not support the recommendations it is likely no further action is taken.

Conclusion

Council has supported the Apollo Bay community for nearly sixty years with the building of the current kindergarten and its ongoing reactive maintenance.

There is now an opportunity where Council and a number of local early years service providers can work together to plan for and seek funding to support a new early learnings facility to meet many local early years needs well into the future.

This multi-agency approach, through a working group, is a positive form of collaboration to address local needs. Although there is no guarantee of receiving funding in 2017, these recommendations allow for discussions and pre-work to be progressed that will identify the most suitable early learnings facility for Apollo Bay.

Attachments

Nil

Recommendations

That Council:

- 1. Supports in principle the relocation of the Apollo Bay kindergarten from 69 McLachlan St to the Apollo Bay P-12 College site.***
- 2. Supports a senior Council officer being represented on a project working group for the relocation of the kindergarten to the Apollo Bay P-12 College.***
- 3. Supports in principle the public sale of the land that the current kindergarten at 69 McLachlan St Apollo Bay occupies in the event that relocation of the kindergarten to the Apollo Bay P-12 school site is supported by the State Government and fully funded.***
- 4. Supports in principle, making a financial contribution to the construction of a new kindergarten at the Apollo Bay P-12 site from a yet to be determined proportion of the proceeds of the sale of the site at 69 McLachlan Street Apollo Bay, noting that;***
 - 4.1. The funds available from the sale of the land at 69 McLachlan St Apollo Bay are not currently known.***
 - 4.2. The amount of any Council contribution to the relocation of the kindergarten must be the subject of a future Council resolution.***
 - 4.3. The amount of any Council contribution to the relocation of the kindergarten will be determined by Council taking into account the financial outcome of the sale of the land (minus sale costs, clean-up costs demolition, legals etc), the final project cost, funds required and extent of external funding secured.***
 - 4.4. Councils contribution will be dependent on reaching a formal agreement regarding guaranteed public access to the kindergarten building and repayment of funds in the event that the school site is disposed of by the State Government in the future.***

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**OM162408-8 GREAT OCEAN ROAD REGIONAL TOURISM FUNDING AGREEMENT**

|             |                                  |           |             |
|-------------|----------------------------------|-----------|-------------|
| AUTHOR:     | Tony White                       | ENDORSED: | Brydon King |
| DEPARTMENT: | Development & Community Services | FILE REF: | F16/6696    |

**Purpose**

The purpose of this report is to seek Council's authority for the Chief Executive Officer to execute the attached funding agreement with Great Ocean Road Regional Tourism.

**Declaration of Interests**

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

**Background**

Council at its September 2013 meeting agreed to participate in the formation of the Great Ocean Road Regional Tourism Board (GORRT).

A number of requirements were placed on Council's agreement to join GORRT. These conditions have been and continue to be substantially met or exceeded. Some of the progress against these measures is outlined in the attachments to the agreement which include GORRT's 2016-19 Strategic Business Plan and the current Operational Plan.

GORRT has moved away from the old membership based model employed by Geelong Otway Tourism to a service subscriber-based model that is more customer focused and allows a degree of flexibility that can be tailored toward servicing individual businesses.

In recent times GORRT has also played a significant role in advocacy for State government resources to be deployed toward restarting the tourism industry after the recent bushfires. GORRT has also supported the development of the Shipwreck Coast Masterplan which will drive increases in customers to businesses in Colac Otway towns such as Apollo Bay and Colac as they travel to and from an enhanced 12 Apostles destination. GORRT has also led the development of a number of Tourist Destination Masterplans in Colac Otway and other member shires that have brought small businesses and key agencies together to plan for the growth of the local visitor economy. GORRT also plays a very important role coordinating the digital presence of the region's marketing effort through region and destination based websites and social media.

The original Council motion to join other Council's in the region in forming GORRT also required Council's contribution to be \$75,000 and then increased by CPI each year after joining. This figure was arrived at from Council's earlier contribution rate to Geelong Otway Tourism.

Earlier discussions around the formation of GORRT had canvassed the possibility of looking at examining the relevant contribution of each council with a view to ensuring equity between councils. On a number of models whether it be by tourist sector employment, visitor numbers or population share Colac Otway and arguably Surf Coast contribute less than other member councils however the rate is fixed in this agreement for a further three years indexed at the lesser of CPI or the amount of the State government's municipal rates cap.

For the first three years of the operation of GORRT, the organisation received \$500,000 per annum from the state government and the organisation's aim was to source roughly one third of its revenue from each of State government, local government and industry subscriptions. The original decision of Council required that the expected three year commitment by the then Tourism Victoria be delivered. However in 2016/17 the State contribution has been cut to \$315,000 per annum for the next three years, this reduction may be linked to a decision to fund Tourism Geelong and the Bellarine which did receive some funding over the last three years but no ongoing commitment until 2015.

Notwithstanding this reduction, GORRT continues to be able to apply for additional funding for itself or for projects in constituent municipalities.

GORRT continues to play the role that Geelong Otway Tourism played in terms of coordinating marketing of the region interstate and overseas however it could be argued that it does so without the brand diluting effect that the requirement to include Geelong had on the operations of the former Geelong Otway Tourism. Unlike Geelong Otway Tourism, GORRT has limited number of direct employees with a preference for contracted services when required and operates primarily through a virtual office. This leaner model has been as a result of a deliberate decision by the GORRT board.

The funding agreement runs for three years and provides for quarterly reports to council as well as six monthly organisational performance reports against the annual business plan and strategic plan including:

- Destination marketing
- Destination partnerships
- Industry development
- Investment attraction
- Stakeholder management and
- Visitor management.

It is in a standard format that has been signed by Corangamite, Surf Coast, Moyne, Warrnambool and Glenelg councils.

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

<Y:\GOVERNANCE\Council Meetings\CouncilPlan.doc>

### **A Planned Future**

Creates an attractive shire with quality buildings and spaces, accessible travel and transport, and a community that has the services and facilities it needs now and in the future; supports a prosperous economy where trade, manufacturing and business activity flourishes.

### ***Our Goal:***

Facilitate the growth, liveability and development of the shire and encourage innovation and efficiency in the local economy.

### **Issues / Options**

The tourism sector is now the Shire's largest employer with more employees than either manufacturing or agriculture. This employment is expected to grow as numbers of international, interstate and intrastate visitors are expected to grow. However the tourism sector is characterized by many small customer facing businesses with an extremely diverse and digitally connected customer base; in this situation good and bad performances in either marketing or service delivery can affect many other small businesses in the same region. It is this potential for market failure that justifies government intervention and support. In the case of the Great Ocean Road region, visitors do not make distinction between destinations based on which municipality they are administered by, but there is a case for seamless integrated effort at the industry marketing and development level across municipalities.

Council's financial commitment to GORRT is equivalent to the cost of one medium level administrative employee but gives access to very much more than what such an employee could deliver in terms of industry and broader local and state and commonwealth government resources. The objectives of the Local Government Act include the sustainable economic development of the local economy and if GORRT did not exist then Council would probably need to do something very like it, but at much greater cost, in order to give an equivalent effect to that objective of the Act.

The agreement primarily makes specific requirements for the provision of services by GORRT it does not impede the operation of Council in other areas such as operational management of the Visitor Information Centres and what tourism services they provide. Council's execution of the agreement will not impact on Council's resolution of 27 April 2016 to allow for printed material for all "holiday rental" rated properties to be displayed at Visitor Information Centres where such businesses seek that outcome.

The agreement specifies that Council's contribution will be indexed at the lower of CPI or the State Government's maximum municipal rate. This indexation amount is indicated at Clause 4.6 however this specification could also be included in Schedule One without materially affecting the agreement.

### **Proposal**

It is proposed that the Chief Executive Officer be authorized to execute the attached funding agreement

### **Financial and Other Resource Implications**

The current Council budget includes provision for an \$80,000 allocation to GORRT. Future budgets will require a similar amount indexed at around 2%.

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

The agreement provides for through and regular reporting against performance measures as well as an option to withdraw from the agreement should GORRT ceases to trade or fails to carry out its obligations under the agreement.

### **Environmental and Climate Change Considerations**

Environment and climate change matters are considered within GORRT's risk management framework.

### **Community Engagement**

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected would be inform and include notifying the tourism sector through Council's industry database.

### **Implementation**

The Chief Executive Officer will be able to sign the agreement if authorised. The activities of GORRT will be publicized through their own electronic newsletter, social media and other means as appropriate.

### **Conclusion**

The Chief Executive Officer should be authorised to execute the attached agreement.

### **Attachments**

1. colac otway Shire council and GORRT Funding Agreement 20162019

**Recommendation**

***That Council:***

- 1. Authorise the Chief Executive Officer to execute the attached funding agreement with Great Ocean Road Regional Tourism subject to the Schedule to the agreement re-iterating that Council's contribution will be indexed at the lower of CPI or the maximum municipal rate specified annually by the State government.***

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FUNDING AGREEMENT

BETWEEN

COLAC OTWAY SHIRE COUNCIL

And

GREAT OCEAN ROAD REGIONAL TOURISM BOARD

JULY 2016 – JUNE 2019

REGIONAL TOURISM FUNDING AGREEMENT

THIS FUNDING AGREEMENT is made **BETWEEN**

COLAC OTWAY SHIRE COUNCIL a corporation established under the Local Government Act.

and

GREAT OCEAN ROAD REGIONAL TOURISM BOARD (GORRTB) (ABN 77 166 120 565)

IT IS NOW AGREED

1. The purpose of this Agreement and all schedules attached thereto is to define the services / outputs that will be delivered by (GORRTB) in return for specified funding by COLAC OTWAY SHIRE Council.
2. This Agreement will apply for the period 01 July 2016 to 30 June 2019
3. The terms and conditions of funding, including details of reporting requirements and schedule of progress payments, are detailed in Schedule One to this Agreement.
4. Colac Otway Shire Council will provide funding to GORRTB in return for the services/outputs that will be delivered by GORRTB for the funded program as detailed in Part 1 and in Schedule One of this Agreement. GORRTB will take sole responsibility for the expenditure of the funding provided under this Agreement and agrees it will fully implement the activities and further has agreed to be legally bound to carry out those activities and services for the funded Program throughout the Great Ocean Road Region as detailed in this Agreement.
5. GORRT agrees to work with partner Councils to determine methodology for future Council funding contribution. Methodology and agreement to be agreed prior to December 2018.
6. COLAC OTWAY SHIRE Council and GORRTB acknowledge below their acceptance of the terms and conditions of this Agreement and the schedules attached thereto.

| | |
|--|---|
| <p>Signed on behalf of COLAC OTWAY SHIRE Council
 Name:
 Position: CHIEF EXECUTIVE</p>

<p>Signature
 Date:</p> | <p>Signed for and on behalf of GREAT OCEAN ROAD REGIONAL TOURISM BOARD
 Name:
 Position: GENERAL MANAGER</p>

<p>Signature:
 Date:</p> |
|--|---|

PART I PROGRAM DESCRIPTION

This Agreement is based on a partnership to operate a Regional Tourism Board (RTB) for the Great Ocean Road Region.

| DELIVERED BY GREAT OCEAN ROAD REGIONAL TOURISM BOARD | KEY PERFORMANCE INDICATORS |
|---|--|
| <ol style="list-style-type: none"> 1. Operate or Manage a viable and sustainable regional tourism organisation to facilitate the marketing, management, development and advocacy of the visitor economy of the Great Ocean Road region. 2. Facilitate the Implementation of the Strategic Master Plan of the Visitor economy of the Great Ocean Road region and associated strategies and action plans in accord with the agreed implementation schedule 3. Deliver the following activities that will generate direct stakeholder benefits to the region's tourism industry: <ol style="list-style-type: none"> a. Destination Planning, development, marketing & management b. Advocacy and stakeholder engagement, c. Strengthen and empower local business, tourism and trader organisations whilst d. Effectively administering the activity of GORRTB as an organisation 4. Facilitate communication between Local Government, Visit Victoria, State & Federal Government agencies and the wider tourism industry on issues and initiatives relevant to the visitor economy. | <ol style="list-style-type: none"> 1. Annual audit of GORRTB's organisational performance including provision of an annual report and audited accounts to all stakeholders. 2. Quarterly reports to all stakeholders on performance of; Great Ocean Road as a destination. Reports to be based on an analysis of the available market research relating to destination performance. 3. Half yearly reports, including annual audited reports as above, on GORRTB as an organisation. GORRTB's performance to be measured against delivery of annual business plan and Strategic plan, appendices to this document. 4. Clarity of roles between local, regional and state entities, and the reduced duplication within tourism industry structures. |

| | |
|--|--|
| 5. Provide advice to Local government and other key stakeholders on the further coordination of industry structures to maximise efficient use of resources ie. remove duplication of staffing, funding and effort. | |
|--|--|

| DELIVERED BY Colac Otway Shire Council | KEY PERFORMANCE INDICATORS |
|--|--|
| <ol style="list-style-type: none"> 1. Council to nominate a representative to be a Director and Member of the GORRTB 2. Attend annual CEO forum 3. Council representative to participate in key Board sub-committees and working groups. 4. Provide Council feedback and input into GORRT programs and campaigns 5. Maximise opportunities for regional collaboration 6. Permission given for GORRT to include the distribution of partner brochures through Visitor Information Centres as a Business Services offering | <ol style="list-style-type: none"> 1. Active participation in Board meetings and workshops. 2. Fulfil obligations of Director of GORRTB 3. Representation on the Development sub-committee 4. Representation on the marketing sub-Committee 5. Representation on key project steering committees (as required) 6. Participation in forums 7. Provide written feedback and input to content where requested 8. Ensure consistency with regional program where appropriate |

PART II TERMS & CONDITIONS OF AGREEMENT**1. SCOPE OF THE AGREEMENT**

1.1 In consideration of the continuing performance by GREAT OCEAN ROAD REGIONAL TOURISM BOARD (GORRTB) of its obligations under this Agreement, and subject to COLAC OTWAY SHIRE Council being satisfied that the GORRTB has complied with its obligations under this Agreement and that funding is being expended in accordance with this Agreement and the schedules attached thereto, COLAC OTWAY SHIRE shall make payments as prescribed in Schedule One to this Agreement.

1.2 Objectives and scope of agreement include, but are not limited to, the following:

1.2.1 Facilitate the work of the Regional Tourism Board as defined by the Constitution, Strategic Plan and Business Plan including facilitation of implementation of the Strategic Master Plan to the Visitor Economy of the Great Ocean Road Region 2015- 2025 and the destination action plans.

1.2.2 This Partnership Agreement does not affect or override any Agreements currently in existence with COLAC OTWAY SHIRE.

2. PERFORMANCE REPORTING REQUIREMENTS

2.1 The following requirements are associated with the use of allocated funds:

2.1.1 Quarterly stakeholder reports provided to Council outlining:

Destination Performance

- Visitation measures (visitor numbers, average length of stay & expenditure)
- Consumer expectations
- Market conditions
- Anecdotal feedback from industry and visitors as relevant

2.1.2 Six monthly GORRTB Organisation Performance against annual business plan & Strategic Plan including:

- Destination Marketing
- Destination partnerships
- Industry Development
- Investment Attraction
- Stakeholder Engagement
- Visitor Management

2.1.3 A report outlining the results of an annual review of GORRTB's operations.

3. REPORTING

3.1 GORRTB will provide reports as detailed in 2.1.1, 2.1.2, 2.1.3 above.

3.2 GORRTB Minutes will be provided to the Director.

4. FUNDING

4.1 Council will make payment to GORRTB on receipt of an invoice for the annual funding sought.

4.2 Funds provided by Council to GORRTB under this Agreement shall be expended on the delivery of services/outputs for which the funding has been provided and as determined by the GORRTB business plan, action plan and budget.

4.3 Council shall not be held responsible for any liabilities, losses or cost overruns incurred in relation to any programs undertaken by GORRTB.

4.4 Any unspent/uncommitted funds at the end of the period as detailed in Schedule One to this Agreement which have been provided by COLAC OTWAY SHIRE are to be retained by GORRTB for agreed activities in following financial periods. GORRTB prudential cash policy requires a minimum of 3 months operational expenditure be retained as surplus at all times.

4.5 Funding for specific projects will be considered on a case by case basis and a business case along with financial request should be submitted to partner Council by December for the following financial year. These projects will be subject to a separate funding agreement.

4.6 The annual indexation increase shall be the lesser of:

- CPI – being the Melbourne All Groups index as published by the ABS as at March each year
- The prescribed rate cap as advised by the minister for local government under the "Fair Go Rates" legislation

5. PUBLICITY AND ACKNOWLEDGMENT

5.1 GORRTB will acknowledge the assistance provided under this Agreement by Council where relevant and Council may publicise the benefits accruing to GORRTB and the State, as a result of the support provided under this Agreement.

5.2 GORRTB may seek, approval for inclusion of Council logo, on key publications and tools. GORRTB does not have the right to use Council logo without this prior consent.

6. INSURANCE

6.1 GORRTB will ensure that it has adequate insurance cover in place to protect physical assets against loss and/or damage, and to indemnify GORRTB against legal liability for personal injury and/or property damage claims made by third parties.

7. SUBCONTRACTING OR ASSIGNMENT

7.1 GORRTB will be fully responsible for carrying out the agreed program notwithstanding that GORRTB may have subcontracted or assigned the performance of any part of the Program. In addition, GORRTB may enter into separate agreements to contract services from or to Council.

8. INDEMNITY

8.1 GORRTB shall release and indemnify Council, its servants and agents from and against all actions, proceedings, claims and demands which may be brought or made against it or them by any person in respect of or by reason of or arising out of:

- the performance by GORRTB of its rights and obligations under this Agreement;
- any negligence or other wrongful act or omission of GORRTB, staff or other servants, employees or agents or of any other persons for whose acts or omission GORRTB is vicariously liable;
- any negligence or other wrongful act or omission of staff or the visitors, invitees or licensees of GORRTB;
- death, injury, loss of or damage to GORRTB, staff or its other servants, employees, agents or visitors; or
- any breach of this Agreement by GORRTB.

9. GOODS AND SERVICES TAX

9.1 In this Agreement, "GST", "Tax Invoice", "Recipient Created Tax Invoice" and "Taxable Supply" have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth). Further, for the purposes of this Agreement, "Taxable Supply" means the obligations of GORRTB. under the terms of this Agreement.

9.2 Each funding payment specified in Schedule One is exclusive of GST and shall be increased by an amount equal to any GST payable with respect to the Taxable Supply for which the payment is made provided that with each relevant claim for payment, GORRTB shall submit a Tax Invoice for processing of payments.

10. INTELLECTUAL PROPERTY

10.1 GORRTB shall indemnify and at all times keep Council indemnified against any action, claim, suit or demand, including a claim, suit or demand for, or liability to pay, compensation or damages and costs or expenses arising out of, or in respect of, any breach of any third party's intellectual property rights.

10.2 GORRTB and LGA partners will hold joint intellectual property on work commissioned or developed by GORRTB through the course of this agreement.

11. PRIVACY

11.1 GORRTB acknowledges and agrees that it shall be bound by the Information Privacy Principles and/or any applicable code of practice as Council may have approved under the Information Privacy Act 2000 with respect to any act done or practice engaged in by GORRTB for the purposes of this Agreement

in the same way and to the same extent as Council would have been bound by the Information Privacy Principles or any such applicable code of practice in respect of that act or practice had it been directly done or engaged by Council.

12. ENTIRE AGREEMENT AND VARIATION

12.1 This Agreement and the schedules attached thereto constitute the entire Agreement between the parties and supersede all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

12.2 No agreement or understanding varying or extending this Agreement shall be legally binding upon either party unless in writing and signed by both parties.

13. DISPUTE

13.1 If either Council or GORRTB considers that there is a dispute or difference arising out of or relating to this Agreement ("Dispute") the parties may adopt the procedure set out in this clause to resolve the Dispute. Notwithstanding the provisions in this clause, if the Services that are the subject of this Agreement have not yet been completed, GORRTB shall at all times proceed to complete the Services and perform its obligations without delay.

13.2 If the parties agree to adopt the procedures set out in this clause, either party within 28 days of the Dispute arising shall send a notice to the other party specifying the detailed particulars of the matters in Dispute and its proposal for their resolution ("Dispute Notice").

13.3 Council's Representative (or other person authorised by Council and GORRTB (or its representative) shall meet personally within two working days (or other such period as agreed) after service of the Dispute Notice to attempt to resolve the Dispute on a basis consistent with a wish to retain a long term relationship between the parties.

13.4 If the parties are unable to resolve the Dispute within 3 working days of the meeting referred to in clause 13.3 (or such longer period as may be agreed) the Dispute will be referred to an independent person or persons whom both parties agree to, to resolve the dispute.

14. WAIVER

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single or partial exercise of a power or right preclude any other or further exercise of that or any other power or right. A power, right or obligation may only be waived in writing, signed by the party to be bound by the waiver.

15. RESIGNATION

This agreement is made in good faith for three years. If a Council decides to resign from this agreement, this resignation is to be provided, in writing, no later than the March in the preceeding financial year. Where possible, twelve months wtitten notice of intent to resign, is preferred.

16. TERMINATION

16.1 Council may terminate this Agreement for future financial years by written notice:

- (a) if, in the reasonable opinion of Council, GORRTB after having been given 45 days' notice in writing, fails to carry out its obligations under this Agreement; or
- (b) if GORRTB goes into liquidation, or a receiver and manager, administrator or mortgagee or chargee's agent is appointed, or becomes subject to any form of insolvency administration or arrangement.

17. NEGATION OF PARTNERSHIP AND AGENCY

17.1 GORRTB shall not, by virtue of this Agreement, or for any purpose, be deemed to be an agent of Council or as having any power or authority to bind or represent Council.

18. SEVERANCE

If any provision of this Agreement is held invalid unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force, apart from such provision, which shall be deemed deleted.

19. CONFLICT OF INTEREST

19.1 GORRTB shall inform Council of any matter connected with this Agreement that may give rise to an actual or potential conflict of interest of the Council, its officers, employees, servants, or agents of the kind referred to in this Agreement at any time during the performance of the Services.

Schedule One

This schedule forms part of the Agreement between Colac Otway Shire Council and Great Ocean Road Regional Tourism Board (GORRTB).

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| COLAC OTWAY SHIRE COUNCIL – GREAT OCEAN ROAD REGIONAL TOURISM BOARD– FUNDING AGREEMENT |
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| Key Contact:
Great Ocean Road Regional Tourism Board: Liz Price, General Manager | | COLAC OTWAY SHIRE Council : |
| Period:
01 July 2016 to 30 June 2019 | Annual Funding:
Funding to facilitate the operation of GORRTB
Colac Otway Shire \$78,000 plus CPI (+GST)
Corangamite \$78,276 plus CPI (+GST)
Moyne \$84,200 plus CPI (+GST)
Surf Coast Shire \$75,976 plus CPI (+GST)
Warrnambool \$169,172 plus CPI (+GST)
Glenelg \$80,000 plus CPI (+GST) | Reporting Schedule (period ending):
Quarterly Reports:
- October
- January
- April
- August

Annual Review:
December 2016 |
| | Project Funding
Funding for specific projects will be considered on a case by case basis and a business case along with financial request should be submitted to partner Councils by December for the following financial year. | December financial year prior |
| Payment Schedule: <ul style="list-style-type: none">Annual Funding to be billed in Quarterly payments to be paid within 30 days of invoice – issued 1 July, 1 October, 1 January, 1 April. | | |

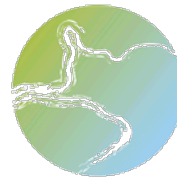
Attachments:

GORRT Strategic Plan 2016-2019

GORRT Annual Business Plan

Great Ocean Road Regional Tourism Board

Strategic Plan 2016- 2019



GREAT OCEAN ROAD
REGIONAL TOURISM LIMITED

Prepared February 2016

INTRODUCTION

The Great Ocean Road Regional Tourism Ltd (GORRT) Strategic Business Plan 2016-19 has been prepared by the Board and management of GORRT to establish the organisation's strategic priorities as it seeks to facilitate a collaborative and united approach to the development of the region as a competitive and sustainable visitor destination.

This plan underpins GORRT's role in the facilitation of the Strategic Master Plan for the Visitor Economy of the Great Ocean Road 2015-2025, It identifies the key priorities of the region and the role and focus of the organization.

DESTINATION OVERVIEW

- Great Ocean Road Regional Tourism represents the geographic area from Torquay to the South Australian border and includes the local government areas of Surf Coast Shire, Colac Otway Shire, Corangamite, Warrnambool, Moyne and Glenelg.
- Stakeholders in GORRT and the visitor economy for the region include visitors, community, industry, local, state & federal governments and agencies.
- In 2014 the visitor economy of the Great Ocean Road region represented \$1.2 billion in visitor expenditure. 6,730 direct jobs and 14% of direct contribution to Gross Regional Product (\$541m).
- The region attracts in excess of 5 million visitors per annum. 2.6 million domestic day trip visitors, 1.9 million domestic overnight visitors representing 6.3m nights and 157,000 international overnight visitors representing 664,000 nights.

- 2 -

CHALLENGES AND OPPORTUNITIES OF THE REGION

The key challenges of the region include:-

- Destination development of the region – including infrastructure, product development and visitor experience
 - to extend beyond the road and rocks
- Increasing visitor yield
- Increasing visitor length of stay
- Increasing visitor dispersal (seasonally, mid week and geographically)
- Increasing business participation, engagement and support
- Increasing community engagement, awareness and support
- Meeting visitor demand expectations from growth markets (eg: China)
- Maximising seamless visitor satisfaction
- Visitor management at key destinations
- Skill shortages
- Integrated economic and community planning
- Risk management
- Resourcing capacity, efficiency and equity

VISION FOR THE REGION

The Great Ocean Road Region will be Australia's foremost sustainable tourism region providing outstanding seamless visitor experiences to drive yield and dispersal growth. Its community and stakeholders value the contribution of tourism to the economic, environmental, social and cultural health of its destinations and the region.

GORRT's VALUES

1. Collaboration and engagement

Fostering collaboration and engagement with, and between, our stakeholders is critical to the development of a healthy, cohesive and responsible tourism industry that delivers outstanding visitor experiences.

2. Taking responsibility

We understand that our actions have impacts upon other people and the environment. We take responsibility for our behaviours, actions and achievements when:

- Working with stakeholders
- Providing commercial services
- Communicating to visitors
- making decisions that impact on the environment

3. Democratic leadership

Our leadership style reflects the acknowledgement that our role is to facilitate responsible and sustainable visitor economy development in the region, rather than to dictate how it should be done.

4. Teamwork

A culture of teamwork is essential for strong, productive relationships within GORRT, and with stakeholders.

5. Financial well-being

Being commercially viable as a regional tourism organisation and supporting the profitability of local businesses is essential to the sustainability of the tourism destination, and desirable in terms of enjoying good quality of life.

6. Flexibility and adaptability

To survive in a comparatively unpredictable, rapidly changing industry with a diverse range of stakeholders, we need to be willing to change, and responsive to change.

7. Authenticity and Realism

In order to be genuinely collaborative and build successful partnerships with the tourism industry and communities, we need to be authentic in the way we relate to others and realistic in our expectations.

8. Inclusiveness and acceptance of diversity

We consciously include and respond to the needs of a diverse range of stakeholders and visitors to the region.

9. Agents for change

Our role gives us the opportunity to work towards improving the regions social, economic, spiritual and environmental health.

KEY OBJECTIVES

To facilitate, promote and advocate for a collaborative, strategic and sustainable approach to growing the visitor economy of the region.

This will be delivered through the Development (product, infrastructure and industry), Marketing and Management of the visitor economy of the Great Ocean Road region.

Focus of tourism for the region.

1. To increase visitor yield by 3.8% pa.
2. To increase visitor dispersal geographically and seasonally
3. To increase visitor satisfaction
4. To increase business and community participation, engagement and support for the visitor economy

| STRATEGIC PRIORITY ONE : STRATEGIC PLANNING | | | | |
|---|---|---|--------|--|
| FOCUS: DEVELOPMENT | | Ensure a research driven, responsive approach to planning and development | | |
| AIM:- <ul style="list-style-type: none">• Maximise return from the visitor economy• Ensure visitor focused, community and industry led approach• Maintain strategic focus | | | | |
| Strategies | Actions | Measures | timing | |
| Conduct research programs to monitor market behaviour | Develop a benchmark dashboard to monitor key analytics | Benchmark developed and distributed quarterly to Board, Councils and Local Tourism & Trader Groups | 16/17 | |
| Invest in research to build the business case for investment into the visitor economy for the region. | Develop a research project to determine economic value of the region specifically Twelve Apostles & the GOR | Research project developed & implemented.

Outcomes integrated into strategies & advocacy program. | 16/17 | |
| Establish a rolling program of renewal for all plans & strategies to ensure they remain timely and responsive to the current climate | Provide annual review of all plans and strategies to ensure progress on key deliverables and prioritisation of activity | Annual audit of GORRT's organisational performance and provision of an annual report to all stakeholders completed. | Annual | |
| Ensure regular monitoring and evaluation of all programs | Ensure priorities and performance indicators are established on an annual basis. | Marketing sub-committee, development sub-committee and Project Steering Committees are coordinated and meet in a timely manner. | annual | |

| | | | |
|--|--|--|---------|
| Build a framework to allow ongoing industry and community engagement in the development, implementation and review of destination plans and Strategic Plan to the Visitor Economy of the GOR region 2015-2025. | Facilitate ongoing role of Leadership groups to oversight implementation and review of Destination Action Plans.

Destination Action Plans to be regularly reviewed by the Leadership Group and feedback sought from community and industry.

Provide Leadership Groups and Tourism & Trader Groups with opportunities for input into key regional programs and plans. | Regular meeting of Leadership groups.

Annual review of progress of implementation of Destination Action Plans.

Establishment of annual focus of implementation | annual |
| Continue to grow destination planning across the region | Establish an annual program of destination planning to provide a strategic framework to the development, management and marketing of the regions destinations. | Destination plans facilitated where relevant. | ongoing |
| Facilitate plan and strategy development for whole of region projects | Develop and implement a future of visitor servicing review (Action 63) | Project completed and endorsed by Council stakeholders. | 16/17 |

| STRATEGIC PRIORITY TWO: INFRASTRUCTURE DEVELOPMENT | | | | |
|---|--|--|--------|--|
| FOCUS:DEVELOPMENT | | Advocate for funding to ensure maintenance and renewal programs for prioritised public assets | | |
| | | Work with all tiers of government to facilitate private sector investment | | |
| OBJECTIVES | | | | |
| <ul style="list-style-type: none">• Increase yield• Increase length of stay• Increase dispersal• Increase visitor satisfaction | | | | |
| Strategies | Actions | Measures | Timing | |
| Build the economic case for investment in the GOR region | Undertake a research project to assess economic value to Victoria and Melbourne from visitation to the GOR | Plan developed and key findings integrated into strategies and advocacy plans | 16/17 | |
| Support the development & implementation of key products within the region | <ul style="list-style-type: none">• Participate in project group for Shipwreck Coast Master Plan• Support Budj Bim Master Plan implementation | | | |
| Advocate for prioritisation of maintenance and renewal of existing product and infrastructure | Develop and implement an annual advocacy program that supports implementation of the Strategic Master Plan for the region and underpins local government advocacy agendas. | An agreed list of advocacy priorities are developed and reviewed regularly by the GORRT Board. | Annual | |

| | | | |
|---|---|---|---------|
| | | Local government has an opportunity to provide input and comment on advocacy priorities, issues and initiatives. | |
| | <ul style="list-style-type: none"> • Seek and support GORRT representation on key State and regional organisations or working groups in line with annual priorities ie. Great Ocean Road maintenance • Shipwreck Coast Masterplan • Growing Adventure Tourism in the Barwon South West | Level of involvement of GORRT on key projects, working groups and organisations. | Ongoing |
| Advocate for and support new infrastructure development that is consistent with the goals and objectives of increasing length of stay, yield, dispersal and satisfaction, defined and/or aligned to the Destination Plans | Support local government and private sector submissions for funding. | Support provided in line with Strategic Master Plan for the Visitor Economy of the Great Ocean Road 2015-2025 and Destination Action Plans. | Ongoing |
| | Provide Stakeholders with access to research and regional networks to support infrastructure development and/or consultation with industry and community. | Quarterly and annual research on key visitation metrics of the region as a tourism destination provided to Council and all stakeholders. | ongoing |
| | | | |

| STRATEGIC PRIORITY THREE : INVESTMENT ATTRACTION | | | |
|---|--|--|----------------|
| FOCUS:DEVELOPMENT | Facilitate investment attraction opportunities aligned with the Strategic Plan for the region. | | |
| OBJECTIVES <ul style="list-style-type: none">• Increase yield• Increase length of stay• Increase dispersal• Increase visitor satisfaction | | | |
| Strategies | Actions | Measures | |
| Provide research and regional intelligence to prospective investors to facilitate business case development for investment. | Develop a regional dashboard to provide a snapshot of current and forecast data for the region | Quarterly and annual research on key visitation metrics of the region as a tourism destination provided to Council and all stakeholders. | ongoing |
| | Facilitate industry and investors access to government networks and funding programs. | GORRT to be recognised as a conduit to government. | ongoing |
| | Facilitate private investor access to LGA experts and resources. | | ongoing |
| Establish and resource an investment attraction and major project implementation task group. (Action 20) | Develop an investment prospectus to showcase opportunities to potential investors. | Prospectus agreed and developed. | 17/18
18/19 |
| | | | |

| STRATEGIC PRIORITY FOUR: PRODUCT DEVELOPMENT | | | |
|--|---|---|--------|
| FOCUS: DEVELOPMENT | | Foster or stimulate product development opportunities that align with the region and individual destination brands | |
| OBJECTIVES <ul style="list-style-type: none"> • Increase visitor expenditure • Increase seasonal dispersal • Increase geographic dispersal • Increase business sustainability • Increase visitor satisfaction • Build industry resilience | | | |
| Strategies | Actions | Measures | Timing |
| Foster product development opportunities identified within the Strategic Master Plan for the Visitor Economy of the GOR region | Facilitate the implementation of the Growing Adventure Tourism in the Barwon South West Strategy (Action 5) | GOR to facilitate annual meeting of stakeholders to review priorities and progress. | annual |
| | Undertake an audit and review of existing accommodation stock and provide guidelines on redevelopment and refurbishment options.
(Action 15) | Opportunities for product and experience development of regional significance identified through the completion of feasibility studies, research or supply & demand gap analysis. | 18/19 |
| | Prepare a region wide food and beverage audit and development plan (Action 24) | Opportunities for product and experience development of regional significance identified through the completion of | 18/19 |

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| | | feasibility studies, research or supply & demand gap analysis. | |
| | Develop a regional events strategy to ensure a collaborative and coordinated approach to growing and leveraging the regions tourism events (Action 25) | Event Strategy completed and endorsed by stakeholders | 16/17 |
| | Develop a Business events & Conferencing Plan. (Action 26) | | 17/18 |
| | Using the framework established in the Growing Adventure Tourism strategy extend product considerations to include a broader range of outdoor active experiences. (Action 27) | <p>Opportunities for product and experience development of regional significance identified through the completion of feasibility studies, research or supply & demand gap analysis.</p> <p>Projects of agreed regional significance coordinated effectively.</p> | 17/18
18/19 |
| | Facilitate the development of products and services to support the cruise ship market (Action 32) | Work with Colac Otway Shire Council, Visit Victoria and the commercial cruise providers to develop cruise product. | 17/18 |

| STRATEGIC PRIORITY FIVE: INDUSTRY DEVELOPMENT | | | | |
|---|---|---|--------|--|
| FOCUS: DEVELOPMENT | | Build a professional, cohesive, resilient and sustainable industry | | |
| OBJECTIVES <ul style="list-style-type: none">• Increase business excellence• Foster business development & improvement• Increase business profitability & sustainability• Increase business participation & engagement• Increase visitor satisfaction | | | | |
| Strategies | Actions | Measures | Timing | |
| Develop a program to facilitate industry development and visitor service excellence | Develop visitor servicing standards (Action 58) | Visitor servicing standards developed and adopted by key stakeholders. | 18/19 | |
| | Develop a research tool to benchmark, measure and report on visitor satisfaction performance (Action 59) | Research tool established and implemented and quarterly results monitored. | 17/18 | |
| | Develop a visitor experience excellence program for implementation at a local destination or business level (Action 61) | Annual program of workshops, tools etc developed, implemented and taken up by industry. | 16/17 | |
| | Develop a program to foster and develop programs on cultural awareness (Action 62) | Annual program of workshops, tools etc developed, implemented and taken up by industry. | 16/17 | |

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|---|---|--|-------|
| | Develop a program to foster business support for on-line tools (Action 65) | Annual program of workshops, tools etc developed, implemented and taken up by industry. | 16/17 |
| Encourage & support strong local organisations and networks | Continue to develop and evolve partnerships with Local tourism and trader organisations. | Develop an annual report card of funding support and activity delivered under this program. | 16/17 |
| | Review the role, function and resourcing of local organisations to increase capability and sustainability (Action 68) | Discussion paper reviewing the coordination of industry structures and efficient use of resources is provided to Council for noting by December 2018 (6 months prior to expiry of this Funding Agreement). | 17/18 |
| | Develop a mentor and training program to facilitate leadership development at the local level.(action 69) | Program established and implemented in partnership with Leadership Groups. | 16/17 |

| STRATEGIC PRIORITY SIX: MARKETING | | | |
|--|--|---|--------|
| FOCUS: | | Reposition the regions and destinations brands

Maximise existing visitation | |
| OBJECTIVES <ul style="list-style-type: none"> • Increase expenditure • Increase length of stay • Increase satisfaction • Increase dispersal | | | |
| Strategies | Actions | Measures | Timing |
| Develop a two tiered approach to marketing & promotion whole of region and individual destinations. | Redefine the brand architecture of the region and its destinations to bring to life the breadth and depth of the brand promise | Destination brand frameworks developed and supported by destination leadership group, local tourism & trader organization and industry. | 16/17 |
| | Entrench brand architecture in all marketing and communications | Quality and consistency of marketing & communications | 16/17 |

| | | | |
|--|--|---|----------------|
| | Develop creative assets and tools to integrate brand within stakeholder marketing and communications | Destination brand tools developed.

Level of stakeholder take up and use monitored and reported annually. | 16/17 |
| | Utilise brand architecture to foster innovation in product and experience development | Number of new products, experiences and events developed and implemented successfully through destination frameworks. | 17/18
18/19 |
| | Develop strategic partnerships to leverage brand offer | Work with individual destination to identify and develop strategic partnerships. | 17/18 |
| Broaden knowledge base of visitors to the region | Continue to develop an integrated approach to the delivery of information to meet visitor needs "en route" print, digital, wifi, VIC's | Great Ocean Road and destination websites and social media platforms are established and administered effectively.

Destination guides, regional touring maps and GOR Travel Planner produced and distributed in digital and print formats to meet visitor demand and information accessing habits. | ongoing |

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|---|---|---|---------|
| | Continuously improve and evolve GORRT tools including print products, digital platforms and campaigns. | Tools developed and monitored to gauge visitor and stakeholder response to tools. | |
| | Develop annual prospectus/program of "buy in" opportunities. | Program developed and participation reported against program elements. | Ongoing |
| | Build the level of products participating in programs to grow depth of product & experiences available to underpin key marketing & promotional messaging/tools. | Tourism business buy in to GORRT programs reported every two months. | Ongoing |
| Empower all stakeholders to play an active role in visitor servicing | Develop tools to facilitate stakeholders servicing their existing and prospective customers. | Operator take up/implementation of tools | 16/17 |
| | Foster operator networks to create new product opportunities | Operator participation in industry development programs. | 17/18 |
| Develop strategic partnerships to leverage the regions marketing and promotion investment | Partner with VisitVictoria to leverage and support the "Wander Victoria" campaign. | Level of exposure through Wander Victoria monitored and reported quarterly. | 16/17 |
| Identify & support key markets for growth | Work in partnership with Parks Victoria to promote appropriate nature based experiences. | Development of an effective partnership with PV | 16/17 |

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|--|--|---|----------------|
| Undertake a price comparative study for the region to assess competitiveness.

(Action 39) | | Opportunities for product and experience development of regional significance identified through the completion of feasibility studies, research or supply & demand gap analysis. | 17/18
18/19 |
|--|--|---|----------------|

| STRATEGIC PRIORITY SIX B: INTERNATIONAL MARKETING | | | | |
|---|--|--|--|-------|
| FOCUS: | | Maximise the return from the international overnight market | | |
| OBJECTIVES | | | | |
| <ul style="list-style-type: none">• Increase expenditure• Increase length of stay• Increase satisfaction• Increase dispersal | | | | |
| Strategies | | Actions | Measures | |
| Grow international overnight visitation | | Facilitate product development and investment opportunities to grow international overnight visitation | | 17/18 |
| | | Facilitate industry development opportunities to foster international readiness and build cultural awareness | | 16/17 |
| | | Develop a research driven approach to measure visitor satisfaction and ‘manage’ international digital reputation | | 16/17 |
| | | Build tools and programs to maximise visitor engagement and satisfaction in region en route | | 16/17 |
| Identify & support key markets for growth | | Continue to develop tools to support servicing visitation to the region by key growth markets ie. China. | Development & successful implementation of WECHAT App. | 16/17 |

| | | | |
|--|--|---|---------|
| Leverage partnership opportunities in key international markets | Work through GSTR as the primary vehicle for in market international trade activity | Level of exposure and activity achieved for the GOR region through the GSTR program.
Level of industry participation and support for GSTR. | 16/17 |
| | | Review effectiveness of GSTR as a marketing tool for GORRT | 16/17 |
| | Partner with Tourism Australia and Visit Victoria to leverage international media opportunities | Level of exposure and activity achieved for the GOR region through TA & VV programs | ongoing |
| STRATEGIC PRIORITY SEVEN: PARTNERSHIPS | | | |
| FOCUS: MANAGEMENT | <ul style="list-style-type: none">Build the sustainability of GORRT as a regional tourism Board to facilitate the delivery of a sustainable visitor economy for the Great Ocean Road regionIncrease the organisations capacity to facilitate a collaborative, united and sustainable approach to growing the visitor economy. | | |
| OBJECTIVES <ul style="list-style-type: none">Maximise visitor economy objectivesLeverage GORRT resourcesCreate efficiencies & economies of scaleRecognise and match expertise, skill & capacity to program delivery | | | |
| Strategies | Actions | Measures | Timing |
| Build commercial partnerships with key stakeholders | Evolve the GORRT business services model to facilitate ‘buy in’ from all beneficiaries of the visitor economy | The number, type and cost of GORRT services offered to local businesses via a Business Services prospectus is reviewed annually and adjusted to meet industry and visitor demand. | 16/17 |

| | | | |
|---|---|---|---------|
| | | Tourism business engagement and participation in GORRT programs reported every second month. | |
| | Maintain and grow commercial partnerships with local tourism and traders groups | Develop an annual report card of funding support and activity delivered under this program. | annual |
| | Renew for a third three year term, agreements with councils. | Roles between local, regional and state entities, and the reduction of duplication within tourism industry structures clarified by December 2018.

Methodology for future Council funding contributions to be agreed prior to December 2018 | 18/19 |
| | Establish a three year agreement with VisitVictoria. | Agreement established and annual reporting requirements met. | 18/19 |
| Leverage the relationship with State government agencies. | Seek opportunities to leverage or partner with State Government agencies. | | ongoing |

| | | | |
|---|--|---|----------------|
| Build on the collaborative relationships established with LGA's | Develop processes and procedures to facilitate two communication | | |
| Build the GORRT business model to decrease reliance on State Government funding programs | Investigate financial models and opportunities to build financial independence and reduce reliance on State government funding including exploration of "visitor" funding opportunities. | Project established and models reviewed. | 17/18
18/19 |
| Evolve the GORRT delivery model to maximise implementation of strategies and minimise duplication of effort through key partners. | Develop a resourcing plan that maximises use of employees, contractors, local government partnerships and local tourism and trader organisation partnerships | Resourcing model developed and successfully implemented | ongoing |
| Build an industry engagement program that creates a culture of trust and connectedness (Action 34) | | | 17/18 |

| STRATEGIC PRIORITY EIGHT: VISITOR MANAGEMENT | | | | |
|---|--|---|---|---------|
| FOCUS:MANAGEMENT | | To facilitate a sustainable and cohesive approach to growing the visitor economy | | |
| OBJECTIVES | | | | |
| <ul style="list-style-type: none">• Increase visitor satisfaction• Increase visitor dispersal• Increase visitor expenditure• Minimise negative impacts of the visitor economy on communities | | | | |
| Strategies | | Actions | Measures | |
| Encourage accommodation and service providers to invest in and promote accessible tourism facilities (Action 29) | | Incorporate educational opportunities on "providing for the needs of visitors" into annual conference or industry development program. | Accessibility incorporated into industry development program | 17/18 |
| Manage mass visitation impacts on the region (Action 47) | | Work with individual destinations to identify visitor impact issues and develop a range pf strategic responses (Action 47)

Facilitate GORRTB input into maintenance & renewal challenges within the region | Facilitate implementation and review of Destination Action Plans | ongoing |
| Educate industry and community on the value of tourism (action 48) | | Provide annual reports on the value of tourism to key stakeholders. | Quarterly reports provided to all stakeholders on performance of Great Ocean Road as a destination. | Ongoing |

| | | | |
|--|---|---|----------------|
| | | Annual report provided to all stakeholders on GORRT as an organisation. | |
| | Provide tools for research to be accessed and shared at local and regional level with industry and community stakeholder groups. | Quarterly reports provided to all stakeholders on performance of Great Ocean Road as a destination. | ongoing |
| Establish and implement an integrated and consistent world-class signage strategy. (Action 52) | Facilitate development of a signage strategy through GORRT partnership with local government. | Strategy development supported by Council stakeholder partners. | 17/18
18/19 |
| | Establish a Project Steering group to develop and implement project. | Project Steering Committee developed. | 17/18
18/19 |
| | Source state and federal funding opportunities to facilitate development and implementation | Funding opportunities explored. | 17/18
18/19 |
| Facilitate GORRT input into current management issues | Facilitate opportunities for GORRT and/or destination input into current management issues including:- <ul style="list-style-type: none"> • Roadside pullovers (Action 54) • GOR Archway (Action 55) • Coach parking (Action 56) | | ongoing |

| STRATEGIC PRIORITY NINE: INDUSTRY & COMMUNITY ENGAGEMENT | | | |
|---|---|--|--------|
| FOCUS:MANAGEMENT | | Increase understanding and recognition of the value of the visitor economy
industry participation and engagement in the visitor economy
Increase participation and engagement with GORRT | |
| OBJECTIVES <ul style="list-style-type: none"> • Build Industry resilience • Increase business sustainability • Increase industry coordination • Increase industry investment in the visitor economy • Strengthen our regional voice | | | |
| Strategies | Actions | Measures | timing |
| Develop and implement a stakeholder communication program that optimises industry industry engagement, participation and investment (Action 75) | Continue to build and strengthen GORRT database | Participation recorded and reported.
Reporting to include number, type, level of spend, retention etc | annual |
| | Build a suite of communication and engagement tools including corporate website, e-newsletter, association newsletters, annual performance activity and performance reports | Effectiveness of all tools monitored and reported. | 16/17 |
| | Leverage communication tools of all stakeholders and partners. | Effectiveness of all tools monitored and reported. | 16/17 |

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|----------------------------------|---|--|---------|
| | | | |
| Facilitate two-way communication | Provide vehicles for industry discussion and debate on key tourism issues | Industry development program includes opportunities for discussion and debate on current issues. | ongoing |

| | | | | |
|--|--|---|--|---------|
| STRATEGIC PRIORITY TEN : CRISIS MANAGEMENT | | | | |
| FOCUS:MANAGEMENT | | Increase the region’s capacity to prepare for, respond to and recover from crisis. | | |
| OBJECTIVES | | | | |
| • Increase industry resilience and sustainability | | | | |
| Strategies | Actions | Measures | | |
| Maintain and implement a crisis preparation, response and recovery plan that is integrated with emergency management services, local and state government. | Develop and maintain a risk assessment matrix | Risk Matrix developed and monitored by Finance & Risk and reported annually to Board. | | ongoing |
| | Develop and maintain a stakeholder database to facilitate industry and community communications | Database developed and maintained | | ongoing |
| | Develop and facilitate programs to educate and assist stakeholders to prepare for crisis response and recovery | Crisis management incorporated into annual industry development program. | | annual |
| Develop a Risk response team to manage crisis response and recovery. | Resource a response and recovery program to minimise impact on GORRT day to day operations. | Response and recovery program established and resourced | | 17/18 |



**GREAT OCEAN ROAD REGIONAL TOURISM
LTD**

Business Plan 2016-17

MISSION

To provide leadership for the development, marketing, management, advocacy and facilitation of sustainable yield growth of the regional visitor economy.

VALUES

1. Collaboration and engagement

Fostering collaboration and engagement with, and between, our stakeholders is critical to the development of a healthy, cohesive and responsible tourism industry that delivers outstanding visitor experiences.

2. Taking responsibility

We understand that our actions have impacts upon other people and the environment. We take responsibility for our behaviours, actions and achievements when:

- Working with stakeholders
- Providing commercial services
- Communicating to visitors
- making decisions that impact on the environment

3. Democratic leadership

Our leadership style reflects the acknowledgement that our role is to facilitate responsible and sustainable visitor economy development in the region, rather than to dictate how it should be done.



4. Teamwork

A culture of teamwork is essential for strong, productive relationships within GORRT, and with stakeholders.

5. Financial well-being

Being commercially viable as a regional tourism organisation and supporting the profitability of local businesses is essential to the sustainability of the tourism destination, and desirable in terms of enjoying good quality of life.

6. Flexibility and adaptability

To survive in a comparatively unpredictable, rapidly changing industry with a diverse range of stakeholders, we need to be willing to change, and responsive to change.

7. Authenticity and Realism

In order to be genuinely collaborative and build successful partnerships with the tourism industry and communities, we need to be authentic in the way we relate to others and realistic in our expectations.

8. Inclusiveness and acceptance of diversity

We consciously include and respond to the needs of a diverse range of stakeholders and visitors to the region.

9. Agents for change

Our role gives us the opportunity to work towards improving the regions social, economic, spiritual and environmental health.



SPECIFIC OBJECTIVES

Build a respected and professional organisation

1. Implement the organization governance structure, Strategic Business Plan, policies and procedures.
2. Take the foundations and framework established over the past two years and drive implementation.

Grow an engaged and supportive network of stakeholders and beneficiaries of the Visitor economy

1. Build industry engagement, interaction and investment
2. Build community engagement and awareness of the value of the visitor economy.
3. Strengthen the collaboration and cooperation with Council partners to maximize the return from the visitor economy and create a united and seamless approach to the marketing, management and development of the visitor economy.
4. Build and strengthen mutually beneficial agreements with local tourism and trader organisations; and
5. Foster and build strong, sustainable local organisations

Establish a communication and advocacy plan to build recognition of tourism as a regional economic, social, environmental and cultural driver

1. Champion the issues and challenges of managing mass visitation to key attractions
2. Advocate for innovative solutions that build sustainability of a vibrant visitor economy.
3. Maintain focus on the critical importance of maintenance and renewal to support investment attraction and infrastructure development.

Maintain a strategic, focused, research driven, accountable approach to the management, development, marketing and servicing of the visitor economy

1. Focus on visitor yield, dispersal and satisfaction
2. Establish a culture of continuous improvement
3. Empower and grow destinations to drive the development, prioritization and implementation of Destination Action Plans
4. Establish a regional performance monitoring dataset / dashboard



OPERATIONAL PLAN

This operational plan is based on the 3 year strategic business plan 2016-19. In 14/15 and 15/16 GORRT invested in the development of strategies and plans to establish the framework for a new regional approach to facilitate a collaborative and united approach to the marketing, management, and development of the visitor economy for the Great Ocean Road region. The priority in 16/17 is on implementation of this framework and plans and consolidating and growing the programs established. Critical to a program of implementation is growing the level of engagement, support and financial investment from industry and beneficiaries of the visitor economy.

1. STRATEGIC PLANNING (DEVELOPMENT)

- a. Develop a benchmark dashboard to monitor key analytics
- b. Provide annual review of all plans and strategies to ensure progress on key deliverables and prioritisation of activity
- c. Establish priorities and performance indicators for all annual programs
- d. Facilitate implementation of Destination Action Plans through Leadership Groups for each plan.
- e. Complete the Future of Visitor Servicing project for the region.

2. INFRASTRUCTURE DEVELOPMENT (DEVELOPMENT)

- a. Develop and implement an annual advocacy program that supports implementation of the Strategic Master Plan for the region and underpins local government advocacy agendas
- b. Seek and support GORRT representation on key State and regional organisations or working groups.
- c. Support GORRT participation in key projects, working groups and organisations. Priorities for 16/17 to include Wye-Jamieson Creek Economic recovery program, VTIC, Shipwreck Coast Master Plan, Flagstaff Hill Redevelopment, Tower Hill, Budj Bim, GOR Memorial Arch Master Plan, Warrnambool Sister City project etc.
- d. Support local government and private sector submissions for funding into key programs ie. TDDI round 2.
- e. Provide Stakeholders with access to research and regional networks to support infrastructure development and/or consultation with industry and community.



3. INVESTMENT ATTRACTION (DEVELOPMENT)

- a. Develop a regional dashboard to provide a snapshot of current and forecast data for the region. Dashboard to be made available to potential developers/investors.
- b. Facilitate industry and investors access to government networks and funding programs.

4. PRODUCT DEVELOPMENT (DEVELOPMENT)

- a. Facilitate an annual meeting of the stakeholder group of Growing Adventure Tourism in the Barwon South West to track progress of implementation and review priorities.
- b. Facilitate implementation of key recommendations of the Growing Adventure Tourism in the Barwon South West Marketing Action plan within existing GORRT tools and platforms.
- c. Develop a regional events strategy to ensure a collaborative and coordinated approach to growing and leveraging the regions tourism events

5. INDUSTRY DEVELOPMENT (DEVELOPMENT)

- a. Develop an annual program of activity to foster industry growth and development. Program to include:-
 - i. visitor servicing excellence,
 - ii. digital marketing excellence
 - iii. cultural awareness
- b. Continue to develop and evolve partnerships with local tourism and trader organisations. Prepare an annual report of funding allocations and activity delivered within this program.
- c. Develop a mentor program to foster and support leadership and succession planning at the destination/local trader organization level.

6. MARKETING

- a. Develop a Strategic Marketing plan for the region
- b. Develop & implement the brand communication framework for the region and key destinations.
- c. Develop creative assets and tools to integrate brand framework within stakeholder marketing and communications.
- d. Implementation and ongoing review of the integrated content strategy – print, digital, social – Future of Visitor Servicing review project to continue to inform strategy refinement.
- e. Develop annual marketing buy in program
- f. Annual program of business products and services developed.
- g. Develop tools to facilitate visitor servicing by all stakeholders.
- h. Develop & leverage key partnerships including continued investment and support of GSTR as the primary tool for international marketing, partnership with TA on Coast & Aquatic and Visit Victoria through Wander Victoria.
- i. Development of tools to service key growth markets ie. China

**7. PARTNERSHIPS (MANAGEMENT)**

- a. Evolve the GORRT business services model to facilitate 'buy in' from all beneficiaries of the visitor economy
- b. Maintain and grow commercial partnerships with local tourism and traders groups.
- c. Implement new GORRT resourcing model to support implementation of GORRT and destination programs.

8. VISITOR MANAGEMENT (MANAGEMENT)

- a. Educate industry and community on the value of the visitor economy.
- b. Work with the leadership group to effectively communicate and seek community input on the priorities of the Destination Action Plan.
- c. Facilitate GORRT input into current management issues

9. INDUSTRY & COMMUNITY ENGAGEMENT (MANAGEMENT)

- a. Continue to grow industry network including level and value of participation in GORRT programs.
- b. Development, implementation and monitoring of industry communication and engagement program.

10. CRISIS MANAGEMENT (MANAGEMENT)

- a. Develop and monitor risk assessment matrix
- b. Develop and maintain industry stakeholder database for communication purposes.
- c. Include crisis management preparedness within industry development program.

IMPLEMENTATION DRIVERS

Performance Monitoring

The Board is committed to a culture of continuous review and improvement. Programs will continue to be reviewed for their effectiveness in servicing the visitor economy and meeting the needs of all stakeholders.

Resourcing

In 14/15 and 15/16 GORRT invested in the development of strategies and plans to establish the framework for a new regional approach to facilitate a collaborative and united approach to the marketing, management, and development of the visitor economy for the Great Ocean Road region. The priority in 16/17 is on implementation of this framework and plans and consolidating and growing the programs established. Critical to a program of implementation is growing the level of engagement, support and financial investment from industry and beneficiaries of the visitor economy. This is being supported through the implementation of the new staffing model.

**OM162408-9 CONTRACT 1607 - PROVISION OF BUILDING SURVEYING AND
INSPECTION SERVICES**

| | | | |
|-------------|-------------------------------------|-----------|-------------|
| AUTHOR: | Andrew Kavanagh | ENDORSED: | Brydon King |
| DEPARTMENT: | Development &
Community Services | FILE REF: | F16/6678 |

Purpose

Council approval is required to award Contract 1607 – Provision of Building Surveying and Inspection Services for which tenders have been received.

Declaration of Interests

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

Background

Tenders closed on 1 June 2016 for the provision of building surveying and inspection services to Council.

Council intends to appoint a contractor for an initial period of two years from 1 September 2016 to 31 August 2018 with a one-year option to extend the Contract. Council requires a 1.2 full-time-equivalent service (ie, 48 hours per week) performed on-site at Council's Colac offices. The tender price includes all allowances for travel and accommodation.

The contract is a lump sum contract with provision for adjustment for rise and fall on the anniversary of the commencement of the contract in accordance with the Australian Bureau of Statistics Consumer Price Index – All Groups (Melbourne).

A single tender was received from **MBS Services Australia Pty Ltd**.

The tender was evaluated and scored in accordance with Council's *Quotations/Tendering & Purchasing Procedure* using selection criteria specified which includes:

| <u>Criteria</u> | <u>Weighting</u> |
|--|-------------------------|
| Tendered price | 50 |
| Previous experience and past performance in the role | 25 |
| Capacity and resources | 25 |

MBS Services Australia has provided the tendered services to Council since 2012 as one of four members of a panel contract. It has been the most frequently engaged panellist over the course of the contract.

The Tender Evaluation Panel consisted of the following members:

General Manager, Development and Community Services
Acting Manager Planning, Building and Health
Contract Governance Coordinator

Council Plan / Other Strategies / Policy

Good Governance

Means we care about and are responsive to the community, encourage democratic participation and involve people in decisions that affect them. We strive for excellence in financial management and council services, and always look for better ways to do things.

Our Goal:

Ensure transparency of governance practices, the capability of our organisation and effective resource management.

Issues / Options

It is important that Council award the contract to ensure its compliance with the *Local Government Act* as it relates to tendering for contracts with a value of \$150,000 or greater for goods or services.

Proposal

It is proposed that the best value option for Council is to award the contract to MBS Services Australia, based on the company's tender price and the quality of its submission, including past performance with Council and nominated personnel for performing the contract.

Financial and Other Resource Implications

The tender of MBS Services Australia is within Council's budget allocation for building inspection and surveying services.

Risk Management & Compliance Issues

MBS Services Australia is a highly reputable company. Council has had an effective relationship with the company since 2012. The Tender Evaluation Panel considers that there is a low risk to Council in awarding it the contract.

Environmental and Climate Change Considerations

Nil.

Community Engagement

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of January 2010, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected would be inform. The tender was advertised in the Colac Herald on 29 April 2016. The tender was also advertised on Council's website and via Tenderlink.

Implementation

Upon Council's approval, the Contract will be awarded to MBS Services Australia.

Conclusion

A recommendation is made to award the contract to MBS Services Australia at its tendered lump sum price of \$228,980 (excluding GST) per annum.

Attachments

Nil

Recommendation

That Council:

- 1. Awards Contract 1607 – Provision of Building Surveying & Inspection Services to MBS Services Australia Pty Ltd for the period 1 September 2016 to 31 August 2018, with provision of a one year option to extend the contract, at the tender price of \$228,980.00 (excluding GST) per annum.***
- 2. Authorises the Chief Executive Officer to place under Council Seal the contract documents following award of Contract 1607.***
- 3. Authorises the Chief Executive Officer to perform all functions and exercise all powers of the principal in accordance with the terms of the Contract, including exercising the option to extend the Contract at the conclusion of its original term.***

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**OM162408-10 CONTRACT 1609 - BITUMINOUS SEALING WORKS**

|             |                                   |           |               |
|-------------|-----------------------------------|-----------|---------------|
| AUTHOR:     | Andrew Kavanagh                   | ENDORSED: | Ingrid Bishop |
| DEPARTMENT: | Infrastructure & Leisure Services | FILE REF: | F16/6696      |

**Purpose**

To consider the awarding of Contract 1609 - Bituminous Sealing Works for which tenders have been received.

**Declaration of Interests**

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

**Background**

Tenders closed on 20 July 2016 for the annual spray sealing of Council's road network (approx. 250,000 sq. m), including reseals and final seals. Tenders were also sought for five primer seals (approx. 43,000 sq. m) that may be awarded as a separate contract at Council's discretion.

Both proposed contracts are lump sum contracts with a rise and fall provision included for any increase (or decrease) in prices for bitumen products. Individual jobs are priced to determine an adjustment to rates if the work is reduced or varied.

Tenders were received from the following contractors (in alphabetical order):

- Boral Resources (Vic) Pty Ltd
- Inroads Pty Ltd
- Roads Corporation (Sprayline)

All of the above contractors tendered for both sets of works – reseals and final seals (Part A) and primer seals (Part B).

Tenders were evaluated and a recommendation made in accordance with Council's *Procurement Policy* and *Tenders/Quotations and Purchasing Procedure*.

All tenders were evaluated and scored using the following selection criteria:

| <b><u>Criteria</u></b>                                          | <b><u>Weighting</u></b> |
|-----------------------------------------------------------------|-------------------------|
| Tendered price                                                  | 50                      |
| Relevant expertise and track record                             | 25                      |
| The resources available to the Tenderer to perform the Contract | 25                      |

The Tender Evaluation Panel consisted of the following members:

- Manager Assets and Property Services
- Manager Services and Operations
- Project Delivery Officer
- Contracts Governance Coordinator

Tenderers must also satisfy Colac Otway Shire Council that they meet requirements for:

- Occupational health & safety
- Financial viability
- Time requirements of the Contract
- Value for money

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

### **Good Governance**

Means we care about and are responsive to the community, encourage democratic participation and involve people in decisions that affect them. We strive for excellence in financial management and council services, and always look for better ways to do things.

#### *Our Goal:*

Ensure transparency of governance practices, the capability of our organisation and effective resource management.

### **A Planned Future**

Creates an attractive shire with quality buildings and spaces, accessible travel and transport, and a community that has the services and facilities it needs now and in the future; supports a prosperous economy where trade, manufacturing and business activity flourishes.

#### *Our Goal:*

Facilitate the growth, liveability and development of the shire and encourage innovation and efficiency in the local economy.

### **Issues / Options**

It is considered appropriate to award the contracts and proceed with the works in a timely manner to ensure the annual spray sealing program is undertaken, enabling the maintenance of the road network in keeping with Council's commitment to maintenance and renewal of its road infrastructure.

### **Proposal**

The Tender Evaluation Panel selected Inroads Pty Ltd ("Inroads") as the preferred tenderer for both reseals and final seals (Part A) and primer seals (Part B) as their submission was best value, lowest cost and scored highest on the selection criteria.

It is proposed to accept Inroads' tender and engage the contractor to complete the annual spray seal program for this year.

### **Financial and Other Resource Implications**

The preferred tender from Inroads for reseals and final seals at \$949,164.83 (excluding GST) is within the budget allocation.

The preferred tender from Inroads for primer seals at \$152,614.83 (excluding GST) is within the budget allocation.

The annual sealing program represents a significant ongoing investment made by Council to maintaining and renewing its road network. In the event there are outstanding monies available these would be used to bring forward additional candidate sealing projects from future years of this program.

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

The preferred tenderer, Inroads, has a sound track record of management of risks and completion of contracts to specification and on time. Council should be confident that contracting with Inroads will manage exposure to occupational health and safety issues and any non-compliance issues with the contract.

Inroads have provided details to confirm they have an effective, suitable occupational health and safety system. Inroads are a quality assured company and are registered under VicRoads' pre-qualification scheme.

Prior to works commencing an independent audit of the Contractor's OH&S system is required under the contract.



### **Environmental and Climate Change Considerations**

Contractors are required under the contract to provide suitable approved environmental plans by the contract supervisor and to actively prevent adverse occurrences such as damage to vegetation or environmental damaging spillages.

The program includes a number of high conservation value roadsides which will require specific consideration in managing risk.

Inroads has confirmed that it is prepared to undertake the necessary measures of putting into place adequate procedures for protection of roadside vegetation including a joint inspection with Council officers for those sites of conservation significance.

### **Community Engagement**

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected would be to inform. The tender was advertised in the Colac Herald on 17 June 2016 and the Geelong Advertiser on 18 June 2016. The tender was also advertised on the Colac Otway Shire Council website and via TenderSearch.

Prior to commencement of sealing works, a public notice is to be placed in the local newspaper(s) to advise of the occurrence of sealing works which may impact upon the community. Also prior to undertaking works, the successful contractor is required to notify affected residents with a letterbox drop.

### **Implementation**

Upon Council's approval, the Contract will be awarded and works will be programmed to commence. If successful, Inroads proposes to commence works upon Council handing over possession of stacksites during the week commencing 28 November. According to the program submitted by Inroads all works will be completed well before Council's nominated practical completion date of 31 March 2017.

### **Conclusion**

It is recommended that Council award the contract to Inroads Pty Ltd to complete the sealing program for 2016/2017 – reseals and final seals (Part A) and primer seals (Part B).

### **Attachments**

Nil

### **Recommendation**

#### ***That Council:***

- 1. Awards Contract 1609 for Bituminous Sealing Works to Inroads Pty Ltd at the lump sum prices of \$949,164.83 (excluding GST) for reseals and final seals (Part A) and \$152,614.83 (excluding GST) for primer seals (Part B).***
- 2. Authorises the Chief Executive Officer to sign and seal the contract documents following award of Contract 1609.***
- 3. Authorises the Chief Executive Officer to perform all functions and exercise all powers of the principal in accordance with the terms of the Contract.***

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**OM162408-11 LAVERS HILL TO CROWES AND MELBA GULLY OFF-ROAD TRAIL -
DRAFT REPORT AND CONCEPT PLANS**

| | | | |
|-------------|-----------------------------------|-----------|---------------|
| AUTHOR: | Nicole Frampton | ENDORSED: | Ingrid Bishop |
| DEPARTMENT: | Infrastructure & Leisure Services | FILE REF: | F15/8105 |

Purpose

To present the Lavers Hill to Crowes and Melba Gully Off-Road Trail – Draft Report and Concept Plans for endorsement by Council in order to commence public exhibition in accordance with Council's Community Engagement Policy 2013.

Declaration of Interests

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

Background

The Lavers Hill and District Progress Association submitted an application under the 2015-2016 Small Town Improvement Program (STIP) to develop a concept plan for a shared path from Lavers Hill to Crowes including a possible path to Melba Gully State Park. The construction of a shared path is identified as a high priority on the Lavers Hill Township Master Plan (2006).

When Council approved the allocation of \$10,800 under the 2015/16 STIP for the project, it did so with an additional resolution. The Council resolution from the 24 June 2015 Council Meeting states:

“Confirms that the allocation of funds for the development of concept design plans for the Lavers Hill to Crowes shared path does not infer any commitment for future support for the design and construction of the Lavers Hill to Crowes shared path”.

Council appointed Michael Smith and Associates to undertake the project.

The aim of the project was to, on behalf of the Lavers Hill community, assess and analyse the viability and practicality of the community's proposed route for an off-road trail between Lavers Hill and Crowes with a link to Melba Gully.

Council Plan / Other Strategies / Policy

A Planned Future

Creates an attractive shire with quality buildings and spaces, accessible travel and transport, and a community that has the services and facilities it needs now and in the future; supports a prosperous economy where trade, manufacturing and business activity flourishes.

Our Goal:

Facilitate the growth, liveability and development of the shire and encourage innovation and efficiency in the local economy.

A Place to Live and Grow

Is a community where people feel cared for and supported; where buildings and spaces facilitate creativity, social activity and enrichment of life, and people have access to gain the skills and education needed to reach their potential.

Our Goal:

Improve access to buildings, spaces, services and education to support and enable quality of life.

A Healthy Community and Environment

Actively connects and includes people of all ages and backgrounds and promotes a healthy and vibrant community life in a clean, safe and sustainable environment.

Our Goal:

Respect cultural differences, support a diverse range of healthy and creative activities, foster community safety and promote environmental sustainability.

Related Strategic Justification

This project aligns to Council's Active Transport Strategy, the Colac Otway Public Open Space Strategy and the Old Beechy Rail Trail strategic directions. Whilst the project is not specifically mentioned in Council's Physical Activity Strategy, the idea for an off-road trail is consistent with the recommendations and principles by providing improved environments that support physical activity, walkability and cyclability.

Issues / Options

A thorough and detailed analysis for determining the best off-road trail alignment from Lavers Hill to Crowes and Melba Gully has been undertaken. A detailed draft project report and concept designs are attached.

As part of the Lavers Hill and District Progress Association's STIP application, the community proposed a possible alignment which formed the basis for an initial assessment of the proposed trail route. The community project team (including representatives from the Lavers Hill and District Progress Association, Lavers Hill Hall Committee, Lavers Hill P12 College and Lavers Hill community members) met with Council's Recreation and Open Space Coordinator and the Michael Smith and Associates project team on Thursday 28 April 2016 for a detailed site assessment.

This meeting involved initial discussion on the community's proposed route, then a detailed onsite analysis of the proposed alignment to determine its suitability for walkers and cyclists, taking into consideration the significant number of vehicles using the Great Ocean Road.

Several principles were established to guide the proposed trail alignment:

- User safety with physical and visual separation of the off-road trail to the Great Ocean Road. Separation provides trail user safety and allows for retention of indigenous vegetation to the immediate edge of the road shoulder, thereby maintaining the scenic roadside landscape.
- Minimise the extent of native vegetation clearance.
- Use existing flat ground and parts of the former Old Beechy Railway line alignment where possible.
- Maintain visual sight lines of driveway entrances to private properties and the trail. Signage to warn pedestrians and cyclists of private driveways which the off-road trail crosses will need to be provided.
- Minimise road crossing points particularly on the Great Ocean Road, which is a busy road with buses, cars and trucks.
- Provide interpretive, directional and information signage along the trail, including specific warning signage on procedures for days of Extreme and Code Red fire danger.
- Minimise the length of the off-road trail on private land.
- Discuss the alignment options with the Old Beechy Rail Trail Committee.

The proposed off-road trail alignment follows the Lavers Hill existing concrete footpath for the township section. The trail extends past the Lavers Hill P12 College along the vegetated embankment to a trail crossing point over the Great Ocean Road. Discussions have been held with VicRoads and in-principle support for the relocation of the 60km/h sign has been provided to ensure user safety when crossing the Great Ocean Road. The proposed off-road trail then follows the south side of the Great Ocean Road meandering through the natural alignment of the roadside verge. Due

to the high traffic volumes of the Great Ocean Road, a conscious effort has been made to keep the trail separate from the road shoulder for the safety benefit of separation between users of the trail and vehicles. The trail then continues off-road to the Crowes Station and Buffer Stop and on to the Melba Gully carpark. It has not been possible for the proposed off-road trail alignment to follow the former alignment of the Old Beechy Rail line.

A meeting with members of the project team and representatives from the Old Beechy Rail Trail Committee provided an overview of the findings from the investigations and presented a sketch map of a proposed trail alignment. The Old Beechy Rail Trail Committee members understand why the proposed off-road trail route is unable to follow the former alignment of Old Beechy Rail line.

The proposed off-road trail alignment has been designed with consideration to the safety of trail users and vehicles using the Great Ocean Road. The proposed off-road trail considers the safety of local residents who regularly walk to Lavers Hill along the Great Ocean Road.

An off-road trail from Lavers Hill to Crowes and Melba Gully appears to be physically achievable. Preliminary probable costs for the next stage of detailed designs and the construction of the off-trail are in the vicinity of \$890,000. The costs are detailed in the draft report. The preliminary costs are for construction only and do not include the ongoing maintenance costs that would be required for the trail.

If the trail were to be constructed, the community's identified stages for development are:

- Stage 1 – construct the off-road trail from Lavers Hill P-12 College to the Crowes Buffer Stop (approximately 2kms). By using the existing Lavers Hill township footpath, this would provide access for the community and visitors from Lavers Hill's Yatzie's Café to the Crowes Buffer Stop.
- Stage 2 – construct the off-road trail from Crowes Buffer Stop to Melba Gully (approximately 1km). This would provide locals and tourists with an off-road walking trail from Lavers Hill to the renowned Melba Gully National Park.
- Stage 3 – construct an off-road trail in the Lavers Hill township from the "Blackwood Gully Tearooms" to the Lavers Hill off-road trail Great Ocean Road crossing point from Stage 1 (approximately 1km). *Please note – this section of the trail has not been costed as part of this project. The former Old Beechy Rail line alignment is visible and it is proposed that this section be designed and costed in the future.*

Presenting the draft documents to Council to be placed on public exhibition is concluding the consultation process and seeking formal submissions to be received for the project. Placing the documents on public exhibition does not infer Council commitment for future financial support for the detailed design and construction of the Lavers Hill to Crowes and Melba Gully off-road trail.

The concept plans have been developed on behalf of the Lavers Hill and District Progress Association as an outcome of a 2015/16 STIP project. The draft report and concept plans would provide the Lavers Hill community with the necessary documents required to seek funding for the detailed design and construction of the proposed off-road trail from Lavers Hill to Crowes and Melba Gully.

Proposal

It is proposed that Council resolve to publicly exhibit the Lavers Hill to Crowes and Melba Gully Off-Road Trail – Draft Report and Concept Plans on behalf of the Lavers Hill community for a minimum six week period in accordance with the Colac Otway Shire Community Engagement Policy 2013, from Friday 26 August 2016 to Monday 10 October 2016.

The 2016 Local Government election (caretaker) period is from 21 September to 22 October 2016. Council has conducted community consultation to develop the draft report and concept plans. Placing these documents on public exhibition is completing the project process by seeking community submissions. As stated previously, placing the documents on public exhibition is not inferring

Council's future financial support for the detailed design and construction of the Lavers Hill to Crowes and Melba Gully off-road trail. Advice from Council's Manager Governance and Customer Service has been sought to ensure this process aligns to the Local Government election (caretaker) period guidelines.

Following the 2016 Local Government elections, the new Council will be briefed on the plans if endorsed by the current Council.

Financial and Other Resource Implications

Council engaged a contractor on behalf of the Lavers Hill and District Progress Association to work with the community to develop concept plans for an off-road trail from Lavers Hill to Crowes and Melba Gully. After a thorough analysis, a proposed off-road trail alignment has been determined. Whilst the proposed off-road trail from Lavers Hill to Crowes and Melba Gully appears to be physically achievable, the \$890,000 for detailed designs and construction is a significant cost.

Placing the detailed report and concepts plans on public exhibition does not infer Council's commitment for future financial support for the detailed design and construction of the Lavers Hill to Crowes and Melba Gully off-road trail. Council will need to determine what future role it will play in advocating for, and/or funding the project, on behalf of the community. This project is not part of Council's current Advocacy Strategy and there is no current or future Council budget allocation to develop detailed designs and construct the proposed off-road trail from Lavers Hill to Crowes and Melba Gully.

Any future business case for the construction of the off-road trail would need to identify possible funding sources and clearly articulate the return on investment from an economic and social perspective.

Risk Management & Compliance Issues

In planning the off-road trail alignment from Lavers Hill to Crowes and Melba Gully, safety for trail users was the primary concern for the Lavers Hill and District Progress Association and project team. Linked with safety for trail users was the retention of the roadside's scenic character. The Lavers Hill to Crowes section of the Great Ocean Road is frequented by many international and interstate tourists unfamiliar with the heavily trafficked road and local climatic conditions. The road is also a route regularly used by trucks travelling in both directions. The parameters of trail user safety and scenic character mutually worked together to determine the off-road trail to run parallel to much of the Great Ocean Road Reserve, through maintaining a strip of existing indigenous vegetation parallel to the road as a visual barrier and providing a 5-8 metres setback from the road seal.

The off-road trail alignment proposes one road crossing of the Great Ocean Road. The consultant's project team included an experienced traffic engineer. An assessment of the community's two proposed road crossing points was undertaken and alternative crossings were required. A single crossing of the Great Ocean Road is proposed, and in principle support from VicRoads to change the speed limit associated with this crossing to 60kmh has been received. This is discussed in detail in the attached report.

The idea of an underpass for the proposed crossing point under the Great Ocean Road was raised during the consultation process by a respondent and by a Senior Traffic Management Officer at VicRoads. The underpass would provide more flexibility in the location of a crossing point along the trail route than an on-road crossing; however the concern with the proposal for an underpass is providing the room at each opening for the DDA compliant ramp approaches to the underpass approach and departure sides, and personal safety issues in a quiet area. Due to the significant amount of civil works required, the cost for an underpass is very high, in the vicinity of several hundreds of thousands of dollars. Based on this information, an on-road crossing has been proposed rather than an underpass.

The proposed off-road trail concept plans have extensively considered vehicle, pedestrian and cyclist safety. The concept plans propose one Great Ocean Road crossing. A detailed assessment has been conducted in determining any crossings of the Great Ocean Road. A schematic plan of the proposed on-road crossing has been included on map L02 of the attached concept plans.

The Lavers Hill and surrounding region is extremely vulnerable to bushfire events. Warning signage would be installed at access points along the trail (6 locations) advising any closure of the trail on Extreme and Code Red Days. 'A' frame boards should be provided along the trail to CFA requirements, with the setting out of the 'A' frame boards being controlled on a daily basis by members of the local community.

Risk management considerations will be factored in more detail if the project were to move to detailed design and if the off-road trail were to be constructed.

Environmental and Climate Change Considerations

A thorough and detailed assessment of the proposed off-road trail alignment has been conducted in developing the draft concept plans and detailed report. Environmental considerations have been investigated in the development of the plans. The report details a preliminary assessment of native vegetation losses and off-sets required for the proposed off-road trail from Lavers Hill to Crowes and Melba Gully.

Environmental considerations will be factored in if the off-road trail were to move to the detailed design stage and considered for construction.

Community Engagement

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

In preparing the draft concept plans and report for an off-road trail from Lavers Hill to Crowes and Melba Gully, the method selected to engage with the community has been to collaborate.

This project was identified and driven by the Lavers Hill community.

The Lavers Hill community has been invited to participate in a number of consultation and information activities including:

- Community Project Team meeting on 28 April 2016. Representatives from the Lavers Hill and District Progress Association, Lavers Hill Hall Committee, Lavers Hill P12 College and community members met with the consultant team and Council's Recreation and Open Space Coordinator to discuss the project and undertake a detailed site inspection of the community's proposed trail route.
- Meeting with the Old Beechy Rail Trail Committee representatives on 29 April 2016 to discuss the findings from the detailed site inspection the previous day and presentation of a "sketch" map of the proposed off-road trail alignment. An onsite assessment to highlight the former Old Beechy railway line alignment was conducted.
- The detailed plans and a project bulletin (both hard and electronic copies) were provided to the Lavers Hill Community Project Team for distribution to the Lavers Hill community to create awareness and discussion about the project (see attached project bulletin).
- An information session ("drop in" meeting) with the Lavers Hill community to present and discuss the draft concept plans was held on Saturday 11 June 2016 from 2-4pm at the Lavers Hill Hall. Ten (10) community members attended the session and several community members provided apologies for their inability to attend the meeting.
- Copies of the concept plans continue to be displayed in local Lavers Hill businesses.

- The Old Beechy Rail Trail Committee has been informed of the project's progress and has viewed the draft concept designs at two of their committee meetings. Feedback from the committee has been reflected in amendments to the draft concept designs.

A thorough community engagement process has provided the opportunity for the community to be involved and provide feedback in determining the proposed alignment for the off-road trail from Lavers Hill to Crowes and Melba Gully.

The community has demonstrated support for the project and the proposed alignment. It is now recommended that the plans be placed on public exhibition seeking requests for public submissions.

If supported by Council, officers will commence the public exhibition process by directly contacting organisations and individuals who have previously been involved in the project, placing advertisements in the local media and providing information in local newsletters. Council officers will work with the local project team which includes representatives from the Lavers Hill and District Progress Association, Lavers Hill Hall Committee, Lavers Hill P12 College and Lavers Hill community representatives to circulate the draft report and concept plans through their membership base.

Implementation

The public exhibition process will be implemented as outlined above and will commence the end of August 2016, subject to endorsement of this report.

At the conclusion of the public exhibition period, all written submissions and comments received will be reviewed by the local project team, Council officers and the consulting team. Suggested modifications to the draft report and concept plans may be made as deemed appropriate and then reported to Council at a future Council meeting for consideration and final adoption.

Conclusion

Council engaged a contractor on behalf of the Lavers Hill and District Progress Association to work with the community to develop concept plans for an off-road trail from Lavers Hill to Crowes and Melba Gully. After a thorough analysis, a proposed off-road trail alignment has been determined, and whilst an off-road trail appears to be physically achievable, the \$890,000 for detailed designs and construction is a significant cost. The Lavers Hill to Crowes and Melba Gully Off-Road Trail – Draft Report and Concept Plans are presented to Council to be placed on public exhibition in order to conclude the consultation process and seek formal submissions to be received for the project.

Placing the documents on public exhibition does not infer Council commitment for future financial support for the Lavers Hill to Crowes and Melba Gully off-road trail project to progress to detailed design and construction.

In accordance with Council's Community Engagement Policy 2013, it is important to test the draft report and concept plans for an off-road trail from Lavers Hill to Crowes and Melba Gully with the broader community by placing the documents on public exhibition.

Attachments

1. Project Bulletin (1 May 2016) - Lavers Hill to Crowes and Melba Gully Concept Plans for an Off-Road Trail
2. Draft Concept Plans - Lavers Hill to Crowes and Melba Gully Concept Plans for an Off-Road Trail - Maps L1-5
3. Draft Report - Lavers Hill to Crowes and Melba Gully Concept Plans for an Off-Road Trail

Recommendation

That Council:

- 1. Endorses the Lavers Hill to Crowes and Melba Gully Off-Road Trail – Draft Report and Concept Plans to be placed on public exhibition in accordance with Council's Community Engagement Policy 2013, from Friday 26 August 2016 to Monday 10 October 2016.***
- 2. Receives a report summarising the feedback from the public exhibition period at a future Council meeting.***

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## LAVERS HILL TO MELBA GULLY AND CROWES OFF-ROAD TRAIL

COMMUNITY DROP-IN MEETING 11th JUNE 2016

BULLETIN N°1 MAY 2016

The Lavers Hill and District Progress Association was successful in receiving funding under the Colac Otway Shire Council's Small Town Improvement Program for 2015/2016 to develop concept plans for a shared pathway from Lavers Hill to Crowes and Melba Gully.

Colac Otway Shire Council has engaged Michael Smith and Associates to undertake the planning feasibility of an off-road walking and cycling trail linking Lavers Hill with Crowes and Melba Gully. The first analytical part of the project has been undertaken in discussion with the Lavers Hill Community Association and representatives of the Old Beechy Rail Trail Committee.

Following on site inspection a preferred route has been plotted and reordered as field notes and cross sections prepared.

You are invited by Colac Otway Shire Council to review the draft route and provide comment.

There will be a community meeting to discuss the proposed route. Alternatively, you can make comments online through the Council's website.

Any enquiries, please call Ms Nicole Frampton on 5232 9400 or email [nicole.frampton@colacotway.vic.gov.au](mailto:nicole.frampton@colacotway.vic.gov.au)

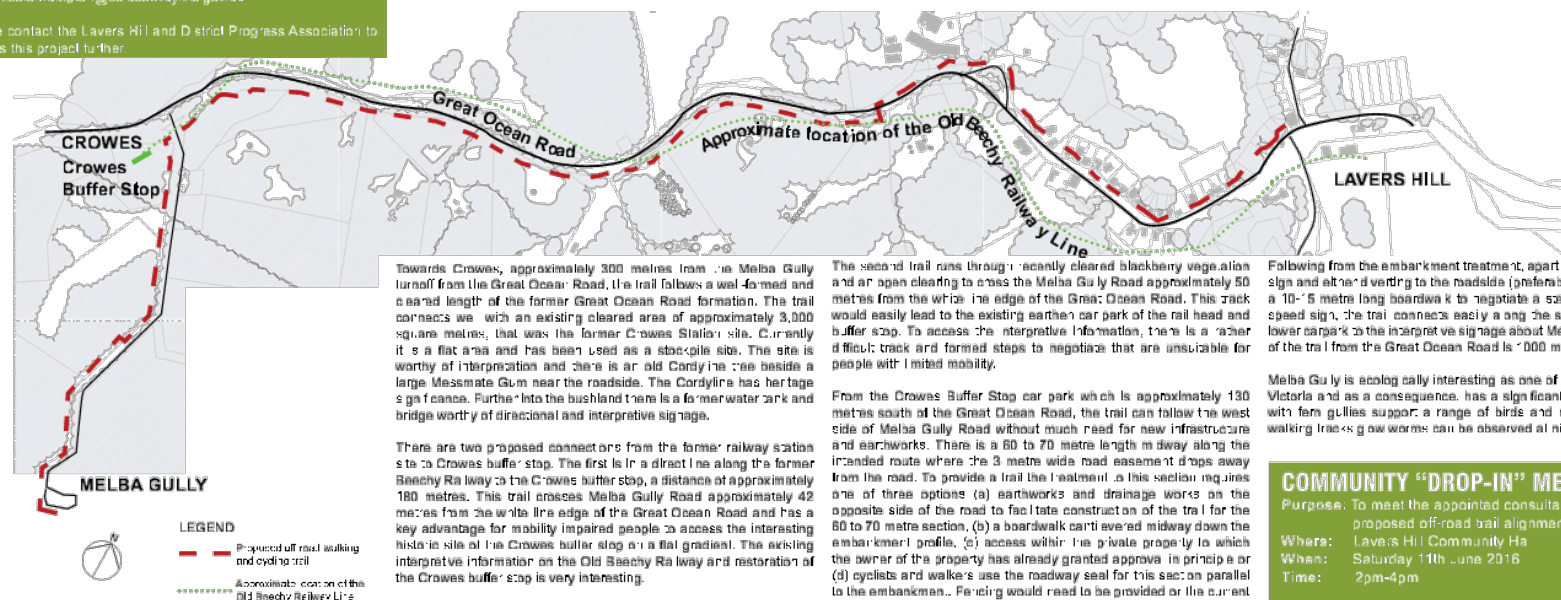
Please contact the Lavers Hill and District Progress Association to discuss this project further.

The community's idea of a walking and bicycle trail connecting Lavers Hill to Crowes and Melba Gully is to provide a safe and pleasant walking and cycling trail with a public and and a points of historical and environmental interest, provide interpretive and directional signage. It is envisaged the trail would be a 2 metre wide gravel path with potential to upgrade to a hard surfaced path in the future.

From the core town centre of Lavers Hill at Yates Café, beginning at the bus stop, the trail is located on an existing 1.5 metre wide concrete footpath that is in good condition. There is a 32 metre length of timber boardwalk that forms the path just west of the public toilets. The existing concrete footpath gently meanders past residential properties and several businesses to finish at the Lavers Hill K-12 College. At the College, the proposed trail follows the vegetated embankment above the Great Ocean Road. The precise college boundary line on the embankment is unknown and the title agreement will need to be resolved in the next stage of planning of the trail. Once on more level ground the trail is located on a wide grassed nature strip with several cherry trees parallel to the road. As the trail route from the school to Crowes could run on either side of the road, detailed inspection with two local interest groups has resolved that west of the college's embankment the safest and the practical long term route, without interference with logging and plantation operations, is to run the trail to the south side of the Great Ocean Road.

The trail crosses the Great Ocean Road at an existing orange coloured 'School Ahead' sign at right angles to an existing large dead tree. This avoids a pinch point further east on the south side of the Great Ocean Road. This road crossing is subject to the VicRoads approval of the existing 60 Kph sign being moved approximately 130 metres west and trimming some indigenous vegetation which forms a hedge row, limiting sightlines particularly on the inside radius curve to the north side of the Great Ocean Road.

Now on the south side of the Great Ocean Road, the trail connects through a short length of what looks like private property (initial conversations have been held with the property owner and the trail alignment will need to be agreed to by the property owner), then connects along a powerline easement of slashed grass to then re-emerge along the roadside. Nallie Nook's driveway. A very interesting feature at the row of Layland Cypress trees is the presence of the former railway line tracks within the grassed road reserve. There are two short 2.3 metre lengths of railway tracks. This site is worthy of interpretation in a covert manner to avoid possible theft or vandalism of the rails. From this area the trail follows the roadside verge and a key parameter for this section is to maintain a line of existing indigenous vegetation, not only as a physical and psychological safety barrier, but as a strip of vegetation that retains the existing roadside character and amenity from a scenic perspective. By keeping the trail separate to the road shoulder this has a safety benefit of separation between people and vehicles. There are two sections towards Crowes that require approximately 25 and 50 metres of boardwalk constructed to the embankment slope. Boardwalks will need handrails and materials can be the inert type of welded and hardened recycled plastics for longevity and grip. There will be a need for indigenous vegetation clearance to facilitate the trail between the above-mentioned private property and the former road formation.



## COMMUNITY "DROP-IN" MEETING

**Purpose:** To meet the appointed consultant and discuss the proposed off-road trail alignment being presented.

**Where:** Lavers Hill Community Hall

**When:** Saturday 11th June 2016

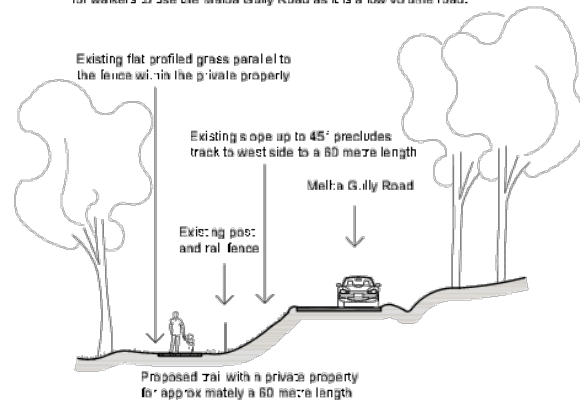
**Time:** 2pm-4pm

## LAVERS HILL TO MELBA GULLY AND CROWES OFF-ROAD TRAIL

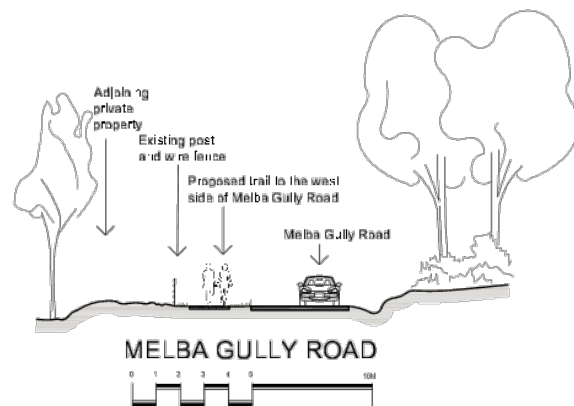
## COMMUNITY MEETING

BULLETIN N°1 MAY 2016

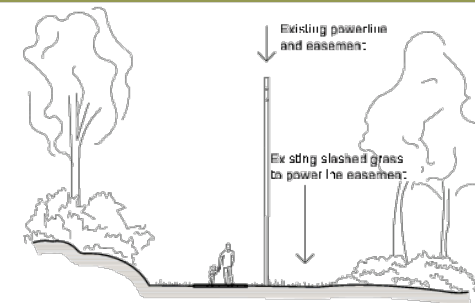
An option for this 60 metre diversion within private property would be for walkers to use the Melba Gully Road as it is a low volume road.



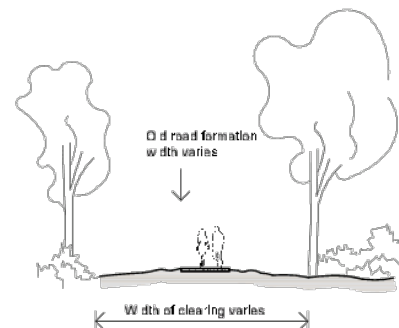
MELBA GULLY ROAD



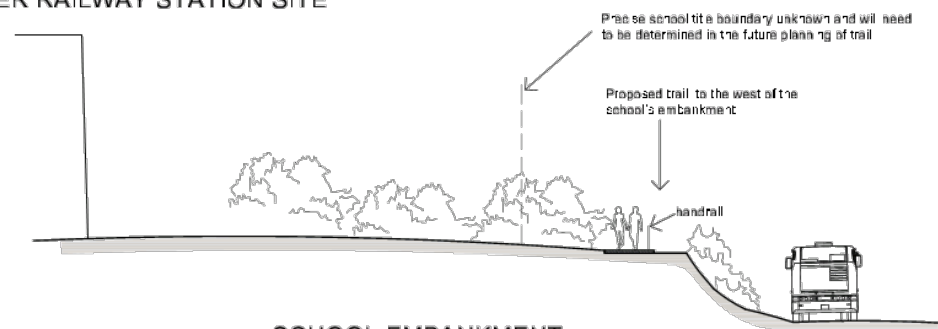
MELBA GULLY ROAD



POWERLINE EASEMENT

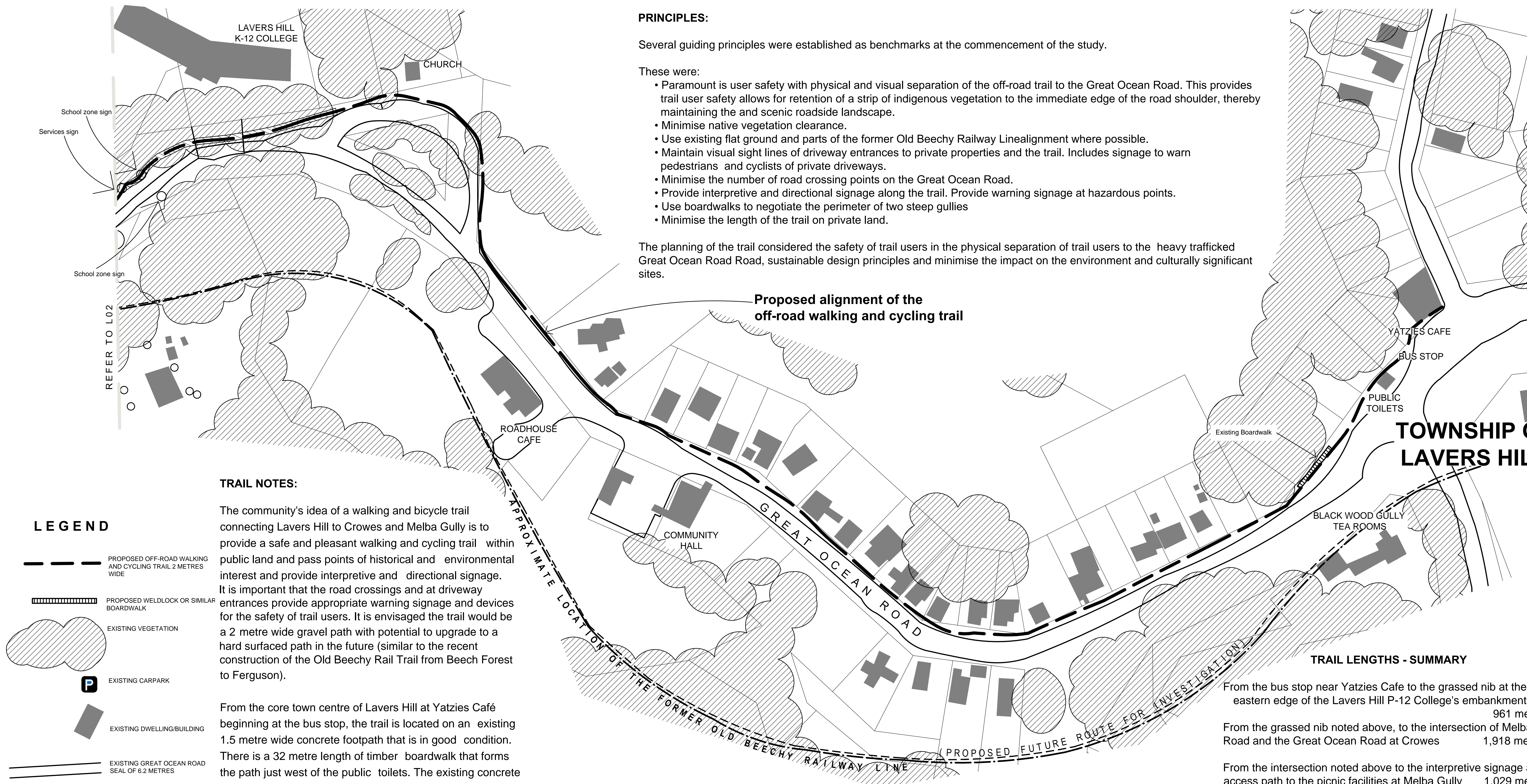


OLD ROAD FORMATION NORTH OF THE FORMER RAILWAY STATION SITE



SCHOOL EMBANKMENT





**PRINCIPLES:**

Several guiding principles were established as benchmarks at the commencement of the study.

These were:

- Paramount is user safety with physical and visual separation of the off-road trail to the Great Ocean Road. This provides trail user safety allows for retention of a strip of indigenous vegetation to the immediate edge of the road shoulder, thereby maintaining the and scenic roadside landscape.
- Minimise native vegetation clearance.
- Use existing flat ground and parts of the former Old Beechy Railway Linealignment where possible.
- Maintain visual sight lines of driveway entrances to private properties and the trail. Includes signage to warn pedestrians and cyclists of private driveways.
- Minimise the number of road crossing points on the Great Ocean Road.
- Provide interpretive and directional signage along the trail. Provide warning signage at hazardous points.
- Use boardwalks to negotiate the perimeter of two steep gullies
- Minimise the length of the trail on private land.

The planning of the trail considered the safety of trail users in the physical separation of trail users to the heavy trafficked Great Ocean Road Road, sustainable design principles and minimise the impact on the environment and culturally significant sites.

**Proposed alignment of the off-road walking and cycling trail**

**TRAIL NOTES:**

The community's idea of a walking and bicycle trail connecting Lavers Hill to Crowes and Melba Gully is to provide a safe and pleasant walking and cycling trail within public land and pass points of historical and environmental interest and provide interpretive and directional signage. It is important that the road crossings and at driveway entrances provide appropriate warning signage and devices for the safety of trail users. It is envisaged the trail would be a 2 metre wide gravel path with potential to upgrade to a hard surfaced path in the future (similar to the recent construction of the Old Beechy Rail Trail from Beech Forest to Ferguson).

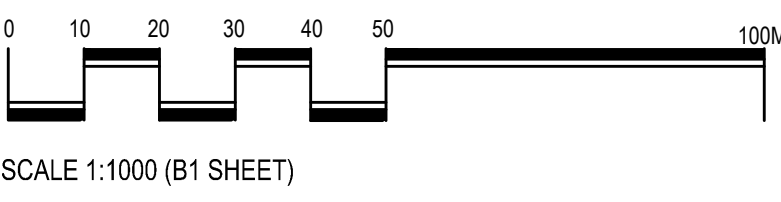
From the core town centre of Lavers Hill at Yatzie's Café beginning at the bus stop, the trail is located on an existing 1.5 metre wide concrete footpath that is in good condition. There is a 32 metre length of timber boardwalk that forms the path just west of the public toilets. The existing concrete footpath gently meanders past residential properties and several businesses to finish at the Lavers Hill K-12 College. At the College, the proposed off-road trail follows the vegetated embankment above the Great Ocean Road. The precise college boundary title on the embankment is unknown and the title alignment will need to be resolved in the next stage of planning of the trail. Once on more level ground the trail is located on a wide grassed nature strip with several cherry trees parallel to the road. As the trail route from the school to Crowes could run on either side of the Great Ocean Road, detailed inspection with two local interest groups has resolved that west of the college's embankment the safest and the practical long term route without interference with logging and plantation operations, is to run the trail to the south side of the Great Ocean Road.

**TRAIL LENGTHS - SUMMARY**

- From the bus stop near Yatzie's Cafe to the grassed nib at the eastern edge of the Lavers Hill P-12 College's embankment 961 metres
- From the grassed nib noted above, to the intersection of Melba Road and the Great Ocean Road at Crowes 1,918 metres
- From the intersection noted above to the interpretive signage and access path to the picnic facilities at Melba Gully 1,029 metres
- Total length of the off-road trail from Lavers Hill to Melba Gully approximately 3.9 kilometres
- Alternative link from the former Crowes Station site to the Crowes Buffer Stop as an accessible path 140 metres
- Total length of boardwalks approximately 107 metres
- Total length of indigenous vegetation clearance approximately 740 metres



**L01 CONCEPT PLAN - LAVERS HILL OFF-ROAD TRAIL  
LAVERS HILL TO CROWES AND MELBA GULLY  
COLAC OTWAY SHIRE**



**Amendments:**  
**17.06.2016 REV A** - Following further site assessment and community meeting 13-6-2016.  
**22.07.2016 REV B** - Title change and addition of future loop to the Lavers Hill township.

**Print Issue:**  
**19.05.2016 - Draft** Emailed to Nicole Frampton  
**17.06.2016 - REV A** Emailed to Nicole Frampton  
**22.07.2016 - REV B** Emailed to Nicole Frampton

**Title:** L01 Concept Plan - Lavers Hill Off-Road Trail

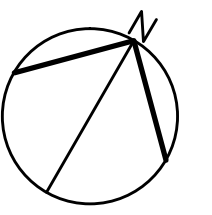
**Client:** Colac Otway Shire

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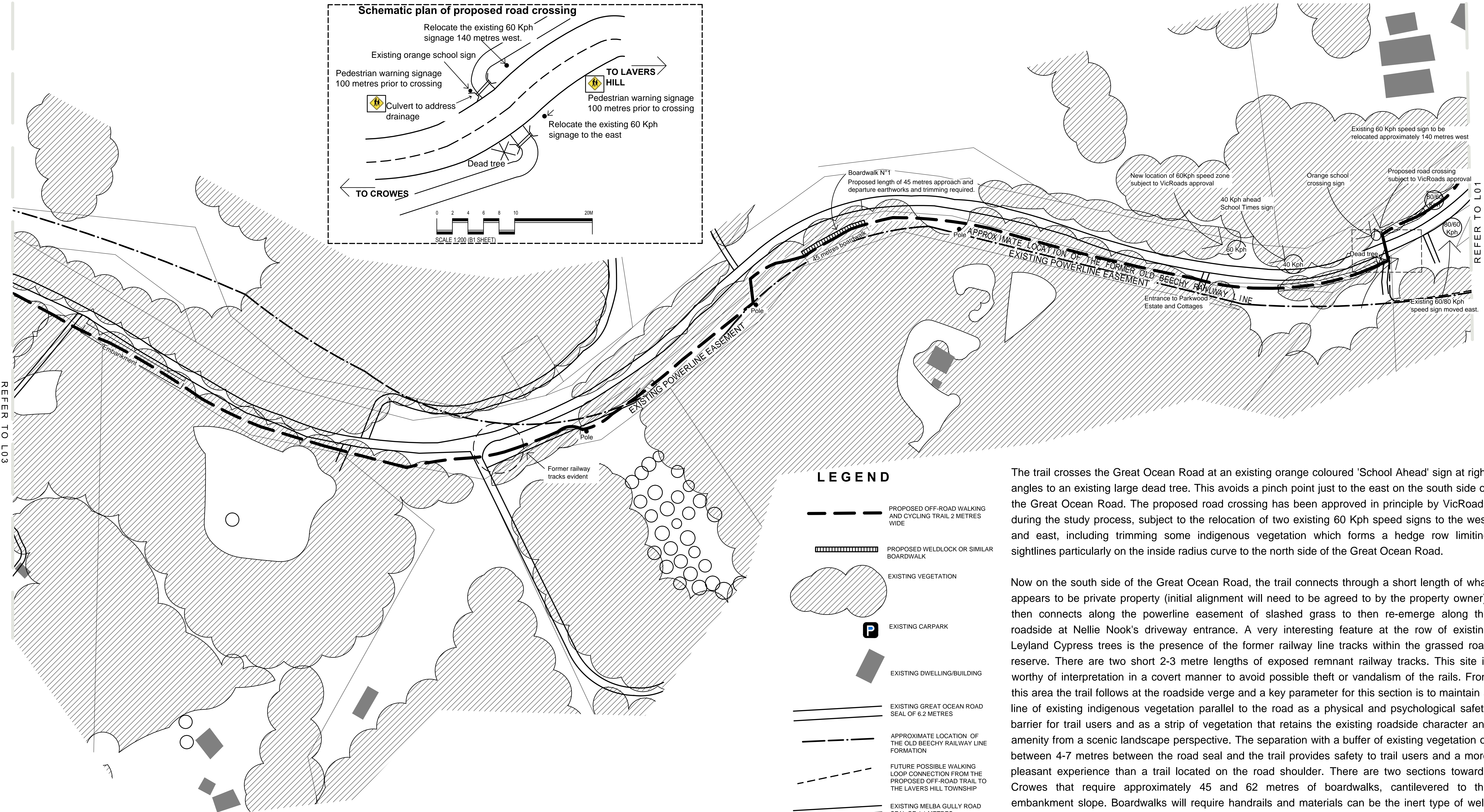
Office: 1st floor, 407 Whitehorse Road, Balwyn VIC 3103  
Postal: 5 Jervis Street, Camberwell VIC 3124  
Tel: 9830 0414  
Fax: 9830 2555  
Email: mike@msalandurb.com.au

**Drawn:** G.L.  
**Date:** 03/05/2016  
**Project No.:** 16-020  
**Cad File:**  
**Drawing No.:** Sheet 1 of 5





REFER TO L03



The trail crosses the Great Ocean Road at an existing orange coloured 'School Ahead' sign at right angles to an existing large dead tree. This avoids a pinch point just to the east on the south side of the Great Ocean Road. The proposed road crossing has been approved in principle by VicRoads during the study process, subject to the relocation of two existing 60 Kph speed signs to the west and east, including trimming some indigenous vegetation which forms a hedge row limiting sightlines particularly on the inside radius curve to the north side of the Great Ocean Road.

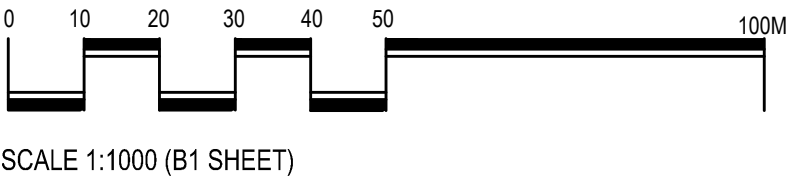
Now on the south side of the Great Ocean Road, the trail connects through a short length of what appears to be private property (initial alignment will need to be agreed to by the property owner), then connects along the powerline easement of slashed grass to then re-emerge along the roadside at Nellie Nook's driveway entrance. A very interesting feature at the row of existing Leyland Cypress trees is the presence of the former railway line tracks within the grassed road reserve. There are two short 2-3 metre lengths of exposed remnant railway tracks. This site is worthy of interpretation in a covert manner to avoid possible theft or vandalism of the rails. From this area the trail follows at the roadside verge and a key parameter for this section is to maintain a line of existing indigenous vegetation parallel to the road as a physical and psychological safety barrier for trail users and as a strip of vegetation that retains the existing roadside character and amenity from a scenic landscape perspective. The separation with a buffer of existing vegetation of between 4-7 metres between the road seal and the trail provides safety to trail users and a more pleasant experience than a trail located on the road shoulder. There are two sections towards Crowes that require approximately 45 and 62 metres of boardwalks, cantilevered to the embankment slope. Boardwalks will require handrails and materials can be the inert type of weld lock and hardened recycled plastics for longevity and grip. There will be a need for indigenous vegetation clearance to facilitate the trail between the abovementioned private property and the former road formation.



# L02 CONCEPT PLAN- LAVERS HILL OFF-ROAD TRAIL

## LAVERS HILL TO CROWES AND MELBA GULLY

### COLAC OTWAY SHIRE



**Amendments:**  
**17.06.2016 REV A** - Following further site assessment and community meeting 13-6-2016.  
**22.07.2016 REV B** - Title change and addition of future loop to the Lavers Hill township.

**Print Issue:**  
**19.05.2016 - Draft** Emailed to Nicole Frampton  
**17.06.2016 - REV A** Emailed to Nicole Frampton  
**22.07.2016 - REV B** Emailed to Nicole Frampton

**Title:** L02 Concept Plan - Lavers Hill Off-Road Trail

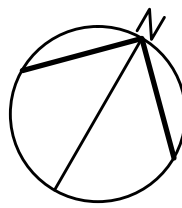
**Client:** Colac Otway Shire

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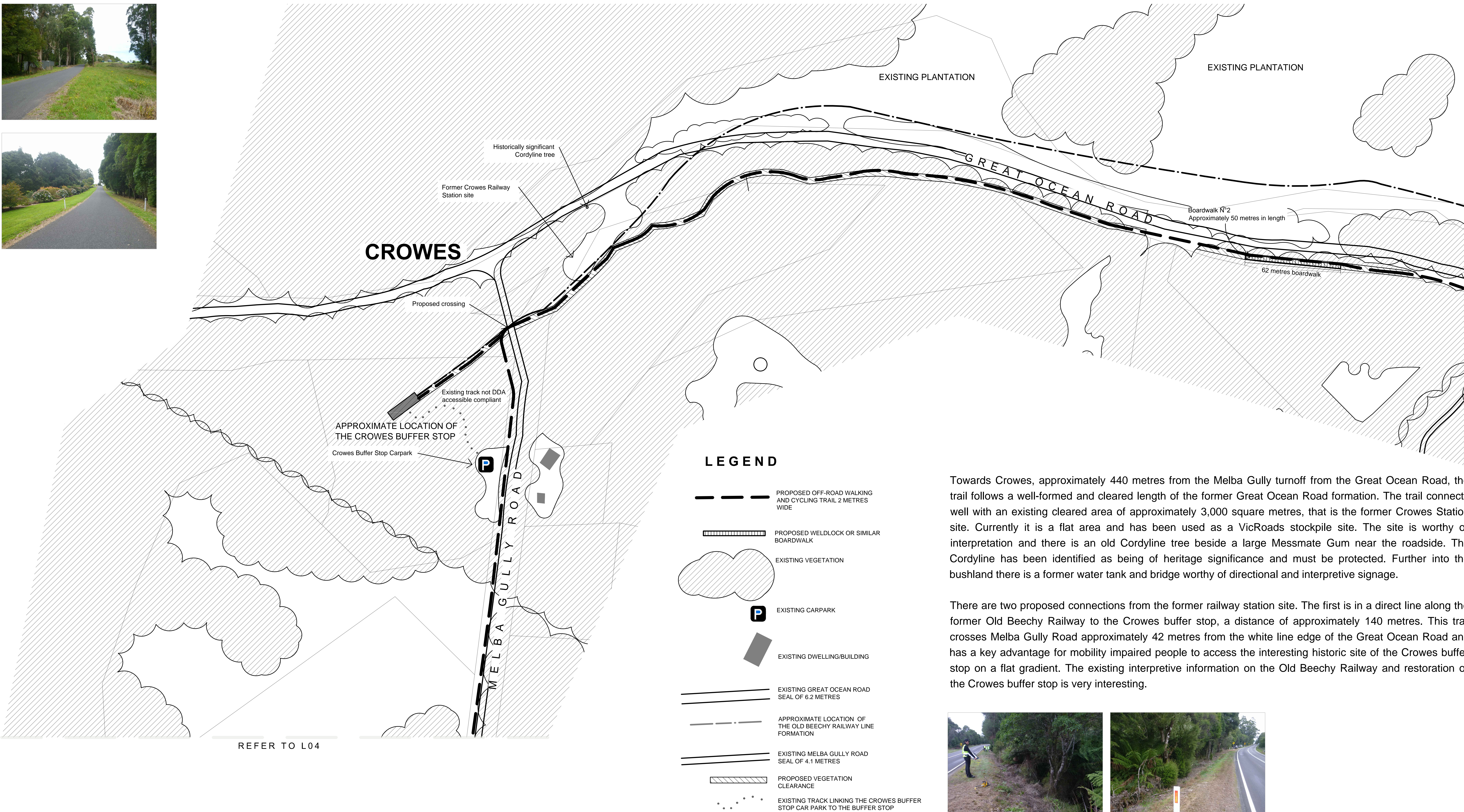
**MICHAEL SMITH AND ASSOCIATES**  
Landscape Architecture and Urban Design

Office: 1st floor, 407 Whitehorse Road, Balwyn VIC 3103  
Postal: 5 Jervis Street, Camberwell VIC 3124  
Tel: 9830 0414  
Fax: 9830 2555  
Email: [mike@msalandurb.com.au](mailto:mike@msalandurb.com.au)

**Drawn:** G.L.  
**Date:** 03/05/2016  
**Project No.:** 16-020  
**Cad File:**  
**Drawing No.:** Sheet 2 of 5





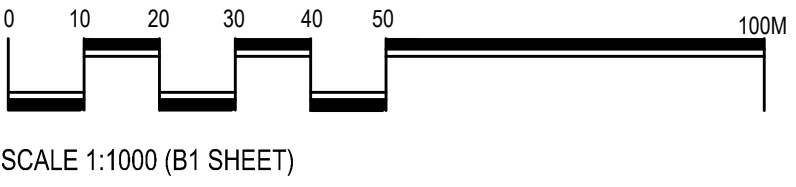


Towards Crowes, approximately 440 metres from the Melba Gully turnoff from the Great Ocean Road, the trail follows a well-formed and cleared length of the former Great Ocean Road formation. The trail connects well with an existing cleared area of approximately 3,000 square metres, that is the former Crowes Station site. Currently it is a flat area and has been used as a VicRoads stockpile site. The site is worthy of interpretation and there is an old Cordyline tree beside a large Messmate Gum near the roadside. The Cordyline has been identified as being of heritage significance and must be protected. Further into the bushland there is a former water tank and bridge worthy of directional and interpretive signage.

There are two proposed connections from the former railway station site. The first is in a direct line along the former Old Beechy Railway to the Crowes buffer stop, a distance of approximately 140 metres. This trail crosses Melba Gully Road approximately 42 metres from the white line edge of the Great Ocean Road and has a key advantage for mobility impaired people to access the interesting historic site of the Crowes buffer stop on a flat gradient. The existing interpretive information on the Old Beechy Railway and restoration of the Crowes buffer stop is very interesting.



L03 CONCEPT PLAN - LAVERS HILL OFF-ROAD TRAIL  
LAVERS HILL TO CROWES AND MELBA GULLY  
COLAC OTWAY SHIRE



**Amendments:**  
17.06.2016 REV A - Following further site assessment and community meeting 13-6-2016.  
22.07.2016 REV B - Title change and addition of future loop to the Lavers Hill township.

**Print Issue:**  
19.05.2016 - Draft Emailed to Nicole Frampton  
17.06.2016 - REV A Emailed to Nicole Frampton  
22.07.2016 - REV B Emailed to Nicole Frampton

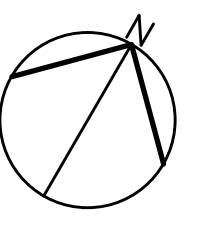
**Title:** L03 Concept Plan - Lavers Hill Off-Road Trail  
**Client:** Colac Otway Shire

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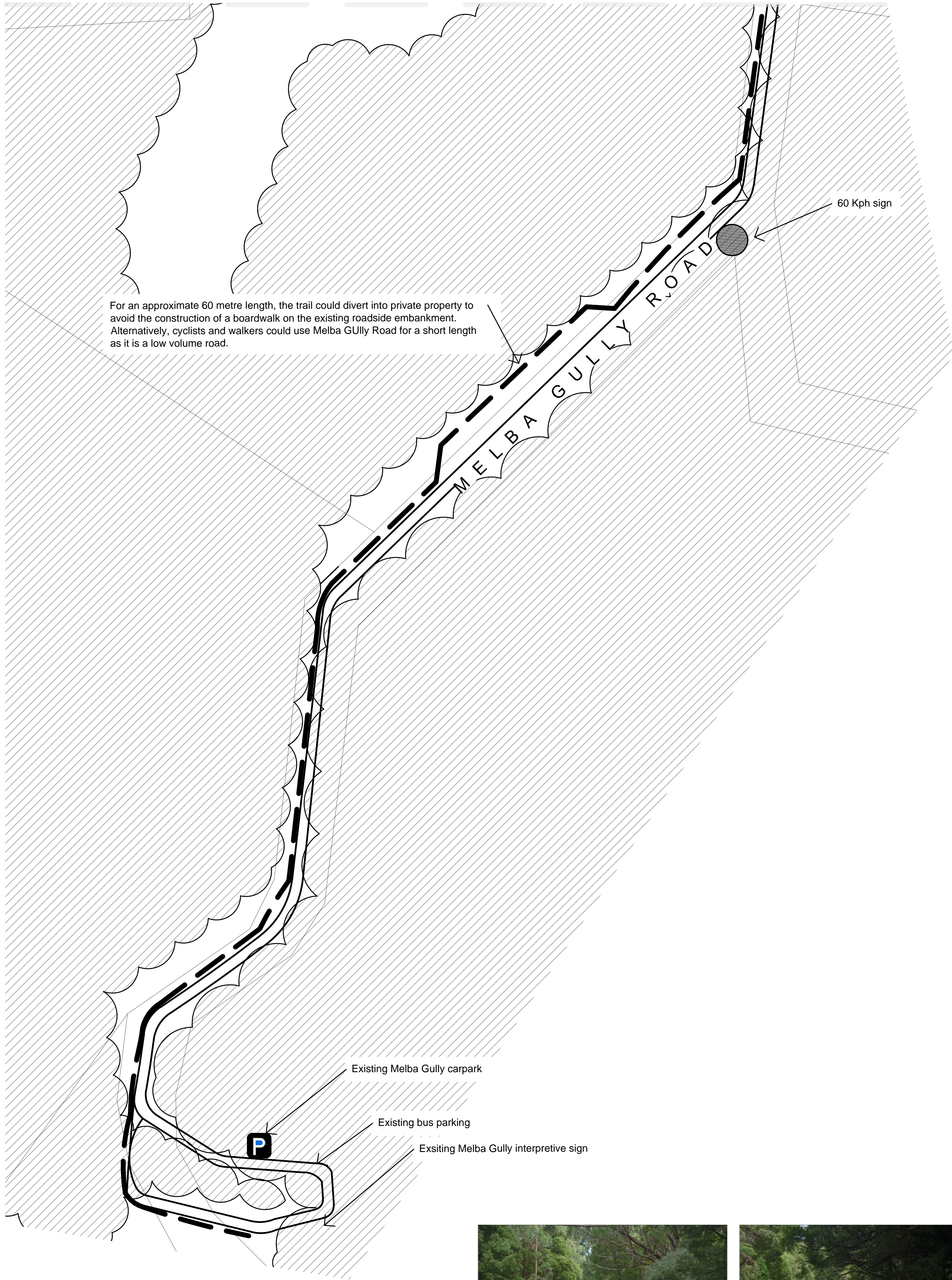
Office: 1st floor, 407 Whitehorse Road, Balwyn VIC 3103  
Postal: 5 Jervis Street, Camberwell VIC 3124  
Tel: 9830 0414  
Fax: 9830 2555  
Email: [mike@msalandurb.com.au](mailto:mike@msalandurb.com.au)

**Drawn:** G.L.  
**Date:** 03/05/2016  
**Project No.:** 16-020  
**Cad File:**  
**Drawing No.:** Sheet 3 of 5





REFER TO L03



## LEGEND

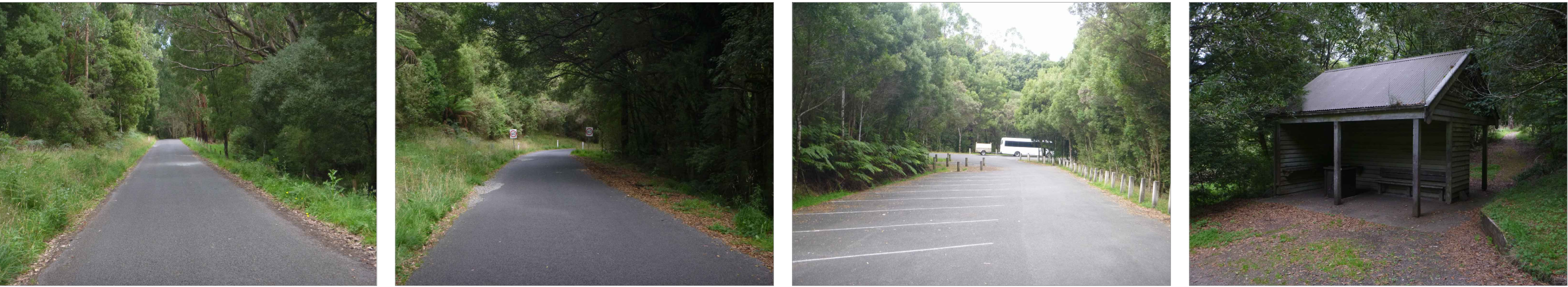
- PROPOSED OFF-ROAD WALKING AND CYCLING TRAIL 2 METRES WIDE
- PROPOSED WELDLOCK OR SIMILAR BOARDWALK
- EXISTING VEGETATION
- EXISTING CARPARK
- EXISTING DWELLING/BUILDING
- EXISTING GREAT OCEAN ROAD SEAL OF 6.2 METRES
- APPROXIMATE LOCATION OF THE OLD BEECHY RAILWAY LINE FORMATION
- EXISTING MELBA GULLY ROAD SEAL OF 4.1 METRES
- PROPOSED VEGETATION CLEARANCE
- EXISTING TRACK LINKING THE CROWES STOP CAR PARK TO THE BUFFER STOP

The second trail runs through recently cleared blackberry vegetation and an open clearing to cross the Melba Gully Road approximately 50 metres from the white line edge of the Great Ocean Road. This track easily leads to the existing earthen car park of the rail head and buffer stop. Currently to access the buffer stop interpretive information, there is a rough uneven and in parts steep track and formed steps to negotiate. The track is therefore unsuitable for people with limited mobility.

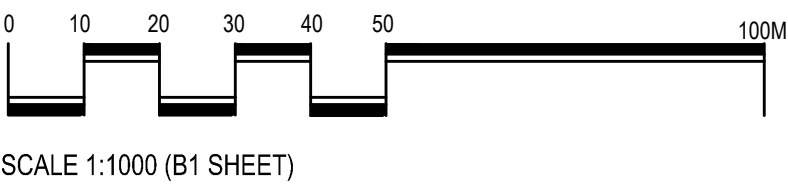
From the Crowes Buffer Stop car park which is approximately 130 metres south of the Great Ocean Road, the trail proposed follows the west side of Melba Gully Road without much need for new infrastructure and earthworks. There is a 60 to 70 metre length midway along the intended route where the 3 metre wide road side verge drops away from the road. To provide a trail, the treatment to this section requires one of three options (a) earthworks and drainage works on the opposite side of the road to facilitate construction of the trail for the 60 to 70 metre section, (b) a boardwalk cantilevered midway down the embankment profile, (c) access within the private property to which the owner of the property has already granted approval in principle or (d) cyclists and walkers use the roadway seal for this section parallel to the embankment. Fencing would need to be provided or the current boundary fence relocated 2 to 3 metres into the private property for the 60 to 70 metre length.

Following from the embankment treatment, apart from a 60 Kph speed sign and either diverting to the roadside (preferable) or construction of a 10-15 metre long boardwalk to negotiate a steep gully edge at the speed sign, the trail connects easily along the southwest side of the lower carpark to the interpretive signage about Melba Gully. The length of the trail from the Great Ocean Road to the interpretive sign is 1,028 metres.

Melba Gully is ecologically interesting as one of the wettest places in Victoria and as a consequence, has a significant Myrtle Beech forest with fern gullies support a range of birds and mammals. Along the walking tracks glow worms can be observed at night.



# L04 CONCEPT PLAN - LAVERS HILL OFF-ROAD TRAIL LAVERS HILL TO CROWES AND MELBA GULLY COLAC OTWAY SHIRE



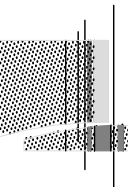
**Amendments:**  
**17.06.2016 REV A** - Following further site assessment and community meeting 13-6-2016.  
**22.07.2016 REV B** - Title change and addition of future loop to the Lavers Hill township.

**Print Issue:**  
**19.05.2016 - Draft** Emailed to Nicole Frampton  
**17.06.2016 - REV A** Emailed to Nicole Frampton  
**22.07.2016 - REV B** Emailed to Nicole Frampton

**Title:** L04 Concept Plan - Lavers Hill Off-Road Trail  
**Client:** Colac Otway Shire

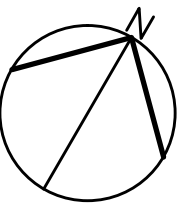
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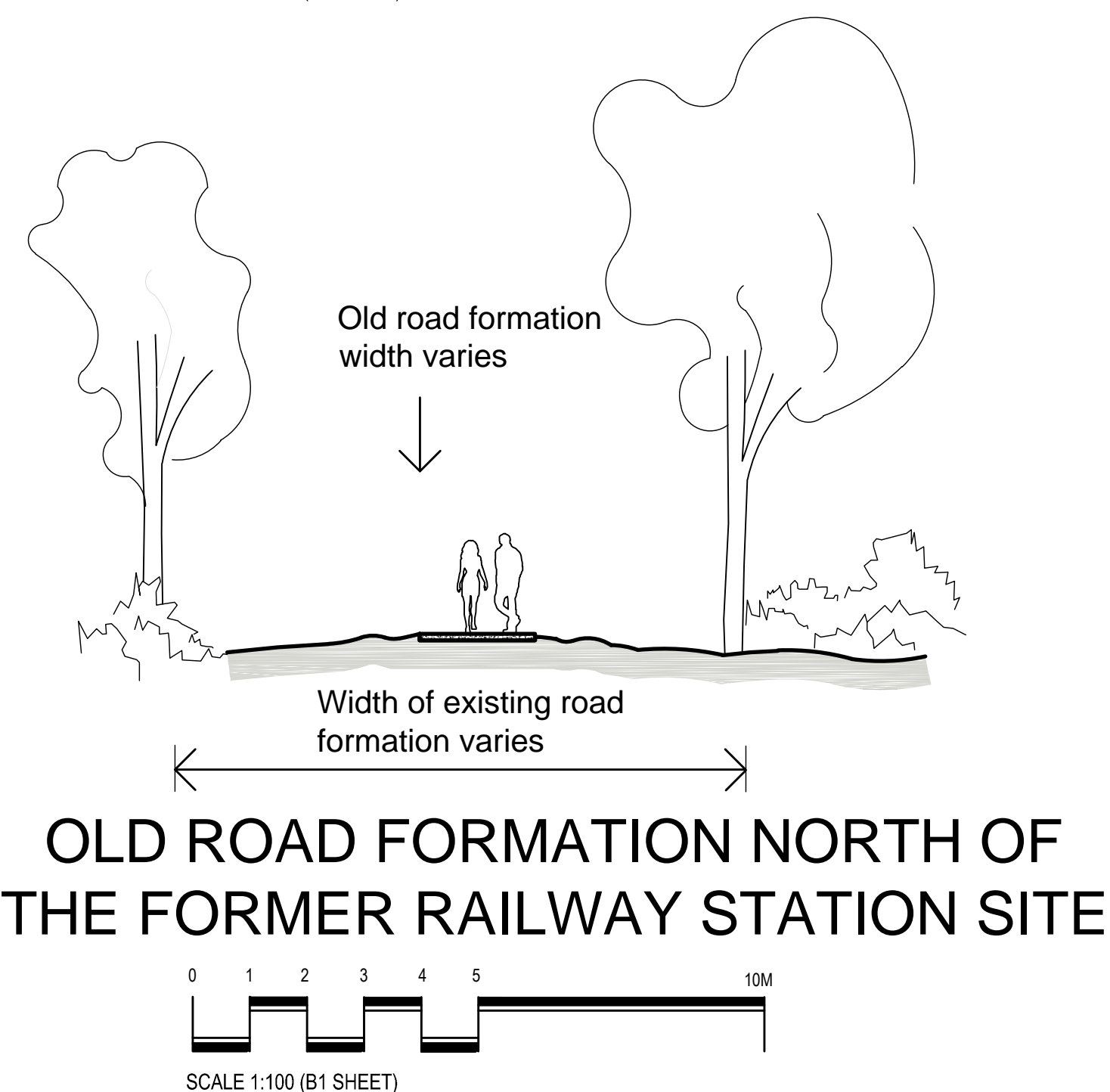
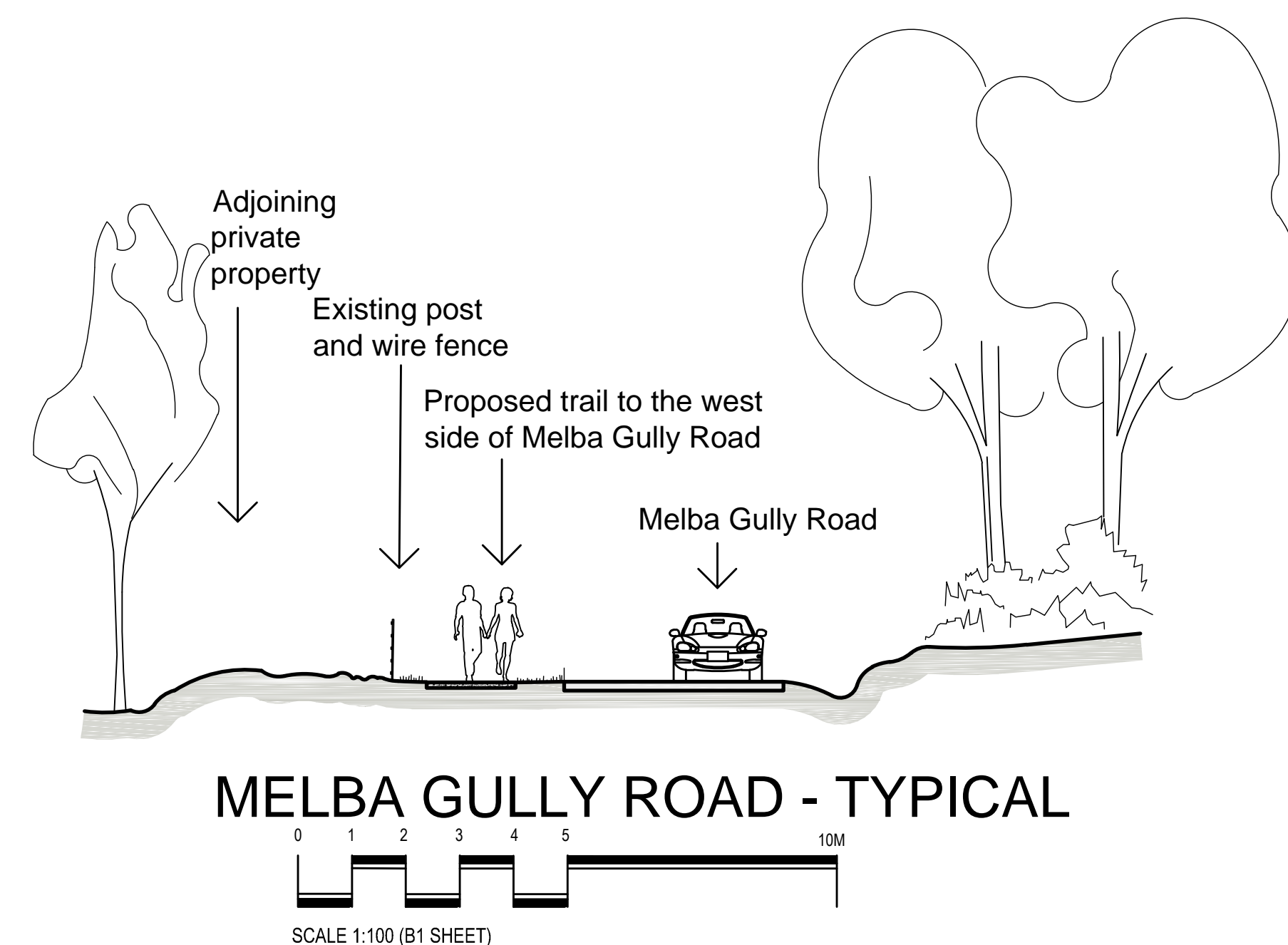
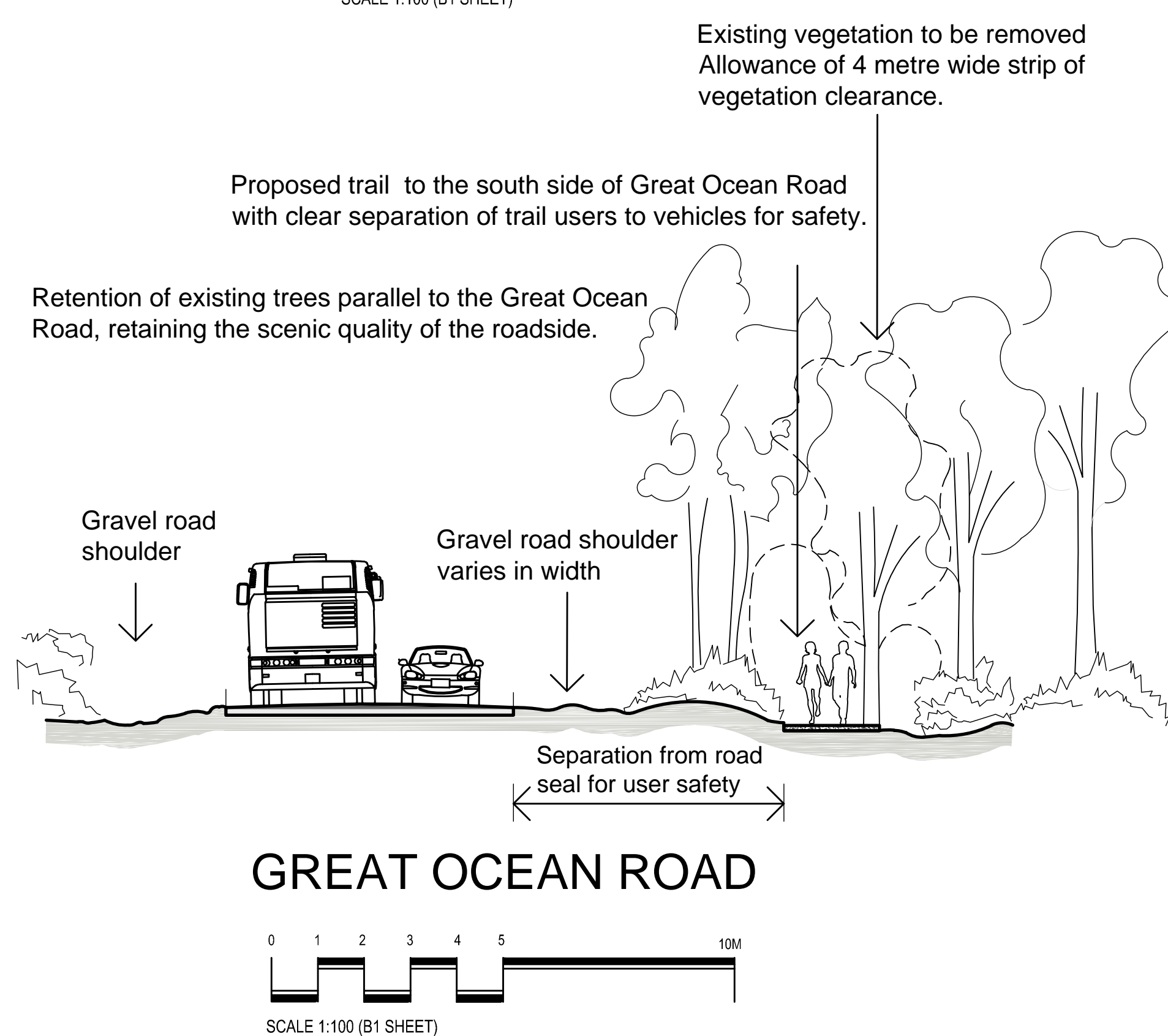
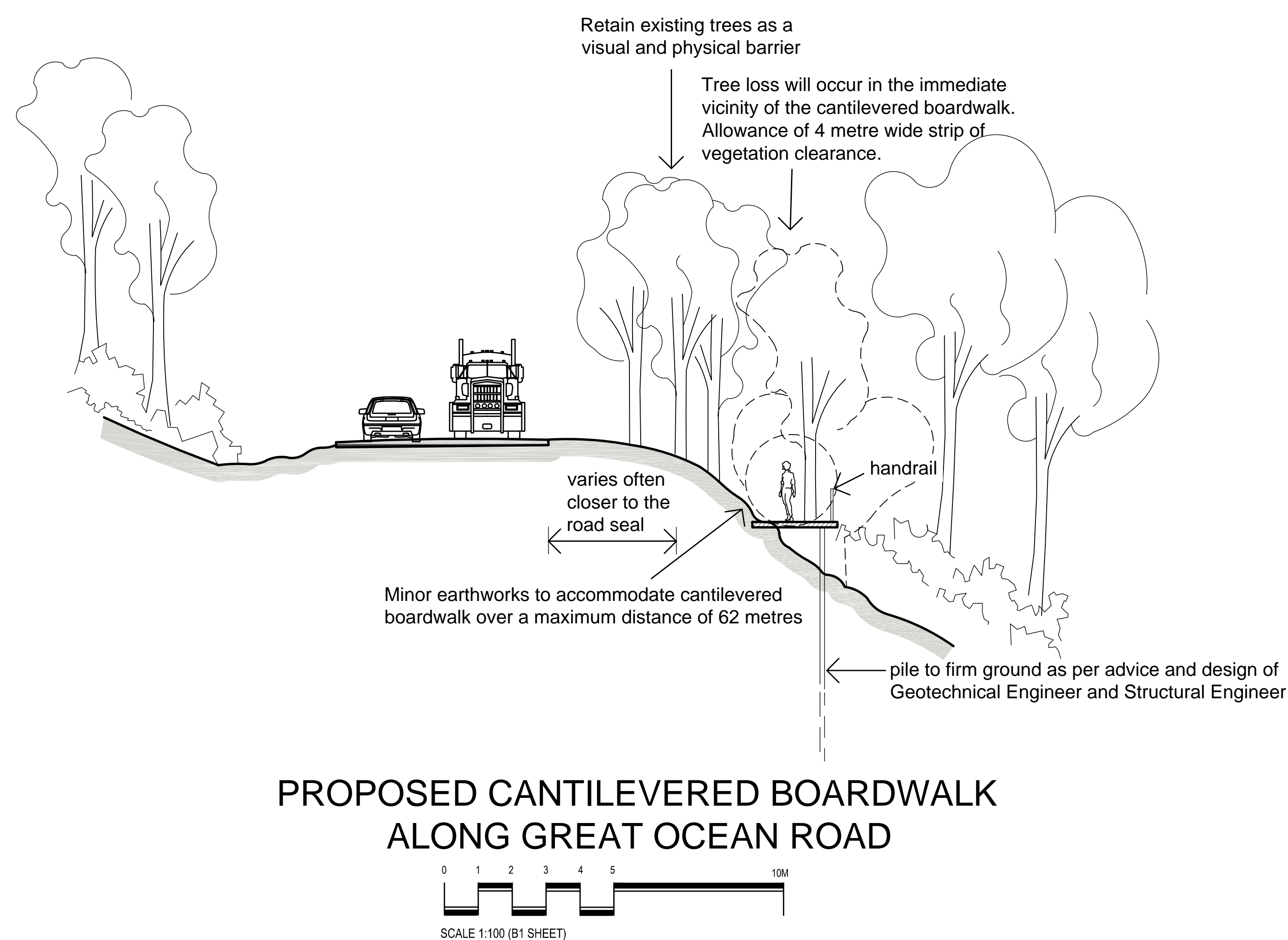
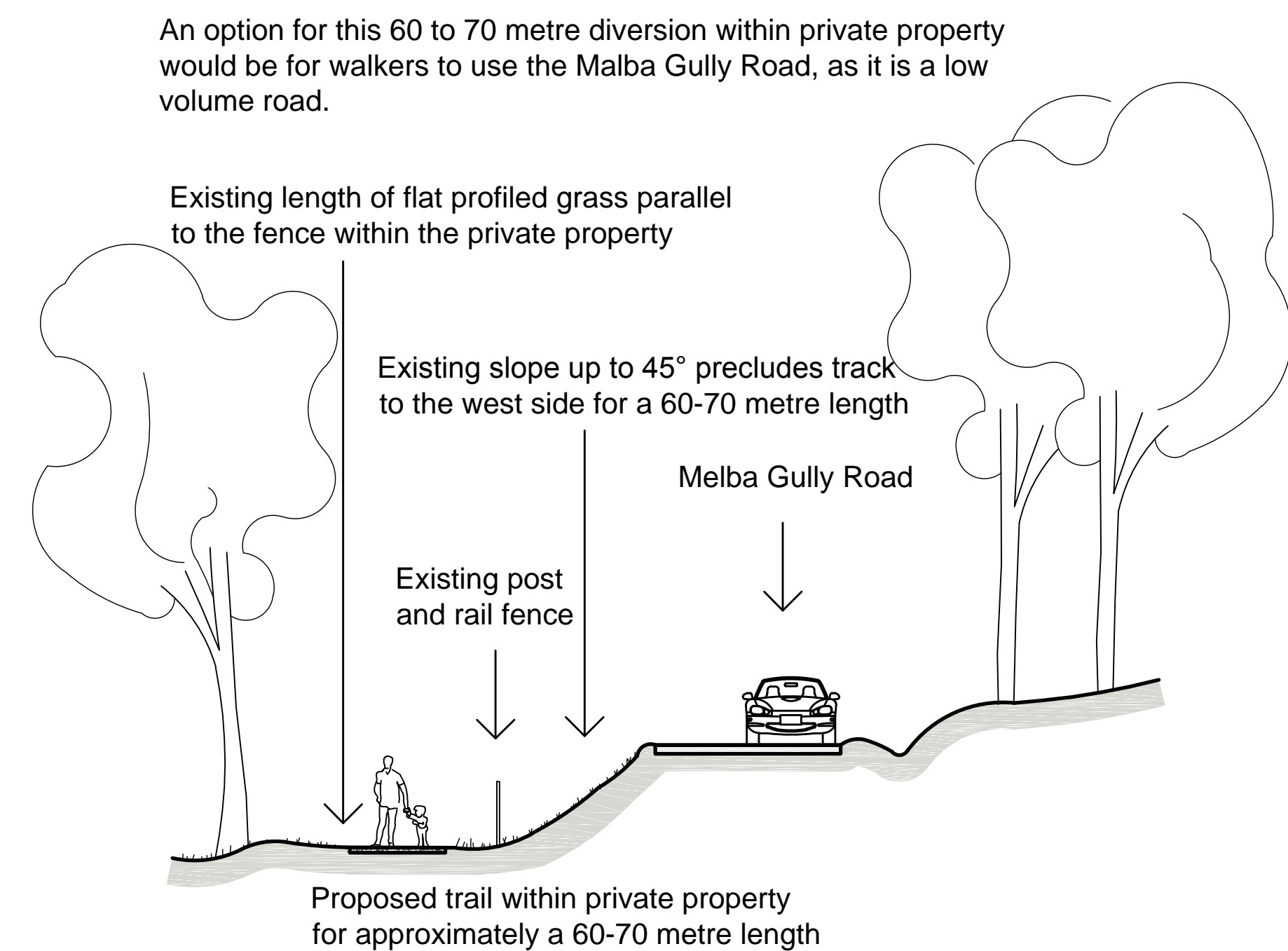
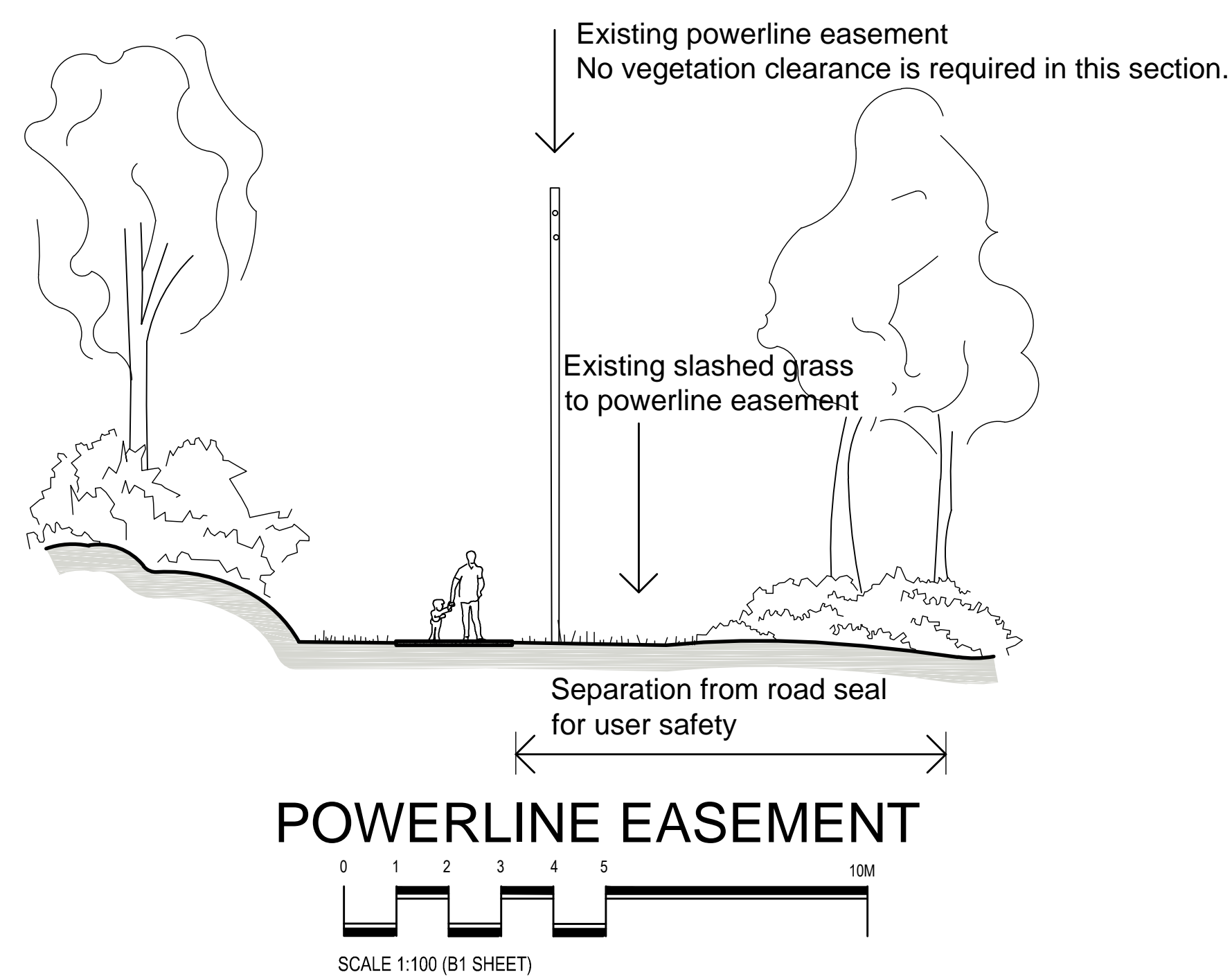
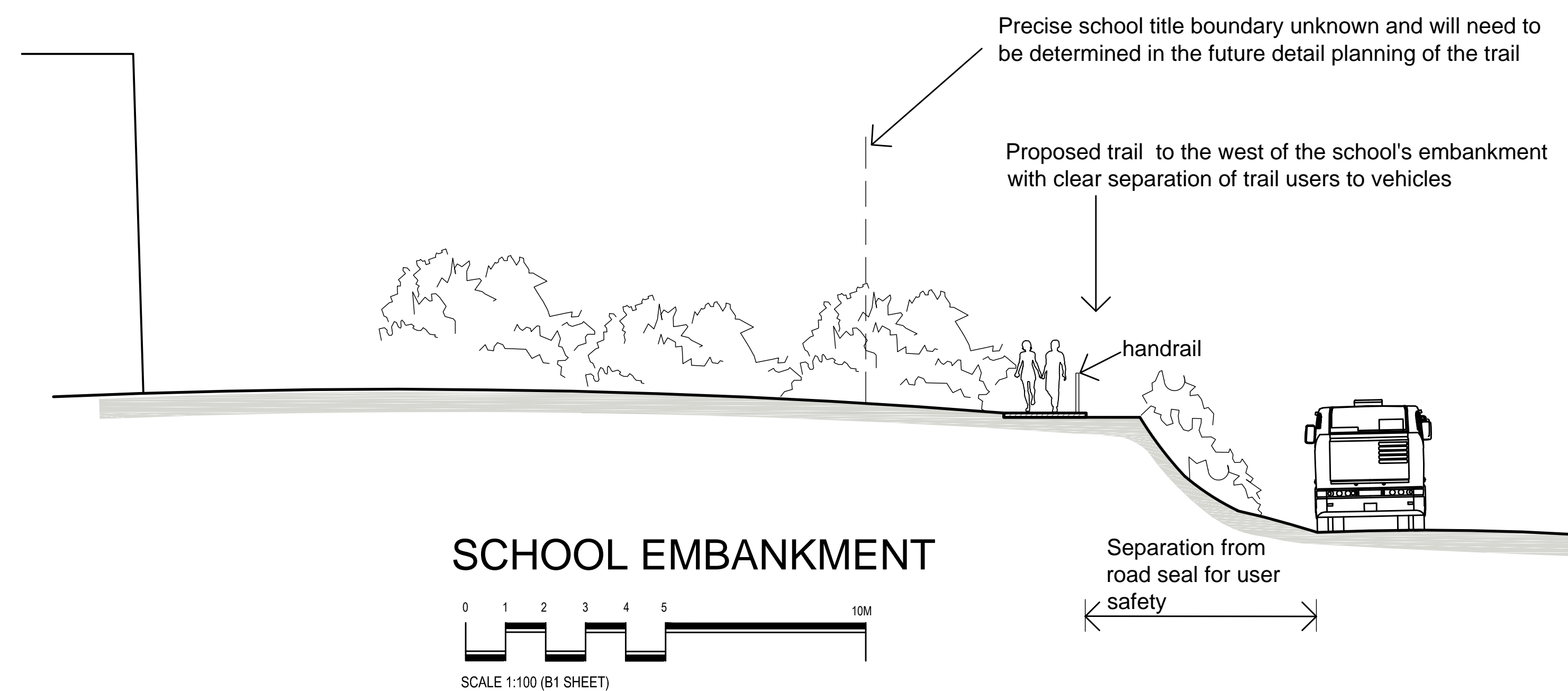


Office: 1st floor, 407 Whitehorse Road, Balwyn VIC 3103  
Postal: 5 Jervis Street, Camberwell VIC 3124  
Tel: 9830 0414  
Fax: 9830 2555  
Email: [mike@msalandurb.com.au](mailto:mike@msalandurb.com.au)

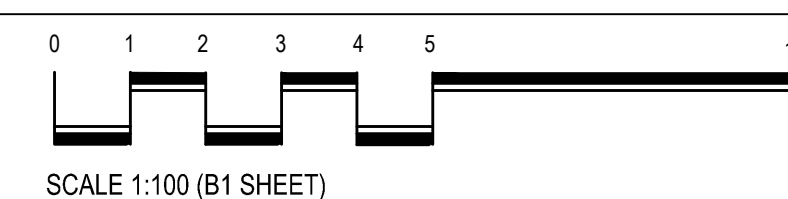
**Drawn:** G.L.  
**Date:** 03/05/2016  
**Project No.:** 16-020  
**Cad File:**  
**Drawing No.:** Sheet 4 of 5







# L05 CROSS SECTIONS - LAVERS HILL OFF-ROAD TRAIL LAVERS HILL TO CROWES AND MELBA GULLY COLAC OTWAY SHIRE



**Amendments:**  
**17.06.2016 REV A** - Following further site assessment and community meeting 13-6-2016.  
**22.07.2016 REV B** - Title change and addition of future loop to the Lavers Hill township.

**Print Issue:**  
**19.05.2016 - Draft** Emailed to Nicole Frampton  
**17.06.2016 - REV A** Emailed to Nicole Frampton  
**22.07.2016 - REV B** Emailed to Nicole Frampton

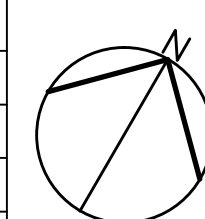
**Title:** L05 Cross Sections - Lavers Hill Off-Road Trail  
**Client:** Colac Otway Shire

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**MICHAEL SMITH AND ASSOCIATES**  
 Landscape Architecture and Urban Design

Office: 1st floor, 407 Whitehorse Road, Balwyn VIC 3103  
 Postal: 5 Jervis Street, Camberwell VIC 3124  
 Tel: 9830 0414  
 Fax: 9830 2555  
 Email: mike@msalandurb.com.au

**Drawn:** G.L.  
**Date:** 13/05/2016  
**Project No.:** 16-020  
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## LAVERS HILL TO CROWES AND MELBA GULLY CONCEPT PLANS FOR AN OFF-ROAD TRAIL REPORT

Submission by:  
**Michael Smith and Associates**  
Landscape Architecture and Urban Design

Office: 1<sup>st</sup> Floor, 407 Whitehorse Road, Balwyn, 3103  
Postal: 5 Jervis Street, Camberwell, 3124  
Tel: (03) 9830 0414  
Mobile: 0418 172 863  
Fax: (03) 9830 2555  
Email: [mike@msalandurb.com.au](mailto:mike@msalandurb.com.au)

*Michael Smith  
Chris Greber  
Mandy Treadwell  
Gianina Lopez*



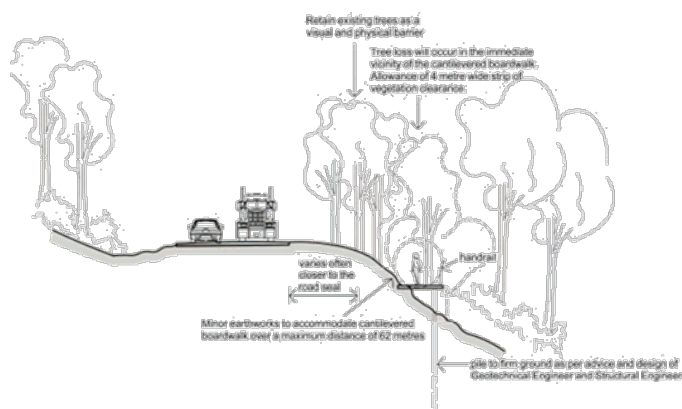
In conjunction with the following subconsultants:

**Practical Ecology**  
Ecology and Environmental Management  
2b Stott Street, Preston, 3072

*Lincoln Kern  
Elise Jeffery*

**Traffix Group**  
Transport Planning and Traffic Engineering  
Suite 8, 431 Burke Road, Glen Iris, 3146

*Brent Hodges  
Will de Waard*



# Lavers Hill to Crowes and Melba Gully Concept Plans for an Off-Road Trail Report

**Colac Otway Shire Council**

**July 2016**

Prepared by:

**Michael Smith and Associates**

**Landscape Architecture and Urban Design**

Office: 1<sup>st</sup> Floor, 407 Whitehorse Road, Balwyn, 3103

Postal: 5 Jervis Street, Camberwell, 3124

Tel: (03) 9830 0414

Mobile: 0418 172 863

Fax: (03) 9830 2555

Email: mike@msalandurb.com.au

In conjunction with the following specialist sub consultants:

**Practical Ecology Pty Ltd**

Lincoln Kern

Ecology and Flora and Fauna Assessment

2b Stott Street, Preston, 3072

**Traffix Group**

Brent Hodges

Transport Planning and Traffic Engineering

Suite 8, 431 Burke Road, Glen Iris, 3146

**FOR COLAC OTWAY SHIRE COUNCIL**

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Nicole Frampton (Colac Otway Shire Council)

Members of the Lavers Hill and District Progress Association

Members of the Old Beechy Rail Trail Committee

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LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

## Table of contents

|                                                                                                                                                       |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Lavers Hill Off-Road Trail .....                                                                                                                      | 1  |
| to Crowes and Melba Gully.....                                                                                                                        | 1  |
| Feasibility Study Report.....                                                                                                                         | 1  |
| 1 Executive Summary .....                                                                                                                             | 3  |
| 2 Introduction .....                                                                                                                                  | 4  |
| 3 Process.....                                                                                                                                        | 7  |
| 4 Description of the Off-Road Trail .....                                                                                                             | 9  |
| 5 Preliminary Assessment of Native Vegetation Losses and Offsets for the Proposed<br>Shared Path from Lavers Hill and Crowes, Colac Otway Shire ..... | 11 |
|                                                                                                                                                       |    |
| Appendix 1 – Ecological vegetation classes map for Lavers Hill by Practical Ecology’s Lincoln<br>Kern.                                                |    |
| Appendix 2 – Schematic diagram by Traffix Group’s Brent Hodges of the proposed road<br>crossing on the Great Ocean Road.                              |    |
| Appendix 3 – Email from VicRoads of approval in principle for the proposed road crossing                                                              |    |
| Appendix 4 – Opinion of Probable Costs                                                                                                                |    |

MICHAEL SMITH & ASSOCIATES 2  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN

# 1 Executive Summary

The local Lavers Hill and District Progress Association's intention for an off-road trail from Lavers Hill to Crowes and Melba Gully was determined as physically achievable, following the ground truthing field assessment and consultation with stakeholder groups. The preferred route has been plotted following the testing of the community's proposed route with the local Lavers Hill and District Progress Association, Council officers and the Consultant Team.

The purpose of developing concept plans for the off-road trail is to provide the Lavers Hill and District Progress Association and the Colac Otway Shire Council with a report that can be used to seek support for external funding for the design, documentation, project management and construction of the off-road trail. The project has included preparation of a layout concept plan with accompanying track notes, preparation of a vegetation impact report, seek VicRoads approval of the one road crossing of the Great Ocean Road (approval in principle given by VicRoads in mid-June) and preparation of the opinion of probable cost for design, construction management and construction of the trail and associated infrastructure. Colac Otway Shire Council have worked closely with the Lavers Hill community to realise the Concept Plans which tested the community's preferred alignment for an off-road trail between Lavers Hill and Crowes then to Melba Gully picnic area, a length of approximately 3.9 kilometres.

The proposed 3.9 kilometre long trail connecting the core town centre of Lavers Hill to the well-established visitor facilities at the Parks Victoria managed Melba Gully picnic facilities, will provide the opportunity to leverage the existing tourist visitation to the area. The trail will provide visitors with another activity and experience, with the potential to linger longer and spend money at Lavers Hill. The provision of this trail will assist in developing the local economy, given there are four shops providing food services and a motel in Lavers Hill.

The trail will be used by locals, some have already indicated they will use the trail as part of their recreation and exercise regime.

While the preferred route of the off-road trail doesn't strictly follow the former Old Beechy railway line that once linked Lavers Hill to Crowes, it does directly connect to three historic sites of particular relevance to the former Old Beechy railway line. They are the Crowes Buffer Stop (end of the line) with its existing interpretive information, the former Crowes railway station site and associated reservoir tank and exposed railway tracks within the grassed roadside verge midway between the Lavers Hill P-12 School and Melba Gully Road. The ultimate connection with safety warning signage and trail linking Lavers Hill with Melba Gully is a strategic advantage in building upon the already established facilities at either end of the 3.9 kilometre trail. The Old Beechy Rail Trail Committee are keen to have the township section of the former railway line established as a loop trail, extending from the Blackwood Gully Tea Rooms to near the Lavers Hill P-12 College. If this were to happen in the future, there would be potential for the connection of a trail from Lavers Hill to Ferguson.

Ongoing maintenance of the trail will involve periodic top-up of the gravel surface on an as needed basis. A vegetation-free canopy zone is required to prevent injury to trail users. Trimming of overhanging tree and shrub branches will need to be attended periodically to provide safe access for pedestrians and cyclists using the track. Council will need to budget for ongoing maintenance and at least, annual inspections of boardwalks, surfacing, warning signage, overhanging vegetation and washouts at drainage culverts.



LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

## 2 Introduction

The Lavers Hill and District Progress Association had undertaken preliminary site assessments of various alternatives to establish an off-road trail linking Lavers Hill to Crowes and south to the existing Parks Victoria picnic reserve and toilet facilities at Melba Gully. The community's preliminary preferred route was tested during the site assessment inspection by the Consultant Team and alternative sections discussed and reviewed with the Association and Council's Project Manager. The trail's route is approximately 3.9 kilometres from the core township area to the existing Melba Gully car park and interpretive signage.

The Old Beechy Rail Trail Committee expressed interest in the review of ideas and plans as they indicated they would like to see as much of the proposed off-road trail located directly on the Old Beechy railway line that once connected Colac to Crowes.

The Old Beechy Rail Trail is of significance as it was a narrow gauge railway line that connected Colac and Beech Forest. The railway operated between 1902 and 1962. The extension to Crowes was constructed in 1911. The railway ran mixed trains of passengers and goods, such as timber, cattle, potatoes, cheese and other horticultural and agricultural produce.

During the ground truthing field assessments of various alternative sections, it became clear that use of the entire, or even a majority of the former Old Beechy railway alignment was not practical as the last half of the Old Beechy railway line from Lavers Hill to Crowes is now located on a timber plantation and resurrection of a trail on the former railway line alignment would be vulnerable to damage through planting, maintenance and tree felling operations. In some other sections the railway line ran through private property.

There is an existing concrete path within the core township area to Lavers Hill P-12 College. By using the existing concrete path between the core township zone to Lavers Hill P-12 College, the need to establish a trail on the former Old Beechy railway line is reduced. The Old Beechy railway line route to the south side of the township should remain as an alternative route in the future not only to link with the preferred trail route to Melba Gully, but also providing a short 2 kilometre circuit loop within the Lavers Hill township. The former railway line route within the township zone is overgrown by shrubs and blackberries for approximately 50% of its length. There are opportunities to use portions of the former railway line alignment that is now incorporated within the existing powerline easement and a short length linking the former Crowes station site across Melba Gully Road to the Crowes Buffer Stop.

### **PRINCIPLES:**

Several principles were established by the Lavers Hill and District Progress Association, Council's Project Manager and the Consultant Team as benchmarks to underpin the feasibility assessment process at the commencement of the study.

These were:

- User safety with physical and visual separation of the off-road trail to the Great Ocean Road. The separation provides trail user safety and allows for retention of indigenous vegetation to the immediate edge of the road shoulder, thereby maintaining the scenic roadside landscape.
- Minimise the extent of native vegetation clearance.
- Use existing flat ground and parts of the former Old Beechy railway line alignment where possible.
- Maintain visual sight lines of driveway entrances to private properties and the trail. Signage to warn pedestrians and cyclists of private driveways which the off-road trail crosses will need to be provided.

**MICHAEL SMITH & ASSOCIATES 4**  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN

LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

- Minimise road crossing points particularly on the Great Ocean Road, which is a busy road with buses, cars and trucks.
- Provide interpretive and directional signage along the trail.
- Provide specific safety warning signage on procedures for days of Extreme and Code Red fire danger.
- Use boardwalks to negotiate the perimeter of two steep gullies in the middle section of the trail.
- Minimise the length of the off-road trail on private land.
- Discuss the alignment options with the Old Beechy Rail Trail Committee.

Safety for trail users was the primary concern for Colac Otway Shire Council, the Lavers Hill and District Progress Association and the Consultant Team in planning of the trail. Linked with safety for trail users was the retention of the roadside's scenic character. This particular section of the Great Ocean Road is frequented by many international and interstate tourists unfamiliar with the heavily trafficked road and local climatic conditions. The road is also a route regularly used by trucks travelling in both directions. The parameters of trail user safety and scenic character mutually worked together to determine the off-road trail to run parallel to much of the Great Ocean Road Reserve, through maintaining a strip of existing indigenous vegetation parallel to the road as a visual barrier and providing a 5-8 metres setback from the road seal.

As the surrounding region is extremely vulnerable to bushfire events, warning signage will need to be installed at access points along the trail (6 locations) advising of closure of the trail on Extreme and Code Red Days. 'A' frame boards should be provided along the trail to CFA requirements. The setting out of the 'A' frame boards would be controlled on a daily basis by members of the local community.

Land ownership was a consideration in the assessment of the route of the trail. As with most railway lines in Victoria, many railway formations were converted to private ownership several decades ago and logistics of land acquisition, risk management, conflicts of access and rural farming operations, are common issues that arise in planning and use of particularly rail trails.

The Lavers Hill and District Progress Association advised that their planned route did not extend into privately owned land with the exception of two short sections near the Parkwood Estate Cottages, the other a short length on Melba Gully Road.

The preferred route links the centre of Lavers Hill township with the Lavers Hill P-12 College a distance of just under one kilometre using the existing 1.5 metre wide concrete path on the north side of the Great Ocean Road which meanders through Lavers Hill. At the west of the Lavers Hill P-12 College the off-road trail follows an embankment then crosses the Great Ocean Road approximately 150 metres west of the College. During the study process, VicRoads gave their approval in principle of the proposed road crossing, provided that the legal warning signs are provided, the two existing 60 Kph signs are relocated to appropriate distances either side of the road crossing and existing Blackwood Wattle trees be trimmed on the inside radial curve of the road west of the proposed crossing.

The off-road trail runs parallel to the Great Ocean Road to Crowes with two sections requiring boardwalks of approximately 62 and 45 metres in length.

The proposed off-road trail route of approximately 440 metres east of Crowes follows the old road formation which remains as cleared land and a section in the middle follows a powerline easement that may well be part of the Old Beechy railway formation. Using these two cleared sections free of indigenous vegetation, reduces the overall extent of indigenous vegetation clearance. The approximate length of indigenous vegetation to be cleared is 740 linear metres.

**MICHAEL SMITH & ASSOCIATES 5**  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN



LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

There are sites of interest along the route being the presence of remnant railway tracks, the former railway station site at Crowes and the restored buffer stop with its existing interpretive information.

The Old Beechy Rail Trail Committee members suggested the trail extend from the former Crowes Station Site to the Crowes Buffer Stop. The gradient is flat and would allow people with mobility impairments to access the interesting buffer stop display which they otherwise would miss out visiting. Their suggestion for this route has been adopted in the preferred trail layout.

The idea of an underpass under the Great Ocean Road was raised during the consultation process by a respondent and by a Senior Traffic Management Officer at VicRoads. The underpass would provide more flexibility in the location of a crossing point along the trail route than an on-grade crossing. The concern with the proposal for an underpass is providing the room at each opening for the DDA compliant ramp approaches to the approach and departure sides and personal safety issues in a quiet area. Due to the significant amount of civil works required, the cost for an underpass is very high, in the vicinity of several hundreds of thousands of dollars. Based on this information, an on-road crossing has been proposed rather than an underpass.

There are four trail layout plans L1-L4 and an accompanying sheet of cross sections being plan L5. Track notes describing the off-road trail and information on the off-road trail's distances are provided within this report on the preferred route plans L1-L4.



**MICHAEL SMITH & ASSOCIATES 6**  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN

LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

## 3 Process

Colac Otway Shire Council facilitated the initial on-site inspection meeting with the Lavers Hill and District Progress Association and the Consultant Team in late May 2016.

The briefing and tour was attended by Council's Project Manager Ms Nicole Frampton, seven members of the Lavers Hill and District Progress Association and four members of the Consultant Team.

Consultant Team members included:

**Gianina Lopez**, Landscape Architect

**Michael Smith**, Landscape Architect, Urban Designer and Horticulturist

**Lincoln Kern**, Principal of Practical Ecology

**Brent Hodges**, Traffic Engineer from Traffix Group

A 'mud map' layout for the off-road trail had already been prepared by representatives of the Lavers Hill and District Progress Association. The intent of the initial inspection was to test the proposed off-road trail route, to discuss alternative routes and consider functions of land ownership if required and consider functions of vegetation clearance, user safety and roadside visual amenity. At the inspection the practicality of reuse of sections of the former Old Beechy railway line alignment was considered, including the use of the powerline easement and part of the former Great Ocean Road which is the section east of Crowes.

The group walked the intended trail route as proposed by the Lavers Hill and District Progress Association and Old Beechy Rail Trail Committee and made various adjustments based on user safety, limiting the road crossing points, drainage infrastructure required and negotiating the two steep gullies that virtually skirted the edge of the Great Ocean Road. Two members of the Consultant Team and Council's Project Manager met with three representatives of the Old Beechy Rail Trail Committee the day following the initial trail inspection of the trail route with Council's Project Manager and the Lavers Hill and District Progress Association. Representatives of the Old Beechy Rail Trail Committee advised that the route should use the former railway alignment as much as possible. This group then walked the town section of the former Old Beechy railway line where possible. A considerable length of the former railway line is covered in Blackberry and undergrowth which prevented access to approximately 50% of the 1.2 kilometre Laves Hill town section of the former Old Beechy railway line. The group visited several sections to the north side of the Great Ocean Road where the Old Beechy railway line has now been 'swallowed up' by timber logging operations. On inspection of the former Old Beechy railway line alignment within the timber plantation, the Old Beechy Rail Trail Committee representatives advised that it was not practical to have the proposed off-road trail on the former railway line within the plantation. They advised that the most practical route for the off-road trail was the south side of the Great Ocean Road. Representatives of the Committee asked if the township route could be placed on plans as a possible future walking loop for the Lavers Hill township and also a future connection for the Lavers Hill to Crowes and Melba Gully off-road trail (this has been noted on the concept plans). Their suggestion of continuation of the new trail from the former Crowes Station site through to the Crowes Buffer Stop has been accommodated on the final feasibility layout plan L3 to provide access for people of all abilities to safely walk from the town to the Crowes Buffer Stop site which has good interpretive information and significant railway artefacts.

**MICHAEL SMITH & ASSOCIATES 7**  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN

LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

Lincoln Kern the Principal Ecologist of Practical Ecology, assessed as an overview the extent vegetation loss which is estimated in the order of 740 linear metres of the 1,918 linear metres from Melba Gully Road to the Lavers Hill P-12 College. Brent Hodges a Senior Traffic Engineer with Traffix Group reviewed the community's proposed options for road crossing points and dismissed all three ideas as unsuitable on the grounds of vehicle speed (80 Kph) and poor pedestrian/motorist sightlines. A suitable single crossing point was determined close to Lavers Hill P-12 College. VicRoads were approached on the basis that the two existing 60 Kph speed signs be relocated at the appropriate distances further west and east of their respective current locations. In mid-June 2016 VicRoads gave their approval in principle of a road crossing approximately 150 metres west of the college.

The Consultant Team prepared a route plan as four large scale plans accompanied by track or trail notes. The layout plans were presented at a community drop-in event conducted at the Lavers Hill Community Hall on Saturday afternoon 11<sup>th</sup> June. Participants who attended were strongly in favour of the trail route.

Following the meeting, large format plans were displayed in Lavers Hill.

The opinion of probable costs was prepared to cover the planning, design and documentation then project management and construction of the off-road trail with the intensive construction from the Lavers Hill P-12 College to the Melba Gully car park.



**MICHAEL SMITH & ASSOCIATES 8**  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN

LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

## 4 Description of the Off-Road Trail

The community's idea of a walking and bicycle trail connecting Lavers Hill to Crowes and Melba Gully is to provide a safe and pleasant walking and cycling trail within public land and pass points of historical and environmental interest, and provide interpretive and directional signage. It is important that the road crossings and driveway entrances be provided with appropriate warning signage and devices for the safety of trail users. It is envisaged the trail would be a 2 metre wide gravel path with potential to upgrade to a hard surfaced path in the future (similar to the recent construction of the Old Beechy Rail Trail from Beech Forest to Ferguson).

From the core town centre of Lavers Hill at Yatzie's Café beginning at the bus stop, the trail is on an existing 1.5 metre wide concrete footpath that is in good condition. There is a 32 metre length of timber boardwalk that forms the path just west of the public toilets. The existing concrete footpath gently meanders past residential properties and several businesses to finish at the Lavers Hill K-12 College. At the College, the proposed off-road trail follows the vegetated embankment above the Great Ocean Road. The precise college boundary title on the embankment is unknown and the title alignment will need to be resolved in the next stage of planning the trail. Once on more level ground the trail is on a wide grassed nature strip with several cherry trees parallel to the road. As the trail route from the school to Crowes could run on either side of the road, detailed inspection with two local interest groups, has resolved that west of the college's embankment the safest and the practical long term route, without interference with logging and plantation operations, is to run the trail to the south side of the Great Ocean Road.

The trail crosses the Great Ocean Road at an existing orange coloured 'School Ahead' sign at right angles to an existing large dead tree. This avoids a pinch point further east on the south side of the Great Ocean Road. This road crossing is subject to the VicRoads approval of the existing 60 Kph sign being moved approximately 130 metres west and trimming some indigenous vegetation which forms a hedge row, limiting sightlines particularly on the inside radius curve to the north side of the Great Ocean Road.

Now on the south side of the Great Ocean Road, the trail connects through a short length of what appears to be private property (initial alignment will need to be agreed to by the property owner), then connects along a powerline easement of slashed grass to then re-emerge along the roadside at Nellie Nook's driveway. A very interesting feature at the row of Leyland Cypress trees is the presence of the former railway line tracks within the grassed road reserve. There are two short 2-3 metre lengths of railway tracks. This site is worthy of interpretation in a covert manner to avoid possible theft or vandalism of the rails. From this area the trail follows at the roadside verge and a key parameter for this section is to maintain a line of existing indigenous vegetation, not only as a physical and psychological safety barrier, but as a strip of vegetation that retains the existing roadside character and amenity from a scenic perspective. The separation with a buffer of existing vegetation of between 4-7 metres between the road seal and the trail provides safety to trail users and a more pleasant experience than a trail located on the road shoulder. There are two sections towards Crowes that require approximately 45 and 62 metres of boardwalk cantilevered to the embankment slope. Boardwalks will need handrails and materials can be the inert type of weld lock and hardened recycled plastics for longevity and grip. There will be a need for indigenous vegetation clearance to facilitate the trail between the abovementioned private property and the former road formation.

MICHAEL SMITH & ASSOCIATES 9  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN



LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

Towards Crowes, approximately 440 metres from the Melba Gully turnoff from the Great Ocean Road, the trail follows a well-formed and cleared length of the former Great Ocean Road formation. The trail connects well with an existing cleared area of approximately 3,000 square metres, that was the former Crowes Station site. Currently it is a flat area and has been used as a stockpile site. The site is worthy of interpretation and there is an old Cordyline tree beside a large Messmate Gum near the roadside. The Cordyline has been identified as being of heritage significance and must be protected. Further into the bushland there is a former water tank and bridge worthy of directional and interpretive signage.

There are two proposed connections from the former railway station site. The first is in a direct line along the former Old Beechy Railway to the Crowes buffer stop, a distance of approximately 140 metres. This trail crosses Melba Gully Road approximately 42 metres from the white line edge of the Great Ocean Road and has a key advantage for mobility impaired people to access the interesting historic site of the Crowes buffer stop on a flat gradient. The existing interpretive information on the Old Beechy Railway and restoration of the Crowes buffer stop is very interesting.

The second trail runs through recently cleared blackberry vegetation and an open clearing to cross the Melba Gully Road approximately 50 metres from the white line edge of the Great Ocean Road. This track would easily lead to the existing earthen car park of the rail head and buffer stop. To access the interpretive information, there is a rather difficult track and formed steps to negotiate that are unsuitable for people with limited mobility.

From the Crowes Buffer Stop car park which is approximately 130 metres south of the Great Ocean Road, the trail can follow the west side of Melba Gully Road without much need for new infrastructure and earthworks. There is a 60 to 70 metres length midway along the intended route where the 3 metre wide road easement drops away from the road. To provide a trail, the treatment to this section requires one of three options (a) earthworks and drainage works on the opposite side of the road to facilitate construction of the trail for the 60 to 70 metre section, (b) a boardwalk cantilevered midway down the embankment profile, or (c) access within the private property to which the owner of the property has already granted approval in principle. Fencing would need to be provided or the current boundary fence relocated 2 to 3 metres into the private property for the 60 to 70 metre length.

Following from the embankment treatment, apart from a 60 Kph speed sign and either diverting to the roadside (preferable) or construction of a 10-15 metre long boardwalk to negotiate a steep gully edge at the speed sign, the trail connects easily along the southwest side of the lower carpark to the interpretive signage about Melba Gully. The length of the trail from the Great Ocean Road is 1,028 metres.

Melba Gully is ecologically interesting as one of the wettest places in Victoria and as a consequence, has a significant Myrtle Beech forest with fern gullies support a range of birds and mammals. Along the walking tracks glow worms can be observed at night.

**MICHAEL SMITH & ASSOCIATES<sup>10</sup>**  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN

LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

## 5 Preliminary Assessment of Native Vegetation Losses and Offsets for the Proposed Shared Path from Lavers Hill and Crowes, Colac Otway Shire

### Introduction

A concept plan for the proposed shared trail between Lavers Hill and Crowes has been developed by Michael Smith and Associates. The shared trail would be constructed between Lavers Hill and the former Crowes Station site at the road that leads to Melba Gully in the Otway Ranges National Park.

The shared path was designed collaboratively with a team of consultants led by Michael Smith and Associates, representatives of Colac-Otway Shire Council and the Lavers Hill and District Progress Association. Practical Ecology was part of the design team and was able to inspect the potential trail footprint with ecological values considered through the design process. It was possible to design a shared off-road trail through areas of cleared land and/or areas of minimal ecological value. This was of course possible because of the disturbed nature of roadside vegetation along the Great Ocean Road. These roadsides have all likely been cleared in the past and have ongoing disturbance even if some areas have regenerated native vegetation.

The proposed trail alignment is approximately 3.9 kilometres from the core Lavers Hill township zone intersection to the entry to Melba Gully picnic facilities. Along this length there is only an estimated 740 linear metres of native vegetation required to be cleared. This is an excellent outcome from the design process.

This part of Victoria has high rainfall and supports vigorous and luxuriant native vegetation when it is allowed to grow. It is also likely that much of this landscape was cleared for farming in the past and the native vegetation along the Great Ocean Road is a product of disturbance. Several areas of native vegetation do need to be cleared for the shared trail but they are disturbed examples of the original native vegetation with different indigenous species dominating in different circumstances.

Information about rare or threatened flora and fauna in the local landscape was also taken into account in the design process. Local records of rare and threatened flora and fauna and information about their habitat needs were sourced prior to the site inspection. It was possible during the site inspection and design process to determine that none of the roadside vegetation was likely to be habitat for the rare or threatened flora and fauna species recorded in the local areas.

This report will describe the native vegetation that would be removed for the shared trail, estimate the required offsets and estimated costs. As this project was to develop a concept plan it was not possible to undertake the detailed work necessary to do a detailed assessment of the native vegetation to be lost and strictly define the offsets. However, it has still been possible to define the likely losses effectively and provide a reasonable estimate of the offsets required as well as the likely costs for the required offsets.

MICHAEL SMITH & ASSOCIATES<sup>11</sup>  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN

LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

## Native Vegetation and Threatened Flora and Fauna

The areas of native vegetation that will be required to be cleared are highlighted on the concept plans for the shared trail. There are only limited sections within the whole that would need to be cleared. Most of the areas to be cleared do meet the strict definition of remnant native vegetation and habitat zones, but are disturbed examples of the original vegetation.

The areas of remnant vegetation to be cleared are likely to be comprised of Ecological Vegetation Class 30 Wet Forest. A map of the Ecological Vegetation Classes (EVCs) in the local area is attached at the end of this report; it indicates that the vegetation along the road is either EVC 30 Wet Forest or EVC 201 Shrubby Wet Forest. EVC 201 Shrubby Wet Forest is “largely restricted to western and northern and ridgelines” while most of the vegetation effected is sheltered on the south side of the ridge where the Great Ocean Road was built. Both EVCs are considered to have a Bioregional Conservation Status of “Least Concern” in the Otway Ranges Bioregion which means that more 90% of the pre-European extent of the vegetation still remains.

The areas of EVC 30 Wet Forest that would be lost if the shared trail was built are consistently disturbed examples of the EVC but with different dominant species. The areas along the road were likely to have been cleared in the past and the regeneration that has occurred is typically of a limited group of indigenous species. The following conditions exist along the road and are representative of different areas:

- The road reserve in front of the Lavers Hill College is dominated by introduced trees and shrubs but have some indigenous shrubs present.
- The areas distributed for a few hundred metres on the south side of the Great Ocean Road just west of the proposed crossing are dominated by Blackwood *Acacia melanoxylon* and various shrubs. The typical overstorey tree Mountain Ash *Eucalyptus regnans* is not present and Blackwoods likely dominate these sites because the seeds were stored in the soil after clearing, could regenerate and other tree species haven’t had the opportunity to regenerate on the sites.
- The embankment on the south side of the Great Ocean Road on the west end of Map 2 of 5 of the Concept Plan is dominated by Prickly Tea-tree *Leptospermum juniperinum* and small trees. Small shrubs were the first species to have a chance to regenerate and they have grown to dominate.

The above conditions are repeated in different areas of native vegetation loss. In general, none of the vegetation to be cleared is pristine nor of a high quality.

Local records of rare or threatened flora and fauna species were also reviewed and considered in the design process. It was found that most records of relevant threatened species were limited to wet gullies in the local area and are more typical of the Cool Temperate Rainforest that would occur in such gullies. In addition, disturbed roadsides are unlikely to contain habitat for rare or threatened species because of the limited habitat components present after past clearing and among the ongoing disturbance of a busy road. It is unlikely that the habitat along the road is providing habitat for any rare or threatened flora and fauna species.

MICHAEL SMITH & ASSOCIATES<sup>12</sup>  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN



LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

It was found that the native vegetation that would likely be lost to build the shared trail is comprised of disturbed examples of the “least concern” EVC Wet Forest and that it is unlikely that rare or threatened flora and fauna species occur in the habitat present. The construction of the shared trail is unlikely to have an impact on any significant habitats. However, if native vegetation is cleared then there will be the requirement to provide offsets and the likely offsets required are calculated in the next section. A planning permit will be required to clear any native vegetation and offsets will very likely be required.

## Offset Estimates and Potential Costs

The required approach to determining required offsets when a permit is obtained for clearing remnant native vegetation usually involves mapping the exact areas to be cleared and determining habitat scores of vegetation to be cleared. That information is then provided in spatial data files to Native Vegetation Support at the Department of Environment, Land, Water and Planning (DELWP) who then develops a Biodiversity Information and Offset Report that identifies the exact amount of offsets required. However, as this project is just at the concept plan stage the offset requirements are simply estimated to the best degree possible.

The losses were calculated as follows:

Area of loss: 740 m long x 4 m wide ~ = 2960 m<sup>2</sup> or 0.296 ha

Area of loss (0.296 ha)

x likely habitat score (0.60<sup>^</sup>)

x strategic biodiversity score (0.90<sup>\*</sup>)

= 0.1598 General Biodiversity Equivalency Units

0.1598 General Biodiversity Equivalency Units

x offset multiplier 1.5 = 0.2398 GBEUs

*~As based on data provided by Michael Smith and Associates with a 1m construction impact estimated on either side of the 2 m trail.*

*<sup>^</sup>Visually estimated based on my experience and is a cautiously high estimate.*

*<sup>\*</sup>Sourced from Biodiversity Interactive Mapping. Most of the corridor is mapped as having a Strategic Biodiversity Score of 0.80 to 1.00.*

GBEUs cost between \$120K and \$180K so this offset might cost more because of the high Strategic Biodiversity Score. The likely offset cost is at least \$30K but with cautiousness it may be more reasonable to estimate a cost of up to \$50K excluding GST. As the required offsets usually need to be purchased in the “offset market” it is hard to be sure of the cost until the exact offset requirement is known and an offset is purchased.

Please note as well that the possibility of Species-specific offsets being required exists. These would be required if there is modelled habitat for certain rare or threatened flora and fauna species lost above a certain threshold. However, the level of Species-specific offsets would be similar to the amount of general offsets required because the level of offset units are very similar and are calculated according to the area affected. Species-specific offsets can also be more expensive than general offsets but usually not more than 10 or 20%.

MICHAEL SMITH & ASSOCIATES<sup>13</sup>  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN

LAVERS HILL TO CROWES AND  
MELBA GULLY – CONCEPT PLANS  
FOR AN OFF-ROAD TRAIL  
REPORT

## Conclusion

It was found that the native vegetation that would likely be lost to build the shared trail is comprised of disturbed examples of the “least concern” EVC Wet Forest and the construction of the shared trail is unlikely to have an impact on any significant habitats.

Native vegetation offsets will be required and will likely cost up to \$50,000.

This report is only a preliminary assessment based on a general assessment of the possible impacts of the shared trail construction and a detailed vegetation assessment will be required when more detailed designs are completed and a planning permit is applied for. It is unlikely that the small level of clearing required will be problematic for the planning permit application process as the losses are unlikely to be significant in the context of Victorian biodiversity.

## References

- DEPI (May 2013) *Biodiversity Assessment Guidelines*. The State Department of Environment and Primary Industries, Melbourne.
- DELWP (2016) *Biodiversity Interactive Mapping: Ecological Vegetation Classes*.
- DELWP (2016) *Biodiversity Interactive Mapping: Strategic Biodiversity Scores*.
- DELWP (2016) *Biodiversity Interactive Mapping: Threatened Flora and Fauna Records*.
- DSE (?) *Bioregional Conservation Status for BioEVC*. Sourced from DELWP website.
- DSE (?) *EVC 30: Wet Forest*. Sourced from DELWP website.
- DSE (?) *EVC 201: Shrubby Wet Forest*. Sourced from DELWP website.

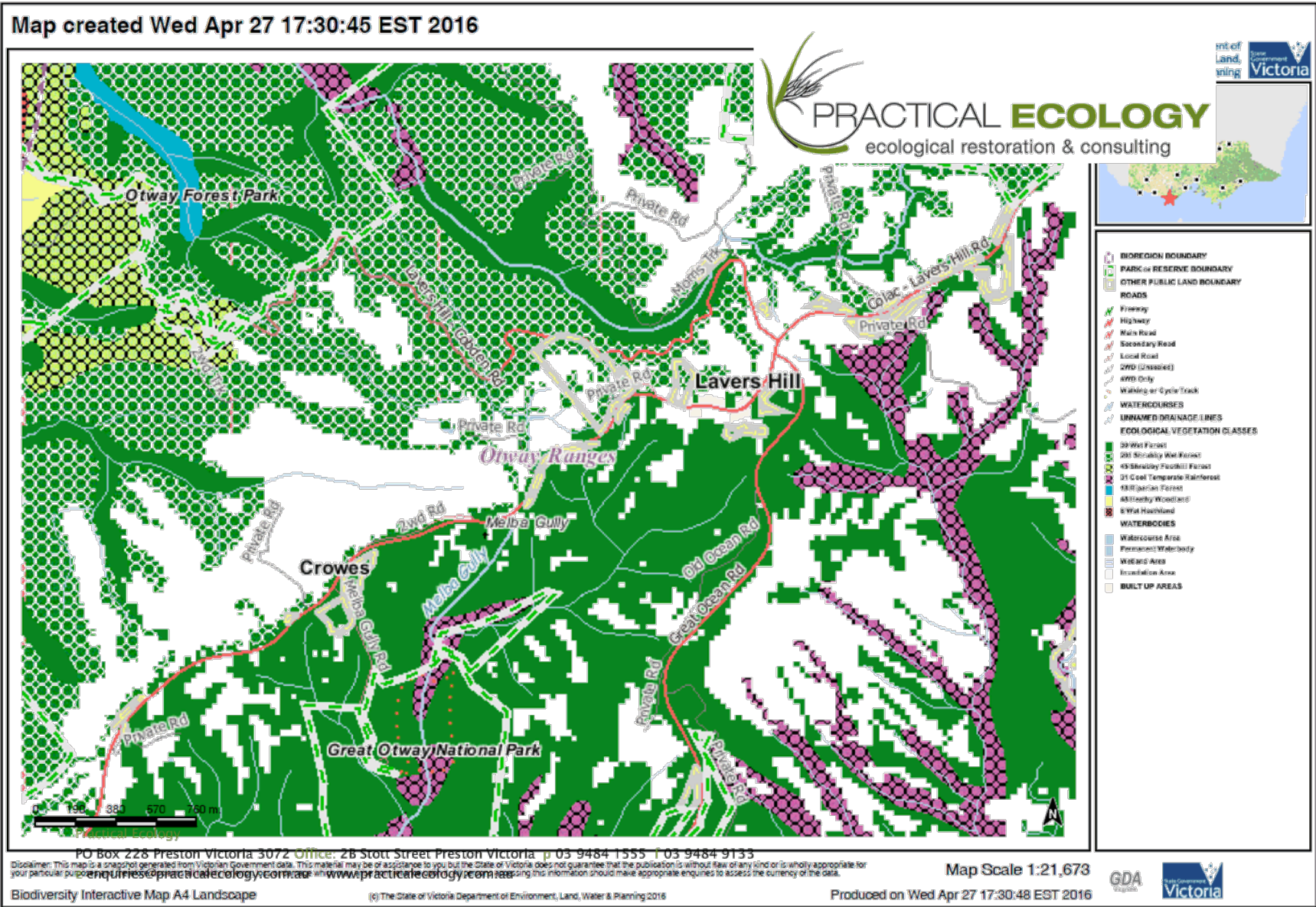
Prepared by Lincoln Kern 1<sup>st</sup> July 2016



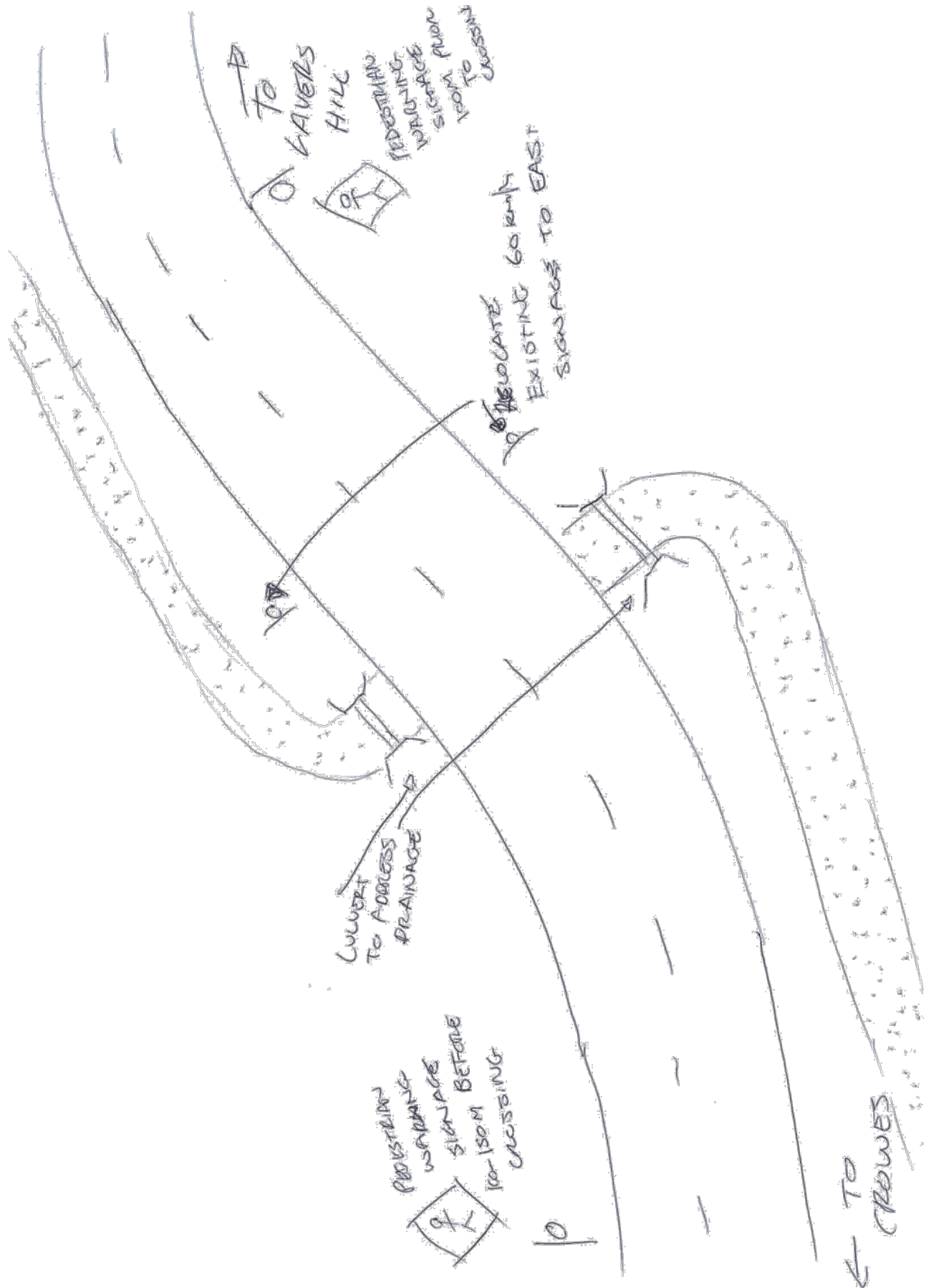
Practical Ecology

PO Box 228 Preston Victoria 3072 Office: 2B Stott Street Preston Victoria p 03 9484 1555 f 03 9484 9133  
e enquiries@practicalecology.com.au www.practicalecology.com.au

MICHAEL SMITH & ASSOCIATES<sup>14</sup>  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN







---

**Mike Smith**

---

**From:** Brent Hodges <brent@traffixgroup.com.au>  
**Sent:** Friday, 10 June 2016 11:42 AM  
**To:** Glenn.Blundell@roads.vic.gov.au  
**Cc:** Michael (mike@msalandurb.com.au); nicole.frampton@colacotway.vic.gov.au  
**Subject:** RE: Lavers Hill to Crowes - Off-Road Trail Feasibility Study

Hi Glenn,

Thanks for the feedback. Obviously there will be more design work in the future if the path is feasible from a funding perspective.

We will include a note on the plans that a Road Safety Audit would need to be conducted at a future design stage.

Regards,

**Brent Hodges**  
Senior Traffic Engineer  
**TraffixGroup**  
<http://www.traffixgroup.com.au>

Suite 8, 431 Burke Road  
Glen Iris Victoria Australia 3146  
Email: [brent@traffixgroup.com.au](mailto:brent@traffixgroup.com.au)  
Phone: +61 3 9822 2888  
Facsimile: +61 3 9822 7444

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**From:** Glenn.Blundell@roads.vic.gov.au [mailto:Glenn.Blundell@roads.vic.gov.au]  
**Sent:** Friday, 10 June 2016 9:48 AM  
**To:** Brent Hodges <brent@traffixgroup.com.au>  
**Subject:** RE: Lavers Hill to Crowes - Off-Road Trail Feasibility Study

Hi Brent,

VicRoads in principle supports the proposal - extension of the 60km/h zone west. Obviously further down the track, we assume a road safety audit would be undertaken?

**Glenn Blundell**  
Senior Traffic Management Officer  
**VicRoads - South Western Region**  
29 Jamieson Street, Warrnambool, 3280  
T 03 5561 9203

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Lavers Hill to Crowes and Melba Gully  
– Concept Plans for an Off-Road Trail

## CONCEPT PLANS FOR THE LAVERS HILL TO CROWES AND MELBA GULLY OFF-ROAD TRAIL

COLAC OTWAY SHIRE COUNCIL

**MICHAEL SMITH & ASSOCIATES**  
LANDSCAPE ARCHITECTURE AND URBAN DESIGN



### OPINION OF PROBABLE COSTS

Based on plans L1 to L5 Rev A (dated 17.06.2016)  
DATE 22.06.2016

Postal: 5 Jervis Street, Camberwell Vic 3124  
Office: 1st Floor, 407 Whitehorse Road, Balwyn Vic 3103  
Telephone 03 9830 0414 Facsimile 03 9830 2555  
Mobile 0418 172 863 Email mike@msalandurb.com.au

| ITEM        |                                                                                                                                                                                                                                                                                                                                                                                                 | UNIT | QTY | RATE | COST (\$) |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-----|------|-----------|
| <b>1.00</b> | <b>COUNCIL'S CO-ORDINATION OF PLANNING DESIGN AND DOCUMENTATION AND PROJECT MANAGEMENT</b>                                                                                                                                                                                                                                                                                                      |      |     |      |           |
|             | Council officer planning, Council input to the design and documentation, then the project management during construction.                                                                                                                                                                                                                                                                       | Item | -   | -    | \$15,000  |
| <b>2.00</b> | <b>PLANNING APPROVAL</b>                                                                                                                                                                                                                                                                                                                                                                        |      |     |      |           |
|             | Planning approval, including report and Council officer's time, including an independent planner's report.                                                                                                                                                                                                                                                                                      | Item | -   | -    | \$2,500   |
| <b>3.00</b> | <b>CULTURAL HERITAGE DUE DILIGENCE REVIEW</b>                                                                                                                                                                                                                                                                                                                                                   |      |     |      |           |
|             | On site walk through by an experienced CHMP Archaeologist to assess for indigenous culture artefacts. Mostly on already disturbed ground, therefore due diligence level is likely to be acceptable.                                                                                                                                                                                             | Item | -   | -    | \$2,000   |
|             | Removal of overhanging tree limbs to trees 1-2 metres beyond the four metre wide corridor.                                                                                                                                                                                                                                                                                                      | Item | -   | -    | \$3,000   |
| <b>4.00</b> | <b>VEGETATION OFF SET PLANNING AND PLANTING</b>                                                                                                                                                                                                                                                                                                                                                 |      |     |      |           |
|             | Preparation of the vegetation offset report and further inspection along the trail's length by Practical Ecology. Report prepared as part of the planning submission.                                                                                                                                                                                                                           | Item | -   | -    | \$3,000   |
|             | Offset requirement planting of replacement of approximately 740 linear metres of indigenous vegetation.                                                                                                                                                                                                                                                                                         | Item | -   | -    | \$50,000  |
| <b>5.00</b> | <b>FIELD SURVEY FROM LAVERS HILL P-12 COLLEGE TO MELBA GULLY CAR PARK</b>                                                                                                                                                                                                                                                                                                                       |      |     |      |           |
|             | Field survey of section from Lavers Hill to College to the Melba Gully car park approximately 2.8 kilometres. Undertake a feature and levels survey, plot existing trees of over 250mm ø at 1.4 metres above ground level. Plot existing thickets of vegetation within a five metre corridor of the intended trail. Plot roadside signs, power poles, driveway entrances, fencelines and gates. | Item | -   | -    | \$15,000  |
| <b>6.00</b> | <b>GEOTECHNICAL INVESTIGATION AND REPORTING</b>                                                                                                                                                                                                                                                                                                                                                 |      |     |      |           |
|             | Field inspection take 15 bore holes (10 at boardwalks). Field samples to laboratory test, CBR, PI. Slump. Note on plan. Prepare the geotechnical report with focus on the two boardwalk sections. To inform the structural and civil design and documentation.                                                                                                                                  | Item | -   | -    | \$8,000   |

MICHAEL SMITH AND ASSOCIATES LANDSCAPE ARCHITECTURE AND URBAN DESIGN  
1 OF 4

Lavers Hill to Crowes and Melba Gully  
– Concept Plans for an Off-Road Trail

|              |                                                                                                                                                                                                                                                                  |                |      |     |          |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|------|-----|----------|
| <b>7.00</b>  | <b>STRUCTURAL AND CIVIC DESIGN DEVELOPMENT DESIGN AND DOCUMENTATION</b>                                                                                                                                                                                          |                |      |     |          |
|              | Field visit, ground truthing with the feature and levels survey plan. Confirm major earthwork sections and boardwalk sections. Peg out the boardwalk sections. Tag the intended route with marker tape.                                                          | Item           | -    | -   | \$3,000  |
|              | Civil and structural design development and documentation. Engineering Certifications of structural boardwalks and handrail design. Earthworks from minor to major trimming. Preparation of AutoCAD plans, cross sections and performance specification notes.   | Item           | -    | -   | \$20,000 |
| <b>8.00</b>  | <b>GREAT OCEAN ROAD CROSSING POINT</b>                                                                                                                                                                                                                           |                |      |     |          |
|              | To the location on plan L2 approximately 150 metres west of Lavers Hill P-12 College - Vic Roads approval following their site inspection and documentation/application                                                                                          | Item           | -    | -   | \$3,000  |
|              | Installation of warning signs and relocation of signs.                                                                                                                                                                                                           | Item           | -    | -   | \$20,000 |
|              | Formation of path at right angles to the road. Culvert drainage either side                                                                                                                                                                                      |                |      | -   | \$5,000  |
|              | Lopping of trees to internal edge of Blackwoods between the road crossing and 60Kph sign.                                                                                                                                                                        | Item           | -    | -   | \$8,000  |
| <b>9.00</b>  | <b>MELBA GULLY ROAD CROSSING POINT</b>                                                                                                                                                                                                                           |                |      |     |          |
|              | To the location on plan L4 - Council review as Council road. Provision of warning signs.                                                                                                                                                                         | Item           | -    | -   | \$3,000  |
| <b>10.00</b> | <b>TRAFFIC MANAGEMENT</b>                                                                                                                                                                                                                                        |                |      |     |          |
|              | Traffic management plan documentation                                                                                                                                                                                                                            | Item           | -    | -   | \$3,000  |
|              | Provide traffic signage and at times an attendant to manage vehicle movements on the busy road for trucks and machinery accessing work areas in tree felling, earthworks, path and boardwalk construction, track surfacing over a 30-40 day construction period. |                |      |     |          |
|              | Static signage set up and moving signage.                                                                                                                                                                                                                        | Days           | 30   | 700 | \$21,000 |
|              | Traffic management attendants on site with a ute. Allow for several occasions of lane closures.                                                                                                                                                                  | Days           | 10   | 300 | \$3,000  |
| <b>11.00</b> | <b>CONSTRUCTION OF TRAIL FROM P-12 COLLEGE TO CROWES</b>                                                                                                                                                                                                         |                |      |     |          |
|              | General set up and pegging out route.                                                                                                                                                                                                                            | Item           | -    | -   | \$5,000  |
|              | General bulk earthworks and ground profiling to approximately 750 metres, lenth 4 metres width.                                                                                                                                                                  | Lm             | 20   | 750 | \$15,000 |
|              | Contractors establishment and site compounds, sheds, toilet facilities including project management.                                                                                                                                                             | Item           | -    | -   | \$12,000 |
|              | Indigenous vegetation clearance 740 lm of 4 metre width corridor                                                                                                                                                                                                 | Days           | 40   | 600 | \$24,000 |
|              | Trimming and earthworks in general to approximately 1200 Linear metres between Lavers Hill P-12 College and Crowes. Allow for 175 mm depth and cartage/disposal.                                                                                                 | m <sup>2</sup> | 2400 | 15  | \$36,000 |
|              | Trimming and earthworks at approaches to boardwalks                                                                                                                                                                                                              | Item           | -    | -   | \$6,000  |
|              | Trimming to old road and powerline easement approximate length 700 Lm, removal 175 mm depth and cartage/disposal.                                                                                                                                                | Lm             | 700  | 10  | \$3,500  |

MICHAEL SMITH AND ASSOCIATES LANDSCAPE ARCHITECTURE AND URBAN DESIGN  
2 OF 4



Lavers Hill to Crowes and Melba Gully  
– Concept Plans for an Off-Road Trail

|              |                                                                                                                                                                                                                                                                                       |                |       |       |           |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------|-------|-----------|
| <b>12.00</b> | <b>CONSTRUCTION OF TRAIL ON MELBA GULLY ROAD</b>                                                                                                                                                                                                                                      |                |       |       |           |
|              | Trimming and earthworks in general 864 metres from the Great Ocean Road to the start of the existing car park at Melba Gully.<br>Allow for 175 mm depth and cartage/disposal.                                                                                                         | m <sup>2</sup> | 1,728 | 10    | \$17,280  |
| <b>13.00</b> | <b>BOARDWALKS</b>                                                                                                                                                                                                                                                                     |                |       |       |           |
|              | Two weldlok FD385 fibre reinforced plastic mesh boardwalks with deep piles to solid ground. Boardwalks 1.5 metres wide with handrails.                                                                                                                                                | Lm             | 107   | 2,000 | \$214,000 |
| <b>14.00</b> | <b>SURFACING OF THE TRAIL FROM LAVERS HILL P-12 COLLEGE TO CROWES AND CROWES TO MELBA GULLY</b>                                                                                                                                                                                       |                |       |       |           |
|              | 2.0 metre wide crushed rock base to 75mm depth over compacted site soil. Includes old road formation and powerline easement, 1920 linear metres.                                                                                                                                      | m <sup>2</sup> | 3,840 | 10    | \$38,400  |
|              | 2.0 metre wide Scoria Tuff as surfacing to 100mm depth. Includes old road formation and powerline easement 1,920 linear metres                                                                                                                                                        | m <sup>2</sup> | 3,840 | 12    | \$46,080  |
|              | Floodway and culvert drains at various locations to divert water away from the surface.                                                                                                                                                                                               | Item           | -     | -     | \$20,000  |
|              | Ballast/salamander rock to fill depressions associated with earthworks trimming and culvert drainage.                                                                                                                                                                                 | Item           | -     | -     | \$10,000  |
|              | 2.0 metre wide crushed rock base to 75 mm depth over compacted site soil, 864 linear metres on Melba Gully Road.                                                                                                                                                                      | m <sup>2</sup> | 1,728 | 10    | \$17,280  |
|              | 2.0 metre wide Scoria Tuff as surfacing to 100mm depth, 864 linear metres on Melba Gully Road.                                                                                                                                                                                        | m <sup>2</sup> | 1,728 | 12    | \$20,736  |
|              | Ballast/salamander rock to fill depressions.                                                                                                                                                                                                                                          | Item           | -     | -     | \$1,000   |
| <b>15.00</b> | <b>FURNITURE</b>                                                                                                                                                                                                                                                                      |                |       |       |           |
|              | Provide seats and picnic tables at particular points. Allow three points along the trail for picnic tables and bench seats. Three wheelchair accessible picnic tables and concrete surround.                                                                                          | ea             | 3     | 2,500 | \$7,500   |
|              | Three seats (no concrete surround).                                                                                                                                                                                                                                                   | ea             | 3     | 1,000 | \$3,000   |
| <b>16.00</b> | <b>SIGNAGE (INTERPRETIVE AND DIRECTIONAL)</b>                                                                                                                                                                                                                                         |                |       |       |           |
|              | Provide directional and interpretive signage. Allow for artwork, written content, fabrication and installation.<br>Signage at commencement point, i.e. core town, mid point of Crowes and Melba Gully.                                                                                |                |       |       |           |
|              | Directional and distance signage.                                                                                                                                                                                                                                                     | Item           | -     | -     | \$15,000  |
|              | Interpretive signage at the former station site, rail tracks and in town.                                                                                                                                                                                                             | Item           | -     | -     | \$25,000  |
|              | Provide fire safety warning signage at key access points on the trail, six locations advising of procedures for Extreme Fire Days and Code Red Fire Days. Provide a link to Apps and/or website/s. Provide 'A' frame boards at three locations controlled by local community members. |                |       |       |           |
|              | 6 signs and installation                                                                                                                                                                                                                                                              | Item           | 6     | 1,100 | \$6,600   |
|              | 3' A' frame boards                                                                                                                                                                                                                                                                    | Item           | 3     | 700   | \$2,100   |

MICHAEL SMITH AND ASSOCIATES LANDSCAPE ARCHITECTURE AND URBAN DESIGN  
3 OF 4

Lavers Hill to Crowes and Melba Gully  
– Concept Plans for an Off-Road Trail

|                              |                                                                                                                           |  |  |  |                     |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------|--|--|--|---------------------|
| <b>17.00</b>                 | <b>CONTINGENCY SUM</b>                                                                                                    |  |  |  |                     |
|                              | Allow 10% sum contingency sum for unforeseen circumstances and cartage/cost escalations/confined working site conditions. |  |  |  | \$73,298            |
| <b>TOTAL (Excluding GST)</b> |                                                                                                                           |  |  |  | <b>\$732,976.00</b> |
| 10% Contingency Sum          |                                                                                                                           |  |  |  | \$73,297.60         |
| <b>ADD 10% GST</b>           |                                                                                                                           |  |  |  | <b>\$80,627.36</b>  |
| <b>TOTAL (Including GST)</b> |                                                                                                                           |  |  |  | <b>\$886,900.96</b> |

**MICHAEL SMITH AND ASSOCIATES LANDSCAPE ARCHITECTURE AND URBAN DESIGN**  
**4 OF 4**

**OM162408-12 COUNCIL WASTE DROP OFF FACILITIES - FEES AND CHARGES**

|             |                    |           |            |
|-------------|--------------------|-----------|------------|
| AUTHOR:     | Jenny Wood         | ENDORSED: | Mark Lyons |
| DEPARTMENT: | Corporate Services | FILE REF: | F16/6678   |

**Purpose**

The purpose of this report is to consider an amendment to the fees and charges for the 'Drop off Facilities' at Lavers Hill, Beech Forrest, Gellibrand and Carlisle River.

**Declaration of Interests**

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

**Background**

The 'Drop Off Facilities' at Lavers Hill, Beech Forrest, Gellibrand and Carlisle River operate one day on a weekend on a fortnightly basis. Residents who are unable to obtain access to a kerbside collection service are able to drop off general waste and recycling material at any of the 'Drop Off Facilities' when available.

Spence Waste ("Spence") operates as Council's contractor for the 'Drop Off Facilities' and fees are set by Council each year as part of the annual budget process. The fees set for the 2016/17 financial year for all Council waste sites was \$11 for a 120 litre waste bin and \$17 for a 240 litre waste bin. All domestic recycling material is free to drop off at all facilities (including Transfer Stations).

**Issues / Options**

Our Contractor who manages our 'Drop Off Facilities' commenced the communication process to customers regarding the fees in place for the 2016/17 financial year.

While there was no change in the fees for 120 & 240 litre waste bin charges between 2015/16 and the 2016/17 charges register, until this recent communication the Contractor had been charging a flat fee of \$10 per 120 litre or 240 litre waste bin and therefore as a result some customers have expressed their concern regarding the price increase.

**Proposal**

Based on customer feedback and the past methodology of providing access to equivalent pricing to kerbside collection customers it is proposed that the fees and charges be amended for waste drop off at all 'Drop off Facilities' as follows:

| Bin size         | Price | Number of bins      |
|------------------|-------|---------------------|
| Up to 240 litres | \$11  | 1 <sup>st</sup> bin |
| 120 litre        | \$11  | Additional bins     |
| 240 litre        | \$17  | Additional bins     |

Alternatively ratepayers are able to purchase waste ticket books from Council's customer service centres in Colac and Apollo Bay. The waste ticket books offer a discounted drop off service price. The ticket book prices are:

- 25 tickets for \$142.00 (which equates to \$5.68 per 240 litre general waste bin drop off)
- 10 tickets for \$66.00 (which equates to \$6.60 per 240 litre general waste bin drop off)

This is the cheapest option for residents that do not receive a kerbside collection service and it is not proposed to change arrangements in relation to waste ticket books. Also fees and charges in place at transfer stations remain unchanged.

Total fees generated through 'Drop of Facilities' for general waste bin disposal in the 2015/16 financial year (excluding ticket use) was \$2,990 and the proposal will not have any financial impact on Councils budget.

### **Implementation**

If approved the fees and charges schedule will be amended to reflect the cost for dropping off Waste at one of our Drop off facilities as \$11 for the first bin up to 240 litres in size and then \$11 for each additional 120 litre bin and \$17 for each additional 240 litre bin.

### **Conclusion**

Council has set its fees and charges for the cost of a bin to be dropped off at one of our 'Drop off Facilities'. The Contractor has charged a rate of \$10 at these facilities for either a 120 or 240 litre bin. It is proposed that the fees and charges schedule be amended to indicate a fee that is comparable to with kerbside collection fees for those customers who cannot access a kerbside collection due to their location.

### **Attachments**

Nil

### **Recommendation**

#### ***That Council:***

***Amend the 2016/17 Fees and Charges Schedule to add the following:-***

***Putrescibles (including mixed rubbish) Drop of Facilities - Lavers Hill, Beech Forrest, Gellibrand and Carlisle River, 1<sup>st</sup> bin up to 240 litre bin \$ 11, additional bins 120 litre bin or less \$ 11, additional bins 240 litre bin \$ 17.***

~~~~~\ ~~~~~

OM162408-13 LOCAL GOVERNMENT ACT REVIEW SUBMISSION

| | | | |
|-------------|--------------------|-----------|------------|
| AUTHOR: | Jenny Wood | ENDORSED: | Mark Lyons |
| DEPARTMENT: | Corporate Services | FILE REF: | F16/6696 |

Purpose

To present the proposed submission in response to the Directions Paper – ‘An Act for the Future’ – Directions for a new Local Government Act 1989.

Declaration of Interests

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

Background

Following the release of a Discussion Paper in September last year, the Government has undertaken an extensive consultation process to inform the proposals for reform of the Local Government Act 1989 contained in this paper.

At Councillor Briefings held during July and August Councillors provided feedback to allow officers to prepare a submission for formal consideration by Council.

Issues / Options

The aims of the ‘Act for the future’ has three principal aims:

- To revitalise local democracy
- To support councils to be innovative, collaborative and efficient, and
- To create a plain English act that is easy to understand and apply

The directions paper outlines over 150 reforms to make councils more effective, autonomous and democratic. A key element of the reforms is to establish deliberative community engagement as a core principle of the new act and an essential element in the role of Councillors.

Submissions on the Directions Paper are open until 16 September 2016 and can be made by Council or by individual submission.

Proposal

Attached is the draft submission for the Directions Paper based on feedback received in Council briefings held to date. If adopted, the submission will be provided to the State Government as a contribution to the feedback on the Directions Paper by the Colac Otway Shire.

Community Engagement

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected would be inform. Councils submission will be a public document and the State Government are coordinating community engagement in relation to the changes to the Local Government Act. Individuals are also able to make submissions to the State Government directly.

Implementation

Submissions for the response to the Local Government Act Directions Paper – ‘An act for the future’ are required to be submitted by Friday 16 September 2016.

Conclusion

Following consultation with Council a submission in response to the Directions Paper – ‘An Act for the future’ has been prepared and if adopted by Council will be submitted to the State Government on behalf of the Colac Otway Shire.

Attachments

1. 'Act for the future' - Directions for a new Local Government Act Submission Paper - Colac Otway Shire

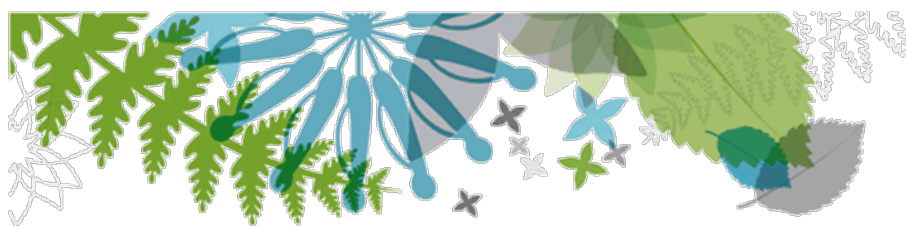
Recommendation

That Council:

Adopt the draft submission 'Act for the Future' – Directions for a new Local Government Act Submission Paper – Colac Otway Shire, for submission to the State of Victoria Department of Environment, Land, Water and Planning by 16 September 2016.

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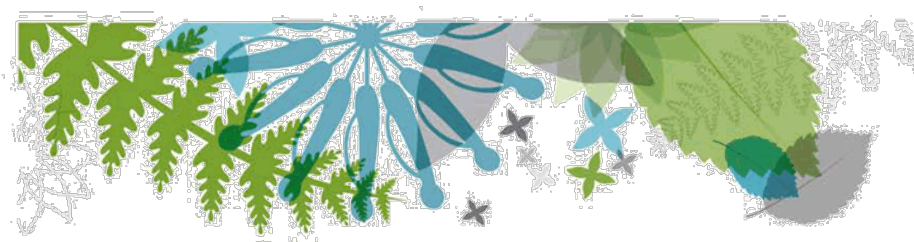


## Act for the Future – Directions for a new Local Government Act

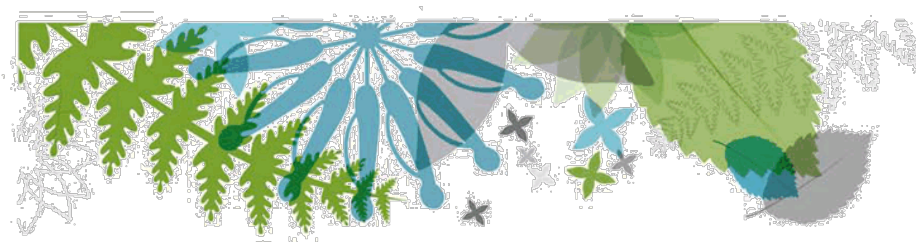
### Submission Paper – Colac Otway Shire

#### CONTENTS

|                                                                              |   |
|------------------------------------------------------------------------------|---|
| Chapter 2 – Contemporary Councils capable of meeting future challenges.....  | 3 |
| Principles based act .....                                                   | 3 |
| Minimum two year terms for Mayors and Deputy Mayors .....                    | 3 |
| Expanded role of the mayor.....                                              | 3 |
| Require Councillors to actively participate in Engagement processes.....     | 3 |
| Councillor entitlements .....                                                | 3 |
| CEO Remuneration policy .....                                                | 4 |
| Confidential business.....                                                   | 4 |
| Assemblies of Councillors.....                                               | 4 |
| Employment and workforce matters.....                                        | 4 |
| Community consultation and local laws .....                                  | 4 |
| Chapter 3 – Democratic and representative Councils.....                      | 5 |
| Ability to provide for an increase of Councillors and Setting of Ratios..... | 5 |
| Ward and Representational Structures .....                                   | 5 |
| Voting method and voter franchise.....                                       | 5 |
| Entitlement to Vote .....                                                    | 5 |
| Chapter 4 – Councils communities and participatory democracy.....            | 5 |
| Deliberative community engagement .....                                      | 5 |
| Transparency and accountability.....                                         | 6 |
| Chapter 5 – Strong Probity in Council performance.....                       | 6 |
| Councillor conduct framework.....                                            | 6 |
| Conflict of Interest.....                                                    | 6 |



|                                                                                  |    |
|----------------------------------------------------------------------------------|----|
| Chapter 6 – Ministerial oversight of Councils .....                              | 6  |
| Suspension of Councillors .....                                                  | 6  |
| New Municipalities .....                                                         | 6  |
| Fair Go Rates System .....                                                       | 7  |
| Chapter 7 – Integrated planning .....                                            | 7  |
| Integrated Strategic Planning and reporting framework .....                      | 7  |
| Extension of Council Plan Timeframe .....                                        | 8  |
| Rolling Community Plan .....                                                     | 8  |
| Long-term Financial Plan .....                                                   | 8  |
| Revised Budgets .....                                                            | 9  |
| Annual General Meetings of Council .....                                         | 9  |
| Chapter 8 – Sustainable Finances for Innovation and Collaborative Councils ..... | 9  |
| adoption of council policies and practices .....                                 | 9  |
| Entrepreneurial powers .....                                                     | 9  |
| Chapter 9 – Fair rates and sustainable efficient councils .....                  | 10 |
| Fixed Municipal Charge .....                                                     | 10 |
| Differential Rating .....                                                        | 10 |
| Service charges .....                                                            | 10 |
| Special Charges .....                                                            | 10 |



## CHAPTER 2 – CONTEMPORARY COUNCILS CAPABLE OF MEETING FUTURE CHALLENGES

### PRINCIPLES BASED ACT

To ensure Council has a thorough understanding of its position on this proposal there needs to be further clarification of the meaning and structure of deliberative community engagement. While fully supporting community engagement we anticipate this work would be resource intensive and add to the financial stress that already exists in the organisation in the current rate capping environment.

Council does not support the prescriptive manner in which this appears and Councils should be provided with the opportunity to establish arrangements that match its community and operational capacity to support the principles rather than have it prescribed as a 'one size fits all' model.

The current Act is quite prescriptive in nature and does not provide flexibility for the varying council profiles. This can be quite restrictive and outdated and seems to have not progressed as technology has changed.

Council would support a principles based Act should it provide guidelines, standards and implementation support around those principles, however it is important that minimum standards are set based on best practice principles.

### MINIMUM TWO YEAR TERMS FOR MAYORS AND DEPUTY MAYORS

As it currently exists in the Act, Council should be provided the option to elect a mayor and deputy mayor for either a one or two year term as required. All other areas of the proposal are supported.

### EXPANDED ROLE OF THE MAYOR

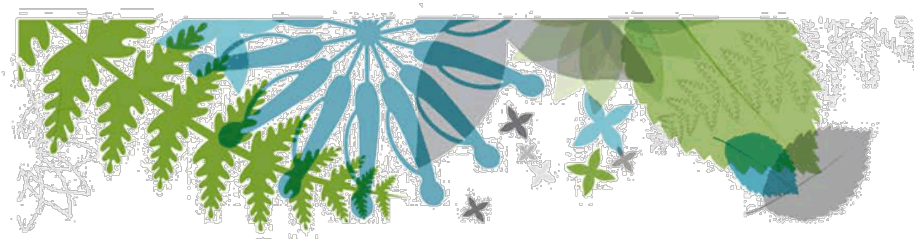
Council does not support the proposal that the Mayor appoints chairs of council committees and appoints councillors to external committees that seek Council representation. All other elements of this proposal are supported by Council.

### REQUIRE COUNCILLORS TO ACTIVELY PARTICIPATE IN ENGAGEMENT PROCESSES

Council supports the principles that underpin deliberative community engagement as a form of consultation with the community for Council planning and decision making however it is important that these are not prescriptive in the Act. Councils vary across the state and with careful strategic planning around community consultation each Council should have the flexibility to approach this taking their resources and Council needs into consideration.

### COUNCILLOR ENTITLEMENTS

Council believes that Councillor Allowances should be set independently of Council with no Council decisions on the matter. All taxation rules should be applied to Councillor Incomes similar to those of public office employees. In addition Councillors should be required to declare their entitlements and income.



#### CEO REMUNERATION POLICY

Council supports this proposal however it does not support the element of the Remuneration principles of the Victorian Public Sector Commission's *Policy on Executive Remuneration for Public Entities in the Broader Public Sector* where it is required that Councils are to 'go out to the market' at the conclusion of a CEO's contract and prior to the CEO being reappointed. This should remain a decision of the Council and mandating such a change would add significant extra cost to Council.

#### CONFIDENTIAL BUSINESS

Council supports the high level principles about Council decision making processes, however further clarity of what is considered to be open and accountable would be useful before providing detailed feedback on this proposal.

#### ASSEMBLIES OF COUNCILLORS

Council does not support the proposal for removing provisions for assembly of Councillors. This requirement provides accountability for Councillors and a greater line of sight of the decisions and discussions Councillors are involved in where a conflict of interest would occur. Should they be removed there would need to be more detailed processes around transparency and disclosure that would replace this requirement.

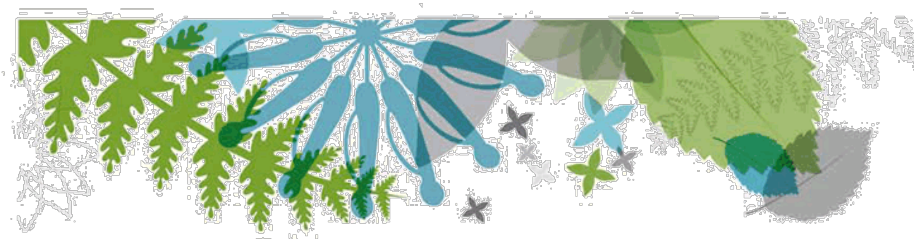
#### EMPLOYMENT AND WORKFORCE MATTERS

Council is supportive of appropriate workforce planning and due diligence in Council however it does not support that these matters are prescribed in legislation. Provisions for the CEO to consult with staff prior to workforce changes are already included in industrial relations legislation a matter for consideration.

#### COMMUNITY CONSULTATION AND LOCAL LAWS

Council notes the proposal to mandate a community consultation process before making a local law. It supports greater transparency and community consultation, however it believes the existing arrangements around making local laws are sufficient and do not support additional provisions as described in the paper.

The current penalty unit for local laws should remain under the current arrangements rather than provide for the determination of the value of a penalty unit by consultation. This is a cumbersome and lengthy process which is unnecessary given the current arrangements are efficient and effective.



## CHAPTER 3 – DEMOCRATIC AND REPRESENTATIVE COUNCILS

### ABILITY TO PROVIDE FOR AN INCREASE OF COUNCILLORS AND SETTING OF RATIOS

Council does not support the proposal to extend the number of Councillors per Council from 5-12 to 5-15 given the cost associated with the high number of Councillors. This would be an additional cost burden on communities and the ability to manage these costs is uncertain in a rate capping environment. The current numbers suit our shire profile and population size given the growth of our municipality and Council believes a maximum of 12 Councillors would be sufficient for all Councils.

Council supports the proposal to regulate a formula to determine Councillor numbers and for this to be applied consistently. It emphasises however concern over the costs associated with an increase in Councillor numbers for our Council and this would need to be supported at state level.

### WARD AND REPRESENTATIONAL STRUCTURES

Council supports the proposal of Option 1 to allow for one of two representative structures being un-subdivided or entirely uniform multi member wards to be applied in each municipality.

### VOTING METHOD AND VOTER FRANCHISE

Council supports proposals to introduce partial preferential voting consistent with Victorian Legislative Council Election reforms to voter entitlements and the introduction of a common voting method for local governments across Victoria. The common voting method should be a postal system across the state with the integration of online voting.

### ENTITLEMENT TO VOTE

Council does not support Option 1 or 2 but would like to maintain the status quo (Option 3).

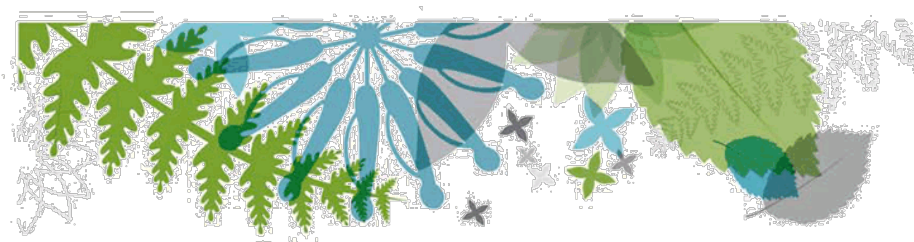
## CHAPTER 4 – COUNCILS COMMUNITIES AND PARTICIPATORY DEMOCRACY

### DELIBERATIVE COMMUNITY ENGAGEMENT

Council supports the proposal to require Council to have a consultation and engagement strategy. While the intent of the proposal to include deliberative community engagement as a principle in the Act to require Councils to conduct a deliberative community engagement process to prepare its Council plan, however we do not believe that the Act should prescribe deliberative practices as part of the proposal.

The focus for change and improvement should be on ensuring that a community consultation and engagement strategy is prepared and is comprehensive in nature rather than prescribing how Councils conduct their community engagement. It would be inefficient and in many cases not applicable to some Councils and resource intensive for potentially little or no benefit.





## TRANSPARENCY AND ACCOUNTABILITY

Council supports the provisions which encourage greater levels of transparency and accountability, however further investigation into the costs associated with these practices and resources required to adhere to such provisions should be carried out.

## CHAPTER 5 – STRONG PROBITY IN COUNCIL PERFORMANCE

### COUNCILLOR CONDUCT FRAMEWORK

Council generally supports the current Councillor conduct framework however it believes careful consideration should be given into the impact of the proposed provisions and whether changes are required to the framework. It is important that there are clearer processes and understanding of serious breaches, governance failure and conflicts of interest.

Council would support the introduction of a specialist tribunal system that would hear only matters of Councillor conduct with members experienced in understanding and ruling on these matters.

### CONFLICT OF INTEREST

Further consultation with the local government sector is required regarding the full extent of new provisions of conflict of interest procedures. There should be a detailed consultation process around the proposed extent of these changes.

Currently Councillors are unsure and unclear about conflict of interest requirements and tend to be over cautious in their approach.

## CHAPTER 6 – MINISTERIAL OVERSIGHT OF COUNCILS

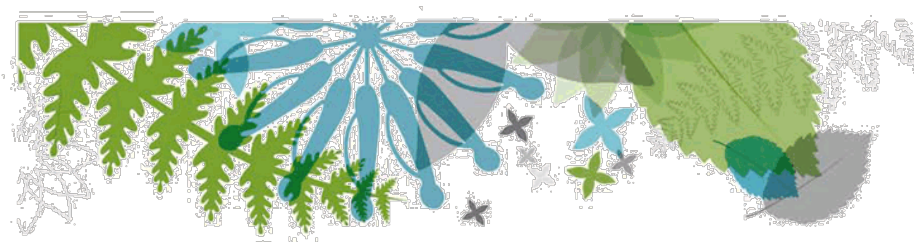
### SUSPENSION OF COUNCILLORS

Council supports in principle the proposal to empower the Minister to recommend a Councillor be suspended however the provision should only be used in extraordinary circumstances. Underpinning this is the imperative that appropriate Mayor and Councillor training on good governance is consistently provided across Local Government.

### NEW MUNICIPALITIES

Council supports the proposed provisions by which the Minister for Local Government may create a new municipality based on an agreed set of criteria however careful consideration needs to be given to the model adopted, taking into account the varying Council types.





## FAIR GO RATES SYSTEM

The Paper proposes that Councils further develop long term financial planning strategies and documents. While absolutely supporting long term planning, Council questions how local government could adequately fulfil such a requirement in the environment of uncertainty which rate capping brings.

In addition, the Paper seeks to encourage good governance, financial sustainability and a positive relationship between local government and community. What has not been taken into account is how the basic premise of rate capping, which prescribes Councils' abilities to respond to the needs of local communities, is at complete odds with these objectives.

Council have already noted the additional costs and effort which would be required of Councils under the new proposals set out in the Paper. The Paper sets out additional costs such as deliberative practices and new long term and financial planning but neither recognises the additional resources this places on Councils, nor how Councils could reasonably manage these costs in an environment of rate-capping. This is particularly relevant for regional and rural Councils.

The FGRS will be required by legislation to be reviewed in coming years. Council does not believe that the transference of these provisions in their current form into a new Local Government Act would send a positive signal around the State Government's openness to review its rate capping legislation. Accordingly, the FGRS should be a separate piece of legislation.

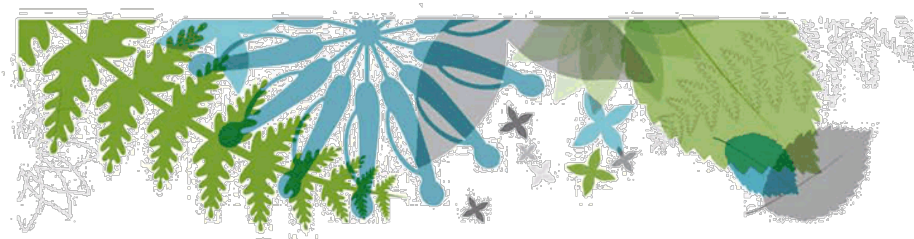
## CHAPTER 7 – INTEGRATED PLANNING

### INTEGRATED STRATEGIC PLANNING AND REPORTING FRAMEWORK

Council strongly supports the retention of the Council Plan as Council's central strategic policy instrument. The proposals put forward in this Paper support long term planning. Long term and integrated planning are important tools by which local government engages with the community and other levels of government.

Council notes however that other proposals identified in the Paper, namely to extend the timeframe whereby a Council must finalise its Council Plan, would undermine the integrity and significance of the document.

Council also notes the impact that rate capping will have on the delivery of strategic planning; in particular, the prospect that a Council could be prevented from delivering the objectives set out in its Council Plan as a result of the Minister for Local Government setting a lower than expected rate cap. The setting of a rate cap on a yearly basis grossly undermines Councils' capacities to plan for the long term and where rate capping is in place, an indicative cap for at least a 4 year period needs to be provided to facilitate longer term planning.



#### EXTENSION OF COUNCIL PLAN TIMEFRAME

The Paper proposes to extend the timeframe over which a Council prepares and finalises its Council Plan, to 31 December of the second year after a general election. Council does not support the proposition to extend the planning timeframes for the preparation and adoption of a Council Plan.

As outlined in Direction 80, Council notes that the Paper intends to keep the Council Plan as the central strategic planning document. Currently, the Council Plan is considered and finalised by a new Council and is the vehicle through which it outlines its strategic objectives over the 4 year Council term. Each year, Council budgets are then created which align to the objectives and commitments outlined in the Council Plan.

Council notes that this proposal in the Directions Paper would result in a circumstance where a new Council would be considering and finalising its Council Plan outside the normal nexus between the Plan, the 4 year Council term and its yearly budgets. It would mean that a new Council would be required to finalise a budget in its first year reliant on objectives and commitments made by the previous administration. Council believes that this is inconsistent the broader intent of the Paper, which is to support and foster leadership and community engagement. A Council must retain the capacity to deliver upon its mandate.

Council believes that an unfortunate outcome of this extension could be that the Council budget becomes the more significant document, since new Councillors will have immediate capacity to influence that process rather than work in conjunction with their colleagues and the community to shape the Council Plan.

Council believes that (i) a Council Plan should be developed, as it is now, immediately following a general election; (ii) that the Plan be finalised in conjunction with Council's budget in its first year after a general election; and (iii) it remains the central strategic planning document. The Council believes that the changes outlined in this proposal would, over time, grossly undermine the significance of the Council Plan and would erode Councillor support in viewing it as the premier document in which to outline their vision for the Council term ahead.

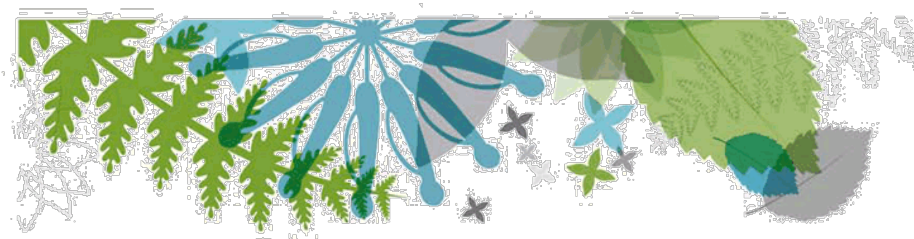
#### ROLLING COMMUNITY PLAN

Council supports integrated and long term planning in the local government sector and believes that the introduction of a rolling Community Plan of at least 10 years is a costly and unnecessary inclusion in this planning.

#### LONG-TERM FINANCIAL PLAN

Council supports the proposal to incorporate long term financial planning as part of Councils' integrated strategic planning requirements. It believes that these are positive steps forward however notes the additional costs of these requirements.

In addition, Council notes the Paper's discussion around the importance of long term finance planning and sound financial management. We believe that whilst the Paper provides a valued argument, Council questions how Councils reconcile the uncertainty of yearly rate caps set by the Minister for Local Government with long term financial planning based on sound financial principles.



## REVISED BUDGETS

Council does not support the need to change the arrangements in relation to revising Council budgets. The current arrangements are sufficient and would support to maintain the status quo.

## ANNUAL GENERAL MEETINGS OF COUNCIL

The Paper proposes that a Council be required to present its annual report at an annual general meeting (AGM) at which the Mayor must also report progress implementing the Council Plan. Council supports the concept that Councils make their annual report public and that the Mayor report on the progress of the Council Plan. This is in keeping with good governance and open and transparent practices.

Council does not support the proposition that this should be conducted at an AGM. It does not believe that this provision is necessary given that there already exist many opportunities for a Council to present its annual report and well allow the Mayor to report upon the progress of the Plan. One such opportunity would be to have the annual report presented, and a progress report provided on the Plan, at the September or October ordinary meetings. This aligns those requirements with the conclusion of a Mayor's term and provides a clear, open and transparent setting by which a new Mayor is elected or the current Mayor is re-elected. The Council would then have the opportunity to consider the report and the progress towards the Council Plan moving forward.

Council recommends that a new Act include provisions which would require Councils to present an annual report and for the Mayor to provide an update on the progress of the Council Plan and for this to be completed by the October ordinary meeting, rather than at a separate AGM.

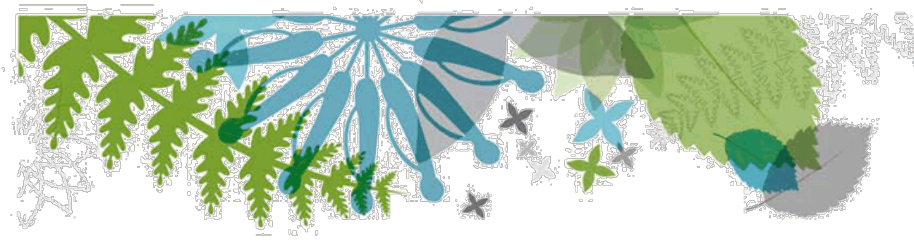
## CHAPTER 8 – SUSTAINABLE FINANCES FOR INNOVATION AND COLLABORATIVE COUNCILS

### ADOPTION OF COUNCIL POLICIES AND PRACTICES

Council supports the proposal to require Councils to develop and adopt policies such as a procurement policy, a debt policy, an investment policy and related policy although does not believe there is a need to prescribe the timeframes for review in the Act. Many of these proposals would require further consultation and work to ensure an understanding of best practice. There would need to be a responsibility on the state government to support sector led reform around these and other matters.

### ENTREPRENEURIAL POWERS

Council would need to understand this proposal further to provide feedback; in particular, what guidance would the revised powers provide for the formation of an entity?



## CHAPTER 9 – FAIR RATES AND SUSTAINABLE EFFICIENT COUNCILS

### FIXED MUNICIPAL CHARGE

The Paper proposes to fix the municipal charge at a maximum of 10% of the total revenue from municipal rates and general rates. Council questions the prescriptive nature of this provision in so much as it does not align with the intent of the broader Paper. Council believes that the municipal charge should not be prescribed in legislation. This would require Councils to have the flexibility to respond to new and emerging circumstances appropriately.

Council does however support the proposed maximum 10% of the total revenue from municipal rates and general rates in the financial year, divided equally among all rateable properties.

### DIFFERENTIAL RATING

Council supports the Paper's proposal to retain provision of differential rating. Council believes that this provision provides greater flexibility for Councils to generate revenue and shape its strategic direction. Council notes that a Revenue and Rating Strategy, as outlined in the Paper and addressed above, would provide a tool by which Councils consider the equity of rating across the municipality and how it aligns with other Council documents and strategic planning.

### SERVICE CHARGES

Council supports the proposal that as part of the changes to the service rates and charges (service charges), provide the Minister with the power to prescribe the setting of other service charges in the Regulations.

This process should have flexibility to support various Council types (e.g. Rural/Regional/Metro).

### SPECIAL CHARGES

Council supports the addition of clearer guidance in the Act about the purpose of special rates and charges, and about the criteria Councils should use when declaring them and determining the benefit ratio.

**OM162408-14 PROPOSED AMENDMENTS TO COUNCIL MEETING DATES - 2016**

|             |                    |           |            |
|-------------|--------------------|-----------|------------|
| AUTHOR:     | Jenny Wood         | ENDORSED: | Mark Lyons |
| DEPARTMENT: | Corporate Services | FILE REF: | F16/6678   |

**Purpose**

The purpose of this report is to confirm cancellation of Council meetings previously scheduled to be held in September, October and November during the Election Caretaker Period and directly following the Local Government Elections 2016 prior to formation of a new Council.

**Declaration of Interests**

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

**Background**

The Local Government Elections will be held on Saturday 22 October 2016. The Election Period (Caretaker) begins at 12.01am on Wednesday 21 September until 6pm on Saturday 22 October (Election Day).

Colac Otway Shire Council adopted an 'Election Period Policy' in March 2016 which in accordance with the requirements of the Act.

Section 6.2 of the Election Period Policy states:-

*Council meetings, including Ordinary Council, Statutory Planning and Special Council Meetings will not be held during the Election Period unless exceptional circumstances warrant it.*

Therefore proposed meeting dates adopted by Council in November 2015 need to be adjusted to comply with the more recently adopted policy.

**Policy**

Council adopted the reviewed and updated Election Period Policy at the Ordinary Council Meeting held on Wednesday 23 March 2016.

**Issues / Options**

The Election Period Policy which was adopted at the Ordinary Council Meeting held on 23 March 2016 states that Council will not hold meetings during the election period and therefore a number of meeting and briefing dates must be cancelled.

Cancelling set meeting dates does not preclude the calling of a Special Meeting if the need arises to deal with a matter during the caretaker period. As an example subject to the final arrangements established by Councils Auditors it is likely that it will be necessary to hold a Special Meeting to adopt the 2015/16 Annual Report to comply with the Local Government Act 1989 requirements.

Notwithstanding the cancellation of the meeting listed it is necessary to hold an Ordinary Council meeting in September to continue to conduct the Business of Council before the Caretaker Period begins.

Furthermore following the election the Victorian Electoral Commission has up to Friday 4 November 2016 to declare the election result. The first meeting of the new Council is proposed for 9 November, 2016 to elect the Mayor and Deputy Mayor after which normal meeting cycles can resume.

**Proposal**

The following meetings are currently scheduled to occur during the Election Period and directly after the Election and it is proposed they are cancelled:



Wednesday 12 October - Planning Committee Meeting  
Wednesday 9 November – Planning Committee Meeting

In addition to cancelling the above meetings it is recommended that Council give consideration to rescheduling the Ordinary Meeting of Council currently scheduled for Wednesday 28 September to be held on Wednesday 14 September, 4pm at COPACC.

When taking into account the caretaker period and post-election process times there will be a period of nearly 2 months where Council does not meet. The proposal to hold an Ordinary Meeting in September 2016, prior to commencement of caretaker, is recommended to facilitate efficient delivery of the business of Council for any matters that arise between the 24<sup>th</sup> August, 2016 and the date of the meeting.

It is also noted that Councillor Briefings will not be scheduled during the same period unless circumstances occur that require Councillors to be briefed.

The first Council meeting following the Election will be a Special Council Meeting on Wednesday November 9, 2016 in Colac to elect the Mayor and Deputy Mayor. The first Ordinary meeting of Council (as currently adopted) will be 23 November, 2016 at Apollo Bay.

### **Community Engagement**

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected would be inform and include: Notification in the Newspaper and on the Colac Otway Shire Website.

### **Conclusion**

The Local Government Elections are to be held on 22 October 2016. In accordance with the Election Period (Caretaker) Policy adopted by Council on 23 March 2016 it is recommended that meetings currently scheduled during September, October and early November be cancelled and an Ordinary Council meeting be scheduled for Wednesday 14 September 2016.

### **Attachments**

Nil

### **Recommendation 1**

***That Council:***

***Re-schedule the Ordinary Council meeting currently scheduled to be held on Wednesday 28 September to be held on Wednesday 14 September 2016 4pm at COPACC.***

### **Recommendation 2**

***That Council:***

***Cancel the following Council Meetings scheduled to be held during the Election (Caretaker) Period and immediately following the Local Government Elections 2016.***

- ***Wednesday 12 October 2016 - Planning Committee Meeting***
- ***Wednesday 9 November 2016 – Planning Committee Meeting***



**Recommendation 3**

***That Council:***

***Schedule a Special Meeting to be held on Wednesday 9 November 2016 4pm at COPACC for the purposes of Electing the Mayor and Deputy Mayor.***

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OM162408-15 MINUTES OF THE OLD BEECHY RAIL TRAIL COMMITTEE

| | | | |
|-------------|-----------------------------------|-----------|---------------|
| AUTHOR: | Nicole Frampton | ENDORSED: | Ingrid Bishop |
| DEPARTMENT: | Infrastructure & Leisure Services | FILE REF: | 11/96660 |

It has been previously agreed to by Council that the minutes of the Old Beechy Rail Trail Committee should be included in the Council agenda once any confidential items have been identified and the minutes have been confirmed by the Committee.

Attached are the Minutes from the meeting held on 23 May 2016.

Meetings are held every two months, commencing February of each year.

Attachments

1. Meeting Minutes - Old Beechy Rail Trail Committee - 23 May 2016 - confirmed

Recommendation

That Council notes the Minutes of the Old Beechy Rail Trail Committee for 23 May 2016.

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## Old Beechy Rail Trail Committee Meeting

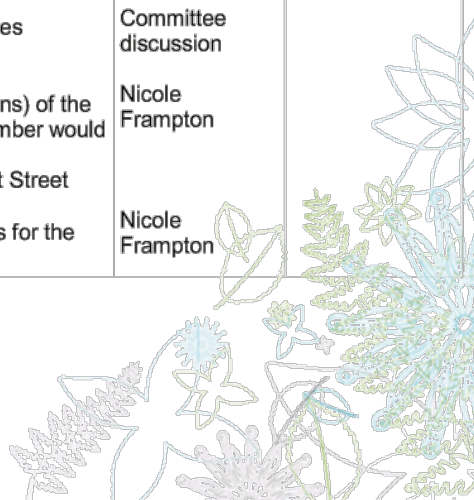
Meeting Venue: Meeting Room 1, COPACC

23 May, 2016

Time: 10.00am to 12.30pm

# MINUTES

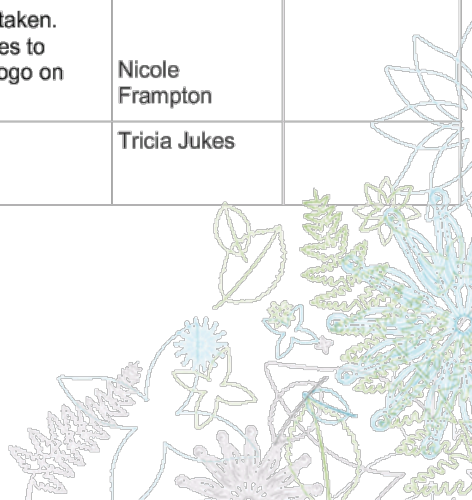
|    | ITEMS & ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | RESPONSIBLE OFFICER                                                                                              | ACTION DUE DATE |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-----------------|
| 1. | <b>ATTENDEES</b><br>Cr Chris Smith (Chair), Noel Barry, Cyril Marriner, Tony Grogan, Phil Dandy, Robert Bendon (DELWP), Nicole Frampton – Recreation and Open Space Coordinator (COS - minutes)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                  |                 |
| 2. | <b>APOLOGIES</b><br>Anthony Zappelli, Bernard Jordan, Tricia Jukes<br><br><b>ABSENT</b><br>Glen Anderson                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                  |                 |
| 3. | <b>CONFIRMATION OF MINUTES FROM PREVIOUS MEETING – 4 April 2016</b><br><b>Corrections - None</b><br><br><b>Moved – Noel Barry</b><br><b>Seconded – Tony Grogan</b><br><b>Carried</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                  |                 |
| 4. | <b>BUSINESS ARISING FROM PREVIOUS MINUTES:</b> <ul style="list-style-type: none"> <li>OBRT water bottles <ul style="list-style-type: none"> <li>Sample bottle presented to meeting: 600ml size is too large.</li> <li>Bring current OBRT drink bottle to next meeting to review.</li> </ul> </li> <li>Signage OBRT <ul style="list-style-type: none"> <li>Arrange signage for reporting defects along the OBRT</li> <li>Emergency marker posts – can reporting of defects signage be incorporated on the Emergency Marker posts (Check with COS Project Delivery Officer)</li> <li>If Emergency Marker post cannot be used, then can other signs be put on km posts? (could report km mark with defect)</li> <li>Signage for event organisers to provide warning to other trail users that an event is in progress.</li> </ul> </li> <li>Inspection – committee OBRT 11/04/2016 <ul style="list-style-type: none"> <li>Worked through the summary and action report – list of issues (attached)</li> </ul> </li> <li>Trail improvements <ul style="list-style-type: none"> <li>Improvements to steep sections (at the dismount bicycle signs) of the trail between Dinmont and Ditchley – second hand bridge timber would be available.</li> <li>Identified safety concerns about thick loose gravel on Forest Street South part of trail</li> </ul> </li> <li>Committee appointments – nominations for committee members for the OBRT Committee</li> </ul> | Nicole Frampton<br><br>Nicole Frampton<br><br>Committee discussion<br><br>Nicole Frampton<br><br>Nicole Frampton |                 |





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|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|--|
| 5. | <b>CORRESPONDENCE - IN</b> <ul style="list-style-type: none"> <li>11/03/2016 – Email from Bushwalking Victoria – pleased to support nomination of Bernard Jordan to represent Bushwalking Victoria on the Old Beechy Rail Trail Committee.</li> <li>4/04/2016 – Email from Rail Trails Australia – Autumn 2016 Magazine</li> <li>14/04/2016 – Email from T. Grogan – Committee Inspection notes (11/04/2016) – discussed above</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                   |  |
| 6. | <b>CORRESPONDENCE – OUT</b> <ul style="list-style-type: none"> <li>Nil</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                   |  |
| 7. | <b>WORKS REPORT – Presented by Nicole Frampton</b><br><b><u>Works Report – Provided by COS Gellibrand Depot</u></b><br>Old Beechy Rail Trail works since last meeting (4 April 2016) <ul style="list-style-type: none"> <li>Fallen trees cleared along the trail as required.</li> <li>Maintenance along the trail carried out prior to the Trinity College annual OBRT walk.</li> <li>European wasp nests dusted near McDevitt Station on 21/04/2016.</li> <li>Normal mowing maintenance</li> <li>Gate at Birnam Station – the gate was vandalised – gate has been repaired with angle iron used to reinforce the gate and act as a deterrent for vehicles to drive through. Gate to be hung on 23/05/2016.</li> <li>The Gellibrand depot assisted the Friends with the Lovat Station works – provided the gravel material for the base and safety signage during construction.</li> <li>Colac railyard – area to be fixed up so it's easier to maintain with a mower rather than the slasher.</li> <li>Proposed works prior to the end of the financial year include – tree down near Maggio's Rd will be removed, Colac railyard improvement works, Birnam Station gate.</li> </ul><br><b><u>Works Report – Provided by Project Delivery Officer</u></b> <ul style="list-style-type: none"> <li>Lovat Station Shelter – mostly complete.</li> <li>Emergency markers – communications continue with ESTA in relation to the placement of emergency markers. Discussions still not finalised.</li> </ul> | Colac Otway Shire                 |  |
| 8. | <b>FRIENDS REPORT</b> <ul style="list-style-type: none"> <li>Lovat Station – Project Report               <ul style="list-style-type: none"> <li>Lovat Station nearly complete – some minor works still to be completed, photos provided. The landowner maintains the frontage to the shelter.</li> <li>Poem (see attached)</li> <li>Friends to contact Colac Herald to promote the works undertaken.</li> </ul> </li> <li>Is it possible to purchase a magnetic sign to be placed on vehicles to promote the trail? Nicole to find out about the use of the OBRT logo on personal vehicles.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Noel Barry<br><br>Nicole Frampton |  |
| 9. | <b>TREASURERS REPORT</b> <ul style="list-style-type: none"> <li>No report provided – T. Jukes apology for meeting.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Tricia Jukes                      |  |

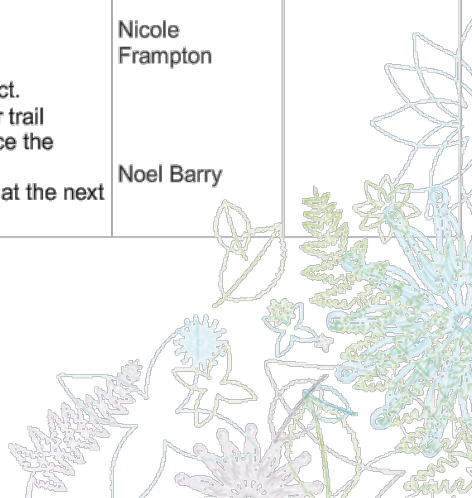
OBRT Committee Meeting – 23/05/2016





| 10.                   | <p><b>EXECUTIVE OFFICER REPORT</b></p> <p><b><u>Pedestrian Counters</u></b></p> <table border="1"> <thead> <tr> <th></th><th>Reading</th><th>Ped Count</th><th>No of Days</th><th>Peds/day</th></tr> </thead> <tbody> <tr> <td>Colac</td><td>4632</td><td>616</td><td>49</td><td>13</td></tr> <tr> <td>Coram (Forest St Sth)</td><td>6844</td><td>555</td><td>49</td><td>11</td></tr> <tr> <td>Maggio's Road</td><td>27307</td><td>863</td><td>49</td><td>18</td></tr> <tr> <td>Maxwell Road</td><td>36600</td><td>722</td><td>49</td><td>15</td></tr> <tr> <td>Fry's Road</td><td>Reading not provided</td><td></td><td></td><td></td></tr> <tr> <td>Larson's Gate</td><td>Reading not provided</td><td></td><td></td><td></td></tr> <tr> <td>Beech Forest</td><td>2530</td><td>659</td><td>59</td><td>11</td></tr> <tr> <td>Fairyland</td><td>2853</td><td>737</td><td>59</td><td>12</td></tr> <tr> <td>Ditchley</td><td>7911</td><td>770</td><td>59</td><td>13</td></tr> <tr> <td>Zappelli's</td><td>30901</td><td>981</td><td>59</td><td>17</td></tr> </tbody> </table> <ul style="list-style-type: none"> <li>Recent events include the Trinity College Year 9 Beechy Trek from 26-29 April. Another successful walk.</li> </ul> |           | Reading    | Ped Count | No of Days | Peds/day | Colac | 4632 | 616 | 49 | 13 | Coram (Forest St Sth) | 6844 | 555 | 49 | 11 | Maggio's Road | 27307 | 863 | 49 | 18 | Maxwell Road | 36600 | 722 | 49 | 15 | Fry's Road | Reading not provided |  |  |  | Larson's Gate | Reading not provided |  |  |  | Beech Forest | 2530 | 659 | 59 | 11 | Fairyland | 2853 | 737 | 59 | 12 | Ditchley | 7911 | 770 | 59 | 13 | Zappelli's | 30901 | 981 | 59 | 17 | Nicole Frampton |
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|                       | Reading                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Ped Count | No of Days | Peds/day  |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Colac                 | 4632                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 616       | 49         | 13        |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Coram (Forest St Sth) | 6844                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 555       | 49         | 11        |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Maggio's Road         | 27307                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 863       | 49         | 18        |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Maxwell Road          | 36600                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 722       | 49         | 15        |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Fry's Road            | Reading not provided                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |           |            |           |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Larson's Gate         | Reading not provided                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |           |            |           |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Beech Forest          | 2530                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 659       | 59         | 11        |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Fairyland             | 2853                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 737       | 59         | 12        |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Ditchley              | 7911                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 770       | 59         | 13        |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |
| Zappelli's            | 30901                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 981       | 59         | 17        |            |          |       |      |     |    |    |                       |      |     |    |    |               |       |     |    |    |              |       |     |    |    |            |                      |  |  |  |               |                      |  |  |  |              |      |     |    |    |           |      |     |    |    |          |      |     |    |    |            |       |     |    |    |                 |

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| 11. | <p><b>GENERAL BUSINESS</b></p> <ul style="list-style-type: none"> <li>Lavers Hill to Crowes and Melba Gully – concept plan for an off-road trail <ul style="list-style-type: none"> <li>Nicole provided a project update and the initial draft concept plans were viewed by the committee for comment and feedback: <ul style="list-style-type: none"> <li>Committee asked that the plans note the need to add the future Lavers Hill township project to the concept plans – “Blackwood Gully Tearooms to Lavers Hill Crossing” to be a future project and costed as a future stage for the Lavers Hill township off-road trail component for the trail.</li> <li>On the concept plan map – the line highlighting the trail through to the Crowes Buffer Stop to be included as dark dotted route.</li> <li>3 individual projects have been defined for the proposed concept plans – Lavers Hill to Crowes, Crowes to Melba Gully, Lavers Hill township off-road trail following the former Old Beechy Rail Line alignment.</li> </ul> </li> </ul> </li> <li>Gellibrand Rex Norman Park Master Plan <ul style="list-style-type: none"> <li>Nicole provided a project update.</li> <li>The OBRT committee will submit a submission for this project.</li> </ul> </li> <li>Future Planning – The committee would like to investigate better trail alignment with the Midway sections of the trail, and to also reduce the number of road crossings for the safety of users. <ul style="list-style-type: none"> <li>Noel to provide a map for possible sections to be re-aligned at the next meeting.</li> </ul> </li> </ul> | <p>Nicole Frampton / Committee</p> <p>Nicole Frampton</p> <p>Noel Barry</p> |
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|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--|
|     | <ul style="list-style-type: none"> <li>Website – Committee to look at trail page on the new Council website and provide feedback if necessary.<br/><a href="http://www.colacotway.vic.gov.au/Parks-Recreation/Old-Beechy-Rail-Trail">http://www.colacotway.vic.gov.au/Parks-Recreation/Old-Beechy-Rail-Trail</a></li> <li>Gellibrand Station "A" Frame Sign – Sign being fixed and painted</li> <li>Banool sign needs to be fixed: <ul style="list-style-type: none"> <li><b>Motion</b> – That the Committee agrees that the Friends of the Old Beechy Rail Trail can purchase the materials required to fix the Banool sign.</li> <li><b>Moved</b> – Tony Grogan</li> <li><b>Seconded</b> – Cyril Marriner</li> <li><b>Carried by All.</b></li> </ul> </li> <li>It was noted that Barongarook Wildlife Sanctuary signs have been installed at various points along the trail.</li> <li>The Friends of the Old Beechy Rail Trail will look to reinstate some "wing" fences (historical aspect for the trail) – the purpose of the "wing" fences were to mark how far the railway line was from Melbourne. <ul style="list-style-type: none"> <li>Noel to provide a map with the proposed locations, concept designs, and cost of materials to the next meeting.</li> </ul> </li> <li>The Friends to install information board for the Lovat Station and new sections of the trail.</li> <li>Rae Street and Gellibrand Street Roundabout Garden Bed Replacement Project. <ul style="list-style-type: none"> <li>Nicole provided the Committee with a proposed plan for the roundabout for discussion. The Committee asked if timber sleepers could be used rather than concrete.</li> <li>Nicole to provide feedback to the Manager Services and Operations.</li> </ul> </li> </ul> | Committee       |  |
|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Noel Barry      |  |
|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Noel Barry      |  |
|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Noel Barry      |  |
|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Noel Barry      |  |
|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Nicole Frampton |  |
| 12. | <p>Meeting closed 12:15pm.</p> <p>Next meeting – Monday 18 July 2016 - 10am to 12.30pm.</p> <p>Meeting Venue – COPACC – Meeting Room 1.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                 |  |

## Attached –

- Old Beechy Rail Trail – Committee Inspection from Monday 11 April 2016
- Poem – Lovat Shelter





**Old Beechy Rail Trail Committee inspection; Monday April 11<sup>th</sup> 2016 .**

*The following was emailed to the Committee by Tony Grogan on 14/04/2016 following the Committee inspection on 11/04/2016.*

The inspection team left Colac at 10-00 am with a vehicle shuffle, Driver was Chairman Chris Smith, Other committee members were Tony Grogan, Trisha Jukes and Noel Barry.

Points noted requiring attention/rectification were:

- There was some litter both inside and outside the fenced trail and railways and COS land looks untidy, not a good first impression for trail users.
- Wilson St/Queen St roundabout - directional sign which is fairly high on a telegraph pole is easy to miss by a first time user on a bicycle who would presumably be busy watching traffic on the roundabout and could continue East on Wilson St instead of making the right hand turn onto Queen St, (Subject of 2 recent user complaints).
- Queen St/Aireys St - Sign to turn left onto Aireys St easily missed, even committee members who were aware of the required turn had to search for the sign.
- Turn onto the trail proper from Maggios Rd (also the subject of recent comment by first time user) was seen as unambiguous by members.
- Birnam Station - Gate from the trail onto Cashins Rd is smashed in half, this appears to be the result of a deliberate action, (Replace with a steel gate?)
- Cashins Rd - Bollards on leaving Cashins Rd are difficult to remove and replace, (bolt holes through the posts difficult to align with the holes in the tie down plates).
- Gellibrand township - No clear signage for first time users wishing to start from Gellibrand in either direction where the trail actually starts.
- Several sites - Wooden gates are hung too low resting on the ground and are very heavy to lift for anyone with prams, tricycles or other vehicles needing key access.
- Suicide section - The trail through Humphris section between Dinmont and Ditchley is reasonable for the first kilometre at the Dinmont end but deteriorates into extremely difficult to downright dangerous towards the Ditchley end, Steep grades with no cover over clay will leave these very very slippery in wet conditions (normal conditions in Beech Forest), in fact one of these very steep slopes (downhill for cyclists travelling North) terminates in a cattle crossing with mesh farm gate likely to end in disaster, (to borrow a phrase from McDonalds, "would you like chips with that?") The graphic sign at the top warning of a steep descent needs to be changed to a compulsory dismount sign!!!! (Noel Barry at the April meeting recommended steps and a handrail attached to the fence posts for this slope). Another slope has a turn at the bottom where the camber continues across the trail with a probable slide down a fairly steep drop for anyone approaching at more than walking pace (almost impossible given the steepness).
- The Ditchley to Beech Forest section was not walked on this inspection and the Beech Forest to Ferguson was only driven alongside with stops at points where the trail could not be seen from the road, no defects to report.
- General comments - With the end of the dry summer, trailside vegetation is regrowing and soon will need some reach-arm slashing and some strenuous growth of nightshade in the Humphris section will need spraying (probably by quad bike due to inaccessibility)

Tony Grogan

**Attachment (POEM) – LOVAT Shelter Shed by Noel Barry**

Along the Beechy Rail Trail  
Some station shelters stand  
Small tin huts called Mallee sheds  
Once used on railway land

These shelters serve a purpose  
For people on the Trail  
Protecting them from the weather  
Like rain and wind and hail

They occupy old station sites  
From the former narrow gauge  
That once ran through the Otway's  
In a bygone golden age

First shed rebuilt was Dinmont  
Along the Beechy Line  
Then McDevitt, Wimba and Banool  
Followed closely on behind

If gender was required at all  
It would certainly be male  
Boy sheds with rugged features  
Standing strong along the trail.

But now a new shed's turning heads  
with applause and many cheers  
Refined and pleasing to the eye  
The best looking shed in years

More gentle lines are part of it  
A rare beauty you will see  
Its sensual name is Lovat  
A girl shelter it must be

In twenty sixteen she did arrive  
It was early in May that year  
Her delivery date was slightly late  
But everyone's glad she's here

She received a thunderous Welcome  
As lightning lit clouds overhead  
Then a million little raindrops  
Blessed Lovat Shelter Shed

The boy sheds have a sister now  
To share the rail trail with  
Five siblings that could take a bow  
For the shelter that they give

The eighth wonder of the world some say  
A Taj Mahal made out of tin  
But to hundreds of tiny creatures  
Lovat's a place they could live in

With a web draped on her shoulder  
And a gleam in her eight eyes  
Mother spider's quick to make her home  
In the shiny new high rise

Then mister and missus swallow  
Will build their nest within  
And with babies soon to follow  
Lovat nursery will begin

For Lovat to retain her looks  
She will need some beauty care  
With a wash or two on the books  
And some paint splashed here and there

If cared for as the years go by  
A great asset she will be  
May the name of Lovat never die  
As she grows old gracefully

And should she last one hundred years  
Let a toast to her be said  
Three cheers for Lady Lovat!  
The grand dame of shelter sheds.

**OM162408-16 ASSEMBLY OF COUNCILLORS**

|             |                    |           |            |
|-------------|--------------------|-----------|------------|
| AUTHOR:     | Sarah McKew        | ENDORSED: | Mark Lyons |
| DEPARTMENT: | Corporate Services | FILE REF: | F16/6678   |

**Purpose**

The purpose of this report is to provide details of the Assemblies of Councillors which have taken place.

**Declaration of Interests**

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

**Background**

The *Local Government Act 1989* S.3 (1) defines an 'Assembly of Councillors' as:

A meeting of an advisory committee of the Council, if at least one Councillor is present, or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers or is likely to be:

- the subject of a decision of the Council or
- subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee.

The *Local Government Act 1989* S.3 (1) defines an Advisory Committee as:

Any committee established by the Council, other than a special committee, that provides advice to:

- the Council; or
- a Special committee; or
- a member of Council staff who has been delegated a power, duty or function of the Council under S. 98 (Delegations).

**Criteria**

When considering whether or not a committee is an advisory committee, there are two key criteria to consider:

- How is it established?
- What is its advisory role?

For a committee to be considered an 'advisory committee' under the Act, it must be established by the Council. This generally requires a decision to establish the committee by:

- Council resolution; or
- resolution of a special committee; or
- a Council management decision.

*Local Government Act 1989* S.80 requires a written record to be made by Council Staff member:

"At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of":

- the names of all Councillors and members of Council staff attending; and
- the matters considered; and
- any conflict of interest disclosures made by a Councillor attending.

This information is:

- to be recorded (documented);
- to be retained by the Chief Executive Officer for 4 years;
- to be made available for public inspection at the Council Offices for 12 months after the date of the Assembly of Councillors.

### **Council Agenda**

An agenda item is required to note the Assembly of Councillors.

It is a requirement that the written record of any Assembly of Councillors must be (as soon as practicable):

- reported at an ordinary meeting of the Council; and
- incorporated in the minutes of that Council meeting.

### **Written Record**

The written record of an Assembly must include at least:

- the names of all Councillors and names of Council staff attending;
- the matters considered;
- any conflict of interest disclosures made by a Councillor attending;
- whether a Councillor who has disclosed a conflict of interest leaves the Assembly.

### **Procedure at an Assembly of Councillors**

A Councillor who has a conflict of interest at an assembly of Councillors must:

- disclose to the meeting that he or she has a conflict of interest; and
- leave the meeting while the matter is being discussed and is recalled once the discussion has concluded.

### **Staff attendance**

It is important that any meeting that is an assembly of Councillors should have at least one member of Council staff in attendance to:

- prepare the record of the Assembly;
- make recommendations about Council decisions;
- disclose any conflict of interest if applicable.

Relevant meetings in a Colac Otway Shire context that meet the reporting requirements include:

- Councillor Briefings (including pre-meeting briefings);
- Australia Day Advisory Committee;
- Central Reserve Advisory Committee;
- Colac Livestock Selling Centre Advisory Committee;
- Festival and Events Support Scheme Advisory Committee;
- Friends of the Colac Botanic Gardens Committee;
- Grants/Community Funding Advisory Committee;
- Lake Colac Coordinating Committee; and
- Small Town Improvement Program Advisory Committee.

A review of reporting completed from November 2015 to January 2016 (other than those included for noting specifically in this report) confirms that all meetings subject to reporting have been included in an agenda to Council's Ordinary Meeting in accordance with legislation.

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

The *Local Government Act 1989* requires that records of meetings which constitute an Assembly of Councillors be tabled at the next practicable meeting of Council and incorporated into the minutes of the Council meeting.

### **Issues / Options**

Not all gatherings or meetings at which Councillors are present will constitute assemblies of Councillors. For a meeting to be an assembly of Councillors it **MUST** be one of the two types of meetings described above.

Examples of Meetings or Committees that would **NOT** be defined as an Assembly of Councillors are:

- Ordinary Meeting of the Council;
- an Audit Committee established under S.139 of the *Local Government Act*;
- Special Committee of the Council;
- a committee or working group established by another organisation;
- chance meetings of Councillors and Council staff that are not planned or scheduled;
- meetings of other organisations such as clubs, associations, peak bodies or political parties.

### **Proposal**

The following assemblies of Councillors have been held and are attached to this report for noting:

- Councillor Briefing – Wednesday 20 July 2016
- Ordinary Council Meeting Pre Meeting Briefing – Wednesday 27 July 2016
- Councillor Briefing – Wednesday 3 August 2016
- Councillor Briefing – Wednesday 10 August 2016

### **Financial and Other Resource Implications**

Nil

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

The inclusion of the Assembly of Councillors report meets the compliance requirements of the *Local Government Act 1989*:

Section 80 A – requirements for an assembly of Councillors;

Section 3 (1) – definition of an ‘advisory committee’ and ‘assembly of Councillors’.

### **Environmental and Climate Change Considerations**

Nil

### **Community Engagement**

The community engagement strategy follows the recommendations of the Colac Otway Shire Council Community Engagement Policy of July 2013, which details five levels of engagement – inform, consult, involve, collaborate and empower.

The method selected would be to inform. This is achieved by including documentation and notification of the Assembly of Councillors that have occurred to the public at the Ordinary Council Meeting.

### **Implementation**

All meetings that are defined as an Assembly of Councillors will be recorded, documented and kept by Council for 4 years. They will be reported to the next practicable Ordinary meeting of Council.

### **Conclusion**

The *Local Government Act 1989* requires that records of meetings which constitute an Assembly of Councillors be tabled at the next practicable meeting of Council and incorporated in the minutes of the Council meeting. All relevant meetings have been recorded, documented and will be kept by Council for 4 years. The attached documents provide details of those meetings held that are defined as an Assembly of Councillors.

### **Attachments**

1. Assembly of Councillors - Councillor Briefing - 20160720
2. Assembly of Councillors - Council Meeting Preparation 20160727
3. Assembly of Councillors - Councillor Briefing - 20160803
4. Assembly of Councillors - Councillor Briefing - 20160810

### **Recommendation**

***That Council notes the Assembly of Councillors reports for:***

- |                                                               |                              |
|---------------------------------------------------------------|------------------------------|
| • <b><i>Councillor Briefing</i></b>                           | <b><i>20 July 2016</i></b>   |
| • <b><i>Ordinary Council Meeting Pre Meeting Briefing</i></b> | <b><i>27 July 2016</i></b>   |
| • <b><i>Councillor Briefing</i></b>                           | <b><i>3 August 2016</i></b>  |
| • <b><i>Councillor Briefing</i></b>                           | <b><i>10 August 2016</i></b> |

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Councillor Briefing

COPACC

Wednesday 20 July 2016

2.00pm

Assembly of Councillors

INVITEES:

Cr Buchanan, Cr Woodcroft, Cr Russell, Cr Hart, Cr Crook, Cr Smith, Cr Delahunty, Sue Wilkinson, Mark Lyons, Ingrid Bishop, Brydon King

ATTENDEES:

Cr Woodcroft, Cr Russell, Cr Hart, Cr Crook, Cr Delahunty, Sue Wilkinson, Mark Lyons, Ingrid Bishop, Brydon King, Greg Fletcher, Sandra Wade, Doug McNeill, Jade Thomas, Tamzin McLennan, Melanesia Carson, Adam Lehmann

EXTERNAL ATTENDEES:

Tim Harrop, Pam Williams

APOLOGIES:

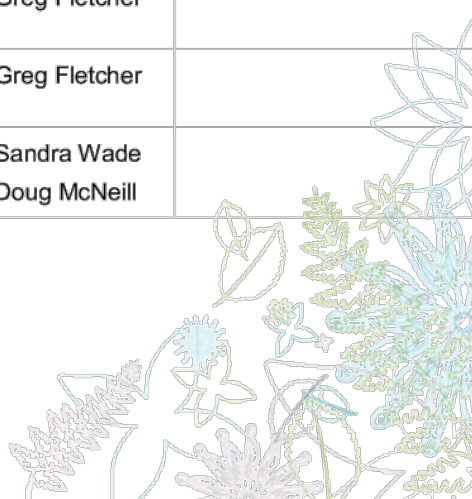
Cr Buchanan

ABSENT:

Cr Delahunty, Cr Smith

| 2.08pm | Declarations of Interest: | Item: | Reason: |
|-----------------|---|-------------------------------|--|
| | Greg Fletcher | Colanda Redevelopment Process | Partner works at Colanda |
| | | Officer/s attending | External attendees |
| 2.11pm – 2.53pm | Colanda Redevelopment Process (verbal only) | Greg Fletcher | Tim Harrop, Manager Transformation Projects, Barwon Area.
Pam Williams, Director, Barwon Area – DHHS. |
| 2.53pm – 3.13pm | Kindergarten Licence Agreement with Apollo Bay Pre-School Committee | Greg Fletcher | |
| 3.13pm – 3.21pm | Kindergarten Licence Agreements with Barwon Child, Youth & Family | Greg Fletcher | |
| 3.21pm – 3.38pm | Bushfire Recovery Update – Drainage & Landslip | Sandra Wade
Doug McNeill | |

Assembly of Councillors – 20/07/2016





| | | | |
|--------------------|--|-------------------------------------|--|
| 3.38pm –
3.40pm | Break | | |
| 3.41pm –
3.59pm | Apollo Bay Sailing Club Lease Renewal | Jade Thomas | |
| 3.59pm –
4.16pm | Rate Notice 2016
(verbal only) | Tamzin McLennan
Melanesia Carson | |
| 4.16pm –
5.12pm | General Business:

Bluewater

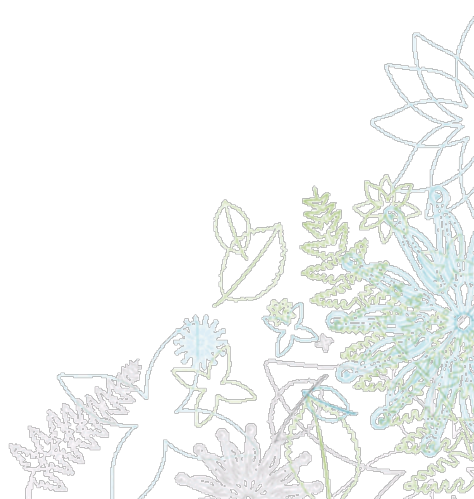
Organisational Update

Barwon South West Waste and Resource Recovery Group

Apollo Bay Library

MAV State Council Meeting | | |

Assembly of Councillors – 20/07/2016





Pre-Council Meeting Preparation

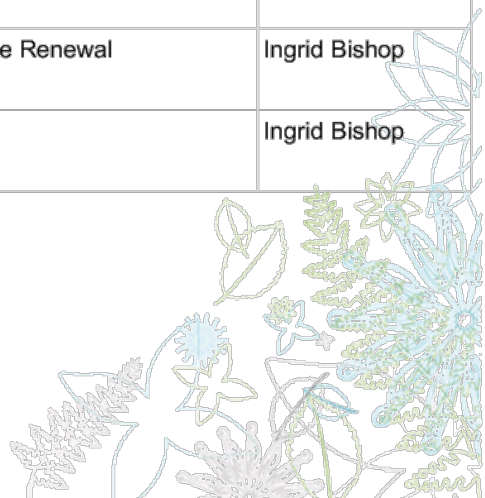
COPACC

Wednesday 27 July 2016 2pm

Assembly of Councillors

| INVITEES:
Cr Buchanan, Cr Woodcroft, Cr Russell, Cr Hart, Cr Crook, Cr Smith, Cr Delahunty, Sue Wilkinson, Mark Lyons, Ingrid Bishop, Brydon King | | | |
|---|--|--|--|
| ATTENDEES:
Cr Woodcroft, Cr Russell, Cr Hart, Cr Crook, Sue Wilkinson, Mark Lyons, Ingrid Bishop, Brydon King, Tony White | | | |
| EXTERNAL ATTENDEES:
Nil | | | |
| APOLOGIES:
Cr Buchanan | | | |
| ABSENT:
Cr Smith, Cr Delahunty | | | |
| 2.07pm | Declaration of Interest | Item No. | Reason |
| Left meeting at 2.32pm
Returned at 2.36pm | Cr Russell | Contract 1606 - Supply of Crushed Rock, Sealing Aggregate and Pavement Materials | Brother-in-law has tendered for the contract |
| Left meeting at 3.25pm
Returned at 3.29pm | Cr Russell | In Committee Item 3 | Brother-in-law has tendered for the contract |
| 2.10pm – 2.13pm | Petition Regarding Use Of Land At 65 Aireys Street Elliminyt | | Brydon King |
| 2.13pm – 2.16pm | Expressions Of Interest To Host 2017 Australia Day Celebrations | | Brydon King |
| 2.16pm – 2.20pm | COPACC History Centre Lease | | Ingrid Bishop |
| 2.20pm – 2.24pm | Corangamite Regional Library Corporation – Library Service Level Agreement | | Ingrid Bishop |
| 2.24pm – 2.29pm | Apollo Bay Sailing Club Lease And Licence Renewal | | Ingrid Bishop |
| 2.29pm – 2.32pm | Contract 1605 - External Plant Hire | | Ingrid Bishop |

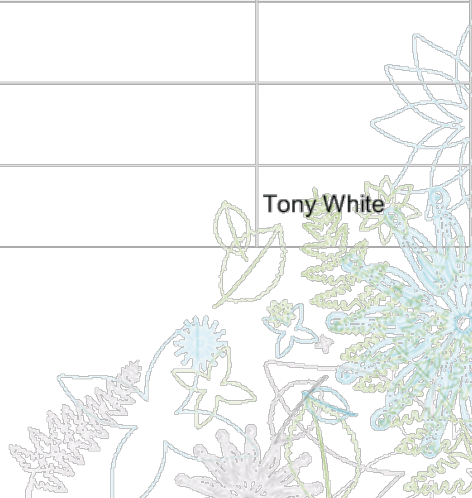
Pre-Council Meeting Preparation – 27/07/2016





| | | |
|--------------------|--|---------------|
| 2.32pm –
2.36pm | Contract 1606 - Supply of Crushed Rock, Sealing Aggregate and Pavement Materials | Ingrid Bishop |
| 2.36pm –
2.40pm | 2017-2018 Community Sports Infrastructure Fund | Ingrid Bishop |
| 2.40pm –
2.44pm | MAV - Liability Mutual Insurance Scheme Renewal | Mark Lyons |
| 2.44pm –
2.46pm | Update Instrument of Delegation - Council to Council Staff | Mark Lyons |
| 2.46pm –
2.48pm | Authorisation of Planning Officers Under the Planning and Environment Act 1987 | Mark Lyons |
| 2.48pm –
2.50pm | Re-Election of S86 Committees of Management | Mark Lyons |
| 2.50pm –
2.52pm | Assembly of Councillors | Mark Lyons |
| 2.52pm –
2.54pm | Audit Committee Summary Minutes 20160601 | Mark Lyons |
| 2.54pm –
3.06pm | Notice of Motion - Central Reserve - Facility Naming | Ingrid Bishop |
| 3.06pm –
3.15pm | Break | |
| 3.15pm –
3.21pm | In Committee Item 1 | |
| 3.21pm –
3.25pm | In Committee Item 2 | |
| 3.25pm –
3.29pm | In Committee Item 3 | |
| 3.29pm –
3.33pm | In Committee Item 4 | |
| 3.33pm –
3.40pm | In Committee Item 5 | |
| 3.40pm –
3.46pm | General Business <ul style="list-style-type: none"> Bushfire Recovery Update | Tony White |

Pre-Council Meeting Preparation – 27/07/2016





Councillor Briefing

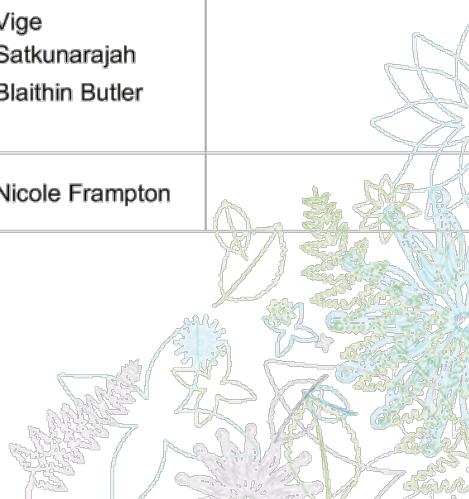
COPACC

Wednesday 3 August 2016 2.00pm

Assembly of Councillors

| | | | |
|--|--|---|--|
| INVITEES:
Cr Buchanan, Cr Woodcroft, Cr Russell, Cr Hart, Cr Crook, Cr Smith, Cr Delahunty, Sue Wilkinson, Mark Lyons, Ingrid Bishop, Brydon King | | | |
| ATTENDEES:
Cr Woodcroft, Cr Russell, Cr Hart, Cr Crook, Sue Wilkinson, Mark Lyons, Ingrid Bishop, Brydon King, Vige Satkunarajah, Blaithin Butler, Nicole Frampton, Doug McNeill, Simone Robertson, Jenny Wood | | | |
| APOLOGIES:
Cr Buchanan | | | |
| ABSENT:
Cr Smith, Cr Delahunty | | | |
| 2:02pm Declaration of Interest | | | |
| | Councillor: | Item: | Reason: |
| Left at 2.25pm
Returned at 2.44pm | Cr Hart | Lavers Hill to Crowes Off Road Trail | Indirect as it might affect residential amenity of my property |
| Left at 5.28pm
Returned at 5.30pm | Cr Russell | General Business Planning Applications Update | Brother-in-law owns quarry in Colac Otway Shire |
| | | Officer/s attending | External attendees |
| 2.02pm – 2.25pm | Planning Committee Reports for 10 August Meeting
- Use and Development of a Telecommunications Facility (40m Monopole), associated antennas and equipment units at 19 Strachan Street, Birregurra (PP103/2016-1).
- Planning & Building Statistical Report | | Vige Satkunarajah
Blaithin Butler |
| 2.25pm – 2.41pm | Lavers Hill to Crowes Off Road Trail | | Nicole Frampton |

Assembly of Councillors – 03/08/2016





| | | | |
|--------------------|---|-----------------------------------|--|
| 2.41pm –
2.45pm | Break | | |
| 2.45pm –
4.36pm | Local Government Act - Directions paper | Jenny Wood | |
| 4.36pm –
4.40pm | Break | | |
| 4.40pm –
4.48pm | Barwon South West Waste and Resource Recovery Group Implementation Plan - Draft | Jenny Wood
Simone
Robertson | |
| 4.48pm –
5.03pm | State Government Asset Protection Zone Investigation and Review of Bushfire Attack Levels | Doug McNeill | |
| 5.03pm –
5.55pm | General Business: <ul style="list-style-type: none"> • Regional Partnerships • Timber Towns • Planning Applications Update • Bluewater | | |

Assembly of Councillors – 03/08/2016





Councillor Briefing

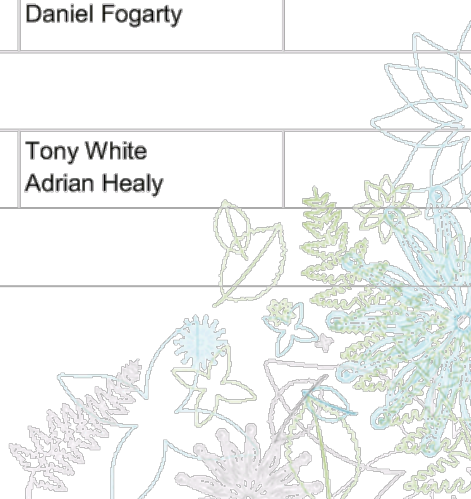
COPACC

Wednesday 10 August 2016 11.00am

Assembly of Councillors

| INVITEES:
Cr Buchanan, Cr Woodcroft, Cr Russell, Cr Hart, Cr Crook, Cr Smith, Cr Delahunty, Sue Wilkinson, Mark Lyons, Ingrid Bishop, Brydon King | | | |
|--|---|-----------------------------|--------------------|
| ATTENDEES:
Cr Buchanan, Cr Woodcroft, Cr Russell, Cr Hart, Cr Crook, Sue Wilkinson, Mark Lyons, Brydon King, Doug McNeill, Sandra Wade, Vige Satkunarajah, Daniel Fogarty, Tamzin McLennan, Melanesia Carson, Adrian Healy | | | |
| APOLOGIES:
Ingrid Bishop | | | |
| ABSENT:
Cr Smith, Cr Delahunty | | | |
| DECLARATION OF INTEREST:
10.48am | | | |
| | Councillor: | Item: | Reason: |
| Nil | | | |
| | | Officer/s attending | External attendees |
| 10.48am – 11.23am | Bushfire Recovery - Wye River & Separation Creek Traffic & Construction Management Plan | Doug McNeill
Sandra Wade | |
| 11.23am – 11.50am | Apollo Bay Harbour EOI Process | Vige Satkunarajah | |
| 11.50am – 12.24pm | Review Effectiveness of 2016/17 Budget Process | Daniel Fogarty | |
| 12.24pm – 12.31pm | Break | | |
| 12.31pm – 12.48pm | Great Ocean Road Regional Tourism Board Funding Agreement | Tony White
Adrian Healy | |
| 12.48pm – 1.43pm | Lunch | | |

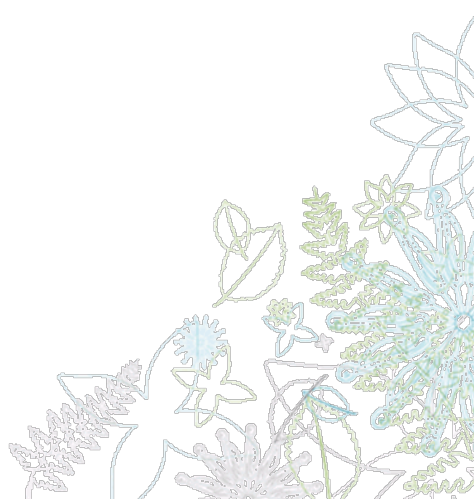
Assembly of Councillors – 10/08/2016





| | | | |
|--------------------|--|---------------|--|
| 1.43pm –
2.16pm | Co location Apollo Bay Kindergarten with Apollo Bay P-12 College | Greg Fletcher | |
| 2.16pm –
2.58pm | General Business: <ul style="list-style-type: none"> • COPACC • Bluewater • Great Ocean Road • IT Funding for Schools | | |
| 2.58pm –
3.55pm | CEO Performance Appraisal | | |

Assembly of Councillors – 10/08/2016



OM162408-17 NOTICE OF MOTION - AMBULANCE SERVICES SUMMIT (CR MICHAEL DELAHUNTY)

TAKE NOTICE that it is my intention to move at the Ordinary Council Meeting of the Colac Otway Shire to be held on 24 August 2016:

That Council request the CEO:

1. Writes to the Honourable Jill Hennessy, Victorian Health Minister and Minister for Ambulance Services, requesting advice as to a suitable date for the Minister to attend an interagency meeting, arranged and convened by Colac Otway Shire and involving all relevant agencies to discuss optimising emergency medical service provisions in the township of Colac and the surrounding district.
2. Convenes a summit involving all relevant agencies to discuss optimising emergency medical service provisions in the township of Colac and the surrounding district once advice has been obtained from the Honourable Jill Hennessy, Victorian Health Minister and Minister for Ambulance Services as to a suitable date for the Minister to attend.

Attachments

Nil

Recommendation

That Council request the CEO:

1. ***Writes to the Honourable Jill Hennessy, Victorian Health Minister and Minister for Ambulance Services, requesting advice as to a suitable date for the Minister to attend an interagency meeting, arranged and convened by Colac Otway Shire and involving all relevant agencies to discuss optimising emergency medical service provisions in the township of Colac and the surrounding district.***
2. ***Convenes a summit involving all relevant agencies to discuss optimising emergency medical service provisions in the township of Colac and the surrounding district, once advice has been obtained from the Honourable Jill Hennessy, Victorian Health Minister and Minister for Ambulance Services as to a suitable date for the Minister to attend.***

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## IN COMMITTEE

### Recommendation

***That pursuant to the provisions of Section 89(2) of the Local Government Act, the meeting be closed to the public and Council move “In-Committee” in order to deal with:***

| <b>SUBJECT</b>                                                                                                                         | <b>REASON</b>                                                                                                                                 | <b>SECTION OF ACT</b>      |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <b>Minutes of In-Committee Council Meeting held on 27 July 2016</b>                                                                    | this matter deals with contractual matters; AND this matter may prejudice the Council or any person.                                          | Section 89 (2) (d) & (h)   |
| Bushfire Recovery - Award of Contract 16/17-10 - Wye River & Separation Creek Topographical & Cadastral Survey & Creation of Easements | this matter deals with contractual matters; AND this matter deals with legal advice; AND this matter may prejudice the Council or any person. | Section 89 (2) (d) (f) (h) |
| Colac Saleyards                                                                                                                        | this matter deals with contractual matters; AND this matter may prejudice the Council or any person.                                          | Section 89 (2) (d) (h)     |
| Contract 1607 - Provision of Building Surveying & Inspections Services                                                                 | this matter deals with contractual matters.                                                                                                   | Section 89 (2) (d)         |
| Contract 1609 - Bituminous Sealing Works                                                                                               | this matter deals with contractual matters.                                                                                                   | Section 89 (2) (d)         |
| COPACC Cinema Services Lease                                                                                                           | this matter deals with contractual matters.                                                                                                   | Section 89 (2) (d)         |
| Leave of Absence                                                                                                                       | this matter may prejudice the Council or any person.                                                                                          | Section 89 (2) (h)         |
| Leave of Absence                                                                                                                       | this matter may prejudice the Council or any person.                                                                                          | Section 89 (2) (h)         |