

Planning and Environment Act 1987

**Panel Report**

**Apollo Bay Tourism Resort Call In  
Colac Otway Permit Application No PP169/2017-1**

**13 December 2018**

Planning and Environment Act 1987

Panel Report pursuant to sections 97E, 153 and 155 of the Act

Apollo Bay Tourism Resort Call In

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13 December 2018



Dalia Cook, Chair



Annabel Paul, Member



Sandra Brizga, Member

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## List of abbreviations and glossary

AV	Aboriginal Victoria
AEP	Annual Exceedance Probability
AGS 2007	Australian Geomechanics Society <i>Guidelines for Landslide Risk Management 2007</i>
AH Act	<i>Aboriginal Heritage Act 2006</i>
AH Regulations	<i>Aboriginal Heritage Regulations 2018</i>
Applicant	Oceans United Investments Group Pty Ltd
BMO	Bushfire Management Overlay
BMP	Bushfire Management Plan
CCMA	Corangamite Catchment Management Authority
CFA	Country Fire Authority
CHMP	Cultural Heritage Management Plan
Council	Colac Otway Shire Council
DELWP	Department of Environment, Land, Water and Planning
EMO1	Erosion Management Overlay Schedule 1
EMP	Emergency Management Plan
EMV	Emergency Management Victoria
ESO3	Environmental Significance Overlay Schedule 3
FFG Act	<i>Flora and Fauna Guarantee Act 1988 (Vic)</i>
GORRT	Great Ocean Road Regional Tourism Limited
LPPF	Local Planning Policy Framework
LRA	Landslip Risk Assessment
MSS	Municipal Strategic Statement
PCRZ	Public Conservation and Resource Zone
PE Act	<i>Planning and Environment Act 1987</i>
planning scheme	Colac Otway Planning Scheme
PPF	Planning Policy Framework

RAZ	Rural Activity Zone
RCZ	Rural Conservation Zone
SDWM Report	Stormwater Drainage and Waterway Management Report
SLO3	Significant Landscape Overlay Schedule 3
SPPF	State Planning Policy Framework
VPP	Victoria Planning Provisions

## Overview

### Application summary

<b>Permit Application</b>	Colac Otway Permit Application No PP169/2017-1
<b>Common name</b>	Apollo Bay Tourism Resort Call In
<b>Permit applicant</b>	Oceans United Investments Group Pty Ltd
<b>Responsible Authority</b>	Minister for Planning (called in from Colac Otway Shire Council)
<b>Subject land</b>	275 Barham River Road, Apollo Bay
<b>Proposal</b>	Proposed use and development of land for an integrated tourist facility including Residential hotel and Leisure and recreation facility with associated permissions
<b>Zones, Overlays and Particular provisions</b>	<p>Permission is sought under the following provisions of the Colac Otway Planning Scheme:</p> <ul style="list-style-type: none"> <li>- Clause 35.08-1 (Rural Activity Zone) – use of land for Residential hotel, Leisure and recreation facility</li> <li>- Clause 35.08-4 (Rural Activity Zone) – construction or carrying out buildings and works for Residential hotel, Leisure and recreation facility</li> <li>- Clause 42.01-2 (Environmental Significance Overlay Schedule 3) – construction of a building and carrying out works and removal of vegetation</li> <li>- Clause 42.03-2 (Significant Landscape Overlay Schedule 3) – construction of a building and carrying out works and removal of native vegetation</li> <li>- Clause 44.01-2 (Erosion Management Overlay Schedule 1) – construction of a building and carrying out works</li> <li>- Clause 44.01-3 (Erosion Management Overlay Schedule 1) – removal of vegetation</li> <li>- Clause 44.06-2 (Bushfire Management Overlay) – construction of a building and carrying out works for Accommodation and Leisure and recreation</li> <li>- Clause 52.17 – removal of native vegetation</li> </ul> <p>The provisions of Clause 52.06 pertaining to car parking apply to this proposal, to be provided to the satisfaction of the Responsible Authority.</p>

<b>Land description</b>	<p>The property is large and undulating, comprising two lots with a total area of approximately 104.6 hectares. It is currently under pasture and used for grazing. The site is located approximately 3.6km south west of the Apollo Bay township and some 1.9km west of Marengo. It is accessed via Barham River Road, a scenic designated tourist route.</p> <p>The site topography is complex and is incised by a series of waterways that contain varying levels of vegetation.</p> <p>The property offers outstanding long range views across the Apollo Bay hinterland to the township and Bass Strait.</p> <p>The land contains two existing dwellings. It has also been used for a function centre of a reasonably confined scale since approximately 2008, within a shed style building on the north eastern part of the site.</p> <p>Nearby properties are used predominantly for rural purposes or small scale tourism facilities. A confined number of dwellings exist in the area, including the adjacent site immediately to the east, within properties along Old Horden Vale Road and at a site in Killala Road which all have direct interfaces with the subject land.</p>
<b>Objectors</b>	<p>Notice was given of the original permit application and 181 objections and 14 submissions of support were received (many of which were received after the application was called in by the Minister for Planning but were referred to the Panel subsequently).</p> <p>Further notice of the amended application was given and 113 objections and 2 supporting submissions were received, with some overlap in the identity and concerns of objectors across the two notification processes.</p>
<b>Panel process</b>	
<b>The Panel</b>	Dalia Cook (Chair), Annabel Paul and Sandra Brizga
<b>Directions Hearing</b>	Apollo Bay Senior Citizens Centre, 23 August 2018
<b>Panel Hearing</b>	17, 18, 20, 21 September and 8, 9, 10, 11, 15 and 16 October 2018
<b>Site inspections</b>	<p>An accompanied inspection of the subject land was undertaken with the parties on the first day of the Hearing. The Panel also separately inspected the adjacent property owned and occupied by the Farley family, a property in Conns Lane owned by the Telford family and two rural properties owned by Dr Pockley and his family.</p> <p>The Panel conducted numerous unaccompanied inspections of the surrounding area including the Great Ocean Road from Skenes Creek to Marengo, the full length of Barham River Road, Old Horden Vale Road and Marriners Lookout.</p>
<b>Appearances</b>	Recorded in Appendix C
<b>Citation</b>	Colac Otway SC [2018] PPV 169/2017-1
<b>Date of this Report</b>	13 December 2018



## Executive summary

Apollo Bay is a scenic coastal township along the iconic Great Ocean Road. The region hosts significant numbers of tourists with this number increasing over time, including a rise in international visitation. An overwhelming proportion of these visitors are on day trips.

There is a strong emphasis on tourism in policies within the Colac Otway Planning Scheme. There is scope to provide new luxury accommodation in or near the township of Apollo Bay with the objective to increase the average visitor length of stay and overall tourism spend in the region.

The permit application seeks permission for the use and development of a substantial tourist resort on an undulating site in the Apollo Bay hinterland which forms part of a landscape of national significance. The main hotel building would step down the existing landform using three interconnected wings to take advantage of spectacular views. The proposal would also provide a series of villas offering different visitor experiences.

Colac Otway Shire Council (Council) requested the Minister for Planning (Minister) to call in the permit application under Division 6 of Part 4 of the *Planning and Environment Act 1987* on the basis that the proposal raised significant issues of state policy namely, regional and tourism development. The Minister accepted this request and called in the proposal.

The proposal has been the subject of widespread local community opposition.

The Panel was convened to conduct a public Hearing, to consider all submissions and evidence in respect of the permit application and to make recommendations accordingly. This report will be provided to the Minister to assist his determination of the permit application as the Responsible Authority.

The proposal is an ambitious one. It would provide a luxury hotel and villas with associated recreation and retail facilities to cater for visitors to Apollo Bay and the broader region. There is currently no facility of a comparable scale or integrated service offer in Apollo Bay or proximate townships.

There is no doubt that the construction and operation of a substantial tourist facility in this location has potential to generate notable economic and social benefits. Potential economic and social disbenefits are far less clear at this stage.

The site has numerous constraints including geotechnical instability, environmental sensitivity, significant bushfire and flooding risk. It is located within a landscape of national significance which has been recognised by the Significant Landscape Overlay and is set within a tranquil, picturesque rural area forming part of the Barham River Valley that is an identified tourist route.

This setting generates both opportunities and challenges for the proposal in terms of the suitability of the location and the proposal's response to site features. It also calls for carefully balanced consideration of the appropriateness of the scale and impact of the use and development.

Key issues raised in objections were wide ranging. They emphasised potential impacts on the Apollo Bay community. They included a concern that the proposal constituted urban

development that should be located in an urban area and the scale was excessive. Objectors raised potential impacts on the broader significant landscape and the character of the Barham River Valley. Numerous objectors sought to highlight that environmental risks had not been addressed suitably, including landslip, fire and flooding. They also identified concerns about traffic and parking as well as impacts on native vegetation and the Barham River.

A smaller number of submissions were received in support of the proposal. They emphasised the potential contribution to tourism and the local economy, the desirability of creating new facilities for the community and the acceptability of the built form response.

The Applicant submitted that the proposal represented a site responsive design that would meet identified needs for high quality tourist facilities in the region. It relied on evidence that the visual impact of the proposal would be low to negligible, and acceptable in its setting. During the Hearing, the Applicant volunteered a number of potentially significant contributions to tourism, community services and facilities in the region if the proposal was approved.

Council's officer recommended the grant of a permit subject to important provisos and consideration of further information to be provided by the Applicant. However, Council did not support the grant of a permit in its role as referring Responsible Authority because of concerns that aligned largely with the objections received.

The Panel has considered the proposal in terms of its compliance with planning policy, the relevant planning controls and the overall setting of the site. It recognises the important role of tourism for this township and broader region. As a starting point, it considers that the zoning of the land which is relatively recent and confined in area contemplates tourist accommodation or tourism activities on the subject land in some form.

A key issue is whether the scale, design and intensity of the proposal demonstrates appropriate respect for its rural context and the surrounding landscape of national significance in particular. Another central enquiry is the adequacy of the proposed response to environmental risks and site constraints.

The Panel concludes:

- The proposal would meet a demonstrated need for high quality luxury accommodation in the region in line with planning policy. It would provide increased tourism opportunities, although both the potential economic benefits and disbenefits have not been fully demonstrated.
- The scale of the proposed hotel land use cannot be sustained within the Rural Activity Zone given the particular context of the site. Although the hotel building would be articulated and stepped to address site topography, its proposed built form would be contrary to planning policy and would have an unacceptable impact on a nationally recognised landscape. It would also detract from the valued character of the Barham River Valley.
- Subject to some refinement, the proposed villas would represent an acceptable built form for the site that responds to policy and zone objectives.
- The Panel has no confidence based on the scope of investigations to date that 'tolerable' risk criteria for landslip could be met for the proposal within the parameters of the permission applied for. Significant subsurface investigation is required to confirm the

preliminary geotechnical/geological risk model and to enable the siting and design of suitable mitigation works to be determined.

- The permit application does not respond adequately to flooding risk since no feasible alternative access to Barham River Road has been established as part of the proposal. This raises inherent challenges for management of site occupants during flood events.
- The Applicant has not demonstrated that the proposal would prioritise the protection of human life during a bushfire event, given the disparate nature of the buildings and challenges for internal site movement.
- The proposal does not suitably document the impacts on native vegetation, which remain unresolved in connection with bushfire management issues and geotechnical risk. This may have consequential impacts on the visual impact of the proposal, land stability and ecological values.
- The community contributions offered by the Applicant in connection with the proposal would have the potential to generate significant community benefit, although they do not form part of the permit application itself.
- The proposal has not yet demonstrated its capacity for a net environmental gain.
- Parking and internal site accessibility would be problematic and may require substantial ongoing management to be workable.
- The broader impacts of providing service infrastructure to the site are not yet resolved.

Many of these concerns are symptomatic of the fact that the amended application lacks detail in fundamental areas, some of which were identified by the Panel or the Department of Environment, Land, Water and Planning (DELWP) early in the process.

The Panel is not persuaded that it is appropriate to grant the permissions sought. Overall, the Panel concludes that the amended permit application would not result in net community benefit or sustainable development.

### **Recommendation**

**Based on the reasons set out in this Report, the Panel recommends that planning permit application No. PP169/2017-1 be refused.**

# 1 Introduction

## 1.1 The subject land and surrounds

The subject land is located at 275 Barham River Road along the Barham River Valley, approximately 3.6 km south west of Apollo Bay. It is comprised of two lots and has a total area of 104.6 hectares.

The site consists of largely cleared grazing land with six major gullies running through it. The largest of these (located centrally) and an additional gully to the south west corner are 'designated waterways' under the *Water Act 1989*. A large farm dam is located towards the western side of the site on a higher part of the land and there are several smaller dams on the site. Pockets of native vegetation exist on the site, both remnant and planted.

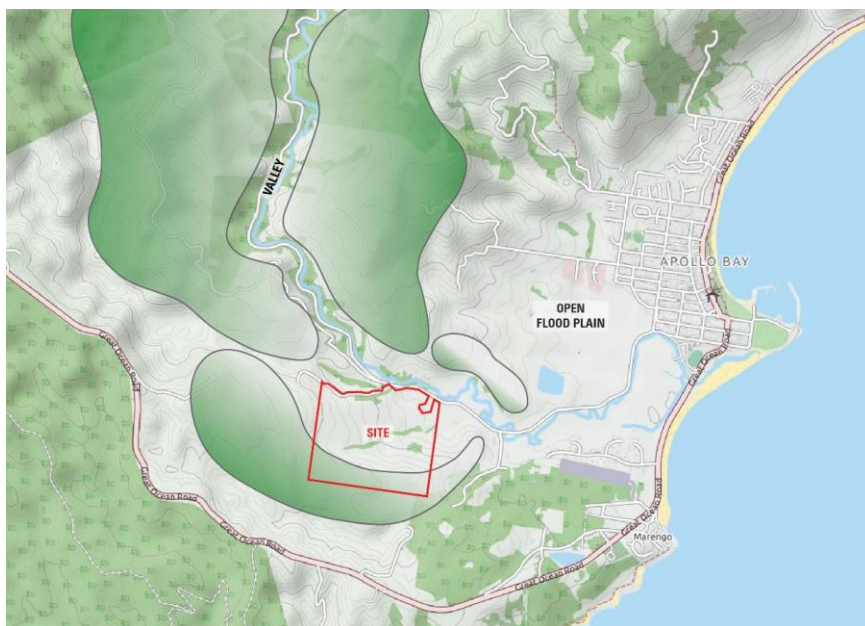
In 2009 the Minister rezoned the subject land and abutting properties to the east and west to Rural Activity Zone (RAZ), with the purpose of facilitating tourism development in the hinterland of Apollo Bay.<sup>1</sup> Private land to the north and south is zoned Rural Conservation Zone (RCZ). The Barham River, and parts of the Barham River Road are zoned Public Conservation and Resource Zone (PCRZ).

The land is developed with a rural building located in the north east corner of the site, a dwelling to the south east corner of the site, and a reception centre with capacity for 250 people (formerly operated as Barham River Events) close to Barham River Road. In 2000, planning permit PP433/99b was granted, allowing use of the land for a Licensed Restaurant (Café), Winery, Rural Industry and Primary Produce Sales and Place of Assembly (Tourist Related Displays & Activities). The uses authorised by that permit have not commenced and it has lapsed.

Barham River Road (which provides access to the site) and the Barham River Valley are located to the north of the site. Land at 303 Barham River Road projects into the subject land and contains an existing dwelling. The owners and occupiers of that property are objectors to the permit application. To the north and west of the site are properties with access from Old Horden Vale Road, with the closest dwelling at 30 Old Horden Vale Road. Land to the south contains properties with access from Alice Court and the Great Ocean Road which are largely separated from the parts of the site proposed for development by distance and topography. East of the site are properties with access to Conns Lane, Telfords Access and Barham River Road. These properties include rural residential development along Ocean Park Drive and the Apollo Bay Airfield.

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<sup>1</sup> Amendment C55.



**Figure 1** The context of the subject site

*Source: David Barnes' expert witness statement*

## 1.2 The proposal

Oceans United Investments Group Pty Ltd (the Applicant), proposes to use and develop the land with tourist accommodation including:

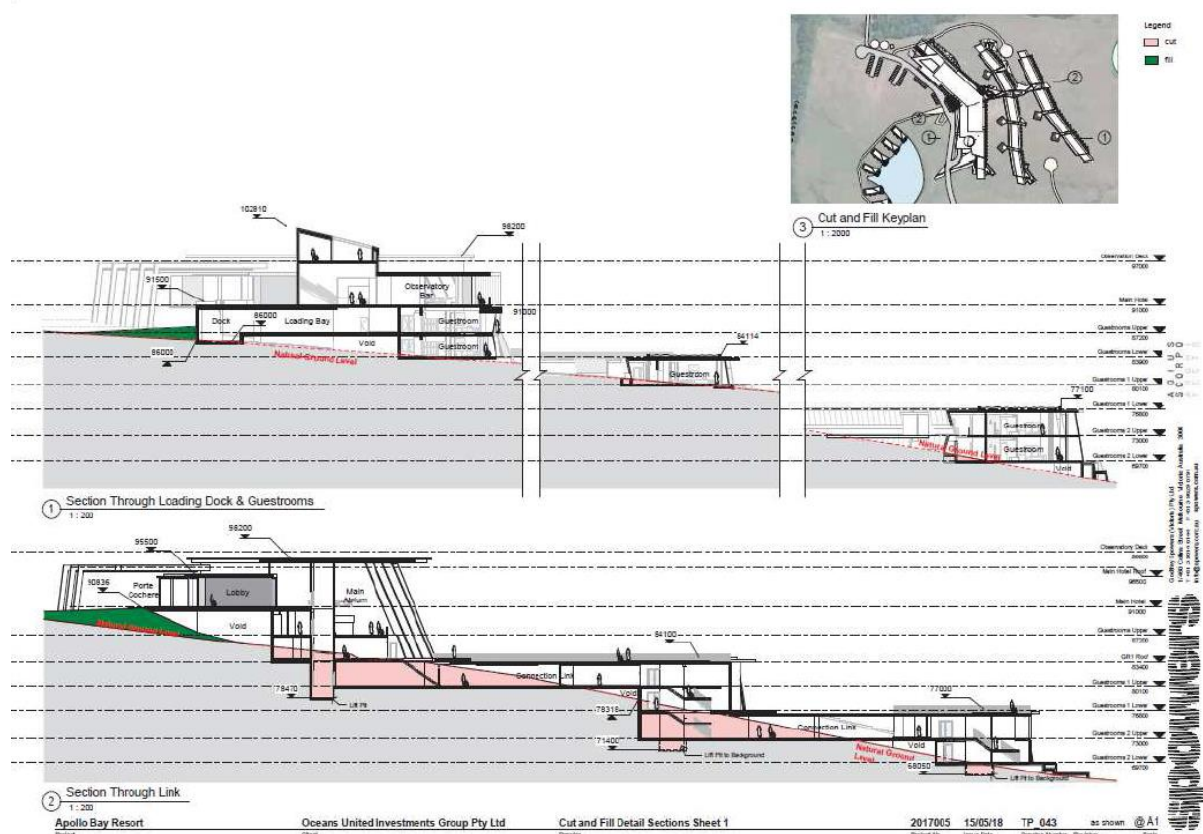
- 180 hotel rooms
- 82 villas located to the east, west and south of the main hotel to be used in conjunction with the hotel
- hotel facilities including a bar, all-day dining restaurant, a further restaurant, retail tenancies and rooftop observatory
- a wellness centre and 25m swimming pool
- staff accommodation.

The Applicant estimated that the site would accommodate approximately 880 people at peak occupancy, plus staff.



- a main residential hotel building comprised of three interconnected wings. This is to be located on the western part of the site near the existing large dam and would stagger down the contours of the site. The western wing has a maximum height of 18.7 metres from the ground floor to the observatory roof and the cumulative height of the three wings is 33.1m from the ground floor of the eastern wing to the observatory roof
- 11 villas located to the north of the main hotel building, proposed as single storey with two bedrooms each (referred to as Ridge Villas) built on stilts to cater for the fall in the land (approximately 5.9 metres in height)
- 11 villas located to the west of the existing dam, which are also proposed to be single storey and contain two bedrooms (referred to as Water Villas) at approximately 4.9 metres maximum height
- an additional 60 villas located along the southern side of the main designated waterway through the centre of the site, consisting of 15 one bedroom villas, 35 two bedroom villas and 10 three bedroom villas (referred to as the Creek and Pasture Villas) to approximately 5.8 metres in height
- buffers of 30 metres on each side of both of the designated waterways are proposed to allow for revegetation and natural management of these areas





**Figure 3** Cross-sectional view of hotel building

Source: extracted from amended application plan NoTP043

Access to the site from Apollo Bay and the Great Ocean Road would be via Nelson Street and Barham River Road, involving an upgrade to the latter roadway in connection with this proposal. Substantial internal access roads and paths would be created to service the proposed hotel and villas. In relation to car parking, the application plans depict:

- 50 sealed parking spaces to the west of the main hotel building and a drop off point at the main entrance
- 45 sealed car parking spaces and 8 bus parking spaces on the north eastern portion of the land down the slope, near the existing maintenance areas
- 137 crushed rock “overflow” parking spaces near the maintenance area. Serviced buggies operated by resort staff would transport people to the main hotel building and across the site as part of a valet service
- one to two car parking spaces for each villa depending on the number of bedrooms.

The site is proposed to be serviced with reticulated water, sewer and power to be provided in connection with the development of the resort.

Subject to management of riparian and other vegetation in line with defensible space requirements, existing vegetation would be retained beyond the development areas, with the exception of one stand of established trees identified for removal. Additional revegetation is proposed along parts of gullies and along the western boundary subject to a detailed landscape plan to be prepared to align with defensible space requirements.

Overall, the amended application plans indicated that an area of up to 2.8 hectares of native vegetation is to be removed (or notionally 'lost' under the updated Native Vegetation Framework), which was described as mostly replanted vegetation funded through Landcare and not considered to be exempt under the 'Planted Vegetation' exemptions in Clause 52.17. Throughout the Hearing, it became apparent that this figure would need to be revised to correspond with more detailed information to be provided about managing fire risk while retaining the maximum amount of native vegetation possible along the gully lines.

## **1.3 Background**

### **1.3.1 Original application and call in**

A planning permit application for a two stage Residential hotel tourist proposal was lodged with Council in July 2017. Stage 1 involved a 180 room hotel with 82 villas (although no detail was provided for 60 of the villas). Stage 2 involved a 200 room hotel extension, a further 140 villas, conference and function centre, chapel and yoga retreat and associated buildings and works.

Council gave notice of the permit application from September to October 2017 on the basis of an understanding with the Applicant that it was only considering Stage 1 of the proposal. This generated 181 objections and 14 submissions of support.

At a Council Meeting on 22 November 2017, Council resolved to request the application be called in under Section 97C of the *Planning and Environment Act 1987* by the Minister. It formed this view on the basis that the proposal was considered to have significant implications for state planning policy related to tourism, the Great Ocean Road, environmental issues and character. Additionally, any decision on the application was considered likely to influence how tourism development along the Great Ocean Road would be considered in the future across municipal boundaries.

The Minister called in the application on 31 December 2017. On 29 January 2018, a delegate of the Minister requested the appointment of a Panel. On 6 February 2018, a Panel was appointed to consider the permit application under sections 97E, 153 and 155 of the PE Act. The Panel comprised William O'Neil (Chair) and Annabel Paul.

At its meeting in February 2018, Council confirmed it did not have sufficient information in relation to flooding of Barham River Road, landslip risk and details of all proposed villas to enable it to form a position on the application.

A Directions Hearing was held by the Panel on 14 March 2018, during which the Applicant confirmed that an amended permit application would be lodged deleting stage 2.

On 21 March 2018, Michael Malouf, a Member with infrastructure and geotechnical expertise was appointed to the Panel having regard to the issues identified for consideration.

### **1.3.2 Amended proposal**

The Applicant lodged an amended application with DELWP on 16 May 2018<sup>2</sup> deleting stage 2 of the proposal. On 3 July 2018, DELWP wrote to the Panel Chair acknowledging the

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<sup>2</sup> Pre-Hearing Document 8.



amendments made to the application under section 57A of the PE Act, and confirming the documentation which now comprises the application.<sup>3</sup> The amended proposal included a revised hotel design incorporating 180 rooms, 82 villas, a wellness centre, restaurant and other facilities.

Some villas formerly proposed along a central drainage line through the site were relocated. Significantly, the amended application also removed and relocated some built form elements of the proposal identified as having ‘very high’ landslip risk.<sup>4</sup>

The Applicant provided additional information requested by the Panel in its directions dated 20 March 2018 including an updated geotechnical report, a social and economic impact assessment and a draft Emergency Management Plan. The Panel conducted re-notification of the amended permit application on 5 July 2018. 115 submissions were received including 113 objections and 2 supporting (totalling 58 new submissions).

On 30 July 2018, Dalia Cook, a planning and environmental lawyer and Sandra Brizga, a Member with expertise in geomorphology, hydrology and environmental management were appointed to the Panel in addition to Annabel Paul (in place of William O’Neil and Michael Malouf).<sup>5</sup>

### **1.3.3 Council officer’s report and Council meeting**

An officer of Council assessed the amended permit application and presented a detailed report to its Special Meeting on 15 August 2018. He offered conditional support for the proposed use and development of the land based on the following, in summary:

- *The proposal will support strategic objectives related to tourism development along the Great Ocean Road and assist with development of the local and regional economy.*
- *Subject to further analysis of the landscape visual assessment via the Panel process, the proposal is consistent with the purpose of the Rural Activity Zone and can integrate into the site and not detrimentally impact on the landscape.*
- *Subject to clarification of specific detailed elements associated with the Geotechnical and Landslip Risk assessment, the proposal can adequately respond to environmental risks and issues on the land as identified by relevant overlays present on the land.*<sup>6</sup>

The officer also recommended various conditions be imposed on a permit, including a requirement to upgrade Barham River Road at the Applicant’s cost.

Ultimately, Council resolved at its Meeting on 15 August 2018 to oppose the grant of a permit for the amended application on the following grounds:

- *The proposal is inconsistent with the purpose of the Rural Activity Zone by virtue of the scale of the development and its visual prominence in the*

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<sup>3</sup> Pre-Hearing Document 14.

<sup>4</sup> Referencing Golder Associates Landslide Risk Assessment Report, dated 15 May 2018.

<sup>5</sup> Due to non-availability.

<sup>6</sup> Minutes of Special Council meeting, Recommendation 1, 15 August 2018.

*surrounding landscape, and that it would detract from the environmental and agricultural aspects of the location.*

- *The proposal will be visually obtrusive on the site and will detrimentally impact on the wider landscape which is nationally significant.*
- *The proposal has not provided clear justification that the geotechnical and landslip risks have been adequately identified and appropriately responded to the requirements of the Erosion Management Overlay Schedule 1.*
- *The anticipated vegetation removal along the central designated waterway on the site is contrary to the objectives of the Rural Activity Zone, Significant Landscape Overlay Schedule 3 and Clause 52.17.*
- *The proposal has not provided appropriate parking to service the main hotel building.*
- *The proposal will result in unreasonable traffic impacts on the Barham River Road without widening of the Barham River Road.*
- *The additional traffic generated by the proposal will have unreasonable impacts on the amenity of residents along Barham River Road, Nelson Street and other local roads.*
- *The access to the site along Barham River Road is affected by flooding of the Barham River from time to time, and it has not been adequately demonstrated how this will impact on accessibility to the site by patrons and staff.*
- *The proposal will adversely impact the night sky of the location through lighting across the site associated with the use/development.*
- *The opportunity for emergency evacuation is limited.<sup>7</sup>*

Council also prepared a set of draft permit conditions that should underpin the grant of a permit if supported by the Minister. It incorporated community feedback to resolve these draft conditions at its meeting on 22 August 2018.

On 23 August 2018, a second Directions Hearing was held by the newly constituted Panel in Apollo Bay and written directions followed.

## **1.4 Procedural issues**

On 17 September 2018, Planning Panels Victoria and DELWP were advised by a Director of the Applicant, Mr Duff AM, that a post had been made on social media using the State Government and DELWP's logos without permission in reference to the Panel Hearing, encouraging the community to attend the Hearing to support presentations by objectors. DELWP took immediate action to identify the source of the post and to request that the logos be removed immediately, seeking a retraction statement from the author. DELWP Barwon South West Region also undertook proactive social media engagement to outline the independent Panel process moving forward.

On 18 September 2018, during preliminary matters at the reconvened Hearing, the Panel considered submissions from all interested parties about this issue, which resulted in an oral

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<sup>7</sup> As above.

direction for parties to avoid unauthorised use of State Government or Departmental logos, and a general request to community members to exercise caution in publishing information on social media relating to the Panel process.

## **1.5 Issues dealt with in this report**

The Panel considered all written submissions made in response to the permit application, observations from site visits, and submissions, evidence and other material presented to it during the Hearing.

The Panel has reviewed a large volume of material. The Panel has had to be selective in referring to the more relevant or determinative material in the report. All objections/submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in this Report.

This report deals with the issues under the following headings:

- Planning context
- Consistency with policy and zoning
- Impacts on landscape and character
- Geotechnical and landslip issues
- Hazards and emergency management
- Environmental considerations
- Social and economic considerations
- Parking, traffic and road impacts
- Other issues including:
  - impacts on Apollo Bay Airfield
  - servicing and infrastructure
- Integrated assessment
- Panel preferred permit conditions (in the event that the Panel's primary recommendation to refuse the permit is not accepted).

## **1.6 Precondition to the potential grant of a permit**

The subject land is mapped within an area of 'cultural heritage sensitivity' for the purposes of the *Aboriginal Heritage Act 2006* (AH Act) and *Aboriginal Heritage Regulations 2018* (AH Regulations) by virtue of its proximity to a registered waterway – the Barham River.<sup>8</sup>

The proposed development is a 'high impact activity' since it would result in significant ground disturbance and is for the purpose of a residential building.<sup>9</sup>

Section 52(1) of the AH Act provides that a statutory authorisation must not be granted unless an Aboriginal Cultural Heritage Management Plan (CHMP) has been approved for a high impact activity unless a relevant exemption applies. The Minister appears to be included in the definition of a 'decision maker' for the purpose of Division 3.<sup>10</sup> A 'statutory authorisation'

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<sup>8</sup> Regulation 26.

<sup>9</sup> Regulation 46 and Clause 73.03 of the planning scheme.

<sup>10</sup> Section 50, PE Act.

is defined in that Division as including a permit under the PE Act to use or develop land for all or part of an activity defined in the AH Regulations.

The Applicant has not demonstrated that the whole of the land has been the subject of significant ground disturbance by machinery (even though it has been substantially cleared compared with its natural condition). Consequently, it must prepare and obtain approval of a CHMP before a planning permit could be granted.

The Panel's role is to provide a fair Hearing process and to independently analyse the merits of the permit application. Its capacity pertains to making relevant recommendations to guide the ultimate decision. On this basis, it formed and communicated the view at the first Directions Hearing that it would not be prevented from conducting a Hearing and evaluating the proposal in the absence of an approved CHMP.

Notwithstanding, this issue was raised early in the Panel process because of its potential implications. The protection of Aboriginal cultural heritage is a significant objective of planning in Victoria and has particular resonance in the Apollo Bay local context.

A draft CHMP was prepared on behalf of the Applicant and submitted to Aboriginal Victoria (AV). The Panel was provided with a letter from AV dated 13 February 2018 indicating that the CHMP was not suitable for approval since it was incomplete and did not comply with the requirements in section 61 of the AH Act.<sup>11</sup>

The Panel was advised by the Applicant that investigations would commence shortly after the conclusion of the Hearing for a 'complex' Aboriginal cultural heritage assessment, with an expectation that a CHMP may be prepared and approved early in 2019.

The Applicant was advised by the Panel throughout the process that it would carry the risk of the approved CHMP potentially necessitating changes or otherwise generating challenges for the proposed development. The Applicant acknowledged this risk but elected to progress the Panel Hearing in the interim.

If the amended permit application is supported in principle by the Minister for Planning, the Applicant would need to confirm whether an approved CHMP has been obtained for the proposed activity, as required under the AH Act and the AH Regulations, since no planning permit could be granted unless this requirement has been satisfied. The amended permit application would need to be assessed for consistency with the approved CHMP.

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<sup>11</sup> Pre-Hearing Document 8, refer Appendix I.

## 2 Planning context

Relevant planning policy is extensive and provides detailed guidance for evaluating this permit application. In addition, the zoning and overlay controls that apply to the site are targeted to the site's location and the broader values of its setting.

Amendment VC148 to all planning schemes was gazetted after the permit application was originally advertised.<sup>12</sup> It introduced a new statewide Planning Policy Framework (PPF) and streamlined many controls within the Victoria Planning Provisions (VPP).

Council and DELWP confirmed that there were no significant changes arising from that Amendment that would materially affect consideration of the permit application. The Panel agrees. Therefore, it has assessed the proposal in light of the new suite of policy provisions in the Colac Otway Planning Scheme (planning scheme), noting that parties had the opportunity to make submissions and give evidence about them.

There are many policies in the planning scheme that need to be balanced when considering this application. Key themes relate to tourism and economic development, settlement and development, landscape and environmental values and environmental risk. Sustainability and community benefit are underlying themes. Council provided the Panel with a detailed outline of the relevant policy, zone and overlay provisions in its Part A submission. The planning experts also provided a detailed analysis which is explored further in this Report.

### 2.1 Outline of Planning Policy Framework

#### 2.1.1 Settlement

##### (i) State policy

Clause 11 of the planning scheme seeks to contribute towards a range of matters including health, wellbeing and safety, diversity of choice, economic viability and protection of environmentally sensitive areas and natural resources.

At Clause 11.01-1R Settlement - Geelong G21, Apollo Bay is nominated as a settlement with a minor port, with the subject site located within an area designated to '*maintain productive agricultural areas*'. Apollo Bay is not nominated as a settlement for planned growth per se.

Relevant regional growth plans are central in policy provisions, with a strong emphasis on reinforcing settlement boundaries. Settlements are directed to respond sustainably to population growth and changing environments whilst preserving and protecting natural resources and features and recognising the contribution of rural land.

Clause 11.03-4S Coastal settlement seeks to plan for sustainable coastal development. Strategies include managing increased visitation to avoid unsustainable use of coastal resources. Urban renewal and redevelopment opportunities are directed to defined settlement boundaries, with areas between settlements protected for non-urban use.

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<sup>12</sup> 31 July 2018.

Distinctive areas and landscapes in Clause 11.03-5S seeks:

*To protect and enhance the valued attributes of identified distinctive areas and landscapes.*

Strategies include:

- *... Recognise the important role these areas play in the state as tourist destinations.*
- *Protect the identified key values and activities of these areas.*
- *Support use and development where it enhances the valued characteristics of these areas.*
- *Avoid use and development that could undermine the long-term natural or non-urban use of land in these areas ...*

Clause 11.03-5R provides an objective to manage sustainable development within the Great Ocean Road region. Associated strategies central to this application include:

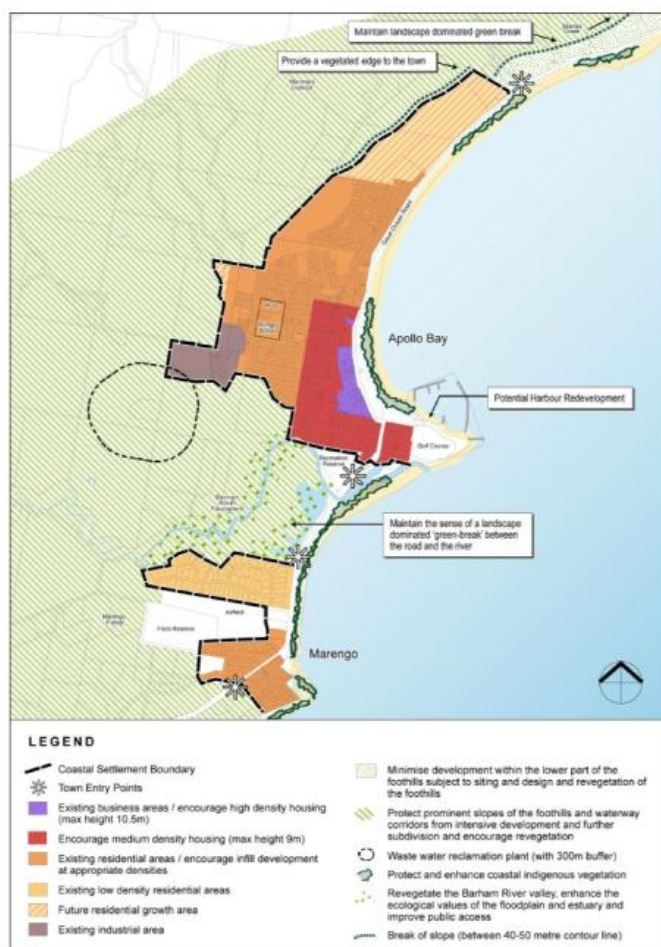
- *Ensure development responds to the identified landscape character of the area.*
- *Manage the impact of development on catchments and coastal areas.*
- *Manage the impact of development on the environmental and cultural values of the area.*
- *Encourage sustainable tourism and resource use by:*
  - *Developing a network of tourism opportunities throughout the region.*
  - *Supporting tourism activities that provide environmental, economic and social benefits.*
  - *Supporting the land use and transport needs of key regional industries including tourism.*
  - *Using natural resources with care.*

A particularly influential policy document is the *Victorian Coastal Strategy*, Victorian Coastal Council, 2014.

## **(ii) Local policy**

At a municipal level, Clause 21.03 provides objectives and strategies for townships within the Shire. A Structure Plan for Apollo Bay, including Marengo and Skenes Creek, outlines preferred future development for this coastal setting, reproduced in Figure 4.

The growth of tourism is supported as a major employer within the region. At the same time, policy seeks to maintain 'green-breaks' between the settlements and landscape dominance to ensure that each settlement remains distinct. The Otway foothills are to be protected as a scenic, undeveloped backdrop to Apollo Bay and Marengo.



**Figure 4** Apollo Bay, Marengo and Skenes Creek Framework Plan

Source: Clause 21.03 of the planning scheme

## 2.1.2 Environmental and landscape values

### (i) State policy

Policy at Clause 12 aims to protect, restore and enhance nature, conservation, biodiversity, geological and landscape value. Clause 12.01-2S seeks no net loss of biodiversity from the destruction of native vegetation. Relevantly, Clause 12.02-1S Protection of coastal areas seeks:

*To recognise the value of coastal areas to the community, conserve and enhance coastal areas and ensure sustainable use of natural coastal resources.*

Strategies include:

- ... Protect and maintain areas of environmental significance ...
- Ensure development is sensitively sited and designed and respects the character of coastal settlements.

More broadly, the objective of Clause 12.05-2S Landscapes is:

- To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.

Associated strategies include:

- *Ensure development does not detract from the natural qualities of significant landscape areas.*

Policies that address waterways are considered in detail in Chapter 7 of this Report.

## **(ii) Local policy**

At a local level, Clause 21.04-8 highlights that the Shire contains landscapes of recognised environmental, cultural, social and economic significance, as outlined in the Great Ocean Road Region Landscape Assessment Study (GORRLAS).<sup>13</sup> Objectives seek to retain the open and rural character of views and outlooks, particularly from main road corridors and tourist routes and to protect the landscape features identified in that study.

Strategies direct the retention of indigenous and native vegetation where possible and to locate development sparsely in the hinterland landscape, maximising space available between buildings and structures for vegetation. Large buildings and structures are to be located and screened to minimise their visibility from main roads and key viewing locations.

This sets the scene for the more specific guidance provided in the Significant Landscape Overlay that relates to the Apollo Bay Coastal Valley and Hills Precinct (SLO3) combined with the nature of development sought for the Rural Activity Zone (RAZ).

### **2.1.3 Environmental risks and amenity**

#### **(i) State and local policy**

Clause 13 relates to Environmental risks and amenity. It seeks a best practice approach to environmental and risk management and aims to avoid or minimise environmental hazards, environmental degradation and amenity conflicts. This policy also calls for appropriate response to climate change, as does local policy at Clause 21.04.

The strategies outlined at Clause 13.01-1S Natural hazards and climate change includes:

*Site and design development to minimise risk to life, property, the natural environment and community infrastructure from natural hazards.*

A seminal new provision relating to bushfire planning is contained in Clause 13.02-1S, with an overriding objective:

- *To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.*

Clause 13.03-1S relates to Floodplain management. A central objective of this clause is:

*To assist the protection of:*

- *Life, property and community infrastructure from flood hazard ...*

Strategies include avoiding intensification of the impact of flooding through inappropriately located use and development.

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<sup>13</sup> Great Ocean Road Region Landscape Assessment Study (2003), Reference Document to the Colac Otway Planning Scheme (Clause 21.07).



Clause 13.04-2S Erosion and landslip seeks to protect areas prone to erosion, landslip or other land degradation processes. Strategies include:

- ... *Prevent inappropriate development in unstable areas or areas prone to erosion.*
- *Promote vegetation retention, planting and rehabilitation in areas prone to erosion and land instability.*

At Clause 21.04-5 Erosion, the planning scheme recognises that landslides are a significant hazard in the southern half of the Shire including the slopes of the Barham River. Strategies include ensuring that new development demonstrates 'tolerable' risk to property and loss of life. This ties in directly with the Erosion Management Overlay (EMO1) which establishes requirements for development of the land.

More holistically, Clause 13.07-1S relates to Land use compatibility, seeking to:

- *[Direct] land uses to appropriate locations.*
- *[Use] a range of building design, urban design, operational and land use separation measures.*

#### **2.1.4 Natural resource management**

Clause 14.01-1S Protection of agricultural land seeks to protect the state's agricultural base by preserving productive farmland. Strategies include preventing inappropriate urban activities in rural areas.

Clause 14.02-1S relates to Catchment planning and management, with the objective:

*To assist the protection and restoration of catchments, water bodies, groundwater, and the marine environment.*

#### **2.1.5 Built environment**

Clause 15 Built environment and heritage provides that all land use and development should respond appropriately to its surrounding landscape and character, valued built form and cultural context.

Clause 15.01-2S seeks to achieve building design outcomes that contribute positively to the local context and enhance the public realm.

More detailed policies are documented and applied in Chapter 4.

#### **2.1.6 Economic development and tourism**

##### **(i) State policy**

Clause 17 Economic development provides:

*Planning is to provide for a strong and innovative economy, where all sectors are critical to economic prosperity.*

*Planning is to contribute to the economic wellbeing of the state and foster economic growth by providing land, facilitating decisions and resolving land use conflicts, so that each region may build on its strengths and achieve its economic potential.*

Regional policies at Clause 17.01-1R Diversified economy - Geelong G21 include the following strategy:

- *Build on the region's competitive strengths, including tourism and agricultural land resources and economic, social and natural assets ...*

Clause 17.04-1S relates to Facilitating tourism, with the following objective:

*To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.*

Clause 17.04-2S seeks suitably located and designed coastal, marine and maritime tourism and recreational opportunities. Its strategies are particularly apposite to this application and include:

- *Support the development of ecotourism, tourism and major maritime events.*
- *Ensure a diverse range of accommodation options and coastal experiences are provided for and maintained.*
- *Ensure tourism development, within non-urban areas, demonstrates a tourist accommodation need and supports a nature-based approach.*
- *Ensure development is of an appropriate scale, use and intensity relative to its location and minimises impacts on the surrounding natural, visual, environmental and coastal character.*
- *Encourage high quality urban design that is innovative, sustainable and integrated with surrounding areas.*

Associated strategies of Clause 17.04-1S relating to Tourism are:

- *Encourage the development of a range of well-designed and sited tourist facilities, including integrated resorts, accommodation, host farm, bed and breakfast and retail opportunities ...*
- *Promote tourism facilities that preserve, are compatible with and build on the assets and qualities of surrounding activities and attractions.*
- *Create innovative tourism experiences.*
- *Encourage investment that meets demand and supports growth in tourism.*

## **(ii) Local policy**

Clause 21.05 Economic development seeks to protect agricultural land (a key economic contributor) while recognising the increased demand for rural lifestyle properties and tourism based activities in rural areas.

Strategies include supporting development that will provide economic and social benefits while not adversely affecting farmland of strategic significance, water catchments, timber protection and environmental and landscape attributes.

The Shire contains some of Victoria's most significant tourist attractions, including the Great Ocean Road, internationally acclaimed beaches and the Otway Ranges. At Clause 21.05-4, tourism is recognised as a very important contributor to employment, with demonstrated consistent growth.

Policy expressly recognises that the Shire is well placed to capture a large proportion of Victoria's key tourism growth market – both short-stay trips and day trips. At the same time, the planning scheme recognises that an increase in tourism has the potential to create pressure on the environment and to generate potential dangers to residents and visitors in areas sensitive to landslip and bushfires.

More particularly, the planning scheme highlights that the *Rural Land Strategy 2007* has identified demands of tourism and accommodation in the area to the west of Apollo Bay and has included this area in the RAZ. It recognises that there is potential for farm-based activities on relatively cleared land and nature-based activities on partly vegetated land.

Objectives of Clause 21.05-4 relating to Tourism are:

- *To encourage growth in tourism in a way that assists diversification in the economy and ensures the protection of key environmental features.*
- *To encourage investment in tourism that has close linkages with local industries and the environment.*
- *To protect key visual and environmental features which are of major significance and contribute to the tourism assets of the Shire.*
- *To provide a range of accommodation and related activities which encourages tourist visitation.*
- *To provide for a preferred mix of uses in the Rural Activity Zone to the west of Apollo Bay ...*

Strategies include encouraging eco-tourism, small scale activities related to locally produced art and crafts and agriculture-based tourism. This policy also seeks to protect the visual quality and amenity of the Great Ocean Road and its adjoining coastal and rural landscapes, and to facilitate development of a diverse range of accommodation to meet changing visitor needs.

The strategies also seek to consolidate larger scale tourism use and development into identified activity nodes that are subservient to the landscape, of high quality design and style and capable of achieving net gain environmental outcomes.

Centrally to this application, implementation within the RAZ west of Apollo Bay (including the subject site) seeks consideration of the following:

- ... The scale of development and use should relate to the land size and surrounding uses.
- Development should be subservient to the landscape and not detract from the landscape quality.
- Development should be of high design quality and the style should respect surrounding development ...
- Development should be capable of net environmental gain.

### **2.1.7 Infrastructure**

Clause 19 directs that planning for development of social and physical infrastructure should be provided in a way that is efficient, equitable, accessible and timely. At the local level, implementation strategies at Clause 21.05-4 include:

- *Development should be self sufficient in, or meet all the relevant costs of, infrastructure provision.*

These policies are applied in Chapter 10.2.

## **2.2 Local Planning Policy Framework – further detail**

Clause 21.01 sets out key features of the Colac Otway Shire. Colac is the major urban centre of the Shire, with Apollo Bay being the Shire's other main centre with a permanent population of 1300 people at the 2006 census. The Shire includes some of the most scenic and environmentally sensitive land in Victoria, including the Great Otway National Park and 90 km of coastline served by the Great Ocean Road.

Economic development and employment opportunities are derived through a range of primary industries, tourism and commercial and community services.

Clause 21.02-2 sets out the vision for townships, with the following vision for Apollo Bay, Marengo and Skenes Creek, as outlined in the *Apollo Bay Structure Plan 2007*:

- *Apollo Bay, Marengo and Skenes Creek will remain as distinct coastal settlements, each with a separate identity and local character;*
- *The natural beauty of the area, with its unspoilt beaches set against a dramatic backdrop of rolling hills, provides the overarching character which unites the settlements, and should 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 should take place in Apollo Bay, Marengo and Skenes Creek 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.*

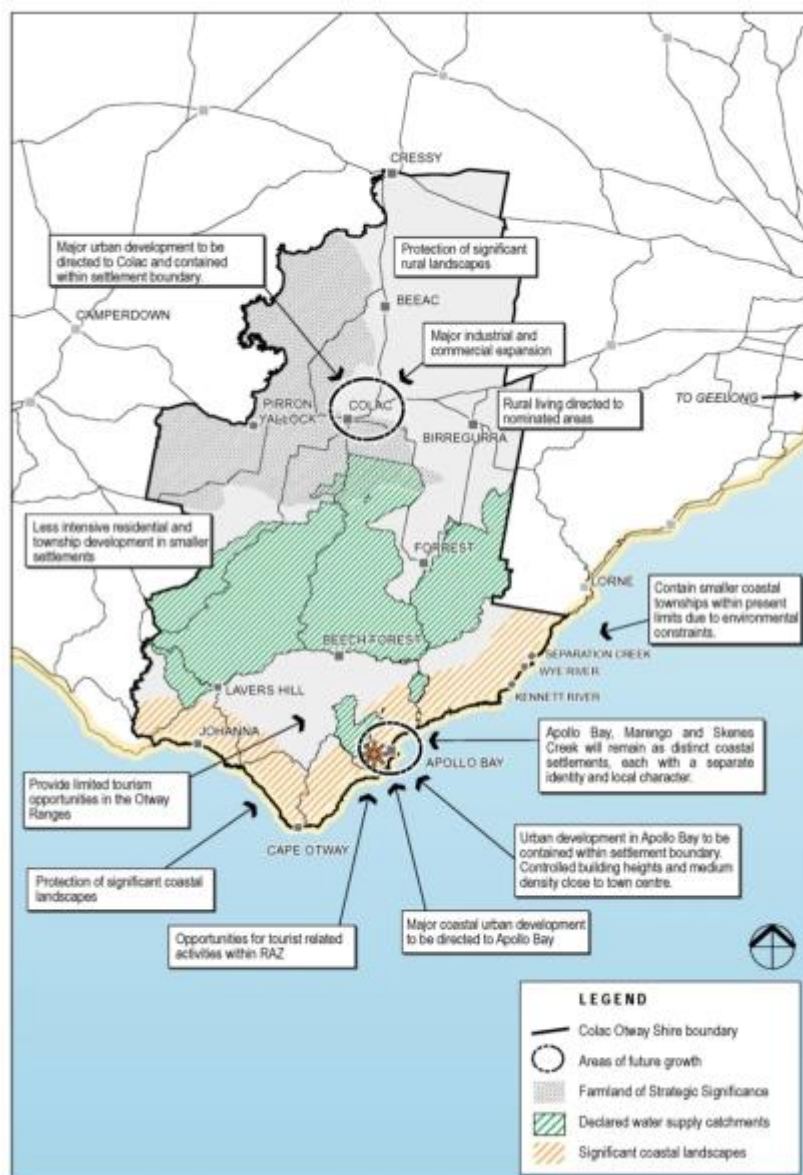
In relation to tourism, the vision generally mirrors state policy but specifically provides:

- *... Limited opportunities will be provided for tourist related activities in the Apollo Bay hinterland, around the Forrest Township and the Otways.*

The vision for environmental features replicates state policy somewhat, but confirms that:

- *... Those natural, physical and amenity features that contribute to the character of the Otway Ranges and Coast will be protected and enhanced for future generations.*

The Strategic Framework Plan at Figure 5 indicates that there are opportunities for tourist related activities within RAZ, that major coastal urban development is to be directed to Apollo Bay and that significant coastal landscapes need to be protected.



**Figure 5 Colac Otway Strategic Framework Plan**

*Source: Clause 21.01 of the planning scheme*

The *Apollo Bay Coastal Valley and Hills Precinct Development Principles, Incorporated Plan 2003* is a relevant Incorporated Document in the planning scheme. There are also numerous reference documents of relevance to the planning controls, principally as identified in the individually applicable zone and overlay provisions.

## 2.3 Policy synopsis

Policies in the planning scheme that apply to this proposed use and development are layered. The Panel considers that the suite of policies applying to this application provide consistent direction, with a strong emphasis on encouraging tourism as a contributor to the local and regional economy. Significantly, in the Panel's opinion, this is subject to the proviso that appropriate tourism development must be:

- sensitive to its context including the significant landscape setting

- appropriately sited, designed, scaled and managed to control its impacts
- responsive to its natural environment and associated hazards.

The Panel has assessed the amended proposal through this lens.

Overall, planning policy seeks integrated decision making that achieves net community benefit and sustainable development, in line with the objectives of the PE Act.

## 2.4 Planning scheme provisions

### 2.4.1 Zones

The site is contained within the RAZ which applies to a confined area of the hinterland between Apollo Bay and Marengo. The land was included in this zone relatively recently in 2009 as the outcome of a strategic planning process. That process identified areas with capacity to host tourism uses provided they are compatible with natural values and surrounding land use.



**Figure 6** Zoning map (David Barnes expert witness statement p.8)

The purposes of the zone are:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for the use of land for agriculture.*
- *To provide for other uses and development, in appropriate locations, which are compatible with agriculture and the environmental and landscape characteristics of the area.*
- *To ensure that use and development does not adversely affect surrounding land uses.*

- *To provide for the use and development of land for the specific purposes identified in a Schedule to this zone.*
- *To protect and enhance natural resources and the biodiversity of the area.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

A permit is required for the use of land for a Residential hotel and for Leisure and recreation, being section 2 uses within the zone. A permit is also required for buildings and works associated with a Section 2 use. Decision guidelines are provided in Clause 35.08-5 and are applied in the body of this Report.

The greatest level of direction is provided by the Schedule to the RAZ which is tailored to this small pocket of RAZ land and describes the Apollo Bay Hinterland as follows:

*The Rural Land Strategy has identified some demands for tourism and accommodation in an area to the west of Apollo Bay that has been included within the Rural Activity Zone. The identification of this area to the west of Apollo Bay does not aim to increase rural living opportunities, but aims to facilitate commercial, tourism or recreation development that will complement and benefit the particular agricultural pursuits, landscape features or natural attractions of the area.*

*The objective is to provide for a preferred mix of uses in the Rural Activity Zone to the west of Apollo Bay including agriculture; tourist and recreational activities; group accommodation with tourist or recreational activities (including backpacker accommodations, camping and caravan park, cabins, etc); and restaurant, but only in association with a tourist facility or recreational activity.*

*Development and use in the Rural Activity Zone to the west of Apollo Bay will be of a scale relevant to the land size and surrounding uses; subservient to the landscape so as not to detract from the quality of the landscape; of high quality design and style relevant to the surrounding land uses; capable of net gain environmental outcomes and self sufficient in the provision of relevant infrastructure and associated development costs...*

#### **2.4.2 Overlays and particular provisions**

The subject site is affected by the following overlays under which permissions are required as outlined in the Overview table:

- Bushfire Management Overlay (BMO) – whole site
- Environmental Significance Overlay, Schedule 3 – Declared Water Supply Catchments (ESO3) – northern part of the site only
- Erosion Management Overlay, Schedule 1 (EMO1) – whole site (except for a small area at the north-eastern corner of the site, on the Barham River floodplain)
- Land Subject to Inundation Overlay (LSIO) – relating to the Barham River Road frontage of the property
- Significant Landscape Overlay, Schedule 3 (Apollo Bay Coastal Valley and Hills Precinct) (SLO3) – whole site.

Clause 52.06 Car Parking is also relevant to this application, since parking and accessways must be to the satisfaction of the Responsible Authority – in this case, the Minister.

Permission is also required under Clause 52.17 Native Vegetation, although the precise extent of removal or impact has not been documented to date.

### **2.4.3 Particular and general provisions**

The Panel has also considered the following provisions in its integrated assessment:

- Clause 53.02 Bushfire Planning
- Clause 65 Decision Guidelines
- Clause 66 Referral and Notice Provisions.

## **2.5 Other relevant background**

### **2.5.1 Introduction of the Rural Activity Zone**

The RAZ was introduced to the subject site and adjoining land to the east and west via Amendment C55 to the Colac Otway Planning Scheme in 2009. This was a wide-ranging amendment that included a complete review of the local policy framework for the municipality, as well as the implementation of the *Rural Land Strategy 2007*.

The Strategy identified that there had been a shift away from agriculture in some areas around the Apollo Bay hinterland, and recognised that there was increased demand for tourism accommodation and tourist based activities linked with the natural environment and landscape character.

The subject site and adjoining land to the west of Apollo Bay was considered appropriate for rezoning to the RAZ since it met certain criteria including being well set back from the Great Ocean Road and consisting of relatively cleared land with opportunities to minimise impacts on native vegetation.

The Panel also considered that the nature and scale of the use should be consistent with its setting and environment and the need to protect vegetation.<sup>14</sup> This is now reflected in the planning scheme (including Clauses 21.02, 21.03, 21.04 and 21.05) as well as the Schedule to the RAZ.

### **2.5.2 Colac Otway C29 (PSA) [2007] PPV 58 (17 July 2007)**

The Great Ocean Green proposal represents an important historic proposal to use and develop land in Apollo Bay. It included an 18 hole golf course, residential hotel and resort facilities, and up to 537 residential lots, on approximately 170 ha between the settlements of Marengo and Apollo Bay, and was sought to be implemented by Amendment C29. The nominated site was located on the southern side of the Apollo Bay township at the start of the Barham River Road, and extended to the south to abut existing development along Ocean Park Drive. The land was generally bounded by the Great Ocean Road to the east, Seymour Crescent to the north, Otway foothills to the west and residential development to the south.

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<sup>14</sup> Panel Report, Colac Otway Planning Scheme Amendment C55, Planning Scheme Review, September 2008, p.47-48.



The proposal resulted in significant public interest and submissions, including concerns about how the proposal would affect the character of the setting, the expansion of Apollo Bay and the need for protection of the 'green break' between Apollo Bay and Marengo. A range of detailed technical issues such as flooding, heritage, water supply, environmental matters, coastal erosion and the like were relevant to that proposal.

The Panel recommended adoption of Amendment C29 subject to recommendations for detailed further analysis and a sunset clause ensuring commencement of the development within ten years. Council adopted the Amendment based on the Panel report and requested the Minister's approval.

The Minister of the day refused support for the Amendment, due to an unacceptable risk of flooding that would be compounded by climate change and the excessive scale of engineering works required in a sensitive location, all of which would outweigh the potential benefits of the proposal on that site. Accordingly, the development did not proceed.

## 3 Consistency with policy and zoning

### 3.1 The issue

Is the proposal consistent with planning policy? Is the proposal consistent with the provisions of the Rural Activity Zone and Significant Landscape Overlay Schedule 3?

### 3.2 Submissions and evidence

Key issues at the Hearing were the appropriateness of the proposal having regard to the planning policy framework for the site and the suitability of the proposed use and development within the RAZ and SLO3.

#### Council

Council made it clear that, in its opinion, this was a proposal that should be rejected for non-compliance with policy from the outset. It submitted that the weight of policy has for many years sought to contain major development within defined township boundaries and that the approval of the RAZ did not provide an express support for a major resort development outside the town boundaries.

Mr Barnes was called by Council as an expert planning witness. He identified that tourism is a fundamental element of the economy and character of Apollo Bay. He observed that planning policy generally directs urban development to within a strongly defined coastal settlement boundary, whilst seeking to protect the rural hinterland or backdrop from inappropriate development. He pointed to policy at Clause 21.03-3 that refers to limited opportunities for tourism within the hinterland; seeks to maintain the green breaks between settlements; and seeks to protect the Otway foothills as a scenic, undeveloped backdrop to Apollo Bay.

In his view, planning policies only support opportunities for tourism within the rural hinterland outside the Apollo Bay township boundaries for limited types of uses and at a confined scale. He acknowledged that the site was suited for tourism, however considered that the type and scale of development proposed was inappropriate for the site and inconsistent with the RAZ, stating that *"the development in my opinion, would neither complement or benefit agricultural pursuits, landscape features of the site, or the natural attractions of the area"*.

The Applicant concurred with the officer's report to Council which supported the application subject to specific qualifications. It submitted that the proposal would provide a new form of high quality tourist accommodation in the region in line with state, regional and local tourism policies.

#### The Applicant

The Applicant also concurred with the officer's assessment of the proposal against the provisions of the RAZ Schedule in that the proposal was not considered to overwhelm surrounding uses or prejudice agricultural uses due to setbacks from boundaries. It submitted that site topography helps manage interfaces with adjoining land.

The Applicant called Mr Barlow to give expert planning evidence. His evidence focused heavily on the policy support for tourism as a major economic driver for many of Victoria's regional

areas, with an increasing need to provide a range of experiences and forms of accommodation to cater for the expanding tourism market.

He highlighted that the subject site had been through a strategic assessment process that resulted it being rezoned to RAZ and established the opportunity to establish a tourism related development on the site, being a spatially limited opportunity in this municipality.

He considered that the proposal would comfortably meet the decision guidelines in the RAZ, namely, that the land can accommodate the proposal with respect to infrastructure; would not limit the operations of adjoining or nearby agricultural uses; and that the design was cognisant of the natural physical features of the site and would not adversely affect the natural environment.

Mr Barlow also considered that the site attributes provide the opportunity for a development of the scale proposed, including the large site area (104.6 hectares); undulating site topography ranging between RL10 to approximately RL130; and waterways creating distinct 'precincts' within the site, allowing for elements of the development to be physically and visually separated. He pointed to other favourable features including stands of trees that mediate or block views towards the site particularly from the south and east; the elevation of the site offering uninterrupted views towards the coast; the stepping down the slope of the hotel building and villas; the site location well setback from the Great Ocean Road and not impacting on the coast; and the use of sensitive materials.

### **Objectors**

In contrast, a high proportion of objectors considered that the proposal was contrary to the planning scheme policies and zone and overlay provisions. Objectors also considered that the proposal did not meet the objectives of the RAZ as it was not compatible with agriculture, the environmental or landscape characteristics of the area, and would adversely affect surrounding land uses.

Objectors including Mr Fillmore and Mr Fankhanel submitted that the prime purpose of the RAZ is to support agriculture and to maintain the landscape values of the area. Tourism and some other activities are supported *provided* they do not interfere with the zone's primary purpose. They considered that this proposal was not consistent with this purpose and would have an adverse landscape impact; detract from the rural setting; have a negative impact on agriculture through loss of farming land and possible conflict with surrounding farming activities.

Ms Fanning submitted on behalf of Objectors Inc that the application presents a mix of uses at a scale that goes *"well beyond anything envisaged by the zone"*. It considered that the proposed development typology including a 180 room hotel, a wellness centre, two restaurants and a bar, retail shops, swimming pool, observatory and associated facilities would be in conflict with what is specified in the zone, including the express reference to a far more modest accommodation typology of *"backpacker accommodation; camping and caravan park, cabins, group accommodation."* Objectors Inc also considered that many of the proposed uses would exceed what could be considered ancillary to the accommodation use (such as retail which would otherwise be prohibited within the zone).

Objectors also contended that the scale of the proposal was at odds with the small, low scale and fundamentally agriculturally based land uses in the surrounds, including hobby farms and family based agricultural activity pursuits, bed and breakfasts and farm stays.

Mr Dance and Mr Rushford expressed concern that the movements, noise and activity associated with over 800 people within the site generated by the accommodation, restaurants and shops would represent a clear conflict with rural uses including agriculture, and thereby conflicted with the intent of policy.

Professor Schencking submitted that that the development of the proposed scale contradicts a key vision of the planning scheme that *“Apollo Bay, Marengo and Skenes Creek will remain as distinct coastal settlements each with a separate identity and local character”*. He considered that the development would create an ‘Apollo Bay West’ and would not only change the separate identity of the existing townships, but would overwhelm them forever.

Many other objectors were concerned that the footprint of the proposal would exceed all existing development within the township of Marengo by comparison.

### **3.3 Discussion**

#### **(i) Relationship of the proposal to the settlement boundary**

A key point of divergence in evidence and submissions was whether the proposed use and development could be appropriately located outside the settlement boundary (which is shown on the Apollo Bay, Marengo and Skenes Creek Framework Plan in Figure 4). The Applicant submitted that the RAZ was a specific location nominated for tourism development. By contrast, Council submitted that a proposal of this scale should be located within the settlement boundary, on land within the township of Apollo Bay.

Council and objectors considered that the proposed development was fundamentally ‘urban’ in character – being contrary to the type and scale of uses encouraged by policy for the rural hinterland. Council requested that the Panel express a view whether Amendment C55 which rezoned the land to RAZ fundamentally changed the conventional approach to discouraging ‘out of centre’ development, or provided a limited window of opportunity for tourism development on this land.

There is a consistent line of planning policies and provisions that recognise the centrality of the hinterland landscape as a component of the landscape of national significance. This is particularly evident in policies referencing ‘green breaks between settlements’ and dramatic intersections between landscape elements. Landscape objectives in clause 21.04-8 also seek to retain the open and rural character of views and outlooks, especially from main road corridors.

The Panel considers that the RAZ and the SLO3 work in unison and provide clear direction in terms of what type of development would be appropriate in this valued setting.

The Schedule to the RAZ sets a high standard. It aims to facilitate tourism development that will *“complement and benefit the particular ... landscape features or natural attractions of the area”*. Development should be:

*of a scale relevant to the land size and surrounding uses; subservient to the landscape so as not to detract from the quality of the landscape; of high quality design and style relevant to the surrounding land uses.* [Panel emphasis.]

The Apollo Bay, Marengo and Skenes Creek Framework Plan provides a clear coastal settlement boundary in which urban development is to be contained. This is intended to cater for growth until 2030.<sup>15</sup> The Apollo Bay, Marengo and Skenes Creek Framework Plan states that land outside the settlement boundary, including the subject site, should “*protect prominent slopes of the foothills and waterway corridors from intensive development and further subdivision and encourage revegetation*”.

At the same time, the Panel considers that there is a clear and strong planning policy framework providing an opportunity for tourist development within the rural hinterland of Apollo Bay, within the area encompassed by the RAZ. The policies and RAZ support a broader range of uses than otherwise encouraged in rural areas, and the Schedule nominates tourism uses in particular.

The Panel does not consider that the introduction of the RAZ fundamentally changed settlement policy, which directs urban developments to within the township boundary as a preference. Rather, it provided an opportunity to increase and diversify individual tourism offerings in response to changing land use patterns, and support for tourism as a key economic driver of the region.

In introducing the RAZ, the planning scheme provided accompanying policy directions, with the detailed Schedule to the zone providing parameters for appropriate and sensitive use and development in this rural area.

The Panel is cognisant that the RAZ is itself a ‘rural’ zone, which encourages a particular type of land use and development, particularly agriculture. The purposes of the RAZ inform the outcomes sought for use and development within the zone. They include the implementation of policy, in addition to providing for other uses and development, in appropriate locations, which are compatible with agriculture and the environmental and landscape characteristics of the area.

It is clear that the use of this land for some form of tourism is supported but that it must also be tempered. The provisions in the RAZ Schedule, when read in conjunction with policy, call for development to be subservient to the landscape; consistent with the rural character in which the site is located; complementary to agricultural pursuits and natural attractions and have special regard to the landscape of national significance.

Although it is not mandatory for all elements of policy to be complied with, it is evident to the Panel that this proposal, especially the hotel component, cannot be described as “*subservient to the landscape*”. The hotel has a proposed width of approximately 190 metres and comprises multiple levels with a total above-ground vertical extent of more than 33 metres on an exposed hillside site.

This raises the question – would the proposal detract from the quality of the landscape by its lack of subservience to it? The SLO3 is particularly important in this regard.

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<sup>15</sup> Clause 21.03-3 Apollo Bay and Marengo

A key purpose of the SLO is “to conserve and enhance the character of significant landscapes”. In this case, the landscape is of national significance. At a detailed level, the SLO3 expressly provides that:

*Ribbon development and inappropriate development on hill faces should be limited, and township edges have the potential to be further defined.*

The documented preferred character seeks to maintain the dramatic intersection of landscape ‘edges’ and interrelationships within the region. Additional landscape character objectives at clause 2.0 include:

- *To consider the contrasts between landscape elements within the precinct.*
- *To ensure that development that occurs on hill faces or in other prominent locations is not highly visible and sensitively designed.*
- *To protect the clear sweeping views to and from the ocean available from the precinct.*

The Panel considers that the siting, fundamental design approach and scale of the hotel building is flawed having regard to the aspirations of the RAZ and SLO. In terms of siting, the hotel would be constructed on a hill face in a prominent location. This is discouraged by policy and does not meet the landscape character objectives set out in SLO3. While the proposal does not represent conventional ‘ribbon development’ such as along roadways, the hotel’s distinctly long lineal design and the cumulative height of the three wings stepped down the hillside with limited vertical separation is not sensitive to its setting. It is considered to be a form of development discouraged by policy, zone and overlay controls for this site.

For the reasons set out below, the Panel considers that the scale of the use, combined with the built form of the hotel building and the extent of parking and accessways required, gives the proposal an essentially ‘urban’ character. The policy framework and relevant controls discourage urban development outside the settlement boundary.

That is not to say that policy and the relevant controls could not sustain a consolidated building form on this site. Suffice to say that there is scope for a low rise, modulated and more confined built form that could provide central facilities to service the villas, for example. Built form of greater scale may be achievable but would need to be evaluated critically to ensure compliance with the landscape outcomes sought for the site and area.

## **(ii) Preferred uses**

Planning policy and the Schedule to the RAZ establish the type of uses preferred for this land. At Clause 21.02-2 of the planning scheme, the vision states; “*limited opportunities will be provided for tourist related activities in the Apollo Bay hinterland, around the Forrest Township and the Otways*”.

All parties, including both planning experts, agreed that this site was not an ‘activity node’ as defined under the *Victorian Coastal Strategy* to which larger scale tourism is directed.

The preferred uses for the land within the RAZ are listed as “*agriculture, tourist and recreational facilities, group accommodation with tourist or recreational activities (including backpacker accommodation, camping and caravan park, cabins etc) and restaurant, but only in association with a tourist facility or recreational activity*”.

The examples of group accommodation listed are generally modestly scaled, or low intensity types of accommodation. While the terminology refers to 'preferred uses', the associated built form is interrelated and relevant. The listed preferred uses, while not the only uses that could be appropriate for the site, frame the expectations for future use and development in this area and link with other policy provisions limiting the scale and intensity of development in the rural hinterland. The associated built form provides further guidance as to the type and scale of uses that are encouraged.

The Panel agrees with the Applicant that just because Residential hotel is not listed as a preferred use does not mean that it is inappropriate for the site. Residential hotel is a discretionary use within the RAZ and could take many forms. The substantial purpose of that use is for Accommodation, which sets it apart from a Hotel, being principally a Food and drink premises that is prohibited in the RAZ.

A Residential hotel use could take many forms, for example a small or boutique residential hotel designed to be subservient to the landscape with limited ancillary uses. Alternatively, a Residential hotel could provide hundreds of accommodation rooms and include extensive ancillary uses such as function rooms, bars, restaurant and the like, contained within a large building.

The Panel considers that the intensity of use of the proposed hotel, along with the form of the proposed hotel development, is vastly different in scale and character to the listed preferred uses for this land, and is at odds with other policy provisions for development within the rural hinterland, especially within this nationally significant landscape.

The Panel considers that the villa typology proposed *is* consistent with the preferred uses for the RAZ, as well as the scale of surrounding uses. The villas are more akin to cabins or backpackers' accommodation or more compact dwellings which are dotted throughout the hinterland. Their built form is considered further in Chapter 4. That said, the villas are part of an integrated proposal that relies heavily on the services provided within the main hotel building.

### **(iii) Scale**

The Panel does not consider that the proposal meets the aspirations of the RAZ to provide a scale relevant to the land size and surrounding land uses and to facilitate subservience to the landscape. The appropriateness of built form, scale and site responsiveness is discussed in more detail Chapter 4 below but overlaps with the issue of consistency with policy and zoning.

While the subject site is a very large site, larger than the urban area of Marengo, the scale of the hotel building is foreign to surrounding land uses. The existing buildings in the rural hinterland include generally single storey dwellings, farm sheds of varying sizes and small tourism accommodation uses. The design, style, form and massing of the main hotel building is unrelated to these land uses and to the rural context, and is in stark contrast to the smaller building elements in the area.

The Panel acknowledge that some attempt has been made to integrate the building with the landscape, through the stepping down the slope, landscaped roofs and the use of natural materials such as stone and timber. However, it does not consider that these measures are sufficient to meet the relevant considerations of the zone or overlays.

Again, the Panel considers that the scale and form of the proposed villas are more akin to surrounding land uses and of a built form that the policy encourages.

The Panel accepts that the size of the site provides an opportunity for a greater extent of built form than a smaller site, including the ability to provide for generous setbacks and to enable clustering of buildings in different parts of the site. That said, it is conscious that although the land is sizeable and the overall site coverage would be relatively minimal by comparison, the areas of the site that can actually be developed are far more confined due to slope, waterways and landslip hazard.

#### **(iv) Impacts on agriculture**

The RAZ encourages uses in appropriate locations which are compatible with agriculture. The Schedule to the RAZ seeks to facilitate tourism uses that will benefit and complement agricultural pursuits, landscape features or natural attractions.

The Rural Land Strategy identifies the site has having 'medium' agricultural capacity. Some objectors submitted that the property was previously 'the best dairy farm in the area'. It is currently used for sheep grazing.

The proposal would remove a large and currently productive site from agricultural activity (other than possibly a small area for vines and an orchard). This is not consistent with the policy objectives for the zone although, as mentioned earlier, there is capacity to convert the land to *appropriately scaled* tourism uses, recognising the benefits of this industry in a strategic planning sense.

The Panel was not presented with clear evidence or detailed submissions about the impact of the proposal on agricultural pursuits on this site or nearby land. The Applicant submitted that the setbacks from adjoining properties would ensure no adverse impacts on agriculture in the area, while objectors highlighted potential conflicts.

Overall, the Panel has some reservations about potential land use conflicts between a facility of the intensity proposed (with up to 800 or more people using the site at peak periods), and the daily operations of surrounding farms. This would include potential conflicts with the movement of stock in and around the area, noise generated by both farming uses and the people and cars associated with the proposed use, and environmental impacts. This highlights the need for tourist facilities within the RAZ to be at a scale that is compatible with what is principally a rural area.

#### **(v) Link to landscape**

The Applicant contended that the restaurant and wellness centre provide tourist or recreational activities and that the accommodation would function as a base from which visitors could explore the assets of the region.

The Panel considers that the state and local planning policy framework and the RAZ Schedule in particular encourage a stronger, more direct link to the landscape for such activities, including nature-based tourism, eco-tourism and agricultural based tourism. This is also reflected in the *Victorian Coastal Strategy* which recognises that changes to the rural zones



created opportunities for *“additional nature-based, heritage-based or agricultural-based tourism, and ‘eco’ type hotel accommodation”*.

While there is no mandatory requirement for a direct integration of the proposed use with the natural landscape, the Panel considers that a proposal that demonstrates a more direct connection to its rural context would be more consistent with policy.

#### **(vi) Other considerations**

The RAZ encourages use and development that is capable of net gain environmental outcomes, and that is self-sufficient in the provision of relevant infrastructure and associated development costs. This latter issue is addressed in Chapter 10.2.

The Applicant was not able to demonstrate net gain environmental outcomes as part of this proposal. The Applicant pointed to the potential for increased landscaping across the site. The Panel is not persuaded that this constitutes a net gain environmental outcome. Mr Barlow considered that the proposal was ‘neutral’ in terms of environmental gain, but could be enhanced. The Panel notes that this contrasts with many other tourism developments in rural or sensitive environments, such as the 12 Apostles Geothermal development recently approved that provides for the planting of 120,000 trees and an indigenous nursery.<sup>16</sup>

### **3.4 Conclusions**

The Panel concludes:

- Planning policies provide for tourism opportunities within the rural hinterland of Apollo Bay, in particular within the RAZ. However, this is subject to an important proviso that they be limited in scale and impact.
- The hotel component of the proposal would be inconsistent with the preferred uses for the land and does not accord with planning policies relating to scale and subservience to the landscape. Nor does it complement or benefit agricultural pursuits, landscape features or the natural attractions of the area.
- The proposed villas could be consistent with the policy context and the preferred uses for the site, although currently they form part of an integrated proposal that relies heavily on the services provided within the main hotel building.

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<sup>16</sup> Council officer’s report, planning application PP2017/119 12 Apostles Hot Springs, Corangamite Shire Council, Agenda Ordinary Council meeting 19 December 2017.

## 4 Impacts on landscape and character

One of the key questions for the Panel is whether the proposal would have an acceptable impact on landscape values and character. Resolving this question involves interrelated factors, including consideration of built form, visual impact, integration with the landscape and the proposed response to character.

### 4.1 Built form

#### (i) The issue

Is the built form responsive to the site and its context?

#### (ii) Evidence and submissions

##### Council

Relying on the evidence of Mr Barnes, Council submitted that the scale of development and its visual prominence in the surrounding landscape was inappropriate and would have a detrimental impact on the landscape of national significance. It advised that this would be the only major tourist development at elevation in the hinterland between Torquay and Apollo Bay and the hotel building would present unacceptably with unbroken wide elevations.

In Mr Barnes' opinion, a development of the type and scale proposed constitutes an inappropriate form of development on hill faces, having regard to the SLO3 provisions. Although the hotel building had been separated into three layers, Mr Barnes considered this response insufficient to mitigate against the visual impact of the building on the landscape given its overall size, scale and siting. He considered that the development would be 'highly visible' from the rear of the township, the Great Ocean Road between Apollo Bay and Marengo, from the Barham River road approach and along parts of the boundary frontage.

By contrast, he was of the view that the villas generally provide a scale and type of development with a dispersed built form that is more appropriate for the site and more consistent with relevant policy.

In its submission Council cautioned:

*... if the Panel takes into account the approach to iconic tourist destinations outside of Victoria, it will see examples where scale has had to be tempered out of respect for the local context, notwithstanding the existence of demand to visit outstanding tourism assets. Well known examples include Yulara at Uluru, Cooina Lodge at Kakadu National Park, and Coral Bay in Western Australia. These are all locations that have regulated access to sensitive tourism destinations, to achieve sustainable development outcomes.*

##### The Applicant

The Applicant submitted that the proposal was site responsive since the main hotel was comprised of three distinct but interconnected lineal building elements, each stepping down the site contours; that elements such as car parking had been designed and sited to have

minimal visual impact; and that the topography and vegetation would integrate the built form within the site.

The Applicant's architect, Mr McGee, outlined the key principles that influenced the siting and design of the resort including siting the hotel to optimise the long views to Bass Strait; cascading the hotel down the topography of the site with the maximum building length configured around room service requirements; folding and embedding the building into the landscape with green roofs; and including an observatory to allow for views to the southern sky.

Mr McGee explained that the villas were designed as relatively lightweight building modules, sited to 'perch' above ground levels. They would be constructed from materials that would integrate with the natural landscape. Each cluster of villas was designed to respond to its particular setting and to provide a varied landscape experience for guests.

The Applicant pointed to the confined proportion of the total site area that would host buildings, being less than 2 per cent excluding driveways, parking areas and hard stand areas.

Mr Barlow stated in support of the proposal that nothing in the planning scheme dictates that large development should or should not be located on this site or in the RAZ. Rather, the Panel should adopt a performance based assessment. His opinion was that the proposal is consistent with the policy direction that development should not dominate the Great Ocean Road experience.

### **Objectors**

Objectors Inc and individual submitters contended that the size and scale of the proposal were significantly out of character with existing and preferred built form in this sensitive landscape and the small scale coastal township setting. Objectors Inc submitted that:

*Visibility does not equate to an adverse visual impact, and there must be a reasonable expectation about some level of visual impact. However, the planning controls demonstrate this site has a high level of significance in visual amenity terms ... it is not only the amount but the position of the built form which results in unacceptable impacts inconsistent with SLO3.*

It expressed a preference for more 'light weight' tourism options that would have a more limited environmental footprint. This position was echoed by many individual objectors.

### **The Office of the Victorian Government Architect**

The Minister requested the Office of the Victorian Government Architect (OVGA) to provide design review assistance in respect of the proposal, subject to Terms of Reference dated 20 February 2018 which contemplated that the Panel would take into account the report to be prepared by this body.

The Minister and the Applicant did not consent to the Panel providing access to the initial Design Review Report prepared by the OVGA dated 7 March 2018 to the other parties to the Hearing. The Panel has an overriding obligation to afford natural justice to all parties to a panel process. The Panel would not be able to meet this obligation if it were to consider the OVGA's report in the absence of the other parties having the opportunity to consider and respond to the report. The Panel has therefore not accessed or considered this report.

In any event, the proposal has since been amended. Two further Design Review Reports were prepared by the OVGA with the participation of the Applicant's consulting team, dated 17 April 2018 and 30 April 2018.<sup>17</sup> They were made available to parties to the Panel process. The April 2018 report notes that *"the previous review raised concerns about the significant building bulk and visual impact of the collected facades of the three buildings"*.

In summary, the OVGA held the view that the revised proposal suggested a *"strong and successful concept that uses topography, natural landscape and careful siting of new buildings to knit the development together"*.

Relevant comments on the amended proposal from the OGVA include:

- *Generally, the site diagram and development composition has been more effectively tailored to site features and topography. We acknowledge the advice that the development is located outside areas of sensitive geomorphology and the revised site diagram suggests that building clusters have been successfully orientated to site features such as water courses, overland water flows, contours and the existing landscape.*
- *The revised layout provides better differentiation of accommodation types and settings...the site layout can now be understood as clusters of buildings within a strong natural form and landscape.*
- *The two lower tiers of building stepping down the slope appear reduced in scale by the refined landscape which is used to break up the long facades and these buildings are now more satisfactorily linked to the main hotel building.*
- *The layout of the villas has been positively refined and each area now has a strong relationship to the natural attributes of its setting.*
- *We understand that there will be considerable earthworks and remodelling to construct the road, and for building siting and are encouraged that the siting and access will be informed by topography.*

The OVGA made the following key recommendations (in summary):

- The sense of arrival should be curated, for example, to reveal the view gradually – the landscape should frame the arrival sequence.
- The introduced landscape structure (the effect of folding in, around and over buildings in an effort to embed them into the site) should be refined to contrast with the natural setting – equal attention should be given to resolving both landscape and architecture.
- Relative levels for the villas should be confirmed relative to the undulating topography.
- The architectural composition should be refined, including simplified materials (potentially using reduced maintenance materials).
- The layout of car parking requires further design consideration (with an intent to soften and shield these areas).

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<sup>17</sup> Document 11 and 12. The Panel was advised that the purpose of the workshops was to assist in achieving an improved design response having regard to a suggestion made by it at the first Directions Hearing. It is not entirely clear which documentation was provided to the OVGA beyond an overall site plan, a description of an amended architectural approach to accommodation types and villa designs (with sketch designs for the Master Plan and hotel not presented), but it is assumed that it is generally in accordance with the proposal contained in the amended application plans.

- Creative and intelligent landscaping is encouraged in response to Bushfire Attack Level (BAL) ratings and the need for buffer zones around buildings. Special consideration should be given to the raised villas.

### **(iii) Discussion**

All parties accepted that the relationship of the buildings and works to the site, including the potential impact of the proposed development on the landscape, is an important consideration.

Parties and expert witnesses referred to detailed assessment criteria included in both the RAZ and SLO3 provisions, which include consideration of location and design of buildings and infrastructure, and impacts on the natural environment, character and appearance of the area.

The Panel has also considered the two OVGA reports as part of its overall assessment, recognising the specialist skills of this body in architecture and urban design. Overall, the OVGA expressed support for the amended design concept and site layout subject to refinement, and noted considerable improvements in the amended proposal as compared to the original scheme.

The Panel observes that it appears that the OVGA analysis has focused principally on the building composition and design and its response to the features of the site itself. The Panel does not seek to fundamentally depart from the views of the OVGA in this regard.

However, it is not apparent to the Panel that the OVGA considered the suitability of the built form in the broader physical and policy context, or the visual impact of the proposal when viewed from public vantage points offsite, including the Barham River valley and parts of the Great Ocean Road. It appears that the OVGA had a confined focus that did not include the benefit of advice about the relevant planning scheme provisions that underpin this Panel report.

By contrast with the Terms of Reference provided to the OVGA, the Panel has a broader role to synthesise the acceptability of the built form in its broader setting, with a keen focus on its level of compliance with planning policy and relevant zone and overlay provisions.

There are positive elements of the design and layout of the proposed hotel building, include the stepping of hotel forms down the natural slope and separation into three 'wings'; the partial concealment of car parking behind the main building; and the use of timber and stone and natural colours and finishes. Aspects of the built form have been designed to enhance the proposed user experience, such as opening impressive, previously private, views to members of the public. Likewise, the Panel does not dispute that there is capacity to achieve a high level of luxury and service within the proposed buildings.

However, there is a strong emphasis (including through direct references) in policy and relevant controls on avoiding large building footprints within this setting. Even though the hotel forms have been vertically stepped and the amended proposal has included greater articulation of building elements, the Panel has a fundamental concern that, when viewed from any distance *beyond the site boundary*, the topography has the resultant effect of

‘stacking’ the hotel forms one above the other with the appearance of being vertically connected.

This is exacerbated by the length and height of key building elements. The main hotel extends to a length of approximately 190 metres; with the upper level of the hotel being three levels (approximately 14.5 metres in height with an additional approx. 4.6 metre element to the top of the observatory); the two ‘wings’ below, each being approximately 5 metres in height and similar length. Combined (or as viewed in a ‘stacked’ format), the building extends up the slope for over 30 metres in height for a distance of approximately 180-190 metres and occupies a significant part of the foothills rising up from the Barham Valley Road frontage.

The Panel considers a building of this size and scale makes it very challenging for the hotel to be ‘subservient’ to the landscape. This aligns with the evidence and submissions for Council and objectors.

Although not essential for approval (with ‘acceptability’ being the relevant test), the Panel considers that there should be no ‘uplift’ attributed to this proposal for high quality design. While the overall offer is high quality and likely to be ‘5 star’, the Panel regards the architecture as more ‘fit for purpose’ rather than formative in the way other landmark resorts worldwide in wilderness and natural areas were referred to at the Hearing.

By distinction, the application plans for the recently permitted Geothermal Resort and Spa near the 12 Apostles reveal a notably more sensitive, low rise and sophisticated response to its site context with the main building confined to the spa and hotel services and all guest rooms in the form of disparate pods or villas (not dissimilar to the current villa proposal).

For reasons expanded on below, the Panel considers that a ‘central services building plus villa model’ would inherently be a more suitable built form typology for the use and development of the current site in line with planning policies and controls, compared with the current proposal which presents a substantial hotel building.

#### **(iv) Conclusions**

The Panel concludes:

- The hotel building would have an unacceptable built form impact on the area when viewed from the broader surrounds, given its scale and perceived mass.
- The hotel building does not respond appropriately to planning policy for development within the rural hinterland encompassed by a Significant Landscape Overlay.
- Subject to some refinement, the proposed villas could represent an acceptable built form for the site that aligns suitably with policy and zone objectives.

## **4.2 Visual impact**

### **(i) The issue**

Would the proposal have an acceptable visual impact having regard to the planning policies and SLO3 that relate to the site and surrounds?

## **(ii) Evidence and submissions**

### **Council**

Council submitted that the proposal would be “*transformational from a range of perspectives within the viewshed*”, such that it could not be regarded as subservient to the landscape in line with planning scheme objectives. Although it may not silhouette against the horizon from long range views, the hotel would present expansive horizontal elements on an elevated, exposed site in a largely cleared setting.

Council produced photomontages prepared by Hansen Partnership from a number of publicly accessible locations. It did not call evidence in relation to these photomontages.

### **The Applicant**

The Applicant conceded readily that the proposed built form would be visible to some degree and that the planning scheme sets a ‘relatively high bar’ having regard to the provisions of the SLO3 and the landscape rating established under the GORLASS. Notwithstanding, it submitted that the proposal would be subservient to the landscape, would not visually dominate it and would have a negligible to low impact on it.

The Applicant called expert planning evidence from Mr Barlow and landscape impact evidence from Mr Burge. Mr Barlow considered that the design and siting of the main hotel building and visual separation of the villas responded suitably to relevant decision guidelines, including those in the RAZ, Clause 21.05 and the *Apollo Bay Coastal Valley and Hills Precinct Development Principles*.

Mr Barlow’s evidence was that the subject land forms only a very small part of the overall viewshed from the Great Ocean Road, and that the existing landscape and vegetation would either conceal or limit views to the proposal. He was also influenced by existing development closer in foreground views from some vantage points and the fact that the presence of built form in this landscape is “*not unusual*”. He concluded that the proposal would sit “*very comfortably*” within the landscape given the distance of the views, the small scale of the proposed buildings within that view and the mix of elements in the overall landscape.

At the same time, he suggested that consideration be given to screen planting in strategic locations including the site entrance, along the eastern boundary and between the site and 30 Horden Vale Road (identified in Hearing Document 39).

Mr Burge gave evidence that the proposal contributes to the ‘preferred character’ objectives in the SLO3, with the development not negatively impacting on or removing sweeping views either to or from the ocean. He considered views to the site from publicly accessible locations.

He began with a more technical examination of fields of view and the proportion of the view that would be occupied by built form. He placed greater emphasis on the vertical plane than the horizontal when identifying the areas within the landscape that would be visually affected by the proposal (referred to as the extent of the view shed and zones of visual influence), noting that, in his opinion, the vertical height of an object is more visible than its horizontal length. He referred to powerlines as an example.

In general, he considered that 20 metre high objects (estimated as the maximum height of the main hotel building excluding the ‘wings’ below) would be discernible to a distance of

approximately 2.6 km based on the percentage of a person's view cone. Beyond that distance, as is the case for the subject land from many local vantage points, he considered that a building would be visible but not 'visually dominant'. In his evidence and cross examination, comparisons were drawn with methods of analysis of the visual impacts of wind turbines, given his expertise with such structures.

Mr Burge applied a range of inputs such as the potential number of viewers and duration of view and then overlaid this with a more subjective analysis of impact of the proposal. He noted that for the majority of views, the development would not pierce the horizon. From other views, vegetation and topography play a role in screening views to the buildings. In his opinion, the development would not have a negative impact on sweeping views to or from the ocean.

In respect of viewlines with capacity for the most impact, Mr Burge's evidence was that:

- From the Great Ocean Road to Marengo, the Ridge villas and hotel roof line may be noticeable but would not represent a dominant visual change in part due to distance, intervening vegetation and existing buildings such as within the sportsground and caravan park. He considered that the visual impact would be negligible.
- Views further along across the floodplain such as from dwellings in Seymour Crescent at the edge of the township would include the main hotel building, parts of the Ridge and upper Creek villas. These structures would be added to a view that includes many structures on nearby hillsides and would sit below the horizon established by the Otway Ranges. The new buildings would be noticeable but would not constitute a dominant visual change and the visual impact could be characterised as low to negligible.
- For the most part, views from Barham River Road would be transitory. From sections of Barham River Road closer to the township, the upper roofline of the main hotel building and parts of the Ridge villas would be visible. This may be noticeable above the low intervening rise but would not constitute a dominant visual change.
- From closer aspects along Barham River Road, the Pasture villas will be seen in the cleared area and later the views would open to the roofline of the main hotel and the Ridge villas would be visible. Mr Burge considered that the views would be short in duration and there would be few road users. He observed that the hotel building would be of a 'different style' to existing buildings but noted that the view is already modified, so he attributed a low visual impact rating.
- There would be clear views to the hotel complex from the site entrance. Visually, he considered that the development would be of similar scale and proportion to the stone entrance walls. This view would be limited in duration and therefore the visual impact in his view, would be low. New vegetation near the entrance could screen these views.

## **Objectors**

Objectors Inc called visual impact and landscape evidence from Mr Jean-Philippe Pector, landscape architect. From the outset, Mr Pector was concerned that the proposal did not include adequate information to make an informed assessment of visual impact, especially in the absence of a detailed survey including clear contours established for the entirety of the site and in the absence of a detailed landscape plan. This was compounded by a lack of dimensions on relevant architectural drawings, which had also been noted by the Panel. He



expressed the view that the Applicant's assessment appeared to stem from a "*preconceived assumption of a non-existing impact*".

When analysing the Applicant's assessments, he sought to identify numerous deficiencies in the framing of certain views, the extent of visibility of structures, extent of intervening vegetation, or localisation of the buildings. Mr Pector gave evidence that the visual impact would be discordant with the objectives of the SLO3. He pointed to a number of factors that he considered increased the visual impact of the proposed development, including:

- its scale and associated infrastructure
- the width and height of the perceived 'stacked' building form
- the clustering and massing of the villas (with the montages focused on the hotel building)
- the need to limit vegetation or other screening to preserve outward views (he also challenged an assumption that most onsite vegetation would be retained, given the need for defensible space)
- the likely reflective surfaces/external finishes, and
- night lighting.

In terms of direct interfaces, Mr Pector was concerned about the intervisibility between the ridge villas and properties in Horden Vale Road and Barham River Road at separation distances between 97 and 792 metres. He was also concerned that the screening proposed was primarily due to vegetation, rather than a permanent landform, and that trees may die and be removed from the landscape over time.

Many other objectors submitted that the visual impact of the proposal would be completely out of character with the area. For example, Dr Pockley had a major concern with the visibility of the Ridge villas, as seen from his property and surrounds, and considered that screening via vegetation would be incompatible with bushfire requirements. He considered these villas would create a 'suburban' character in a rural area.

Ms Rowley was also concerned about the visual impact of the resort villas as viewed from her property, particularly when taking into account vegetation that would require removal for bushfire management reasons.

### **(iii) Discussion**

Much of the Panel Hearing was dedicated to consideration of the potential visibility of the built form. The evidence and submissions diverged in terms of the consequences to be attributed to the visibility of structures.

Both Mr Burge and Mr Pector are landscape architects experienced in conducting visual impact assessments. Neither expert prepared photomontage evidence. Rather, they made detailed observations of the site and setting by reference to the application plans, which were later 'ground truthed' by them with the benefit of the photomontages prepared by Hansen Partnership on behalf of Council in the lead up to the Hearing.

All parties agreed that the photomontages prepared on behalf of Council were the most representative depictions of the proposal. While these photomontages are technically correct (faithfully representing the dimensions and location of the proposed development), a number of submissions to the Panel including by Council suggested that the perceived impact of the

proposal was perceptually diminished by the photo montages, compared with real life views. This view was adopted by Mr Pector and some concessions to this effect were made by Mr Burge.

Irrespective, the experts took distinctly different views to an assessment of the impact of the proposal's visibility.

The Panel accepts the submissions of Council and objectors that the Hansen photomontages are not entirely *perceptually* accurate and under-represent the scale of the proposed development in its setting, even when viewed in A0 format. This was evident when using these plans on site inspections when features such as existing dwellings, farm sheds and trees were less prominent in the landscape compared with actual views. This is most likely a product of the 'flattening effect' of the 50mm lens that is used to create images that are perceptually different than the human eye as explained by Mr Pector.

The Panel has used its experience in evaluating proposals such as this in the field, in combination with the assessment tools available to it as part of the application and Hearing process.

It is important to note from the outset that the Panel does not substantially contest the description of which built form elements will be visible from the vantage points identified by Mr Burge.

Were it not for the influence of the Significant Landscape Overlay – that is, if this had been a conventional site in a rural area viewed from a coastal township – the Panel would have generally agreed with the evidence of Mr Burge that the overall visual impact of the proposal was 'low' to 'negligible' subject to retention of vegetation and new landscaping in particular areas.

At the same time, the Panel accepts Council and the objectors' concerns that Mr Burge's starting point is largely based on distance and the percentile impact on the vertical cone of vision, without making sufficient adjustment for applicable planning policies, including the nationally significant status of the landscape in question. While Mr Burge did advise the Panel that this 'subjective' assessment had been factored into his conclusions, the Panel found it difficult to see where this consideration had been given adequate weight in his evidence.

The Panel is also cognisant of the need not to automatically conflate visibility with impact. The fact that parts of the development would be seen does not necessarily equate to this impact being unreasonable. It accepts that planning policy does not expect the setting to remain pristine or entirely free from any visible development.

At the same time, a vital consideration for this particular application is the location of the site within the landscape of national significance. The landscape elements that make the site attractive for this proposal are those that are highly valued at a national level and are recognised and protected by the planning scheme. They include the interrelationships between the topography of the Otway Ranges with intervening rolling hills and their incised vegetated creek valleys sweeping down to the narrow coastal strip and bayside townships.

This context heightens the landscape impact of the proposal overall and gives greater credence to visibility – especially when the extent and location of built form are not consistent with policy objectives. Although views of the development would be relatively distant and

tempered by topography to some extent, the Panel remains concerned about the incursion of substantial built form in this sensitive natural landscape.

Mr Burge was of the opinion that the mid building breaks would “*penetrate the facades of the two hotel buildings and will assist the guest rooms to read as individual buildings*”. The Panel considers that this would only be accurate from the experience of a person standing within the site itself at relatively close range.

There are no substantial breaks in the lineal hotel building forms that could be perceived readily from a distance to alleviate its stacked continuous appearance in any meaningful way. The effect of distance is such that even a building recess of some 20 metres in width is unlikely to lead to the appearance of a building comprised of modules, as confirmed by the evidence of Mr Barlow.

The Panel’s concerns about unacceptable visual impact are derived principally from views along the Great Ocean Road roadway, beaches and walking trails as well as from positions along the Barham River Road. Other views are of comparatively less concern. It synthesises its conclusions about the visual impacts from several outlooks below.<sup>18</sup>

### **Seymour Crescent**

Seymour Crescent is on the southern outskirts of the Apollo Bay township. The view is largely from the front of private residences and the roadway, extending across the hinterland to the south of the township. Modifications to the landscape include sporadic dwellings on rural land as well as other infrastructure used for rural purposes. Although this is one of the vantage points from which the greatest expanse of the proposal will be seen, the Panel is conscious that these views are largely from private land or a local roadway which diminish its overall impact.

Overall, the Panel places limited reliance on comparisons of visual impact with the perceived scale of existing agricultural buildings in the viewshed, which was a factor given weight by Mr Barlow and Mr Burge.

To the extent that the proposal will be seen largely in the same viewshed as large farm structures in the hinterland closer to the viewer, the Panel regards these structures as detracting from the objectives of the SLO. While they serve the agricultural purposes of the zone, they are visually intrusive in the landscape. This stems largely from their apparent lineal clustering, in addition to their light colour and finish, form and lack of screening. They are also not necessarily long term structures in the future of this landscape.

The Panel specifically disagrees with the evidence of Mr Barlow in response to questions at the Hearing that the landscape that is sought to be protected includes the modified post-European landscape with its component structures. In the Panel’s view, the planning scheme gives primacy to protection of the *natural* landscape, allowing built form incursions only where this will not detract from the landscape. In policy terms, it is even preferable for built form to benefit or complement the landscape.

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<sup>18</sup> The immediately adjacent property is addressed under a separate sub-hearing in this report. Numerous other vantage points were examined by the Panel on its site inspections in the area but those listed are regarded as key locations for potential impact of the proposal.

### **Great Ocean road vantage points including the beach and public golf course**

The quality and nature of views will differ based on whether the viewer is in a vehicle, walking or using other modes of transport. The most open views to the site are from portions of the Great Ocean Road and the Great Ocean Road walk proximate to the Barham River Bridge, as well as looking across the estuary from the public golf course<sup>19</sup>. Views towards the 'stacked' hotel building are a particular concern from a number of viewing positions, such as close to the bridge at the mouth of the Barham River. While there may be existing structures in the foreground, these are understood by viewers as inherently connected with the township and its services. The planning scheme identifies that structures within the hinterland are a different proposition and need to be more carefully sited and designed.

### **Barham River Road vantage points**

There are a number of points along this winding roadway from which elements of the proposal would be seen. There is also the potential for views from certain parts of the river itself but this has been given comparatively less focus by the Panel given the more limited practical access and potentially reduced number of viewers. Visual impacts near the property frontage are discussed below in the context of the character of the Barham River Valley.

### **Dwellings in Horden Vale Road**

Along Horden Vale Road, the most direct outlook would be from the dwelling at number 30 towards the northern Ridge villas. The hotel would not be visible from this road. The Panel inspected the potential view to the subject site from outside 30 Horden Vale Road and considers that its principal outlook is away from the subject land. Furthermore, as noted elsewhere in this report, the Panel considers that some views to the villas are acceptable, given that the form and scale of the villas is similar to other built form in the landscape and that the villas provide for spacing between built form to allow the landscape to continue to dominate.

### **Rural properties with outlooks to the northern Ridge villas**

There are a number of farming properties that would have views to these proposed structures from varying elevations. From some angles, it is apparent that certain villas could be seen. While this would represent a change in the outlook for these properties, the Panel considers that the visual impact is acceptable since these structures are comparable if not more confined than the existing dwellings visible from these properties and the outlook is predominantly from farmland.

### **Marriners View lookout**

This view is significantly elevated.<sup>20</sup> Elements of the proposed buildings will be visible, although the Panel observes that this is in the context of an expansive panorama which includes the flatter foothills of the Otway Ranges leading to the township and down to the coastline. This makes it less likely that the overall view will be affected negatively by the introduction of built form on the subject land which would be a confined element of the broader outlook.

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<sup>19</sup> Generally in the position of the photograph taken by Mr Ballinger, albeit at conventional eye level (Document 55).

<sup>20</sup> Although the entrance gate to the adjacent private property obscures direct lines of view from some vantage points.

## **The Rowley property**

This property is an irregularly shaped essentially rural living allotment to the immediate east of the subject land, with a far more confined area than the subject land. It has a high level of amenity because of its picturesque setting.

An inspection of this dwelling and its curtilage demonstrated that the main outlook from habitable rooms is towards the north (away from the subject site), with comparatively limited sensitivity from rooms at the rear of the dwelling. Its landscaped garden is to the west of the dwelling. Pastures associated with this property are located to the south and further east.

The greatest area of concern for the Rowley family was the potential for vegetation along the adjacent waterway to be thinned, which could expose views of certain Pasture villas and potentially the overflow parking area and staff accommodation.

The Panel regards this as a reasonable concern given the proximity of these areas to the Rowley's property, as well as the relatively confined ability to plant screening trees on their land given their limited land area and fire risk.

One issue that is unresolved in the permit application is the need to remove or thin riparian vegetation. If the proposal was considered to warrant support, the Panel would support submissions and expert evidence that this vegetation would have an important role in filtering views of proposed structures. It would be preferable to require changes to the siting of structures on the site if required to ensure that effects on vegetation arising from compliance with bushfire management requirements are minimised.

Given the proposed siting of buildings and the nature of the current outlook towards the property, the Panel considers that the visual impact of the proposal would probably be acceptable if the vegetated interface was preserved.

Amenity impacts on the Rowley property such as increasing intensity of use, noise and traffic are addressed separately.

## **Villas**

The Panel appreciates objectors' concerns about the clustering of villas and that the Creek and Pasture villas would appear as a group of buildings stepping down the slope, but it regards these concerns as somewhat overstated.

In general, the Panel accepts Mr Barnes' evidence that the style, scale and dispersed nature of the villas is a type of built form that this site could reasonably sustain whilst complying with relevant policy. It notes the observation of the OVGA that *"villas 'perched' in the landscape is a strong visual concept, reminiscent of other Great Ocean Road settings"*.

For the most part, the Panel regards the design and scale of individual villas as sensitive to the site's setting. The villas are single storey and have been suitably articulated, are set within the landscape, generally comprised of sympathetic materials<sup>21</sup> and will be appreciated in broader views as disparate, relatively compact structures. The Water villas are relatively benign in built form terms, being largely screened from public views within the centre of the site.

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<sup>21</sup> With the exception of proposed galvanised iron roofs (chosen for their low maintenance at the suggestion of the OVGA), since it has the potential to be overly intrusive in this sensitive landscape until it weathers.

The Panel acknowledges that the Ridge villas are proposed on an elevated and partly exposed area of the site and that elements will be visible from surrounding land at generally lower elevations. Notwithstanding, the Panel considers that this mode of accommodation and its location and siting has parallels with existing built form within this rural hinterland environment. It also considers that the Ridge villas will appear as a confined element in a broad landscape and will be viewed from either expansive rural properties or from less sensitive parts of nearby dwellings (such as across the access and parking area of 30 Horden Vale Road at a substantial angle).

#### **(iv) Conclusions**

The Panel concludes:

- The hotel component of the proposal is considered to have an unacceptable visual impact given the physical and policy context of the site.
- The Panel generally accepts that the visibility of the villas would be acceptable, however notes that this would be subject to more detailed considerations relating to retention of vegetation and revegetation in areas.

### **4.3 Impacts on character**

The portion of the Barham River Valley between the main road and the site is predominantly rural, with close views of the winding Barham riverbed from the roadway. The roadside is grassed and the setting is punctuated with sporadic trees. The topography within this portion of the valley exhibits significant variation which is a striking element of the character of the area.

Beyond the property, Barham River Road narrows and the vegetation changes to denser, tall vegetation along the roadside, often with more layered riverside vegetation. This environment is more enclosed and tranquil. Larger rural uses tend to become interspersed with forms of rural living and small scale tourist accommodation.

#### **(i) The issue**

Is the proposal acceptable in terms of its impact on the surrounding character?

#### **(ii) Evidence and submissions**

##### **Objectors and Council**

A large number of objectors emphasised the contrast between the scale of works required for the resort proposal and existing built form in the valley environs, which presents as generally low rise development with confined and dispersed building footprints. They were principally concerned that a substantial tourist proposal would be in stark contrast to the rural character of the area and would not respect natural features.

Mr Barnes likewise considered that the establishment of a hotel of the scale proposed would significantly impact the character of the valley, and would be incompatible with the nature of the area and other more modest tourist experiences within the valley.

Many objectors expressed the view that the proposed development was not consistent with the character of the area. Professor Schencking submitted that development should

complement the existing character of the area, not change it. Mr Fillmore, Otway Forum described the area as a “*beautiful, low key, authentic, seaside village*” and considered that the development was completely at odds with this character.

Mr Dance and others submitted that there had not been a thorough site analysis to provide the basis for an informed, viable plan that would sit comfortably within the site, and the proposal was akin to a new urban township.

Mr Upton submitted that the built form was both inconsistent with the planning scheme provisions that seek to protect the Otway foothills as an undeveloped backdrop to Apollo Bay and Marengo (Clause 21.03-3) and to the provisions of the Incorporated Document to the SLO3, that seeks to avoid large building footprints.

### **The Applicant**

Mr Barlow acknowledged in evidence that the Barham River Valley has a unique character that warrants consideration beyond the broader landscape setting. However, he considered that the visibility to the hotel and villas would be tempered by existing and proposed vegetation and the presence of built forms in the landscape is not unusual.

### **(iii) Discussion**

Barham River Valley is a designated tourist route and has high scenic qualities.

Clause 21.04-8 expressly contains objectives to “*maintain the dominance of the natural landscape from main roads corridors and tourist routes outside townships*”. Strategies include to locate development sparsely in this landscape to maximise space between buildings for vegetation, and to locate and screen large buildings and structures to minimise their visibility from main roads and key viewing locations.

The Panel’s concerns about impacts on this character are integrally connected with its concerns about the scale of the proposed use and development, as outlined above. In the Panel’s opinion, there are a number of points along the Barham River Road and also private land where the built form and scale of the proposal will have an unacceptable impact on the character of the valley. From a number of approaches, a lineal cluster of Pasture and Creek villas would be located on an exposed part of the site. There is minimal capacity for vegetative screening given the need for defensible space as well as a desire for outward views for guests.

The area of greatest concern is when passing the property itself. In seeking to capture outward views, the proposed hotel would sit above the topography of the site, punctuating the immediate skyline to a notable degree. The ‘stacking’ effect of the hotel wings would be most prominent in this viewline.

As confirmed in evidence and supplementary viewline diagrams, there is capacity to plant screening trees on either side of the internal entrance road to restrict these views. However, this would not alleviate the Panel’s concerns that a clear break would remain through the central accessway and that the native trees that would be required to perform this function would only filter views in part. In reality, a driver, cyclist or pedestrian will remain exposed to front views of the hotel building from multiple locations, in stark contrast to the scale and generally lower elevation of other structures in the immediate and broader valley environs.

#### **(iv) Conclusions**

The Panel concludes:

- The built form of the proposal does not respect the character of the area and would have an unacceptable impact on the character of the Barham River Valley.

### **4.4 Night lighting**

#### **(i) The issue**

Would night lighting have an unacceptable impact on the area or nearby uses?

#### **(ii) Evidence and submissions**

##### **Council**

Council submitted that the effect of night lighting associated with a resort development in an elevated setting within a nationally significant landscape should be regarded as 'a threshold issue'. The hotel would be at an elevation of 90-102 metres AHD which suggested to it that even subdued lighting would impact much of its hinterland surroundings.

##### **Objectors**

Many local residents were concerned about the potential for night lighting of buildings of this scale and site footprint to significantly affect the rural setting and to reinforce what they perceived as the urban qualities of the proposal. They emphasised that at present, this landscape was generally dark at night, except for 'dotted' lighting comprising street lights and occasional, well spaced dwellings.

The Objectors Inc submitted that there had been no night light impact study undertaken, and that the night light impacts would adversely impact the sensitive significant rural setting and values of the Great Ocean Road.

##### **The Applicant**

Originally, in the amended application material, Irwinconsult expressed the view on behalf of the Applicant that given viewing distance, topography and the extent of proposed landscaping, light spillage issues were likely to be "*negligible in effect; impractical to assess and non-measurable [when assessed against the criteria of AS 4282]*".<sup>22</sup>

Mr Barlow accepted in evidence that there is no doubt that the proposal would increase night lighting in the area and that illuminated windows and open areas of the proposal would be visible from certain vantage points. However, he regarded the possibility of *direct* light spill as very low if not negligible given setbacks from site boundaries, vegetation and landform.

He and the Applicant explained that there were opportunities for a lighting management plan with associated modelling to provide reasonable mitigation measures that would comply with *AS 4282 – Control of the obtrusive effects of outdoor lighting*. For example, this could require baffled, low level lighting and would prevent uplighting of building facades.<sup>23</sup>

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<sup>22</sup> In its letter dated 2 August 2008 to DELWP.

<sup>23</sup> As referred to in the Irwinconsult letter.



Mr Burge accepted that the addition of lighting for this development may be noticeable but would not be added to a backdrop 'absent of lighting', given existing structures in the hinterland as well as light spill from the townships and vehicles travelling along the Great Ocean Road.

### **(iii) Discussion**

The Panel's night time observations of the area were consistent with objectors' submissions that the hinterland presents as a dark landscape dotted with few individual lights. This further differentiates it visually from the townships of Apollo Bay and Marengo.

The OVGA noted in its April 2018 report that *"the views to the hotel from a distance could be magical with form and lighting creating striking effects"*. The Panel envisages that the OVGA may have been alluding to treatment of some of the more streamlined hotel forms such as the RACV Club in Cape Schanck or Torquay, which demonstrate this effect at night.

The OVGA is likely to have formulated this opinion about lighting the hotel building as a piece of architecture, without necessarily considering that this aspiration is in direct contrast with intentions for this particular site and setting as outlined in planning policy, which seek buildings to be *subservient* to the landscape, irrespective of the time of day.

There would be capacity to control the placement, design and strength of lighting in a consolidated proposal for the site, to be confirmed through expert assessment. Detailed parameters were suggested in the letter from Irwinconsult to DELWP on behalf of the Applicant.

Irrespective, the capacity for exposed internal lighting within the hotel building in particular, as well as lighting of the extensive accessways across the site remains a concern for the Panel.

The minimal presence of night lighting is another feature that reinforces the breaks between settlements and reinforces the distinction between the character of the hinterland and nearby townships. Although there may be no direct light spill onto adjoining properties, even lighting the tall main hotel atrium is likely to generate a noticeable change to the character of the valley at night, potentially visible from a substantial distance.

By comparison, the far smaller Seafarers Getaway hotel located between Apollo Bay and Skenes Creek is already prominent by virtue of its room night lighting when viewed from the foreshore of Apollo Bay. This is not an outcome that the Panel considers should be replicated on a larger scale in the rural hinterland.

It is inevitable that during high occupancy periods, lighting will be dispersed across hotel rooms on the subject site over a great breadth. This would be compounded with the lighting required across the extensive resort accessways and pathways as well as potentially from headlights of vehicles moving between the various component parts of the site. The Applicant has not satisfied the Panel of a suitable outcome in this regard.

### **(iv) Conclusions**

The Panel concludes:

- Night lighting from the resort has real potential to detract from the character of the setting. The Applicant has not demonstrated that this could be managed in an acceptable way.

## 5 Geotechnical and landslip issues

The Otway Ranges are a region with relatively high susceptibility to landslips. The Colac Otway Planning Scheme addresses the risk of landslip through the application of an Erosion Management Overlay.<sup>24</sup> EMO1 applies to almost all the land on the subject site, except two small areas in the north-eastern section that extend onto the Barham River floodplain.

### 5.1 The issue

Does the permit application adequately address geotechnical and landslip risks?

### 5.2 Panel directions

The Panel was cognisant of the need for adequate site investigation to underpin the application for buildings and works under EMO1. Its updated directions of 28 March 2018 required:

1. *The applicant is to provide the following information, of sufficient detail to enable a proper assessment of the amended proposal, commensurate with the scale of the proposed use and development:*
  - (c) *An updated Geotechnical Land Slip Assessment report that:*
    - i. *documents the findings of the further geotechnical investigations to provide technical verification that the total development and site disturbance proposed can meet the tolerable risk criteria or lower, as specified in the Schedule to Clause 44.01 (Erosion Management Overlay) of the Colac Otway Planning Scheme;*
    - ii. *details all proposed cut and fill associated with the proposal, including the internal access roads, buildings and associated infrastructure;*
    - iii. *contains an updated and completed geotechnical verification 'Form A' document, reflecting the amended proposal, as required under Clause 44.01 (Erosion Management Overlay) of the Colac Otway Planning Scheme.*

A further letter was sent to the Applicant from PPV dated 5 June 2018 addressing the amended application documentation:

*The letter supplied by Golder and Associates dated 15 May 2018, titled 'Revised Landslide Risk Assessment', did not detail what further geotechnical investigations were undertaken. Nor does the letter provide the technical verification that the total development and site disturbance proposed can meet the tolerable risk criteria. Given that parts of the proposed hotel site, hotel villas and access roads remain in areas that have been identified as being within the High Risk Zone, the Panel requires documentation to be submitted that details what further geotechnical investigations were undertaken on site, the results of such investigations and technical verification as requested. Implicit in relation*

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<sup>24</sup> The terms 'landslip' as used in the VPPs and 'landslide' as defined by AGS 2007 are defined in EMO1, Schedule 1 to have the same meaning.

*to the above is the expectation that the sampling/modelling results will be supplied in support of the technical verification.*

The Applicant responded by letter dated 26 June 2018 that it did not consider that there was any 'outstanding' information. It provided a copy of Golder Associates letter to Spowers Architects dated 15 June 2018 by way of 'further' information:

- *No additional geotechnical investigation was performed or required as part of the revised LRA [Landslip Risk Assessment]*
- *The revised LRA including the Geotechnical Declaration attachment provides technical verification that the land can meet the tolerable risk criteria taking into account the total development and site disturbance proposed*
- *The revised LRA is based on the significant changes to the development proposal subsequent to our LRA report dated 1 November 2017, i.e. changes to the elements at risk with respect to the landslide hazards. The requirement for a revision was due entirely to the revised layout, not because Golder changed the assessment of the landslide hazards on sit*
- *Further geotechnical investigation (e.g. the drilling of boreholes) will be performed as part of detailed design for the proposed development and to support an engineering design building permit. Our assessment that the residual risk level meets tolerable criteria is subject to these investigation(s) being performed and engineering design of building footings, retaining walls, earthworks and drainage to mitigate landslide hazards. The objective of the drilling would be to provide parameters for engineering design, not to identify or define landslide hazards.*<sup>25</sup>

In light of this correspondence and the material accompanying the amended permit application, the Panel and DELWP as the responsible authority determined that the threshold had been met for amending the permit application and for directing further public notice. At the same time, DELWP highlighted matters requiring further work by the Applicant to enable a comprehensive assessment of the proposal on its merits. This was included in its letter dated 27 June 2018.<sup>26</sup>

The Panel once again asked the Applicant to address perceived deficiencies in subsurface testing at the second Directions Hearing. It referenced the limited subsurface investigations that had been undertaken to date. It also enquired about a lack of plans depicting details of landslip mitigation works.

The Panel specifically indicated that subsurface and technical verification information was sought to enable it to arrive at an informed view of the amended permit application. This is a different threshold than the one for notice of a permit application to be given.<sup>27</sup> The Applicant inherently carries the risk of this information not being provided, since uncertainty may remain about the nature of the proposal or its overall acceptability.

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<sup>25</sup> Golder Associates Letter, Pre-Hearing Document 12, p.1-2.

<sup>26</sup> Pre-Hearing Document 13.

<sup>27</sup> For example, it goes beyond the type of information that the Victorian Civil and Administrative Tribunal would normally require in an application for review under section 78(b) of the *Planning and Environment Act 1987* in a request for further information under section 54 of that Act.

For the record, the Panel still has concerns that the site conditions have not been characterised adequately, especially with regard to subsurface conditions. The amended application plans still do not depict all proposed cut and fill, or the layout and design of internal access roads and service infrastructure. While some indicative cross sections have been provided by the Applicant, it is not clear whether they are representative of site conditions generally.

### 5.3 Expert conclave

The Panel's directions for an expert witness conclave included:

6. *Expert witnesses for all parties in the field of geotechnical engineering must meet and agree on key issues in dispute and key assumptions, prior to the Hearing. The matters for consideration must include:*
  - a. *whether the potential for landslide and associated risk has been addressed properly in the permit application...*

The expert witness conclave was held on 13 September 2018 and a statement was prepared summarising the outcomes of the conclave.<sup>28</sup> The participants were:

- Mr Darren Paul, Golder (Applicant)
- Mr Tony Miner (Council)
- Mr Paul Saunders (Objectors Inc).

The conclave statement indicated that:

*There were no key issues in dispute or disagreement between the three parties in attendance at the expert witness conclave.*<sup>29</sup>

The Panel addresses the evidence of these witnesses and the extent to which they share common opinions below.

### 5.4 Evidence and submissions

A Landslip Risk Assessment (LRA) was prepared for the Applicant by Golder Associates, which is documented in the following reports that form part of the amended permit application:

- J. Geotechnical landslide risk assessment report (Golder Associates, 1 November 2017)
- J. Revised Landslide Risk Assessment letter (Golder Associates, 15 May 2018)
- J. Response to Planning Panels Victoria letter (Golder Associates, 15 June 2018)
- Geotechnical Landslide Risk Assessment report (Golder Associates, 1 November 2017)
- Revised Landslide Risk Assessment letter (Golder Associates, 15 May 2018)
- Response to Planning Panels Victoria letter (Golder Associates, 15 June 2018).<sup>30</sup>

Numerous objectors submitted that the amended application material was preliminary and did not adequately address the risk of landslide and erosion, especially given topography and

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<sup>28</sup> Document 10.

<sup>29</sup> P.1.

<sup>30</sup> Golder Associates November 2017 (part of Pre-Hearing Document 1), May 2018 (Part of Pre-Hearing Document 8), June 2018 (Part of Pre-Hearing Document 12). Copies of all these Golder Associates Reports were submitted as part of the expert witness statement by Mr Darren Paul.

site conditions. They emphasised that the application had not suitably addressed risks to life or property. Objectors Inc submitted that:

*A planning permit cannot be issued until a full risk assessment is provided in accordance with AGS requirements.<sup>31</sup>*

Council shared the objectors' concerns regarding geotechnical and landslip risks, submitting that:

*... Council has formed the view that more detailed justification is required to explain how the proposal has adequately responded to known geotechnical and landslip risks on the site. The EMO requires a tolerable level of risk to life and property to be met and the proposal relies on detailed investigation and engineering solutions to meet this level of risk which are not clearly documented.<sup>32</sup>*

#### **5.4.1 Landslide Risk Assessment (LRA) methodology**

Golder Associates undertook a LRA for the Applicant in general accordance with the *AGS 2007 Guidelines*.<sup>33</sup> The LRA was based on desktop studies and a site inspection on 2 and 3 October 2017. The desktop review identified that existing subsurface information for the site is limited to data presented in an earlier report for the Applicant by Bruce Hollioake.<sup>34</sup>

The initial LRA informed changes to the permit application. A revised LRA addressing the amended development proposal was subsequently undertaken by Golder Associates dated 15 May 2018.<sup>35</sup> The Panel notes that the revisions to the LRA did not change the underlying information about the site.

Council's closing submission identified that the key residual issue in assessing geotechnical risk is "whether the level of investigation carried out to date is sufficient to grant a permit under the EMO1". It submitted that "the site investigation is preliminary. This is not what the EMO1 requires".

The conclave statement indicated that:

- All parties acknowledged the need for compliance with EMO1 and AGS 2007, including the requirement to demonstrate 'tolerable' risk (or lower) in accordance with the requirements of the Schedule to the EMO1.
- AGS 2007 recognise landslide risk assessment as a multi-stage process. The extent of work undertaken to date is consistent with a preliminary landslide risk assessment as described in that document.
- The preliminary LRA has been undertaken to a reasonable and competent professional standard.

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<sup>31</sup> Objectors Inc para 51.

<sup>32</sup> As above, para 213.

<sup>33</sup> Dated 1 November 2017, which incorporated a desktop review dated 15 September 2017 as an Appendix (Document 1).

<sup>34</sup> Pre-Hearing Document 1 (2017 report).

<sup>35</sup> Council's closing submission (Document 65), Geotechnical expert witness conclave statement (Document 10).

- The preliminary LRA does not demonstrate that ‘tolerable’ risk can be achieved. However, it provides no indication that it would not be feasible to achieve ‘tolerable’ risk through landslide risk mitigation measures.
- Further work is required prior to construction to demonstrate compliance with the requirements of the EMO. The scope of this work includes further investigations (including site investigations) and landslide risk assessments as well as the design of landslide risk mitigation measures.

#### **5.4.2 Subsurface conditions**

A key issue in relation to the study methodology is the adequacy of the subsurface data for the LRA. All experts agreed that the only subsurface data known for the site are soil profile descriptions presented in the Hollioake report. That report presented soil profiles for 13 boreholes drilled on the property in the vicinity of the proposed hotel and access road, which have a maximum depth of 2 metres. Rock (weathered sandstone) was encountered in only three of the boreholes, all on the north side of the existing access road, at a depth of 1200 to 1500 mm. In addition, there is anecdotal evidence indicating that silty clays at the main dam site extended to a depth in excess of 5 or 6 metres.<sup>36</sup>

All experts agreed that additional surface data is required to adequately address and manage geotechnical risk.

Mr Saunders advised that the scale of investigation presented in the Hollioake report was applicable to a ‘low level residential style construction’ rather than a large multi-level hotel building, particular given the site is within an area of historic and current landslips.<sup>37</sup> Furthermore, he noted that no in-situ strength testing or laboratory testing had been performed on representative samples. He also pointed out that the Hollioake report had been prepared for initial proposal, not the amended proposal, therefore no subsurface information was provided in relation to additional villas proposed.<sup>38</sup>

Mr Hancock, an objector who is an experienced hydrogeologist, submitted that the geotechnical investigations undertaken by Mr Hollioake do not provide adequate information regarding subsurface conditions for a landslip and erosion risk assessment because the boreholes were too shallow, limited in locations and only represent geotechnical conditions at a single point in time.<sup>39</sup> Golder Associates proposed that further subsurface investigations be undertaken in the detailed design stage, suggesting that:

*The objective of the drilling would be to provide parameters for engineering design, not to identify or define landslide hazards.*<sup>40</sup>

However, Mr Miner was of the opinion that the additional subsurface data is not only required for detailed design but that it is necessary to confirm the conceptual model (geotechnical

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<sup>36</sup> Miner, para 44; Hollioake Report. Bruce Hollioake, 29 June 2017, Geotechnical Assessment and Land Stability Assessment Report. Proposed Hotel and Main Access Road Development at 275-305 Barham River Road, Apollo Bay. Report for Spowers Architects on behalf of the Applicant.

<sup>37</sup> Mr Saunders expert witness statement, para 2.6.

<sup>38</sup> Mr Saunders expert witness statement, para 2.6, 2.7.

<sup>39</sup> Document 21, para 22.

<sup>40</sup> Golder Associates June 2018 (Part of Pre-Hearing Document 12).

slope model) that underpins the LRA.<sup>41</sup> He considered that the available subsurface data provides some confirmation of the conceptual model proposed by Golder Associates but advised that:

*... detailed confirmation of the overall geotechnical slope model through further detailed targeted geotechnical investigation is required.*<sup>42</sup>

Furthermore, Mr Miner advised that the scope of subsurface investigations required to confirm risks and inform design has not been adequately defined and further detail is required to specify the work that needs to be done.

Mr Hancock further clarified that it was important to understand temporal variability in groundwater levels in relation to geotechnical and landslide risk. Similarly, Mr Miner confirmed that further investigation requirements in relation to groundwater levels, monitoring wells and piezometers.

Mr Hancock had professional experience of subsurface investigations in the immediate area in connection with a formerly proposed Barwon Water water storage facility. He noted that deep subsurface investigations for the Barwon Water project were undertaken to depths of up to 25 metres, and the materials were found to be saturated, pressurised and to include sediments buried beneath landslide rubble. The results of the subsurface investigations were considered to have led to the project being discontinued as uneconomic.

Mr Hancock submitted that a proper assessment of hydrological and geotechnical conditions across the site would require at least 60 boreholes.<sup>43</sup> Based on his professional experience in the local area, he drew attention to the implications of heterogeneity in the subsurface materials for the interpretation of subsurface data, in particular the risk of boulders being mistaken for bedrock based on refusal of auger drilling. He noted that boulders are common in landslide rubble arising from past massive failures. Therefore, he stressed the importance of including a sufficient number of boreholes to minimise the risk of gaining a misleading impression of depth to bedrock.

### **5.4.3 Conceptual model**

A conceptual understanding of the site geology and geomorphology provides a fundamental basis for identifying, assessing and managing geotechnical risks.

The Golder Associates September 2017 report presented a conceptual model of the study site reproduced at Figure 7. It shows that the site is bordered by ridgelines to the north, west and south, while the central part of the site slopes more gently towards the east. Golder Associates noted that the site is mapped as Cretaceous Eumeralla Formation on published geological mapping the Eumeralla formation does not outcrop at the site except on the ridges. Golder Associates considered soil profile in the central part of the site to be at least 5 metres deep. It observed that:

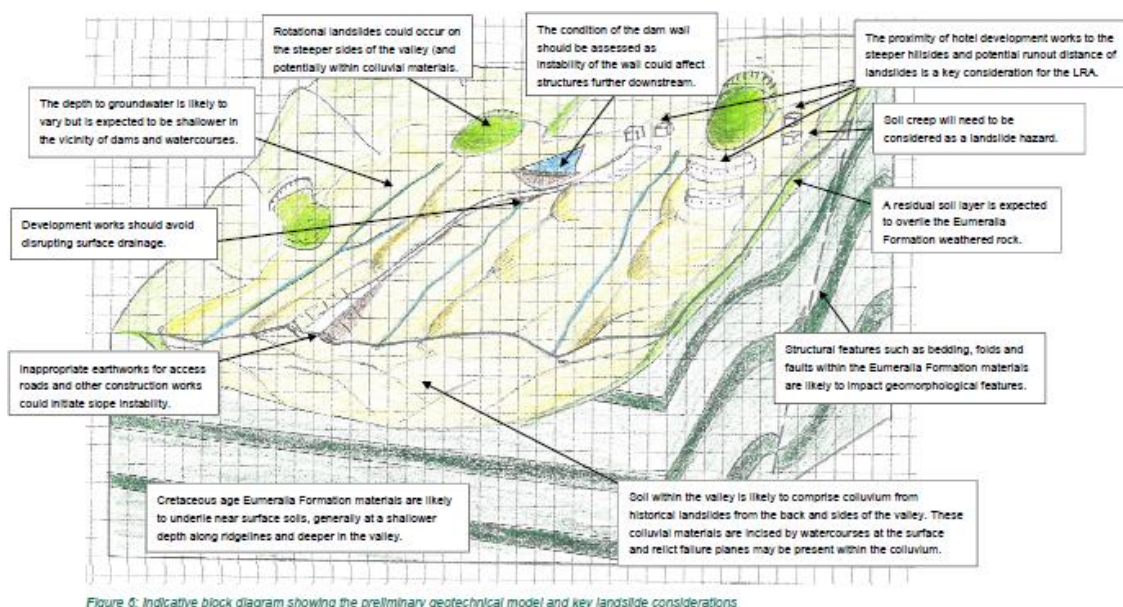
*... the gentle slopes in the central part of the site are atypical of slopes at the same elevation in the Otway Ranges, which are typically very steep ...*

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<sup>41</sup> Mr Miner expert witness statement, para 45.

<sup>42</sup> Mr Miner expert witness statement, para 45.

<sup>43</sup> Document 56.



**Figure 7 Conceptual geotechnical model**

*Source: Golder Associates report, September 2017*

In its September 2017 report, Golder Associates interpreted the geomorphology of the site as having been formed by past landslides. It interpreted the ridgelines to the north, west and south of the site as the scarps of previous landslides, and the central area of the site as landslide debris (colluvium). Golder Associates noted that the colluvium may have originated from a single very large landslide or a series of smaller landslides. Mr Hancock agreed, and submitted that the geomorphology of the Barham River Valley in the vicinity of the subject site is typical of large- scale, probably old landslips. He noted that the old landslip on the subject site is now drained by three deeply incised and actively headwardly eroding streams, while the slope is subject to further failure by mass creep and repeated smaller landslips.<sup>44</sup>

In its November 2017 report, Golder Associates speculated on alternative interpretations of the geomorphology of the site. It noted that the geological history of the site appears complex, and suggested that the current landforms and sediment deposits may also reflect coastal processes within former embayment, lacustrine deposition in a pondage upstream of a former landslide dam and/or extreme floods from the Barham River. Golder Associates November 2017 report concluded that:

*A key inference from our understanding of the geological history is that the processes which formed the upper/east linear feature beneath the proposed hotel site do not appear to be active.*<sup>45</sup>

In response to questions during the Hearing, Mr Paul conceded that Golder Associates had no evidence of the fluvial, lacustrine or marine deposition referred to in its November 2017 interpretation, other than speculation based on the appearance of topographic features.

<sup>44</sup> Document 21, para 15.

<sup>45</sup> Golder Associates, November 2017 page 10 (Part of Pre-Hearing Document 1).



#### 5.4.4 Landslide hazards

##### (i) Types of hazards

Golder Associates (November 2017) identified the following types of landslide hazards at the site: rotational landslide or earthflows; debris runout from very steep ridges; detachment of boulders from old access road rock cutting; rotational landslide below the old access road and lateral spreading of central soil deposits due to landslide dam event.

The expert witness conclave noted the limitations to the investigations undertaken by Golder Associates and advised that:

*... further investigation and risk assessment work could possibly identify hazards that have not been identified based on the work undertaken to date, although this was considered unlikely. This may require the proposed design to be modified, or additional landslide risk mitigation measures that were not anticipated based on the preliminary work undertaken to date.*<sup>46</sup>

##### (ii) Landslide triggers

There was general agreement among the experts and submitters that rainfall events were of primary importance for triggering landslides. A number of objectors presented information about historical landslides in the Barham River Valley and Otway Ranges, including photographs<sup>47</sup> and anecdotal descriptions.

Mr Paul considered that that earthquakes were of minor importance as a landslide trigger in the study area. However, Mr Miner recommended further investigation of the potential for seismicity in the Otway Ranges with regard to its influence on overall slope stability and landslide risk at the site.<sup>48</sup>

Council made the following submissions in regard to seismicity and earthquake hazard:<sup>49</sup>

9.4.1 *Mr Paul did not give the risk of seismic events a lot of weight but the conclave agreed it should be further addressed.*

9.4.2 *We have limited records as a basis to predict future seismic activity, but we know that this area has a relatively high risk of earthquakes.*

9.4.3 *... The Minister will need to form a view on whether the impact of an earthquake on the hotel (whether in terms of direct damage or inducing landslides) is acceptable, before issuing a permit, which will form a basis for future capital raising, debt finance or investment.*

##### (iii) Speed of landslide processes

Mr Paul submitted that the type of landsliding in the parts of the site where buildings or other infrastructure was proposed was expected to be a slow process with rotational movement,

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<sup>46</sup> Document 10, para 16.

<sup>47</sup> Document 30.

<sup>48</sup> Mr Miner expert witness statement, para 28.

<sup>49</sup> Document 54, para 9.4.

which would provide sufficient time for people to evacuate. He did not anticipate rapid mud flows. Mr Paul noted that these parts of the site had relatively flat slopes compared to the steep sided valleys where the majority of landslides in the Otway Ranges region occur. He advised that the steeper areas around the perimeter of the site, which Golder Associates had identified as 'high risk' areas, were more similar to these typical slopes, where more rapid landsliding could occur.

However, Mr Hancock submitted that:

*... there is potential for catastrophic failure and this could indeed be triggered by natural causes such as rainfall, bushfire or seismic events or destabilisation of the substrate as a consequence of construction (landscape disturbance) and engineering stabilisation attempts (subsurface drainage installation, etc.)<sup>50</sup>*

Mr Hancock was not convinced that it would necessarily be possible to evacuate people at risk in advance of a landslip in a situation where there is little forward warning, such as high intensity rainfall events, flooding or a seismic event.

The EMP made the assumption that emergency planning for landslides would not be required on the basis that landslide risk would be adequately covered by compliance with 'tolerable' risk level under EMO1. By contrast, Mr Miner advised that landslide is one of the hazards that needs to be addressed in the EMP.

#### **(iv) Risk assessment**

Golder Associates presented risk assessments for various elements of the proposed development, including separate assessments of risk to property and risk to life. The risk assessments were compared to risk thresholds set out in EMO1 to determine whether the various elements of the proposed development complied with the overlay or whether mitigation measures were required to achieve compliance.

EMO1 refers to two threshold levels of risk - 'acceptable' and 'tolerable', which are defined in the Schedule. 'Tolerable' risk is defined as:

*A risk within a range that society can live with so as to secure certain net benefits. It is a range of risk regarded as non-negligible and needing to be kept under review and reduced further if possible. Tolerable Risk for new development or changes to existing development a risk to life and/or risk to property is in accordance with the AGS Guidelines 2007.*

'Acceptable' risk is defined as:

*A risk for which, for the purposes of life or work, we are prepared to accept as it is with no regard to its management. Society does not generally consider expenditure in further reducing such risks justifiable ...<sup>51</sup>*

Mr Paul and Mr Miner advised that they considered that a 'tolerable' risk level is appropriate for the proposed development. Mr Paul advised that it may not be practical to demonstrate 'acceptable' risk for the current proposal if this was the requisite standard.

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<sup>50</sup> Document 21, para 31.

<sup>51</sup> For example, this standard is used in the Schedule to the Yarra Ranges EMO.

Golder Associates noted that the definition of the ‘tolerable’ risk level for the Colac Otway Shire EMO1 is based on a risk to property of no more than ‘moderate’ risk whereas other regulators in Victoria including Yarra Ranges Council define ‘tolerable’ risk to property as no more than ‘low’ risk. They also included a warning indicating that adopting a ‘moderate’ level of landslide risk may have ongoing implications for monitoring and maintenance of the property.

Mr Upson, an objector, expressed concern about the potential risk to life and limb from a major landslide. He submitted that guests of the hotel would assume it is safe, and questioned how they would react if they found out if the risk to the hotel of a landslide is not ‘acceptable’ but ‘tolerable’.

#### **(v) Risk to property**

Golder Associates undertook qualitative assessments of risk to property for the initial and amended development proposals in accordance with AGS 2007.<sup>52</sup> It presented a map of indicative risk zones to buildings (Figure 8). It noted that the risk zones shown on the plan are “approximate”.<sup>53</sup>

There was discussion at the Hearing regarding subjectivity in the risk assessments. For example, Mr Paul clarified that the 1:1,000 year event was based on Council’s Landslide Inventory, but was necessarily subjective.

Golder Associates presented tables summarising the risk assessments for the various types of landslide hazards for elements of the initial and amended proposed development.<sup>54</sup>

Golder Associates noted that that ‘moderate’ risk is considered to comply with EMO1 but ‘high’ and ‘very high’ risk levels do not comply with the EMO1 definition of ‘tolerable’ risk.<sup>55</sup> They indicated that the hotel complex had ‘high’ risk to property which would be deemed to be unacceptable under EMO1 and would require risk reduction measures.

Mr Miner and Mr Saunders raised the question of whether the risk assessment process adequately accounts for the potential for infrastructure or assets in zones mapped as lower risk to be affected by runout from the ‘very high’ risk zones.<sup>56</sup> Mr Hancock drew attention to a need to protect buildings from upslope hazards such as boulder release from steep slopes.<sup>57</sup>

Mr Miner noted that a number of the lower risk zones are located immediately adjacent to ‘high’ and ‘very high’ risk zones.<sup>58</sup>

Mr Paul indicated that runout zones had been considered in when determining the boundaries of the various landslide risk zones.

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<sup>52</sup> November 2017, May 2018.

<sup>53</sup> June 2018.

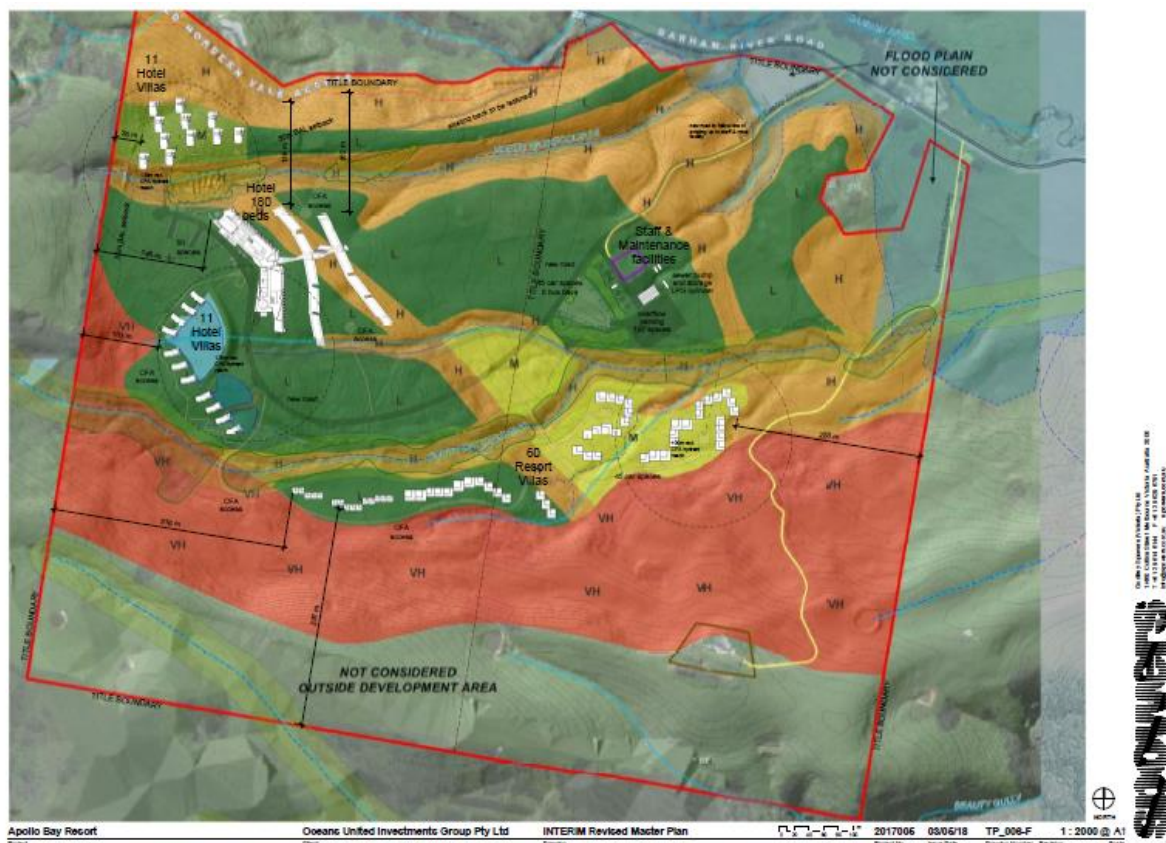
<sup>54</sup> November 2017, May 2018.

<sup>55</sup> May 2018.

<sup>56</sup> Mr Saunders expert witness statement, para 2.3.

<sup>57</sup> Mr Hancock expert witness statement, para 2.3.

<sup>58</sup> Mr Miner expert witness statement, p.30-31.



**Figure 8** Map of indicative landslide risk to property

Source: Golder Associates May 2018 report

#### (vi) Risk to life

Golder Associates also undertook quantitative assessments of risk to life in accordance with AGS 2007 for the original and amended development proposal and presented the results in tabular format.<sup>59</sup> The Ridge villas, hotel and new access roads were assessed to be subject to risks to life exceeding 'tolerable' risk.

The assessment was based on the risk to life of the individual most at risk. It noted that a risk level greater than  $1 \times 10^{-5}$  does not comply with EMO1 'tolerable' risk criteria and requires mitigation to reduce the risk level.

Mr Miner provided comparisons that indicate the risk of death per participants per year is estimated to be 1 in 70,000 for drowning and 1 in 1,000,000 for scheduled airline use. This raises questions as to whether hotel guests would feel comfortable staying in accommodation where the risk of being killed by a landslide is greater than the risk of being killed in a plane crash.

Council was concerned that although the standards in AGS 2007 had been applied, there was still an element of subjectivity in the analysis of risk to life.

<sup>59</sup> Golder Associates November 2017, May 2018.

**(vii) Societal risk**

Council submitted that it had concerns regarding the approach used to quantify societal risk.<sup>60</sup>

Golder Associates discussed 'societal risk' (the risk of multiple fatalities due to a landslide for the original proposal in its November 2017 report in relation to principles from the *ANCOLD 2003 Guidelines on Risk Assessment*.<sup>61</sup> It presented a 'tolerable' societal risk curve for landslides for a new development', which showed that the 'tolerable' probability of occurrence of a single death was defined as  $1 \times 10^5$  per annum and the 'tolerable' probability of 100 deaths was defined as  $1 \times 10^7$  per annum. However, it did not present detailed calculations. Golder Associates noted that its assessment of societal risk was limited by not knowing the total occupancy of the proposed development. Golder Associates did not re-assess societal risk for the amended proposal in its May 2018 report, only noting that if the scale of the development is reduced there would likely be fewer occupants.

**(viii) Risk mitigation and residual risk**

The Golder Associates November 2017 report indicated that a number of proposed building elements were in areas of 'very high' landslip risk, and these were removed in the amended proposal.

Notwithstanding, its May 2018 report indicates that several elements of the amended proposal remain at 'high' risk and will require mitigation to achieve 'tolerable' risk:

- the proposed hotel – risks to property and life
- the proposed villa on the northern ridge – risk to life
- the new access road – risk to life.

Golder Associates (May 2018) concluded that the proposed development did not meet criteria for 'acceptable' risk of landslip, but it would be feasible to meet criteria for 'tolerable' risk provided that appropriate mitigation measures were implemented. The May 2018 report included a Geotechnical declaration and verification form, where Dr Stuart Colls declared that the land can meet 'tolerable risk' criteria specified in Clause 44.01, but not 'acceptable risk' criteria taking into account the total development and site disturbance proposed.<sup>62</sup>

Golder Associates (May 2018) outlined risk mitigation measures relevant to various aspects of the proposed development and provided estimates of residual risk after these measures were applied.<sup>63</sup> It presented a table showing indicative mitigation measures and residual risk assuming successful application of these measures.

Mr Paul confirmed that he considered the remedial measures recommended in the Golder Associates reports to be practical and feasible for mitigating landslide risk to a 'tolerable' level in accordance with EMO1.<sup>64</sup>

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<sup>60</sup> Document 65, 9.3.2.

<sup>61</sup> Golder Associates (November 2017, p.25).

<sup>62</sup> Golder Associates May 2018 report (part of Pre-Hearing Document 1, p.25).

<sup>63</sup> Golder Associates, May 2018 report, Table 3 p.8.

<sup>64</sup> Mr Paul expert witness statement, para 33.

The expert conclave advised that the design of the mitigation works can only be undertaken after further site investigations and assessment/analysis are completed. Experts noted that appropriate landslide risk mitigation measures may include:

- surface and subsurface drainage
- foundation design (e.g. contiguous piles for hotel lift well)
- engineer designed retention structures
- revegetation and preservation of vegetation
- minimisation of earthworks
- modifications to the siting of structures
- preparation and implementation of a landslide risk monitoring program.

Fundamentally, Mr Saunders advised that the estimates of residual risk based on assumptions regarding proposed mitigation measures were premature, as such measures cannot be designed or estimated without comprehensive geotechnical data.<sup>65</sup> Mr Miner advised that confirmation will be required that any engineering measures and remedial works are feasible and capable of achieving desired effects including the required extent of risk mitigation in the 'high' risk zones.

Mr Hancock submitted that mitigation works would need to be designed carefully to account for the potential for mass movement and with close attention to appropriate surface and subsurface drainage. He also submitted that mitigation works cannot be expected to prevent all future landslide activity, noting that:

*It is accepted that ground failures may be delayed by the introduction of engineering measures, slope management and revegetation programs but the fact of continuing rock mass weathering, fracture and bedding plane lubrication and rock mass weakening once initiated cannot be mitigated; thus further failures must be expected.*<sup>66</sup>

#### **(ix) Monitoring**

The Golder Associates November 2017 report recommended that a formal slope monitoring and response plan be implemented as part of the proposed development.

All experts agreed on the need for, and importance of monitoring for this proposal given underlying conditions and the nature of the proposed use and development. It was noted that monitoring of changes in groundwater pressure could provide advance warning of landslides.

Mr Hancock provided suggested parameters for an effective monitoring program.<sup>67</sup>

Mr Miner raised the question as to who would be responsible for overseeing the monitoring. The Applicant verbally indicated in its closing submission that it would be willing to pay for peer review of the monitoring design and ongoing monitoring.

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<sup>65</sup> Mr Saunders expert witness statement, paras 2.10, 3.3.

<sup>66</sup> Document 21, para 20.

<sup>67</sup> Document 21, paras 32-40.

**(x) Scope of the erosion and Landslip Risk Assessments**

The risk assessments prepared on behalf of the Applicant focused on proposed buildings and access roads but did not expressly address risks associated with all elements of the proposed development, including:

- vegetation management/removal, especially to address bushfire risk
- stormwater management
- farm dams – existing and proposed
- proposed new infrastructure for services including water supply, sewerage and power supply.

**(xi) Vegetation management**

Mr Paul provided general comments on the role of vegetation in relation to slope stability and landslip risk, indicating that the benefits of vegetation are mainly due to its effect on reducing soil moisture content.

The Applicant did not clearly define the extent of vegetation proposed to be removed, particular in relation to complying with bushfire management requirements as discussed in Chapters 6 and 7.

Mr Fankhanel, an objector, pointed out that the vegetation that would be modified or removed for defensible space fronting the Creek Plateau and Pasture Villas is situated in areas that has been identified as having ‘high’ landslide risk.<sup>68</sup>

**(xii) Stormwater management**

A Stormwater Drainage and Waterway Management Report (SDWM) by Irwinconsult was submitted as part of the application material. It acknowledges the need for surface and subsurface drainage to address geotechnical and landslip risk. However, it also indicates that stormwater from the site will require treatment and retardation in a stormwater treatment train prior to discharging into the waterways in order to achieve Water Sensitive Urban Design (WSUD) objectives.

The application documentation indicated that grassed swales and detention basins have been considered as drainage elements to be incorporated into the overall drainage scheme, however underground detention elements may also be utilised in key locations. The proposed stormwater management arrangements were not assessed as part of the LRA.

The Conclave recommended that:

- *The geotechnical specialist who prepared the landslide risk assessment should review the stormwater drainage design ... to confirm that any stormwater drainage and waterway management proposed for the site is consistent with the identified geotechnical risk and recommended risk mitigation measures.*<sup>69</sup>

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<sup>68</sup> Document 43, p9.

<sup>69</sup> Conclave statement, Document 10, para 24.

Mr Miner noted the importance of both surface and subsurface water management to slope stability at the site and provided more detailed comments on the SDWM.<sup>70</sup>

#### **(xiii) Farm dams**

There are several existing dams on the property. There is a large dam to the west (upstream) of the proposed hotel. If it fails, there are potential implications for flooding and damage to the hotel. There is also a smaller dam on the non-designated waterway that flows past the Creek Plateau and Pasture villas, which may have potential implications for the villas if they were to fail. A new dam is also proposed at the western end of the property, near the existing large dam.

Golder Associates did not assess dam safety but identified the need to assess the large dam in the western part of the site, as its instability could adversely impact structures built downstream.<sup>71</sup> In its November 2017 report, it recommended that a formal spillway should be constructed and that a dam break analysis may need to be performed depending on the final location of structures downstream.

Mr Miner advised that potential leakage or seepage from the existing dam is relevant to slope stability and should be included in assessments relating to the main dam and nearby slopes.<sup>72</sup>

#### **(xiv) Timing of further investigations**

Several submitters, including Mr Hancock and Mr Upson, raised concerns that if the LRA is not completed prior to a planning permit being issued, the development may be significantly changed after approval in response to matters arising from further studies.

Mr Hancock submitted that following subsurface testing, the development may either be proven to be uneconomic or at minimum, would need be substantially altered to the extent that current proposal is no longer representative of the final form. He considered that this was a burden the community need not bear.

The evidence and submissions clearly indicate a generally shared view that the information presented to the Panel was preliminary in nature. Further investigations are required to provide an assessment of landslip risk that complies with EMO1.

The conclave offered the following comments regarding the timing of further investigations at the Panel's request:

*No opinion is offered as to whether the additional work must be undertaken before or after the issue of a planning permit. This is considered to be a planning issue and outside of the area of expertise of the geotechnical consultants.*

*If additional investigation and the design of landslide risk mitigation measures is made a condition of the planning permit, it is very important that the responsible authority implement a process to ensure compliance to the*

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<sup>70</sup> Mr Miner expert witness statement, para 39-43.

<sup>71</sup> Golder Associates Report, September 2017.

<sup>72</sup> Mr Miner expert witness statement, paras 42b-c.



*planning permit and assess the adequacy of the risk mitigation measures proposed prior to the commencement of construction. This process should include peer review of the geotechnical reports, design reports and supporting calculations for mitigation measures.*

The Applicant submitted that:

*In respect to the geotechnical and landslip risk assessment, the Applicant submits that the preliminary assessment undertaken by Golders is thorough and provides a sufficient level of certainty (at the planning permit application stage) that a tolerable level of risk is able to be achieved in respect to the proposed development. The detailed assessment required to confirm and implement on-going risk landslide management can be appropriately addressed by way of permit conditions<sup>73</sup>.*

In response to questions from Mr McIlrath (for Council), Mr Miner advised that the EMO operates in three stages - investigation, risk assessment and engineering detail. He advised that the Council usually signs off at the risk assessment stage (with input from a peer reviewer regarding the site investigations and risk assessment). A building surveyor is then responsible for signoff on the engineering detail during the construction process.

In response to a question from Ms Fanning (Objectors Inc), Mr Miner advised that he could not recall a planning permit for a project on such a large scale being granted subject to conditions to achieve compliance with the EMO.

Council submitted that if a permit is to be granted, too much is left to be resolved by conditions, including further geotechnical risk investigations.<sup>74</sup>

Council submitted that conditions relating to geotechnical matters should not be required to be undertaken 'to the satisfaction of the Responsible Authority', as it does not have the resources or capacity to provide appropriate supervision. It submitted that it has no statutory duty to manage geotechnical risk. Further, Colac Otway Shire is a rural council with a limited rates base and would require disproportionate resources to administer the completion of the geotechnical assessment if directed by permit conditions.

It submitted that the EMO1 does not provide for a specific role in oversight, for example, comparable to the role of an environmental auditor in the management of contaminated sites, or the role of a private building surveyor. It emphasised that its role in relation to the EMO1 concludes once the planning permit is issued.

## **5.5 Discussion**

From the outset, the Panel notes that Mr Hancock did not give expert evidence to the Panel (although parties were given an opportunity to ask him questions), so his submissions have been regarded by the Panel as those of an 'experienced gatekeeper' given his professional qualifications and experience.

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<sup>73</sup> Document 31, para, 10.2.

<sup>74</sup> Document 65, para 11.2.3.

### 5.5.1 Inadequacy of the Landslide Risk Assessment

The EMO requires that:

*applications for development are supported by adequate investigation and documentation of geotechnical and related structural matters.*<sup>75</sup>

The Panel has formed the view that the permit application does not comply with this objective. It acknowledges that the investigations undertaken by Golder Associates were undertaken to a competent and reasonable professional standard. However, the Panel accepts the advice from the conclave that the extent of investigation undertaken is of a preliminary nature only.

Without an adequate LRA, it is not possible to determine whether the proposed development is capable of satisfactorily addressing the following objectives of the EMO:

*To ensure that development is only carried out if identified geotechnical and related structural engineering risks to life and property are effectively addressed.*

*To ensure that development can be carried out in a manner which will not adversely increase the landslip risk to life or property affecting the subject land or adjoining or nearby land.*<sup>76</sup>

#### (i) Preliminary nature of the investigation

The Panel regards this as a fundamental deficiency of the permit application.

All geotechnical experts framed their conclusions about the preliminary LRA in the negative – that the work undertaken to date provides no indication that it would not be ‘feasible’ for ‘tolerable’ risk criteria to be met for the proposal.<sup>77</sup> This is not tantamount to the experts accepting that it is feasible for ‘tolerable’ risk criteria to be met at this stage.

Application requirements in the planning scheme require a ‘Landslide Risk Assessment’ under EMO1 to include:<sup>78</sup>

*A detailed assessment of subsurface conditions, including the underlying geology.*

The Panel has serious concerns about the inadequacy of data on subsurface conditions used in the assessment. AGS 2007 indicate that subsurface investigations for landslip risk assessment must include ‘determination of the depth to rock or to below the depth of potential failure surfaces if this is greater’.<sup>79</sup> This gives rise to uncertainty regarding the conceptual model underpinning the assessment, leading to further uncertainties throughout the entire LRA including the risk assessments.

The Panel also has concerns that in the absence of adequate subsurface investigations, the relative stability of even the areas that appear to be more stable cannot be confirmed, such

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<sup>75</sup> Clause 44.01 (Clauses 1.0 and 4.0 of Schedule).

<sup>76</sup> As above.

<sup>77</sup> Document 10, para 10.

<sup>78</sup> EMO1 Clauses 1.0 and 6.0.

<sup>79</sup> AGS 007, s 5.2.3.

that the possibility of sudden landslips in those areas where buildings and infrastructure are proposed cannot be ruled out based on the information currently available.

Ultimately, the Panel regards the absence of any subsurface testing to date as a key deficiency of this particular application given the specific conditions of the site and the potential consequences of further work.

**(ii) Uncertainty in relation to the conceptual model**

The Panel notes that there is controversy regarding the geomorphological evolution of the site, which has implications for understanding current processes. If the site was formed by past landslides, the principle of uniformitarianism indicates that further landsliding could be expected to continue unless there has been a change in controlling factors. However, if the site was formed by lacustrine deposition associated with a former lake or marine deposition associated with a former higher sea level, as suggested in the Golder Associates November 2017 report, it suggests a lower degree of susceptibility to landsliding, particularly if ancient topographic features such as former shorelines are well preserved. More extensive and detailed subsurface investigations would help clarify this issue.

**(iii) Limited scope in relation to the various elements of the proposal**

The Panel has serious concerns that the LRA does not provide full consideration of all relevant aspects of the proposed development. AGS 2007 requires that LRA should be applied to all forms of development on a site.

The LRA provides risk assessments for major buildings (or groups of buildings) and roads, but does not include assessments relating to dam safety, stormwater management, service infrastructure or vegetation removal or modification.

Vegetation removal or modification is a key issue in this case, and all geotechnical experts agree that vegetation plays an important role in land stability at the proposed development site. The objectives of the PPF in relation to erosion and landslip include:

*promote vegetation retention, planting and rehabilitation in areas prone to erosion and land instability*<sup>80</sup>

Under the EMO a permit is required to 'remove, destroy or lop any vegetation'.<sup>81</sup> The decision guidelines for the EMO require the responsible authority to consider a range of matters as appropriate, including:

*Whether the proposed ... removal of vegetation can be carried out in a manner which will not increase to an unacceptable level the possibility of landslip affecting the site or adjoining or nearby land.*

*Whether the proposed removal of vegetation is required to facilitate a permitted use or development of the land, and if there is any practical alternative form of development which would result in less disturbance to the existing vegetation.*

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<sup>80</sup> Clause 13.04-2S.

<sup>81</sup> Clause 44.01-3.

*The impact of future vegetation removal for bushfire protection and whether any such vegetation removal would result in an increase to the risk to property and/or the risk to life as measured against the tolerable risk criteria defined in the AGS Guidelines 2007.<sup>82</sup>*

The Panel notes that other aspects of the proposed development, including stormwater management and provision of service infrastructure, have potential implications for landslide risk, and therefore also need to be addressed to satisfy the requirements of the EMO.

Dam safety is another important issue. Existing and proposed new dams are intended to be used as focal points for the Water Villas, and the designs of these villas will be reliant on these waterbodies. The hotel and some villas are proposed to be situated very close to waterways downstream of dams and access crossings are also proposed on these waterways. These structures are potentially exposed to risks associated with dam break flooding if the dams should fail. The amended application material does not address dam safety or potential dam break flooding.

#### **(iv) Management of landslide risk across the whole site**

Objectors raised questions regarding the management of the 'high' and 'very high' landslip risk areas, other than in the immediate vicinity of the development.

AGS 2007 requires landslide risk assessments to deal with the full site (not just the part of a site that is being developed) and indicate that this is a primary duty of care.<sup>83</sup>

The proposed approach to landslide risk in the LRA is to avoid areas of 'very high' risk and to mitigate risk in other areas. It is not proposed to stabilise the entire site to eliminate any risk of landsliding.

The Panel finds that the risk of landsliding anywhere within the property must be addressed as part of the LRA and EMP, especially since processes in the high risk parts of the site (where no construction is proposed but on site occupants may choose to access) may be more rapid.

#### **(v) Societal risk**

Concerns were expressed by Council and other submitters in regard to the assessment of societal risk. AGS 2007 indicated that in situations where there is potential for a large number of lives to be lost in a single event, societal risk should be estimated based on the frequency and number of lives lost for each landslide hazard, and the total annual risk should also be estimated.<sup>84</sup> The Golder Associates reports do not present these calculations and do not provide a clear statement of the societal risk associated with the amended development proposal.

#### **(vi) Defining 'tolerable' risk**

The planning scheme does not clearly articulate thresholds or criteria for establishing 'tolerable' risk, instead referencing AGS 2007 which provide guidance in regard to setting

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<sup>82</sup> Clause 44.01 (Clauses 1.0 and 9.0 of Schedule).

<sup>83</sup> AGS 2007 s 11.2.

<sup>84</sup> AGS 2007 s 7.4(b).

‘tolerable’ risk thresholds but do not prescribe specific risk levels. The expert witnesses did not dispute the ‘tolerable’ risk thresholds applied by Golder Associates in the LRA. Objectors submitted that the risk tolerance applied in the assessment of the proposed development is less stringent than lay people including resort visitors might expect. Golder Associates noted that some other councils have more stringent requirements.

AGS 2007 indicate that ‘tolerable’ risk levels are likely to vary depending on a building ‘Importance Level’. Mr Miner advised that the ‘tolerable’ risk level adopted in this instance was based on an Importance Level of 3, which includes buildings and facilities where more than 300 people can congregate in one area. However, given the proposed use of the main hotel building for Shelter-in-Place during bushfires and as a flood refuge, an Importance Level of 4 (designated emergency shelters) should be applied. This suggests that more stringent thresholds for ‘tolerable’ risk may be appropriate.

#### **(vii) Establishing ‘tolerable’ risk**

Having regard to the objectives of the EMO, a decision maker needs to consider the criteria in Clause 9.0 as an effective ‘bottom line’, *“whether the risk to property and the risk to life measured against the tolerable risk as defined in the AGS Guidelines 2007 is acceptable”*.

Significantly, at this point in time, the Panel cannot be satisfied of this in respect of the current proposal. This does not represent a best practice approach to environmental risk and management as sought by Clause 13 of the planning scheme.

It is also relevant to consider the potential consequences of approving the proposal in light of the current state of knowledge about site conditions. The expert conclave recorded an agreed outcome that:

*16. Although considered unlikely, it is possible that further investigation and risk assessment work could identify hazards that have not been identified based on the work undertaken to date. Depending on the type of hazard identified, there may be a requirement to modify the proposed design or to incorporate landslide risk mitigation measure[s] that were not anticipated based on the preliminary landslide risk assessment work undertaken to date.*

...

*21. It must be noted that there is some risk to the developer that the risk mitigation measures recommended on the basis of further site investigation and risk assessment will incur unexpected costs or a requirement to modify the layout, location and design of structures.<sup>85</sup>*

#### **(viii) Timing of further investigations**

The report from the conclave indicated that the experts did not profess to be qualified to advise as to whether this further investigative and design work was required before or after the grant of a planning permit.

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<sup>85</sup> Document 10, paras 16 and 21.

The Panel regards this as a key issue for it to resolve in this proceeding since it concerns the potential grant of a planning permit.

### **5.5.2 Directions in policy**

An analysis needs to begin with the provisions of the updated planning policy framework at Clause 13, which addresses Environmental risks and amenity. It provides:

*Planning should strengthen the resilience and safety of communities by adopting a best practice environmental management and risk management approach.*

*Planning should aim to avoid or minimise natural and human-made environmental hazards, environmental degradation and amenity conflicts.*

*Planning should identify and manage the potential for the environment and environmental changes to impact on the economic, environmental or social wellbeing of society.*

*Planning should ensure development and risk mitigation does not detrimentally interfere with important natural processes.*

In principle, the Panel considers that there is a need for certainty when assessing a planning permit application for a sizeable proposal on sensitive land such as this. It is vital for the Panel to have an understanding of all works proposed as part of this application, and to be confident that the siting of all structures identified in the plans will be achievable.

Any changes to proposed structures have the potential to cause unforeseen and potentially unacceptable visual, environmental, safety or amenity impacts. This may also have social impacts on the broader Apollo Bay community for reasons identified elsewhere in this report, being a factor recognised expressly in clause 13 of the planning scheme.

### **5.5.3 Operation of the EMO**

The EMO is targeted to ensure that areas prone to erosion, landslip or other land degradation processes are protected by minimising land disturbance and inappropriate development.

In the Panel's opinion, the provisions of the overlay read as a whole require a permit application to include a fulsome evaluation of site conditions as the basis for a development proposal. This is a legitimate requirement before a decision maker could be satisfied that the objectives of the overlay and policy would be met when determining whether to grant a planning permit. It is also consistent with the requirement in AGS 2007 for a LRA to cover a whole site, not just part.

The EMO requires an application to meet the application requirements in Clause 44.01-6 as well as any information requirements of the Schedule. The decision guidelines in Clause 44.01-8 call for consideration of matters specified in the Schedule.

The essence of the Schedule is that proposed development needs to meet 'tolerable' risk criteria. The Panel observes that this is a lower standard less than 'acceptable risk'.

It is clear from the evidence and the professional assessment of the Panel that this proposal cannot be demonstrated to meet the 'acceptable' risk criteria. This arises principally because

significant management works and monitoring will be required to achieve a suitable level of risk for this proposal on the land. AGS 2007 which indicates that 'tolerable' risk criteria are widely applied because of the trade-off between the risks, the benefits of development and the cost of risk mitigation.

The question is whether and when 'tolerable' risk can be demonstrated for this proposal. The Panel considers that the requirement to ensure that development applications are supported by adequate investigation and documentation comes first in time. This is confirmed by the detailed application requirements in clause 6.0, which include a completed Geotechnical Declaration and Verification Form. Although Dr Colls confirmed that 'tolerable' risk criteria could be met for this application, the experts at the conclave agreed that:

10. *The work undertaken to date is not sufficient at this stage to demonstrate that tolerable risk criteria as defined in the schedule to the [Colac Otway Shire] EMO can be met and therefore does not yet meet the requirements of the [Colac Otway Shire] EMO.*

...

13. *The schedule does not describe the timing or staging of the risk assessment process, including at what stage of the planning process an applicant is required to demonstrate the development can meet tolerable risk criteria.<sup>86</sup>*

In this regard, it is important to consider the objectives of EMO1 at Clause 4.0 of the Schedule:

- *To manage the risk of landslide.*
- *To ensure that development can be carried out in a manner which will not adversely increase the landslide risk to life or property affecting the subject land or adjoining or nearby land.*
- *To ensure that development is not carried out unless the risk associated with the development is a Tolerable Risk or lower.*
- *To ensure that applications for development are supported by adequate investigation and documentation of geotechnical and related structural matters.*
- *To ensure that development is only carried out if identified geotechnical and related structural engineering risks to life and property are effectively addressed.*

The Panel finds that the application requirements of Clause 6.0 of the Schedule have not been met by this proposal, notwithstanding directions from the Panel seeking this information from the Applicant.

Most significantly, a mandatory application requirement for both a Geotechnical Assessment and LRA is:

*a detailed assessment of subsurface conditions, including the underlying geology.*

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<sup>86</sup> Document 10.

The application requirements in the Schedule also contemplate a statement indicating:

*whether site investigation requires subsurface investigation or may involve boreholes and/or test pit excavations or other methods necessary to adequately assess the geotechnical/geological model for the subject lot and details of all such investigations, boreholes, test pits or other methods.*

While educated assumptions have been made about the underlying geology, it cannot be suggested that there has been a detailed assessment of subsurface conditions in this case leading to a sound understanding or verification of the predicted geotechnical or geological model for the land. This application requirement remains unmet, even at the conclusion of the Panel hearing. For example, it is conceivable that the boundaries of areas of identified landslip risk may warrant adjustment.

In the Panel's opinion, there is substantial variability in terms of the expectations of bedrock and groundwater levels across this site and subsurface investigations are vital in this context to establish underlying ground conditions. The Panel accepts the submissions of Mr Hancock based on his professional experience in the region (which was not contested), that unconsolidated deposits may extend to considerable depth (over 25 metres reported at the adjacent site).

The EMO requires an LRA to include a *"full assessment of the risk posed by all reasonably identified geotechnical hazards which have the potential to either individually or cumulatively impact upon people or property on the subject lot or related land, in accordance with the AGS Guidelines 2007"*. In the Panel's view, upfront reference to a 'full assessment' suggests that more than a preliminary assessment is required at the stage a permit application is evaluated to enable a decision maker to apply the decision guidelines at clause 9.0 of the Schedule.

#### **5.5.4 Options for further work**

It is generally relevant to consider the nature of the investigation that would have been required to establish underlying ground conditions.

Mr Paul indicated that each individual borehole would provide improved data for an analysis of subsurface conditions. While it may be possible to undertake test boreholes under the hotel site for example to provide an indication of the depth of groundwater and bedrock, the Panel considers that there is no certainty that this would be representative of conditions elsewhere on the site. It follows that a full subsurface investigation would be needed.

The evidence of Mr Paul was that an appropriate program of subsurface testing would cost in the order of \$150,000-\$200,000. There was no credible explanation provided to the Panel as to why this work was not undertaken, despite its earlier directions.

Issues of scale were discussed by experts as a potential justification for not undertaking subsurface testing in conjunction with the planning permit application, citing the option for a staged investigative process for larger projects. AGS 2007 discuss staged investigations, but make a point of stressing that an adequate assessment of existing conditions and processes is essential before proceeding to the risk assessments.

In the Panel's view, it is not an answer in this case that the proposal is large, therefore the subsurface investigative work could be undertaken after the grant of a permit. Proportionality



of investigation and verification is an important aspect of all permit applications, and the level of further investigation outlined to the Panel would be proportionate to the scale of the proposal and its potential for impact.

### **5.5.5 How to deal with the uncertainty**

The Panel is unable to conclude at this time that the site is ‘inherently geologically unsuitable’ for the proposal as submitted by Mr Hancock. This is yet to be confirmed one way or another. There is some risk to the developer that the risk mitigation measures recommended on the basis of further site investigation and risk assessment will incur unexpected costs or may result in a need to modify the layout, location and design of structures.

While it may be thought that the risk is principally carried by the permit holder if permission is granted but if the project becomes uneconomic because of geotechnical conditions or needs to be substantially changed, there is also a consequential risk to the community that its substantial participation in the public process will have been ‘wasted’.

Plans to be endorsed under condition 1 of any permit to be issued would document the basis of the planning approval. If fundamental investigations are to be undertaken under the auspices of an issued permit (once granted) yet there is genuine potential for varied or additional buildings and works as a direct consequence, this detracts from the certainty necessary to ensure that the proposal in its entirety is acceptable.

In cross examination by parties and in response to questions from the Panel, it became apparent that the experts were individually or collectively unable to predict the extent of potential changes that may be required to the proposal. This is a reasonable reflection of the fact that subsurface conditions are largely unknown at the present time.

## **5.6 Conclusions**

The Panel concludes:

- The proposal is insufficiently resolved in terms of the documented design response to landslip risk. The Panel is not satisfied that the EMO1 requirements have been met for this proposal.

## **6 Hazards and emergency management**

### **6.1 Bushfire risk and management**

#### **6.1.1 The issue**

Has bushfire risk been managed suitably in the permit application?

#### **6.1.2 Submissions and evidence**

The entirety of the subject site and surrounding land are subject to a Bushfire Management Overlay (BMO). Therefore, Clause 53.02-4 Bushfire planning applies to the amended application. The amended application material includes a Bushfire Management Statement prepared by South Coast Bushfire Consultants (BMS).

The Country Fire Authority (CFA) is the determining referral authority for applications for land within the BMO. Its referral response dated 13 August 2018 indicated that it did not object to the grant of a planning permit for the proposed development subject to compliance with mandatory conditions specified in the planning scheme and specific conditions to meet site-based exposure benchmarks. These focused principally on ensuring water supply and access, construction specifications for buildings and management of vegetation for defendable space. Resultant changes to the proposed BMS and Emergency Management Plan which accompanied the amended permit application would be required.

The Applicant regarded the CFA's proposed permit conditions as acceptable and achievable.

#### **(i) Bushfire Risk**

The BMS indicated that the site is in a bushfire-prone landscape. It indicated that all structures on site aside from the hotel building would be constructed to a minimum BAL 12.5 in accordance with Australian Standard AS 3959-2009. The hotel would be constructed to BAL 29.

The CFA presented a detailed submission to the Panel, in which it explained the bushfire hazard at regional, municipal, neighbourhood and local levels. The Great Ocean Road region, from Torquay to Princetown, is generally a high to extreme bushfire risk environment. It advised that the landscape bushfire hazard on the site is extensive due to many kilometres of forest to the west and south-west of the subject site, areas where a bushfire would most likely come from under Victoria's prevailing north-westerly and south-westerly bushfire weather conditions. However, it noted that the proposed development has significant separation from Great Otway National Park (approximately 1.3 km away) and this was a critical factor in the CFA's opinion on the proposal.

In this context, the cleared open areas in and around Apollo Bay are preferred locations for development. The CFA advised that a location for a development of this nature closer to the town boundary would only provide marginal risk benefits.

The CFA concluded that landscape risk could be mitigated to an acceptable level with site-based mitigation as required by proposed permit conditions.

Numerous objectors raised concerns about the siting of a major tourist resort in an area of high bushfire risk. They submitted that the development would put at risk the lives of hundreds of people who would otherwise not be there. Mr Fankhanel drew attention to the difficulty of managing people who have no bushfire experience (such as from overseas or major Australian cities) during a bushfire emergency.

**(ii) Access to Apollo Bay**

The BMS indicated that Barham River Road is an appropriate entry and exit route during times of fire risk as it does not require travel through unmanaged forest vegetation with high fuel loads.

Objectors expressed concerns that insufficient options for evacuation routes are provided.

The CFA confirmed that the site has good strategic access to Apollo Bay which is of lower fire risk. It considered that secondary access routes would be preferable but were not essential.

**(iii) Shelter-in-Place**

The BMS indicates that the hotel would be constructed and used to provide Shelter-in-Place in the event of a bushfire.

**(iv) Building design and landscaping**

The CFA was influenced by fact that the hotel complex would be constructed to BAL 29 for a Shelter-in-Place option, offering a degree of ember and radiant heat protection. It suggested that the Shelter-in-Place option may conceivably provide increased protection for other local residents who could come to the site for refuge during a fire event.

Objectors expressed concern that building design and materials would not mitigate bushfire risk sufficiently. The CFA indicated that the building design and firefighting system would need to be resolved through permit conditions. These would include a requirement to provide adequate on site water supply (probably tanked) to support the Shelter-in-Place option (estimated at approximately 4 hours supply).

The CFA assumed that there would be an area of BAL:LOW<sup>87</sup> in and around the main hotel building, which would require a setback of more than 100 metres from 'classifiable vegetation'<sup>88</sup>. However, the amended application material (including BMP and landscape plans) does not show the extent of the area of BAL:LOW or provide any information in relation to its landscaping or management.

**(v) Access to the hotel**

The CFA raised concerns regarding the movement of people on site since time is a significant factor. It indicated that people should not be walking in the open air during a fire, such as from a villa to the hotel. It reinforced that it is important to relocate people early, or to provide an alternative place of shelter if people are trapped.

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<sup>87</sup> Defined as the lowest of six bushfire attack levels (very low risk) based on Australian Standard AS 3959 (Construction of buildings in bushfire-prone areas).

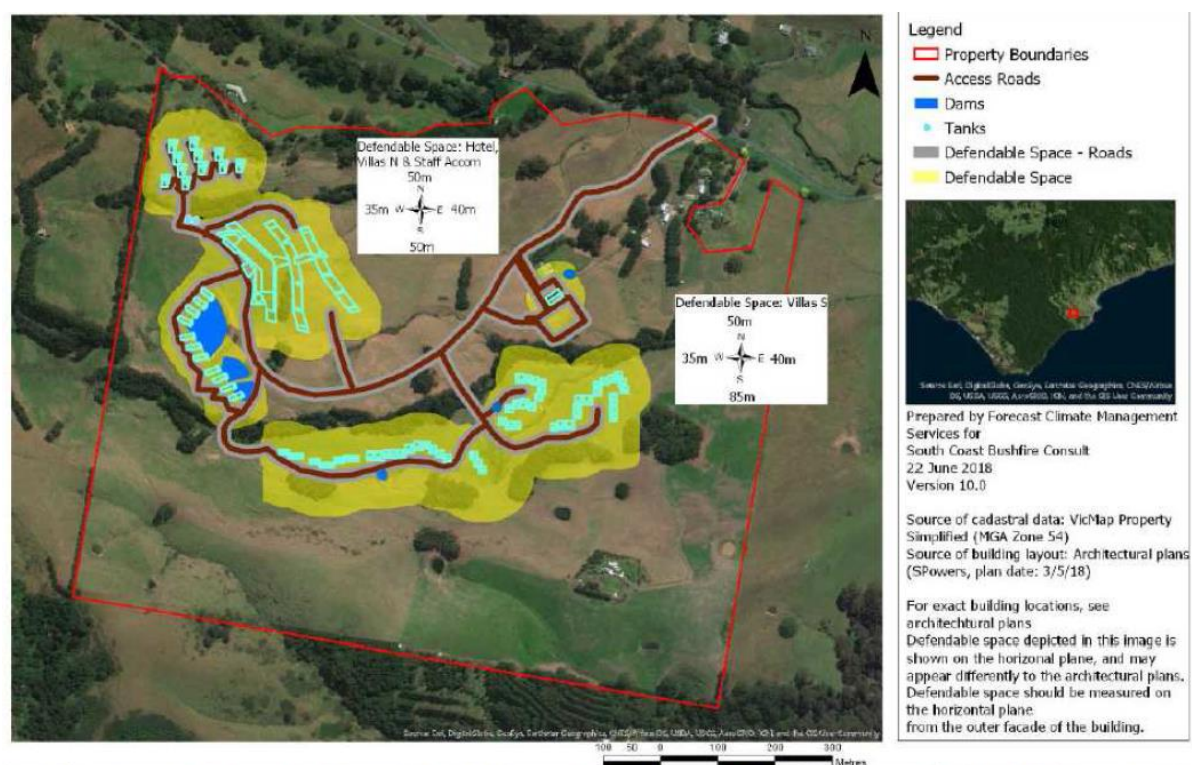
<sup>88</sup> Defined as an area of vegetation that may contribute to fire behaviour.

This issue was also raised by objectors, some of whom expressed serious misgivings regarding the transportation of resort guests from the resort villas to the hotel during a bushfire emergency, given the reliance on buggies and walking across land with challenging topography.

The Applicant was asked by the Panel to explain how it would gather people from across the site and bring them to the main hotel building for the Shelter-in-Place option within an appropriate timeframe. The Applicant was unable to answer this question.

#### (vi) Defendable space

Defendable space requirements determined in the BMP based on proposed BAL levels are shown in Figure 9 and would be managed in accordance with the requirements of the BMP. The vegetation management requirements for defendable space are set out in Clause 53.02-5.



\*The Bushfire Management Plan shows an indicative area for defendable space, due to the large scale of this map it is recommended that defendable distances be scaled from individual buildings on architectural plans.

**Figure 9 Defendable space requirements defined in the BMP (June 2018)**

The CFA submitted that permit conditions should include a requirement for amended landscape plans to be submitted that show arrangements to manage bushfire risk to an acceptable level. It noted that the Applicant proposes to manage vegetation in accordance with bushfire safety requirements in areas defined as defendable space on the BMP. However, the CFA submitted that it requires the *entire site* to meet the requirements for defendable space as set out in Table 6 of Clause 53.02. It indicated that the Applicant could seek to tailor these requirements for areas of vegetation not in proximity to a building or access routes so long as relevant objectives were achieved.

The CFA expressed a preference for the setback of the northern Ridge villas to be increased to 50 metres from the property boundary to ensure that defensible space requirements could be met entirely within the site. It submitted that vegetated riparian zones provide 'ladder fuels' for bushfires and indicated that, from a fire safety viewpoint, these areas need to be broken up so that they do not act like a wick to spread fire.

The CFA submitted that the vegetated riparian corridors on the site were on the borderline of being classifiable vegetation. It also indicated that it was important to implement measures to prevent fire from spreading to the crowns of these trees, including management of understory vegetation and likely removal of mid-storey vegetation. At the same time, the CFA noted that biodiversity implications of the proposal are 'beyond its remit'.

Council emphasised that there is too much reliance on permit conditions to resolve outstanding matters, including defensible space and vegetation.

Ms Whelan raised the question of who would be responsible for monitoring compliance with defensible space requirements. She also raised concerns about fire risks arising from mowing, referring to the Deans Marsh fire on Ash Wednesday.

The Applicant noted the CFA's requirement for a detailed landscape design and bushfire management plan for the whole site. It emphasised the CFA's reference to a 'tailored approach' to landscape design and defensible space, submitting that:

*... defensible space objectives, including the related landscape design requirements are not necessarily applied as a rigid formula. In plain terms, there is more than one way to skin a cat, and the larger the available defensible space, as is the case here, the more options there are available in sensitively designing a landscape proposal that meets bushfire management objectives. ...*

*... examples of possible fire management options in relation to the linear creek lines ... included creating breaks along the length of the creek so that the fire does not have time to run along its length; managing the understorey / available ladder fuel to reduce fire in the crown of the trees; consider separation distance to the villas; potentially increasing the villas BAL level of construction; and more generally designing and managing the whole of the site to reduce fire risk.<sup>89</sup>*

The Applicant advised that it would agree to permit conditions specifying that only one or two fire breaks would be created through riparian vegetation (depending on the waterway) to ensure that native vegetation would be substantially maintained. It did not support or oppose the suggestion by the CFA that the setback of the northern Ridge villas be increased.

#### **(vii) Access arrangements**

The CFA submitted that access arrangements within the site would need careful planning and may require variations from the amended application plans. Key requirements include appropriate access for firefighting appliances and multiple egress routes for each building and accommodation element.

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<sup>89</sup> Document 31, para 80-81.

The amended application plans show that some of the accommodation, such as the Ridge villas, was not proposed to have vehicular access and would only be accessible on foot or by buggy. The CFA clarified that it would need access to these areas for firefighting appliances and indicated that this should be a permit requirement.

The Applicant indicated that this could be provided on plans to be endorsed under a permit and that it was aware of the need to comply with maximum gradient limits as specified by the CFA.

#### **(viii) Impact on Local CFA resources**

Objectors including Ms Wilmink raised the concern that the CFA within the region does not have capacity to protect the proposed resort and guests in an emergency bushfire event or that this would detract from its other key responsibilities in the region.

Mr Haley confirmed that the local CFA consists of a volunteer brigade with limited capability and resources. Support is often a long distance away and it would take a minimum of about 2 hours to bring additional resources to the area, hence the detailed conditions proposed. The CFA's greatest concern in this regard was in the case of a structural (building) fire, compared with a bushfire event.

### **6.1.3 Discussion**

#### **(i) Prioritization of human life**

It is clear from Clauses 13.02 and 71.02-3 which were recently introduced into the planning scheme that state-wide planning policy requires a decision maker to prioritize the protection of human life above all other policy considerations.

This is vital to the Panel's assessment of the proposal and is influenced heavily by the assessment of bushfire risk undertaken by the CFA. Notwithstanding the persisting high level of broader landscape fire risk, subject to one important proviso, the Panel accepts that the proposal is suitably sited and could mitigate bushfire risk to an acceptable level if supplemented by the detailed conditions required by the CFA.

#### **(ii) Unresolved project design issues**

The challenge for this proposal is that there are still numerous key elements of the required bushfire response that have not been addressed adequately by the amended permit application.

Although the CFA considers that there may be numerous ways to meet defendable space requirements on site other than full removal of vegetation within creek lines close to proposed buildings, the application lacks detail about how this will be achieved and what the consequential environmental, geotechnical and visual impacts will be. The Applicant's response to the CFA's submission discusses 'options' and 'opportunities' rather than providing clear information about the proposal that would enable it to be properly assessed.

Clause 13.02-1S requires the assessment of a planning permit application to:

*Ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts.*

Similarly, the CFA indicated that if the implications of managing the entire site to meet the objectives for defensible space were deemed to be unacceptable for other reasons, the proposal should not proceed rather than compromising bushfire requirements.

There is also a prospect of additional buildings and works being required across the site, with potential for consequential visual impact. For example, the application documentation does not show the location of sizeable water tanks that will be required for the Shelter-in-Place option and has not documented the nature of elevated creek crossings or the extensive network of accessways that will need to be provided between built form elements to provide suitable access for fire appliances, such as to the Ridge villas.

Likewise, on a site with complex topography, there is no documentation to date to indicate that the maximum accessway gradients required for bushfire management can be achieved consistently across the site. Only a typical section is shown in the further drawings<sup>90</sup> and it is unclear which portions of the site this could be achieved for.

### **(iii) Assembly procedures**

The Panel also identified another fundamental concern toward the end of the Hearing that remains unresolved namely, how site occupants would be gathered to the Shelter-in-Place option and how long this would take. The amended application material does not address this issue beyond the commentary at pages 13 and 14 of the EMP which suggests that assembly procedures would need to be designed.

The EMP indicates a projected 662 total on site guests, with additional staff and visitors expected (totaling over 800 people). The site size, topography and disparate layout of the many Creek, Pasture and Ridge villas would make it extremely challenging to gather site occupants quickly within the hotel building in an emergency situation. This challenge is compounded by the fact that it is not feasible for most site occupants to walk between these parts of the site and the hotel building, and many guests are expected to arrive by bus rather than independent vehicles. Whilst a buggy or valet service is proposed for day to day use across the resort land, there are obvious limitations on its capacity and timing in an emergency event.

Notwithstanding the in-principle support of the CFA subject to conditions, the Panel could not support the grant of a permit until a detailed villa evacuation plan (or similar) was prepared as part of the EMP and demonstrated to be suitably timely and effective to protect human life in an impending extreme fire event.

The Panel accepts the paramount importance of measures to protect human life. It considers that it is premature to grant a permit until the issues relating to bushfire management have been adequately addressed.

The amended application raises but does not suitably resolve the question as to whether the works required to provide a suitable bushfire response will have an acceptable impact on the site responsive development of the land overall, recognising the multitude of sensitivities identified elsewhere in this Report. At this stage, the Panel cannot be satisfied that the

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<sup>90</sup> Part of Document 12.

proposed development can implement bushfire protection measures without unacceptable impacts on land stability or biodiversity and without unreasonable visual impact.

Consistent with the policy direction to prioritise human life over all other considerations, if the implications of managing the site in accordance with bushfire management requirements are deemed to be unacceptable considering other factors, the proposal should not proceed rather than compromising bushfire requirements.

Notably, the Panel could not support the grant of a permit until these issues are better resolved, including preparation of detailed villa evacuation plan as part of the EMP that can be demonstrated to be suitably timely and effective to protect human life in an impending extreme fire event.

#### **6.1.4 Conclusions**

The Panel accepts the advice of the CFA that the proposal could potentially respond suitably to policy and bushfire provisions if detailed conditions were addressed. However, before a permit could be granted, the Applicant would need to demonstrate that all site occupants could be suitably gathered to the Shelter-in-Place option in a timely way. There is no certainty that an acceptable outcome could be achieved for this site.

### **6.2 Flood risk and management**

#### **6.2.1 The issue**

Has the proposal responded appropriately to flood risk pertaining to the Barham River and impacts on Barham River Road?

#### **6.2.2 Submissions and evidence**

The Land Subject to Inundation Overlay (LSIO) applies to the north-eastern corner of the site and Barham River Road between the proposed development and Apollo Bay. This includes the existing and only proposed access to and from the site.

Council's grounds for not supporting the amended application included:

*The access to the site along Barham River Road is affected by flooding of the Barham River from time to time, and it has not been adequately demonstrated how this will impact on accessibility to the site by patrons and staff.*

*The opportunity for emergency evacuation is limited.*

Objectors raised similar concerns which are summarised below.

The Applicant relied on the EMP in relation to flood risk and management.

The Corangamite Catchment Management Authority (CCMA) is a recommending referral authority. Its August 2017 letter to Council indicated that it was unable to adequately assess the proposal because insufficient information had been provided. It formally requested further information from the Applicant, including a flood impact investigation that addresses flood flow, flood storage, freeboard, site safety and access safety as a minimum.

The Panel issued Directions on 28 March 2018 (Direction 1k) requiring the Applicant to provide:



*An Emergency Management Plan that among other issues, addresses risk of access to and egress from the subject site in circumstance of both flood and fire, and that includes a response to the concerns of the Corangamite Catchment Management Authority regarding flood impact*

*... of sufficient detail to enable a proper assessment of the amended proposal, commensurate with the scale of the proposed use and development.*

The Applicant responded by submitting the EMP but this document did not include or reference any flood investigation other than the information provided by CCMA. CCMA advised that the EMP did not satisfactorily address its concerns.

## **(i) Barham River flooding**

### **CCMA submission**

CCMA advised that it does not support the application because it does not provide safe access to the proposed resort in times of flooding. The Panel requested CCMA to attend the Hearing to advise the Panel of information known to it, modelling undertaken by it and how it assessed the permit application. This was in the context of correspondence between the Panel and CCMA which was shared with the Applicant to further document the nature of further investigations it would have required.<sup>91</sup>

CCMA submitted that the Applicant should have undertaken flood modelling to demonstrate safe access to the development from Apollo Bay via Barham River Road, as well as any alternative access route proposed. These requirements were re-stated several times.<sup>92</sup> CCMA considered that the modelling was necessary because:

*Any development cannot be supported in circumstances where the depth and flow of floodwater affecting access to the property is hazardous.*

*This requirement is designed to ensure that people attempting to enter or leave a property during a flood event are not endangered by deep or fast-flowing water.*

*It applies to the normal driveways, road and footpaths that link a property to the nearest effective refuge area, and is required to safeguard emergency response personnel and other third parties as well as property occupants or visitors.<sup>93</sup>*

The Applicant did not provide any flood modelling. It only submitted an EMP that referred to anecdotal information from the current landholder and advice provided to the Applicant by CCMA in March 2017.

In the absence of any flood modelling undertaken by the Applicant, CCMA undertook a preliminary flood assessment of the Barham River floodplain using a one-dimensional HEC-

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<sup>91</sup> Pre-Hearing Document 23.

<sup>92</sup> CCMA letters August 2017, March 2018, August 2018; CCMA Submission October 2018 (Document 64).

<sup>93</sup> CCMA letter August 2017.

RAS hydraulic model.<sup>94</sup> The model was based on the extension of an earlier model,<sup>95</sup> and covers the Barham River Valley between the junction of the east and west branches and Conns Lane. CCMA indicated that a 2-dimensional “cells” model would be more appropriate in this situation, but such investigation would normally be undertaken by an Applicant, not it.

CCMA’s flood modelling shows that in a 1% Annual Exceedance Probability (AEP) flood, Barham River Road is affected by floodwaters for a distance of approximately 3 km. Two road sections between the property and Conns Lane, comprising a total distance of 578 metres, are subject to flood depths greater than 0.3 metres. Flow velocities in the flooded sections average 0.9 metres/sec. Flood hazard (a parameter based on average velocity and depth) exceeds the recommended maximum value for safe access (established by the Australian Rainfall and Runoff Project 10 – Safety Criteria) by a factor of 3.<sup>96</sup>

CCMA also provided an outline of the flood history of the Barham River based on recorded and modelled flows, which showed that there have been six floods in the last 43 years that would have closed the Barham River Road between the proposed development and Conns Lane.

CCMA concluded that Barham River Road between Conns Lane and the property is likely to be impassable for all flood events with an AEP of 10% or less, and may be impassable for up to 24 hours. At the Hearing, it clarified that the length of time when the Barham River Road is impassable due to flooding would vary based on the duration of peak flow (which varies for every event) which is typically 12 to 18 hours. In addition, extra time needs to be allowed for State Emergency Services to clear flood debris.

### **Other submissions**

Numerous local residents expressed concerns about the safety risks associated with flooding of Barham River Road. Their submissions included photographs, videos and descriptions of historical flood events. Observations of flooding made by local residents were generally consistent with the CCMA’s flood modelling, but indicated a greater number of flood events when Barham River Road was closed to traffic.

Mr Lawson submitted that he had undertaken a review of the flood history of the Barham River, which showed that Barham River Road had been closed due to flooding 12 times in 48 years, indicating an average recurrence interval of four years. This is much more frequent than the 10 year average recurrence interval indicated by CCMA’s analysis, although Mr Lawson noted it was possible for four-wheel drive vehicles to get through in some of the smaller floods. He also noted that larger floods can last several days – for example the June 1952 and October 1976 floods.

Ms Wilmink made submissions regarding the potential impact of log jams on flood behaviour. She drew attention to the extensive occurrence of large woody material in the Barham River and indicated that log jams can block the flow of water, which is then suddenly released when sufficient force builds up to cause the log jam to fail. In response to questions at the Hearing, CCMA indicated that they were aware that a lot of timber comes down the Barham River

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<sup>94</sup> CCMA letters March 2018, August 2018, Document 64.

<sup>95</sup> CCMA (2007) Barham River Flood Study. Report No. FPM-2007-1, 5 April 2007.

<sup>96</sup> Document 64.

during floods. Build-up and failure of log jams would tend to steepen the flood hydrographs but is not simulated by conventional flood models.

## **(ii) Alternative access and egress**

CCMA considered that the use of Barham River Road as the sole access to the proposed development is not consistent with the “standard requirement for such a large tourist development attracting many visitors (national and international) staying on the property to have a flood free access to and from the property”.<sup>97</sup>

No formal alternative access proposal has been offered or secured as part of the amended application. The Applicant offered to assist Council in establishing an emergency track connection to the Great Ocean Road via Old Horden Vale Road.

The EMP acknowledged that Barham River Road was subject to flooding, and submitted two options for alternative safe access and egress from the site in a 1% AEP flood:

- a potential new access road between the resort site and Apollo Bay Airfield – this route involves travelling along the Barham River Road to Conns Lane, then south along Conns Lane and east along the edge of the Apollo Bay Airfield
- an upgrade of the Old Horden Vale Road, exiting to the Great Ocean Road to the west (to which the Applicant proposed to contribute as suggested in permit conditions).

The Applicant did not present any information or evidence addressing potential flood risks along either potential alternative access route.

CCMA advised that the alternative egress routes proposed in the EMP were unrealistic or unviable. In particular, it noted that:

- the Barham River Road between the proposed development and Conns Lane is subject to significant flooding from the Barham River and is considered high risk
- the route along the Old Horden Vale Road is affected by flooding from the Barham River West Branch and would be difficult to construct.

CCMA indicated that further work by the Applicant including detailed flood modelling would be required to show that an alternative safe evacuation route from the proposed resort is viable. It suggested that the Applicant could potentially consider a possible egress route from the south-east corner of the site to the Airfield or Ocean Park Drive via Telfords Access to Conns Lane.

Council submitted that there are many areas of uncertainty about this route, including land tenure (including possible leases applying to reserves), dense native vegetation and topography. Mr Pector suggested that an egress route along the Old Horden Vale Road would be susceptible to blockage by tree falls.

In addition, the geotechnical reports by Golder Associates indicate that the Old Horden Vale Road passes through an area of high landslide risk.<sup>98</sup> Specific hazards include rockfalls associated with the detachment of boulders from the road cutting and potential undermining

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<sup>97</sup> Document 64, para 10.

<sup>98</sup> Golder Associates Report, November 2017.

of the old access road by a rotational landslide potentially triggered by flooding of the Barham River West Branch.

In any case, the Applicant did not propose this option as part of the amended application.

Ultimately, CCMA did not support the grant of a permit until ongoing alternative emergency access was secured (if possible) and confirmed to be safe before any works commence or permits are issued. Otherwise, it emphasised that the risk of making this a permit condition is that it may not be achievable in respect of a threshold safety issue.

### **(iii) Other flood risk management measures**

#### **Flood warning**

The Applicant submitted that it proposed to use flood warnings as a basis of its flood response, to be detailed in the EMP. In the event of flooding, guests would stay at the resort or, it suggested, would be given the option of leaving before a flood if sufficient warning was available.

CCMA indicated that the Bureau of Meteorology is the agency that operates flood warning systems in Victoria but does not provide this service in the Barham River Valley. Fundamentally, it submitted that flood warning systems are more appropriate for dealing with 'legacy issues' concerning existing development, rather than new development where it is possible to avoid the flood risk from the outset. It further submitted that establishment of a flood warning system to address flood risks relating to a new development was inconsistent with current floodplain management principles.

The Panel heard submissions from local residents and the CCMA that a flood warning system for the Barham River would be problematic due to the rapid response of the river to rainfall. For example, CCMA noted that the May 1983 flood rose to a level where the road was impassable within three hours. It submitted that such rapid rise provides insufficient time to mount a meaningful response.

#### **Flood refuge**

The Panel notes submissions made by the Applicant indicating that the resort is an appropriate 'flood refuge' and would be well equipped to accommodate visitors who need to stay longer than planned due to access being cut off for a day or two by flooding of the Barham River - the delay being a 'mere inconvenience' - and that evacuation or supply of a medical team could be provided by helicopter in a medical emergency.

CCMA submitted on-site refuge during flooding is a very different matter to onsite refuge during bushfire. On-site refuge for flooding may be an appropriate last resort option for an existing establishment but is not, in its opinion, an appropriate measure for a new development, especially where it involves large numbers of visitors unfamiliar with flooding characteristics of the area.

#### **Amphibious vehicle**

The Applicant proposed that an amphibious vehicle 'Amphicoach' would be purchased by the resort operator and used for emergency access and egress during floods. However, it did not

provide any information about the capabilities of this vehicle in flood situations similar to what would be encountered on the Barham River floodplain.

Amphibious vehicles are not standard equipment for flood response in Victoria. CCMA did not offer any specific comments on the proposed use of this vehicle for emergency access/egress but noted that State Emergency Services generally discourage people from driving through floodwaters. Council also queried whether a special purpose vehicle of this type could be registered for passenger transport in Victoria even if it had potential to be of use.

### **Helicopter**

The Applicant submitted that a private helicopter would be used if an emergency evacuation were necessary during a flood. However, CCMA noted that the availability of a helicopter would be limited during a flood, as there is a lot of demand for aircraft at these times. For example, CCMA uses helicopters to monitor flooding. It submitted that the Applicant cannot rely on an aircraft being available.

In addition, residents pointed out that weather conditions during a flood event may be severe and may impact the safe use of helicopters.

### **Willow removal**

The Applicant submitted an offer to contribute \$200,000 toward the cost of removing willow blockages from the Barham River to reduce flooding (as well as provide environmental benefits). CCMA advised that, in its experience, willow removal would not be expected to significantly alter flood risk along the Barham River Road.

## **6.2.3 Discussion**

The objectives of Clause 13.03-1S include:

*To assist the protection of... Life, property and community infrastructure from flood hazard.*

*Avoid intensifying the impact of flooding through inappropriately located use and development.*

Relevantly, the LSIO requires the Responsible Authority to consider:

*The potential flood risk to life, health and safety associated with the development. Flood risk factors to consider include:*

- The frequency, duration, extent, depth and velocity of flooding of the site and accessway.*
- The flood warning time available.*
- The danger to the occupants of the development, other floodplain residents and emergency personnel if the site or accessway is flooded.*

The Victorian Floodplain Management Strategy sets out objectives for floodplain management in Victoria, including:

- *Reducing legacy issues to minimise exposure to future flood risk and consequences*

- *Not making things worse.*<sup>99</sup>

Barham River Road is the only proposed access and egress route from the resort. It is subject to regular inundation by floodwaters from the Barham River and has approximately a 10% probability of being impassable due to flooding in any given year (translated from the AEP). The Panel accepts CCMA's assessment that flood hazard exceeds the recommended maximum value for safe access by a factor of 3, and that the Applicant has not presented any evidence to demonstrate that flooding would not result in unacceptable risks to life, health and safety.

The Panel notes the list of risks identified in the EMP, but has concerns regarding these definitions of likelihood levels which it considers to be illogical in relation to the design life of the development. For example, if the design life is assumed to be 50 years, an event that occurs on average every ten years is not 'unlikely' rather, it is 'almost certain' – for example, closure of Barham River Road due to flooding.

The assigned probabilities are also inconsistent with probabilities of extreme events used in specialist assessments including flood risk and landslide risk. For example, CCMA requires flood risk assessments to be based on the 1% AEP flood (that is, the flood that will occur on average every hundred years), yet the most extreme category of 'rare' is defined as one that will occur on average every fifty years. Altering the definition of likelihood to include rare events may potential expand the range of potential risks covered, as more unusual but potentially catastrophic events are included.

There is no flood warning system on the Barham River to ensure adequate time to get people safely off the site in a flood event. There is one stream gauging station upstream, which is situated on the Barham River East Branch and operated by DELWP. CCMA indicated that it does not currently have telemetry and that the flows in the Barham River West Branch are ungauged. The Panel accepts submissions that flows in the Barham River can rise quickly and travel times for floodwaters may be so short that flood response is problematic.

Resort patrons and staff may not be able to travel to or leave the resort for one or two days or longer during flood events which, at minimum, would cause significant inconvenience and also has implications for access to medical facilities in case of an emergency. The Panel also has concerns that some visitors may attempt to use their private vehicles to exit the property during a flood event, a situation that can be highly dangerous.

Ultimately, the Applicant has not demonstrated that alternative access is available via a safe, viable and permanent route as part of this permit application. It has not provided sufficient information about its proposed use of an amphibious vehicle for flood egress to convince the Panel that this is a credible option. The Panel notes that the proposed use of an amphibious vehicle appears to be contrary to advice from emergency services authorities not to drive through floodwaters.

The Panel finds that it is inappropriate for new development to be permitted in situations where the depth or flow of floodwater affecting the only access to a property makes conditions hazardous. It concurs with CCMA's submission that the proposed development

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<sup>99</sup> Victorian Floodplain Management Strategy 2016, p.17.

should not be permitted unless safe alternative access and egress can be demonstrated and secured on an ongoing basis.

A permit should not be granted unless alternative safe access can be demonstrated and maintained on an ongoing basis. It would not be reasonable for this to be imposed as a permit condition without demonstrating that it is capable of being achieved without other undue impacts.

An alternative egress route would require many potentially conflicting matters to be considered including land tenure, flood risk, landslide risk and environmental considerations, including impacts on vegetation and biodiversity. Therefore, it is entirely unclear at this stage whether alternative flood free access can be made available to this site.

#### **6.2.4 Conclusions**

State and local planning policies discourage new development in areas affected by flooding unless suitable responses are provided. Safe alternative access and egress in times of flooding is a critical threshold issue for this proposal, yet this has not been addressed in the application with any level of certainty.

## 7 Environmental considerations

### 7.1 Impacts on native flora and fauna

#### 7.1.1 The issue

Will the proposal cause a loss of biodiversity?

#### 7.1.2 Evidence and submissions

##### (i) Biodiversity impacts

A number of objectors were concerned about the impacts of the proposal on existing biodiversity and its capacity to be enhanced. Mr Dance and Mr Rushford submitted that the proposed development gives inadequate consideration to flora and fauna corridors and linkages.<sup>100</sup>

Council submitted that the proposed removal of vegetation along the local waterways would be inconsistent with the RAZ, applicable overlays and Clause 52.17. It also submitted that planning policy calls for proposals for use and development in the RAZ to be assessed against a number of specific criteria, including net environmental gain.<sup>101</sup> Council also expressed concerns related to how the proposal delivers overall positive environmental outcomes on the subject land.

The Applicant submitted that the proposal had suitably responded to a need to protect environmental values, including biodiversity and that native vegetation to be removed (or managed) could be suitably offset. It submitted that the biodiversity report did not show any major loss, and suggested that the site has the capacity to accommodate landscape improvements including additional canopy plantings along the creek and elsewhere on the site.

A biodiversity assessment was undertaken by Ecology and Heritage Partners to:

- identify and characterise vegetation on the land
- determine the presence (or likelihood) of any significant flora and fauna species and address any implications under Commonwealth and State environmental legislation.<sup>102</sup>

The biodiversity report provided the following information regarding existing vegetation:

- most of the study area consists of paddocks with a high cover of exotic grass species
- remnant vegetation is representative of Ecological Vegetation Class 30 – Wet Forest, and consists largely of mature eucalypt canopy trees with modified understorey
- habitat zones along the waterways consist of areas of revegetation (predominantly indigenous trees and shrubs) funded through Landcare for biodiversity enhancement
- other areas of planted vegetation on the land consisting of large canopy tree species were likely to have been planted for soil stabilisation, shelter and timber production.

The biodiversity report drew the following conclusions:

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<sup>100</sup> Document 44, p.22.

<sup>101</sup> Pre-Hearing Document 43, para 191.

<sup>102</sup> EHP, May 2018, Biodiversity Assessment: 275 Barham River Road, Apollo Bay.



- no nationally significant flora, fauna or ecological communities are considered likely to occur or rely on habitat within the study area
- there is suitable habitat within the study area for several species listed or protected under the *Flora and Fauna Guarantee Act 1988 (Vic)*(FFG Act)
- the native forest vegetation within the study area is likely to provide suitable habitat for a range of common native fauna species.

Objectors Inc expressed concern that although the site has suitable habitat for species listed or protected under the FFG Act, the biodiversity report indicated that a permit is not required under the FFG Act due to the land being in private ownership.<sup>103</sup>

The Applicant submitted that DELWP Environment as the relevant authority assessed the proposal (including the biodiversity report) and provided conditions for a permit that may be issued to address these matters.<sup>104</sup> It considered these proposed conditions acceptable.

## **(ii) Native vegetation impacts**

The amended application material includes a Landscape Plan and a Vegetation Plan. These plans show:

- proposed revegetation along the designated waterway north of the hotel
- an avenue of semi-advanced native trees along the hotel driveway
- proposed vegetation in key areas including the hotel curtilage and in the vicinity of the villas, including plants of indigenous or local provenance where feasible.

The amended plans propose ‘habitat creation through revegetation’, including along the local waterways as well as perimeter planting around the site. The proposed revegetation is based on EVC 16 Lowland Forest and EVC 53 Swamp Scrub.<sup>105</sup>

The Design Statement in the Aspect Studios landscape masterplan indicates that the amended plans account for fire considerations, including CFA and Council landscape design guidelines as well as the application of defensible space offsets to all buildings.

Throughout the Panel process, objectors expressed concern regarding a lack of clarity as to the location and extent of vegetation modification or removal proposed.

The Panel issued Directions on 28 March 2018 requiring the Applicant to provide:

*Updated plans and drawings, including plans that clearly show what is included in the application, with appropriate detail to enable assessment including ...*

*Location and extent of vegetation removal required, including for associated infrastructure provision ...*

*... of sufficient detail to enable a proper assessment of the amended proposal, commensurate with the scale of the proposed use and development ...*<sup>106</sup>

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<sup>103</sup> Document 34, para 57.

<sup>104</sup> Document 31, para 21.

<sup>105</sup> Aspect Studios Landscape Architecture Report.

<sup>106</sup> Pre-Hearing Document 5, Direction 1(n)(v).

In response to Directions, the Applicant submitted a plan showing existing vegetation to be removed which indicates:<sup>107</sup>

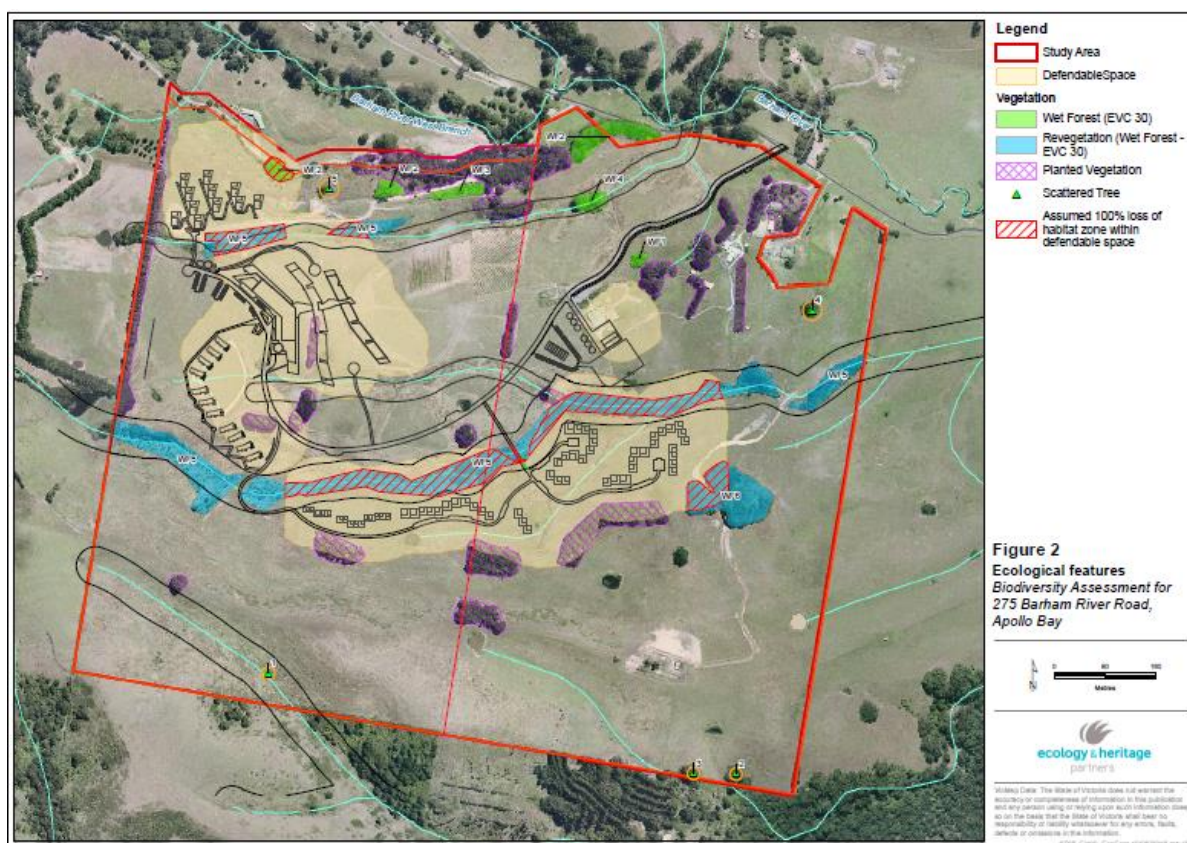
- vegetation to be removed - 0.368 ha
- revegetation / forest managed to create defendable space as required by the BMO - 2.785 ha
- planted vegetation managed to create defendable space as required by the BMO - 1.315 ha.

Most of the vegetation removal or modification proposed by the Applicant is to create defendable space consistent with bushfire management requirements, aside from the proposal to remove a stand of senescing trees to optimise views from the hotel. As discussed in Section 6.1 (Bushfire), there remains significant uncertainty regarding this issue. Further uncertainty arose in Mr Barlow's evidence (called by the Applicant) since he advised it would be preferable to relocate some of the villas to achieve defendable space requirements rather than remove riparian vegetation.

The biodiversity report (prepared earlier) examined the implications of removing a total of 2.795 hectares of native vegetation to accommodate the proposed infrastructure works and create defendable space as indicated in the BMP (Figure 10). While it assessed the implications of vegetation removal and offset requirements in relation to the vegetation management provisions of the planning scheme (Clauses 12.01-2S and 52.17), it did not examine the consequences of the riparian zone vegetation loss or removal for the waterways.

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<sup>107</sup> Spowers Drawing TP\_041 rev C - Existing Trees to be Removed.



**Figure 10** Ecological features and vegetation requiring removal or modification to comply with defensible space requirements

Source: Ecology and Heritage Partners Biodiversity report 2018

The biodiversity report indicates that the provision of defensible space as shown in Figure 10 will lead to extensive modification or loss of revegetated Wet Forest, particularly along the waterways. This vegetation is not 'remnant' but revegetation planted using public funds for biodiversity enhancement purposes, which is not exempt under the planted vegetation exemption in Clause 52.17.

The biodiversity report noted that defensible space requirements include ensuring the canopies of individual trees are separated by at least 5 metres. The patches of Wet Forest (EVC 30) within the study area support a high number of canopy trees, some of which may need to be removed to ensure this separation. The biodiversity report assumed 100% loss of vegetation in these areas (which is consistent with standard practice), although it recognised that not all nominated vegetation will actually be cleared, as opposed to managed.

### (iii) Capacity for net environmental gain

The Applicant submitted that net environmental gain was achievable for this proposal. It pointed out that the proposed development would be situated within a highly modified landscape and would provide environmental benefits. In addition, it offered to fund willow management in the Barham River and to contribute to the proposed local ecology centre (to be secured via a section 173 agreement) as relevant considerations in determining net environmental gain.

In response to a question from Ms Fanning on behalf of Objectors Inc, Mr Barnes (Council's expert witness) advised that a net environmental gain could potentially be achieved on the site, given that the land is currently agricultural. This would entail appropriate landscaping and an appropriate environmental management plan. However, he formed the view that net environmental gain has not been demonstrated by the current application yet.

A number of objectors, including Objectors Inc submitted that it was unclear to them how the project contributed to net environmental gain, and they considered that it would lead to net environmental loss rather than gain.

### **7.1.3 Discussion**

The amended application material and subsequent submissions on behalf of the Applicant lack clarity and consistency regarding vegetation management, including vegetation modification, removal and revegetation. Even by the conclusion of the Hearing, the Panel was unable to ascertain with any certainty whether the proposal depicted in the most recent set of plans could be achieved.

For example, the landscape plans do not indicate the areas where existing vegetation is proposed be removed or modified to provide defensible space to comply with bushfire management requirements. The vegetation plan proposes "forest revegetation" along the northern designated waterway, in an area that the BMP identified as defensible space. In fact, the "forest revegetation area" is situated between two areas of native vegetation indicated for modification or removal in the biodiversity report. Also, the proposed plantings would not align with the EVC of existing vegetation.

Without an expert witness on behalf of the Applicant, the Panel did not have the opportunity to explore whether the biodiversity report was conservative (as suggested by the Applicant) or whether the authors considered the functional loss resulting from modification to be so significant that offsets were necessary (that is, whether some trees and ground covers would remain but the EVC community should be regarded as lost).

The Panel concludes that net environmental gain is a relevant consideration for this proposal under the RAZ although it is not a distinct requirement of itself. The Panel accepts that a net environmental gain may in theory be achievable on the site, but the Applicant has not demonstrated that the proposed development as detailed in the permit application will achieve net environmental gain in practice - let alone demonstrate that it will not result in net environmental loss. At this stage, given a lack of detailed information within the application material, no firm conclusions can be drawn about what the environmental outcomes of the proposal might be in terms of biodiversity and native vegetation impacts.

Clauses 12.01-2S and 52.17 indicate that the objective for native vegetation management is:

*To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.*

Both clauses indicate that the three-step approach set out in the DELWP (2017) *Guidelines for the Removal, Destruction or Lopping of Native Vegetation* should be followed. This approach requires an application to remove native vegetation to demonstrate that:

- *no options exist to avoid native vegetation removal, that will not undermine the objectives of the proposed use or development, and*
- *no options exist to further minimise the impacts of native vegetation removal, that will not undermine the objectives of the proposed use or development*<sup>108</sup>

The application material (including the biodiversity report) does not examine options to avoid or minimise native vegetation removal, such as increasing the BAL level of adjacent villas, or relocating villas to provide more appropriate setbacks from adjacent vegetation. It assumes that vegetation removal (or significant modification) is necessary and proposes offsets as compensation. This is inconsistent with the DELWP (2017) Guidelines.

The Panel notes that the majority of vegetation ‘removal’ associated with the proposed development is for establishment of defensible space, which does not necessarily require total removal of all vegetation in a given area (as provided for in the biodiversity report as the worst case scenario). However, the structure of the vegetation community may be notably altered. Opening up the canopy of forest vegetation may also make it more susceptible to weed invasion, especially along creeklines. The Panel concludes that significant functional loss is likely from an ecological viewpoint, even if the footprint of the vegetation and remnants of the canopy are broadly retained.

Some of the existing vegetation, including along the waterways and in the ‘planted areas’ not included in the offset calculations was planted to address erosion and land stability problems. Golder Associates indicated that some of the vegetated (treed) areas are on the sites of old landslides.<sup>109</sup> Therefore, the proposed vegetation modification or removal also warrants consideration from the view of erosion and landslide risk which has not yet been undertaken.

Further discussion of the proposed modification or removal of vegetation along the waterways is presented in Chapter 7.2, which considers the vegetation in the context of its location in the riparian zones of creeks and gullies.

In short, the site does not exhibit high biodiversity value, given its substantial modification from pre-European conditions and its use as agricultural land.

Notwithstanding, there are some stands of vegetation that are important because of their location within riparian zones and because of their status as replanted vegetation as part of a Landcare program. There is a prospect that if this vegetation is modified, it will no longer be representative of its EVC class and that there will be detrimental impacts on the function of on site waterways and the stability of their banks.

In principle, the approach to vegetation management is not consistent with state and local policy which only supports the removal of native vegetation if no feasible options exist to avoid or minimise loss. The Applicant has proposed using offsets to compensate for loss of vegetation to create defensible space, without exploring alternative options to avoid or minimise that loss.

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<sup>108</sup> As above, p.12.

<sup>109</sup> Golder Associates report (November 2017).

#### **7.1.4 Conclusions**

There is uncertainty about the extent and impacts of the management and removal of native vegetation required to create defensible space. This would require detailed resolution and consideration of effects on biodiversity and the site's capacity for net environmental gain before a permit should be granted.

### **7.2 Impacts on waterways**

The proposed development is situated in the Barham River catchment. A number of minor creeks and gullies flow through or drain the property. The north-eastern corner of the property is situated on the Barham River floodplain but is not immediately adjacent to the Barham River, which is situated on the opposite side of the Barham River Road. The minor streams on the property all drain to the Barham River.

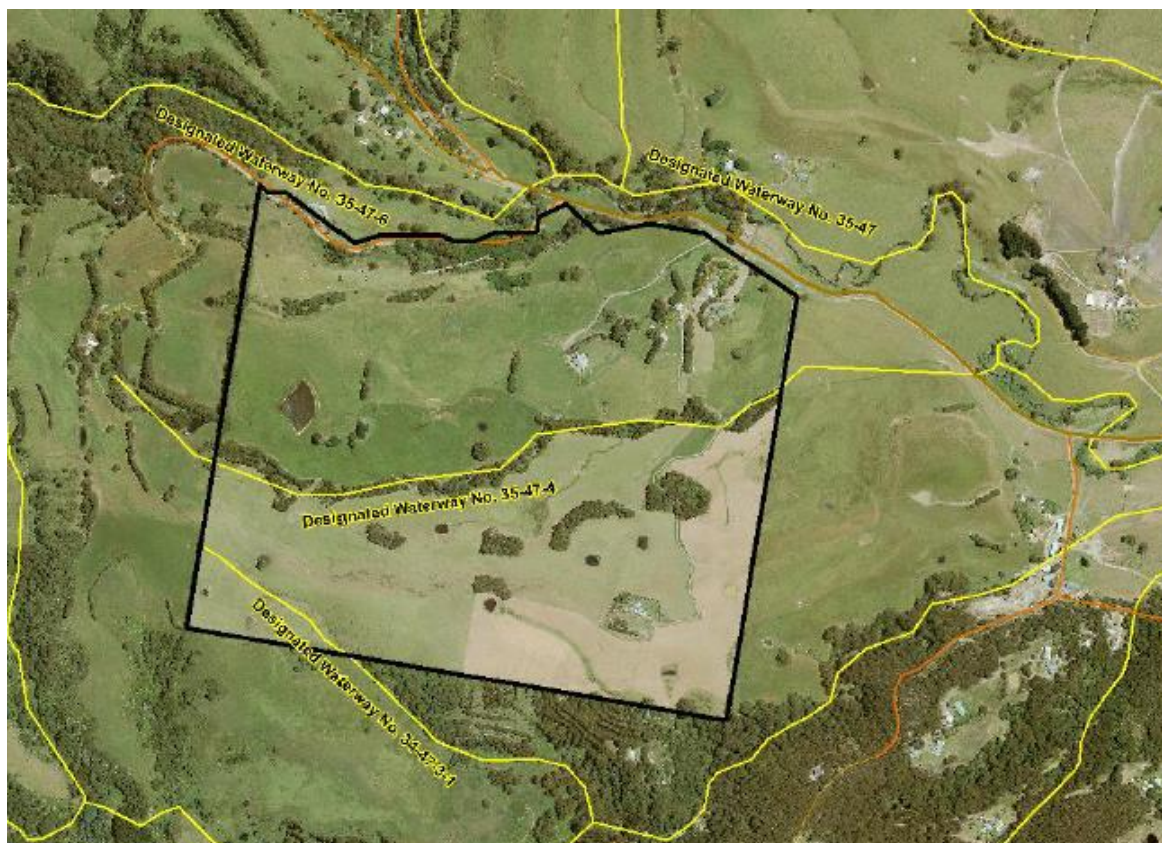
CCMA indicated that two of the waterways traversing the property have been designated under the *Water Act 1989*, and provided a map showing the location of these waterways (Figure 11). A Works on Waterways permit application must be submitted to CCMA prior to any works in, on, or over these waterways, and be approved prior to the commencement of works. Such works include any access crossings (temporary or permanent) and stormwater outlets.

A Stormwater Drainage and Waterway Management Report by Irwinconsult was submitted as part of the application material.<sup>110</sup> It provides little information about the existing waterways or their proposed management, other than in relation to crossings and points of discharge.

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<sup>110</sup> Stormwater Drainage and Waterway Management Report, Irwinconsult (May 2018).





**Figure 11** Subject property showing the approximate location of designated waterways

Source: CCMA 2018

### 7.2.1 The issue

Will the proposal have unacceptable impacts on local waterways or the Barham River?

### 7.2.2 Evidence and submissions

#### (i) Riparian buffer zones

CCMA indicated that Clause 14.02-1 requires natural drainage corridors with vegetated buffer zones at least 30 metres wide to be retained along each side of a waterway. The buffer zone is required for a range of purposes including:

- ensuring a resilient waterway system that can effectively absorb and/or recover from damaging processes without losing its core functionality
- preserving areas of the riparian zone that protect or enhance native vegetation, river health and biodiversity where present.<sup>111</sup>

The buffer zone requirement applies to designated and non-designated waterways.<sup>112</sup> CCMA provided a map showing the location of the 30 metre buffer zones on known waterways crossing the property (Figure 12). A 50 metre buffer zone is required for the Barham River.

<sup>111</sup> CCMA letter August 2018, p.9

<sup>112</sup> Document 64.



**Figure 12 Waterway buffer zones identified by CCMA in relation to the subject property (CCMA, 2018)**

Objectors Inc expressed concern that the application proposed built form very close to waterways. They submitted that “we are unconvinced the application has dealt with any potential impacts upon these waterways and potential downstream impacts”.<sup>113</sup>

CCMA noted that proposed buildings are set back outside the 30 metre buffer zones on each side of the *designated* waterway, consistent with planning policy requirements. However, the amended plans indicate that a number of built structures including the main hotel building, the Pasture villas and the access road to the Pasture villas, are proposed to be situated in very close proximity to *non-designated* waterways, well within the 30 metre buffer zones that are intended to exclude such development.

At the Hearing, the Panel queried about the encroachment of built structures into the 30 metre buffer zones of the non-designated waterways. The Architect, Mr McGee confirmed that this encroachment was a deliberate element of the design. The Applicant submitted that it proposed a ‘bespoke’ approach to managing the non-designated waterways, including revegetation of the northern non-designated waterway, but no revegetation of the other non-designated waterways. Buildings, into the hotel and some of the villas are proposed to be situated in close proximity of some waterways, well within the 30m buffer zones identified by CCMA. For example:

- The northern non-designated waterway (which flows between the Ridge villas and hotel) is part of the Barham River Special Water Supply Catchment and currently has patches of riparian forest. The Landscape Plans show that existing areas of riparian forest would be

<sup>113</sup> Document 34, para 56).



retained and there would be forest revegetation in the gaps. However, this is not consistent with the map in the EHP report, which shows that some of the riparian vegetation would need to be removed or modified to provide defensible space.

- The central non-designated waterway (which is situated downstream of the large dam and flows immediately to the south of the hotel) currently has grassy banks. The master plan indicates that the sides of the hotel will taper into the creek channel. The Landscape Plans propose some aquatic plantings in the bed.
- The southern non-designated waterway flows into the southern designated waterway. It currently has grassy banks and a small dam. The Landscape Plan does not acknowledge this waterway or propose any treatment different to the adjacent non-riparian land. Indeed some of the Pasture villas appear to be situated almost on top of the waterway. The Civil Services Plan indicates that this waterway would be bypassed and crossed by artificial drains that would discharge into the designated waterway downstream of the present confluence.

## **(ii) Riparian vegetation modification or removal**

The amended application material indicates that defensible space for bushfire management requires extensive modification or removal of vegetation along the local waterways on the property. This especially affects the central designated waterway due to the close proximity of the Pasture villas and Creek and Plateau villas, and to a lesser extent, the northern non-designated waterway due to the proximity of the hotel and Ridge villas.

Council's grounds for not supporting the amended permit application included:

*The anticipated vegetation removal along the central designated waterway on the site is contrary to the objectives of the Rural Activity Zone, Significant Landscape Overlay Schedule 3 and Clause 52.17.<sup>114</sup>*

Council noted that the RAZ decision guidelines include:

*The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.<sup>115</sup>*

Council submitted that vegetation along the creek lines should be retained and the villas sited in accordance with BMO1 requirements. However, it noted that the relocation of the villas may result in them becoming more visible and closer to high risk landslip areas, therefore requiring reassessment of these factors.<sup>116</sup>

As noted in Chapter 5, evidence presented in relation to geotechnical matters and landslip risk indicated that the riparian vegetation has an important role in regard to land stability.<sup>117</sup> In response to questions, Mr Miner confirmed that removal of vegetation from along the watercourse would reduce stability.

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<sup>114</sup> Pre-Hearing Document 43, para 16-4.

<sup>115</sup> Pre-Hearing Document 43, para 22.

<sup>116</sup> Document 65.

<sup>117</sup> Golder Associates report November 2017, p.10.

### **(iii) Stormwater**

Objectors raised concerns regarding potential negative impacts on waterways including the Barham River arising from polluted stormwater and wastewater in particular. Objectors also expressed concerns regarding runoff and stormwater discharge from the site flowing into the Barham River and polluting the Apollo Bay town water supply offtake.<sup>118</sup>

CCMA indicated that the proposed development would be required to meet the Environment Protection Authority's stormwater management objectives.

A number of objectors also submitted that surface and groundwater management, including drainage and stormwater management, has significant implications for land stability and geotechnical risk. Concerns were expressed at the hearing regarding Water Sensitive Urban Design (WSUD), as the retention of water on-site has the potential to increase landslide risk. The need for integrated assessment of stormwater, landscape and geotechnical issues was emphasised.

Irwinconsult prepared a Stormwater Drainage and Waterway Management Report, which indicated that there would be several points of discharge into the central designated waterway as well as multiple discharges into non-designated waterways. Catch drains would be used upstream of the hotel and carpark to divert external overland flow into the waterways, and the channel of the existing waterway entering the large dam would be 'formalised'.

Irwinconsult proposed that runoff would be held in retarding storages and pass through a stormwater treatment train prior to discharging into the waterways to achieve water sensitive urban design (WSUD) objectives. The Stormwater Drainage and Waterway Management Report indicates that grassed swales and detention basins are proposed as central elements of the overall drainage scheme and underground detention may also be used in key locations.

The Applicant submitted that it would be willing to pay for peer review of the revised Stormwater Drainage and Waterway Management Report.

### **(iv) Barham River**

Objectors Inc expressed concerns that the proposed development would have a negative impact on the environmental condition and values of the Barham River, which supports the Australian Grayling and Great Egret Bird, both of which are listed as threatened species.<sup>119</sup> References in documents provided by that group indicate that Barham River is a priority waterway for riparian zone management<sup>120</sup> and supports the Australian Grayling, which is a fish species of conservation significance.<sup>121</sup>

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<sup>118</sup> Ms Whelan (Document 40), Mr Filmore (Document 42).

<sup>119</sup> Document 34, para 55.

<sup>120</sup> Document 35c, p.13.

<sup>121</sup> Document 35a – John McGuckin 20016 Aquatic fauna survey after the resnagging of a 250 metre reach of the Barham River estuary, Draft Report for CCMA; Document 35b – DSE 2008 National Recovery Plan for the Australian Grayling *Prototroctes maraena*.

### 7.2.3 Discussion

The Applicant's submission acknowledges that "avoiding loss of vegetation along the linear waterways traversing the site is a relevant objective", but does not clearly state if or how it proposes to achieve this.

The uncertainty regarding vegetation management noted earlier by the Panel carries through to the management of vegetation in riparian zones. The amended application material does not resolve the question of how to achieve bushfire management objectives without compromising riparian zones and waterway health. Likewise, it does assess the implications of proposed drainage measures on the stability of on site waterways and this requires further assessment.

Notwithstanding these uncertainties, removal of riparian vegetation and encroachment of development into streamside buffer zones is clearly inconsistent with planning policy. Clause 14.02-1S includes a requirement to:

- *Retain natural drainage corridors with vegetated buffer zones at least 30 metres wide along each side of a waterway.*

This supplements numerous other references to the protection and enhancement of waterways in the planning scheme. For example, Clause 12.03-1S seeks to "protect and enhance river corridors, waterways, lakes and wetlands". Strategies include:

- *Ensure development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of water bodies and wetlands.*
- *Ensure development is sensitively designed and sited to maintain and enhance environmental assets, significant views and landscapes along river corridors and waterways and adjacent to lakes and wetlands.*
- *Ensure development does not compromise bank stability, increase erosion or impact on a water body or wetland's natural capacity to manage flood flow.*

Council's local planning policies, including Council's Land Use Vision (Clause 21.02-2), provide comparable direction. Similar intentions are expressed in other government policies including the Victorian Waterway Management Strategy.<sup>122</sup>

It may appear from a casual site view that the non-designated waterways that traverse the site are of only minor significance and that therefore there is scope for development to intrude into their zone. However, the planning scheme leaves no doubt that the protection and enhancement of waterways is an important consideration. It does not confine this to only designated waterways, since all waterways form a part of a broader integrated catchment.

Clause 14.02-1S summarises the environmental benefits providing 30 metre buffer zones on either side of a waterway:

- *Maintain the natural drainage function, stream habitat and wildlife corridors and landscape values,*
- *Minimise erosion of stream banks and verges, and*
- *Reduce polluted surface runoff from adjacent land uses.*

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<sup>122</sup> Victorian Waterway Management Strategy (DEPI 2013, p.34).

In addition, the 30 metre buffer zones also provide the benefit of reducing risks to the development arising from waterway processes such as instream erosion and flooding.

The 30 metre buffer distance in the planning scheme and CCMA's submission provides relevant guidance for acceptable outcomes. In the absence of any information regarding the hydrology and geomorphology of the non-designated waterways, the Panel is not convinced that it is appropriate for development to encroach into riparian zones. The Panel has significant doubts as to whether development within the riparian zones would be compatible with environmental objectives set out in the policy framework.

In some cases, the central wing of the hotel and some of the villas extend right into waterways. In an urban context, minor waterways are sometimes piped or shifted to accommodate development (although this is becoming less widely accepted) but piping and diversion are not appropriate for a rural development. The issue is not just an environmental or vegetation one – if development is too close, it is exposed to flood and erosion risk associated with the waterway, and pollution risks are much higher (such as by direct spills into the waterway).

Had the Panel been inclined to support the grant of a permit, it would have imposed conditions requiring all development to be located outside the buffer zones on both sides of all waterways. This would be in addition to the setback of all development to ensure that defensible spaces areas do not intrude into these buffer zones.

In terms of stormwater impacts, Clause 14.02-1S includes requirements to:

- *Undertake measures to minimise the quantity and retard the flow of stormwater from developed areas.*
- *Require appropriate measures to filter sediment and wastes from stormwater prior to its discharge into waterways, including the preservation of floodplain or other land for wetlands and retention basins.*

Irwinconsult outlined a stormwater management strategy that aims to respond to these requirements. However, there is a potential conflict between the use of WSUD for stormwater attenuation and treatment, and land stability. Holding back and storing water can potentially aggravate landslide risk.

The Panel concludes that further work is required to demonstrate stormwater management arrangements that provide satisfactory environmental outcomes without compromising land stability.

The Panel notes the significance of the Barham River for water supply as well as environmental values. Part of the subject site is subject to the ESO3 overlay, as it falls within the catchment of the Barham River pumping station that provides town water supply to Apollo Bay. The application material did not provide an assessment of the implications of the proposed development on the Barham River.

If the permit application was given in-principal approval, the Panel would recommend a condition requiring an assessment of likely implications for the Barham River, including water quality (for town water supply) and its associated ecological values.

#### **7.2.4 Conclusions**

The Panel concludes:

- The application does not provide adequate buffers between proposed development and on site waterways which should be achieved in all instances.
- The stormwater management plan accompanying the amended application is preliminary, with tensions between stormwater management and landslip or erosion risk not having been resolved.
- The permit application is unacceptably silent in regard to potential impacts on the Barham River.
- The Applicant has not satisfied the Panel that the project in its current form would provide net environmental gain. In the worst case, it may result in net environmental loss.

## **8 Social and economic considerations**

### **8.1 Tourism policy and economic considerations**

#### **8.1.1 The issue**

How does the proposal respond to tourism policy and economic considerations?

#### **8.1.2 Evidence and submissions**

The Applicant's submission and the planning evidence of Mr Barlow was that this proposal would make a meaningful contribution to tourism policy and the economic health of the region. Significant emphasis was placed on the need for a higher end tourist resort (4 to 5 stars) as a sector of the tourist market that was largely absent from Apollo Bay and the Great Ocean Road region more generally.

No economic evidence was provided to the Panel on behalf of the Applicant, however a Socio-Economic Impact Assessment prepared by Street Ryan (dated 2018) formed part of the amended application material.

The economic and community benefits identified in the Street Ryan report included 185 FTE construction jobs; potential to accommodate 43,300 guests per annum; \$50.86 million annual direct and ancillary regional economic contribution when the resort is in full operation; 39 direct jobs at the resort and a number of ancillary and indirect jobs; potential training programs; community use of the pool through learn to swim programs, wellness centre and restaurant; and a bicycle link to the Apollo Bay foreshore.

The Street Ryan report also noted that there would likely be commercial supply chain relationships with a range of Apollo Bay businesses and organisations including Otway Health; a potential wildlife visitor experience with an Apollo Bay based group; agreements with food operators to supply the resort; and financial assistance to extend existing tour operated businesses.

Mr Graham Duff, Chairman of the Applicant, personally outlined the significant need for luxury accommodation in the region. He also agreed to make a number of significant local contributions if the proposal was approved. This was proposed to be secured via a section 173 agreement as a condition of permit. The details of these contributions are outlined in Chapter 8.2, recognising that they would generate both economic and social benefits if realised.

Mr Duff advised that he was formerly Chairman of John Holland Holdings Pty Ltd. He provided an outline of his substantial project management experience for substantial proposals on highly challenging sites, including on sand dunes in Dubai and at Uluru that would be brought to this project. He also broadly explained the funding model for the proposal and described his personal experience in many major luxury Australian and international hotels throughout the world.

Mr Wayne Kayler-Thomson on behalf of Great Ocean Road Regional Tourism Limited (GORRT) presented to the Panel. GORRT is a regional tourism board that works with state and local

government and with industry to provide strategic support for tourism development and visitor management in the region.

GORRT supported the permit application and submitted that the project is of regional, state and national significance. It highlighted the importance of the Great Ocean Road region as the State's most visited destination - attracting more visitors annually than the Great Barrier Reef.

GORRT submitted that currently there is a trend for international visitors to stay in Melbourne and make day trips to the region. It submitted that this was partially due to lack of supply of suitable accommodation in the area and that currently there is no 5 star accommodation in the region. It regards the lack of available high quality accommodation as a constraint on economic growth and employment in the region. In its view, there is a need to provide additional supply to ensure 'surety of product' when marketing internationally to meet increasing demand.

The key messages from GORRT were that there is significant forecast increased demand for trips to the Great Ocean Road region, in particular from international visitors. There has been extremely high growth since 2010 and demand is growing faster than previous forecasts. The Chinese market is the largest source of international overnight visitation and is a key growth market with a strong preference for luxury hotel accommodation that can cater for large groups of tourists.

*'The Great Ocean Road – Destination Management Plan 2012'* is a relevant background document. Its 2030 forecast scenario for visitor growth was reached in 2017. There is now a forecast need for an additional 3,440 rooms in the region to meet demand, including:

- up to 4 large resorts of 4-5 star standard
- up to 12 new hotels or motels of various scale and star ratings, including budget and 5 star offers with international branding
- an upgrade of existing accommodation to increase economies of scale and occupancy.

Relevantly, there is also an identified need for "4-5 star integrated resorts, wilderness and wellness retreats and boutique accommodation".

The Applicant submitted that this proposal would contribute to meeting this need.

The Panel was also provided with a letter of support from Regional Development Victoria for the proposal stating that:

A major quality accommodation investment on the Great Ocean Road will help increase the length of stay and better position this important tourism asset as a destination for national and international visitors. Regional Development Victoria has been actively working with stakeholders in the region to encourage such investment ...<sup>123</sup>

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<sup>123</sup> Letter dated 31/10/2017 from Regional Development Victoria to Mr Duff. Provided by the applicant as part of the background to the application (Pre-Hearing Document 8).

The current proposal comes in the wake of earlier concept plans for this site being prepared in conjunction with Tourism Victoria depicting a hotel, golf course, camping ground and other facilities. That proposal was not progressed.

Objectors Inc submitted that while the Applicant referred to the economic benefits of the proposal during the construction phase and ongoing employment for the residents of Apollo Bay, the assessment had failed to consider the impacts on existing operations within Apollo Bay and the impacts on the existing tourist market and accommodation providers in particular. This group considered that it would be likely that tourists to the resort would bypass the township to be entertained, accommodated and feed at the resort, with no net community benefit.

It called evidence from Mr Couch, a chartered accountant with experience in the tourism industry, specifically focused on the short term accommodation sector. Mr Couch gave evidence that the proposed resort would increase the existing annual supply of short term accommodation nights in Apollo Bay from 148,190<sup>124</sup> room nights, to 243,820 room nights (an increase of 95,630 room nights per annum), the latter being three times more than the annual room night sales for the year 2015/16 at 78,540 nights (being the latest data available).

Mr Couch's evidence was that the significant increase in rooms<sup>125</sup> would have grave consequences for most short term accommodation operators and allied businesses in Apollo Bay and the surrounding district. In Mr Couch's opinion, this would include dramatic reductions in business and property values to the point that many businesses would be unviable since:

*The market sets the sale price of a product not a seller - a room not sold tonight can never be sold. Where supply is so far out of balance with demand and the rooms cannot be sold, massive losses occur.*<sup>126</sup>

Beyond the initial start up period, Mr Couch and many other objectors did not consider that the presence of the resort and its facilities would fundamentally change existing patterns of tourist visitation to the Great Ocean Road, with tour groups and independent tourists mainly choosing to experience the region as a day trip.

Mr Fillmore of the Otway Forum considered that recreational tourism, including hiking, was one of the biggest tourism trends, with activities such as the recently completed Great Ocean Walk being the future for Apollo Bay. In his view, there would be confined economic benefit to the town or broader economy from international guests who book their tours overseas and bus in and out of the area in a day. Professor Schencking also questioned the economic benefit to the local community when the vast majority of the hotel guests would come on packaged tours or on some form of "zero dollar tours" as referred to in academic literature.

Mr Couch also gave evidence that there was an inherent conflict in the proposal being geared to the higher spending spectrum of the tourist market (5 star, luxury accommodation), yet the majority of patrons were expected to subscribe to fully packaged coach tours. In his

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<sup>124</sup> Based on calculations of Mr Couch provided by 54 businesses with an aggregate of 406 rooms, as at 28 August 2018.

<sup>125</sup> Addition of 262 accommodation units (339 bedrooms) being 65% more than the current supply of 406 rooms.

<sup>126</sup> Mr Couch expert witness statement, 3 September 2018, p.3.



experience, the coach market is geared to the lower end of the market, with substantially less profit and return on capital expenditure. He considered it rare for the higher end of the market to be associated with coach travel, with high end travellers that would stay at a 5 star resort, typically having more time and money to self drive and spend longer in a region.

Mr Couch and objectors also questioned the assumptions of the Applicant that there would be 75 per cent occupancy per annum. He compared it to the Mantra Hotel and Resort at Lorne, being a 4 star facility with a 56 per cent average occupancy rate. He considered the Mantra well established and better located within a township on the beach. Mr Couch considered this a more typical industry average for this region. In Mr Couch's view, if the Applicant's assumptions were incorrect, the feasibility for the proposal could be out by many millions of dollars.

Mr and Ms Ritchie, who operate the Best Western Hotel and Apartments within the Apollo Bay township, also questioned the assumptions on which the proposed resort was based. This included an average three night stay, which they contend was entirely inconsistent with all industry statistics compared with the average 1.1 to 1.2 night occupancy currently experienced in the region. They also questioned the estimated 75 per cent room occupancy per annum, comparing it to a documented average of 63 per cent in peak period (October to April) and 39 per cent in the off season (May to September)<sup>127</sup>. They considered that the impacts of these figures not being realised would be significant on existing local businesses since it would mean that the resort would substantially discount its prices to be in direct competition with existing accommodation providers.

Mr Fankhanel submitted that to attract visitors for three or four day stays, the area would need to feature a substantial number of attractions to compete with tourist icons such as Phillip Island, the Healesville Sanctuary, Sovereign Hill and the like. As this is currently lacking, he considered that the estimated regional economic contribution would be far less than forecast in the Street Ryan report.

In answer to questions from the Panel, Mr Couch gave evidence that there would be significant impacts on the local economy, particularly through the quantum of accommodation being provided in one facility. He stated that a staged release of rooms could be better absorbed by current businesses. This was echoed by objectors who operate accommodation facilities including Ms Tovey who submitted that impacts can be better absorbed if new facilities are smaller scale. An example was Airbnb which now extends to up to half of the residential offer in Apollo Bay at certain times of year. Although it has created a profound shift in the local tourism accommodation market, objectors advised it has been gradual and involves small scale properties such that existing accommodation providers have been able to change their practices in response to remain viable.

Mr Barlow on behalf of the Applicant noted that the potential economic impact on existing individual accommodation providers simply represents legitimate competition between businesses and would not be a relevant planning consideration unless it led to community wide effects, such as on the township as a whole.

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<sup>127</sup> These figures were also used in the Street Ryan report.

Mr Barnes on behalf of Council acknowledged the range of community benefits that the proposal could have, however he did not consider that these were sufficient to counter the adverse impacts that a development of the type and scale proposed would have on the Barham River Valley and rural hinterland of Apollo Bay.

Some objectors including Mr and Mrs Ritchie submitted that staff availability is a significant issue for current operators and challenged the notion that the resort would be in a position to employ locals since skilled and experienced staff would be required and are in short supply locally. They also questioned the availability of staff accommodation, with limited supply within the town and little information provided within the application about arrangements for staff accommodation on site.

Likewise, many objectors described the plans to include retail stores, restaurants, a bar and souvenir shops on the premises as an 'insular development' that lacked linkages to the existing community or established commercial operators. Mr Andrew Coffey in his written objection considered the development would effectively divide the economic heart of the town, being unlikely that guests would eat and shop in the town if their needs were catered for at the 'remote, self-contained hotel'. This sentiment was reflected in many other objections from local residents.

### **8.1.3 Discussion**

The Panel is persuaded that there is a need for more 4 to 5 star quality accommodation in the region and that economic benefits would result from the influx of new visitors to the accommodation and associated facilities. Significant economic benefits are likely to flow to Apollo Bay, the surrounding region and more generally to the state.

The Panel also agrees with the Applicant and GORTT that the provision of a new high quality tourist resort is likely to increase overnight stays in the region, catering for a demand that is currently not adequately met by existing local supply. Increased visitor nights in the region could also have a flow on benefit to other tourism or hospitality providers in the area.

It is entirely conceivable that international visitors on luxury packaged tours would be attracted to a facility of this type but previously considered that their particular needs were not met by the existing accommodation offer which tends to focus on motel and apartment accommodation or Bed and Breakfast style accommodation. That is, even if the existing supply of accommodation within the township or region caters for the current demand at certain times of the year, the provision of a new resort is likely to generate additional demand for an integrated resort, being a different type and category of accommodation.

However, while it is reasonable to place significant emphasis on the potential for this proposal to forward policies pertaining to tourism, economic and social development, the Panel considers that these policies have been given overriding weight by Mr Barlow in a way that is not warranted for this application. The Panel considers that the weight to be given to these factors must be tempered in balancing all relevant policy considerations to achieve net community benefit.

Given a lack of data about likely take up of the operating model proposed by the resort, the Panel does not have sufficient evidence to confirm whether the predicted length of stay would be achievable for this category of accommodation. Without detailed expert economic

evidence from the Applicant tested through cross examination, there was no way to validate assumptions of an average three night stay and projected 75 per cent occupancy. In these circumstances, the Panel cannot reliably predict how this may impact economic estimates.

While recognising the potential economic benefits of a new tourism resort, the Panel also considered the evidence of Mr Couch and the submissions from many objectors (including tourism accommodation providers within the township) to be compelling. The Panel considers that it is realistic that if these predictions were not achieved and length of stay was more in line with the region's average, there is potential for the resort to discount its rates, resulting in more direct competition to existing operators with potentially significant economic impacts.

Further, the Panel was not provided with evidence about the impact of the proposed facilities on site, including retail shops, wellness centre, restaurants and bars, on the existing township. The Panel agrees with Mr Barlow that market competition is generally not a relevant planning consideration, however, if impacts are experienced by the township, this may also affect net community benefit.

The Panel also shares the concern of some of the objectors in relation to the quantum of accommodation being delivered at one time for a township of the size of Apollo Bay. It considers that a smaller development, or a staged approach to the supply of such a significant number of new accommodation rooms would enable a better transition into the market and provide a greater opportunity for existing operators to adapt.

Overall the Panel has given significant weight to the strong policy support for new tourism activities and accommodation within Apollo Bay, the region and the state more generally, especially in light of its potential economic benefits, however is not satisfied that there will not be any unreasonable economic impact on the Apollo Bay township from the development as proposed.

#### **(i) Need and scale**

Need is a relevant planning consideration. As highlighted in the plan within the GORTT submission<sup>128</sup>, a new 4-5 star resort at the subject site would form one of several other significant investments recently approved or proposed along the Great Ocean Road. This includes the 12 Apostles Geothermal Spa and Resort recently approved outside Port Campbell; the Montarosa Eco Lodge at Princetown also recently approved; and the early planning of the proposed Cora development at Winchelsea. A similar view was expressed by Mr Barlow, who confirmed that the region will require multiple facilities in varying locations to meet emerging demand. The permit application represents just one of these.

The Panel is also acutely aware of the potential impact on the Applicant of either potentially granting or refusing to grant a permit. In these circumstances, however, the fact that the proposal may not be approved on the land in its proposed form does not necessarily equate to the overall need being unmet. There are other alternative forms of accommodation or designs that could be pursued for this site in line with Panel guidance, or other opportunities could emerge throughout the region, including elsewhere in Apollo Bay.

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<sup>128</sup> Document 5.

The Applicant submitted that a minimum size is required for a functional resort of this size to provide the benefits that are proposed.

The Panel was unable to form an opinion founded on evidence as to what this minimum size is, especially since it was not provided with the feasibility assessments underlying the Street Ryan report. Mr Couch gave evidence that 4-5 star accommodation does not necessarily have to provide 100 rooms or more, but can be of a variety of scales including boutique developments. The Panel is well aware of many other 5 star accommodation models of significantly lesser scale, particularly in sensitive environments where integrating with the natural environment is a key consideration. Therefore, the Panel is not convinced that the proposal needs to be of the scale proposed to provide a 5 star experience or to achieve significant tourism and economic benefits.

While understanding the economies of scale a larger resort can provide, the Panel does not consider the subject site suited to such an intensive development for reasons of policy, landscape and environmental matters discussed in this Report.

## **(ii) Conclusions**

The Panel concludes:

- The provision of a high quality resort offering 4-5 star tourist accommodation would meet a demonstrated need for this form of accommodation in the region and is well supported by tourism and economic policy.
- However, the potential economic benefits and disbenefits of the proposal have not been fully demonstrated.
- In any event, taken at their highest, the potential economic benefits of the proposal would not overcome the equally significant direction in the planning scheme for use and development to be suitably scaled, designed and sited.

## **8.2 Social considerations**

### **8.2.1 The issue**

What are the likely social effects of the proposal on the local and wider community?

### **8.2.2 Submissions**

#### **Objectors**

Numerous objectors submitted that the approval of this proposal would undermine the community's confidence in the planning scheme and the value of strategic planning given the emphasis on supporting the significant landscape and agricultural pursuits within the Barham River Valley.

From a social perspective, both individual objectors and Objectors Inc viewed the proposed business model as "very isolating to the community", being socially and physically remote from the township. In their view it would be self-contained in its accommodation and service offer and provide limited community use of its facilities. Distilling these and other concerns, Objectors Inc and other individual objectors submitted that the proposal would not provide a net community benefit.

Objectors Inc requested the Panel to have regard to the substantial number of objections to the original and amended permit application in line with section 60 of the PE Act. That section provides:

(1) *Before deciding on an application, the responsible authority must consider—*

...

(f) *Any significant social effects and economic effects which the responsible authority considers the use or development may have.*

(1B) *For the purposes of subsection (1)(f), the responsible authority must (where appropriate) have regard to the number of objectors in considering whether the use or development may have a significant social effect.*

Objectors Inc conceded that *“the number of objections alone is not indicative of a specific significant social impact or effect”*. It also referred to the VCAT decision of *Great Ocean Road Adventure Park Pty Ltd v Surf Coast SC*<sup>129</sup> which confirmed that *‘planning permit applications, and decisions made on them by Councils and the Tribunal, are not a plebiscite or referendum where the majority view prevails’*.

Notwithstanding, Objectors Inc pointed out that some 1,500 people were members of the objector group which was formed in direct response to the permit application, constituting between 80 and 90 per cent of residents of Apollo Bay and Marengo and that weight should be afforded accordingly.

Objectors Inc was critical of the lack of consultation with the local community by Street Ryan, (the consultancy that prepared a report for the Applicant that accompanied the permit application). It also suggested that the report did not document accepted methodology used to assess socioeconomic impacts. The process for this permit application was contrasted with the ‘community workshop approach’ adopted by Council in forward planning for the Apollo Bay Harbour.

Professor Schencking also submitted that, *“the manner in which this plan has been developed and delivered on a local community overwhelmingly opposed to it also contravenes well-researched, and the long established “best practice” undertaken to ensure long term sustainable development that will contribute a win for tourists, locals and businesses”*<sup>130</sup>. He submitted that the United Nations World Tourism Organization suggests that sustainable tourism development is defined as “development related to tourism that makes a low impact on the environment and local culture while at the same time ensuring that development is a positive experience for local people, tourism companies and tourists themselves”.

## **Applicant**

The Applicant emphasised that the proposed accommodation offer would meet an identified need by reference to planning policy and strategic documentation for the region. It referred

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<sup>129</sup> [2016] VCAT 1185.

<sup>130</sup> Document 41.

specifically to a desire for 4 or 5 star accommodation, including a focus on encouraging international visitation.

A component of the proposal includes a swimming pool, restaurants and bar and wellness centre. Other aspects of the original permit application including a function centre were deleted from the amended permit application.

Following the Directions Hearing, the Applicant was asked to clarify which facilities would be available for use by members of the public not staying at the resort. The Panel was advised (by reference to Document 44) that one restaurant would be open to the public and that the wellness centre was available for bookings by people other than hotel guests, with associated access to the swimming pool for the duration of the booking. In addition, the swimming pool would be made available for access by school and other learn to swim groups at certain times.

The Applicant also committed to the upgrade and widening of Barham River Road to the site frontage, including a pedestrian and bicycle path. It submitted that this upgrade was most likely justified by current levels of use and requisite safety standards but that it would be facilitated by the development as a positive community benefit.

Partway through the Hearing, the Applicant offered a number of community contributions that would accompany the grant of a permit for the resort proposal. They were further refined as the Hearing progressed. By the end of the hearing, the Applicant offered the following contributions, to be secured via an agreement under section 173 of the PE Act:

- \$2.5m financial contribution to Apollo Bay Conservation Ecology Centre (or as works in kind<sup>131</sup>)
- \$1.5m financial contribution towards the provision of an Aboriginal Cultural and Heritage Centre (or as works in kind)
- financial contribution to the CFA (amount to be confirmed)
- \$200,000 financial contribution to CCMA towards willow management in the Barham River
- \$100,000 financial contribution to Otway Heart for heart treatment equipment
- financial contribution to Otway Health or another local health provider of at least \$250,000 per annum towards improved medical services.

The Applicant also advised that it had discussions with a local sporting club to seek to use its facilities as a training centre (and potentially as a function centre), potentially in connection with a local vocational institution.<sup>132</sup>

Council was unclear how some contributions would have a direct nexus with the RAZ under which the use permission is required, or with the development specifically. It submitted that voluntary financial contributions can support a net community benefit argument but that it could not *“cure a fundamental inconsistency with the zone or local policy”*. For example, it said that the visual prominence on the landscape cannot be reduced by such contributions.<sup>133</sup>

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<sup>131</sup> Suggesting that this would be applied to the approved ‘Wildlife Wonders’ facility in the region.

<sup>132</sup> It was suggested that the applicant would be prepared to make a commitment to this effect but that it may be premature to include this in a section 173 agreement until the capacity for such an arrangement is progressed.

<sup>133</sup> There may also be other governance obligations that would need to be overcome, as mentioned in Council’s closing submission (Document 65), part 3.4.

During the Hearing, DELWP expressed concern that these initiatives are not tied to the 'planning unit' that forms the basis of the permit application. This raises a legitimate question as to whether or how they are to be balanced in assessing the proposal.

In response to questions by the Panel, the Applicant confirmed that these initiatives did not form part of the amended permit application but were foreshadowed via a public press release by the Applicant in August 2018 and were also broadly outlined in the planning application material. It suggested that these initiatives had been nominated because they would enhance the broader experience of guests of the facility when spending time in the region. The Applicant also indicated that in future, it intends to investigate other opportunities to provide tourist facilities in the region, outside Colac Otway Shire.

### **8.2.3 Discussion**

#### **(i) Enhanced accommodation options**

There is no doubt that some members of the wider community stand to benefit from the grant of a permit, since accommodation in the region is in high demand at certain times of the year and luxury accommodation near Apollo Bay is relatively confined at present.

The Panel is somewhat cautious of what to make of the suggestion that if this proposal is not approved, the township of Apollo Bay will be 'bypassed' since this type of accommodation will be provided elsewhere along the Great Ocean Road. This does not sit neatly with the submission on behalf of GORRT and the evidence of Mr Barlow that there is justification for a number of new luxury accommodation facilities in the region, whether or not this proposal is approved on this particular site.

At the same time, the Panel is not inclined to engage in an exercise of comparing what were identified as alternative existing sites within township boundaries, as suggested by Mr McIlrath on behalf of Council. Its role is to evaluate the proposal before it. Suffice to say that there may be alternative sites, including within the township boundary, but each would generate its own challenges. The social impact of a proposal within the township is entirely undefined. It is also evident that the current vacant sites within the township would lend themselves more to a conventional hotel design, rather than a resort and villas in an expansive natural setting. Also, the Panel regards the sensitivities of township character and interface with the Great Ocean Road as being likely to limit potential development of an intensive hotel on existing sites within the town boundary as identified by Council.<sup>134</sup>

#### **(ii) Nominated community contributions**

Although visitation numbers to the region are high, they are centred largely around its outstanding natural assets. The reality is that there is a deficiency in more diversified tourist related facilities or services (even basic facilities such as adequate and available toilets in

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<sup>134</sup> For example, VCAT observed the inherent visual sensitivity of the property to the south of Wild Dog Creek even for conventional double storey detached house in *Australian Tourism No.5 Pty Ltd v Colac-Otway SC* [2018] VCAT 895. Equally, the planning controls applying to the nominated 'alternative sites' have not been evaluated in any meaningful way.

popular areas<sup>135</sup>) to engage tourists fully and to provide a complementary offer to encourage them to stay longer in the region.

The Applicant has recognised this deficiency and seeks to address it in part, although principally off site. The extent and nature of the community contributions proposed by the Applicant are significant.

The Panel is of the view that each of the proposed contributions would have merit and potential for genuine community benefit, subject to appropriate resolution of relevant need, detail and timing. Importantly, this is the case whether or not a planning permit is granted in this instance, but the Panel appreciates that the permission sought is expected to generate the income to make these proposed contributions worthwhile.

The challenging issue is what weight to give these contributions in the context of the particular permit application. The Panel notes that DELWP expressed similar concerns throughout the Hearing.

The Panel finds that these proposed contributions do not form part of the amended permit application. This was not disputed by the Applicant. Significantly, they do not relate directly to the land which that is the subject of the permit application. Rather, they should be regarded as associated flow-on benefits if a permit was granted.

In the Panel's opinion, it would not be appropriate to include these contributions in a 'linear' equation of net community benefit when assessing the merits of the permit application. In effect, they would represent a significant 'bonus', but the Panel agrees with the objectors that they should not be in effect 'traded off' with the deficiencies inherent in the permit application itself, such as to overcome a fundamental lack of responsiveness to the site and policy setting.

### **(iii) 'Significant' social effects of the proposal**

Planning Advisory Note 63 confirms that the fact that a large number of people have objected will not of itself establish that a proposal will have a significant social effect. Rather, in the judgement of *Stonnington CC v Lend Lease Apartments (Armadale) Pty Ltd*<sup>136</sup>, the Supreme Court held that the number of objections may be a relevant factor indicating that a proposal may have significant social effect on the community.

VCAT in *Rutherford & Ors v Hume CC*<sup>137</sup> made a number of observations about how effects on the community are to be evaluated in permit applications. The VCAT case of *Backman & Company v Boroondara CC*<sup>138</sup> expanded and applied these principles in the context of a medium density housing proposal where the use of land did not require planning permission. In essence, there must be sufficient evidence to demonstrate the likelihood of a significant social effect as well as the severity of the effect and that it is sufficiently probable to be significant. Parties must also demonstrate that the adverse social effect is not offset by other social benefits – such as tourism related benefits.

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<sup>135</sup> Referencing numerous observations from parties on both sides of this Hearing.

<sup>136</sup> [2013] VSC 505.

<sup>137</sup> (Red Dot) [2014] VCAT 786.

<sup>138</sup> [2015] VCAT 1836.



**(iv) Synthesised considerations**

The Panel has considered the extensive opposition to the proposal expressed by a high proportion of the permanent residents of Apollo Bay. It also acknowledges the stress placed on members of the community and effort required of them to respond to a substantial permit application such as this. This comes in the wake of earlier proposals in the locality such as the Great Ocean Green project (ultimately abandoned) which can generate 'objector fatigue'.

The Panel regards the number of objections to this application as potentially indicating the scale of a perceived social effect on the community of Apollo Bay. However, the Panel is not satisfied by evidence or detailed submissions on behalf of objectors that the proposal would be likely to lead to any identified significant social effect.

At the same time, the Panel recognises that Apollo Bay and the broader region depends heavily on its function as a tourist destination for its overall success. Given its wealth of natural assets and strategic location along the Great Ocean Road to the 12 Apostles landforms, it is not surprising that it is a candidate for accommodation proposals.

Challenges with parking, traffic and road safety along the main road was raised as a concern for many objectors. These are not disputed by the Panel, although it observes that part and parcel of living or working in an attractive coastal township such as Apollo Bay, calls for an inherent acceptance that activity levels in and around the town will be heightened at certain times of the year, and may have negative impacts on some local residents.

The management of increased numbers of tourists is a matter that requires coordinated planning by Colac Otway Shire in connection with community and business groups together with relevant authorities such as VicRoads. This is an issue affecting other coastal townships and may be addressed in a more integrated way by the newly formed Great Ocean Road Taskforce.

The task for the Panel is to *balance* social effects with other effects of the proposal, assessed in light of the objectives of the PE Act and other matters in Section 60 and the provisions of the planning scheme applied as a whole, including Clause 65.

The task before the Panel is to evaluate each permission required under the applicable planning scheme controls to consider if it warrants approval and then, if appropriate, to undertake an integrated assessment beyond this.

In terms of this application, the social and economic effects of the proposal input into the appropriateness of the proposed use of the land for a resort. They may also have relevance in an integrated assessment of whether permission should be granted if all permit triggers are satisfied.

The proposal would provide increased tourism opportunities which are explicitly sought by the planning scheme at state and local level. More specifically, the proposal would meet a demonstrated need for high quality luxury accommodation in the region which is a positive response to policy.

A significant community benefit would result from the upgrade of Barham River Road and the associated provision of a cycling and pedestrian path at the cost of the Applicant (volunteered as part of the permit application). While local residents may fairly be concerned with the

associated change to the character of this setting as a result, if the application was approved, it would be reasonable to give priority to increasing safety along a roadway with compromised safety at proposed usage rates (discussed more in Chapter 9.2).

These are important factors lending support to the use of the land for a resort in principle, although for reasons indicated above, the proposed scale of the facility is considered problematic.

On the whole, the Panel regards community benefits from potential availability of new facilities for local residents as relatively confined, and therefore, marginal. In particular, the Panel attributes low to moderate weight to the offer to make the swimming pool available for learn to swim groups. Whilst this activity is important to community safety and childhood development, it is expected to form a more confined part of what would principally be a swimming pool available for use by resort guests.

Likewise, the provision of a restaurant immediately outside Apollo Bay, especially one with expansive views of the hinterland and Bass Strait, has the potential to provide social benefit and improve choice. However, the Panel does not propose to attribute a separate social benefit of an in-house bar being available to the general public, since a conventional Hotel is a prohibited use in the RAZ.<sup>139</sup>

#### **8.2.4 Conclusions**

The proposal has the potential to generate significant social benefit, especially by providing a luxury resort model of accommodation with increased choice for tourists, although this benefit would not be expected to extend significantly beyond site users and staff employment. That is, broader community benefits are not expected to be significant.

The greater social benefit to the community would flow from the Applicant's commitment to upgrade Barham River Road including provision for pedestrians and bicycles.

While these considerations are important and lend some support for allowing the use of land for a Residential hotel and Leisure and recreation facility, on balance, the Panel finds that these positive social effects do not outweigh the lack of compliance with planning policy and the zone controls as addressed in Chapter 3. Also, such social benefits could not logically be used to overcome concerns with other elements of the permissions sought, such as permission for buildings and works under relevant overlay provisions.

There are also likely negative social consequences of the proposal although they have not been quantified or demonstrated, including the impact on community sentiment and cohesiveness.

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<sup>139</sup> Defined in clause 73.03 of the planning scheme as 'land used to sell liquor for consumption on and off the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling'.

## **9 Parking, traffic and road impacts**

### **9.1 Parking and on site movement network**

#### **9.1.1 The issue**

Would sufficient on site be parking to meet anticipated demands? Is it suitably located and functional?

#### **9.1.2 Submissions and evidence**

A parking and traffic engineering assessment prepared by Traffix Group accompanied the amended permit application. However, the permit Applicant did not call traffic evidence at the Panel Hearing. The report indicated that adequate parking could be provided on site for all uses and that traffic could be suitably absorbed within the existing road network (although road upgrades were possible).

The amended application plans show a total of 277 car parking spaces and 8 bus bays. 50 car parking spaces would be provided behind the main hotel building, with an additional 45 car parking spaces and 8 bus bays near the existing building towards the property frontage (proposed for staff accommodation). An overflow parking area would be provided to the immediate south east of that structure that could notionally cater for an additional 137 cars. 45 car parking spaces would be provided adjacent to the villas.

The Applicant's traffic engineer suggested that the resort would generate four bus trips per day, with 75 per cent of guests predicted to arrive by bus (requiring 27 parking spaces). GORTT appeared to consider that this could be achievable as one of its projected directions for tourism in the region.

Council and a number of objectors considered that the amended application did not provide sufficient formed parking to cater for all components of the proposed uses or that such parking was insufficiently proximate to the buildings in question.

Objectors Inc pointed out that the assumed resort operating characteristics are 'highly business model specific' and were insufficiently robust to test the potential development impact. In particular, it submitted that there was no proper basis to assume that the proposal would generate a marked shift in consumer behaviour to a substantially increased proportion of arrivals by bus compared with existing accommodation facilities in the region.

Council called independent traffic evidence from Mr Toby Cooper, GHD at the Panel Hearing which included an evaluation of the Traffix report. Mr Cooper agreed that sufficient provision had been provided for the villas. However, he was of the view that, in summary:

- it was unrealistic to expect that such a high proportion of guests would arrive to the site by bus, especially for a luxury resort. The proportion was more likely 32 per cent, with 68 per cent arriving by private transport
- 122 car spaces would be required for the hotel, rather than the 27 spaces estimated by the Traffix Group
- inadequate parking had been allocated for the restaurant use (12 spaces for 150 seats), given the potential for external patrons in particular

- parking for the pool and wellness centre had been underestimated significantly
- staff parking had not been accounted for.

The Applicant circulated a plan during the Hearing to indicate how two additional ‘wings’ of parking could be accommodated behind the main hotel building (an additional 24 spaces) to provide a total of 74 spaces<sup>140</sup>, but advised that its preference was to provide the number included in the amended application to reduce the visual impact of car parking.

Various parties suggested that the nominated ‘overflow parking’ area would be required for conventional parking as part of the resort and that this should be more clearly resolved in the plans (including screening from the Rowley property). Its distance from the main hotel and its facilities was highlighted as a concern.

At the Hearing, the Panel queried how the valet parking, buggies and overflow parking area would operate. In response, the Applicant provided a list of resort properties in Australia and worldwide that provided a service of this nature including Couran Cove, Stradbroke Island, Hamilton Island (Qualia Hotel) and Saffire, Freycinet, Tasmania.<sup>141</sup>

### **9.1.3 Discussion**

#### **(i) Parking numbers**

The Panel agrees with Council and the objectors that the estimated car parking demands associated with various elements of the proposal have been understated by the Applicant and its team, especially for uses within the main hotel building.

At the same time, this is not regarded as a fatal aspect of the proposal since it appears that a sufficient overall number of parking spaces would be provided on the site as a whole to meet likely consolidated peak demand.

Clause 52.06 requires parking for a Residential hotel to be provided ‘to the satisfaction of the responsible authority’ – in this case, the Minister. Although the application also seeks permission for the use and development of the land for Leisure and recreation, the Panel considers that the further information provided by the Applicant appears to confirm that this would be an ancillary use of the land.

It is difficult to estimate the number of parking spaces required for hotel guests when a relatively new business model is proposed for the region – a luxury resort purportedly seeking to attract high end international package tours - since no detailed evidence of similar operations was provided.

Although not demonstrated through evidence, the Panel tends to the view that the likely figure will be somewhere in between the 75 per cent bus arrivals suggested by Traffix Group and the 36 per cent (two bus movements per day) suggested by Mr Cooper, at least in the early stages of a resort of this type with substantial changes sought to existing travel patterns for overnight visitors.

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<sup>140</sup> Document 32.

<sup>141</sup> Document 67.

The Panel also accepts Mr Cooper's evidence that some allowance should be made for car parking in connection with the use of the swimming pool by members of the public. Having regard to Mr Cooper's answers to Mr Taylor's questions in cross examination, the Panel considers that approximately 10-15 spaces would be reasonable for the swimming pool (beyond hotel guest use) to cater for learn to swim classes which may involve up to 30 students at a time. If attending during school hours, this number may be less if a bus was used.

Parking for the wellness centre should probably also be increased from 5 spaces to 11-14 spaces to reflect the likely pattern of use of such facilities where there are likely to be a number of staff providing treatments at any point in time.<sup>142</sup> This increased figure would be generally consistent with the number of parking spaces that would ordinarily be required for the comparable use of a Medical centre with 3-4 practitioners under Clause 52.06 of the planning scheme (which may include massage services).

If the business model proposed only provides access to the pool for members of the public in connection with paid entry to the wellness centre, this would be accounted for in calculations of parking for the wellness centre.

Restaurant parking was also thought to be underestimated by some parties, with potentially higher numbers of patrons using the restaurant and not staying at the resort. 12 are proposed to be provided although Mr Cooper suggested the additional demand would be in the order of 14 spaces for non-staying guests.<sup>143</sup> The Panel regards this as reasonable as a minimum, because it is unclear at this stage whether the restaurant would become a 'drawcard' for visitors to the region in its own right.

There is no calculation in the Applicant's documentation for staff parking numbers and this should have been undertaken. The Applicant reiterated at the Hearing that 39 direct on site jobs are proposed, with an additional 30 on site staff estimated for the retail outlets, restaurant and lounge bar (that is, 69 staff at peak). The Applicant suggested that on its calculations, there would be approximately 41 parking spaces left for staff. The Panel tends to agree that the parking area adjacent to the staff facilities would have adequate capacity to cater for staff parking.

Even if it could be demonstrated that adequate parking spaces were provided across the site for all intended uses, it is clear to the Panel that there is insufficient parking proximate to the main hotel building and its facilities which are expected to generate the highest demand. Other parking areas for the hotel facilities are located approximately 1 km from the main building.

It is still not entirely clear whether there is realistic capacity to provide well designed additional parking proximate to the hotel building having regard to issues of topography and landslip risk. The indicative plan provided by the Applicant depicts scope for 24 additional spaces to be provided behind the hotel building. The Panel would strongly support this being

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<sup>142</sup> This is consistent with the architectural plans showing three consulting rooms and four treatment rooms.

<sup>143</sup> As a guide, the statutory rate for a restaurant is 0.4 spaces for each patron at Clause 52.06 of the planning scheme. Applying a notional 50% reduction for the restaurant if it was to operate as a use ancillary to the accommodation would equate to 30 spaces.

required as a permit condition to improve the efficiency of on site parking areas close to where the demand is generated. However, the full impacts of additional parking in this area including visual impact would need to be addressed.

**(ii) Site movement**

The Panel has concerns about the impracticality of access and parking arrangements within the site, especially given an absence of documentation and plans that demonstrate its workability.

The distance between the unconstructed 'overflow parking' area near the entrance to the site and the main hotel and villas is a fundamental concern. Formed internal roads and paths are expected generally in the locations shown on the site plan but Panel Members traversed this potential alignment by foot and consider it would still be significantly challenging in terms of slope and distance - even for a person of average mobility. Also, given the anticipated regular use of the 'overflow' car park it should at least be properly formed and constructed.

In reality, the Panel expects that the villas would be isolated from the main facilities on site, since it is not realistic for all visitors to walk between them and the main hotel - with the possible exception of the Water villas and possibly some of the Ridge villas. This would become an issue even if a villa guest proposed to go to the restaurant for breakfast and would be exacerbated at night and in poor weather conditions.

Therefore, the proposal would rely very heavily on a system of buggies 'on call' from reception, since it is highly unlikely that all types of visitor would be able to navigate the pathways to be created across the site given topography and other natural features. Also, if a high percentage of guests arrive by bus as indicated by the Applicant, they will not have their own transport once on site.

The Applicant did not present detailed information in relation to either an on-call buggy or valet parking system, and limited information was available in relation to the grades of the internal roads and nature of waterway crossings in areas. This did not satisfy the Panel that adequate levels of movement could be achieved across the site in its ultimate configuration. At the same time, it recognises that it may be possible for a permit condition to require an Operational Management Plan to seek to address this issue.

Even if this could be demonstrated, the Panel would have concerns about how such a requirement could be enforced on an ongoing basis, for example, if a valet or buggy service was found to provide too costly in the medium to long term or inconvenient for year-round use.

**9.1.4 Conclusions**

The Panel concludes:

- sufficient parking is likely to have been provided for the site as a whole in the amended application plans although the demand for various elements of the use - especially those in proximity to the main hotel - have been underestimated
- the location of parking areas is a concern, since internal site accessibility may require substantial ongoing management to be workable.

## **9.2 Traffic and road impacts**

### **9.2.1 The issue**

Would the proposal have an acceptable traffic impact on Barham River Road and the broader road network? What measures are proposed to upgrade Barham River Road in connection with this proposal and how would they be achieved?

### **9.2.2 Submissions and evidence**

#### **(i) Increase in traffic**

A key concern for residents was that the nature and increase in traffic associated with the resort and villa proposal would have a significant negative impact on Barham River Road. Some were also concerned about impacts on town safety. Many suggested that traffic associated with the proposal would represent a material change to local roadways.

Objectors explained that Barham River Road is a scenic rural roadway currently servicing agricultural properties, small scale tourist enterprises and reasonably sporadic dwellings. In addition, it plays an important role as a tourist route and has prominent signage to this effect. The road generally follows and, at some points, crosses the Barham River.

The Applicant submitted that although traffic volumes would increase as a result of this proposal, their impacts would be contained based on an estimated increase of 228 movements per day in the Traffix Group report. It accepted that this additional traffic would be noticeable to local residents but that it would not substantively impact on the amenity of the rural location. Reliance was also placed on the Traffix Group report to indicate that additional traffic could reasonably be accommodated in Nelson Street and McLauchlan Street.

As indicated, the main areas of divergence between the parties centered on the projected percentage of bus versus car traffic associated with the hotel and villas, and the realistic traffic generation associated with *all* components of the proposal, especially those available to the general public.

With a lesser proportion of guests estimated to arrive by bus, Mr Cooper estimated that the proposal would increase traffic on Barham River Road by up to 440 vehicles per day. This would compare with existing peak counts of 646 per day. Council submitted that this was not consistent with expectations of amenity for a rural roadway with surrounding land predominantly in the Rural Conservation Zone.

#### **(ii) Proposed road upgrade**

The Applicant committed to upgrade Barham River Road to the property entrance at its cost if a permit was granted. This was intended to address Council and community concerns about unreasonable traffic impacts and road safety. The upgrade would encompass a bicycle and pedestrian path, with specifications to be determined with engineering input following Council liaison.

Varying submissions were made by parties at the Hearing about the scope of these works and timing for when this should occur – before or after the commencement of development (or some hybrid of these).

Mr Cooper formulated a memorandum to his evidence that depicted various options for this road upgrade, based on the relevant standard for Rural Access Roads.<sup>144</sup>

Council advised that further consents would need to be obtained for the upgrade, with details of the scope and cost of the works to be negotiated between the permit Applicant and Council (with direct input from its traffic engineers).

The Panel notes that VicRoads did not oppose the grant of a permit based on the impacts on roads under its control, such as the Great Ocean Road. There was no evidence before the Panel to displace this view.

### **9.2.3 Discussion**

The traffic counts for Barham River Road confirm that the roadway already experiences reasonably high volumes of traffic in peak (summer) season.<sup>145</sup> However, the Panel was not presented with any traffic counts for other times of the year to understand average annual usage rates.

There is no doubt that the proposal would increase demand on this roadway in terms of vehicle numbers, peak counts and the spread of vehicles using the road across the year, potentially in line with the higher figures provided by Mr Cooper of 440 vehicles per day, which represents a high proportional increase compared with existing traffic movements.

It is clear that especially during quieter times of the year, the increase in traffic movements associated with the proposed resort would be more noticeable to permanent residents and local users. At the same time, the nature of the land use adjacent to Barham River Road already lends itself to diverse vehicle use – from conventional passenger vehicles to farm vehicles and large semi trailers. Its function as a tourist road already involves bus and minivan traffic.

Professional traffic engineering evidence confirmed that the current use of the road exceeds the threshold level for widening the pavement, although Traffix Group did not consider that there was an immediate need for road widening.

In the Panel's opinion, the levels of traffic generation associated with the proposed use would increase this impetus. The road upgrade would be essential if the resort and villa proposal was approved to ensure adequate safety.

In this context, the Panel considers that the increased number of vehicles associated with the proposal could theoretically be accommodated within reasonable expectations, provided that the road infrastructure was upgraded to a safe and appropriate standard for a Rural Living Collector Road (carrying more than 1000 indicative maximum vehicles per day).

There is no doubt that the upgrade to Barham River Road committed to by the Applicant would change the character and appearance of this roadway from a low level rural road to a wider, more formalized roadway. To some, this would represent a community benefit by increasing safety and functionality. To others, this would be an unwelcome intrusion in terms

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<sup>144</sup> Document 19. Referenced in the following documents, Infrastructure Design Manual; VicRoads Supplement to Austroads Guide to Road Design Part 3; Austroads Guide to Road Design 6: Roadside Design, Safety and Barriers; Austroads Guide to Road Design 6A: Paths for Walking and Cycling.

<sup>145</sup> Traffic counts undertaken for the Colac Otway Shire, between 25 January and 2 February 2018.



of the character of the valley. The Panel notes that the road upgrade would be undertaken in the portion of the road up to the site where the road reserve is already widest and the effects on native vegetation are expected to be less than for the continuation of Barham River Road when the road narrows and is experienced in a more naturalistic setting.

The permit Applicant also agreed to provide a bicycle path as part of the road upgrade. The Panel acknowledges that this would be an important community benefit which is not currently provided.

It appears that there is generally adequate width within the existing road reserve for widening of this nature and that there is minimal native vegetation likely to be impacted by these works, with non-native grass as the predominant roadside vegetation.

The Panel has deliberately kept its consideration of the proposed road upgrade at a high level, since Council is the relevant road authority for Barham River Road and the plans do not include these works as part of the permit application.

Although the alignment and design of roadworks would be matters for Council to resolve, the Panel would generally be satisfied if the pavement width of Barham River Road was expanded to a minimum seal width of 6.2 metres with a 1.5 metre sealed shoulder on each side up to the site entry. A left turn auxiliary lane should also be provided at the site entry as suggested by Mr Cooper (for access by bus and heavy vehicle). The Panel does not take a firm view that a separate walking path or buffer is required for safety or functionality, and this would need to be balanced with seeking to retain the character of the rural roadway to a reasonable extent.

There is also the prospect of other road management measures being required for 'pinch points' identified at the Panel Hearing, including those on the plan forming part of the memorandum to Mr Cooper's evidence.<sup>146</sup> It appears that these may include 'Stop' or 'Give Way' signs and potentially limits on one vehicle at a time on the bridge in the part of the road closer to town. It may also be appropriate for Council to consider reducing the speed limit for this roadway since it currently has a default speed of 100 km per hour.

If a permit was granted against the Panel's recommendations, the Panel would be satisfied with a condition generally of the nature proposed by the parties requiring a section 173 agreement to outline the road upgrade obligations to be placed on the Applicant. There are also other important permissions that sit outside the permit application that would be required to facilitate these road improvements. For example, relevant permission will be required from the road authority and it is likely that a Cultural Heritage Management Plan will be a prerequisite.

Mr Cooper, Council and some local residents advocated for the road upgrade to be undertaken before works start for the development to accommodate the sizeable construction traffic demand. The Applicant suggested that it would be preferable to require relevant approvals to be obtained for the roadworks before the development started but that the works should only be completed prior to the occupation of any buildings to be constructed on the site.

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<sup>146</sup> Document 19.

On balance, if a permit was granted, the main ongoing impacts in terms of vehicle numbers would be expected in connection with the increased use of the site by guests. Therefore, the Panel would recommend that all relevant approvals should be obtained before works for the resort commence but the upgrade works should be completed before any aspect of the approved use starts. If the upgrade work was carried out before this time, there is potential for large construction vehicles to cause substantial damage.

#### **9.2.4 Conclusions**

The Panel concludes:

- the proposed upgrade to Barham River Road would be required by the proposed uses and would represent a benefit to the community to be funded by the Applicant
- such an upgrade would change the character of this roadway but would not necessarily be unacceptable for this part of Barham River Road
- if a permit was granted, all relevant approvals should be obtained before development starts and the upgrade works should be completed before any approved use starts.

## 10 Other issues

### 10.1 Impacts on the Apollo Bay Airfield

The proposed development is situated to the west of the Apollo Bay Airfield. The distance from the eastern boundary of the property to the western end of the Airfield is approximately 1.2 km and the proposed hotel is approximately 2 km to the west of the Airfield. The issue of potential impacts of the proposed development on the safe operation of the Apollo Bay Airfield was raised in a submission by Ms Francis.

#### 10.1.1 The issue

Will the proposed development adversely affect the safe operation of the Apollo Bay Airfield?

#### 10.1.2 Submissions and evidence

Ms Francis submitted that as a pilot she has used the Apollo Bay Airfield for light aircraft for many years. She drew attention to the location of the proposed development in relation to the authorised landing area. The proposed development is situated due west of the Airfield, directly in line with the runway. Ms Francis expressed concerns regarding safety, as aircraft taking off towards the west fly directly towards the site of the proposed development, and an aircraft could potentially crash into the hotel or other part of the proposed development if it failed to gain sufficient altitude.

The Apollo Bay Airfield is owned and operated by Council. The Colac Otway Planning Scheme includes an Airport Environs Overlay relating to the Apollo Bay Airfield (AEO2). The AEO2 overlay does not include the subject site.

Council indicated in its Closing Submission that:

*10.1.5 Council records do not indicate that the application was formally sent to the airfield manager but, we are instructed that the airfield manager was notified of it.*

The Panel directed Council to provide further information regarding the Apollo Bay Airfield, including confirmation of relevant planning controls and their application in this instance.

The Council provided a written submission to the Panel on 30 October 2018<sup>147</sup>, stating that:

*Council does not believe that the development will have any material adverse effect on the operation of the airfield ... given the constraints imposed by the local terrain and development pattern and the distance beyond the runway to the subject land.*

In particular, Council submitted that:

- *The [Airfield] is not a registered or certified aerodrome. It is not subject to the airspace requirements applicable to airports regulated under the Airports Act 1996 (Cth) as it is not located on Commonwealth land*

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<sup>147</sup> Document 73.

- *There are no RPT (Regular Public Transport) operations from the airfield. These are defined as “Flight operations performed for remuneration and conducted to fixed schedules over specific routes, and on which seats and/or cargo space is available to the general public” ...*
- *The constraints imposed by the local terrain affect the type of planes that can use the airfield ...*
- *The proposed development does not exceed the height of existing ridge lines to the rear of the site.*

Council submitted that it had considered the Commonwealth Government’s ‘National Airports Safeguarding Framework’<sup>148</sup> (the National Framework) in developing its submission. In particular, Council’s submission indicated that Council had assessed the proposal in relation to Guideline F of the National Framework, which relates to intrusions into protected airspace, and concluded that the proposed development will not cause such intrusion.

### **10.1.3 Discussion**

The National Framework is a national land use planning framework that is being implemented through state planning systems. It consists of a set of guiding principles as well as guidelines on specific matters including aircraft noise, windshear and turbulence, wildlife strikes, wind turbines, lighting distractions, protected airspace and public safety areas. Council’s submission provided an assessment of the proposed development in relation to Guideline F but did not refer to any other Guidelines in the National Framework, including the following guidelines that address issues of potential relevance:

- Guideline G (Managing the Risk of Distractions to Pilots from Lighting in the Vicinity of Airports)
- Guideline I (Public Safety Areas). A Public Safety Area is an area of land at the end of a runway where development may be restricted in order to control the number of people on the ground at risk of injury or death from an aircraft accident on take-off or landing. Public consultation on a draft of Guideline I was undertaken during May to July 2018 and the final version was agreed by Ministers at the Transport and Infrastructure Council on 9 November 2018.

Council’s submission did not provide a comprehensive assessment of the proposal in relation to issues identified in the National Framework. Other issues of potential relevance include the risk of distractions to pilots from lighting (Guideline G) and Public Safety Areas (Guideline I). However, the Panel notes that Guideline I was not finalised until 9 November 2018, after the Panel Hearing and Council’s submission were completed.

### **10.1.4 Conclusions and recommendations**

The Panel concludes that:

- The effects of the proposal on the Apollo Bay Airfield have not been resolved by this permit application.
- If the proposed development is approved contrary to the Panel’s primary recommendation, permit conditions should include requirements for:

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<sup>148</sup> [https://infrastructure.gov.au/aviation/environmental/airport\\_safeguarding/nasf/nasf\\_principles\\_guidelines.aspx](https://infrastructure.gov.au/aviation/environmental/airport_safeguarding/nasf/nasf_principles_guidelines.aspx).

- *Consideration of the risk of distraction to pilots using the Apollo Bay Airfield in relation to the lighting design for the development*
- *Confirmation that the development does not encroach into any Public Safety Area associated with the Apollo Bay Airfield.*

## **10.2 Servicing and infrastructure**

### **10.2.1 The issue**

How would the proposed development be serviced? Have the implications of servicing and infrastructure been adequately considered in assessments of the proposal? Can the required servicing be provided to the development without adverse impacts on other users and the environment?

### **10.2.2 Submissions and evidence**

#### **(i) Water supply**

The Applicant proposed that the resort be serviced by Apollo Bay's reticulated water and Barwon Water indicated its conditional approval.

The amended application material indicated that there would be a 150,000 litre underground concrete rainwater tank, collecting water from the main hotel building to meet toilet flushing demand for the site. It also proposes two 252,000 litre tanks adjacent to the fire pump enclosure near the carpark to the east of the hotel for fire fighting purposes, proposed to be buried to minimise visual impact.

Council submitted that it had discussions with Barwon Water, which confirmed that "reticulated water and sewer can be provided to the site at the developer's costs and without impact to current capacity".

However, a number of objectors submitted that Apollo Bay's town water supply is inadequate to meet even medium term needs, and there is no spare capacity available to service a large new development. They drew attention to recent water restrictions despite the completion of a new reservoir in 2014, as well as potential implications of climate change.

Mr Fankhanel and others submitted that security of potable water supply has been a longstanding issue in Apollo Bay. He submitted that environmental flow requirements limit the extraction of water from the Barham River. Ms Whelan, an objector, noted the coincidence between the seasonal pattern of peak occupancy in summer and low river levels that limit opportunities for pumping from the river.

Mr Fankhanel also submitted that all negotiations to date regarding water supply for the proposed development appear to have been undertaken without a "water budget" being prepared. He submitted that this was an important consideration because 5-star resorts are expected to generate high water demands and regarded this as unsustainable.

Mr Upson drew attention to inconsistencies in the information about water supply provided to the public by Barwon Water. He submitted that after that authority completed the latest water supply upgrade for Apollo Bay in 2014 it predicted that another upgrade would not be required until 2047. However, Stage 3 water restrictions were implemented soon after in May

2016, and the predicted date by which another upgrade would be required was brought forward. Objectors were concerned that approval of the resort would effectively force Barwon Water to accelerate the next augmentation of township water supply.

**(ii) Sewage**

A number of objectors queried the capacity of the existing sewerage system to deal with the additional wastewater from the site. Ms Whelan noted that sewage overflows have already occurred from the holding tank at Marengo and concerns were expressed in relation to increased overflows, potentially leading to sewage inflows to the Barham River.

The proposed resort would be serviced by Apollo Bay's reticulated sewage system with in principle approval from Barwon Water.

Mr Paul gave expert evidence that provision of reticulated sewage would have beneficial implications for landslip risk.<sup>149</sup> In response, Mr Dance submitted that piped services carry the risk of leakage, which can exacerbate landslip risk.

Mr Riches' submission highlighted that on some of the earlier application plans, the planned extension to the sewer was shown as running through his family's property. While later plans have shown it relocated to the road reserve, he submitted that the development had not provided easements or secured rights for the proposed new alignment of the sewer connection.

**(iii) Electricity and natural gas**

The Applicant proposed for the resort to be serviced from the power grid, supplemented by on-site solar power generation.

Council advised that it had discussions with the service provider confirming that reticulated power can be provided to the site and that augmentation of the power supply will ensure that the power system can provide for the development without impacts to existing customers in the region.

Irwinconsult indicated that the electrical supply in the vicinity of the site would need to be upgraded to support the proposed resort. It advised that:

*Powercor has submitted an SDSC Offer to undergo detailed investigation prior to issuing a formal supply offer. They have stated that they are unable to provide any further information until they have received the signed and accepted offer.*<sup>150</sup>

It indicated that existing aerial powerlines are proposed to be relocated underground throughout the site as part of the upgrade works.

Irwinconsult reviewed on-site power generation strategies that could be implemented to supplement mains supply using solar photovoltaic panels. It proposed that panels would be located on the ground in an array adjacent to the overflow carpark. It noted that "A 99kW

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<sup>149</sup> Mr Paul expert witness statement, para 19.

<sup>150</sup> Irwinconsult, Service Infrastructure Report.

installation would require approximately 300 panels equating to a solar photovoltaic panel area of 491 sqm".<sup>151</sup>

The Apollo Bay area is not serviced by natural gas. Local gas supply is provided by LPG. The resort would provide bulk LPG gas storage vessels and gas reticulation on site supplied by high pressure inground piping to each of the buildings that require gas.

#### **(iv) Telecommunications**

Objections to the original application raised concerns in relation to the provision of mobile phone and internet access.

Irwinconsult indicated that 4G services would be available to the whole site based on Telstra and Optus coverage maps. The resort would connect to standard fixed wireless NBN using a roof-top antenna. Alternatively, it advised that NBN Co verbally indicated that a fibre connection can be provided to the site given proximity to nearby Fibre to the Premises and Fibre to the Node connections.

#### **(v) Site Services and infrastructure**

Irwinconsult outlined proposed arrangements and infrastructure in relation to hydraulic services, electrical services, mechanical services and fire protection services. This infrastructure is not shown on the amended application plans and does not appear to have been assessed as part of the geotechnical or other investigations.

### **10.2.3 Discussion and conclusions**

The Panel was not provided with sufficient information to evaluate what the impacts of providing services such as water supply and sewage services to the site may have on other users. It also did not have the benefit of detailed comments from Barwon Water in this regard. If a single proposal was to generate increased demand at a level that requires infrastructure provision or upgrades to be brought forward, this may be associated with community impacts or impacts on natural resources that have not yet been quantified.

In the absence of this level of detail, it is not realistically possible to consider whether further measures may be required to reduce or mitigate impacts of servicing the resort.

The Panel recommends that prior to the grant of any permit, the Applicant (in consultation with Barwon Water) be required to provide more detailed information including detailed information from that authority to confirm the arrangements that are proposed to ensure that reticulated water and sewerage services can be provided without impacting other users.

The Irwinconsult report does not provide a detailed description of all proposed infrastructure and services that would be expected in connection with the proposed resort. In some instances, it indicates potential servicing options such as a solar power generation system but these are not indicated on the amended application plans. This makes it difficult to assess the

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<sup>151</sup> It recommended against the installation of a system with capacity exceeding 100 kW as this would affect the payment of Renewable Energy Target (RET) subsidies and trigger a requirement for registration as a Power Station with the Clean Energy Regulator.

consistency of the proposed development with the RAZ, as the decision guidelines for the RAZ require the responsible authority to consider:

*The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.*

The Panel notes that some of the proposed or mooted service infrastructure outlined in the Irwinconsult report may have potential implications that have not been assessed. For example, the solar power generation system noted above has a footprint of 491 sqm, with potential implications for local hydrology and visual impact, perhaps even glare. The large water tanks for water supply and fire services and other site services and infrastructure (such as extensive excavations for underground services and a possible Heat Rejection System for the hotel that involves drilling 50 to 90 pipes into the ground) have potential implications landslip risks. It is also unclear from the comments made by the CFA at the Hearing whether additional water tanks would be required to service the proposed hotel as a Shelter-in-Place option.

The Panel considers that more detailed assessments of the potential implications of infrastructure and services, including landslip risk, visual impact and the environment are necessary to undertake a full and proper assessment of the proposal. Without this information, the Panel cannot be satisfied that the permit application is consistent with planning policy including the RAZ and that it is suitably responsive to the values of the land.



# 11 Integrated assessment

## 11.1.1 The issue

How should competing considerations be balanced when assessing this proposal?

## 11.1.2 Discussion

The Panel has identified and explored factors both ‘for’ and ‘against’ the proposal in this report. This permit application highlights the need for an integrated approach.

The guiding principle in so far as the application of policy is concerned is in clause 71.02-3 of the planning scheme which calls on a responsible authority to balance competing objectives in favour of net community benefit and sustainable development.

The leading case authority pertaining to integrated decision making in planning permit applications where multiple permissions are sought is *Boroondara City Council v 1045 Burke Road Pty Ltd & Ors* [2015] VSCA 27. In essence, the Victorian Court of Appeal confirmed that a decision maker must be satisfied that it is appropriate to grant *each* separate permission required under the planning scheme. In considering these matters, it may be relevant to consider broader planning policies or decision guidelines of relevance in the planning scheme.

The permissions required for the proposal include use and development under the zone controls, development under each of the ESO, SLO, EMO and BMO controls as well as permission for the removal of vegetation (where no bushfire exemption applies).

The Panel considers that economic and social benefits are potentially very significant in connection with this application. However, they need to be balanced against the extent to which the development is consistent with other policies contained within the planning scheme. They cannot override the conventional decision guidelines pertaining to each permit ‘trigger’. Even on an integrated assessment after the appropriateness of the grant of individual permissions, the Panel agrees with submissions and evidence for Council and the objectors that these benefits (to the extent they can be demonstrated with any certainty) would not be sufficient to counter the adverse impacts of a development of the type and scale proposed on the significant landscape and unique character of the area.

For these reasons, the Panel does not support the grant of a permit for the use of the land as an integrated tourist resort (Residential hotel in particular) at this scale, and has not been persuaded that permission could be granted for buildings and works under the zone or overlay provisions having regard to information and evidence available with the amended permit application.

In previous chapters, the Panel concludes:

- The proposal would meet a demonstrated need for high quality luxury accommodation in the region in line with planning policy. It would provide increased tourism opportunities, although both the potential economic benefits and disbenefits have not been fully demonstrated.
- The community contributions offered by the Applicant in connection with the proposal would have the potential to generate significant community benefit, although they do not form part of the permit application itself.

- The scale of the hotel land use cannot be sustained within the RAZ and the particular context of the site. It would also detract from the valued character of the Barham River Valley.
- Subject to some refinement, the proposed villas would represent an acceptable built form for the site that aligns suitably with policy and zone objectives. Although the hotel building would be articulated and stepped to respond to topography, its proposed built form would be contrary to planning policy and would have an unacceptable impact on a nationally recognised landscape.
- It has no confidence based on the nature of investigations to date that ‘tolerable’ risk criteria for landslip could be met for the proposal within the parameters of the permission applied for. Significant subsurface testing is required to confirm the preliminary geotechnical/geological risk model and to enable the siting and design of suitable mitigation works to be identified.
- The permit application does not respond adequately to flooding risk since no feasible alternative access to Barham River Road has been established as part of the proposal.
- The Applicant has not demonstrated that the proposal would prioritise the protection of human life during a fire event given the disparate nature of the buildings and challenges for internal site movement.
- The proposal does not suitably document the impacts on native vegetation, which remains unresolved in connection with bushfire management issues and geotechnical risk. This may have consequential impacts on the visual impact of the proposal. Overall, the proposal has not yet demonstrated its capacity for sustainable development or a net environmental gain.
- Parking and internal site accessibility would potentially be problematic and require substantial ongoing management to be workable.
- The broader impacts of providing service infrastructure to the site are not yet known at this point in time.

Many of these concerns are symptomatic of the fact that the amended application lacked detail in fundamental areas.

### **11.1.3 Conclusion and recommendation**

The Panel concludes:

- It is not appropriate to grant the planning scheme permissions proposed by the amended application.
- The amended permit application would not result in net community benefit or sustainable development, and should be refused.

The Panel’s primary recommendation is:

**Based on the reasons set out in this Report, the Panel recommends that planning permit application No. PP169/2017-1 be refused.**

## 12 Panel preferred permit conditions

### 12.1 The issue

If a planning permit is supported by the Minister for Planning as Responsible Authority against the Panel's primary recommendation, what conditions should regulate the approved use and development? How effective are these likely to be for this particular permit application?

### 12.2 Submissions

DELWP on behalf of the Minister requested the Panel to provide a recommended set of permit conditions for the proposed use and development even if its ultimate recommendation was to refuse to grant a permit.

Council as the referring Responsible Authority circulated a draft set of permit conditions (notwithstanding its lack of support for the proposal). These were refined during the course of the Hearing and were informed by evidence given to the Panel. The Applicant provided a consolidated response to these submissions with its recommended changes and additions.

The Panel heard submissions from all parties about these versions and was assisted by DELWP highlighting key issues for its consideration. Given the Panel's substantive recommendation to refuse to grant a permit, it has not documented the nature of these submissions in full. Rather, it has identified the main areas of divergence between the parties which included:

**Geotechnical investigations** - the Applicant submitted that further geotechnical investigation could be carried out under the auspices of a permit, with conditions capable of being imposed to give effect to requirements to design mitigation works to achieve 'tolerable' risk criteria under the EMO. Other parties strongly opposed this notion and submitted that this deficiency indicated that no permit should be granted. Another issue was the extent of subsurface testing that would be required as a minimum before plans could be endorsed.

Council also contended that it would not be reasonable for conditions to impose an ongoing burden to administer technical requirements of this particular permit or ongoing monitoring in connection with the potential for landslip. Rather it suggested that this should be required of an independent 'verifier', peer review or the like at the cost of the permit holder.

**Native vegetation** - the extent to which native vegetation may be impacted by the proposal and the extent to which permit conditions could suitably restrict this. There was also a question as to which form conditions pertaining to native vegetation removal and offsets should take (as drafted by Council or by DELWP Environment). Another key issue was the extent of setbacks considered necessary between buildings and works and non-designated waterways.

**Emergency access** - the suitability of permit conditions to require alternative access during flood events where this had not yet been demonstrated and did not form part of the permit application. This was considered by the Applicant to be surmountable subject to further investigation. The CCMA, Council and objectors regarded this as a threshold issue that had not been resolved.

**Timing of roadworks** – The Applicant explained that the construction process was likely to result in damage to any road upgrades and that traffic could be managed during this process without the need to fully construct the road improvements. Consequently, it would agree to all relevant approvals being obtained before starting buildings and works but proposed to construct the upgrades prior to the use commencing. Council would accept this timing. This was not supported by a number of parties who explained that the road presented safety concerns in its current condition that would be exacerbated by construction traffic including heavy vehicles.

**Additional on site parking** – Council advocated for a total of 199 car parking spaces to be provided at the rear of the hotel building in addition to one parking space per villa and the overflow parking area. The Applicant preferred to provide parking in line with the amended application plans to reduce the visual impact of parking areas on the presentation and operation of the hotel. Some residents also advocated for increased on site parking in connection with the combination of uses proposed.

**Lighting** - Whether a lighting design and management plan would be sufficient to result in an acceptable night lighting outcome given the sensitive setting.

**Australian workers and materials** - A proposal by Mr Upson that the permit holder should be required to ensure a minimum percentage of workers being Australian Citizens or permanent residents and a minimum percentage of Australian content of construction materials.

**Barwon Water conditions** - The wording proposed in the Barwon Water would ordinarily require further clarification as to the scope of works and approvals proposed and whether they come under the direct ambit of the planning permit.

### 12.3 Discussion

The 'Panel preferred' draft set of permit conditions has been appended to this report (Appendix D) as requested by DELWP on behalf of the Minister. The comments from each party have been taken into account in arriving at the Panel's preferred form of conditions.

Substantial work has been undertaken by the Panel to arrive at a version of permit conditions that would address the Panel's major concerns moving forward.

Notwithstanding the best efforts of the Panel as assisted by the parties, the Panel is not comfortable with the significant residual uncertainty about the proposal and its impacts which have the potential to include undetermined modifications to buildings and works depicted in the proposal under consideration. The Panel considers that these potential impacts would remain unresolved in many key respects, even if the conditions were complied with.

The Panel has fundamental concerns about conditions in this permit being relied on too heavily. They would be called upon to do 'heavy lifting' to overcome deficiencies in the permit application, resulting in a permit with uncertain outcomes that is extremely challenging for both the Applicant and Council to administer. The fact that the process for approval of condition 1 plans needs to be deferred until after further investigation is far from ideal. Also, the extent of management plans that would be required (including integrated assessments of conditions pertaining to all disciplines) is immense – with this itself tending to indicate that it is preferable for a permit to be refused.

In these circumstances, the Panel makes broad observations about its approach to drafting permit conditions.

The overriding purpose of the application requirements and decision guidelines of the EMO is to satisfy the decision maker that a 'tolerable' level of risk can be achieved for the proposal in terms of landslip, and for it to understand the implications for the permit application when achieving this level of risk. Fundamentally, the Panel has concluded that is not appropriate to defer this investigation and response to conditions of a permit given the uncertainty that may result, including potential changes to buildings and works. However, if a permit was granted by the Minister, all geotechnical investigations including a full program of subsurface testing should be undertaken before the endorsement of plans under condition 1 of the permit. Although the endorsement of plans normally comes first in time, there are strong reasons why this would not be appropriate for the current application as outlined in this Report.

Although numerous expert reports and assessments have been prepared for this proposal and will be supplemented by requirements of the permit, there is a real concern that these need to 'speak to one another' to work in unison. An integrated assessment must be completed to the satisfactory of the Responsible Authority as an overriding permit requirement. Its purpose is to ensure that:

- linkages between the various specialist components (such as interaction between vegetation management and landslip risk) are properly investigated
- all specialist reports are based on a consistent and complete understanding of the proposal, which is specified in sufficient detail to allow each specialist assessment to be completed without uncertainty regarding what is proposed
- the final design (including built form, infrastructure and services, and landscaping) appropriately balances conflicting requirements for example, fire risk, land stability, flood risk, vegetation protection, drainage and the like.

There should be provision made for peer review and ongoing monitoring obligations on the Applicant. It is not reasonable for a coastal municipal council such as Colac Otway Shire to carry the professional or cost burden of closely administering this permit, especially where specialist expert supervision and advice would be required to undertake this task. This is another fundamental reason why the Panel does not support the grant of a permit until the application achieves a suitable level of completeness.

There is no certainty that the Applicant could achieve alternative flood free access to and egress from the site if this was to be included in a covenant within a section 173 agreement. This is a critical deficiency for a proposal of this nature, where an integrated new development is proposed in an area prone to significant flooding, especially where site users are not likely to be familiar with local flood conditions and appropriate responses. However, if a permit condition requires this to be provided, it should be worded to enable all potential routes to be considered, since the Old Horden Vale Road alignment as suggested by the Applicant may well be found to be unsuitable. This is a matter that should be established before the endorsement of plans since it is a threshold issue.

The Panel accepts that it would be reasonable for all approvals for the upgrade works to Barham River Road to be obtained before the approved development starts, with the works

to be completed before any approved uses start. While the existing use of the road may meet the trigger for an upgrade of the nature proposed to maintain safety, this level of usage is likely to only be achieved at limited peak times of the year and the ongoing increase of traffic associated with the proposed use of the land would necessitate the upgrade works. A Construction Management Plan to be approved under the permit would provide details of the management of this roadway during construction to ensure safety and control impacts.

All conditions addressing landscaping and vegetation should defer to bushfire management as a priority, with other measures to improve the bushfire responsiveness of buildings or their siting in preference to the removal or modification of existing native vegetation. This should include a requirement to retain vegetation within 30 metres either side of all existing waterways on site (both designated and non-designated) especially since this land forms part of the potable water supply catchment. Further ecological assessment would be warranted to assess the implications of achieving and maintaining defensible space across the entire property.

Additional on site carparking near the hotel building would be required, albeit not to the level requested by Council. This would necessitate careful site planning having regard to topography, landslip and vegetation. In addition, the overflow car parking area would need to be properly formed and screened given the extent of reliance on this parking area. The 'trafficability' of the site would need to be demonstrated via an Operational Management Plan which would need to include a requirement for buggy or valet operations all times the use was ongoing.

While conditions requiring a minimum percentage of local employment may be desirable in principle, there is no evidence that they could be met for this proposal given the local context. All indications are that there would be a lack of current capacity to meet the demand for skilled local staff, aside from future potential opportunities to establish a training centre in the region. Likewise, while there may be merit in a minimum 'local content' construction materials condition for a substantial new development proposal such as this, the Panel considers that at this point of time it would place a greater burden on this particular private proposal compared with other major tourist developments in Victoria, which have not yet been demonstrated to need to conform to this requirement. It is also not a matter reflected directly in the applicable planning scheme provisions. While there may be some precedent for recent major public infrastructure projects, this is not a project of this character.

## **12.4 Conclusions**

The Panel concludes:

- The grant of a permit ordinarily represents confirmation that all relevant matters can be addressed suitably subject to further regulation but, in this case, this is yet to be demonstrated.
- Fundamentally, the Panel does not support significant key investigations being undertaken under the auspices of the permit or key contingencies being left for resolution at a later date.

## Appendix A Objectors/Submitters to the Permit Application

### Original Submitters to Planning Permit Application

Sub No	Name of Submitter	Sub No	Name of Submitter
001	Nick & Cheryle Polgeest	028	Matilda Ballinger
002	Nicola Muxworthy	029	Chris Dance
003	Gail Darling	030	Julie Daniels
004	Lyndon Darling	031	Nathan Inglis
005	Nicola & Craig Philp	032	Phil & Roslyn McDonald
006	Sally & Richard Stone	033	Richard Piera
007	Susan Graham	034	Colin Stewart
008	Wendy Skene & C Epskamp	035	Marisa Cooper
009	Patricia Farley	036	Janette Lewis
010	Freda Martin	037	David Rushford
011	Wilma Bedford	038	Michael & Denise Hooke
012	Patricia Barnes	039	Dani Ainsworth
013	Rula Lenski	040	Barbara Birkett
014	Phil & Marg Lawson	041	Peter Fillmore
015	Robert Bedson	042	Vaia Gimbiritis & Michael Papadopoulos
016	Simon Pockley	043	Fran MacGregor
017	Tracey Watson	044	Jean Marshall
018	Teresa Doughty	045	Linda McKenzie
019	Hans Fankhanel	046	Brett & Caterina Morrison
020	Russell & Christina Lyons	047	Nereda Rink
021	Robyn Lamson & Richard Lythgo	048	Pete Sarda
022	John & Dorothy Riches, Pete Mawhinney, Libby Riches, Jean & Geoffrey Kirkbride	049	Peter & Roz Shelton
023	Cathy & John Donovan	050	Jonathan Smith
024	Vicki & David Hannah	051	Edward Stuckey
025	Kenneth & Valerie Johnson	052	Bruce Thomas
026	David & Caroline Rushford	053	Dawn Thomas
027	Natasha Sikand	054	Darren Brimacombe

Sub No	Name of Submitter	Sub No	Name of Submitter
055	Rahni Buchanan	085	James & Sandra Toone
056	Arthur Nosedo	086	Deborah Tovey
057	Gillian Ballinger	087	Peter Tovey
058	Warwick Ballinger, Seafarers Getaway	088	Anthony Van Fossen
059	Wim Bezemer	089	James Walters
060	Lee & Jenny Bryant	090	Lyndi Whalen
061	Andrew Coffey	091	Reg & Maiva Wilkinson
062	Graham Costin	092	Carol & Frits Wilmink
063	Gordon & Olive Currie	093	Rebecca Wright
064	Cindy Day	094	Andrew Buchanan
065	Judy Forrester	095	Sonja Ballinger
066	Judi Forrester	096	John Beaumont
067	Allan & Debbie Frizon	097	Janette Carland
068	Bill Gross	098	Ann Clissold
069	Jane Gross	099	Pollyanna Day
070	Lyn Halloran	100	Clive Fitts
071	Kelly Hurley	101	Scott & Jill Fowler
072	Colin Jevons	102	Stephen Fox
073	Nancy Kininmonth	103	Naomi Halpern
074	Phil Langdon	104	Patricia Hansen
075	Ron & Judith Lawler	105	Robert Hansen
076	Michelle MacEwan	106	Denise Harisiou
077	Sue McKenzie	107	Michael & Georgina Harrison
078	Margaret Murphy	108	Michelle Hayat
079	Julia Quintana	109	Chris Hayes
080	David Rees	110	Norma & Ian Hayward
081	Lynne & Kevin Ross	111	Michael Heland
082	Anja & Richard Schrederis	112	Jai Henricus
083	Kris Thomas	113	Darren Hill
084	Anton Tibbits	114	Victoria Howlett



Sub No	Name of Submitter	Sub No	Name of Submitter
115	David Hume	144	Ronald & Kay Pitcher
116	Richard Jones	145	Annette Telford
117	Russell Lonie & Cath Richardson	146	Amy Ware
118	Graham & Susan Mahoney	147	Tony Webber
119	Rod & Marlene Martin	148	Lynette Horton
120	Helen Masters	149	Alan & Publia Simm
121	Mikhala McCann	150	Christian Enkelmann
122	Susanne McDonald	151	Lyn Munro
123	Pauline Nolle	152	Andrew and Minori Melzak
124	Judith O'Shea	153	Frances Simm
125	Julia Quintana	154	Robert Craig
126	Gladys Riches	155	Catherine Marriner
127	David & Robyn Ritchie	156	Leonie Ord
128	Helen Robbins	157	Jonathan Upson
129	Lauren Robbins	158	Great Ocean Road Regional Tourism Ltd
130	Louise Russell	159	Shane Maliki & Madison Eltringham
131	Rob & Prue Sinclair	160	Vic Bongiorno
132	Claire Smith	161	Robert Telford
133	Valerie Stahn	162	Warrick Ballinger
134	Danielle Stevens & Peter Murnane	163	Paul Heland
135	Andrew Strang	164	Dr Mani Kutti
136	Noel Tanis	165	Stuart Matthews
137	Cate Thomas	166	M Sutton
138	Gregory & Valerie Ware	167	Lisa & Bill Geier
139	Glenda Whelan	168	Robert Sieminski & M Nicol
140	Rick Whitwell	169	Peter Cameron
141	Paul Yeaman	170	Alistair Royce
142	Thomas McDougall	171	Objectors to Barham River Road Development Inc.
143	Peter Milverton	172	Chris & Karen Adams

Sub No	Name of Submitter	Sub No	Name of Submitter
173	John Gawthrop	185	Valda Bawden
174	Natasha Sikand	186	Oleg & Elena Kouznetsov
175	Allan & Faye Rampal	187	Garry & Joycie Henderson
176	Pauline Roberts	188	David Callerame
177	Patricia Lloyd	189	John & Robyn
178	Mathew Saliba	190	Marilyn Hanzalik
179	Shayne Collins	191	Nereda Rink
180	Alison Macfarlane & Mark Frewin	192	Geoffrey Williams
181	John Schencking	193	Kamahi Djordon King
182	Peter & Elisabeth Humphries	194	Tim Cobb
183	Bruce Andrews	195	Georgie Meehan
184	Nicola & Craig Philp		

## Submitters to Amended Planning Permit Application

Sub No	Name of Submitter	Sub No	Name of Submitter
001	Russell Patterson	028	Mike Lyons
002	Colin Stewart	029	Pete Fillmore
003	Dawn and Bruce Thomas	030	Kelly Hurley
004	Andrew Buchanan	031	Ken Weaver
005	Natasha Sikand	032	Jillian Langhammer
006	Tony and Lee James	033	Joy Sayers
007	Barbara Birkett	034	Great Ocean Road Regional Tourism Limited
008	David Rees	035	Bruce Frost
009	Sylvie Giles	036	Denise Reynolds
010	Patricia Hansen	037	Poppy Gounaris
011	Robert Hansen	038	Paul Sayers
012	Susan Graham	039	Jenny Laird
013	Objectors to Barham River Road Development Inc.	040	Philip Bolton
014	Mathew Saliba	041	Shayne Collins
015	Catherine Hollywell	042	Danny Newton
016	Stephen Hancock	043	Karen Anders
017	Thomas McDougall	044	Abby Nagle Garne
018	Tracey Harbour	045	Submission withdrawn
019	Hans Fankhanel	046	Yvett Hill
020	Martha Macintyre	047	Jenny Little
021	Peter Mackay	048	Joanne Johnson
022	Nicola and Craig Philp	049	Paul McDonald
023	Andrew Coffey	050	Tracey Watson
024	Alex McKenzie	051	Kerrin Metz
025	David Jones	052	Gail Darling
026	Andrew White	053	Stephani Jones
027	Lynne Ross	054	Janet Lowe

Sub No	Name of Submitter	Sub No	Name of Submitter
055	David Kingsford	086	Simon Pockley
056	Nancy Kininmonth	087	Pat Mackle and Paul Smith
057	Paul Heland	088	Jeremy Alexander
058	Cathy Richardson	089	David Bunyan
059	Mick Heland	090	Carol and Frits Wilmink
060	Nasser Kotb	091	Jenny Hamilton
061	Kevin Ross	092	Lyn Halloran
062	Catriona Burgess	093	Grant and Barbara Moss
063	Patricia and Robyn Farley	094	Glenda Whelan
064	Valda Bawden	095	Annette Telford
065	Richard and Sally Stone	096	Karen Keegan
066	Mark Kininmonth	097	Judith O'Shea
067	Arthur Goud	098	Deborah Tovey
068	Jo Sloggett	099	Janet Borland
069	Chris Dance	100	Tess Doughty
070	Clive and Sally Fitts	101	Judith Forrester
071	Jan Lewis	102	Ruth Bunyan
072	Brad Hinds	103	David and Robyn Ritchie
073	Edward Stuckey	104	Jessica Manton
074	Caterina Morrison	105	Kate Sloggett
075	Morwenna Brown	106	Ronald and Kay Pitcher
076	Brett Morrison	107	Peter Byrnes
077	David Rushford	108	Alan Lucas
078	Margaret Fitzgerald	109	Andrew Strang
079	Greg and Val Ware	110	Sally Fitts
080	Jane Gross	111	Jo Wiffen
081	Pauline Roberts	112	Ngaira Smith
082	John Charles Schencking	113	Tony Webber
083	Anton Tibbits	114	Kellie Nagle
084	Amy Ware	115	Joyce Biddle
085	Mikhala McCann and Jai Henricus		

## Appendix B Document list

### Pre-Hearing document list Version 1 – 260918

No.	Date	Description	On behalf of
1	13/3/18	Letter from Oceans United Investments Pty Ltd to Minister for Planning dated 13 March 2018, with supporting information	Oceans United Investments Pty Ltd
2	20/3/18	Panel Directions Letter	Planning Panels Victoria
3	27/3/18	Letter from DELWP to Panel Chair commenting on Panel Directions/further information request	DELWP Planning on behalf of the Minister for Planning (DELWP)
4	27/3/18	Further information requirements recommended to Planning Panel	Colac Otway Shire Council (Council)
5	28/3/18	Updated Directions – New and Updated Information and re-notification	Planning Panels Victoria
6	4/4/18	Original submissions to permit application – renumbered by Council at Panel's request	Council
7	6/4/18	Letter from Panel - advice from Applicant regarding anticipated timing of submission of further information	Planning Panels Victoria
8	16/5/18	Response to Panel's directions letter of 28 March 2018 including amended application documents	Oceans United Investments Pty Ltd
9	17/5/18	Panel correspondence to parties regarding receipt of further information from proponent	Planning Panels Victoria
10	26/5/18	Letter from Applicant to Minister for Planning enclosing amended permit application documentation	Oceans United Investments Group Pty Ltd
11	5/6/18	Letter to Applicant regarding further information outstanding	Planning Panels Victoria
12	26/6/18	Letter from the Applicant enclosing further information	Oceans United Investments Pty Ltd
13	27/6/18	Letter from Executive Director, Statutory Planning Services to Applicant regarding preliminary review of amended application documentation, with	DELWP

No.	Date	Description	On behalf of	
		Attachment 1 (Section 57A amendment information overview)		
14	3/7/18	Letter from DELWP to Panel Chair acknowledging the amendments made to the application under section 57A of the Act, and confirming the documentation which now comprises the application	DELWP	
15	5/7/18	Panel letter to submitters – notification Amended Planning Permit Application	Planning Victoria	Panels
16	5/7/18	Letter to each referral authority – notification Amended Planning Permit Application	Planning Victoria	Panels
17	7/7/18	Referral authority response - Corangamite CMA revised	Corangamite CMA	
18	27/7/18	Referral authority response – Barwon Water	Barwon Water	
19	3/8/18	Referral authority response – Transport for Victoria	Transport for Victoria	
20	9/8/18	Submissions to amended application including summary of submissions report	DELWP Planning, on behalf of Minister for Planning	
21	13/8/18	Referral authority response - CFA	CFA	
22	17/8/18	Email with link to unconfirmed minutes recording Council's resolution relating to the permit application at its special meeting on 15 August 2018, and containing a link to the officer report	Council	
23	21/8/18	Correspondence from CCMA responding to Panel's questions, tabled at second Directions Hearing	Handed up at DH by Panel	
24	22/8/18	Correspondence to Panel	DELWP Environment	
25	27/8/18	Copy of unconfirmed minutes of Council resolution on amended without prejudice permit conditions	Council	
26	27/8/18	DELWP summary of submissions report (amended and updated)	DELWP	
27	27/8/18	Email from Council attaching unconfirmed Minutes of 22 August 2018, and amended without prejudice planning permit conditions	Council	

No.	Date	Description	On behalf of
28	28/8/18	Letter with information/documents requested by Panel at Directions Hearing	Oceans United Investments Pty Ltd
29	28/8/18	Panel letter to OVGA	Planning Panels Victoria
30	28/8/18	Second Directions Hearing directions and timetable	Planning Panels Victoria
31	10/9/18	Correspondence regarding Part 1a (dispensation of car parking) and 1b of Panel Directions (Socio-Economic Impact Assessment report)	Oceans United Investments Pty Ltd
32	12/9/18	Council Part A file	Council
33	12/9/18	Council Part B file	Council
34	13/9/18	Correspondence with photomontages (LVIA report)	Council
35	13/9/18	Version 2 Hearing timetable	Planning Panels Victoria
36	13/9/18	Email from Coastal Planning to PPV providing further details/links to relevant reports relied upon by the experts they intend to call	Objectors to 275 Barnham River Road Development (Objectors Inc)
37	14/9/18	Email from Planning & Property Partners providing further details/links to relevant reports relied upon by the experts they intend to call	Oceans United Investments Pty Ltd
38	14/9/18	Letter from OVGA to Panel Chair responding to Panel's letter dated 28/8/18	Office of the Victorian Government Architect
39	14/9/18	3 x emails attaching Street Ryan report references – socio-economic impact	Oceans United Investments Pty Ltd
40	14/9/18	Email with details about site inspection and map	Oceans United Investments Pty Ltd
41	14/9/18	Email attaching Ararat Wind Farm Panel Report	Council
42	14/9/18	Email attaching Irwinconsult document	Oceans United Investments Pty Ltd

No.	Date	Description	On behalf of
43	14/9/18	Council's Part A submission	Council
44	14/9/18	Letter with response to Panel's request for clarification	Oceans United Investments Pty Ltd
45	14/9/18	Links: <ul style="list-style-type: none"> <li>- Table with relevant VCAT decisions and panel reports by theme</li> <li>- Table with extracts of relevant VCAT decisions and panel reports</li> <li>- Electronic copies of each decision and report referenced in the tables</li> </ul>	Council
46	15/9/18	Email attaching EMO1 reference documents	Council
47	17/9/18	Copy of Council peer reviews	Council



**Main Hearing Document List, Version 4 – 25 October 2018**

<b>No.</b>	<b>Date</b>	<b>Description</b>	<b>Presented by</b>
1a	17/9/18	Aerial photo consolidated objectors' locations within 2km of site	Council
1b	17/9/18	Aerial photo original objectors' locations	Council
2	17/9/18	DELWP submission	DELWP
3	17/9/18	Site plans with survey points and height poles	Oceans United Investments Group Pty Ltd
4	17/9/18	Maddocks site inspection A4 plans	Council
5	18/9/18	Great Ocean Road Regional Tourism Ltd submission	Great Ocean Road Regional Tourism Ltd
6	18/9/18	Viewshed analysis, Hansen Partnership	Council
7	18/9/18	Submission by Richard & Sally Stone	Mr Stone
8	19/9/18	Response to Amendment VC148	DELWP
9	19/9/18	Architectural plans for 12 Apostles Geothermal Spa & Resort	Council
10	19/9/18	Geotechnical Expert Witness Conclave statement dated 13/9/18	Council
11	20/9/18	OGVA Report dated 17 April 2018	DELWP
12	20/9/18	OGVA Report dated 30 April 2018	DELWP
13	20/9/18	Planning permit 12 Apostles Resort Geothermal Spa & Resort	Council
14	20/9/18	Council Part B Submission	Council
15	20/9/18	Traffic Counts Barham River Road	Council
16	20/9/18	Traffic Counts Nelson Street	Council
17	20/9/18	State of the Industry Tourism Research Australia 2016-17	Council
18	21/9/18	Great Ocean Road Regional Tourism Ltd attachments to submission	Great Ocean Road Regional Tourism Ltd
19	21/9/18	GHD memorandum 19/9/18, supplement to evidence of Mr Cooper	Council
20	21/9/18	CFA Submission	CFA
21	27/9/18	Mr Stephen Hancock revised submission	Mr Hancock
22	28/9/18	Pete Fillmore background documents	Mr Fillmore

No.	Date	Description	Presented by
23	3/10/18	Email to CCMA with Panel's questions to be addressed at Hearing	Planning Panels Victoria
24	4/10/18	Council marked up draft planning permit conditions	Council
25	5/10/18	DELWP Environment revised conditions to be used in place of Council's suggested conditions 16-18 inclusive	DELWP
26	8/10/18	Siting & Design Guidelines for Structures on the Victorian Coast, May 1998	Council
27 a & b	8/10/18	Applicant's submission, A3 documents prepared by Spowers	Oceans United Investments Group Pty Ltd
28	8/10/18	Dr Pockley's supplementary information	Dr Pockley
29	9/10/18	Expert Evidence of Mr Allan Wyatt for the Lal Lal wind farm	Council
30	10/10/18	Photographs of historical flooding from Mrs Telford	Mrs Telford
31	10/10/18	Submission on behalf of the permit Applicant, prepared by Mr Chris Taylor, Planning & Property Partners	Oceans United Investments Group Pty Ltd
32	10/10/18	Hotel Zone Site Plan, Spowers	Oceans United Investments Group Pty Ltd
33	10/10/18	Additional sections showing cut and fill	Oceans United Investments Group Pty Ltd
34	10/10/18	Outline of Submission on behalf of Objectors Incorporated Apollo Bay	Objectors Inc
35	10/10/18	Attachments to Objectors Incorporated submission	Objectors Inc
36	10/10/18	Visual impact material, 325 Tuxion Road, Apollo Bay	Mr Pector
37	10/10/18	Ms Ballinger Barham River Road Flooding PowerPoint presentation	Objectors Inc
38	10/10/18	Calculation sheets prepared by Mr Hayden Burge	Oceans United Investments Group Pty Ltd
39	10/10/18	Mr Barlow's marked up site plan with landscaping, referred to in planning evidence	Oceans United Investments Group Pty Ltd
40	11/10/18	Submission by Glenda Whelan	Ms Whelan
41	11/10/18	Submission by J. Charles Schencking	Professor Schencking

No.	Date	Description	Presented by
42	11/10/18	Submission on behalf of the Otway Forum and background email sent on 8/10 from Tourism Victoria CEO to Mr Fillmore	Mr Fillmore, Otway Forum
43	11/10/18	Submission by H Fankhanel including visitor survey from Otway Planning Association	Mr Fankhanel
44	11/10/18	Submission by Chris Dance and David Rushford	Mr Dance & Mr Rushford
45	11/10/18	Riches Family Submission and plans showing initial and proposed sewer proposal and proposed airfield access route	Mr Riches
46	11/10/18	Nereda Rink's Submission	Ms Rink
47	11/10/18	Defining Sustainable Tourism titled Sustainable Tourism Info Sheets (including reference to World Tourism Organisation definition) <a href="https://www.gdrc.org/uem/eco-tour/st-infosheets.html">https://www.gdrc.org/uem/eco-tour/st-infosheets.html</a>	Professor Schencking
48	11/10/18	Submission by David and Robyn Ritchie	Mr Ritchie
49	11/10/18	Submission on behalf of Patricia Farley	Ms Farley
50	11/10/18	Submission by Carol and Frits Wilmink and PowerPoint presentation	Mr Wilmink
51	11/10/18	Submission by Phil Lawson	Mr Lawson
52	15/10/18	Applicant's marked up version of proposed conditions	Oceans United Investments Group Pty Ltd
53	15/10/18	Summary of length of stay data Best Western Apollo Bay Motel & Apartments	Mr Ritchie
54	15/10/18	Photos of the northern ridge taken by Mr David Barnes	Council
55	15/10/18	Photos from golf course towards the subject site	Mr Ballinger
56	15/10/18	Groundwater and geotechnical conditions, prepared by Mr Hancock	Mr Hancock
57	15/10/18	Great Ocean Road Action Plan, Protecting our iconic coast and Parks, Victoria State Government	Council
58	15/10/18	Viewline diagrams, package of A3 plans, of villas and Hotel from various vantage points with existing and proposed vegetation	Oceans United Investments Group Pty Ltd
59	15/10/18	Media Release dated 10 August 2018	Oceans United Investments Group Pty Ltd

No.	Date	Description	Presented by
60	15/10/18	Comments in response to GORRT submission, evidence in chief Mr Couch	Mr Couch
61	15/10/18	Survey Report Great Ocean Road	Mr Fankhanel
62	15/10/18	Submission (emailed) and handouts from Mr Jonathan Upson	Mr Upson
63	15/10/18	Pauline Roberts submission	Ms Roberts
64	15/10/18	Corangamite Catchment Management Authority (CCMA) submission and attachments	Dr Taylor and Mr Jones
65	15/10/18	Council's closing submission	Council
66	15/10/18	Applicant's closing submission	Oceans United Investments Group Pty Ltd
67	15/10/18	Examples of other resorts that utilise buggy systems	Oceans United Investments Group Pty Ltd
68	15/10/18	No content – referred to duplicate document of 59	Oceans United Investments Group Pty Ltd
69	16/10/18	DELWP comments on draft conditions	DELWP
70	16/10/18	Email from Mr Saunders clarifying conclave statement	Objectors Inc
71	15/10/18	Great Ocean Road Action Plan announcement email link	Council
72	16/10/18	Council response to Applicant's amended draft conditions	Council
73	30/10/18	Council response regarding the proximity of the proposal to the Apollo Bay Airfield	Council
74	17/9/18	Email from Mr Graeme Duff to Planning Panels Victoria with link to social media website with state government and DELWP's logos	Mr Graham Duff A.M.

## Appendix C Parties to the Panel Hearing

Party	Represented by
Department of Environment Land Water and Planning (DELWP) Planning Portfolio on behalf of the Minister for Planning as Responsible Authority	Mr Kim McGough and Mr Lachlan Forsyth
Colac Otway Shire Council	Mr Barnaby McIlrath of Maddocks Lawyers who called the following expert witnesses: <ul style="list-style-type: none"> <li>- Mr David Barnes, Town Planner, Hansen</li> <li>- Partnership</li> <li>- Mr Anthony Miner, Geotechnical Engineer, AS Miner P/L</li> <li>- Mr Tony Cooper, Traffic Engineer, GHD</li> </ul>
Objectors to 275 Barham River Road Development Inc.	Ms Shelly Fanning of Coastal Planning and Mr Warrick Ballinger who called the following expert witnesses: <ul style="list-style-type: none"> <li>- Mr Graeme Couch, Accountant and Real Estate Agent, Pitcher Partners</li> <li>- Mr Paul Saunders, Geotechnical Engineer, Saunders Consulting</li> <li>- Mr Jean Phillip Pector, Landscape Architect, BILOBA Sustainable Landscape Architecture</li> </ul>
Oceans United Investments Group Pty Ltd	Mr Chris Taylor of Planning and Property Partners who called the following expert evidence: <ul style="list-style-type: none"> <li>- Mr Darren Paul, Geotechnical Engineer, Golder Associates</li> <li>- Mr Michael Barlow, Town Planner, Urbis</li> <li>- Mr Hayden Burge, Landscape Architect, Jacobs</li> </ul>
Great Ocean Road Regional Tourism	Mr Wayne Kayler-Thomson
Mr Richard and Ms Sally Stone	Mr Richard Stone
Dr Simon Pockley	Dr Simon Pockley
Ms Glenda Whelan	Ms Glenda Whelan
Mr Stephen Hancock	Mr Stephen Hancock
Professor John Charles Schencking	Professor John Charles Schencking
Otway Forum	Mr Pete Filmore
Mr Hans Fankhanel	Mr Hans Fankhanel
Mr Chris Dance	Mr Chris Dance
Mr John & Ms Dorothy Riches, Mr Pete Mawhinney, Ms Libby Riches, Ms Jean & Mr Geoffrey Kirkbridge	Mr John Riches
Mr David Rushford	
Ms Nereda Rink	
Ms Deborah Tovey	

Mr David and Ms Robyn Ritchie	Mr David Ritchie
Ms Patricia Farley	Ms Robyn Farley
Mr Philip Lawson	
Mr Tony Webber	
Mr Jonathan Upson	
Mr Tony James	
Ms Pauline Roberts	

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## **Appendix D   Panel preferred permit conditions**

### Geotechnical and Landslip Risk Investigations

1. Prior to the endorsement of plans, a Geotechnical and Landslip Risk Management Plan incorporating a revised and fully completed Landslip Risk Assessment must be submitted to and approved by the Responsible Authority. When approved, the Geotechnical and Landslip Risk Management Plan will be endorsed and will then form part of the permit. The Landslip Risk Assessment must be generally in accordance with the Landslip Risk Assessment prepared by Golder Associates dated 1 November 2017 and its letter dated 15 May 2018 but modified to fully meet all requirements of the Erosion Management Overlay (EMO1) of the Colac Otway Planning Scheme, and must include:
  - a) Design and implementation of a geotechnical investigation to inform the design of landslip mitigation measures. The scope of the geotechnical investigation must be provided for review and approval by the responsible authority prior to implementation. The investigation should include:
    - i. A detailed assessment of subsurface conditions across the whole site based on boreholes drilled to sufficient depth to enable the determination of the depth to bedrock, or to below the depth of potential failure surfaces if this is greater.
    - ii. An assessment of the geotechnical characteristics of the subsurface materials including laboratory testing as relevant.
    - iii. Groundwater measurements and monitoring to establish the depth and dynamics of groundwater across the whole site.
  - b) A revised and fully completed assessment of landslip risk, including a revised map of landslide risk zones and revised assessments of risk to property, risk to life and societal risk. The assessment of societal risk must be completed following the methodology in the *AGS Guidelines 2007*. The assessments of risk must address risks based on current site conditions and residual risks remaining after the implementation of the proposed landslip risk mitigation measures and must consider the individual and cumulative impacts of geotechnical hazards. The assessments of risk must incorporate the results of the subsurface investigations, and also address the following specific matters:
    - i. Reference to other geological structures such as the Apollo Bay Syncline and the Barham fault and their relevance to the site as part of a broader geological setting in the area.
    - ii. Comment regarding potential seismicity in the Otways and any impact of slope stability at the site.
    - iii. Explanation of whether the identified geotechnical hazards can travel out of higher risk zones to lower risk zones and whether the zones have been developed to allow buffers for such.
    - iv. Confirmation that any minimum buffer distance has been applied from the boundary of high and very high risk zones if necessary.
  - c) Details of designs and measures proposed to mitigate any geotechnical hazards, including insitu hazards and those with the potential to travel from another area within or external to the subject land. The information submitted must include design reports, detailed plans and, where relevant, supporting calculations of the landslip risk mitigation measures proposed.



- d) Review of the Stormwater, Drainage and Waterway Management Plan required under condition 39 of this permit by a geotechnical specialist to confirm that all stormwater drainage and waterway management proposed is consistent with the identified geotechnical risk and recommended risk mitigation measures.
- e) Review of the Infrastructure and Services Plan to ensure all infrastructure and service provision is consistent with the identified geotechnical risk and recommended risk mitigation measures.
- f) Review of the Landscaping Plan to ensure that it is consistent with the identified geotechnical risk and recommended risk mitigation measures, and to ensure that it incorporates details of all vegetation and planting requirements set out in the Geotechnical and Landslip Risk Management Plan.
- g) Review of the Bushfire Management Plan including a full assessment of the risk posed by future vegetation removal for bushfire protection if undertaken to the maximum extent permissible under the conditions of the planning permit and under permit exemptions in the Planning Scheme to ensure consistency with the identified geotechnical risk and recommended risk mitigation measures.
- h) A statement as to whether the proposed development will meet 'tolerable' risk criteria as defined in EMO Schedule 1, and specification of all measures required to achieve this objective. 'Tolerable' risk thresholds for the purpose of this assessment must be specified to the satisfaction of the Responsible Authority having regard to:
  - i. The nature of the development as a major resort intended to accommodate a large number of people.
  - ii. The proposed use of the Hotel for Shelter-in-Place in the event of a bushfire, and
  - iii. Any other implications of societal risk for tolerable risk thresholds.
- i) A requirement for the permit applicant to pay the reasonable cost of the Responsible Authority to engage a suitably qualified geotechnical engineer to peer review the Geotechnical and Landslip Risk Management Plan.

#### Integrated Assessment

- 2. Before any development starts, an Integrated Assessment Report must be prepared to the satisfaction of the Responsible Authority to ensure that the various specialist components of the application is based on a consistent and complete understanding of the proposal; that there are linkages between specialist components of the proposal including, but not limited to, vegetation removal and new landscaping, landslip risk, bushfire management, services infrastructure, stormwater management, dam safety, waterway management, visual impact and biodiversity, and that the final design appropriately balances conflicting requirements.

#### Amended Plans

- 3. Before any development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans submitted with the application, but modified to show:
  - a) Any changes required by the Geotechnical and Landslip Risk Management Plan in accordance with condition 1 of this permit.

- b) Detailed engineering plans of specific mitigation measures responding to the recommendations of the Geotechnical and Landslip Risk Management Plan approved under condition 1 of this permit.
- c) Any changes required by the Bushfire Management Plan approved under condition 51 of this permit, including the location of water tanks for fire fighting purposes; access routes to accommodate CFA vehicles to service all parts of the site to be used for accommodation or leisure and recreation; and the hotel building constructed to BAL 29.
- d) Any changes required by an approved Cultural Heritage Management Plan for the site.
- e) Minimum setbacks of buildings to the western boundary of 50m.
- f) Setbacks of all villas to vegetation that comply with Clause 53.02 of the Planning Scheme.
- g) The removal, relocation and/or increased BAL of villas as required to ensure that defensible space associated with the villas does not encroach into the 30 metre buffer zone on either side of the central designated waterway and northern non-designated waterway, or the existing areas of riparian vegetation associated with these waterways if this vegetation extends further from the waterways than 30 metres.
- h) All buildings and other structures (except access crossings, dams and waterway management works) must be set back at least 30 metres from any of the waterways on the site, unless otherwise approved by CCMA and the RA.
- i) Swept paths showing access to the land, and access to a loading bay for larger vehicles servicing the site.
- j) An overall site plan including details of all internal accessways, including cross sections to show required cut and fill and details of all elevated crossings over waterways, with capacity for a CFA appliance to traverse these accessways and crossings.
- k) A minimum of 74 car parking spaces to the rear of the main hotel building.
- l) The area marked as overflow parking provided in the vicinity of the staff accommodation building properly formed and constructed to a standard to the satisfaction of the Responsible Authority and screened from views from the Barham River Road and neighbouring properties.
- m) All parking areas to be designed to allow for full circulation without requiring reversing out onto the main access driveway.
- n) Delete the notation for future signage at the entrance to Barham River Road.
- o) Delete galvanised iron from the external materials schedule and its replacement with a non-reflective material.

#### Endorsed Plans

- 4. The approved use and development must be carried out and maintained in accordance with the endorsed plans. The endorsed plans must not be altered without the written consent of the Responsible Authority.
- 5. The approved development must be carried out on the site in accordance with the recommendations of Geotechnical and Landslip Risk Management Plan as approved under condition 1.

### Access

6. Before the endorsement of plans, the permit holder must establish appropriate alternative access to the site to be used in emergencies that is not subject to flooding, other than from Barham River Road, at the cost of the permit holder and to the satisfaction of the Responsible Authority and the CCMA. Such emergency access must be maintained on an ongoing basis while the any use approved by this permit is operational, to the satisfaction of the Responsible Authority.

### Consolidation

7. Before any development starts, Lot 1 P757287 (Vol 04068 Fol 542) and Lot 2 PS515118 (Vol 10725 Fol 985) comprising the subject land, must be consolidated under the provisions of the Subdivision Act 1988 to the satisfaction of the Responsible Authority.

### Emergency Management Plan

8. Before the development starts, an updated Emergency Management Plan, to the satisfaction of the Responsible Authority and the Country Fire Authority (pertaining to bushfire) and Corangamite Catchment Management Authority (in respect of flooding) must be submitted to and approved by the Responsible Authority. Any plans must be to scale and with dimensions, and three copies of the Emergency Management Plan must be provided. When approved, the Emergency Management Plan will be endorsed and will then form part of the permit. The plan must be generally in accordance with the Emergency Management Plan submitted with the amended permit application by Resource Management Consulting dated June 2018 and the Bushfire Management Statement prepared by South Coast Bushfire Consultants dated 25 June 2018) and must satisfactorily address the following matters:
  - a) Pertaining to bushfire (all having regard to AS 3745: Planning for emergencies in facilities):
    - i. The Fire Danger Rating triggers for closure of the facility.
    - ii. Monitoring and notifying staff and visitors of forecast Fire Danger Rating and any consequential actions.
    - iii. Details of the location/s for emergency assembly, evacuation and shelter-in place (in the event that evacuation from the site is not practicable). Where shelter is required or proposed within a building or structure, the need for a Bushfire Attack Level construction requirement to be applied must be assessed by a suitably qualified person and where deemed necessary, specified in the approved Bushfire Management Plan.
    - iv. Transport arrangements for staff and visitors, including detailed arrangements for consolidating site users into the hotel as a Shelter-in-Place option.
    - v. The need for any additional arrangements for persons with special needs.
    - vi. Training of staff, visitors and overnight guests on emergency procedures.
    - vii. The nature and frequency of emergency procedure exercises.
    - viii. Emergency procedures (bushfire action statements) including the assignment of roles and responsibilities to staff. This must include assigning responsibility for the:
      - Management and oversight of emergency procedures.
      - Training of employees in emergency procedures.
      - Reviewing the effectiveness of emergency procedure exercises and implementing procedure improvements.

- Accounting for all persons during the emergency procedures.
- Monitoring and review of the Bushfire Management Plan at least annually.
- b) Remove reference to access along a new road to the site and access along the Old Horden Vale Road and alternative provision of an emergency flood access/egress route and flood emergency management arrangements consistent with condition 6 of this permit.
- c) Bushfire management arrangements including Shelter-in-Place within the hotel building, in accordance with the approved Bushfire Management Plan.
- d) Inclusion of emergency management arrangements relating to landslip risk, consistent with the Geotechnical and Landslide Risk Assessment and Management Plan.
- e) Management measures to provide for the safety of site occupants during flood events.
- f) The EMP must be consistent with risk assessments for bushfire, flood and landslide risk and all plans endorsed under this permit.

#### Lighting and Glare Management Plan

9. Before the development starts, a Lighting and Glare Management Plan for the site must be prepared by an experienced consultant and submitted to the Responsible Authority for its approval. Any plans must be to scale and with dimensions, and three copies of the Lighting Management Plan must be provided. When approved, the Lighting Management Plan will be endorsed and will then form part of the permit. The plan must include (but is not limited to):
- a) Specifications of all lighting structures designed in accordance with AS 4282 – Control of the obtrusive effects of outdoor lighting and details of their location, number and lux levels.
  - b) Outlining how appropriate but minimal lighting with low luminescence can be provided on the site to minimise lighting impacts associated with the development at night.
  - c) Measures to screen lighting impacts beyond the boundaries of the site.
  - d) Use of appropriate shrouding and low level lighting.
  - e) Use of automated measures to ensure lighting of roads, buildings and common areas is switched off at appropriate times.
  - f) Avoidance of the use of light poles; luminaire selection with controlled beam type and distribution; no architectural uplighting to be directed onto building facades; internal lighting shielded by the building fabric and window coverings; selection of surfaces with lowest practical reflectance to minimise the amount of reflected light.
  - g) Consideration of lighting impacts on the safe operations of the Apollo Bay Airfield.
  - h) Consideration of potential glare from buildings on the site, including potential effects on the Great Ocean Road.

#### Land Management Plan

10. Before development starts, a Land Management Plan must be prepared by a suitably qualified person and submitted to the Responsible Authority for its approval. The Land Management Plan must be consistent with the Bushfire Management Plan and all other plans approved under this permit. All plans must be to scale and with dimensions, and three copies of the Land Management Plan must be provided. When approved, the Land Management Plan will be endorsed and will then form part of the permit. The plan must include but is not limited to:
- a) A site plan.
  - b) Site description.

- c) List of the objectives for the property to protect and enhance its environmental values and condition.
- d) A description of all vegetation including native plants on site and in the immediate area.
- e) Methods to maintain the site and vegetation in accordance with the Bushfire Management Plan.
- f) Identification of land management Issues including:
  - (i) Identification of Habitat Zones (areas of sensitivity).
  - (ii) Protection and management measures to enhance the ecological values of the site generally including actions such as:
    - Location of fencing to protect and encourage the expansion of any remnant native vegetation including along all boundaries of the site to the extent permissible for defensible space.
    - Identification of key areas of revegetation to link existing patches within and outside of the site.
    - Engaging with local conservation groups to assist in informing the protection and management measures.
- g) Conservation strategies for species and vegetation identified as requiring specific attention.
- h) Details of how advice will be provided to contractors on site so that they are aware of ecologically sensitive areas to minimise the likelihood of inadvertent disturbance.
- i) A preclearance weed survey which records and maps the location of all noxious and weed and pathogen control measures which addresses obligations in relation to minimising the spread of weeds as a result of the use and development.
- j) Pest animal identification and management program.
- k) Soil erosion identification and rehabilitation management in accordance with the Geotechnical and Landslip Risk Management Plan and to address other erosion processes including any erosion of the bed and banks of the local waterways.
- l) Pasture management.
- m) Appropriate monitoring for the above matters.
- n) Rehabilitation works.
- o) Goal setting and specification of actions and implementation and monitoring of the identified actions.
- p) Measures to ensure compliance with any agreement under section 173 of the *Planning and Environment Act 1987* that applies to the land.

The management of the land and the activities on the site must be conducted in accordance with the endorsed Land Management Plan at all times to the satisfaction of the Responsible Authority.

11. An Annual Report against the requirements of the endorsed Land Management Plan must be prepared and submitted to the Responsible Authority for the first five years following completion of the approved development, and thereafter at the reasonable request of the Responsible Authority. Reports must be submitted on or before the anniversary date of the endorsement of the Land Management Plan. The following must be included:
- a) Details of the permit holder.
  - b) Planning permit number.
  - c) Reporting year (1-5).
  - d) Date the report is submitted.

- e) Who completed the report.
- f) Condition of site against each management commitment.
- g) Actions taken during the year to achieve the management commitment.
- h) Photographs which clearly depict management actions undertaken for the previous year.

#### Service Infrastructure report

12. Before the development starts, an updated Service Infrastructure Report must be submitted to and approved by the Responsible Authority to its satisfaction. All plans must be to scale and with dimensions, and three copies of the Service Infrastructure Report must be provided. When approved, the Service Infrastructure Report will be endorsed and will then form part of the permit. The plan must be generally in accordance with the Service Infrastructure Report submitted with the amended permit application by Irwinconsult dated 10 May 2018. The plan must also include details of subsurface excavation required for all service infrastructure and consideration of the potential for this to alter drainage.

#### Landscape Plan

13. Before the development starts, a Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The Landscape Plan must be generally in accordance with the landscape design principles and concepts identified in the Aspect Studio report dated May 2018, and must be consistent with the Bushfire Management Plan and Land Management Plan. In addition, the Landscape Plan must show:
- a) The location of all buildings, pedestrian pathways, internal roads and carparks as detailed in the amended Site Plan required by Condition 3 of this permit.
  - b) The following to the maximum extent permissible under the Bushfire Management Plan:
    - (i) Retention of existing native canopy trees within the riparian zone of the designated waterway No. 35-47-4.
    - (ii) Retention of existing native canopy trees within the riparian zone within the waterway located between the main hotel building and the Ridge villas.
    - (iii) Retention of existing remnant vegetation within the EVC 30 Wet Forest patch (WF2) located to the north of the Ridge villas, and retention of existing screen planting located along the site boundary with Old Horden Vale Road to the north of the Ridge villas.
    - (iv) Retention of other components (e.g. mid-storey, understory, groundcover) of the vegetation communities indicated in (i)(ii) and (iii) above as necessary to maintain riparian zone functions in relation to biodiversity and waterway health (locally and downstream), based on an assessment by a suitability qualified ecologist / waterway management practitioner to the satisfaction of the Responsible Authority.
    - (v) Retention of other vegetation if and as necessary based on the completed Landslip Risk Assessment.
  - c) The location of existing vegetation, including trees to be retained and removed.

- d) Details of protection of retained trees on the subject land in accordance with the recommendations of an arborist to the satisfaction of the responsible authority.
- e) A detailed Planting Schedule of all proposed trees, shrubs, grasses and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities.
- f) Details of all finished surfaces including pathways and driveways.
- g) The Planting Schedule using predominantly indigenous native species including selected from EVC 30 – Wet Forest.
- h) Additional canopy screen planting to at least 20 metres mature height along the eastern boundary to assist in screening views of the development from Barham River Road.
- i) Additional canopy screen planting to at least 10 metres mature height along the northern boundary adjacent to the main vehicle entrance to Barham River Road to assist in screening views of the development from Barham River Road.
- j) Additional canopy screen planting to at least 10 metres mature height along the northern boundary adjacent to Old Horden Vale Road to assist in screening views from this road.
- k) Landscaping to mitigate erosion and landslip risks, including in areas of steeper slopes of the site as outlined in the Geotechnical and Landslip Risk Management Plan.
- l) The native vegetation to be planted must be grown from locally sourced seed stock wherever possible.
- m) Landscaping requirements in association with the Stormwater, Drainage and Waterway Management Plan – e.g. retention pondages and swales.

All species selected must be to the satisfaction of the Responsible Authority. The landscaping and works shown on the endorsed plan must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

14. Within 12 months of the occupation of the development or by such later date as may be approved by the Responsible Authority in writing the landscaping works shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority.

#### Landslip and Geotechnical - Implementation

15. The approved development must be constructed and maintained in accordance with the recommendations of the approved Geotechnical and Landslip Risk Management Plan as required by Condition 1.
16. All bored piers, site cuts and excavations must be inspected by a qualified geotechnical engineer during construction and the profiles documented. A copy of the profiles must be lodged with the Responsible Authority within thirty days of inspection.
17. Upon completion of construction of the landslide risk mitigation measures and prior to occupation of the structures approved by the permit, a suitably qualified geotechnical engineer must visit the site and assess whether the 'as constructed' landslide risk mitigation measures are consistent with

their design recommendations and that Tolerable risk will be achieved in accordance with the requirements of the EMO1. Confirmation is to be provided to the Responsible Authority by completing and submitting Form B of the AGS Guidelines 2007.

#### Monitoring Program

18. Concurrent with the endorsement of plans, the permit holder must provide details of a landslide risk monitoring program to the Responsible Authority for its approval, including the methods by which landslip risk will be monitored, the frequency of monitoring and options proposed to manage and mitigate landslide risks to the development, its residents, workers and to the contiguous environment.
19. The permit holder must file annual reports with the responsible authority demonstrating proof of compliance with the landslip risk monitoring program, verified by the independent geotechnical engineer. The reports must include any instances and or failures of relevance to the geotechnical risks and or changes in risk associated with the site, its facilities and use. The permit holder must, if requested, confirm any management actions carried out, considered or proposed to address geotechnical risks identified from the monitoring program.
20. The permit applicant must pay the reasonable cost of the Responsible Authority to engage a suitably qualified geotechnical engineer to peer review each annual landslip monitoring report.

#### Dam Safety

21. Before the development starts a dam safety assessment of all existing dams must be undertaken having regard to geotechnical and other risks. Any rectification work required by the dam safety assessment must be undertaken by the permit holder at its expense to ensure dam safety, or the dams should be decommissioned if they cannot be made safe.
22. The design of the new dam associated with the Water villas and any other proposed new dams must be prepared in accordance with relevant engineering standards and assessed by a geotechnical professional.
23. A dam break flood analysis must be undertaken to assess risks to downstream structures, and the layout of the proposed development modified if necessary, to ensure that appropriate setbacks are provided.

#### Construction Management Plan

24. Before the development starts a Construction Management Plan to the satisfaction of the Responsible Authority must be submitted and approved by the Responsible Authority. When approved the plan will be endorsed and form part of the permit. The plan must address the following matters:
  - a) Management of stormwater during construction to avoid pollution through the contamination of runoff by chemicals, sediments, wastes or pollutants. In particular, this must address the northern non-designated waterway within the Barham River Special Water Supply Catchment.



- b) Measures to minimise the impacts of construction vehicles arriving and departing from the land, including via local and state roads, and including repairs from damage caused by construction vehicles at the expense of the permit holder.
- c) Traffic management arrangements within and external to the site.
- d) Measures to accommodate private vehicles of workers/tradespersons.
- e) Details of construction equipment and facilities, including delivery points, storerooms, toilets, temporary offices and workers facilities.
- f) Noise attenuation measures to be put in place to protect the amenity of the surrounding area during construction having regard to the EPA Noise Control Guidelines.
- g) Measures to minimise the generation and dispersal of dust.
- h) Details of a 24 hour hotline for access to a project manager accountable for the project.
- i) Arrangements for waste collection and other services during construction.
- j) Erosion must be controlled during construction in accordance with Environment Protection Authority Guidelines to the satisfaction of the Responsible Authority.
- k) A guide for all contractors providing an outline of all relevant requirements under this permit.
- l) Suitable signs must be displayed on tree protection zone fences at all times.

#### Native vegetation and Landscaping

- 25. The removal of native vegetation may only be undertaken in areas shown on the approved Landscape Plan and must be undertaken only to the minimum extent necessary to enable the development and as required to provide defensible space, to the satisfaction of the Responsible Authority.
- 26. Before any native vegetation is removed under this permit, a Native Vegetation Plan to the satisfaction of the Department of Environment, Land, Water and Planning must be submitted to and approved by the Responsible Authority. When approved the Native Vegetation Plan will be endorsed and will then form part of the permit. All works constructed or carried out must be in accordance with the endorsed plan. The Native Vegetation Plan must include:
  - a) an updated version of the Biodiversity Assessment Report prepared by Ecology and Partners Pty Ltd (May 18) which identifies all losses being approved by this permit including those associated with defensible space and associated offset requirements, in accordance with the Guidelines for the Removal, Destruction or Lopping of Native Vegetation (DELWP 2017).
  - b) Plans drawn to scale with dimensions that identify:
    - i. an informed greatest extent construction footprint.
    - ii. native vegetation to be removed.
    - iii. any current mapped wetlands, as defined in the Guidelines for the removal, destruction or lopping of native vegetation' (DELWP 2017) that are present on the site.
    - iv. all native vegetation to be retained.
    - v. the location of any detected threatened flora and fauna species.
  - c) Measures to be used during construction to protect native vegetation to be retained.

27. To offset the native vegetation removal described in the endorsed Native Vegetation Plan, the permit holder must secure a native vegetation offset in accordance with the Guidelines for the Removal, Destruction or Lopping of Native Vegetation (DELWP 2017).
28. Before any native vegetation is removed, evidence that the required offset for the project has been secured must be provided to the satisfaction of the Responsible Authority in consultation with the Department of Environment, Land, Water and Planning. This evidence may be one or both of the following:
  - a) an established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site and/or
  - b) credit extract(s) allocated to the permit from the Native Vegetation Credit Register.

A copy of the offset evidence will be endorsed by the Responsible Authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the Responsible Authority, a copy of the endorsed offset evidence must be provided to DELWP. At the conclusion of the project, offset requirements may be reconciled by agreement by the Responsible Authority and DELWP.

29. If a security agreement is entered into as per the preceding condition, the permit holder must provide the annual offset site condition report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the landowner must provide a report at the reasonable request of a statutory authority.
30. Before any development starts, tree protection fencing must be erected for a distance of at least 2 metres (trunk) around the native trees to be retained at the site and in the road reserve to the extent defensible space requirements allow. The tree protection fencing must be maintained in good order throughout the entire construction period and no soil or building materials may be placed within the tree protection zone, to the satisfaction of the Responsible Authority.
31. Vegetation removal and disposal must not cause damage to vegetation stands to be retained, to the satisfaction of the Responsible Authority.
32. Unless otherwise approved by the Responsible Authority, no earthworks or construction activity is permitted to take place within 30 metres of the designated waterways.

#### Maximum building height - RL

33. The maximum building height of the main hotel building must not exceed RL102.8 to the observatory in accordance with the endorsed plans and to the satisfaction of the Responsible Authority.

#### Surveyor's certificate – set out and frame

34. Written statements from a licensed surveyor must be submitted for approval to the Responsible Authority confirming:
- a) That the buildings have been set out in accordance with the endorsed plan; and
  - b) That the roof levels will not exceed the roof levels specified on the endorsed plan.
- The statements must be submitted to the responsible authority at completion of the set out of the building and at completion of the frame of the building.

#### Car parking and accessways

35. Before the occupation of the development, all internal roads and accessways must be constructed in accordance with the endorsed plans and must thereafter be maintained to the satisfaction of the Responsible Authority.
36. Before the occupation of the development, the area(s) set-aside for the parking of vehicles and access lanes, including the area shown as 'overflow parking' as shown on the endorsed plans must be:
- a) Constructed.
  - b) Properly formed to such levels that they can be used in accordance with the plans
  - c) Surfaced as indicated on the endorsed plans.
  - d) Drained.
  - e) Clearly marked to show the direction of traffic along access lanes and driveways.

Car spaces, access lanes and driveways must be kept available for these purposes at all times.

#### Loading and unloading

37. The loading and unloading of goods from service vehicles must only be carried out on the land within the designated loading bay/s and must not disrupt the circulation and parking of vehicles on the land to the satisfaction of the Responsible Authority.
38. The loading bay/s must remain free for the purpose of loading and unloading at all times.

#### Stormwater, Drainage and Waterway Management Plan

39. Before the endorsement of the development plans under condition 3 of this permit, a revised Stormwater, Drainage and Waterway Management Plan (three copies) must be submitted to and approved by the Responsible Authority to its satisfaction. When approved, the plan will be endorsed and will then form part of the permit. The Stormwater Drainage and Waterway Management Plan must be generally in accordance with the Stormwater Drainage and Waterway Management report by Irwinconsult dated 9 May 2018 modified as necessary to accord with Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control (EPA) to ensure that stormwater and drainage discharge from the development site meets current best practice performance objectives for stormwater and must include:
- a) The incorporation of on-site retention/infiltration, storage and re-use stormwater management techniques to reduce pollutant export and peak discharge from the site.

- b) All details of the proposed stormwater and drainage works including all existing and proposed features that may have impact (e.g. trees to be retained, waterway crossings, culverts, services, fences, buildings, existing and proposed levels).
- c) Confirmation of acceptable implications for water quality within the Barham River catchment for water supply purposes and maintenance of ecological values.

The Stormwater Drainage and Waterway Management Plan must be consistent with the Landscape Plan and the Geotechnical and Landslip Risk Management Plan and must be accompanied by a confirmation statement from a geotechnical engineer.

- 40. All runoff from stormwater, water discharged from any infrastructure on site (including any groundwater management system or sub-surface drainage), including overflow from water storage, must be undertaken in accordance with the approved Stormwater and Drainage Management Plan to the satisfaction of the Responsible Authority.
- 41. The site must be developed and managed to ensure there is no stormwater pollution through the contamination of runoff by chemicals, sediments, wastes or pollutants in accordance with Best Practice Environmental Management Guidelines for Stormwater Management and Construction Techniques for Sediment Pollution Control (EPA) at any time during construction or operation, to the satisfaction of the Responsible Authority.

#### Waste Management Plan

- 42. Before the development starts a Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. When approved the plan will be endorsed and form part of the permit. The plan must address the following matters:
  - a) Arrangement for the storage, and collection of solid and liquid waste.
  - b) Collection times and frequency.
  - c) Measures to avoid impacts on the amenity of nearby properties.

#### Public address system

- 43. Except for use in an emergency, no public address or sound system may be used on the subject land that is audible outside a building on the land.

#### Noise control

- 44. Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 or any other relevant regulatory requirement as relevant.

#### Hours of operation

- 45. The main restaurant and wellness centre must operate only between the hours of:
  - 6am to 10pm from Monday to Sundays and public holidays.

### General Amenity

46. The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:
- a) Transport of materials, goods or commodities to or from the land.
  - b) Appearance of any building, works or materials.
  - c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
  - d) Presence of vermin; or
  - e) In any other way.

### Maximum seating

47. No more than 150 seats may be made available at any one time to patrons of the main restaurant, unless otherwise approved in writing by the Responsible Authority.
48. Helicopters must not be operated in conjunction with the use, except in accordance with the Emergency Management Plan approved under condition 8.

### Section 173 agreement

49. Before the development starts, the owner of the land must enter into an agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority. The agreement must be in a form to the satisfaction of the Responsible Authority, and the owner must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expenses (including legal expenses) incidental to the preparation, registration and enforcement of the agreement. The agreement must contain covenants to be registered on the title of the property so as to run with the land, and must provide for the following:
- a) Widen Barham River Road between Nelson Street and the site at the permit holder's expense to 6.2 metres with minimum 1.5 metres shoulder on each side, or to such other specification that may be required by the Responsible Authority, and provide an auxiliary left turning lane into the entry to the site. Details of any road upgrade/improvements must be submitted to Council for approval before development starts. The works must be completed prior to the commencement of the use or occupation of the building unless otherwise agreed to by the Responsible Authority.
  - b) The provision of a sealed shared path for bicycles and pedestrians along Barham River Road from the entrance to the subject land to Nelson Street, to the satisfaction of the responsible Authority, and at the permit holder's expense. Details of the path must be submitted to Council for approval before the development starts. The works must be completed to the satisfaction of the Responsible Authority before any approved uses start.
  - c) A requirement to make the alternative flood access and egress available in accordance with condition 6 of this permit on an ongoing basis at all times the uses are operational, and to maintain all necessary approvals in connection with that access.
  - d) Provision for landslip monitoring and review in accordance with condition 18.

- e) A financial contribution of \$2.5M to Apollo Bay Conservation Ecology Centre (or as works in kind) which may be provided as an annual contribution over a number of years (e.g. \$500,000 over 5 years).
- f) A financial contribution of \$1.5M towards the provision of a Cultural and Heritage Centre (or as works in kind).
- g) A financial contribution to the Country Fire Authority of \$100,000.
- h) A financial contribution to the Corangamite Catchment Authority of \$200,000 towards willow management in the Barham River or other measures for river enhancement agreed by the Corangamite Catchment Authority.
- i) A financial contribution to Otway Heart of \$100,000 for heart treatment equipment.
- j) A financial contribution to Otway Health or other health provider in Apollo Bay comprising at least \$250,000 annually towards improved medical services in Apollo Bay.

The contributions specified above may be applied for other works, services or facilities with community benefit by agreement with the Responsible Authority.

The agreement must include details as to the timing of the making of the contributions, including any annual contribution, including any details of funds to be held in trust as necessary to the satisfaction of the Responsible Authority.

The agreement must be registered on title to the land in accordance with Section 181 of the *Planning and Environment Act 1987*.

#### CFA CONDITIONS:

##### Amended Bushfire Management Plan

50. Before the approved development starts, an amended Bushfire Management Plan to the satisfaction of the Responsible Authority and the CFA must be submitted to and approved by the Responsible Authority. When approved, the Bushfire Management Plan will be endorsed and will form part of the permit. All plans must be drawn to scale with dimensions and three copies must be provided.

The Bushfire Management Plan must be generally in accordance with the plan submitted with the amended application (Section 6, Page 23 of the Bushfire Management Statement prepared by South Coast Bushfire Consultants dated 25 June 018) but modified to show:

- a) Changes required following amendment VC148 to the Planning Scheme (and a response to the requirements of clause 53.02).
- b) Details of an on site firefighting system for both structural and bushfire use including a water supply/supplies, fire pumps, ring main, sprinkler system, booster system, hydrants, fire hose reels etc.
- c) Any buildings and works required as a result of the Emergency Management Plan required to be prepared as a condition of this permit.
- d) All buildings, works and vehicle & pedestrian roads/access to accommodate firefighting systems required under this permit.
- e) Vegetation management arrangements for all areas of the site to minimise the potential for a bushfire to spread into the site from surrounding land and from ember attack. This

includes but is not limited to those areas close to buildings that require management as defensible space for the purpose of building protection.

Once endorsed, the Bushfire Management Plan must not be altered without the written consent of the Responsible Authority and the CFA.

#### Internal Access and Parking Operational Plan

51. Before the use starts, an Internal Access and Parking Operational Management Plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved the plan will be endorsed and will form part of the permit. The Internal Access and Parking Operational Management Plan must include (but is not limited to) the following details:
- a) details of proposed traffic and car parking management arrangements within the site, including for staff, guests staying at the hotel, villas, and other visitors.
  - b) management of arrivals and departure of guests by bus and other vehicles;
  - c) valet arrangements;
  - d) communal transport arrangements for guests including use of electric carts (size, passenger capacity, frequency of use etc) so that guests do not rely on private vehicles for the purpose of utilising the resort facilities;
  - e) arrangements to advise guests of the valet, transport and car parking arrangements prior to arrival.

The endorsed Internal Access and Parking Operational Management Plan must not be altered without the written consent of the Responsible Authority.

52. Access to and around the complex including roads, bridges etc, must provide fully compliant access for the full range of CFA appliances that would normally be expected to respond to a fire call at the facility from Slip on Units with a weight capacity of 3.9 Tonnes, Tanker at 15 Tonnes and Pumpers at 18 Tonnes +. Access arrangements for the site must be constructed before the occupation of any part of the development and maintained to the satisfaction of CFA.
53. All bushfire protection measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defensible space, water supply, and access, must be maintained to the satisfaction of the responsible authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

#### BARWON WATER CONDITIONS

##### General

54. The owner must create easements for pipelines or ancillary purposes in favour of Barwon Region Water Corporation.
55. For the economical and efficient servicing of this development, Barwon Water may require the owner or permit holder to acquire an easement through other land in the vicinity of this development not owned by the applicant to connect this development to Barwon Water

sewerage system. This clause empowers the permit holder to acquire these easements compulsorily on behalf of Barwon Region Water Corporation in accordance with section 36 of the Subdivision Act 1988.

56. These easements shall be for pipelines or ancillary purposes and shall be made in favour of and without cost to Barwon Region Water Corporation. The owner or permit holder must pay all costs associated with creating these easements including payment of any compensation to other land owners for the easements as may be required.

#### Potable Water

57. A potable water supply must be provided and installed before the approved uses start or the development is occupied.
58. Reticulated potable water mains must be provided external to the land. This work must be undertaken by a Barwon Water accredited consultant and accredited contractor following the "Developer Works" process.
59. Private internal water services must be provided before the approved uses start or the development is occupied. The land owner must enter into a Water Supply by Separate Written Agreement with Barwon Water for the provision of private services.
60. The permit holder must arrange metering of water supply to the development to the satisfaction of Barwon Water to be determined at the time a Developer Deed is issued.
61. The permit holder must pay a standardised New Customer Contribution for any new connection or any upsize to an existing connection. The number of standardised charges applied will be determined on the basis of an equivalent lot calculation and is based on potable domestic water meter size or water service size (where a meter is not being fitted). An equivalent lot is a measure of the additional demand a connection will place on the infrastructure in terms of the water consumption and sewage discharge for an average connection utilising a 20mm tapping and/ or meter. If there is more than one meter within a single meter assembly, the size of the largest meter (excluding the fire service meter) will determine the number of equivalent connections. If there is a combined fire and domestic meter assembly proposed (incorporating a low flow meter), whereby the meter size is largely dictated by the fire service requirements, the developer is required to submit to Barwon Water the proposed peak flow (probable simultaneous demand) associated with the domestic supply in accord with AS/NZS 3500. Barwon Water will then assess the equivalent number of connections.

#### Sewer

62. The permit holder must ensure that the development is connected to reticulated sewerage before any approved uses start.
63. Reticulated sewer mains must be provided external to the land. This work must be undertaken by a Barwon Water accredited consultant and accredited contractor following the "Developer Works" process.



64. Private sewer services must be provided by the permit holder subject to a Sewer Supply by Separate Written Agreement with Barwon Water. Private services must comprise of a sewer pump-station within the land, a rising main to the reticulation sewer connection point, and internal sewer mains within the land.

Expiry of Permit

65. This permit will expire if one of the following circumstances applies:
- a) The development is not started within four years of the date of this permit.
  - b) The development, including the required upgrade to Barham River Road are not completed within six years of the date of this permit.
  - c) The approved uses do not start within two years of the completion of the development.

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.

Notes:

Cultural Heritage Management Plan

The permit must not be granted until a Cultural Heritage Management Plan has been approved for the entire site, unless a relevant exemption has been demonstrated.