

## Delegate's Report

**Application No:** 2018/308

**Application Type:** Use & Development

**Received:** 28 November 2018

**Statutory Days:** 92 (as at 26 June 2019)

**The Applicant:**

Name: Beveridge Williams and Co Pty Ltd  
Address: PO BOX 684  
Traralgon VIC 3844

**The Proposal:**

Proposal: Use and development of the land for group accommodation and development and display of a business identification sign

**The Land:**

Land Address: 250 O'Gradys Ridge Road Foster North VIC 3960  
Land Description: L1 PS622580K Parish of Doomburrim  
Zone/s and Overlay/s: Farming Zone  
Environmental Significance Overlay - Schedule 5

**Description of Proposal:**

Planning Scheme and/or Planning and Environment Act Definition

Land Use

Group Accommodation – Land, in one ownership, containing a number of dwellings<sup>1</sup> used to accommodate persons away from their normal place of residence.

Development

Construct a building or construct or carry out works  
Construction or putting up for display of signs

**Proposal summary**

The application seeks approval for the use and development of group accommodation and development and display of business identification signage at 250 O'Gradys Ridge Road, Foster North. The subject site is irregular in shape, with a total area of 4.01ha. The site is improved by a large dwelling approximately 18 metres to the west of the property boundary with O'Gradys Ridge Road. A number of various outbuildings are found within the domestic curtilage. In addition, a number of large cypress and other domestic garden

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<sup>1</sup> Clause 73.03 defines a dwelling as 'A building used as a self-contained residence which must include:

- a) A kitchen sink;
- b) Food preparation facilities;
- c) A bath or shower; and
- d) A closet pan and wash basin'.

trees are visible on the land. Eight of these cypress trees are to be removed to facilitate the proposed development.

The proposal would see all of the existing buildings on the site refitted and repurposed to provide short-stay tourist accommodation. These buildings are depicted as follows:

- Dwelling – Minor works would be undertaken to this structure. A maximum 8 persons would be accommodated in this building at any one time.
- ‘Dairy Lofts’ (being the former dairy located west-south west of the dwelling) – This structure would be refitted and improved by the addition of a second storey. Various internal fitouts would result in a maximum occupancy of 8 persons.
- ‘Buttercup barn’ (former shearing shed opposite the dairy lofts) – This structure would be improved by the addition of a verandah and alteration to the roofline. Internal fitouts would result in a maximum occupancy of 6 persons.
- ‘Warehouse Studio Apartment’ (former double carport immediately west of the dwelling) – The existing structure will be enclosed and improved with new roofing, walls and internal fitouts. This structure would accommodate a maximum of 4 persons.
- ‘Mezzanine Apartment’ (former garage – American barn style) – Construction of a second storey and internal fitouts. A maximum of 4 persons would be accommodated in this structure.
- ‘Cottage’ – An existing structure that has historically been used as a granny flat for the former owners of the land. No alterations are proposed to this building. A maximum of 6 persons would be accommodated.
- ‘House of Reflection’ – A new structure to be developed close to the northern boundary. The structure, while single storey will appear in the landscape as being comparable to a double storey building. The structure will have a height of 7.05 metres and a floor area 146 square metres. A maximum of 4 persons can be accommodated in this building.
- ‘Tram Unit’ – A former W-Class Tram to be refitted for human occupation. A deck and sunroom will be added to the exterior of the tram. Further correspondence with the permit applicant has confirmed that this building will be used to accommodate on-site managers to the facility. A maximum of 2 persons can be accommodated in this structure.

In addition to these accommodation structures, a number of ancillary features to the facility will be installed. These include a decked ‘leisure area’ adjacent to the dam, a boardwalk and viewing platform to the south of the Tram Unit and terracing/viewing area to the north of the Mezzanine Apartment. Various plantings would occur across the site, including a small vineyard to the north of the site and landscaping of claret ash and ornamental pear trees along O’Gradys Ridge Road.



Image 1: Site Plan showing the proposed development. Source: Application Documents.

There are 21 car parking spaces located across the site in 4 areas of 8, 6, 5 and 2 spaces respectively. Various internal access roads are proposed, including a new exit to O’Gradys Ridge Road to the south of the existing entrance.

These features are discussed and assessed further in this report.

**Site and surrounding area**

The subject site (Lot 1 PS622580K, Parish of Doomburrim, County of Buln Buln), known commonly as 250 O’Gradys Ridge Road, Foster North, is a 4.01ha lot located approximately 4.5 kilometres (as the crow flies) west of the Foster township. The subject land was formerly part of a larger agricultural parcel of land (approximately 86.77ha) until 2008, where it was subdivided into its current lot. The balance farmland of which this lot was excised from is currently utilised for timber production (pine and eucalypt).

The surrounding area comprises a combination of rural-residential and agricultural properties. Within a 1 kilometre radius of the site, 30 individual properties are identified, with lot sizes varying between 0.8ha to 83ha. The area immediately surrounding the subject land is characterised predominately by rural residential properties, save for the timber plantation to its north and north-west. These lots are typically improved by dwellings and associated domestic infrastructure. Some rural infrastructure is visible on the larger lots.

Agricultural activities in the surrounding area are generally broadacre cropping activities, with dairying and beef production being a common use of larger lots. As noted, timber production (nested under crop raising) also occurs in the area. Rolling hills are a defining feature of the area, with a number of properties on the eastern side of O’Gradys Ridge Road obtaining views of Corner Inlet and Wilsons Promontory from

the ridgeline. Almost all other dwellings in the area are setback at least 50 metres from O'Gradys Ridge Road, with extensive vegetative screening provided through cypress plantations. The dwelling on the subject land and those dwellings immediately nearby have been developed in the 1980's and 1990's to create the current character of the area.

In the immediate vicinity of the subject land is:

**North**            192 O'Gradys Ridge Road – An irregular shaped tenement of 121.61ha, generally vacant save for an isolated outbuilding in the north-eastern corner. The site is currently utilised for timber production, with plantations of cypress pine and blue gum visible from O'Gradys Ridge Road.

**East**             225 O'Gradys Ridge Road – An irregular shaped lot of 22.72ha, containing a dwelling and outbuildings. The site has vegetation cover along the riparian banks of multiple waterways traversing the site. The site is understood to be subject to a Carbon Tender 'Landowner' Revegetation Agreement to revegetate approximately 78% of the property. The dwelling on site is located approximately 460 metres from the dwelling on the subject land.

235 O'Gradys Ridge Road – An irregular shaped lot of 1.81ha, containing a large dwelling screened by vegetation. This vegetation comprises approximately 55% of the total site area. The dwelling on this site is located approximately 230 metres from the dwelling on the subject land.

245 O'Gradys Ridge Road – A generally rectangular shaped property of 1ha, containing a large dwelling and outbuildings. This property is known as 'Llarrinda' and operates as a bed and breakfast with a maximum occupancy of 6 guests. The site is generally screened from O'Gradys Ridge Road by roadside vegetation to the south of the driveway. The dwelling on the site is located approximately 115 metres from the dwelling on the subject land.

255 O'Gradys Ridge Road – An irregular shaped lot of 17.73ha, containing a dwelling and a range of vegetation along the banks of the head of Stockyard Creek, which originates on the site. The land is screened by a large row of Cypress trees on the O'Gradys Ridge Road frontage. The dwelling on the site is located approximately 155 metres from the dwelling on the subject land.

**South**            265 O'Gradys Ridge Road – An irregular shaped lot of 1.16ha, containing a dwelling and outbuilding. The site is well screened by vegetation from O'Gradys Ridge Road, with vegetation occupying approximately 60% of the total site area. The dwelling on the site is located approximately 170 metres from the dwelling on the subject site

310 McGleads Road – An irregular shaped lot of 0.82ha, located on the corner of O'Gradys Ridge Road and McGleads Road. The subject site contains a range of large vegetation screening from O'Gradys Ridge Road, occupying the majority of the property. The dwelling on the site is located approximately 220 metres from the dwelling on the subject site.

**West**             270 O'Gradys Ridge Road – An irregular shaped property of 4.39ha, improved by a dwelling and a number of outbuildings. The dwelling curtilage contains some large vegetation,

however this property is not screened in the same way as many others are. The dwelling on the land is located approximately 230 metres from the dwelling on the subject site.



Image 2: Aerial image of subject site and surrounds. Source: GIS 2018 Aerial Photos.

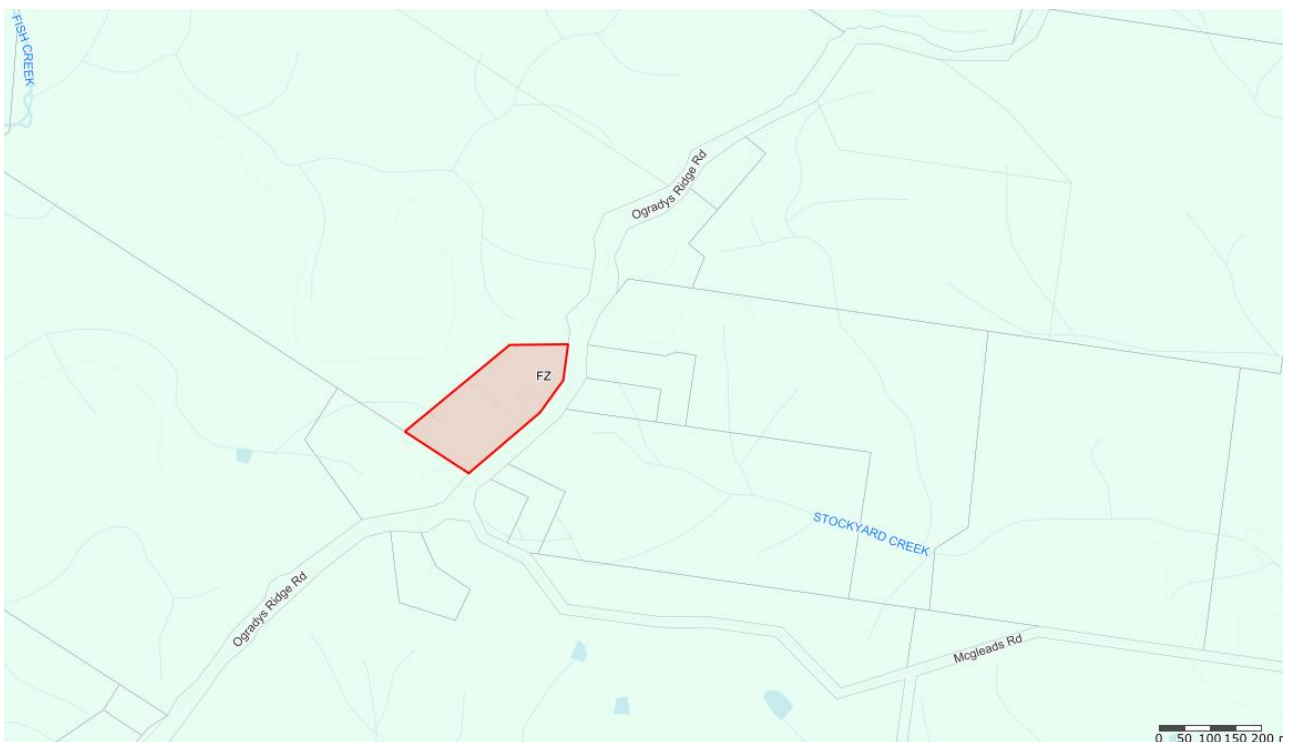


Image 3: Allotment view of subject site and surrounds overlaid with planning zones. Source: GIS 2018.

**Why is a Permit Required?**ZoneUse

Clause 35.07-1 - A permit is required for the use of the land for group accommodation.

Development

Clause 35.07-4 – A permit is required to construct a building or construct or carry out works for the following components of the application:

- Buildings and works in association with a use in Section 2 of Clause 35.07-1;
- Buildings and works within 100 metres of a dwelling not in the same ownership; and
- Buildings and works within 20 metres of a road.

Overlays

Clause 42.01-2 (ESO Schedule 5) – A permit is required to construct a building or construct or carry out works where the total resultant floor area exceeds 200 square metres.

Particular provisions

Clause 52.05-2 – A permit is required to construct or put up for a display a sign in Section 2. Pursuant to Clause 52.05-14, a business identification sign is a Section 2 sign and must be less than 3 square metres.

Particular provisions that are relevant but do not trigger a permit

Clause 52.06 – Car parking

**Is there a registered restrictive covenant or a Section 173 Agreement on the title? If so, does the proposal comply with the restriction or Section 173 Agreement?**

Under Section 61(4) of the *Planning & Environment Act 1987* the Responsible Authority must not issue a planning permit that would result in a breach of a registered restriction. The subject land, Lot 1 PS622580K Parish of Doomburrin is encumbered by registered restriction AG006023H

AG006023H is a Section 173 agreement placed on the subject land and the abutting property at 192 O'Grady's Ridge Road Foster North as a requirement of planning permit 2007/470. This permit authorised the excision of the subject land from the larger farm holding, with the registered agreement restricting future subdivision to create a smaller lot for an existing dwelling.

As the proposal does not seek authorisation to subdivide the land, this restriction is complied with.

**Is the land within a Special Water Supply Catchment Area listed in Schedule 5 of the Catchment and Land Protection Act 1994?**

No.

**Is an Aboriginal Cultural Heritage Management Plan required?**

The Aboriginal Heritage Regulations 2018 specify the circumstances in which a Cultural Heritage Management Plan is required for an activity or class of activity. Division 5 of the Regulations specifies high impact activities that may require a Cultural Heritage Management Plan to be prepared. Pursuant to Section 52(4) of the Aboriginal Heritage Act, Council must not grant a statutory authorisation if a Cultural Heritage Management Plan is required and has not been prepared.

The subject land is partially located within an area of Aboriginal Cultural Heritage Sensitivity, as it is within 200 metres of a named waterway (Stockyard Creek). The extent of cultural heritage sensitivity is depicted in image 4 below:



Image 4: Extent of aboriginal cultural heritage sensitivity. Source: GIS 2018

Pursuant to Regulation 26(2), if part of land within 200 metres of a named waterway has been subject to significant ground disturbance, then that area is no longer an area of aboriginal cultural heritage sensitivity. A claim that land has been subject to significant ground disturbance is to be assessed on a 'balance of probabilities' basis. Significant ground disturbance is defined in the Regulations as:

*disturbance of—*

*(a) the topsoil or surface rock layer of the ground; or*

*(b) a waterway—*

*by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping;*

Pursuant to Regulation 46(1) of the Regulations, Group Accommodation is not a listed high impact activity. Therefore, the development of the land for this purpose does not require a CHMP. Similarly, Regulation 58(1) relating to the use of land for a high impact activity listed in Regulation 46(1) does not apply.

Regulations 48(1) and 48(2) state that the construction or carrying out of works for 3 or more dwellings on a lot is a high impact activity. The Regulations state that land use terms shall adopt their meaning from the Victoria Planning Provisions (VPP's). As is footnoted at the top of this assessment, a dwelling is defined as a self-contained residence containing the requisite features. Officers consider that the development of dwellings for group accommodation falls within the ambit of Regulations 48(1) and 48(2), but only for the physical works to the dwelling structures (and not the broader land use, as this is not a high impact activity by operation of Regulation 46(1) and 58(1)).

At the time of the lodgement of the permit, the applicant sought authorisation for the use and development of a function centre<sup>2</sup>. Such a use/development is a high impact activity pursuant to Regulation 46(1) and 58(1). Accompanying this submission was a statement regarding significant ground disturbance across the site. While officers were not satisfied that this statement demonstrated significant ground disturbance across the **entire** site, officers are satisfied that the areas on and immediately adjacent to the existing structures has been subject to significant ground disturbance.

One exception to this however is the structure labelled 'house of reflection', located where the existing row of cypress trees stands. Officers are not satisfied on the balance of probabilities that this area has been subject to significant ground disturbance. Should Council elect to grant a permit for the development (the merits of which are discussed further in this report), a permit condition should require this structure to be deleted from the plans. For completeness, various ancillary works that do not trigger a planning permit cannot then trigger the need for a Cultural Heritage Management Plan (i.e. car parks, paths, gardens, landscaping and the like). Officers consider that the only trigger is the physical dwellings to be used for the group accommodation facility.

Based on the above, a Cultural Heritage Management Plan is not required for this activity if the house of reflection is removed.

#### **Was Further Information Requested under Section 54?**

At the time of making the permit application, the applicant sought authorisation for the use and development of the land for a function centre (nested under place of assembly at Clause 73.04). The following further information request was sent to the applicant on 20 December 2018 based on this proposal:

- 1) Details of the proposed business identification sign.
- 2) An approved Cultural Heritage Management Plan, **OR** provide further evidence that the whole of the activity area has been subject to significant ground disturbance.

*Council acknowledges in the submitted written response the claim that the whole of the activity area has been subject to significant ground disturbance, and as such a CHMP is not required. This is on the basis of 'Common Knowledge' as set out in the AAV practice note.*

*As held by the tribunal in Melbourne Islamic Centre Ltd v Melton CC [2018] VCAT 1347 (3 September 2018), for the use of the land to be exempt from requiring a CHMP, the whole of the activity area must have been subject to significant ground disturbance.*

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<sup>2</sup> This component of the proposal has been removed from the application.



*While I agree that some of the land has been subject to significant ground disturbance, I consider that on the balance of probabilities, the reasons provided in the written response do not demonstrate that the whole of the activity area has been subject to significant ground disturbance. As such, a CHMP is required unless further evidence can be provided to show that the whole of the activity area has been subjected to significant ground disturbance.*

- 3) Clarification of whether live music will be provided as part of the function centre, and if so please provide a response to Clause 53.06 of the South Gippsland Planning Scheme.

The requested information was provided on 14 March 2019. As a result of this request, the applicant elected to remove the proposed function centre to avoid the need for a CHMP pursuant to Regulation 58(1) of the Aboriginal Heritage Regulations 2018 (as noted above). Consequently, the proposal before Council is only for group accommodation and the display of business identification signage.

**Was notice of the application given under Section 52(1), 52(1AA), 52(3) or 57B?**

The application was notified to adjoining/adjacent owners and occupiers. The application was also notified by placing a sign on the land and by placing a notice in the Foster Mirror.

**Were there any objections received?**

Seventeen (17) individual objections to the application have been received at the time of writing. In addition, one (1) letter of support has been received. TRIM was checked on 20 May 2019.

Areas of concern highlighted by the objectors include:

- Lack of onsite supervision;
- Potential to inhibit agricultural activities;
- Change in character of the area that would occur from a 'medium-high density development';
- Access arrangements to and from O'Gradys Ridge Road;
- Visual amenity impacts (including light pollution);
- Pollution emanating from the site;
- Requirement for a Cultural Heritage Management Plan;
- Capability of the land to treat and retain effluent;
- Erosion impacts;
- Increased traffic on O'Gradys Ridge Road and McGleads Road;
- Illumination of the sign causing distraction and amenity impacts;
- Overlooking from the facility;
- Noise pollution;
- Increased biosecurity risk to neighbouring agricultural activities;
- Overcrowding;
- Legality of the existing structures to be used for the development;
- Bushfire risk to the site and surrounding area;
- Inadequate onsite car parking provided; and
- Misrepresentations of the permit applicant contained within the application material and potential intensification of the activity.

A number of objections are lengthy and provide comprehensive submissions in relation to this application. Officers have not recited or referred to all of the contents of these documents in this assessment. The entirety of all objections have been considered in formulating the assessment of this application. Where

these issues are not touched on in the general assessment section of this report, they will be specifically responded to.

**Was the application referred under Section 55 or 57C?**

No referrals were required pursuant to Section 55 or 57C of the *Planning and Environment Act 1987*.

**Were there any non-statutory or internal referrals?**

The following internal referrals were undertaken:

Authority	Which Clause / Overlay / Why?	Date received and response
SGSC Economic Development	Larger scale tourism development	Comments received in relation to Council's Economic Development and Tourism Strategy 2018-2020. Notes that the strategy is broadly supportive of development of this nature. Response dated <b>20 May 2019</b> .
SGSC Environmental Health	Development of accommodation requiring registration under the <i>Public Health and Wellbeing Act 2008</i>	Consent, no conditions. Response dated <b>8 April 2019</b> .
SGSC Engineering	Stormwater, drainage and access to and from O'Gradys Ridge Road	A request for further information demonstrating stopping site distances was provided on <b>10 May 2019</b> . Further discussions between the planning and engineering departments have determined that the information sought can be provided through conditions on a permit.
SGSC Waste Water	To determine if waste water can be treated and retained on-site in accordance with the SEPP (Waters of Victoria) under the <i>Environment Protection Act 1970</i> .	Conditional consent. Response dated <b>20 May 2019</b> .

**Planning Scheme Requirements and policies:**

Planning Policy Framework (Formerly State Planning Policy Framework)

The following PPF clauses are considered relevant to the assessment of this application:

- 11.03 Planning for Places
  - 11.03-6S Regional and local places
- 13.02 Bushfire
  - 13.02-1S Bushfire planning
- 13.05 Noise
  - 13.05-1S Noise abatement
- 13.07 Amenity
  - 13.07-1S Land use compatibility

- 14.01 Agriculture
  - 14.01-1S Protection of agricultural land
  - 14.01-2S Sustainable agricultural land use
- 15.01 Built Environment
  - 15.01-2S Building design
  - 15.01-5S Neighbourhood character
  - 15.01-6S Design for rural areas
- 17.02 Commercial
  - 17.02-1S Business
- 17.04 Tourism
  - 17.04-1S Facilitating tourism
  - 17.04-1R Tourism - Gippsland

Municipal Planning Strategy (Formerly Local Planning Policy Framework)

The following MPS clauses are considered relevant to the assessment of this application:

21.02 MUNICIPAL PROFILE

- 21.02-4 Environment
- 21.02-5 Natural resource management
- 21.02-8 Transport

21.03 KEY ISSUES

- 21.03-3 Environmental risks
- 21.03-4 Natural resource management
- 21.03-7 Economic development

21.08 NATURAL RESOURCE MANAGEMENT

- 21.08-1 Agriculture

21.11 ECONOMIC DEVELOPMENT

- 21.11-4 Tourism

21.15 LOCAL AREAS

- 21.15-4 Foster
- 21.15-15 Landscape Character Areas
  - Character Area 3.2 – Welshpool Hills and Mount Hoddle
- 22.01 Advertising Signs

**General Assessment:**

Council must make a determination with regards to the key issues of this application, and whether on balance the proposal represents sustainable development and achieves a net community benefit. Clause 71.02-3 on integrated decision making relevantly states:

*Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However in bushfire affected areas, planning authorities and responsible authorities must prioritise the protection of human life over all other policy considerations.*

In assessing this application, officers consider that the key issues relating to the proposed use and development are:

- What is the zoning and planning context of the site and surrounding area?
- Is the use of the land for group accommodation compatible with the purpose and provisions of the Farming Zone?
- Would the proposed use and development remove land from agricultural production or create land use conflicts with nearby agricultural activities?
- Would the proposed use and development lead to unacceptable amenity impacts on neighbouring dwellings?
- Does the proposal appropriately prioritise the protection of human life in a bushfire prone area?

These issues are discussed in turn below.

#### **Zoning and planning context**

As noted earlier in this assessment, the site and surrounding estate is zoned Farming. The purpose of the zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwelling, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

Planning Practice Note 42 – Applying the rural zones (June 2015) states (inter alia):

*The Farming Zone is primarily concerned with keeping land in agricultural production and avoiding land uses that could limit future farming or constrain agricultural activities. In this zone:*

- *farming is the dominant land use and all other land uses are subordinate to farming*
- *farming uses are encouraged to establish and expand with as little restriction as possible, subject to proper safeguards for the environment*
- *non-farm dwellings and land uses not related to farming may be considered but should not limit the operation and expansion of agricultural uses*
- *farm-related tourism and retailing uses may be considered*

- *uses that could lead to the loss or fragmentation of productive agricultural land, or which could be adversely affected by farming activities, are prohibited*
- *land subdivision that could take farmland out of production or limit future farming productivity is discouraged*
- *the minimum lot size for subdivision may be tailored to suit the farming practices and productivity of the land.*

The South Gippsland Planning Scheme contains local policy regarding the use and development of dwellings in the Farming Zone. While not directly translatable to this proposal, the objectives of this clause are relevant in considering development of this nature in the Farming Zone. These objectives include:

- *To discourage the proliferation of dwellings not associated with agriculture on lots over 4.1 hectares*
- *To discourage the proliferation of dwellings on lots over 4.1 hectares where the agricultural use of the land does not require the presence of a land manager*
- *To ensure that the development of dwellings on rural land does not prejudice existing agricultural activities on surrounding land*
- *To ensure that agricultural land is maintained for the cost-effective production of food and raw materials*
- *To retain the open farmed landscape as the defining visual characteristic of the Shire*
- *To ensure the cost-effective servicing of towns and communities across the Shire by avoiding the impacts of a dispersed population base*
- *To provide a consistent basis for considering planning permit applications for the use and development of dwellings in rural areas*

Various clauses of the Planning Policy Framework relate to the use and development of agricultural land<sup>3</sup>. At their highest level, these policies have objectives of protecting agricultural land and encouraging sustainable agricultural land use. Similar policies are encapsulated in Council's Municipal Strategic Statement (MSS)<sup>4</sup>.

Ultimately, planning policies and controls throughout the South Gippsland Planning Scheme consistently seek to protect productive agricultural land, while allowing some non-agricultural uses to be developed where they do not limit the operation and expansion of agricultural uses. This is the policy framework in which this application is considered.

### **Is the use of the land for group accommodation compatible with the purpose and provisions of the Farming Zone?**

Many Farming Zone matters that become subject of controversy, and occasionally review at the Victorian Civil and Administrative Tribunal relate to the establishment of new residential uses in active, working farming areas (such as proposals for the use and development of dwelling/s). The establishment of new

<sup>3</sup> Eg. Clause 14.01-1S, Clause 14.01-1R and Clause 14.01-2S

<sup>4</sup> Eg. Clause 21.08-1, Clause 21.10-3

dwellings and their associated amenity expectations are a key land use issue in South Gippsland and other regions in the State.

However, this is not the case for the subject land. This site today is currently improved by a sizeable dwelling, outbuildings and domestic curtilage, which has been established on the land since the 1990's. The subject land is, in practice not an agricultural property. It is an established rural lifestyle property situated among many properties of similar characteristics. This application is therefore not seeking to entrench a land use that would permanently remove land from agricultural production. The land is already improved to such an extent that it would be wholly uneconomical for the land to be consolidated or otherwise incorporated with ongoing agricultural activities nearby. As such, it is evident that the proposal will not remove agricultural land on the site from production; as such land simply does not exist.

While the proposal does not enhance agriculture, it does not detract from it. The proposed facility would result in the 'value-adding' of the land (i.e. gains realised from the economic benefit of such a facility to the local area) that is currently unable to be produced agriculturally by virtue of the small lot size. Officers do not place significant weight on claims made by the permit applicant regarding commercial output from the proposed vineyard – the primary component of the proposal is evidently the group accommodation use.

Decision guidelines of the Farming Zone require strong consideration of the impact that dwellings may have on ongoing agricultural activities, acknowledging that the establishment of dwellings in farming areas can, and sometimes do lead to land use conflict. In considering this proposal, it is noted that these cabins are not to be used as dwellings (being permanent, self-contained residences). Rather, they are a temporary self-contained unit for persons to stay away from their normal place of residence for short periods of time. Amenity expectations are therefore tempered in light of this. The subject land contains sufficient buffer area from adjoining agricultural activities for any potential impacts to be ameliorated further.

Officers consider that the proposal gains policy support from various parts of the Scheme. At a regional level, Clause 17.04-1R seeks to facilitate tourism development in strategic tourism investment areas. Council has identified the area around Foster and Foster North as an area to encourage this type of investment (as noted in the reference document *Rural Tourism Development Strategy, 2010*). While this document should not be given great weight due to its role in the Scheme, it is an acknowledgement of Council's desire to encourage tourism in certain parts of the Shire. At a local policy level, support for the proposal is found at Strategy 1.6 of Clause 21.11-4, which encourages the development of bed and breakfast, cabin, homestead and motel accommodation in appropriate locations.

It is acknowledged that Local Planning Policy encourages the development of rural-based tourism developments in areas zoned Rural Activity, with some caveats about intensity of activity and agricultural association. However, it is important to distinguish that there is no subsequent discouragement for development of these facilities in other areas, such as the Farming Zone. As noted, Local Planning Policy within the Shire broadly supports small scale tourism ventures.

Were the subject land a vacant Farming Zone lot, officers would have greater concern about the loss of productive agricultural land that could be farmed as part of a tenement. This is not the case here. There is no reasonable prospect that the subject land will be consolidated with an adjoining agricultural activity. A high level agricultural assessment of the surrounding area<sup>5</sup> places the subject land in the lower quality of

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<sup>5</sup> Swan, Ian R and Volum, Andrew G, 'Assessment of Agriculture Quality of Land in Gippsland', 1984.

agricultural land, being mainly suited for 'extensive grazing and cropping'. The potential agricultural output of the subject site is highly limited.

Decision guidelines of the Farming Zone envisage that development may not be associated with agriculture, but may still provide a net community benefit. Officers consider that in this instance, where the subject land is effectively removed from meaningful agricultural use, the proposal provides opportunity for economic development, employment and tourism activity to support the rural community. This is both permissible and envisaged by the Farming Zone.

Officers therefore consider that the purpose and provisions of the zone are satisfied by the proposed development.

**Would the proposed use and development remove land from agricultural production or create land use conflicts with nearby agricultural activities?**

Following on from the above, Officers consider that the relevant test in this case is whether the proposal is likely to create land use conflicts with ongoing agricultural activities in the surrounding area. As has been described earlier in this report, the primary agricultural pursuit in the area is the timber production property to the north of the subject land. The current Code of Practice for Timber Production (2014) contains no requirements for plantation to provide buffers from sensitive land uses or abutting developments.

Officers are not privy to the specific operating details of this property, however timber production requires tree lopping, harvesting, transport and growing. Aerial spraying can occur at some facilities to allow for wide application of fertilisers, herbicides and the like. These activities are generally longer term and/or staged, such that a property does not experience lopping or spraying every season.

The dwelling on the subject land is located approximately 110 metres from the closest plantation row. Amongst all accommodation buildings, the closest building would be the 'tram unit', being 75 metres south of a row of plantation trees. As the subject land already contains all of the other structures to be used, and is currently utilised for an existing sensitive land use, the proposal is considered unlikely to lead to a situation where the timber plantation is constrained in its operations.

The style of agricultural activity in the broader area is moderate; in that there is no feedlot or intensive animal production occurring in the area. A wide range of rural lifestyle properties are present around the subject land, which inhibit the potential for large scale intensive agriculture to occur in the surrounding area. Officers consider that it is important to consider the proposal in this context.

The proposed development is not considered to be changing the overarching character of this part of O'Gradys Ridge Road. Past practices of subdivision and development have result in the surrounding area exhibiting a strong rural-residential character detached from agriculture. The use and development of one of these rural residential properties for group accommodation will not change this rural-residential flavour. The proposed development is also unlikely to represent a tipping point where the agriculture that currently occurs in the area could no longer occur.

A number of objections have observed that Council would not approve the use and development of eight (8) dwellings on a lot of this size under the Farming Zone. This is partly true, however the permit applicant is not seeking permission for the use and development of eight dwellings (being structures used to provide permanent, self-contained accommodation). What is being considered here is a specific use and

development allocation for group accommodation, which must be considered on its own merits. The buildings could not legally be used as dwellings, as defined above.

When considering State and Local Planning Policy, Council is required to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community development. In *Knox CC v Tulcan Pty Ltd* [2004] VSC 375 (30 September 2004), The Victorian Supreme Court made the following relevant observation in relation to the integration of planning policies:

*[13] (d) ...The planning scheme does not require an ideal outcome as a pre-requisite to a permit. If it did, very few, if any, permits for development would ever be granted and there would be difficult differences of opinion as to whether the outcomes were in fact ideal. The Tribunal is entitled to grant a permit where it is satisfied that the permit will result in a reasonably acceptable outcome having regard to the matters relevant to its decision under the planning scheme.*

Ultimately, Council must make a determination of the application and whether the application is, on balance, acceptable. A number of submissions have spoken to this type of use being more suitable in other areas in the Shire (i.e. in the Rural Activity Zone to the North of the South Gippsland Highway). This is not a relevant consideration in determining the acceptability of the proposal; Council cannot refuse an application on the basis that the proposal may be 'better' somewhere else.

It is observed that Planning Scheme Amendment VC103 altered the Farming Zone to provide for a broader range of uses to be allowed subject to the grant of a planning permit. This includes the use of land in the Farming Zone for Group Accommodation (among other accommodation uses). This was a deliberate decision by the State Government following the 2011 report of the Victorian Competition and Efficiency Commission '*Unlocking Victorian Tourism*'. This is not to say that any proposal is acceptable, but rather that the Farming Zone is envisaged to be developed with uses of this nature where this can co-exist with agricultural activities. In this case, for the reasons noted above, officers consider that this site is one where such a proposal can operate without adversely impacting land in agricultural production.

#### **Would the proposed use and development lead to unacceptable amenity impacts on neighbouring dwellings?**

Almost all objectors have raised concerns regarding the potential impacts on residential amenity that could emanate from the proposed facility. Such impacts may be felt by noise, vehicular movements, visual impacts, trespass and the like.

To determine whether such amenity impacts would be acceptable or not, one must consider the context of the existing and expected environment. The subject land, and those lots in the immediate vicinity are contained within an active, working Farming Zone. Activities that ordinarily occur in the Zone can be abrasive to the amenity of residential properties (such as aerial spraying, grazing large numbers of animals, operation of rural machinery etc). Consequently, it is well held that the reasonable amenity expectations of residences in the Farming Zone are lower than those in defined residential zones. While these properties have certain expectations of residential amenity, the Farming Zone does not afford the same level of protection as it would in a defined residential area.

Importantly, planning does not seek to ensure that there are no impacts at all – a proposal of this nature would inevitably lead to some impact being felt (whether it be noise, visual, traffic or some combination). Rather, land use planning must consider whether these potential impacts are acceptable.



Acceptability must be considered relative to the reasonable expectations of residents. The occasional hearing of voices from guests, or an increase in the number of additional vehicles travelling along O'Gradys Ridge Road does not automatically mean the proposal is unacceptable. It must be demonstrated that the potential impacts are such as to warrant refusal of the application.

The core issues that have been raised by objectors (and other issues that officers consider may be relevant) are explored in more detail below:

Noise – Consideration of noise impacts is guided through the Scheme by operation of Clause 13.05-1S – Noise abatement. This clause seeks to control the noise effects of land uses and development on sensitive land uses (such as dwellings).

There is no applicable standard to apply to a group accommodation facility in Victoria. The common noise standards applied to development are:

- SEPP-N1 (Control of Noise from Commerce, Industry and Trade No. N-1)[metropolitan Melbourne];
- SEPP-N2 (Control of Music Noise from Public Premises No. N-2); and
- NIRV (Noise from Industry in Regional Victoria).

There is potential for a facility of this nature to generate noise. In a rural setting, noise impacts can be more heavily felt than in a town or metropolitan area (this is generally a result of rural landscape having a lower ambient background noise). As there is no directly applicable standard, officers consider that the NIRV provides the most comparable noise standards for a use of this nature. This is due to the consideration that the NIRV gives to regional landscapes in determining acceptable noise levels.

Officers therefore recommend a permit condition be placed to ensure that noise emanating from the facility does not exceed the standards set out in the NIRV.

Visual impact – The proposal largely utilises existing structures on the land, with minor associated works. Structures such as the mezzanine apartments and warehouse studio are not currently visible from O'Gradys Ridge Road. A number of other structures are visible from certain aspects of the road and the abutting properties at 192 and 270 O'Gradys Ridge Road. Officers note the large cypress pine windbreak along the eastern side of O'Gradys Ridge Road screens the subject land from properties in this area.

The subject land and surrounding area is not identified in the Scheme as being an area of special visual significance (i.e. by application of a Significant Landscape Overlay or a Design and Development Overlay). While there are elements of the surrounding landscape that could be described as naturally scenic, consideration of visual impact is tempered in this light.

Many of the structures on the land are existing; with Council's aerial imagery showing those buildings on the land for a number of years (save for the W Class Tram). With the deletion of the house of reflection, the proposed works requiring permission are contained within the existing developed curtilage. A number of other facets of the proposal (i.e. landscaping) do not require planning permission.

Having inspected the subject land, a number of these buildings are in a poor state as it stands. Officers consider that the proposal would result in the improvement of many of these structures which currently

stand out in the landscape. Conditions requiring landscaping on the site will reduce any visual impacts that may result from the development.

Traffic – Clearly, a facility of this nature would lead to an increase in vehicular movements. Importantly, O’Gradys Ridge Road is an open, public sealed rural connector road. While there would be an increase in vehicular traffic to the facility, this must be viewed in context of the number of properties and vehicles utilising O’Gradys Ridge Road currently (as well as its role connecting the South Gippsland Highway with Fish Creek-Foster Road).

The application was referred to Council’s Engineering Department, who raised no objection to the number of additional vehicles that would use the road or the potential for guests to travel along McGleads Road into Foster.

Potential breach of conditions – This ground relates to the potential for non-compliance with various potential permit conditions that could be placed upon a permit (such as maximum occupancy numbers), and subsequent potential amenity impacts from a breach of conditions.

In *C & D Recycling Pty Ltd v Greater Geelong CC* [2016] VCAT 1207 (4 August 2016), Tribunal members Bennett and David stated at [25] of their reasons in relation to permit conditions ... *‘The Tribunal has found on many occasions that proposals must be assessed on their merits. As such and for example, the consideration of the persons relating to the land, or the likelihood of compliance with permit conditions are not normally matters to guide the assessment of a planning proposal against the purposes and provisions of the Planning and Environment Act 1987 and the relevant Planning Scheme’.*

Officers adopt this view, and note that planning applications must be assessed with the starting presumption that the proposal is a true and accurate reflection of what is sought, and that any conditions that may be applied to a planning permit will be complied with. The *Planning and Environment Act 1987* provides mechanisms to both Council and the public to enforce the Scheme and/or conditions on a permit should a breach occur. Further, material misstatements or concealing of relevant facts can lead to a permit being cancelled if such a situation eventuated.

Trespass – A number of submissions have stated that visitors to the proposed group accommodation facility would be likely to trespass, either on the neighbouring plantation or on other rural properties. Officers cannot support such a claim. Officers do not have any evidence to suggest a correlation between the location of a group accommodation facility and the propensity of visitors of such a facility to trespass. Much in line with comments regarding permit conditions, one must assume that visitors to a facility will comply with any applicable laws that would be enforceable (i.e. no trespassing).

Officers therefore consider that while there may be some amenity impacts associated with the development, such impacts can be managed through conditions and ultimately be acceptable.

**Does the proposal appropriately prioritise the protection of human life in a bushfire prone area?**

The emphasis of relevant policy at the State and Local level is on the preservation of significant landscapes and character of hinterland towns like Foster North and as the highest priority the preservation of human life in bushfire affected areas.

The objective of Clause 13.02-1S Bushfire planning is:

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

Relevant strategies to achieve this require priority to be given to the protection of human life by:

- *Prioritising the protection of human life over all other policy considerations.*
- *Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.*
- *Reducing the vulnerability of communities to bushfire through the consideration of bushfire risk in decision-making at all stages of the planning process.*

This is reinforced through local policy at Clause 21.04-2 *Vision*, which states that:

- *Development in Bushfire Prone Areas is compatible with the bushfire risk.*

The development site is not located within the Bushfire Management Overlay, however the site is located in a designated Bushfire Prone Area under the *Building Act 1993*. Clause 13.02-1S provides the following policy guidance for development in bushfire prone areas:

*In a bushfire prone area designated in accordance with regulations made under the Building Act 1993, bushfire risk should be considered when assessing planning applications for the following uses and development:*

- *Subdivisions of more than 10 lots.*
- *Accommodation.*
- *Child care centre.*
- *Education centre.*
- *Emergency services facility.*
- *Hospital.*
- *Indoor recreation facility.*
- *Major sports and recreation facility.*
- *Place of assembly.*
- *Any application for development that will result in people congregating in large numbers.*

*When assessing a planning permit application for the above uses and development:*

- *Consider the risk of bushfire to people, property and community infrastructure.*
- *Require the implementation of appropriate bushfire protection measures to address the identified bushfire risk.*
- *Ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts.*

The proposed development is a type of accommodation under the Scheme. Consequently, while there is no permit trigger under the BMO, Council must be satisfied that the proposal can appropriately protect human life.

As has been explored in this report, abutting the subject land is an 80ha+ forestry property, comprised predominately of pine and eucalypt plantations. These trees are currently not of a size to warrant inclusion in the BMO, however this vegetation will grow and establish as 'forest' class vegetation (based on the standards of AS3959-2009).

The BMO Technical Guide and Planning Practice Note 65 identify four landscape types in which to assess bushfire landscape risk (with 1 being the lowest and 4 being the highest risk). Having considered the potential role that the plantation plays in the broader landscape, officers consider that the risk to the subject land would be appropriately classed as being within a Type 3 landscape; albeit at the lower end of such classification.

This view is based on a mature state of the forestry plantation; given that management of the plantation could not be fairly described as being in a 'minimum fuel condition' (for the purpose of AS3959) and access to an appropriate place that provides shelter (such as the Foster Recreation Reserve) would not be certain from the site.

Type 3 landscapes are defined as:

- *The type and extent of vegetation located more than 150 metres from the site may result in neighbourhood-scale destruction as it interacts with the bushfire hazard on and close to a site.*
- *Bushfire can approach from more than one aspect.*
- *The site is located in an area that is not managed in a minimum fuel condition.*
- *Access to an appropriate place that provides shelter from bushfire is not certain.*

The closest part of the proposed development to an existing plantation row is approximately 75 metres. Based on the land area of the site, it is evident that defendable space and BAL construction standards could meet the requirements of Clause 53.02-5 were the subject land located within the BMO. The *Building Act 1993* provides a requirement for buildings to be constructed to a BAL12.5 in bushfire prone areas where the site is not located within a BMO.

However, given the future growth of an abutting forest that will develop into a classifiable vegetation type, officers consider that there is a prospect of a bushfire hazard to affect the subject site. In taking a conservative approach to preservation of human life, officers recommend that the applicant be directed to prepare a Bushfire management plan (including supporting reports as described in Clause 44.06-3 of the Scheme) to be endorsed as part of a planning permit, with ongoing measures. The number of persons that would be able to use the facility also warrants the preparation of a Bushfire Emergency Plan, that clearly sets out procedures for the operation of the facility on days of severe or higher fire danger or in the event that a bushfire event were to occur.

Consequently, officers consider that the proposal can appropriately protect human life subject to the inclusion of appropriate conditions.

#### **Other matters**

##### **Signage**

Pursuant to Clause 35.07-7 of the Scheme, Category 4 (sensitive areas) sign requirements apply to the subject site. Accordingly, the table to Clause 52.05-14 specifies sign types that may be considered within the area. Within the Section 2 – Permit required part of this clause, permission may be granted for a business identification sign with a total display area not exceeding 3 square metres.

The permit applicant has sought authorisation for the development of an *illuminated business identification sign*. Clause 73.02 specifies the various types of signs to which the Scheme seeks to regulate. This clause includes an 'internally illuminated sign', which is defined as 'A sign illuminated by internal lighting or which contains lights or illuminated tubes arranged as an advertisement'. For the purposes of Clause 52.05-14, such a sign is prohibited in Category 4 areas.

It is therefore recommended that a condition be applied to any permit that may issue requiring deletion of the internal illumination shown on the sign.

### **Potential land use**

A number of objections have raised the prospect that this application is a prelude to the intensification of such a facility for a place of assembly. Reference is made to the original application which sought approval for a function centre, as well as advertising on the permit applicant's website.

Ultimately, Council must assess the application as it is described in the application material and associated plans. Having considered the application as a whole, characterising the use as shown and assessing it against the relevant controls, officers are of the view that the proposal seeks authorisation for group accommodation only.

If the landowner were to seek to run a function centre/wedding venue in future, this would require additional permission under the Scheme which would be advertised and assessed on its own merits. Were such a use to occur without permission, then enforcement action could be taken. This is not considered to be a reason to refuse a permit application.

### **Response to Objections**

Where the issues and themes identified by objectors have not been addressed above, these issues are summarised and responded to below:

**Submission:** Lack of onsite supervision.

**Response:** The permit applicant has stated that they intend to provide permanent on-site supervision. Officers consider that such onsite management is required in a proposal of this nature; and will require onsite management as a permit condition.

**Submission:** Potential pollution emanating from the site.

**Response:** The application has been referred to Council's Environmental Health and Wastewater Departments, who have not raised any objections to the proposal.

**Submission:** Capability of the land to treat and retain effluent.

**Response:** The Land Capability Assessment submitted by the permit applicant has been assessed by Council's Wastewater Officer, who has not raised any objections to the proposal.

**Submission:** Potential erosion impacts.

**Response:** The majority of works are contained within existing buildings, or do not trigger permits in their own right. Permit conditions can ensure that appropriate construction techniques are used.

**Submission:** Illumination of the sign causing distraction and amenity impacts.

**Response:** Officers have formed the view that an illuminated sign is prohibited by operation of Clause 52.05-14. Therefore, permission would be granted for a non-illuminated sign only.

**Submission:** Potential overlooking from the site.

**Response:** The Farming Zone provides no standards in relation to overlooking, screening and the like (such as ResCode). Permit conditions will require landscaping to be planted along the abutting property boundary with 270 O'Gradys Ridge Road. Officers do not consider that any views gained over property across the plantation and the ridge would be an unreasonable invasion of privacy.

**Submission:** Increased biosecurity risk.

**Response:** Officers are unaware of any correlation between the location of a group accommodation site and the propensity of visitors of that facility to trespass. Ultimately, if someone was to trespass, this is a crime with remedy available under other legislation (i.e. by phoning police and/or pressing charges). Planning cannot refuse an application on the basis that someone *might* do the wrong thing at some future stage.

**Submission:** Potential for overcrowding to occur.

**Response:** Permit conditions would stipulate a maximum occupancy number for the use. As noted earlier, planning must start with the presumption that patron limits will be complied with. There are remedies available if an operator were to accommodate more persons than permitted.

**Submission:** Legality of the existing structures.

**Response:** This is not a relevant consideration in assessing this application. As is discussed in the Planning Appeals Board decision of Van Egmond v City of Knox, Bassett & Ors ([1985] 3 PABR 249), a permit applicant should neither be punished nor rewarded for undertaking work before a permit was obtained. Officers have not formed a view as to the legality of some of the works referred to in objections (although, it is noted that a number of structures referred to in the objections do not require a planning permit to be developed in association with a dwelling). If the current application were to be refused, the legality of structures would be investigated by Council's enforcement department.

**Submission:** Inadequate car parking provided on site.

**Response:** Clause 52.06-5 provides that car parking for group accommodation is to be provided to the satisfaction of the Responsible Authority. Officers consider that for a use of this nature, 1 space for every 2 patrons is acceptable (this is the rate specified for a Bed and Breakfast, for instance). The deletion of the house of reflection and requirement for onsite management will provide for some overflow parking at this ratio. Further, the site is large enough to cater for additional car parking or larger vehicles if this need were to arise.

**Submission:** Misrepresentations of the permit applicant contained within the application material and potential intensification of the activity.

**Response:** Officers have assessed the application independently and tested various components of the report referred to by objectors (such as neighbouring lot sizes, potential use and the like). Officers note that while some errors are contained within the planning report submitted, Officers can accurately ascertain the features of the proposal and assess them against the Scheme. This is not considered to be an appropriate reason to refuse the application.

**Conclusion and Recommendation:**

Council officers have considered the matters under Section 60 of the *Planning & Environment Act 1987*, and consider that the proposed use and development is appropriate having regard to the relevant matters and can be managed through appropriate conditions.

It is recommended that Council therefore issue a notice of decision to grant a permit for the use and development of the land for group accommodation and development and display of a business identification sign, in accordance with the endorsed plans and subject to the following conditions:

**Proposed Conditions:**

**Amended Plans Required**

1. Before the use or 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 Revision G plans prepared by Beveridge Williams and Co Pty Ltd dated 4 March 2019 and the Revision A plans prepared by David Trease Design and Drafting Solutions dated August 2018 and February 2019, but modified to show:

- a) The deletion of the structure labelled 'house of reflection'.
- b) The deletion of the internal illumination shown on the business identification sign labelled 'Wigney Farm'
- c) A single egress point for all vehicular traffic to be located at the southernmost exit depicted on the Revision G Plans, with specific siting subject to the findings of the Stopping Site Distance Assessment required by Condition 16.
- d) The inclusion of detailed landscaping information as required by condition 7.
- e) Provision for waste management and refuse storage as required by condition 14.
- f) Any changes required by the implementation of bushfire management measures as required by conditions 9 and 10.
- g) A full schedule of external colours and materials for the developments, including swatch sheets.

**Endorsed Plans**

2. The building, works and layout as shown on the endorsed plans must not be altered or modified except with the written consent of the Responsible Authority.

**Timely Development**

3. Once the development has started it must be continued and completed in a timely manner to the satisfaction of the Responsible Authority.

**Section 173 Agreement Required**

4. Prior to the commencement of any buildings and works for the Group Accommodation buildings, an Agreement under Section 173 of the *Planning and Environment Act 1987* must be entered into which ensures that:
  - a) The Group Accommodation buildings must not be occupied by the same person/s for more than 42 consecutive days/nights and no more than 150 cumulative days/nights per calendar year.
  - b) The Group Accommodation buildings must not be used as a permanent residence (dwelling).
  - c) The operator/owner is to keep a log of all visitations/patrons and produce it to the Responsible Authority upon request.
  - d) If the use of the land for Group Accommodation ceases for a period of more than two years, the building(s) must be removed from the land within three months or otherwise decommissioned to be non-habitable outbuildings.

The Agreement must be registered on title pursuant to Section 181 of the *Planning and Environment Act 1987* and confirmation of the Dealing number provided to Council before the issue of an Occupancy Permit or commencement of use of the building(s). All costs relating to the preparation and registration of the Agreement must be borne by the applicant.

**Maximum Occupancy Numbers**

5. The site must not accommodate any more than thirty-six (36) persons (excluding on-site managers) at any one time.
6. Each group accommodation building must not accommodate more than the number of persons specified below:
  - a) Dwelling – 8 persons
  - b) Dairy Lofts – 8 persons.
  - c) Buttercup barn – 6 persons.
  - d) Warehouse Studio Apartment – 4 persons.
  - e) Mezzanine Apartment – 4 persons.



- f) Cottage – 6 persons.
- g) Tram Unit – 2 persons.

#### **Landscape Plan Required**

7. Concurrent with the plans required by Condition 1, 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 landscaping plan must be generally in accordance with the Revision G Landscape Plan prepared by Beveridge Williams and Co Pty Ltd dated March 2019, except that the plan must be prepared in consultation with the Country Fire Authority and must show:

- a) A survey (including botanical names) of all existing vegetation to be retained and/or removed.
- b) Details of surface finishes of pathways and driveways.
- c) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
- d) A visual screen along the shared property boundary of the site and O'Gradys Ridge Road. Such plantings must include canopy trees and shrubs to provide an effective visual screen. Canopy trees must be evergreen and advanced trees must be planted.
- e) A visual screen along the shared property boundary of the site and 270 O'Gradys Ridge Road (being Lot 1 LP126161 Parish of Doomburrim). Such plantings must include canopy trees and shrubs to provide an effective visual screen. Canopy trees must be evergreen and advanced trees must be planted.
- f) Planting which at maturity will comply with the defensible space requirements of the endorsed bushfire management plan.

The landscaping as shown on the endorsed landscape plan must be established prior to the commencement of the use for group accommodation.

All species selected must be to the satisfaction of the responsible authority. Where practicable, species should be selected from the publication *Indigenous Plants of South Gippsland Shire* and should relate to the relevant Ecological Vegetation Class (EVC) for the area in which the planting is to occur. Any dead or dying vegetation is to be replaced with vegetation of equivalent size compliant with the requirements of this condition.

#### **Noise and Amenity Plan Required**

8. Before the use starts, a noise and amenity plan/patron 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 then form part of the permit. All activities forming part of the use must comply with the endorsed plan.

The plan must include (at a minimum):

- a) The provision of at least one (1) permanent on-site manager of the facility.
- b) Contact details of the on-site manager, including provision of a 24 hour available phone service. Such contact details must be publically available and be readily identifiable (i.e. by display on a sign at the entrance to the site).
- c) Appropriate levels of staffing and other measures which are designed to ensure the orderly arrival and departure of patrons.
- d) Measures to control noise emissions from the premises. Noise emissions from the property must comply with the EPA Publication 'Noise from Industry in Regional Victoria'.

#### **Bushfire Management Plan Required**

9. Concurrent with the plans required by Condition 1, a Bushfire Management Plan (BMP) to the satisfaction of the Responsible Authority in consultation with the Country Fire authority must be submitted to and approved by the Responsible Authority. When approved, the BMP will be endorsed and will then form part of the permit.

Any plans within the BMP must be drawn to scale with dimensions. The BMP must:

- a) Be based on a Bushfire Hazard Site Assessment, Bushfire Hazard Landscape Assessment and Bushfire Management Statement as described by Clause 44.06-3 of the South Gippsland Planning Scheme.
- b) Specify the extent of defendable space and building construction bushfire attack level in response to the site and landscape assessments.
- c) Specify water supply and access requirements for the development.

#### **Bushfire Emergency Plan Required**

10. Concurrent with the plans required by Condition 1, a Bushfire Emergency Plan (BEP) to the satisfaction of the Responsible Authority in consultation with the Country Fire Authority must be submitted to and approved by the Responsible Authority. When approved, the BEP will be endorsed and will then form part of the permit. Any plans within the BEP must be drawn to scale with dimensions.

The BEP must be prepared by a suitably qualified expert and must provide for the following (at a minimum):

- a) Premises details:
- Describe property and business details.
  - Identify the purpose of the BEP stating that the plan outlines procedures for:
    - **Closure of premises** on any day with a Fire Danger Rating of Severe, Extreme and Code Red.
    - **Evacuation** (evacuation from the site to a designated safer off-site location).
    - **Shelter-in-place** (remaining on-site in a designated building).
- b) Review of the BEP:
- Outline that the plan must be reviewed and updated annually prior to the commencement of the declared Fire Danger Period.
  - Include a *Version Control Table*.
- c) Roles & Responsibilities:
- Detail the staff responsibilities for implementing the emergency procedures in the event of a bushfire. This must include assigning responsibility for the:
    - Management and oversight of emergency procedures.
    - Training of employees in emergency procedures.
    - Accounting for all persons during the emergency procedures.
- d) Emergency contact details:
- Outline organisation/position/contact details for emergency services personnel.
- e) Bushfire monitoring procedures:
- Details the use of radio, internet and social networks that will assist in monitoring potential threats during the bushfire danger period.
  - Describe and show (include a map) the area to be monitored for potential bushfire activity (i.e. within 20 km of the site).
- f) Action Statements – trigger points for action:
- Prior to the Fire Danger Period
    - Describe on-site training sessions and fire equipment checks.
    - Identify maintenance of bushfire mitigation measures such as vegetation management (including implementation of mitigation measures required by any endorsed Bushfire Management Plan).
  - Closure of premise during forecast FDR days (i.e. Severe, Extreme and Code Red)
    - Outline guest notification procedures and details of premises closure (including timing of closure).
  - Evacuation
    - Identify triggers for evacuation from site. For example, when evacuation is recommended by emergency services.
    - Details of the location/s of the offsite emergency assembly

- location.
- Transport arrangements for staff and guests including details such as:
  - Number of vehicles required
  - Name of company providing transportation
  - Contact phone number for transport company
  - Time required before transportation is likely to be available
  - Estimated travelling time to destination
- Actions after the bushfire emergency event.
- Shelter-in-place
  - Show the location and describe the type of shelter-in-place.
  - Triggers for commencing the shelter-in-place option.
  - Procedures for emergency assembly in the shelter-in-place building.

### **Construction Management Plan Required**

11. Before the development starts, a construction 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 then form part of the permit. The plan must address the following matters:
- a) measures to minimise the impact of construction vehicles arriving at, queuing, and departing from the land.
  - b) measures to accommodate the private vehicles of workers/tradespersons.
  - c) details of the location of all construction equipment and facilities, including delivery points, storerooms, toilets, temporary offices and workers' facilities.
  - d) noise attenuation measures to be put in place to protect the amenity of nearby residents during construction having regard to the EPA Guidelines on Construction and Demolition Noise.
  - e) measures to minimise the generation and dispersal of dust.
  - f) details of a 24 hour hotline for access to a contact person or project manager accountable for the project and compliance with the CMP.
  - g) arrangements for waste collection and other services to be provided during construction.

### **Noise and Amenity Conditions**

12. 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; and/or
  - d) presence of vermin.
13. Effective noise levels from the use of the premises must not exceed the recommended levels as set out in *Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011)* or as amended.
14. All waste material or other refuse must be obscured from the view of the public and must be disposed of in a manner to the satisfaction of the Responsible Authority.
15. The property must be maintained in a neat and tidy condition to the satisfaction of the Responsible Authority.

#### **Engineering Conditions**

16. Concurrent with the plans required by condition 1, the permit holder must engage a suitably qualified consultant to undertake a Stopping Site Distance Assessment (SSDA) and provide such assessment to the satisfaction of the Responsible Authority.
- The SSDA must demonstrate that vehicle movements at the proposed ingress and egress points to the site comply with the appropriate Austroads standards. Any access changes consequent on implementing the findings of the SSDA report must be reflected in the plans submitted under Condition 1 of this permit.
17. The loading and unloading of vehicles and delivery of goods must at all times be within the boundaries of the site.
18. Before the use commences, the car parking spaces, access lanes, driveways and associated works and landscaping shown on the plan must be:
- a) constructed and available for use in accordance with the plan approved by the responsible authority.
  - b) formed to such levels and drained so that they can be used in accordance with the plan.
  - c) constructed with an all-weather pavement or some other durable surface.
  - d) line-marked or provided with some other adequate means of showing the car parking spaces.

Car spaces, access lanes and driveways must be kept available for these purposes at all times. No car parking may occur on the O'Gradys Ridge Road Reserve.

**Erosion Management**

19. Building construction must be carried out in accordance with *Construction Techniques for Sediment Pollution Control* (EPA May 1991) and *Control of Erosion on Construction Sites* (Soil Conservation Authority) to the satisfaction of the Responsible Authority.
20. All works must be undertaken in a manner that minimises soil erosion, and any exposed areas of soil must be stabilised to prevent soil erosion, to the satisfaction of the Responsible Authority.

**Signage Conditions**

21. The location and details of the sign, including those of the supporting structure, as shown on the endorsed plans, must not be altered without the written consent of the Responsible Authority.
22. The sign must not contain any flashing light.
23. The sign must not be illuminated by external or internal light.
24. All signs must be located wholly within the boundary of the land.
25. All lettering, drawing, colouring and other artwork must be carried out and displayed in a professional manner and maintained to the satisfaction of the Responsible Authority.

**Expiry Condition**

26. This permit as it relates to the use and development of the land for Group Accommodation will expire if any of the following circumstances applies:
  - a) The development is not started within two (2) years of the date of this permit.
  - b) The development is not completed within four (4) years of the date of this permit.
  - c) The use does not start within two (2) years after the completion of the development.
  - d) The use ceases for a period of two (2) or more years.

This permit as it relates to the development and display of business identification signage will expire if any of the following circumstances applies:

- e) The sign is not erected within one (1) year of the commencement of the use.
- f) Fifteen (15) years from the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing in accordance with Section 69 of the *Planning and Environment Act 1987*.