

## Delegation Report

**Application No:** 2016/225  
**Application Type:** Use and Development  
**Received:** 30 November 2016

**The Applicant:**  
 Name: W F Clappers  
 Address: 3 Millar Road  
 Yanakie VIC 3960

**The Proposal:**  
 Proposal: Development of an extension to existing building (verandah, beer garden & toilets), Use of the land for Food and Drink Premises, Licenced Premises.

**The Land:**  
 Land Address: 3 Millar Road Yanakie VIC 3960  
 Land Description: CA 48H Parish of Yanakie

**Assessment:**  
 By: Suzanne Occhipinti

### Planning Scheme and/or Planning and Environment Act Definition

#### Land Use

Food and Drink Premises

Existing permitted land use is 'Shop (bakery/café)' (2012/307): *Land used to sell goods or services, or to hire goods. It includes the selling of bread, pastries, cakes or other products baked on the premises. It does not include food and drink premises, gambling premises, landscape gardening supplies, manufacturing sales, market, motor vehicle, boat, or caravan sales, postal agency, primary produce sales, or trade supplies.*

The additional proposed use is Food and Drink Premises.

#### Development

Construct a building and carry out works

#### **Zone and Overlays:**

TZ - Township Zone  
 ESO3 - Environmental Significance Overlay - Schedule 3

#### **Why is a Permit Required?**

##### Zone

Use

- Clause 32.05-01 – A permit is required for the use of the land for a Food and Drink Premises (Retail premises is a Section 2 use).

Development

- Clause 32.05-8 – A permit is required for building and works associated with a use in Section 2.

Overlay

- Clause 42.01-2 – A permit is required to construct a building or to construct or carry out works. This does not apply if a schedule to this overlay specifically states that a permit is not required. The ESO3 Schedule does not contain a relevant exemption.

Particular provisions

- Clause 52.27 Licensed Premises - A permit is required to use land to sell or consume liquor if a licence is required under the Liquor Control Reform Act 1998.
- Clause 52.29 Land adjacent to a Road Zone, Category 1 - A permit is required to create or alter access to a road in a Road Zone, Category 1. Whilst the application does not physically alter or create access to the RDZ1, it does intensify the use of the existing access and therefore it is considered that a permit is triggered under this clause.

Particular provisions that are relevant but do not trigger a permit

- Clause 52.06-1 Car Parking: the clause applies to:
  - a new use; or
  - an increase in the floor area or site area of an existing use.

Clause 52.06-2: Before a new use commences or the floor area or site area of an existing use is increased, the number of car parking spaces required under Clause 52.06-5 must be provided to the satisfaction of the responsible authority on the land.

Both the current and proposed additional use will apply to the land in conjunction with each other (and in roughly equal portions). Both uses require the same car parking rate, and therefore the following car parking calculations are considered relevant: for Food and Drink Premises or Shop, 4 car spaces per 100m<sup>2</sup> leasable floor area are required. The additions to the bakery/café (including the beer garden) are approximately 356m<sup>2</sup>, and therefore 14 additional spaces are required.

The proposed site plans show a total of 23 car spaces (including 1 accessible and five staff spaces), and a loading bay. Car parking is provided and proposed as follows:

Car parking required under previous permit	4
Car parks provided on site (existing) under previous permit	11
<b>Surplus car parks currently on site</b>	<b>7</b>
Car parks required under this application	14

Additional car parks proposed	12
<b>Overall surplus car parks</b>	<b>5</b>

- **Clause 52.07 Loading and Unloading of Vehicles**

No building or works may be constructed for the manufacture, servicing, storage or sale of goods or materials unless space is provided on the land for loading and unloading vehicles as specified in the table below. The loading bay is a minimum of 3.6m in width and 7.65m length and complies.

- **Clause 52.34 Bicycle Facilities**

A new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities and associated signage has been provided on the land. Where the floor area occupied by an existing use is increased, the requirement for bicycle facilities only applies to the increased floor area of the use. The requirement for the additional 356m<sup>2</sup> floor area for 'Retail' (including Shop and Food and Drinks Premises) is 1 bicycle space for visitors and shoppers and 1 bicycle space for employees.

It is noted that the bicycle facilities that were required under permit 2012/307, for the bakery, have not been installed.

- **Clause 52.43 Live Music and Entertainment Noise**

This clause applies to an application required under any zone of this scheme to use land for, or to construct a building or construct or carry out works associated with:

- a live music entertainment venue.
- a noise sensitive residential use that is within 50 metres of a live music entertainment venue.

For the purposes of the clause:

- "live music entertainment venue" means a food and drink premises, nightclub, function centre or residential hotel that includes live music entertainment.
- "noise sensitive residential use" means a boarding house, dependent person's unit, dwelling, nursing home, residential aged care facility, residential village or retirement village.

A live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.

**Size of the Land (Square meters or hectares):**

The land is approximately 2782.3 m<sup>2</sup>

**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?**

No.

**Does the land abut a Road Zone Category 1 or a Public Acquisition Overlay if the purpose of acquisition is for a Category 1 road?**

Yes. The land abuts a Road Zone Category 1. The application requires referral to VicRoads under Clause 52.29 and 66.03 of the Planning Scheme.

**Is there a designated waterway on the land?**

No.

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

No.

**Does the application require car parking / bicycle facilities?**

Yes, Car parking and Bicycle facilities are required. These requirements were discussed under Clause 52.06 and 52.34, and are assessed and discussed further in the General Assessment section of this report.

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

No, a CHMP is not required because the proposed use and development is not in an area of cultural heritage sensitivity.

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

Further information was required regarding the following:

1. A live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue. You are required to prepare and submit a plan detailing the following:
  - a) the location of any noise sensitive residential uses within 50 metres of the site
  - b) the location of any doors, windows and open space areas of existing properties in close proximity to the site.
  - c) the days and hours of operation of the live music venue.
  - d) the times during which live music will be performed.
  - e) Details of existing and proposed acoustic attenuation measures.
  - f) The location of the live music on a site plan.
2. Provide information on the proposed hours of operation.
3. The proposal submitted is for a Food and Drink Premises for which you currently don't have a permit. You are required to amend the application to include 'the use of the land for a food and drink premises', and pay the additional use fee of \$251.00.
4. You are required to either amend the plans to provide 15 new car spaces in addition to those required by the current permit (2012/307/B), or apply to 'waiver part of the car parking requirement'. It is noted that the current permit shows extra car spaces above what was required at that time. On that basis Council is likely to support an application to waive a small number of car spaces. If you don't apply to waive the car spaces by amending the application form and paying the additional fee of \$251.00, you will need to show a total of 24 car spaces (including an accessible space) on an amended site plan.
5. An amended site plan, drawn to a scale such as 1:100, 1:200, which clearly shows:
  - a. All dimensions of buildings and works, and setbacks. Note that the beer garden dimensions on the plan submitted are not readable.

- b. Showing all existing and proposed landscaping, consistent with previous approvals.
  - c. Any existing fencing, noting the materials and height.
  - d. The location of the accessible car space and abutting shared space that are both clearly marked and outlined, Both the car space and shared space must be 2.4m wide in accordance with AS2890.6 (2009).
  - e. A loading bay at the rear of the building that is a minimum of 3.6m wide and 7.6m long, with minimum height clearance of 4.0m. Please clearly mark it as a loading bay on the plan, with relevant dimensions.
  - f. A turning area so that vehicles in the staff carpark and loading bay can turn to exit the site in a forward manner.
  - g. That the trenching servicing the waste water system will not be impacted by the proposed building and works.
  - h. The seating numbers must be consistently shown on the plan, described on the notation on the plan, and in the accompanying report. The report states a total of 84 seats, however the notation on the plan states 48 inside seats and 20 outside seats.
  - i. The 'partition to stop rear access' that is shown on the southern elevation.
  - j. Any steps from the verandah to the natural ground level, including to the beer garden.
6. The details of the proposed beer garden walls, and the walls/fence extending to the southern boundary. Details need to be shown on an elevation plan and must include the length, height, building materials and colors.
  7. The sign being displayed on the fence does not have a permit and does not appear to comply with the 2m2 restriction for a Promotion Sign in the TZ. You are required to either remove it or apply for a planning permit for a sign no larger than 2m2.

**Inspections:**

Date Inspected	Observations
02 September 2016	<p>The site has frontage to Meeniyen-Promontory Road on its northern boundary for approximately 56.39m, and to Millar Rd on its western boundary for approximately 41.16m. The existing carpark area on the land has existing access from both roads, and the staff car park at the rear of the building has access from Meeniyen-Promontory Road.</p> <p>The land contains a bakery and car parking area, and a fence running from the bakery south, to the southern boundary. There is a large water tank near the rear of the bakery. There are 8 visitor car spaces (including 1 accessible space) provided in front of the bakery, however 2 of these spaces are on grass and therefore don't comply with the existing permit which requires them to be gravelled. Employee parking at the rear is not designated in bays, and is being used informally. This needs to be formally set out as per the existing permit and any new permit issued for this application.</p>

	<p>The land is generally flat with only minor fall across the site.</p> <p>The site appears to have access to reticulated power, telecommunications, but not water or sewer.</p> <p>Other than the bakery on the subject land, Yanakie contains a licenced general store, service station and town/public hall. Apart from the bakery there are no other dining venues in Yanakie,. The broader Yanakie area has a large number of bed and breakfast and self-contained cabin accommodation offerings, and a caravan park.</p>
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**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 publishing a notice in newspapers generally circulating in the area.

**Were there any objections received?**

There were 6 objections/submissions received. The issues raised are summarised and addressed below:

<b>Objector concern</b>	<b>Officer response</b>
Customers of the bakery already use the hall's public toilets.	This isn't relevant to the current proposal, which includes male and female toilets that are accessible from within the beer garden. It is not appropriate for Council to restrict the use of public toilets to certain members of the public, nor could it do so.
Insufficient car parking exists already at the bakery. The proposed car parking and a waiver of car parking requirements is therefore not appropriate.	The applicant has already provided 7 car parking spaces above the number required for the recent bakery development. The applicant must only provide an additional 7 spaces in order to comply with the requirement for both uses, but has proposed to provide an additional 12 spaces. In effect, there will still be a surplus 5 car spaces provided above that which was required for both the existing and proposed uses.
<p>The hall's carpark will be used for additional car parking.</p> <p>Overflow parking at the hall is not appropriate because crossing the road is unsafe and there is low visibility in all directions.</p> <p>The hall car park is used by students &amp; the school bus service, and using it will be unsafe.</p>	<p>No overflow car parking is proposed at the hall. As discussed above, the applicant has already provided more car parking at the site than was required for the development of the bakery.</p> <p>The hall car park is a public car park and Council can't restrict its use to certain members of the public. Likewise, it's not appropriate for Council to restrict the use or growth of nearby businesses because of such concerns, where they have or will provide car parking in excess of what they are required to provide. The applicant has been generous in already providing a</p>

	significant number of additional car parking spaces on site.
Yanakie has no sewerage, limited drainage and minimal parking for residents.	Council's Environmental Health Department has reviewed the application and will require the applicant to alter the waste water system. Any system will need to be approved by Council and comply with current EPA standards for waste water treatment and disposal.
Meeniyah-Promontory Road is subject to seasonal flooding.	The access to the property is existing, and whilst it is possible that there is temporary seasonal flooding, the LSIO doesn't apply to any part of Meeniyah-Promontory Road or the subject site.
<p>Music will have a detrimental impact to the guest experience less than 250m away and could cause negative feedback, leading to loss of income.</p> <p>Noise will impact on the quality of life for objectors.</p> <p>Noise from events at the hall can be heard over 2km away with total disregard for the regulations.</p> <p>Objections to the campdraft PA system being so loud from 6AM.</p> <p>Live music and a beer garden close to a residential area is not appropriate.</p> <p>Concern with regard to compliance with noise regulations for this proposal.</p>	<p>The proposal is likely to improve guest experiences as it provides an entertainment experience, which is not currently available in Yanakie.</p> <p>It is not expected that noise levels will impact on nearby houses and tourist accommodation, given the acoustic wall proposed and the speaker direction facing away from all nearby dwellings and the town itself. Further, a planning permit will require noise levels to comply with EPA requirements, which is 65dB(A), or 55 dB(A) when measured indoors from nearby sensitive uses.</p> <p>It is also appropriate to include the following condition which is generally consistent with a Restaurant and Café Licence condition under the Liquor Control Reform Act 1998:</p> <ul style="list-style-type: none"> <li>the licensee must not permit live or recorded music to be played on the premises at higher than background music level at any time outside the hours of operation approved under this permit.</li> </ul> <p>The Liquor Control Reform Act 1998 defines "background music level", in relation to premises, as a level that enables patrons to conduct a conversation at a distance of 600 millimetres without having to raise their voices to a substantial degree.</p> <p>Given the proximity of the hall to nearby houses, and the fact that it is frequently used for events and celebrations, it is not uncommon for residents in the area to experience or expect some level of noise during the day and at night. The proposed live music is not early in the morning or late at night. It is from 3pm until 10pm, which is well within EPA requirement for outdoor venues, in SEPP N-2. It is not appropriate to restrict the growth of this business based on any non-compliance by other businesses and groups such as the campdraft (or users of the hall facilities).</p> <p>Any noise complaint can be made to Council and to the EPA, however Council should not refuse to issue</p>

	permits for any sort of use or development on the speculative basis that the applicant 'might not' comply.
<p>Drinking while listening to music over time will lead to more 0.05 (alcohol reading) problems, and is already a problem.</p>	<p>The applicant will need to obtain a Restaurant and Café Licence from the Victorian Commission for Gambling and Liquor Regulation (VCGLR), and will need to comply with those licence requirements.</p> <p>A Restaurant and Café Licence allows the sale of liquor on the premises only, where the predominant activity carried out at all times on the premises is the preparation and serving of meals to be consumed on the licenced premises. It requires, amongst other things, tables and chairs to be placed so as to be available for at least 75% of the patrons attending the premises at any one time.</p> <p>It is not envisaged, nor is it proposed, that the beer garden or serving of alcohol will be a typical bar 'scene', but rather it will need to be in conjunction with food service. The operator will also need to comply with responsible service of alcohol requirements and any relevant requirements of the Liquor Control Reform Act 1998.</p> <p>Council cannot guarantee that patrons won't drink more than the legal limit, just as it can't guarantee that for any other licenced restaurant or premises. However, as discussed above it is incumbent on the operator to manage that or risk losing their liquor licence.</p> <p>I note that the application was referred to Police Victoria, which has provided unconditional support.</p>
<p>People drinking in the beer garden (in an outdoor space) will be able to be viewed by all passing by.</p>	<p>Council considers this objection to have some validity, however it will only be the case when there are few cars in the carpark and/or the people 'viewing' the beer garden are between it and the carpark (i.e. on the footpath). Cars in the carpark will provide some screening from outside the site. The applicant has agreed to amend plans to provide taller tree planting between the beer garden and the carpark, to minimise views into the beer garden from within the site. This will be a condition of the Notice of Decision. In addition, there are many places throughout the state where alcohol is actually served in public spaces (e.g. footpath trading). Such trading can have a positive impact on the vibrancy and activation of a street. Whilst this is not being proposed here, it is not seen as an impediment to approval or a reason to refuse the application. If that was an issue, thousands of businesses around the state would not be able to operate just because passers-by could see patrons consuming alcohol responsibly.</p>



	That change notwithstanding, it is also appropriate to require the applicant to install some sort of screening to a minimum of 1.5m from FGL across the front wall of the beer garden which has a maximum of 50% transparency, which will further screen patrons while they are seated in the beer garden. This might be in the form of opaque glazing, or some more open structural screening. At that height (1.5m), an average person standing at the footpath in front of the beer garden will only have a clear view of the top of the average seated person who is sitting at least 7m away.
The owner won't maintain the property or conditions in an effective manner.	Again, this is speculative and is not a relevant consideration.

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

Authority	Which Clause? Determining or Recommending?	Date received and response
VicRoads	66.03 and 52.29 An application to create or alter access to, or to subdivide land adjacent to, a road declared as a freeway or an arterial road under the Road Management Act 2004 – Determining	Conditional support, 23/12/16

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

Authority	Which Clause / Overlay / Why?	Date received and response
SGSC Engineering	To determine if provision of access / parking / stormwater facilities is acceptable and complies with the Planning Scheme / IDM / Australian Standards.	Conditional support, 19/2/17
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 Environment Protection Act 1970.	Conditional support, 13/12/16
Police Victoria	Licensed Premises comments sought	Unconditional support, 19/12/16

### Planning Scheme Requirements and policies:

#### SPPF

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

#### 11 SETTLEMENT

- 11.05 Regional development

- 11.05-5 Coastal settlement
  - 11.08 Gippsland regional growth
    - 11.08-1 A diversified economy
    - 11.08-2 Planning for growth
    - 11.08-3 Sustainable communities
    - 11.08-4 Infrastructure
- 12 ENVIRONMENTAL AND LANDSCAPE VALUES
- 12.02 Coastal areas
    - 12.02-1 Protection of coastal areas
    - 12.02-2 Appropriate development of coastal areas
    - 12.02-4 Coastal tourism
  - 12.04 Significant environments and landscapes
    - 12.04-1 Environmentally sensitive areas
    - 12.04-2 Landscapes
- 13 ENVIRONMENTAL RISKS
- 13.01 Climate change impacts
    - 13.01-1 Coastal inundation and erosion
  - 13.04 Noise and air
    - 13.04-1 Noise abatement
- 15 BUILT ENVIRONMENT AND HERITAGE
- 15.01 Urban environment
    - 15.01-1 Urban design
    - 15.01-2 Urban design principles
    - 15.01-4 Design for safety
    - 15.01-5 Cultural identity and neighbourhood character
- 17 ECONOMIC DEVELOPMENT
- 17.01 Commercial
    - 17.01-1 Business
  - 17.03 Tourism
    - 17.03-1 Facilitating tourism
- 18 TRANSPORT
- 18.02 Movement networks
    - 18.02-1 Sustainable personal transport
    - 18.02-2 Cycling
    - 18.02-3 Principal Public Transport Network
    - 18.02-4 Management of the road system
    - 18.02-5 Car parking
- 19 INFRASTRUCTURE
- 19.03 Development infrastructure
    - 19.03-2 Water supply, sewerage and drainage
    - 19.03-3 Stormwater

### LPPF

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

#### 21.03 KEY ISSUES

- 21.03-2 Environmental and landscape values

- 21.03-3 Environmental risks
  - 21.03-5 Built environment and heritage
  - 21.03-7 Economic development
  - 21.03-9 Infrastructure
- 21.04 VISION
- 21.04-1 South Gippsland Shire Council – Council Plan 2010 – 2014
  - 21.04-2 Vision
- 21.05 SETTLEMENT
- 21.05-1 Growth of towns
- 21.06 ENVIRONMENTAL AND LANDSCAPE VALUES
- 21.06-2 Coastal and hinterland landscapes
- 21.09 BUILT ENVIRONMENT AND HERITAGE
- 21.09-2 Urban environment
- 21.11 ECONOMIC DEVELOPMENT
- 21.11-4 Tourism
- 21.12 TRANSPORT
- 21.12-1 Transport
- 21.13 INFRASTRUCTURE
- 21.13-1 Waste management and stormwater drainage
- 21.15 LOCAL AREAS
- 21.15-14 Small towns
  - 21.15-15 Landscape Character Areas
    - Character Area 1.5 – Waratah Bay/Corner Inlet

#### Clause 22 policies

There are no Clause 22 policies considered relevant to the assessment of this application.

#### **General Assessment:**

##### State Planning Policy Framework

The proposal is consistent with the relevant objectives and strategies of the SPPF clauses listed above. Clause 15.01 seeks to ensure development respects neighbourhood character. The development is in keeping with scale and design of the existing development on the land and on the adjacent corner (Yanakie hall). The proposed signs are modest in size and are less than 8m<sup>2</sup> in total, and therefore do not require a planning permit.

Clause 17.01-1 aims to encourage development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities. The proposal provides an entertainment option in Yanakie, at a suitable location, which presently has no other café and entertainment venue that is accessible every day.

Having regard to the objectives for coastal tourism in clause 12.02-4, the proposed use is of an appropriate scale, use and intensity relative to its location, and minimises impacts on the surrounding natural visual, environmental and coastal character. The beer garden will need to be suitably screened to allow only filtered views from the carpark and outside the

site. The proposed acoustic walls will not only screen the beer garden from outside views completely on three sides, but also mitigates noise and light spill into the surrounding residential area. No impacts to the natural environment are expected.

#### Local Planning Policy Framework and Local policies

The proposal is consistent with the relevant objectives and strategies of the LPPF clauses listed above. Clause 21.15-14 Small Towns aims to:

- Encourage small towns to identify niche business sectors that can be used to exploit the tourist market
- Promote ecologically sustainable and attractive forms of development that complement the natural environmental characteristics of the small coastal towns
- Encourage sympathetically designed and sited development to protect the environmental and landscape values of the surrounding area.

As discussed above with regard to the SPPF, there are no other entertainment venues in Yanakie where people can simply drop in, and in that respect the proposal has the opportunity to capture and enhance the tourist market. Whilst the hall can be hired, it is not generally open to the public other than for private functions and occasional public functions. The use and development are considered to be sympathetic to the existing uses and development in the area, which are a mixture of residential, commercial and public uses. This has been discussed with regard to the SPPF and is further discussed below.

#### Subject Site

The subject land is CA 48H Parish of Yanakie, more commonly known as 3 Millar Road Yanakie. The land contains the "Prom Café Bakery", and is a relatively large block for this area at 2782.3m<sup>2</sup>. The bakery building and carpark are located in the north-west corner of the site, near the intersection of the Meeniyah-Promontory Road service lane and Millar Rd, leaving a large vacant area to the south and east of the site.

The land is zoned TZ and the ESO3 applies to the land also. There are no waterways nearby and the land is not subject to inundation. The site is largely clear of vegetation other than planted garden beds near the bakery.

The lots to the east contain dwellings. The lot to the south is a large lot and contains a dwelling on its southern portion. Its northern portion which is adjacent to the subject land is not developed. The Yanakie hall and recreation reserve are located on the opposite corner of the intersection. Surrounding lots to the south and east are developed with dwellings. The nearest dwelling to the proposed building works is approximately 33m to the east.

#### The Proposal

The proposal is to extend the existing bakery to create a beer garden immediately to the south of the existing building, enlarge and enclose the verandah on the western and northern sides of the existing bakery, and licence these areas. The beer garden will contain male and female toilets, and will be enclosed on the eastern and southern sides by a 2.4m high, timber acoustic wall. Seating for 100 people will be provided across both areas, and the beer garden will be used for live music. The plans show a stage in the south east corner

of the beer garden, with speakers oriented to direct sound to the north-west, away from nearby dwellings (i.e. towards the intersection).

The northern side of the beer garden abuts the southern wall of the existing bakery building. The proposal shows a low wall on the western side of the beer garden, opposite the carpark, to allow views out to the west and north-west. The applicant has also proposed (by email) to amend the plans to show a few scattered trees to be planted along this wall. Whilst it is understandable that the applicant wishes to protect the views of the countryside for patrons in the beer garden, in reality the view will be of cars in the carpark. If there are more than about 4 visitor cars on site, there will be cars parked in front of the beer garden. As discussed above with regard to objectors concerns, Council considers it appropriate to require a screen of minimum 1.5m height from FGL, and a minimum 50% transparency, on the western wall of the beer garden to limit public views into the beer garden as it will be licenced. The proposal shows a licenced area that includes the enclosed bakery building and the beer garden, and extends to the east of the beer garden acoustic wall for approximately 5.5m.

#### Hours

The hours proposed for public trading are 8am to 10pm, every day. However, the existing permit (2012/307) allows for public trading from 7am to 10pm, and it is appropriate to continue to allow these hours to continue. Being a bakery, food preparation will extend outside these hours. This is considered appropriate in the zone, and for this type of use, and is consistent with opening hours for similar businesses in neighbouring towns.

The hours proposed for live music are:

- From Boxing Day until the 4th of January everyday until 10pm.
- Easter Friday until Easter Monday
- AFL grand final weekend
- Melbourne Cup weekend
- For long weekends: Friday Saturday and Sundays
- Otherwise Friday and Saturday nights.

#### Licensed Premises

Having regard to Clause 52.27, the amenity of the surrounding area is unlikely to be impacted by the sale or consumption of liquor, hours of operation, or the number of patrons. The surrounding dwellings to the east are some distance from the licenced area (minimum 33m). The dwellings to the south and south-east are further again. Some noise abatement is provided on the subject site by the timber acoustic wall on the eastern and southern side of the beer garden. The only Licensed Premises near the subject land are the Yanakie General Store (Packaged Liquor Licence), and Tingara View Cottages (BYO licence). It is considered that the proposal will not result in a proliferation of licensed premises within the town as there are no other licensed restaurants in the town. It is appropriate that a permit requires the applicant to provide Council with a Security Management Plan prior to the use and development commencing, if a permit is approved, showing how the premises will be managed to avoid nuisance impacts from patrons using or leaving in the land. As there are no other licenced premises nearby open to the general public for on-site consumption, such

as pubs or large clubs, it is unlikely that nuisance from patrons entering the property will be experienced.

Section 3A of the Liquor Control Reform Act 1998, states that factors which may be taken into account when assessing impacts to amenity include:

- (a) the presence or absence of parking facilities;
- (b) traffic movement and density;
- (c) noise levels;
- (d) the possibility of nuisance or vandalism;
- (e) the harmony and coherence of the environment.

#### Traffic and Car Parking

The proposed addition of a licenced premises on the subject land is unlikely to impact on the amenity of the surrounding area. Traffic movements are unlikely to cause detriment, and neither VicRoads nor Council's Engineers have raised this as a concern. It is noted that VicRoads requires permit conditions with regard to access, however these generally relate to construction standards. One new access is proposed on Millar Rd. This will be for entry only.

The existing carpark will be extended to the south with 10 new visitor car spaces, and additional 2 staff car parking spaces are proposed to be located to the rear of the bakery. The existing use for 'Shop' (bakery) required 4 car spaces at that time, however 11 spaces were provided. Given that an additional 7 car spaces were already provided, above that which was required, the proposal will only need to provide 7 spaces. The whole of the land will have 23 spaces, which is still 5 more than required.

The latest Census data shows that the population of the Yanakie district was only 382 in 2011. Yanakie township contains only a small proportion of that number. Most of the town is within 430m of the subject site, and the higher density Township Zone residential area is within a few blocks of the site. Given the small size of the town geographically, and the close proximity of the subject land to the residential areas, it is likely that some patrons would walk rather than drive to the site, thereby reducing the likely requirement, except for during peak tourism periods.

#### Noise

Live music venues make a significant contribution to the vibrancy and cultural fabric of communities, and provide opportunities for emerging and established musicians. The fact that music can be heard doesn't mean that it is excessive or detrimental to the amenity of an area. In this instance, noise levels are unknown, however they will need to comply with SEPP N-2 as discussed earlier. A planning permit will require noise levels to comply with EPA (SEPP N-2) requirements, which is 65dB(A), or 55 dB(A) when measured indoors from nearby sensitive uses. It is reasonable to assume that for much of the year the outdoor seating areas would not be used to capacity due to the weather. Even when they are used however, noise is mitigated by 2.4m high acoustic walls, and to a lesser extent by boundary fences.

#### Bicycles

A bicycle area is shown on the site plan at the front of the bakery building. Whilst the number of additional bicycle facilities have not been shown on the plans, there is ample room to provide these, in the area indicated at the front of the building for visitors, and at the rear for staff. The permit should contain a condition that bicycle facilities must meet the following requirements:

- A bicycle space for an employee or resident must be provided either in a bicycle locker or at a bicycle rail in a lockable compound.
- A bicycle space for a visitor, shopper or student must be provided at a bicycle rail.

#### Waste Water

There is a nexus between the proposed development, the use of the land for a licenced premises and waste water impacts. The use of the land for a licenced premises necessitates a greater level of waste water disposal, because the proposal enables a larger portion of the land to accommodate patrons, by providing enclosed and sheltered eating spaces. Council's Waste Water Department has conditionally supported the application.

#### **Conclusion and Recommendation:**

Council has considered the matters under Section 60 of the Planning & Environment Act 1987. It considers that the proposed use and development is appropriate having regard to the relevant matters and can be managed through appropriate conditions.

That a Notice of Decision be issued for the development of an extension to existing building (verandah, beer garden & toilets), use of the land for Food and Drink Premises and Licenced Premises, all in accordance with the endorsed plans.

Signed.  ..... Planning Officer Date:	  ..... Planning Co-ordinator Date:
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