

# **Planning Delegated Committee Meeting**

## **Agenda**

**8 December 2021 at 6:30pm**

**Council Chamber, Town Hall, Sturt Street,  
Ballarat**



## PUBLIC SUBMISSIONS

1. Due to COVID-19 restrictions, members of the public wishing to attend the meeting in person must be fully vaccinated.
2. Public representations may be made on any items listed on the agenda in a Planning Delegated Committee Meeting.
3. Submissions must also be submitted in writing to [governance@ballarat.vic.gov.au](mailto:governance@ballarat.vic.gov.au) by no later than 4.30pm on the day of Planning meeting; and limited to no more than 200 words that will be read out by the Chief Executive Officer or nominated delegate at the meeting prior to the matter being considered by Council.
4. If you would like to make your submission personally at the Planning Meeting, please contact [governance@ballarat.vic.gov.au](mailto:governance@ballarat.vic.gov.au) to arrange this.

**ORDER OF BUSINESS:**

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## 1. WELCOME TO COUNTRY



The City of Ballarat acknowledges the Traditional Custodians of the land we live and work on, the Wadawurrung and Dja Dja Wurrung People, and recognises their continuing connection to the land and waterways. We pay our respects to their Elders past, present and emerging and extend this to all Aboriginal and Torres Strait Islander People.



**2. APOLOGIES FOR ABSENCE**

**3. DECLARATION OF CONFLICT OF INTERESTS**

**4. CONFIRMATION OF MINUTES**

**5. OFFICER BRIEFING**

## 6. PLANNING DELEGATED COMMITTEE REPORTS

### 6.1. 166 MILLERS ROAD, INVERMAY

**Division:** Development and Growth  
**Director:** Natalie Robertson  
**Author/Position:** Mish Watt – Coordinator Statutory Planning

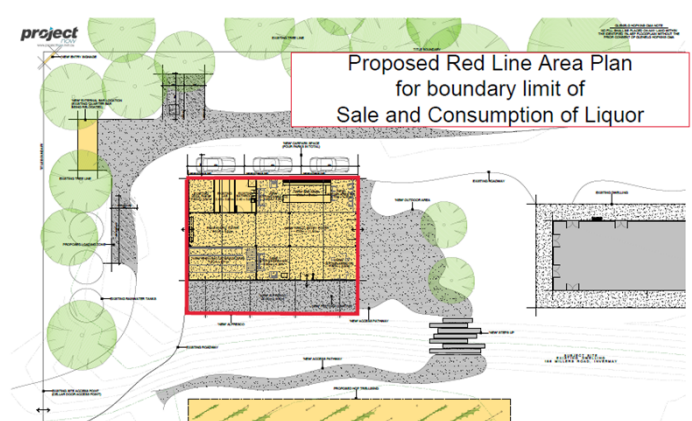
#### PURPOSE

1. The purpose of this report is for Council to determine its position on this application given that the applicant has formally amended the plans which will be considered by the Victorian Civil and Administrative Tribunal (VCAT).

#### BACKGROUND

2. The Delegated Planning Committee will recall making a decision on this application at its meeting in February, 2021. At this meeting Council determined to Refuse to Grant a Planning Permit for the use of the land for horticulture, a function centre with Producer's Licence, rural industry (cider production and wild fermented beer production) at 166 Millers Road Invermay.
3. The application attracted 30 objections, with 19 submissions in support.
4. Council's grounds of refusal were:
  - The application would result in land use conflict in this quiet rural living environment and it is not consistent with the purpose of the zone. It has not been demonstrated that noise impacts from the use will not reduce community amenity or impact on nearby sensitive land uses and is therefore inconsistent with Clause 13.05-1S – Noise abatement and Clause 13.07-1S – Land use compatibility.
  - Adequate car parking cannot be provided on site for the use given that the site is located in a Floodway Overlay and the part of the land in which car parking is proposed to be provided is not supported by Glenelg Hopkins Catchment Management Authority. The car parking area will be subject to deep flooding of up to 1 metre, making it unusable.
  - The application is inconsistent with the strategy to avoid intensifying the impact of flooding through inappropriately located use and development contained in Clause 13.03-1S – Floodplain management.
5. The applicant has lodged an appeal with the Victorian Civil and Administrative Tribunal (VCAT) to review Council's decision. The hearing was to proceed on 22 and 23 November, 2021 but has been adjourned until March, 2022.
6. The VCAT process allows an applicant to amend their application to address Council and objector concerns and the applicant has made a formal amendment to the application through VCAT.
7. The amendments which were disclosed by the applicant in their Statement of Changes are summarised as follows:
  - Reduction in patron numbers from 40 to 10;

- Reduction to the area in which liquor can be consumed, with liquor consumption to occur only within the confines of the shed building as per the below image;



- Deletion of the car parking area which was proposed to the south west of the building, so that there are no car parking spaces proposed in the area of the site which is subject to inundation;
  - Provision of four on-site car parking spaces to the north of the building;
  - 36 function events run over 12 weekends, run as three consecutive days during the following hours:
    - Friday 2pm-8pm;
    - Saturday 10am-6pm; and
    - Sunday 10am-6pm;
  - Provision of a three metre buffer from the waterway for the hops trellising and fruit orchard.
8. In addition to these amendments, upon reviewing the plans and report submitted with the application it is noted that approval is also sought for:
- Signage, located in the north-western corner of the site and internally illuminated signage on the building; and
  - A 'new external bar', located to the north east of the building.
9. No detail has been provided about either of these elements, other than on the plans.
10. Clarification of these issues will be sought formally through VCAT, but a phone call to the applicant's Planning Consultant reveals that the 'external bar' is effectively storage of a mobile bar that the applicant uses for off-site events. The Planning Officer has also been advised that there are no details of the signage at this stage.

## KEY MATTERS

11. The key issues for consideration are amenity/ land use conflict and flooding.

### Amenity/ land use conflict

12. As noted in the previous report to the Delegated Planning Committee, the site is located in a quiet rural living environment. Neighbouring property owners have a legitimate expectation that this will continue, given the purposes of the zone.

13. The reduction in patron numbers to ten and the drawing back of the licensed area to the confines of the shed, along with the reduced hours of operation, are such that the proposal is now of a scale that can be accommodated in this rural living neighbourhood without causing off-site amenity impacts.

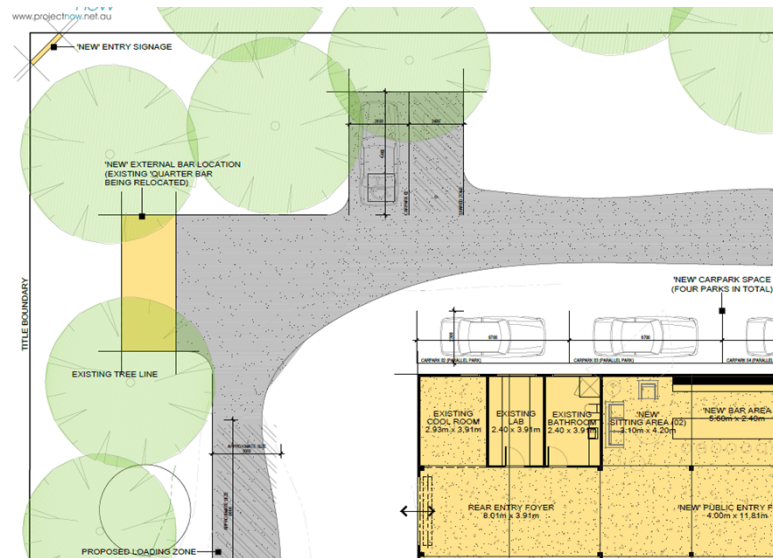
#### Flooding

14. Advice from the Glenelg Hopkins Catchment Management Authority (GHCMA) will be important to assist the Tribunal in determining whether there is a flooding impact from the proposal.
15. It is a positive outcome to remove the car parking area which was formerly located to the south-west of the building. The GHCMA have advised that this area will be flooded regularly and the car parking area could not be relied upon to provide for the parking needs of the use.
16. The reduction in patron numbers to ten results in a need for three on-site car parking spaces for the function centre. The Planning Scheme specifies a requirement for 2.9 car parking spaces per 100 square metres of net floor area for the rural industry component of the use. The amended plans will provide for one car parking space for this use, but it is noted that the use will be undertaken by residents of the dwelling and it is assessed that an appropriate level of car parking is provided on site.
17. The relocation of the hops trellising and orchard away from the waterway is also positive from a flooding perspective, ensuring that natural waterflows are not impeded or displaced by new structures. The plans submitted do not provide the level of clarity required to ensure that the initial concerns of the GHCMA are met, but a permit condition could deal with this issue.
18. As the former proposed car parking area has had a gravel (or similar) surface put in place (refer below image) there will be a need for enforcement action to have this removed from the land now that there is no intention to seek approval for car parking here.



#### Signage

19. A small scale, appropriately located and sized business identification sign could be supported on site. This sign should be located adjacent to the entry point to the site, not proud to the corner of Millers Road and Slatey Creek Road North, as is proposed (refer below image).

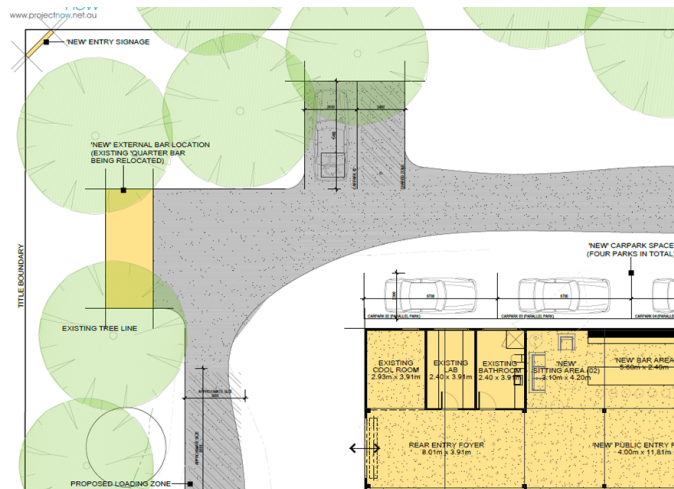


20. It is also noted that the entry signage is proposed in an area of Aboriginal cultural heritage significance, which would trigger the need for a CHMP for the activity. This is further reason that the sign should be relocated.
21. As all attendance/functions will be pre-organised there would seem little need for signage.
22. Insofar as the illuminated signage upon the western end of the shed is concerned (refer below image), it is noted that generally the use operates in daylight hours, aside from a Friday evening. Given the very limited operation proposed, it is unclear why internally illuminated signage would be required outside the hours of operation. Further, the nature of the on-building signage proposed reinforces that there is a non-residential use being undertaken on the land, providing for the commercialisation of the area, which is contrary to the purpose of the zone.



#### Storage of bar used off-site

23. The details of the structure, including its colour are not known.



24. Support could be provided for the storage of this infrastructure in the location shown, provided that the container is painted in a subdued colour and any signage on the structure will not be visible from the road network. A permit condition could deal with this issue.
25. A more appropriate notation is required to be included on the plan, clarifying exactly what is proposed, rather than alluding to an external bar. This can be addressed by permit condition.
26. It is appreciated that there are limited areas of the site in which this structure could be stored without impacting on floodwater. There is also a need to ensure that the structure is stored outside the area of the site which is of Aboriginal cultural heritage significance. A permit condition could deal with this issue.

### Conclusion

27. The significant changes in the application, including substantial reduction in scale, deletion of external licensed areas and changed location of car parking are such that Council's grounds of refusal have fallen away.
28. It is recommended that Council supports the application at the upcoming hearing and ensures that signage and storage of the bar which is used for off-site functions are properly managed to address the issues raised earlier in this report.
29. It is understood third party objectors will present a case at the pending VCAT hearing addressing flooding impacts, based on technical advice from GHCA, this is not a matter officers recommend Council pursues.

### OFFICER RECOMMENDATION

**30. That the Planning Delegated Committee supports the application at the upcoming VCAT hearing subject to the following conditions:**

#### **30.1. Amended plans**

**Before the use and/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 form part of the permit.**



The plans must be drawn to scale with dimensions and emailed to [info@ballarat.vic.gov.au](mailto:info@ballarat.vic.gov.au) with the planning reference number.

The plans must be generally in accordance with the plans submitted to VCAT on 20 October, 2021 but modified to show:

- (a) Deletion of the on-building signage;
- (b) Relocation of the entry signage to adjacent to the vehicle access point,
- (c) Details of the entry signage, with the sign to have a maximum area of 0.2 square metres and non-illuminated;
- (d) Re-labelling of the 'new external bar location (existing quarter bar being relocated)' to storage of shipping container;
- (e) Details of the shipping container, including confirmation that the northern, western and southern elevations are painted in a muted toning and do not include any signage;
- (f) The location of the shipping container demonstrated as being located outside of an area of Aboriginal cultural heritage significance;
- (g) Further detail on the plans to demonstrate that the hops trellising and orchard are located a minimum of three metres away from the top of the waterway/ drain channel which traverses the property, including confirmation that a 6 metre wide channel is achieved, as required by the Glenelg Hopkins Catchment Management Authority.

### 30.2. Endorsed plans

The use and development as shown on the endorsed plans must not be altered without the further written consent of the Responsible Authority

### 30.3. Patron numbers

No more than ten patrons may be present on the premises at any one time.

### 30.4. Hours of operation

The use may operate:

- over 12 weekends per calendar year, with a maximum number of 36 function events permitted per calendar year;
- between the hours of:
  - Friday – 2pm until 8pm;
  - Saturday – 10am until 6pm;
  - Sunday – 10am until 6pm.

A record of function events held must be kept and must be made available upon request to the Responsible Authority.

### 30.5. Land capability assessment

Prior to the commencement of the use a Land Capability Assessment which responds to the use approved under this permit and which details any upgrades required to the wastewater system must be submitted to and approved by the Responsible Authority.

### **30.6. Upgrades to wastewater system**

The use must not commence until any required upgrades or alterations to the wastewater system, as detailed in the endorsed Land Capability Assessment, are undertaken to the satisfaction of the Responsible Authority.

### **30.7. Wastewater**

All wastewater from the use must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017 for an on-site wastewater management system.

### **30.8. Beer and cider production**

Wort must be produced offsite must be modified onsite using indigenous yeasts and indigenous microflora and stored in oak barrels in the area nominated on the endorsed plans to the satisfaction of the Responsible Authority.

Apples for cider production must be milled and pressed offsite and stored in oak barrels in the area nominated on the endorsed plans to the satisfaction of the Responsible Authority.

### **30.9. Bottling**

All bottling undertaken on the site must be undertaken by hand to the satisfaction of the Responsible Authority.

The canning of beer and cider must be undertaken offsite.

### **30.10. Car parking**

Prior to the occupation of the use hereby approved commencing, the areas set aside for the parking of vehicles and access lanes as shown on the approved plans must to the satisfaction of the Responsible Authority be:

- (a) Constructed with a concrete pavement or flexible granular pavement with asphalt surfacing or crushed rock;
- (b) Properly formed to such levels that they can be used in accordance with the plans;
- (c) Drained;
- (d) Line-marked to indicate each car space.

Car spaces and access lanes must be maintained and kept available for these purposes at all times.

### **30.11. Loading/Unloading**

The loading and unloading of vehicles and the delivery of goods to and from the premises must at all times be conducted entirely within the site and/or the designated loading bay hereby approved and must not disrupt the circulation and parking of vehicles on the land or street network to the satisfaction of the Responsible Authority.

All Vehicle entry to and egress from the site shall be in a forward direction.

### **30.12. Amenity**

The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:

- (a) transport of materials, goods or commodities to or from the land;
- (b) appearance of any building, works or materials;
- (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
- (d) presence of vermin or otherwise;

In the event of any nuisance being caused to the neighbourhood by activities related to the use and development the Responsible Authority may direct, in writing, such actions or works, as deemed appropriate, to eliminate or mitigate such nuisance be undertaken.

### **30.13. Background music**

The provision of music on the premises must be limited to background music only and no speakers may be installed external to the building.

### **30.14. No sign illumination**

The signage must not be illuminated by external or internal light.

### **30.15. Conditions required by Glenelg Hopkins CMA**

- a) No portion of any hops trellises are to be installed within 3 metres of the top of the waterway/drain channel which traverses the property from the north east corner of the property to the culverts under Slatey Creek Road on the western boundary of the property. On this basis the development shall incorporate a drainage reserve of no less than 6m width centred on this waterway/drain channel.
- b) No fill shall be placed on any land within the identified 1% AEP floodplain without then prior consent of Glenelg Hopkins CMA.

### **30.16. Condition required by CFA**

Prior to the commencement of the use, a person suitably qualified in emergency planning must prepare a Bushfire Emergency Plan. Once prepared, the site should be managed in accordance with the plan at all times. The Bushfire Emergency Plan at a minimum must include:

- a) a clear statement of the plan's purpose and scope;
- b) details of the site and its emergency features/ equipment;
- c) a version control table and details on when and how the plan will be reviewed;
- d) details the roles and responsibilities of the emergency control organisation (wardens);
- e) outline training requirements and how often exercised will be conducted to practice the plan;
- f) contact details for emergency services, neighbours and other important contacts;
- g) contains appropriate action statements for:
  - a. Before the fire danger period;
  - b. During the fire danger period, including details of how the bushfire threat will be monitored;

- c. When a Code Red Fire Danger Rating is forecast (CFA recommend the use is closed);
- d. When any other lower trigger point for action is forecast (as determined by the site's emergency control organisation/ management);
- e. When a bushfire threatens the site – including the trigger for sheltering in place or evacuation (as appropriate);
- f. After the bushfire threat passes.
- h) Details of evacuating staff, visitors and guests from the site (if required);
- i) Details on sheltering in place (if required).

### **30.17. Expiry**

This permit will expire if:

- (a) The development or any stage of it does not start within two (2) years of the date of this permit; or
- (b) The development or any stage of it is not completed within four (4) years of the date of this permit; or
- (c) The use does not start within two (2) years after the completion of the development; or
- (d) The use is discontinued for a period of two years.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards (for a request to extend the time to commence the development) or twelve months after the permit expires (for a request to extend the time to complete the development).

### **ATTACHMENTS**

- 1. Governance Review [6.1.1 - 1 page]
- 2. Proposed Licensed Area [6.1.2 - 1 page]
- 3. Amended Plans [6.1.3 - 13 pages]
- 4. Cover letter and Statement of Changes [6.1.4 - 3 pages]
- 5. Planning Report [6.1.5 - 11 pages]
- 6. 166 Millers Road INVERMAY VIC 3352 Proposed permit condi [6.1.6 - 4 pages]

**ALIGNMENT WITH COUNCIL VISION, COUNCIL PLAN, STRATEGIES AND POLICIES**

1. The report aligns with Council's Vision, Council Plan, Strategies and Policies.

**COMMUNITY IMPACT**

2. There are no community impacts identified for the subject of this report.

**CLIMATE EMERGENCY AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS**

3. There are no climate emergency and environmental sustainability implications identified for the subject of this report.

**ECONOMIC SUSTAINABILITY IMPLICATIONS**

4. There are no economic sustainability implications identified for the subject of this report.

**FINANCIAL IMPLICATIONS**

5. The cost of running a VCAT hearing is already included within the Statutory Planning Unit's approved budget.

**LEGAL AND RISK CONSIDERATIONS**

6. There are no legal and risk considerations considered for the subject of this report.

**HUMAN RIGHTS CONSIDERATIONS**

7. It is considered that the report does not impact on any human rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

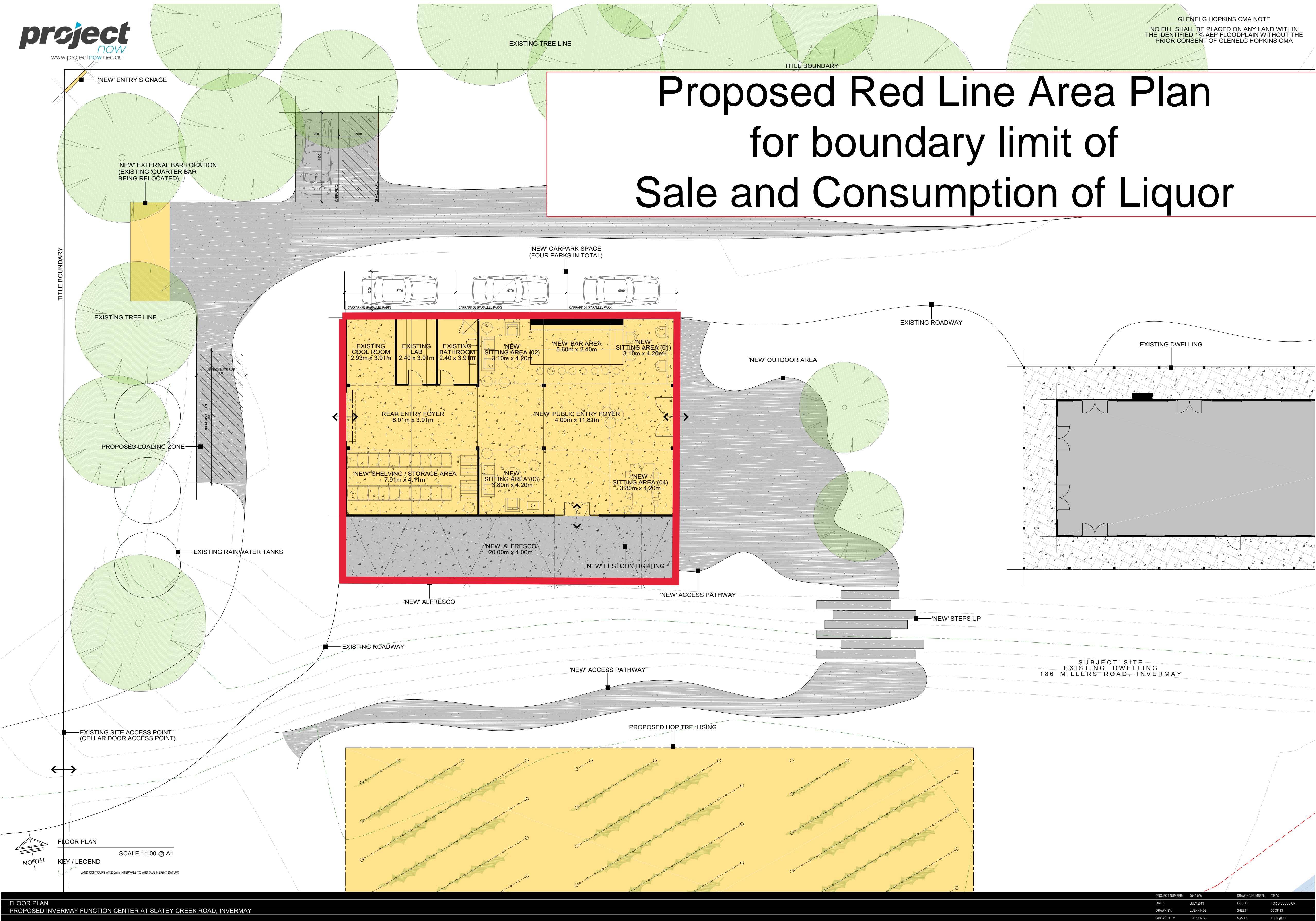
**COMMUNITY CONSULTATION AND ENGAGEMENT**

8. The planning permit application was advertised pursuant to Section 52 of the *Planning and Environment Act 1987*. Council received 40 objections, 19 submissions in support and one petition in support which includes 382 signatories.

**CONFLICTS OF INTEREST THAT HAVE ARISEN IN PREPARATION OF THE REPORT**

9. No Council Officer who has provided advice in relation to this report have a conflict of interest regarding this matter.









# PROPOSED INVERMAY FUNCTION CENTER AT SLATEY CREEK ROAD, INVERMAY

COVER PAGE		PROJECT NUMBER	2018-009	DRAWING NUMBER	CP-01
PROPOSED INVERMAY FUNCTION CENTER AT SLATEY CREEK ROAD, INVERMAY		DATE	JULY 2018	ISSUED	FOR DISCUSSION
		DRAWN BY	L. JENNINGS	SHEET	01 OF 13
		CHECKED BY	L. JENNINGS	SCALE	-









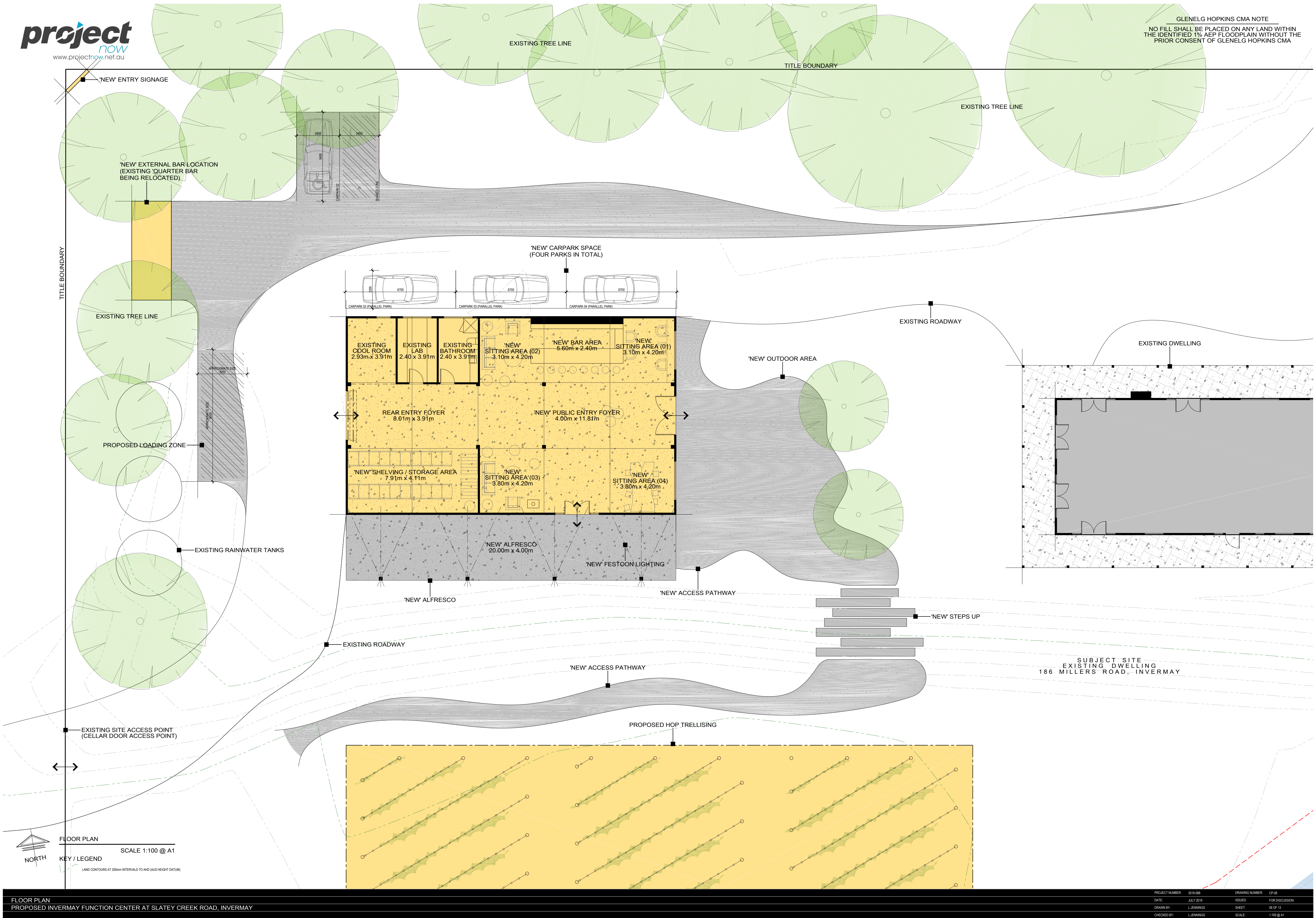
















ARTISTS IMPRESSION (01 OF 08)		PROJECT NUMBER	2018-009	DRAWING NUMBER	CP-07
PROPOSED INVERMAY FUNCTION CENTER AT SLATEY CREEK ROAD, INVERMAY		DATE	JULY 2018	ISSUED	FOR DISCUSSION
		DRAWN BY	L. JENNINGS	SHEET	07 OF 13
		CHECKED BY	L. JENNINGS	SCALE	-





ARTISTS IMPRESSION (02 OF 08)				PROJECT NUMBER	2018-009	DRAWING NUMBER	CP-08
PROPOSED INVERMAY FUNCTION CENTER AT SLATEY CREEK ROAD, INVERMAY				DATE	JULY 2018	ISSUED	FOR DISCUSSION
				DRAWN BY	L. JENNINGS	SHEET	02 OF 13
				CHECKED BY	L. JENNINGS	SCALE	









ARTISTS IMPRESSION (04 OF 08)			
PROPOSED INVERMAY FUNCTION CENTER AT SLATEY CREEK ROAD, INVERMAY			
PROJECT NUMBER	2018-009	DRAWING NUMBER	CP-10
DATE	JULY 2018	ISSUED	FOR DISCUSSION
DRAWN BY	L. JENNINGS	SHEET	13 OF 13
CHECKED BY	L. JENNINGS	SCALE	-









ARTISTS IMPRESSION (06 OF 08)			
PROPOSED INVERMAY FUNCTION CENTER AT SLATEY CREEK ROAD, INVERMAY			
PROJECT NUMBER	2018-009	DRAWING NUMBER	CP-12
DATE	JULY 2018	ISSUED	FOR DISCUSSION
DRAWN BY	L. JENNINGS	SHEET	12 OF 13
CHECKED BY	L. JENNINGS	SCALE	-





ARTISTS IMPRESSION (07 OF 08)				PROJECT NUMBER	2018-009	DRAWING NUMBER	CP-13
PROPOSED INVERMAY FUNCTION CENTER AT SLATEY CREEK ROAD, INVERMAY				DATE	JULY 2018	ISSUED	FOR DISCUSSION
				DRAWN BY	L. JENNINGS	SHEET	13 OF 13
				CHECKED BY	L. JENNINGS	SCALE	



**Beveridge Williams**

Our Reference: 1901049

20 October 2021

**IN THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
PLANNING AND ENVIRONMENT LIST  
AT 55 KING STREET, MELBOURNE**

Application for Review No: **P643/2021**

ACN 006 197 235  
ABN 38 006 197 235

Ballarat Office  
Suite 3, 180 Eleanor Drive  
PO Box 1489  
Lucas VIC 3350

Tel: (03) 5327 2000

beveridgewilliams.com.au

**NOTICE OF PROPOSED AMENDED APPLICATION****Respondents**

Cindy Swanton, Bas & Heather Groeneveld,  
Frances Simpson, Douglas Roy MCubbin,  
Patricia Twaits, Emily Butterworth, Yvonne &  
Don McRae, Jaymee Goldsmith, Betty Bibby,  
Megan Walton, Andrew Clemens Van  
Rooyen, Joanne Palmer, Gavin Macgill, Gloria  
Campbell, Maureen Olga Vincent, Shirely  
Vanderbom, Timothy Mark Grummett, Andrea  
Hedwards, Michelle Huf, Emilie Prendegast

**Responsible Authority**

City of Ballarat

**Applicant**

Ed Nolle

**Council Reference**

PLP/2019/313

**Subject Land**

166 Millers Road, Invermay

**Nature of proceeding**

Review against Council's Notice of Refusal to  
grant a permit in Planning Permit Application  
No. PLP/2019/313

**Date of hearing**

22 and 23 November

The application is sought to be amended to resolve concerns raised about  
noise impacts, adequate car parking and flood impacts.



### STATEMENT OF CHANGES

1. Amended Plans by Project Now – Version 4, dated 27.09.2021, project no. 2019-068, drawings numbers CP-01 to CP-13.
2. Reduction to the maximum limit of patrons from 40 to 10 patrons at any one time.
3. Reduction to the area for consumption and sale of liquor.
4. Deletion of the car parking spaces from the land subject to inundation and provision of 4 car parking spaces. A 'place of assembly' requires 0.3 spaces to each patron permitted as per Clause 52.06 of the Planning Scheme. Therefore, the statutory requirement is exceeded.
5. Ability to be open for functions up to 12 weekends (run as 3 consecutive days) per year as follows:  
  
Friday 2pm-8pm  
Sat 10am-6pm; and  
Sun 10am-6pm
6. 3m buffer from the waterway for proposed hop trellising and fruit orchard.

### AMENDED STATEMENT OF GROUNDS

If a party wants to amend their statement of grounds, they must lodge a completed statement of grounds form with the Tribunal (available on the VCAT website).

The date by which statement of grounds forms must be lodged with the Tribunal is **9 November 2021**, being no less than 19 days from the date of this notice as per Practice Note PNPE9.

Any party can obtain more information including copies of amended plans and supporting material from the permit applicant.

### IMPACT OF CHANGES

The proposed amendments listed above as sought in order to reduce the impact that may be caused by the construction of a car park and hop trellising in the Floodway Overlay. Adequate car parking can now be provided without any impacts to the Floodway.



The number of patrons on site has been reduced to 10 at any one time in order to minimise the vehicle movements to that of a conventional dwelling receiving visitors for events associated with family functions. The owners continue to occupy the dwelling as their principal place of residence and are the nearest noise sensitive receptor to any potential adverse impacts from the operation of the function centre.

The ability to operate for only 12 weekends per year, instead of 1 weekend per month is sought so that the seasonal nature of the function centre activity in generally warmer months can occur outside of growing and production months or those with inclement weather. This equates to a potential of only 3 months in the year where the use of the function centre continues for all 4 weekends in any given month.

**Beveridge Williams & Co. Pty Ltd**

A handwritten signature in black ink, appearing to read 'T Stevens'.

Timothy Stevens

**Principal Urban Planner**

*Acting for (the Applicant) Mr. Ed Nolle*

**Beveridge Williams**

Our Reference: 1901049

20 October 2021

Planning Department  
City of Ballarat

ACN 006 197 235  
ABN 38 006 197 235

Ballarat Office  
96 Main Road  
PO Box 1465  
Bakery Hill VIC 3354  
Tel: (03) 5327 2000

[beveridgewilliams.com.au](http://beveridgewilliams.com.au)

Dear Sir/Madam,

**RE: Planning Permit Application PLP/2019/313  
166 Millers Road, Invermay  
Revised Planning Assessment**

**Subject Land and Surrounding Neighbourhood**

The subject land is located at the south-eastern intersection of Millers and Slatey Creek Road.

It has an overall area of approximately 7.6 acres. The subject land currently contains an existing dwelling and a large shed - both are in the north-west section of the subject land.

Vehicular access to the site is available via Millers Road from the north and via Slatey Creek Road N from the west. Another access point is available via Hanford Court.

The subject land also contains an existing dam in the south-west portion of the site.

The site contains some existing trees along its northern and western boundary and in the eastern handle.

The remainder of the property consists primarily of low lying pasture and introduced grass species.

The land contains a number of natural waterways – one running diagonally across the north-west of the land and a second providing water overflow from the dam at 186 Millers Road via a Council constructed outfall drain along the southern boundary.



Figure-1 Site Satellite Image (Source: Near Maps)



Figure-2 Zone Map (Source: Planning Maps Online Victoria)

#### Planning Permit & Certificate of Compliance History

- A planning permit for development of a dwelling and associated outbuilding (PLP/2017/708) was approved on 28.11.2017.
- A planning permit for earthworks was approved on 20.01.2020 and has been completed, resulting in improvements to floodway impacts.
- A Certificate of Compliance (COC/2021/6) for a Home Based Business was issued on 17 August 2021.





### Proposal

A detailed description of the Proposal based upon our instructions, is as follows:

- establishment of an orchard of fruit trees and hop trellising areas;
- buildings and works to convert the existing outbuilding/shed (in which the Home Based Business operates) to contain a bar area, several sitting areas, storage area, cool room, laboratory, amenities and an alfresco dining area to be used as a Function Centre.
- construction of car parking with 4 spaces (including 1 accessible car space);
- loading area;
- the proposed use will operate under a beer and wine producers licence (allows on an off-premises consumption) with a red line area as shown on the attached plan;
- a maximum limit of 10 patrons;
- open 12 weekends per year as follows:
  - Friday 2pm – 8pm;
  - Saturday 10am – 6pm; and
  - Sunday 10am to 6pm ;
- sale of packaged liquor (beer and cider) produced by the Owners;
- sale and consumption of liquor on premises; and
- display of business identification signs (including internally illuminated signage).

For further details, please refer to the Development Plans and Legal Advice attached.

### Planning Scheme Zone & Overlays

The subject land is in the Rural Living Zone (RLZ), within the Ballarat Planning Scheme. The use of the Land as described above in the Proposal requires a permit in the RLZ.

The land is affected by the Environmental Significance Overlay, Schedule 1 (ESO1), and partly affected by the Floodway Overlay (FO), and Land Subject to Inundation Overlay (LSIO).

### Environmental Significance Overlay – Schedule 1 (ESO1) INVERMAY LAND PROTECTION AREA

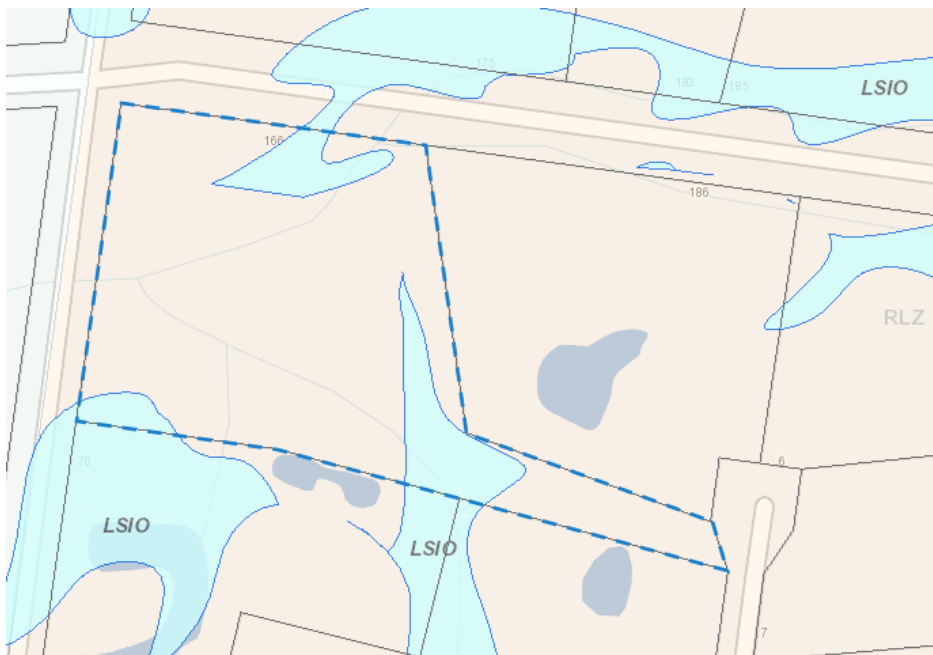
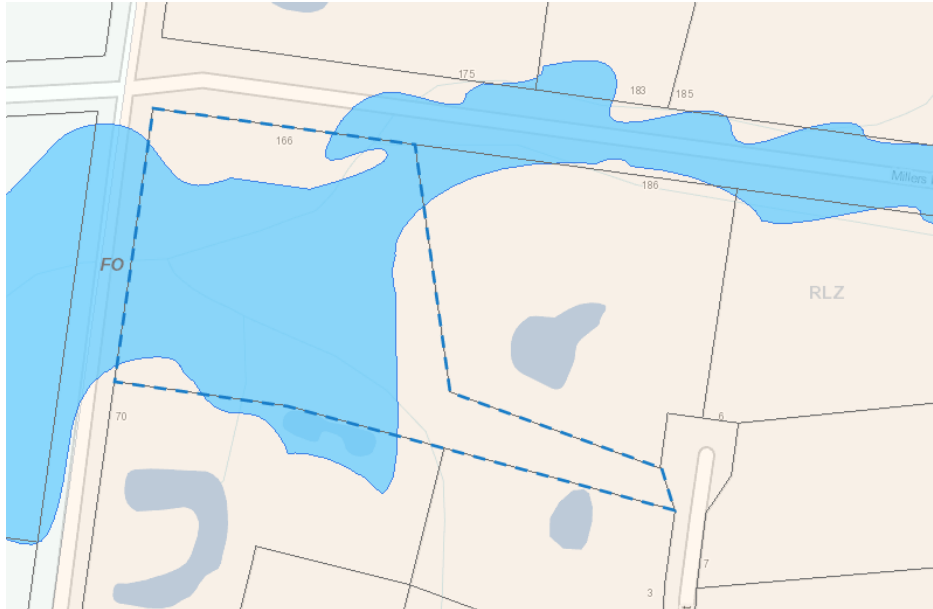
The environmental objective of this Overlay is to control salinity and erosion in the Invermay area and to ensure suitable development occurs on the land.

As per Clause 3 of Schedule 1 of the ESO - All applications must accord with the Invermay Regional Study and Land Management Plan 1991. Any application must include a separate land management plan (LMP) for the site. ***This requirement does not apply where: A land management plan has previously been approved for the site by the responsible authority.***

When the dwelling application was submitted a LMP was approved in PLP/2017/708, therefore, a revised LMP has not been provided with this Proposal.

**Floodway Overlay (FO) & Land Subject to Inundation Overlay (LSIO)**

The site is partially affected by FO & LSIO.

**Planning Policy**

Relevant sections of Planning Policy Framework (PPF) and Local Planning Policy Framework (LPPF) are outlined and responded to below.



### Planning Policy Framework

#### 17.02-1S Business

**Objective:** – 'To encourage development that meet the community's needs for retail, office, and other commercial activities'.

### Local Planning Policy Framework

#### 21.07-1 Economic growth

This clause states that the diversity of the local economy across primary, secondary and tertiary economic sectors is one of Ballarat's great strengths.

#### 21.06-1 Urban Design

**Objective** – 'To protect and enhance the quality and character of built areas, considering context and local values'.

Clause 1.5 – 'Ensure advertising signs avoid visual pollution and intrusive light spill, respecting the architecture of their host buildings, the surrounding streetscape character and skyline'.

### Zoning

#### Clause 35.03 Rural Living Zone (RLZ)

Purpose:

- *'To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for residential use in a rural environment.*
- *To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses.*
- *To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area.*
- *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.'*

It is submitted that the application requirements are addressed through the Development Plans attached and the following assessment against the relevant decision guidelines of the RLZ:

Clause 35.03-5 Decision Guidelines	Comment
<b>General issues</b>	
The Municipal Planning Strategy and the Planning Policy Framework	The proposal is generally consistent with MPS and PPF.
Any Regional Catchment Strategy and associated plan applying to the land.	No loss of vegetation that could contribute to increased stress on local water catchment.
The capability of the land to accommodate the proposed use or development.	Given the size of the land, the land is easily capable to accommodate the proposed use and development.
Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.	The site and its immediately surroundings are located within the Rural Living Zone. The proposal is fully in line with the provisions of Section 2 use and compatible with the surrounding land



	uses and would not have any detrimental impacts on adjoining or nearby land uses.
<b>Agricultural issues</b>	
The capacity of the site to sustain the agricultural use.	The proposed uses are related to the use of land for agriculture.
Any integrated land management plan prepared for the site.	None proposed.
The potential for the future expansion of the use or development and the impact of this on adjoining and nearby agricultural and other land uses	Future expansion of the use is not proposed.
<b>Environmental issues</b>	
The impact on the natural physical features and resources of the area and in particular any impact caused by the proposal on soil and water quality and by the emission of noise, dust and odours.	The only activities that have any potential to cause an impact on soil and water quality are the orchards and hop trellis area, which will improve bare, saline land.
The impact of the use or development on the flora, fauna and landscape features of the locality.	The proposed fruit orchard and hop trellis areas will improve the landscape features of the locality and return flora and wild bees to the area.
The need to protect and enhance the biodiversity of the area, including the need to retain vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.	Re-vegetation of the property could be considered to enhance the biodiversity of the area but no such measures are proposed at this time.
The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.	On-site effluent disposal in association with the existing dwelling is present. No likely impact on waterways.
<b>Design and siting issues</b>	
The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.	The existing building footprints are to be utilised.
The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.	No impact on local features or vistas.
The location and design of existing and proposed infrastructure including roads, gas, water, drainage,	The site has access from two roads. Existing water supply is running along Slaty Creek Road and Millers Road and





telecommunications and sewerage facilities.	is also available on Hanford Court. Reticulated sewer is not available to this site.
Whether the use or development will require traffic management measures.	None proposed.

#### Environmental Significance Overlay, Schedule 1 (ESO1)

ESO1 relates to 'Invermay Land Protection Area'.

Clause 42.01-2 states that a permit is required to construct a building or construct or carry out works.

An assessment of the application pursuant to decision guidelines of Clause 42.01-5 is provided below:

Clause 42.01-5 Decision Guidelines	Comments
The Municipal Planning Strategy and Planning Policy Framework.	The proposal is generally consistent with the MPS and PPF.
The statement of environmental significance and the environmental objective contained in a schedule to this overlay.	<p><b>Statement of environmental significance</b> provides that inappropriate development within the Invermay area has created a number of environmental problems. This area therefore requires careful management to ensure these problems are not exacerbated by new development.</p> <p><b>Environmental objective</b> is to control salinity and erosion in the Invermay area and to ensure suitable development occurs on the land.</p> <p>The proposed development is generally consistent with the statement of environmental significance and environmental objective.</p>
The need to remove, destroy or lop vegetation to create a defensible space to reduce the risk of bushfire to life and property	No vegetation removal is proposed.
Any other matters specified in a schedule to this overlay.	Please see below.
Clause 4.0 Decision Guidelines	Comments
The proposals and recommendations contained in the "Invermay Regional Study and Land Management Plan 1991	The proposal is generally consistent with the Invermay Regional Study and Land Management Plan 1991.
The proposal and recommendations contained within the separate land management plan submitted with the application	No separate land management plan is proposed / required.
The means of treatment and disposal of all sewage, sillage and other perishable wastes	The wastewater is to be treated on site as the area is not serviced by reticulated sewer.



The siting of existing and proposed houses, driveways and effluent disposal systems	Existing house will remain intact. No new house is proposed. Existing driveways / access points have been mentioned on the plan of existing conditions.
The measures which are to be taken to rehabilitate degraded land and to prevent the degradation of other land	No likely degradation as a result of this proposal but ongoing improvements will occur.
The means by which it is proposed to improve the productivity of existing cleared land.	Planting of fruit orchards and hop trellis areas for the production of wild fermented beer and cider production will improve the productivity of cleared land.
The measures which are to be put in place in respect to the management of native vegetation, and (where applicable) the planting of additional vegetation	
Any other management measures considered necessary, including fire protection, stream protection and habitat protection.	A 3 metre buffer from the stream is proposed to protect the floodway conveyance capacity of the stream.
The time period over which all aspects of the land management plan(s) are to be implemented.	Not applicable as no land management plan is proposed.

#### Clause 52.27 Licensed Premises

A permit is required to use land to sell or consume liquor if any of the following apply:

- A different licence or category of licence is required from that which is in force.
- The hours of trading allowed under a licence are to be extended.
- The number of patrons allowed under a licence is to be increased.
- The area that liquor is allowed to be consumed or supplied under a licence is to be increased.

The area will be as per the **Redline Plan** submitted with this application.

An assessment of the proposal against the decision guidelines of Clause 52.27 is provided below.

Decision Guidelines	Comments
The Municipal Planning Strategy and the Planning Policy Framework.	The proposal is generally consistent with the MPS and PPF.
The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.	The subject site has an existing liquor license. The current license is a Pre-retail license (License No. 3367481). It is proposed to alter the category of the existing License to a <u>Producer's License</u>
The impact of the hours of operation on the amenity of the surrounding area.	The activities will operate as per the proposed hours and dates detailed in the Proposal and as such would not likely impact the amenity of the surrounding rural living area.
The impact of the number of patrons on the amenity of the surrounding area.	The proposed maximum number of patrons are 10 and therefore, the amenity impact on the surrounding area will be minimal.
The cumulative impact of any existing licensed premises and the proposed	Practice Note 61 Licensed Premises: Assessing Cumulative Impact dated June



licensed premises on the amenity of the surrounding area.	<p>2015 prepared by the Department of Environment, Land, Water and Planning (DELWP) provides guidelines that support a Council when assessing the cumulative impact of Licensed Premises as part of a planning permit application.</p> <p>To determine whether a cluster of licensed premises exists any determination needs to take into account the number of licensed premises in an area, their distance from the subject land and whether they can be easily accessed from the subject land.</p> <p>As per geomaps VCGLR, there is no licensed premises within a radius of 100 metres from the subject land. Moreover, within 500 metres radius from the subject land, there is no licensed premises. No cluster would occur.</p> <p>As such, the proposal will not contribute negatively to a cumulative impact and amenity of the surrounding area.</p>
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#### Clause 52.05 Signs

Clause 35.03-6 of the Rural Living Zone states that sign requirements are at 52.05. This zone is in *Category 3 – High Amenity Areas*.

Clause 52.05-13 notes that business identification sign, floodlit sign and internally illuminated sign all fit into Section-2 category which require a planning permit.

S/N	Sign Description	General Category	Sub-category
1.	An engraved wooden sign located at the north-western corner	Business Identification Signs	Floodlit sign (externally illuminated)
2.	A round sign displaying brand logo located over the roller door at the west end of the shed.		Internally illuminated
3.	A round light sign displaying brand logo located at south-west corner of shed.		Internally illuminated

Pursuant to decision guidelines at Clause 52.05-3, it is submitted that the proposed signs are necessary for identification of proposed business. The area is not characterised by any sensitive land uses. The proposed signs are very small in nature compared to size of existing buildings and are compatible with the area. The site is not located on a road listed as Gateway Sites as per Ballarat Advertising Signage Policy. No significant views nearby.

Site's corner sign will be externally illuminated at a level required for its identification which will not result in any glare. Each sign on the shed will represent logo (dollar bill). Since the logo signs will be small and will be contained within the site, these are not expected to create any adverse amenity impacts.

Overall, the proposed signage is minimal and will not result in a proliferation of commercial advertising in an area noted for having a high level of amenity.

**Clause 52.06 Car Parking**

Clause 52.06-2 required that provision of car parking spaces is required before a new use commences.

Use	Rate Column A	Car Parking Measure Column C	Remarks
Place of assembly	0.3	To each patron permitted.	Total patrons = 10  0.3 X 10 = <b>3 car spaces are required.</b>  <b>4 car parking spaces have been proposed.</b>

**Clause 65.01 Decision Guidelines**

The following provides an assessment of the application pursuant to the Decision Guidelines at Clause 65.01 – Approval of an application or plan:

<b>Clause 65.01 – Approval of an Application or Plan</b>		<b>Comments</b>
The Municipal Planning Strategy and Planning Policy Framework.		The proposal is generally consistent with MPS and PPF.
The purpose of the zone, overlay or other provision		The proposed development is in line with the purposes of Rural Living Zone, Flood Overlay (FO) and Land Subject to Inundation Overlay (LSIO).
Any matter required to be considered in the zone, overlay or other provision.		All matters have been considered by responses to the zone, overlay and other provisions.
The orderly planning of the area.		The proposal seeks to achieve use and development that is appropriate to the outcomes and objectives of the Rural Living Zone. This proposal represents an orderly and practical planning response to land that is situated within a 'rural' context whereby the amenity of the wider area will not be unreasonably affected.
The effect on the amenity of the area.		The production of beer and cider currently operate under the Home Based Business. A function centre for 10 persons will not have negative amenity impact.
The proximity of the land to any public land.		Other than the abutting roads, no public land is close to the location of the proposal.
Factors likely to cause or contribute to land degradation, salinity or reduce water quality.		Not applicable as the site is not affected by any such overlays.



Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.	Floodway conveyance is maintained by the proposed 3m buffer along the stream.
The extent and character of native vegetation and the likelihood of its destruction.	Not applicable
Whether native vegetation is to be or can be protected, planted or allowed to regenerate.	Not applicable.
The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.	The site is affected by FO and LSIO. Relevant assessment has been submitted as a part of this planning application.
The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts	An existing loading zone to the west of the shed together with the existing site access arrangements will remain intact and will not be disturbed. It is considered that traffic flow will not be disturbed to and from the site due to provision of off-street parking on site and generally low traffic movements in the Invermay area.

### Conclusion

In conclusion, and based on the above assessment, together with submitted attachments, it is submitted that this application, seeking planning permission for a new land use achieves a high degree of consistency with the relevant provisions of the Ballarat Planning Scheme and that it would produce an acceptable development outcome for the site and the surrounding area.

On behalf of our client, we look forward to Council's favourable assessment and determination of the application in due course.

In the meantime, should you have any queries in relation to this application or require further information, please do not hesitate to contact me on (03) 5327 2000 or at [stevenst@bevwill.com.au](mailto:stevenst@bevwill.com.au).

Yours faithfully,

**Timothy Stevens**  
Principal Town Planner  
**BEVERIDGE WILLIAMS**



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## CONDITIONS – WITHOUT PREJUDICE

### 1. Amended plans

Before the use and/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 form part of the permit. The plans must be drawn to scale with dimensions and emailed to [info@ballarat.vic.gov.au](mailto:info@ballarat.vic.gov.au) with the planning reference number. The plans must be generally in accordance with the plans submitted to VCAT on 20 October, 2021 but modified to show:

- (a) Deletion of the on-building signage;
- (b) Relocation of the entry signage to adjacent to the vehicle access point,
- (c) Details of the entry signage, with the sign to have a maximum area of 0.2 square metres and non-illuminated;
- (d) Re-labelling of the 'new external bar location (existing quarter bar being relocated)' to 'storage of shipping container for off-site events only';
- (e) Details of the shipping container, including confirmation that the northern, western and southern elevations are painted in a muted toning and do not include any signage;
- (f) The location of the shipping container demonstrated as being located outside of an area of Aboriginal cultural heritage significance;
- (g) Further detail on the plans to demonstrate that the hops trellising and orchard are located a minimum of three metres away from the top of the waterway/ drain channel which traverses the property, including confirmation that a 6 metre wide channel is achieved, as required by the Glenelg Hopkins Catchment Management Authority.

### 2. Endorsed plans

The use and development as shown on the endorsed plans must not be altered without the further written consent of the Responsible Authority

### 3. Patron numbers

No more than ten patrons may be present on the premises at any one time.

### 4. Hours of operation

The use may operate:

- over 12 weekends per calendar year, with a maximum number of 36 function events permitted per calendar year;
- between the hours of:
  - Friday – 2pm until 8pm;
  - Saturday – 10am until 6pm;
  - Sunday – 10am until 6pm.

A record of function events held must be kept and must be made available upon request to the Responsible Authority.

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5. Land capability assessment

Prior to the commencement of the use a Land Capability Assessment which responds to the use approved under this permit and which details any upgrades required to the wastewater system must be submitted to and approved by the Responsible Authority.

6. Upgrades to wastewater system

The use must not commence until any required upgrades or alterations to the wastewater system, as detailed in the endorsed Land Capability Assessment, are undertaken to the satisfaction of the Responsible Authority.

7. Wastewater

All wastewater from the use must be treated and retained within the lot in accordance with the requirements of the Environment Protection Regulations under the *Environment Protection Act 2017* for an on-site wastewater management system.

8. Beer and cider production

Wort must be produced offsite must be modified onsite using indigenous yeasts and indigenous microflora and stored in oak barrels in the area nominated on the endorsed plans to the satisfaction of the Responsible Authority.

Apples for cider production must be milled and pressed offsite and stored in oak barrels in the area nominated on the endorsed plans to the satisfaction of the Responsible Authority.

9. Bottling

All bottling undertaken on the site must be undertaken by hand to the satisfaction of the Responsible Authority.

The canning of beer and cider must be undertaken offsite.

10. Car parking

Prior to the occupation of the use hereby approved commencing, the areas set aside for the parking of vehicles and access lanes as shown on the approved plans must to the satisfaction of the Responsible Authority be:

- (a) Constructed with a concrete pavement or flexible granular pavement with asphalt surfacing or crushed rock;
- (b) Properly formed to such levels that they can be used in accordance with the plans;
- (c) Drained;
- (d) Line-marked to indicate each car space.

Car spaces and access lanes must be maintained and kept available for these purposes at all times.

11. Loading/Unloading

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The loading and unloading of vehicles and the delivery of goods to and from the premises must at all times be conducted entirely within the site and/or the designated loading bay hereby approved and must not disrupt the circulation and parking of vehicles on the land or street network to the satisfaction of the Responsible Authority.

All Vehicle entry to and egress from the site shall be in a forward direction.

12. Amenity

The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:

- (a) transport of materials, goods or commodities to or from the land;
- (b) appearance of any building, works or materials;
- (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;

- (d) presence of vermin or otherwise;

In the event of any nuisance being caused to the neighbourhood by activities related to the use and development the Responsible Authority may direct, in writing, such actions or works, as deemed appropriate, to eliminate or mitigate such nuisance be undertaken.

13. Background music

The provision of music on the premises must be limited to background music only and no speakers may be installed external to the building.

14. No sign illumination

The signage must not be illuminated by external or internal light.

15. Conditions required by Glenelg Hopkins CMA

- a) No portion of any hops trellises are to be installed within 3 metres of the top of the waterway/drain channel which traverses the property from the north east corner of the property to the culverts under Slatey Creek Road on the western boundary of the property. On this basis the development shall incorporate a drainage reserve of no less than 6m width centred on this waterway/drain channel.
- b) No fill shall be placed on any land within the identified 1% AEP floodplain without then prior consent of Glenelg Hopkins CMA.

16. Condition required by CFA

Prior to the commencement of the use, a person suitably qualified in emergency planning must prepare a Bushfire Emergency Plan. Once prepared, the site should be managed in accordance with the plan at all times. The Bushfire Emergency Plan at a minimum must include:

- a) a clear statement of the plan's purpose and scope;
- b) details of the site and its emergency features/ equipment;
- c) a version control table and details on when and how the plan will be reviewed;

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- d) details the roles and responsibilities of the emergency control organisation (wardens);
- e) outline training requirements and how often exercised will be conducted to practice the plan;
- f) contact details for emergency services, neighbours and other important contacts;
- g) contains appropriate action statements for:
  - a. Before the fire danger period;
  - b. During the fire danger period, including details of how the bushfire threat will be monitored;
  - c. When a Code Red Fire Danger Rating is forecast (CFA recommend the use is closed);
  - d. When any other lower trigger point for action is forecast (as determined by the site's emergency control organisation/ management);
  - e. When a bushfire threatens the site – including the trigger for sheltering in place or evacuation (as appropriate);
  - f. After the bushfire threat passes.
- h) Details of evacuating staff, visitors and guests from the site (if required);
- i) Details on sheltering in place (if required).

17. Expiry

This permit will expire if:

- (a) The development or any stage of it does not start within two (2) years of the date of this permit; or
- (b) The development or any stage of it is not completed within four (4) years of the date of this permit; or
- (c) The use does not start within two (2) years after the completion of the development; or
- (d) The use is discontinued for a period of two years.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires or within six months afterwards (for a request to extend the time to commence the development) or twelve months after the permit expires (for a request to extend the time to complete the development).



**7. GENERAL BUSINESS - MATTERS ARISING FROM THE AGENDA**

**8. CLOSE**