

Proposed Planning Permit Conditions

THE PERMIT ALLOWS:

Use and development of a winery, roadworks and removal of vegetation in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS WILL APPLY TO THIS AMENDED PERMIT:

1. Before the development starts, amended plans to the satisfaction of the responsible authority must be submitted to and be approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in line with the plans submitted with the application by modified to show:
 - A disabled parking space adjacent to the building.
2. Before the use commences a landscape plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale and three copies must be provided. The plans must show:
 - Buildings, outbuildings and other structural features on the land that influence the landscape design.
 - Natural features that influence the landscape design.
 - Native planting to the east, south and west of the building capable of softening the visual bulk of the building in the surrounding landscape.
 - A schedule of all proposed vegetation (trees, shrubs and ground covers) which includes botanical names, common names, pot sizes, mature size and total quantities of each plant.
 - Landscaping in accordance with this approved plan and schedule must be completed within three months of the use commencing.
3. Before the cellar door commences, the proposed internal access drive between Wy Yung Calulu Road and the Winery must be constructed with a gravel surface to a minimum width of 3.5 metres to the satisfaction of the responsible authority. Unless with the written consent of the responsible authority, all cellar door patron traffic must use the new internal access drive for access and egress.
4. Before the use commences, areas set aside for car parking and hard standing as shown on the approved plan(s) must be:
 - Constructed to the satisfaction of the responsible authority.
 - Properly formed to appropriate levels.
 - Surfaces with gravel to satisfaction of the responsible authority.
 - Drained and maintained to the satisfaction of the responsible authority.
 - Marked to indicate each car space to the satisfaction of the responsible authority, in line with requirements set out in AS 2890.1 Parking Facilities Part 1: Off-street car parking.

Parking areas must be kept available for these purposes at all times.
5. Before the use commences all buildings and works as shown on the endorsed plans must be drained to the satisfaction of the responsible authority.

6. During the construction and maintenance activities, adequate steps must be taken to stop soil erosion and the movement of sediment off site and into drainage lines and watercourses. Adequate steps include:
 - Control of on-site drainage by intercepting and redirecting run-off in a controlled manner to stabilised vegetated areas on site.
 - Installation of sediment control structures such as sediment basins, sediment fences and sediment traps when construction commences and maintaining them until the site is stabilised.
 - Re-vegetating all disturbed areas as quickly as possible or within 14 days after construction works are completed.
7. When completed, all batters must have a layer of topsoil, 50mm minimum thickness, spread over them and sown with a suitable grass and clover mixture, or mulched and planted with ground cover plants.
8. All earthworks associated with the development must be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.
9. Deleted.
10. No more than 8 private functions are permitted in any one calendar year.
11. The cellar door and private functions must only operate between the hours of:
 - Sunday, Good Friday and ANZAC Day Between 10am and 11pm
 - On any other day Between 7am and 11pm
12. Deleted.
13. The maximum number of patrons associated with a private function on the site is not to exceed 100.
14. No more than 1 private function is permitted in any 1 calendar month.
15. When a private function is occurring on the land, the cellar door must be closed to customers.
16. Any entertainment provided associated with the private functions, including the playing of live or recorded music or the use of public address systems or similar, is restricted to occurring within the Wine Cellar shown on the endorsed plans.
17. The private functions are only to occur within the approved red line area.
18. No pyrotechnics of any kind are permitted to be used on the site at any time.
19. Before the amended permit hereby approved commences, the existing gravel crossover must be sealed for a distance of 5 metres, full width, from the edge of the road seal towards the property boundary to the satisfaction of the responsible authority.
20. A register of private functions must be maintained, and made available for review by Council officers during the cellar door operating hours. The register must record each private function, including the name of the booking, date, hours and approximate patron numbers.
21. This permit will expire if one of the following circumstances applies:

- The development is not started within two years of the date of this permit.
- The development is not completed within four years of the date of this permit.
- The use is not commenced within four years of the date of this permit.

Department of Environment, Land, Water and Planning Conditions

22. Before works start, the permit holder must advise all persons undertaking the vegetation removal or works on site of all relevant permit conditions and associated statutory requirements or approvals.
23. To offset the removal of 0.014 hectares of native vegetation the permit holder must secure a native vegetation offset, in accordance with the Permitted clearing of native vegetation – Biodiversity assessment guidelines (DEPI 2013) and Native vegetation gain scoring manual (DEPI 2013) as specified below.
 - a. A general offset of 0.001 general biodiversity equivalence units with the following attributes:
 - i. Be located within the East Gippsland Catchment Management Authority or East Gippsland Shire Council municipal district;
 - ii. Have a strategic biodiversity score of at least 0.124.
24. Before any native vegetation is removed, evidence that the required offset for the project has been secured must be provided to the satisfaction of the responsible authority. The offset evidence can be:
 - a. A security agreement signed by both parties, to the required standard, for the offset site or sites, including a 10 year offset management plan, or;
 - b. An allocated credit extract from the Native Vegetation Credit Register.
25. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the responsible authority, a copy of the endorsed offset evidence must be provided to Regional Planning Approvals at the Traralgon regional office of the Department of Environment, Land, Water and Planning.
26. In the event that a security agreement is entered into as per condition 16, the applicant must provide the annual offset site condition report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the land owner must provide a report at reasonable request of a statutory authority.

East Gippsland Water Condition

27. Construction activities associated with the use and development, including roadworks and/or related earthworks, must not impact upon East Gippsland Water's infrastructure (water main supply pipeline). Relevant engineering design plans, specifications and proposed construction arrangements for works in the vicinity of the pipeline must be submitted to East Gippsland Water for consideration, and East Gippsland Water's written approval for the proposed works must be obtained prior to any works commencing.

Notes

1. All buildings erected on this site must comply with the requirements of the Victorian Building Act and Regulations, the Building Code of Australia and relevant Council Local Laws. Note this permit does not approve the placement of hoardings and scaffolds outside building lines. Please contact Council's Local Laws Unit on 5153 9500.

2. The winery once completed must be registered with the Council as a class 3 Food Premises.
3. Before any works on public land start, a permit to take protected flora under the Flora and Fauna Guarantee (FFG) Act 1988 must be required. To obtain an FFG permit, please contact Healthy Landscapes at the Traralgon regional office of the Department of Environment, Land, Water and Planning on (03) 5172 2111.

Amended 15/03/2017: Amended to delete condition 9, alter condition 11, and alter what the permit allows.

Amended XX/XX/XXXX: Amended to alter condition 10, alter condition 11, delete condition 12, insert new conditions 13, 14, 15, 16, 17, 18, 19 and 20 and re-number existing conditions 13 through 20 accordingly.

273 Main Street (PO Box 1618)
Bairnsdale Vic 3875
Website www.eastgippsland.vic.gov.au
Email feedback@egipps.vic.gov.au
Follow us on Twitter @egsc



Telephone: (03) 5153 9500
Fax: (03) 5153 9576
National Relay Service: 133 677
Residents' Information Line: 1300 555 886
ABN: 81 957 967 765

Objection to Planning Permit Application

Planning and Environment Act 1987

There are some hard words in this form. The hard words are in blue. You can read what they mean on page 3.

Your Details:

Name: Ross Miller				
Postal address: [REDACTED]				
Armadale			Postcode	3 1 4 3
Phone number: Home:		Work:	Mobile:	
Email address: [REDACTED]			Fax:	

Permit Details:

Planning permit number: 335/2012/P/B
What has been proposed? Amendment to approved planning permit for amending conditions 10 and 11 and deletion of condition 12
What is the address to be used or developed? 717 WyYung-Calulu Road Calulu
Who has applied for the permit? B&H Lightfoot

Privacy Statement

The East Gippsland Shire Council asks for details about you to collect rates, approve permits and licences, and run a range of community services. The information you give to us on this form is used only for the reasons set out in the form and is not given to anybody else. Sometimes we may supply details about you to someone else, but only if we are allowed by law, or to protect someone or property. When information is given out, Council will always try to make sure your privacy is protected in line with the *Privacy and Data Protection Act 2014*. You may ask for more information about Council's Privacy Policy by contacting our Information Privacy Officer on 03 5153 9500 or e-mail feedback@egipps.vic.gov.au

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ABN: 81 957 967 765

Objection Details:

What are the reasons for your objection?

The original permit conditions as set out by VCAT for the existing application took into consideration the zoning of the area for farming, the proximity of venue to neighbouring residences and the effects of noise pollution.

As there has been no change to any of the conditions taken into account in the original decision that resulted in the existing limitations of the current planning permit there is no basis for a reduction to the restrictions imposed by this permit.

How would you be affected by the granting of this permit? Changes to permits such as those proposed create a precedent that can be used on other applications.

If you need more space for any part of this form please attach another sheet.

Signature:

Name: Ross Miller

Date: 02/08/2019

Office Use Only:

Objection Received by: _____ Date Received: ____/____/____

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Objection to Planning Permit Application

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There are some hard words in this form. The hard words are in blue. You can read what they mean on page 3.

Your Details:

Name: Josephine Miller							
Postal address: [REDACTED]							
Armadale			Postcode	3	1	4	3
Phone number: Home: [REDACTED]		Work:	Mobile:				
Email address: [REDACTED]			Fax:				

Permit Details:

Planning permit number: 335/2012/P/B
What has been proposed? Amendment to approved planning permit for amending conditions 10 and 11 and deletion of condition 12
What is the address to be used or developed? 717 WyYung-Calulu Road Calulu
Who has applied for the permit? B&H Lightfoot

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As there has been no change to any of the conditions taken into account in the original decision that resulted in the existing limitations of the current planning permit there is no basis for a reduction to the restrictions imposed by this permit.

How would you be affected by the granting of this permit? Changes to permits such as those proposed create a precedent that can be used on other applications.

If you need more space for any part of this form please attach another sheet.

Signature:

Name: Josephine Miller

Date: 02/08/2019

Office Use Only:

Objection Received by: _____ Date Received: ____/____/____

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dwa1E6A.txt

From: Gwenda [REDACTED]
Sent: Friday, 2 August 2019 10:01:24 PM
To: Planning Department
CC: Martin Ireland
Subject: Application to amend planning permit 335/2012/P/B

I wish to express my objection to the responsible authority regarding an amendment to the above said planning permit .
In particular to the numbers of patrons where it has been stated "more than 100 patrons with prior consent of the council."

I find this alarming as it is open ended and allowing this venue the possible endless scope for a large event(s) in to the foreseeable future in a rural zone .

This was stated as a previous concern from the sitting member to our VCAT hearing (2016) in which the amendment was not permitted because of the risk of noise intrusion to close proximity of neighbours (myself and my husband)

I fail to see how this concern has been alleviated and in fact its only heightening our concerns .

I have already experienced the fire works from an event at the winery in which our animals were very disturbed and unsettled . My concern is our rural environment and farming pursuits are not being taken into consideration .

Traffic congestion on the wy-yung calulu road with increased numbers and the noise levels along with the concealed driveways and other dangers on country roads also need to be taken into consideration.

Kind regards,

Gwenda clancy .

Sent from my iPad

From: Elsa Hodge [REDACTED]
Sent: Friday, 2 August 2019 9:39:20 PM
To: Planning Department
Subject: Objection to amendment to planning permit

My husband and I wish to make an objection to application to amend permit number 335/2012/P/B put in by Frother & Sadler Pty Ltd. The application reference number is 335/2012/P/C.

The amendment to the planning permit is to allow up to 12 private functions per year and to increase hours and to allow more than 100 patrons with prior consent of council.

Our objection as close neighbours is in regard to the increase in noise in our rural environment, such as loud music, the increase in traffic along our rural road that also carries farming machinery, the sudden and unexplained releasing of fireworks (this has already set off the neighbourhood dogs barking along with the disturbance to other livestock), the increase in hours and potential noise which might impact our sleep and therefore our health. If the numbers increase into the hundreds or thousands ..and there is no limit put forward, the area then is no longer a quiet rural farming area.

We would also like to ask for an extension of time to lodge our objection as we have just arrived back from holidays away and have not had time to view this application at your office.

Sorry that this is such a late email and is all I can manage at such a short notice. I feel that we have been most unfairly disadvantaged by the restricted time frame and hope you will allow us a fair and proper viewing of the changes proposed.

Yours sincerely Elsa and Bill Hodge

[REDACTED] Calulu 3875

From: Rachel Miller [REDACTED]
Sent: Friday, 2 August 2019 9:54:32 PM
To: Planning Department
CC: martin@egipps.vic.gov.au
Subject: Objection to application 335/2012/P/B

2/08/2019

To whom it concerns,

I am writing to object to the application to amend the current permit for 717 Wy Yung-Calulu Road, Calulu. Application number 335/2012/P/B.

I object to their request to an amend the current permit to allow up to 12 private functions per year and to increase the hours and to allow more than 100 patrons with prior consent of Council.

I object on a number of grounds. Firstly being that the area in which 717 Wy Yung-Calulu Rd resides is a farming zoned area, whilst the cellar door is considered a part of farming practice, having 12 functions and more than 100 patrons would be considered a conflict between farming and other land uses. In addition, the number of functions and patrons will detract from the purpose of this farming zone which its primary use is agriculture.

Secondly, increasing the hours that the cellar door is opened, in addition to patron numbers and functions will add considerable and excessive noise pollution to this area. Particularly considering the proximity of the neighboring properties. The traffic congestion on the Wy Yung-Calulu Road from this excessive increased number of patrons would greatly increase the risk of road accidents in this area.

All of the above was outlined in the VCAT permit ruling 2016. The farming zoning of this area and the proximity of the neighboring properties has not altered since the original permit was granted.

Considering the previous view of the VCAT tribunal this proposed amendment to the permit should not be granted.

Kind Regards,

Rachel Miller

From: Haydn Clancy [REDACTED]
Sent: Friday, 2 August 2019 9:59:06 PM
To: Planning Department
CC: martin@egipps.vic.gov.au
Subject: 335/2012/P/B

To whom it may concern,

I am writing to object to the proposed amendment to planning permit application number 335/2012/P/B by 717 Wy Yung-Calulu Rd, Calulu.

I object to the proposed amendments due to the fundamental concerns of noise pollution, rural traffic congestion and the fact that the premise is zoned for farming practice, with the cellar door being deemed an extension of the farming practice.

The first concern involves the excess noise created by the vehicles, patrons and the venue as it is located in close proximity to rural houses and impedes the quite rural nature of the area.

Secondly, traffic congestion around peak hours of the cellar door will congest the quite rural Wy Yung-Calulu Rd disadvantaging those who use the road. Not to mention the increased risk of accidents this excess traffic will produce.

Thirdly, as the property applying for the permit is zoned farming the application for excessive functions numbering 12 per year (up from 2 per year) and over 100 patrons is not applicable to the farming zone regulations. Therefore this cannot be deemed an extension of the properties farming practice as cited by VCAT in 2016.

In regards to the current facility we also object on the grounds that the facilities, as they currently stand, cannot handle patrons in excess of 100 due to limited kitchen and toilet facilities preventing safe responsible serving of alcohol. In addition to this, the increased number of patrons attending a facility unequipped to accommodate this capacity would result in fire hazard risks and patron safety concerns.

It is on these grounds that I object to this proposed amendment.

Kind regards

Haydn Clancy

dwa3E23.txt

From: Gwenda [REDACTED]
Sent: Friday, 2 August 2019 8:39:01 PM
To: Planning Department
CC: Martin Ireland
Subject: Amendment to planning permit 335/2012/P/B

I am referring to the planning permit made by Crowther&Sadler PtyLtd dated 18/07/19

Lot 2 LP 628940

Amendments to conditions 10,11& deletion of condition 12

My objection is focused with regarding increased patron numbers with potentially being over 100- extending to who knows what with councils permission .

Extension of hours.

I object to a creation of a function centre in a rural setting especially when a precedent has been set in the rural setting in Metung some years ago .

East Gippsland shire did not allow a function centre in rural Metung because of all the valid reasons local residents expressed - these concerns included the rural environment ,safety concerns on the country roads , noise intrusion to local neighbours and the impact of noise to farming animals .

I fail to see how our local rural setting in Calulu can be any different with all the above concerns being equally relevant .

I wish to have an extension on these stated dates on the notice of application for amendment as i have been overseas from the 27 th of June till the 02/08/19 inclusive with air line ticket dates as proof of my claim .

Kind regards ,
John clancy .

Sent from my iPad

East Gippsland Shire Council

Planning Department

Bairnsdale Business Centre

34 Pyke Street

Bairnsdale 3875

16/8/2019

Dennis Crane

Bairnsdale 3875

EGSC

21 AUG 2019

INFORMATION
MANAGEMENT

RE: 335/2012/P/C

Dear Council Officer,

I write in response to the advertised amendment for planning permit No. 335/2012/P/B.

As a land owner in Farming Zoning that is very close to the applicant's land (241 M), I am very concerned about the proposed increase in traffic, trading hours, noise and impact on amenity.

Traffic Increase

I have concerns around the increase in vehicles if the applicant is successful in gaining the proposed increase of patrons. Currently the Wy Yung - Calulu Rd is narrow with poorly maintained shoulders. This increase in traffic for events, that would no doubt finish mostly after dusk, would pose a greater risk to the travelling public in the area on these narrow roads, along with the risk to residents when entering the road from their properties.

Noise

The applicants have a history of creating disturbance through excessive noise. On one particular instance our herd of stock was visibly alarmed when fire works were set off without any prior notice to adjacent owners. This caused significant distress to stock as the offspring jumped paddock fences and ran wild. This took many days to sort the herd out to their particular corresponding mothers in relative paddocks.

We were extremely lucky that no stock managed to enter the roadway when running wild after the excessive noise.

Additionally, this occurred in the month of February when fire restrictions were in place, with no notification given to firefighting authorities.

There is a real concern that this action could be repeated if larger events are allowed to be held, more often at the premises, again having an impact on our paddocks, stock and farm animals.

Trading Hours

As previously stated, the adjoining land is in Farming Zone which by its own definition is specified to be a place of tranquillity for raising herds of stock. There is a concern that the proposed extended

trading hours will impact on stock, particularly young herd animals that are not used to the excessive activity and vehicle movements that the increased activity will create out of normal hours.

With subsequent flow-on effects there could be significant impact to people's livelihood and mental health and loss of serenity.

I therefore am lodging this objection against the successful granting of the amendment accordingly, and for the reasons stated above.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read "D. Crane", written in black ink.

Dennis Crane

Patricia Crane

Bairnsdale Vic 3875

East Gippsland Shire Council
Planning Department
Bairnsdale Business Centre
34 Pyke Street
Bairnsdale Vic 3875

19/08/2019

RE: 335/2012/P/C

Dear Council Officer,

I wish to lodge an "OBJECTION" against the proposed amendment to permit number : 335/2012/P/B

I am a landowner (241M) to the East of the Applicant's land. I am concerned regarding the impact that granting the application will have on my life, safety and peaceful running of our farming property.

There will no doubt and as a direct result of the amendment, greater traffic volume and noise from the increase in patron numbers and an increase in the numbers of events.

As we have already experienced, residing to the East of the Applicant's land we have to bear additional noise, when prevailing winds are in a Westerly and Southerly direction. Last February a Wedding Reception was held there. Music was very loud and continued late into the evening. Worse still they let-off fireworks at 9.00pm. This lasted for some 10-15 minutes by which time, our younger cattle in an absolutely frightened state, began running wild and bellowing. Some calves even went through fences trying to escape the din. We had to spend a number of days to re-unite the calves with their respective mothers.

On investigation, due to concerns that fire restrictions were in place, I was advised that no local CFA depots were advised of the pending fireworks. The country was tinder dry and it was only good luck that where the fireworks landed, no fires ignited. I find this act, very foolhardy, with little or no concern for the potential disaster that may have resulted, if fire took hold. I also feel it showed a total lack of respect for us as neighbours as we were not given any prior notice that fireworks were to be part of that particular evening's display.

Given events that have already occurred I believe the situation will only get worse if the amendment is successful.

Increased patron numbers, and events held more often gives me justifiable cause for concern for my own personal welfare and that of our stock. There is also an issue of road safety given the narrowness of the Wy-Yung Calulu Road, where there would be significant increase in traffic at night.

I sincerely request that the amendment as is before Council for consideration, is **not granted**.

Yours faithfully,



Patricia Crane.

EGSC

21 AUG 2019

INFORMATION
MANAGEMENT

From: Jacki Bishop [REDACTED]
Sent: Friday, 16 August 2019 5:19:15 PM
To: Planning Department
Subject: Objection to amendment to permit.

I would like to make an objection to application to amend permit number 335/2012/P/B put in by Crother and Sadler Pty. Ltd. The application reference number is 335/2012/P/C. The amendment to the planning permit is to allow up to 12 private functions per year and to increase hours and to allow more than 100 patrons with prior consent of council.

My objection is with the open ended increase in numbers, that the potential noise factor from loud music and the associated increase in traffic and the disturbance to rural livestock will be totally unacceptable in this rural zoned environment. I hold concerns for the health and wellbeing of my parents. I grew up here and have close associations with my parents Bill and Elsa Hodge.

Yours sincerely Jacki Bishop. [REDACTED]

Regards,
Jacki Bishop

From: Robyn Hodge [REDACTED]
Sent: Sunday, 18 August 2019 8:07:24 AM
To: Planning Department
Subject: Objection to planning permit

To whom it may concern,

I write to object to application to amend permit number 335/2012/P/B put in by Crother and Sadler Pty. Ltd. The application reference number is 335/2012/P/C. The amendment to the planning permit is to allow up to 12 private functions per year and to increase hours and to allow more than 100 patrons with prior consent of council.

I am concerned that the open ended increase in numbers, the potential noise factor from loud music and the associated increase in traffic and the resulting disturbance to rural livestock is contrary to the intention of the rural zoning in this area.

I am concerned for the health and wellbeing of my parents, particularly relating to the increase in traffic with people who do not know the road and are unaware of the dangers of entering the road from this section that has very restricted visibility. I grew up here and have close associations with my parents Bill and Elsa Hodge.

Yours sincerely
Robyn Hodge

[REDACTED] Belmont Vic 3216

From: SeamlessCMS@seamless.com.au
Sent: Sunday, 18 August 2019 9:15:26 PM
To: Planning Department
Subject: Objection to Planning Permit Submitted

Online Form Submitted

Date Submitted: 18 Aug 2019 09:15 PM

Name	Carolyn Noble
Email address	
Postal address	
Home	
Work	
Mobile	
Fax	
Planning permit number	335/2012/P/B
What has been proposed?	Increased number of private functions per year, with increased number of patrons and increased hours.
What is the address to be used or developed?	717 Wy-Yung- Calulu Road, CALULU LOT 2 LP 628940
Who has applied for the permit?	Crowther & Sadler Pty Ltd
What are the reasons for your objection ?	This is a quiet farming neighbourhood with abundant native wildlife and narrow roads that are not suitable for an increased volume of traffic, particularly at night. I feel that the safety of all the road users, both local residents and tourists, would be put at risk by approving this proposal.
How would you be affected by the granting of this permit?	Although I have moved away from the area, I do visit my family regularly and stay in this location. I usually have a hire car which I drive around in whilst visiting. The road is very narrow in places with concealed driveways. I have genuine concerns about the increased volume of traffic and the driving abilities of visitors after alcohol consumption.
Additional information	No file attached

From: SeamlessCMS@seamless.com.au
Sent: Wednesday, 21 August 2019 10:46:57 AM
To: Planning Department
Subject: Objection to Planning Permit Submitted

Online Form Submitted

Date Submitted: 21 Aug 2019 10:46 AM

Name	Jennifer Monington
Email address	[REDACTED]
Postal address	[REDACTED] Traralgon
Home	
Work	
Mobile	[REDACTED]
Fax	
Planning permit number	335/2012/P/B/
What has been proposed?	Increase of Events/functions and opening hours and increased patrons
What is the address to be used or developed?	717 Wy Yung Calulu Road Lot 2
Who has applied for the permit?	Crowther & Sadler PtyLtd
What are the reasons for your objection ?	My Family live on 713 Wy Yung Calulu road, as frequent visits to the area i have concerns of increased traffic in a rural area and people driving too fast and not allowing for people to leave properties safely from farm entrance and gates, in the past 38 years of driving in the area i have had to leave the sealed road and move over to the side to prevent incidents of people going to fast for that road too fast on that road
How would you be affected by the granting of this permit?	When in the area we travel the road several times shopping, visiting out for meals and have other family travel on the road every day, it is a peaceful area farming community and my family safety when travelling to the area
Additional information	No file attached



**EAST GIPPSLAND SHIRE COUNCIL
PLANNING CONSULTATION MEETING
335/2012/P/C – Use and development of a winery,
roadworks and removal of vegetation in accordance
with the endorsed plans**

**Record of Meeting
(Minutes)**

MONDAY, 16 SEPTEMBER 2019

**COUNCIL CHAMBERS
BAIRNSDALE CORPORATE CENTRE**

COMMENCING AT 6.00 P.M.

1. PROCEDURAL

1.1 APOLOGIES

Cr Richard Ellis

Cr Marianne Pelz

Cr Mark Reeves

1.2 IN ATTENDANCE

Councillors: O'Connell, Buckley, White, Roberts, Rettino, Toohey

Applicant: Rob Lightfoot, represented by Kate Young

Officers: Aaron Hollow – Manager Statutory Services, Martin Ireland – Senior Land Use Planning Officer

1.3 DECLARATIONS OF CONFLICT OF INTERESTS

None

2. REPORTS/PRESENTATIONS

2.1 PLANNERS REPORT

Martin Ireland – Senior Land Use Planning Officer

Provided background of the permit history, site location, proposal details, conditions and summary of the number and content of objections.

Cr Buckley asked how we police this? Can we send enforcement out and count?

Mr Ireland – if we received a request to vary, it would be judged on strength. Enforcement, yes, Council could have a staff member count and enforce.

Cr Roberts asked where is the 100 specified and can people normally ask for flexibility of numbers?

Mr Ireland – it isn't common in East Gippsland. The cap on 100 would be a condition on the permit.

Cr White asked for example as to why we might allow more than 100?

Mr Ireland – to be honest, I haven't thought that far ahead.

Cr Roberts asked if there is a number which would be reasonable, a pre-requisite, and how would it be scrutinised?

Mr Ireland – it would come back to the strength of the application, compelling reasons. Consideration of waste, traffic, known issues at the site, but there are no decision guidelines.

Cr Roberts objectors would like some reassurance that it wouldn't be a variation for every function.

Mr Ireland – there isn't anything stopping them from making that many requests, no compulsion for Council to support it.

Cr Toohey in regards to Building Code, is that a safety issue? I'm asking relating to decks collapsing etc.. Why would the building be rated to 100 people, yet we'd allow more?

Mr Ireland – I'm not a building surveyor, that number is based on the floor area of the building, toilets, etc.. You could have more people with more toilets.

Cr Rettino in relation to our rural land use strategy, if it was in place would it streamline the process?

Mr Ireland – no, the statutory process remains the same, regardless of policy. And that document has not been adopted.

Cr Roberts asked about the previous VCAT decision, what was the amendment specifically form and is there any comparison of the application before us today?

Mr Ireland – it was for 24 functions, this one is for 12. It isn't that simple, though.

Cr Roberts asked if there is a precedent for such applications.

Martin – used an example of Hardys Road, being cognisant of previous decisions which we give weight to.

2.2 APPLICANT PRESENTATION

Kate Young on behalf of the applicant

Narrowed down the issues at hand, hours, functions, people. Every one of us could take as many friends as we like, and there is no limit. But if we arrange a function, there is a limit. And we have a premier location here, it is a winery. We can't have more than 12 anyway as the building would be full of wine and wine equipment most of the year.

Traffic – rigorous assessment prepared and provided. SALT have confirmed that it won't create unreasonable risk. Noise – Acoustic report concludes that no unreasonable noise intrusions. Farming areas aren't 'silent or serene'.

Patron capacity report limits to 100 without bringing in more toilets to comply. By having a maximum of 100 we won't create fire or patron safety. Discretion to increase numbers is important for example a bride who can't quite cut to less than 100. We are happy to have a cap of 150.

Trading hours are consistent with those allowed under our current licence, and no more than other wineries in the area.

The farming zone is for agriculture, which is what a winery is.

Comparison to Hardys Road is quite different – a holiday house becoming a function centre versus a genuine award winning winery.

Council has discretion to amend conditions.

No Cr questions

Rob Lightfoot

The hours we are requesting are the same as the standard hours set out by the VCGLR and bring us in line with other wineries. We wish to market our products in a professional manner and complete with other cellar doors.

Take for example Tambo Estate, just approved for restaurant, art gallery and function centre. Functions every day, without restriction, also on FZ land.

To concerns raised, we've invested in expert reports. Traffic report confirms negligible impact. We've built a new, safer entry. Additional signage has been erected on the road further aiding safety. Also have an acoustic report, confirms no impact / inaudible. We have been given written approval from the Shire for other events.

Fireworks, we gave consent for that to occur on the basis that all relevant permits were granted. All relevant notifications were made.

Compromise offers – cap of 150 patrons, so it isn't too open ended, we would like to apologise for the fireworks and accept a condition prohibiting fireworks.

We believe what we are seeking is entirely reasonable.

Cr Toohey – what are the normal operating hours?

(loss of audio, no record of answer)

2.3 OBJECTOR PRESENTATIONS

Dennis Crane

My main objection was the fireworks. We weren't notified. If we were, we could have moved out cattle. Other concern was the patron count but the cap is OK. Roads, having trouble getting out now.

Cr Toohey – in regard to the concessions (cap and fireworks) does that allay your concerns.

Yes, most, but are all the functions going to occur at once?

Brett Keeley

I live just down the road at 585 Wy Yung-Calulu Road, dairy farm. Fireworks display created a whole heard of unhappy cattle. Traffic concerns me a lot as I have a lot of heavy vehicles coming and going. I feel the road is already overloaded. The number of people being open-ended, is this a stepping stone?

Cr White – are the slow moving vehicles creating issues on that road (like tractors)?

Yes, I think the area has outgrown the road really. Adding tourist traffic doesn't help. The other day a tourist was reversing as they'd missed the winery entry.

Elsa Hodge

Three points – increase in traffic, it is already busy with normal traffic including agricultural machinery. Also many groups of motorbikes using the road over summer. I've been advised this has been identified as one of the most dangerous roads in the Shire, but I haven't received the confirmation from the Shire.

Music late at night – doof doof sound could impact our sleep, but we are in direct line of sight of their establishment.

Proposed numbers – would put the use of our ancillary. In the previous VCAT hearing it was questioned why it wasn't applied for (function centre). Concerned they are trying to trick Council.

Bill Hodge

Main objection is the traffic on the road, already had quite a few accidents on that road, lots of motorbikes (up to 50 in a day). Noise is a concern – have previously heard noise. We have no objection to Lightfoot and Sons having a winery and cellar door. We wonder why these amendments are coming forward – why wasn't the original application just for a function centre rather than cellar door? The number of clients is too high. Lots of wildlife on the road. We think the fact that more traffic at night (due to expanded hours) would represent an extra hazard).

John Clancy

Presented the original plan. Applicant has always had the intention of it being a function centre, was nothing more than a trojan horse. Endlessly seeking amendments to gain a function centre. As it is on farming zone land, it is not considered an extension of farming

practice, or ancillary to it. He doesn't have the required facilities to cater for 75 patrons let alone 100 or more.

There will be considerable affects on neighbouring properties. Referenced VCAT case. The applicant has done nothing to change these circumstances. How can it be considered for approval when larger than previously refused by VCAT.

Referenced Hardys Road and why it was refused.

Advised that events have been held outside permit allowance. New Years celebration which went on for three days 2017/2018. Guests were told to access over their private road rather than theirs. Our private gate was damaged by a visitor. Fireworks display for 10 minutes causing animals to go crazy without notice. Please do not tell me that it will be so quite you won't know it has changed. A member of staff refused to speak with me as it was a conflict of interest, pitty that staff member didn't consider that an issue back in 2013.

Cr Buckley asked about whether the night time events would occur and be an issue with wildlife, etc..

Kate Young replied that yes, some may be at night, but one of the key attractions of the site is its views which you can't see at night.

Cr Toohey are you suggesting the number of patrons at the winery has exceeded those allowed.

It was drawn to our attention because of the fireworks, and on social media, was the wording 'another wedding' and video. I highlighted this to officers.

Cr Toohey breaches may impact my decision, but I need facts. Facebook is a good thing to ignore.

Gwenda Clancy

We feel this application allows the applicant to operate a function centre without applying for it the correct way. They don't want to apply the correct way because it would be rejected because it is in a farming area, noise pollution, inadequate facilities. A function centre has been the intended use since the beginning (even on original plans). Instead, applied for a small permit, a smokescreen for what was to eventuate. And later an amendment sought, but was rejected by VCAT on grounds including incorrect manner, noise pollution, inadequate facilities. How can the Shire continue to use ratepayers money defending this person's private business venture? The land use definition of function centre is.... Winery definition is.... Clearly there is distinct difference. This is not ancillary. Notice was not given properly – 4 adjoining properties were not given notice. Why should we need 10 objections to secure a hearing by the Shire? The application has not been handled correctly. This is a function centre in a rural area. We want to keep it a quiet rural area.

Cr White – To planners, the letters sent out, who sent them?

Mr Ireland – Council gives instruction to the applicant. The applicant sends the letters. In that instruction was a list of owners of adjoining land. Doesn't matter where you live, mail will be sent to the contact addresses. A deceased estate continues to have legal status. It is not often we go further than just adjoining, as we could be seen to be soliciting objections.

Cr White – Do you also have to display a sign?

Mr Ireland – That is one way, given the speed limit and context, that isn't considered effective on this site, so letters were sent instead.

Cr White – Did you receive a letter?

Yes, we did. But others didn't, and they are adjoining.

Mr Ireland – Mr Crane doesn't adjoin, but he has objected and is thus aware, so the system works.

Cr Toohey – In regards to the zoning, is a function centre allowable?

Mr Ireland – Yes, it is.

Cr Toohey – So if the applicant applied, they could get a permit for one?

Mr Ireland – Yes, STCA.

2.4 CLOSING COMMENTS

Mr Ireland said that the application would be reported to a future Council meeting for a decision.

3. MEETING CLOSE

The meeting closed at 7.05 PM

Your Reference: 17170
Contact: Martin Ireland
Our Reference: 335/2012/P/B
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Information Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN: 81 957 967 765

15 March 2017

Lightfoot & Sons
C/- Crowther & Sadler Ptd Ltd
PO Box 722
BAIRNSDALE VIC 3875

Dear Sir or Madam,

Planning Application Number: 335/2012/P/B
Proposal: Use and development of a winery, roadworks and removal of vegetation
Location: 717 Wy Yung-Calulu Road CALULU
Lot 2 LP 628940

We previously wrote to you enclosing a Notice of Decision to Grant a Permit in regard to the above mentioned planning permit application. The Notice allowed objectors to the application a period of 21 days to lodge an appeal with the Victorian Civil and Administrative Tribunal (VCAT).

The Tribunal has notified the Shire that no appeals have been lodged.

A copy of planning permit number 335/2012/P/B is enclosed.

Your attention is drawn to the conditions of the permit. Please read these conditions carefully, and check whether there are any actions you need to take prior to acting on the permit.

Please note that this permit is not a building permit, and if the proposal involves the construction or alteration of a building, you may need to obtain a separate building permit.

Yours sincerely



MARTIN IRELAND
Senior Statutory Planner

PLANNING PERMIT

Permit No:
Planning Scheme:
Responsible Authority:

Form 4.4
335/2012/P/B AMENDED
East Gippsland
East Gippsland Shire

ADDRESS OF THE LAND

717 Wy Yung-Calulu Road CALULU
Lot 2 LP 628940

BN: 94093 2

THE PERMIT ALLOWS

Use and development of a winery, roadworks and removal of vegetation in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

1. Before the development starts, amended plans to the satisfaction of the responsible authority must be submitted to and be approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in line with the plans submitted with the application but modified to show:
 - A disabled parking space adjacent to the building.
2. Before the use commences a landscape plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale and three copies must be provided. The plans must show:
 - Buildings, outbuildings and other structural features on the land that influence the landscape design.
 - Natural features that influence the landscape design.
 - Native planting to the east, south and west of the building capable of softening the visual bulk of the building in the surrounding landscape.
 - A schedule of all proposed vegetation (trees, shrubs and ground covers) which includes botanical names, common names, pot size, mature size and total quantities of each plant.
 - Landscaping in accordance with this approved plan and schedule must be completed within three months of the use commencing.
3. Before the cellar door commences, the proposed internal access drive between Wy Yung Calulu Road and the Winery must be constructed with a gravel surface to a minimum width of 3.5 metres to the satisfaction of the responsible authority.

Date Issued: 23 July 2013

Date Amended: 15 March 2017

Page 1 of 4



Signature for the
Responsible Authority

Unless with the written consent of the responsible authority, all cellar door patron traffic must use the new internal access drive for access and egress.

4. Before the use commences, areas set aside for car parking and hard standing as shown on the approved plan(s) must be:
- Constructed to the satisfaction of the responsible authority.
 - Properly formed to appropriate levels.
 - Surfaced with gravel to satisfaction of the responsible authority.
 - Drained and maintained to the satisfaction of the responsible authority.
 - Marked to indicate each car space to the satisfaction of the responsible authority, in line with requirements set out in AS 2890.1 Parking Facilities Part 1: Off-street car parking.

Parking areas must be kept available for these purposes at all times.

5. Before the use commences all buildings and works as shown on the endorsed plans must be drained to the satisfaction of the responsible authority.
6. During construction and maintenance activities, adequate steps must be taken to stop soil erosion and the movement of sediment off site and into drainage lines and watercourses. Adequate steps include:
- Control of on-site drainage by intercepting and redirecting run-off in a controlled manner to stabilised vegetated areas on site.
 - Installation of sediment control structures such as sediment basins, sediment fences and sediment traps when construction commences and maintaining them until the site is stabilised.
 - Re-vegetating all disturbed areas as quickly as possible or within 14 days after construction works are completed.
7. When completed, all batters must have a layer of topsoil, 50mm minimum thickness, spread over them and sown with a suitable grass and clover mixture, or mulched and planted with ground cover plants.
8. All earthworks associated with the development must be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.
9. Deleted
10. No more than 30 patrons associated with the private functions are permitted on no more than two occasions in any one calendar year.
11. The cellar door activities must only operate between the hours of:
- 11am and 5pm (May to September inclusive);
 - 11am and 7pm on Mondays, Tuesdays, Wednesdays and Thursdays during October to April (inclusive);
 - 11am and 9pm on Fridays, Saturdays, Sundays and Public Holidays during October to April (inclusive)

Date Issued: 23 July 2013

Date Amended: 15 March 2017

Page 2 of 4



**Signature for the
Responsible Authority**

12. The private functions must only operate between the hours of 11am and 5pm.
13. This permit will expire if one of the following circumstances applies:
 - The development is not started within two years of the date of this permit.
 - The development is not completed within four years of the date of this permit.
 - The use is not commenced within four years of the date of this permit.


Department of Environment, Land, Water and Planning Conditions

14. Before works start, the permit holder must advise all persons undertaking the vegetation removal or works on site of all relevant permit conditions and associated statutory requirements or approvals.
15. To offset the removal of 0.014 hectares of native vegetation the permit holder must secure a native vegetation offset, in accordance with the Permitted clearing of native vegetation – Biodiversity assessment guidelines (DEPI 2013) and Native vegetation gain scoring manual (DEPI 2013) as specified below
 - a. A general offset of 0.001 general biodiversity equivalence units with the following attributes:
 - i. Be located within the East Gippsland Catchment Management Authority or East Gippsland Shire Council municipal district;
 - ii. Have a strategic biodiversity score of at least 0.124
16. Before any native vegetation is removed, evidence that the required offset for the project has been secured must be provided to the satisfaction of the responsible authority. The offset evidence can be:
 - a. A security agreement signed by both parties, to the required standard, for the offset site or sites, including a 10 year offset management plan, or;
 - b. An allocated credit extract from the Native Vegetation Credit Register.
17. A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. Within 30 days of endorsement of the offset evidence by the responsible authority, a copy of the endorsed offset evidence must be provided to Regional Planning Approvals at the Traralgon regional office of the Department of Environment, Land, Water and Planning.
18. In the event that a security agreement is entered into as per condition 16, the applicant must provide the annual offset site condition report to the responsible authority by the anniversary date of the execution of the offset security agreement, for a period of 10 consecutive years. After the tenth year, the land owner must provide a report at reasonable request of a statutory authority.

Date Issued: 23 July 2013

Date Amended: 15 March 2017

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Signature for the
Responsible Authority

East Gippsland Water Condition

19. Construction activities associated with the use and development, including roadworks and/or related earthworks, must not impact upon East Gippsland Water's infrastructure (water main supply pipeline). Relevant engineering design plans, specifications and proposed construction arrangements for works in the vicinity of the pipeline must be submitted to East Gippsland Water for consideration, and East Gippsland Water's written approval for the proposed works must be obtained prior to any works commencing.

Notes

1. All buildings erected on this site must comply with the requirements of the Victorian Building Act and Regulations, the Building Code of Australia and relevant Council Local Laws. Note this permit does not approve the placement of hoardings and scaffolds outside building lines. Please contact Council's Local Laws Unit on 51 539 500.
2. The winery once completed must be registered with the Council as a class 3 Food Premises.
3. Before any works on public land start, a permit to take protected flora under the Flora and Fauna Guarantee (FFG) Act 1988 may be required. To obtain an FFG permit, please contact Healthy Landscapes at the Traralgon regional office of the Department of Environment, Land, Water and Planning on (03) 5172 2111.

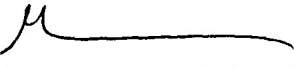
Amended 15/03/2017:

Amended to delete condition 9, alter condition 11, and alter what the permit allows.

Date Issued: **23 July 2013**

Date Amended: **15 March 2017**

Page 4 of 4


**Signature for the
Responsible Authority**

IMPORTANT INFORMATION ABOUT THIS NOTICE

WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit.

WHEN DOES A PERMIT BEGIN?

A permit operates:

From the date specified in the permit, or

If no date is specified, from:

- The date of the decision of the Tribunal, if the permit was issued at the direction of the Tribunal, or
- The day on which it is issued, in any other case.

WHEN DOES A PERMIT EXPIRE?

A permit for the development of land expires if:

- The development or any stage of it does not start within the time specified in the permit, or
- the development requires the certification of a plan of subdivision or consolidation under the *Subdivision Act 1988* and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision, or
- the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the *Subdivision Act 1988*.

A permit for the use of land expires if:

- The use does not start within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit, or
- The use is discontinued for a period of two years.

A permit for the development and use of the land expires if:

- The development or any stage of it does not start within the time specified in the permit, or
- The development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
- The use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
- The use is discontinued for a period of two years.

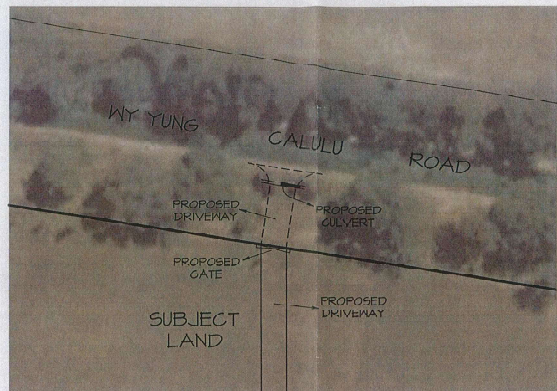
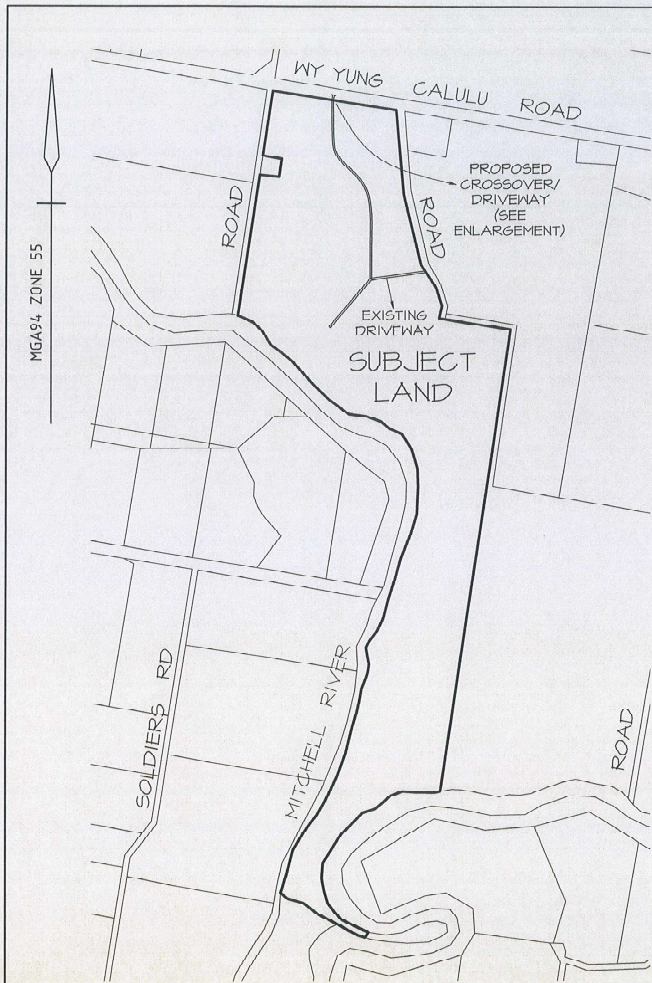
If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in Section 6A(2), of the *Planning and Environment Act 1987*, or to any combination of use, development or any of those circumstances requires the certification of a plan under the *Subdivision Act 1988*, unless the permit contains, a different provision:

- The use or development of any stage is to be taken to have started when the plan is certified; and
- The permit expires if the plan is not certified within two years of the issue of the permit.

The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT APPEALS?

- The person who applied for the permit may appeal against any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal where, in such case, no right of appeal exists.
- An appeal must be lodged within 60 days after the permit was issued, unless a Notice of Decision to Grant a permit has been issued previously, in which case the appeal must be lodged within 60 days after the giving of that notice.
- An appeal is lodged with the Victorian Civil and Administrative Tribunal.
- An appeal must be made on a Notice of Appeal form and lodged with the Victorian Civil and Administrative Tribunal, and be accompanied by the prescribed fee. An appeal must state the grounds on which it is based.
- An appeal must also be served on the responsible authority.
- Details about appeals, notice of appeal forms and the fees payable can be obtained from the Planning & Environment List at the Victorian Civil and Administrative Tribunal.



SCALE OF ENLARGEMENT
1:800

SITE PLAN

PARISH OF WY YUNG
CROWN ALLOTMENTS 4A, 4C & 4B (PARTS)
LOT 2 ON PS628940X

SCALE (SHEET SIZE A3)

1 : 12,500

SURVEYORS REF.

17170

VERSION 1 - DRAWN 05/06/2016

LIGHTFOOT & SONS

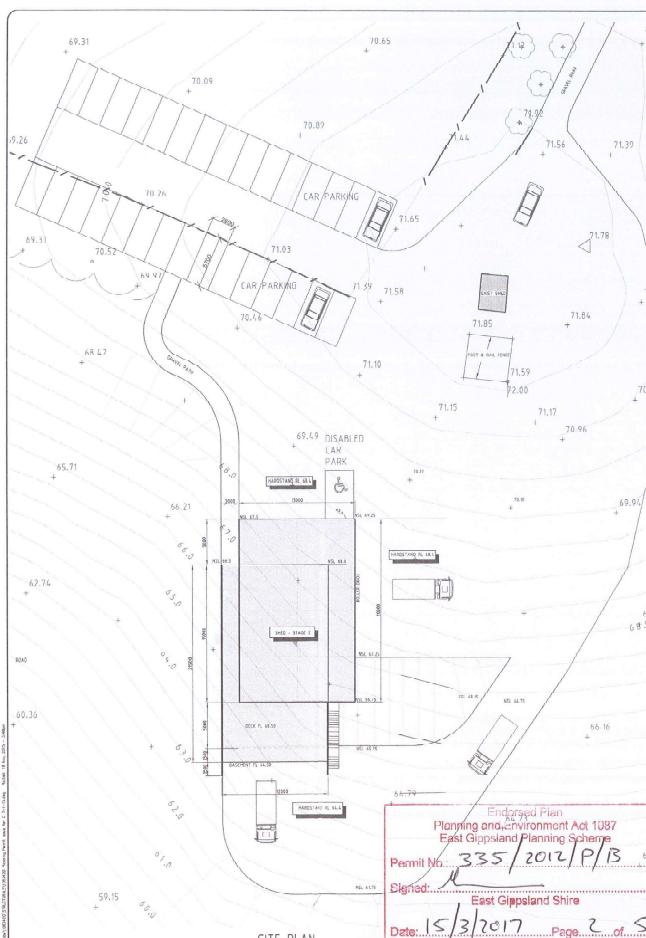
717 WY YUNG-CALULU ROAD, CALULU

Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
162 MACLEOD STREET, BAIRNSDALE, VIC., 3675
P. (03) 5152 5011 E. contact@crowthersadler.com.au

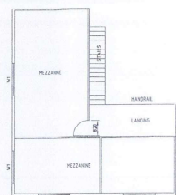
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Endorsed Plan
Planning and Environment Act 1987
East Gippsland Planning Scheme
Permit No.: 835/2012/P/B
Signed: [Signature]
East Gippsland Shire
Date: 15/3/2017 Page 1 of 5

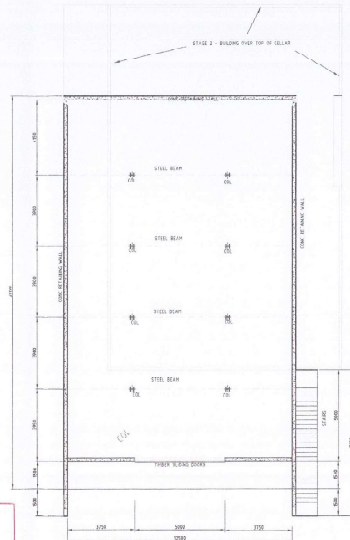


PLANNING DRAWING ONLY

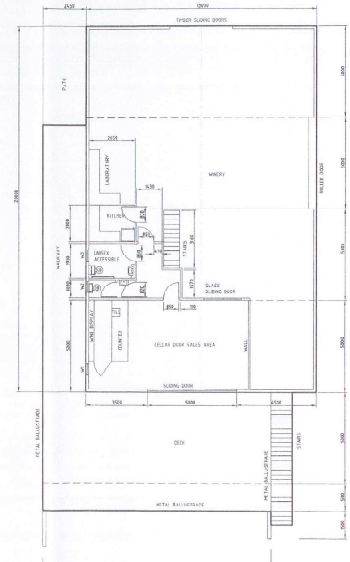
STAGE 1 - BUILDING FOOTPRINT
AREA = 245.12
STAGE 2 - WINE SALES / STORE FLOOR
AREA = 250.12



MEZZANINE OVER WINE SALES - STAGE 2



WINE CELLAR LAYOUT - STAGE 1



STORE LAYOUT - STAGE 2

Endorsed Plan
Planning and Environment Act 1987
East Gippsland Planning Scheme
Permit No. 335/2012/P/B
Signed: [Signature]
Date: 15/3/2017 Page 2 of 5

SITE PLAN

No.	Date	Revision
1	12/7/2012	Original plan submitted
2	12/7/2012	Revised plan submitted
3	12/7/2012	Revised plan submitted
4	12/7/2012	Revised plan submitted



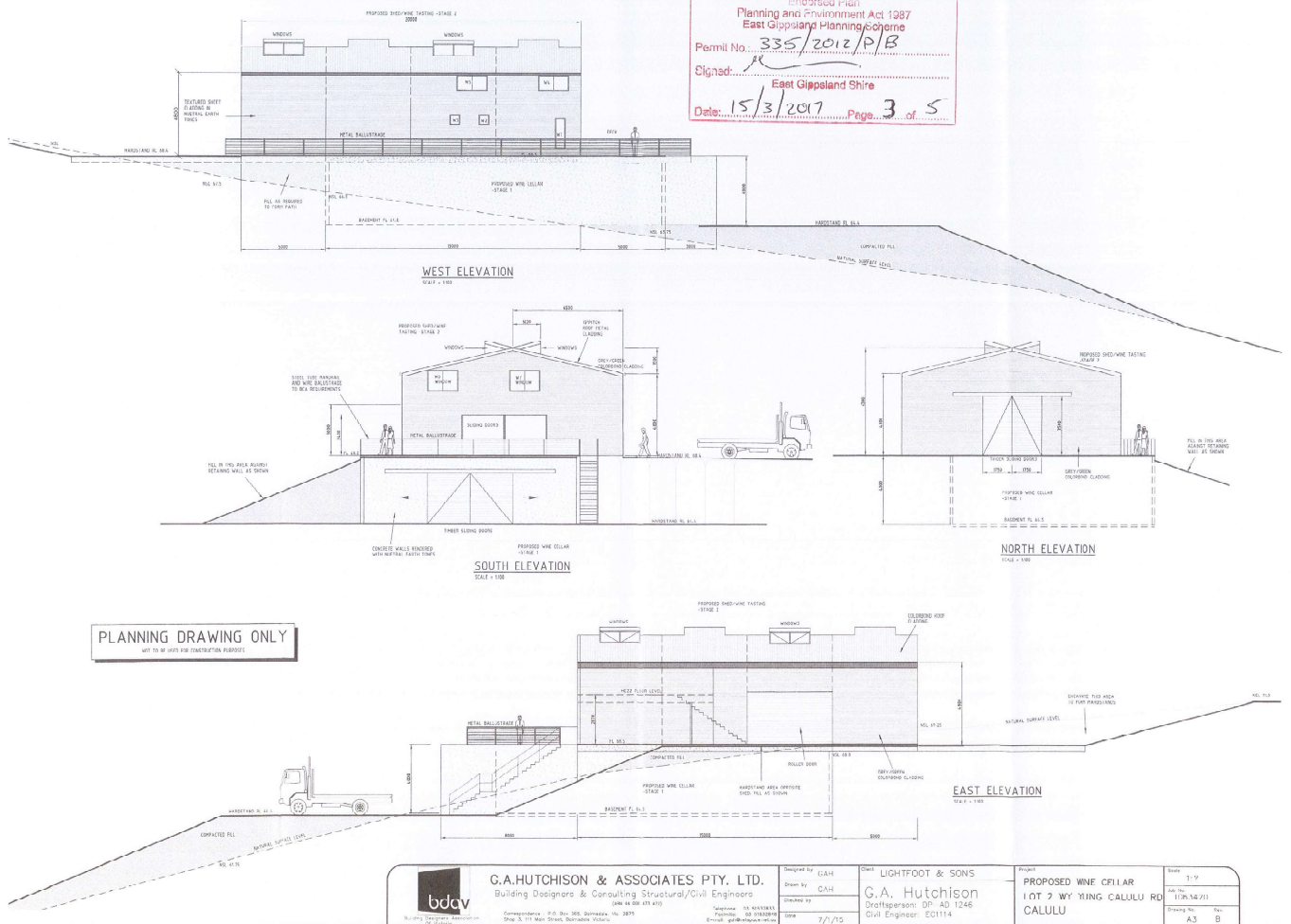
G.A. HUTCHISON & ASSOCIATES PTY. LTD.
Building Designers & Consulting Structural/Civil Engineers
100-102 Main Street, Bairnsdale, VIC 3915
Phone: 03 53333333
Fax: 03 53333333
Email: gah@ga-hutchison.com.au

Designed by: GAH
Drawn by: GAH
Checked by: G.A. Hutchison
Date: 7/7/15
G.A. Hutchison
Draftsperson: DP-AD 1246
Civil Engineer: EC1114

Project: PROPOSED WINE CELLAR
LOT 2 WY YUNG CALULU RD
CALULU

Scale: AS NOTED
Lot No: 100-3420
Drawing No: A2
Rev: D

Endorsed Plan
Planning and Environment Act 1987
East Gippsland Planning Scheme
Permit No. 335/2012/P/B
Signed: [Signature]
East Gippsland Shire
Date: 15/3/2017 Page 3 of 5

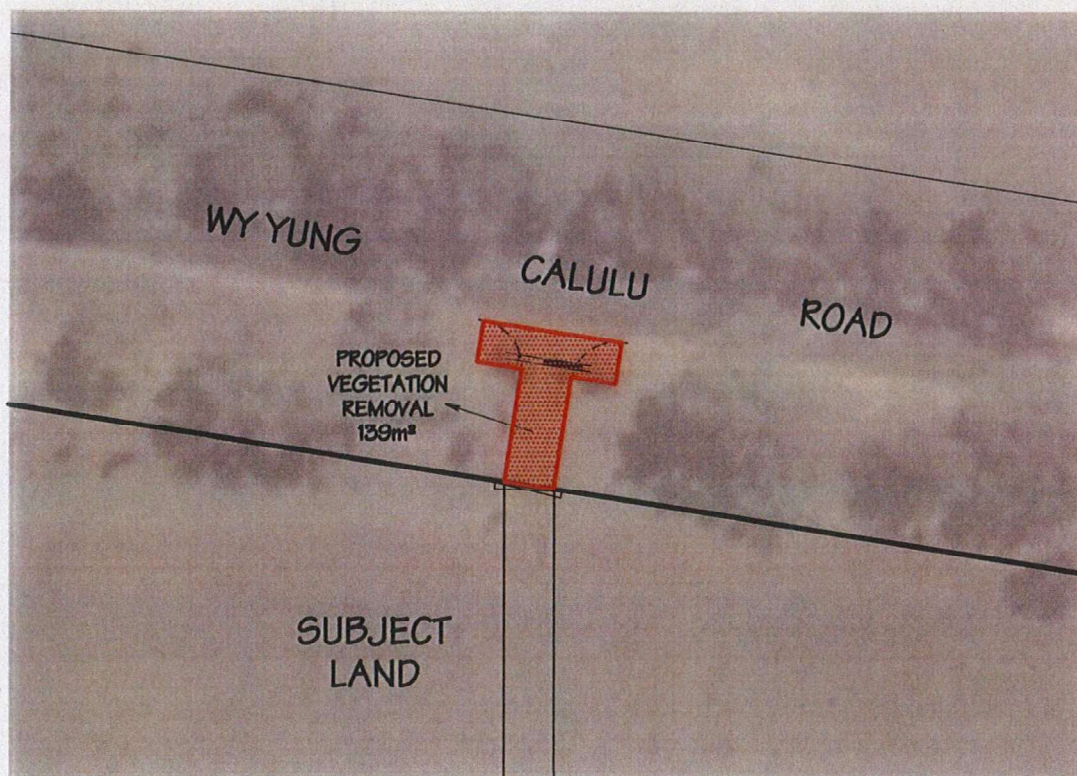
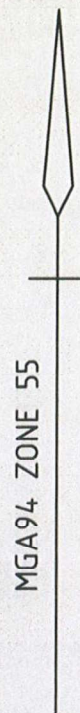


	G.A. HUTCHISON & ASSOCIATES PTY. LTD. Building Designers & Consulting Structural/Civil Engineers Correspondence: P.O. Box 365, Bairnsdale, VIC 3975 Shop 3, 171 Main Street, Bairnsdale, Victoria	Designed by: GAH Drawn by: CAH Checked by: [Signature] Date: 7/7/15	Client: LIGHTFOOT & SONS G.A. Hutchison Draftsperson: DP AD 1248 Civil Engineer: EC1114	Project: PROPOSED WINE CELLAR LOT 2 WY YING CALULU RD CALULU	Scale: 1:1 Map Ref: 1106/14/211 Drawing No: A3 Rev: B

PLAN OF VETGETATION REMOVAL

PARISH OF WY YUNG
CROWN ALLOTMENTS 4A, 4C & 4B (PARTS)

LOT 2 ON P5628940X



Endorsed Plan
Planning and Environment Act 1987
East Gippsland Planning Scheme

Permit No.: 335/2012/P/B

Signed: East Gippsland Shire

Date: 15/3/2017 Page 4 of 5

Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS

152 MACLEOD STREET, BAIRNSDALE, VIC., 3875
P. (03) 5152 5011 E. contact@crowthersadler.com.au

LIGHTFOOT & SONS
717 WY YUNG-CALULU ROAD, CALULU

SCALE (SHEET SIZE A4)

1 : 800

SURVEYORS REF.

17170

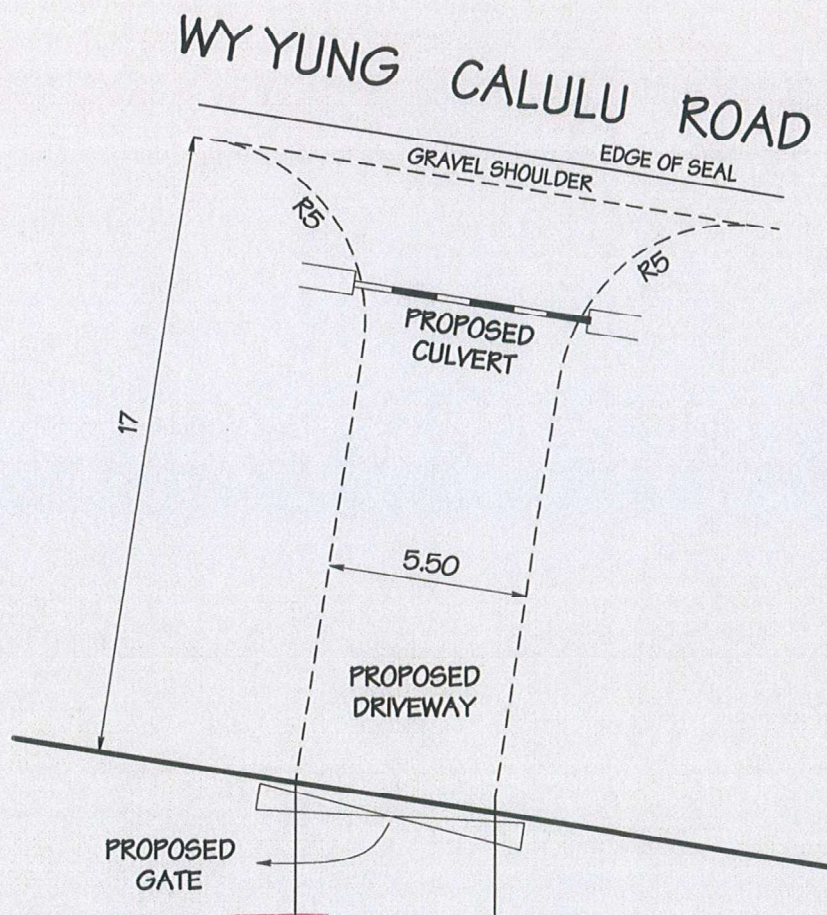
FILENAME: N:\Jobs\17000-17999\17100-17199\17170 Lightfoot\17170 Veg Removal V1.pro

VERSION 1 - DRAWN 09/08/2016

CROSSOVER DIAGRAM

PARISH OF WY YUNG
CROWN ALLOTMENTS 4A, 4C & 4B (PARTS)
LOT 2 ON PS628940X

MGA94 ZONE 55



Endorsed Plan
Planning and Environment Act 1987
East Gippsland Planning Scheme

Permit No: 335/2012/P/B

Signed: [Signature]
East Gippsland Shire

Date: 15/3/2017 Page 5 of 5

Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE, VIC., 3875
P. (03) 5152 5011 E. contact@crowthersadler.com.au

LIGHTFOOT & SONS
717 WY YUNG-CALULU ROAD, CALULU

SCALE (SHEET SIZE A4)

1 : 200

SURVEYORS REF.

17170

FILENAME: N:\Jobs\17000-17999\17100-17199\17170 Lightfoot\17170 Crossover Diag V1.pro

VERSION 1 - DRAWN 10/08/2016

LICENSED SURVEYORS & TOWN PLANNERS

Our ref: 18400

25 June 2019

Senior Land Use Planner
East Gippsland Shire Council
Via email: planning@egipps.vic.gov.au

Attention: Mr Martin Ireland

Dear Martin,

**Re: Application to Amend a Planning Permit
Planning Permit 335/2012/P/B
717 Wy Yung-Calulu Road, Calulu**

Further to our recent discussions please find enclosed an application to amend Planning Permit 335/2012/P/B which seeks to vary Conditions 10, 11 and 12. The Application also seeks to include an additional condition to allow up to 100 guests for private functions, or more than 100 guests with prior written consent from the Responsible Authority.

Since development of the winery has been completed the operators have received increasing levels of enquiry for private functions. The operators of the winery would like the flexibility to conduct up to 12 private functions per year in order to accommodate the current level of enquiry. The existing permit conditions currently limit the number of private functions to just two per year, and other conditions associated conducting private functions are also considered unreasonably restrictive. The following changes to the conditions are proposed.

- Amend Condition 10 to state:
"No more than 12 private functions must occur in any calendar year."
- Amend Condition 11 to state:
"The cellar door and private functions must only operate between the hours of:
Sunday, Good Friday and ANZAC Day: Between 10am and 11pm
On any other day: Between 7am and 11pm"
- Delete Condition 12.
- Include an additional condition within the Planning Permit to state:
A private function having more than 100 guests must only occur with the prior written consent of the responsible authority.

We are pleased to provide the following justification for the changes as sought.

152 Macleod St.
PO Box 722,
Bairnsdale, VIC 3875

P: 5152 5011
F: 5152 5705

E: contact@crowthersadler.com.au



Condition 10

The current wording of Condition 10 is considered somewhat ambiguous through the inclusion of a double negative. The intent of the current wording of Condition 10 is to limit the number of private function and also prescribe a maximum number of patrons for a private function. In order to provide more clarity, it is proposed to amend Condition 10 to clearly state the maximum number of private functions to be conducted in any calendar year. An additional condition is proposed to separately prescribe a maximum number of patrons attending private functions.

It is requested Condition 10 be amended to allow up to 12 private functions in any calendar year.

Private functions would be contained within the winery building and immediate surrounds consistent with the licensed area prescribed by the current liquor licence. Private functions would primarily utilise the balcony on the western and southern sides of the entry, as well as the barrel room and lower terrace. Functions will be limited to the immediate winery area due to the limitation imposed by the liquor licence, with the consumption of alcohol prohibited outside the licensed area.



View of winery building, with access to cellar door on right



View of balcony on south side of cellar door



View of lower terrace and entry to the Barrel Room



Extent of licensed area (Liquor Licence No. 32806177)

Condition 11

It is proposed to amend Condition 11 to state the following:

“The cellar door and private functions must only operate between the hours of:

Sunday, Good Friday and ANZAC Day: Between 10am and 11pm

On any other day: Between 7am and 11pm”

The proposed trading hours are consistent with standard trading hours prescribed by the Victorian Commission for Gaming and Liquor Regulation (VCGLR) for a *Producers Licence*

These trading hours will provide more flexibility for visitors to the cellar door year-round. Amending the trading hours to the standard hours prescribed by the VCGLR is also consistent with the trading hours of other wineries in East Gippsland including Sarsfield Estate, Tambo Estate Vineyard & Winery and Ensay Winery. Nicholson River Winery also has similar hours with the cellar door able to trade between 8am and 10pm Monday to Thursday, 8am to 11pm Friday and Saturday and between 10am -11pm on Sundays, Good Friday and ANZAC Day.

We understand the limitation on trading hours was originally imposed to have regard to the amenity of the adjoining property at 713 Wy Yung-Calulu Road, given the winery was reliant on the shared road and carriageway easement for access. Since then an internal accessway has been constructed a substantial distance from the neighbouring property. The construction of a separate driveway means amenity concerns surrounding noise and dust generated from vehicles using the carriageway easement are no longer impacting the property at 713 Wy Yung-Calulu Road.

An acoustic report has been prepared by *C.G. Consulting Pty. Ltd.* that includes an assessment of noise emissions from vehicles using the internal driveway. The acoustic assessment has confirmed noise from vehicles utilising the internal driveway will not exceed noise levels deemed acceptable for the rural location. A copy of this report is enclosed for your information.

Condition 12

The Application seeks the deletion of Condition 12. It is considered this condition is too restrictive, and that greater flexibility should be afforded for private functions to be conducted until 11pm.

Rather than include a separate condition for private functions to be conducted, it is proposed that Condition 11 prescribe consistent trading hours for both the cellar door and private functions.

Proposed condition – Patron numbers for private functions

Condition 10 currently limits the number of patrons associated with private functions to 30 patrons, with no more than two private functions in any one year. This condition considered to be an excessive restraint. Limiting the number of patrons to 30 is unreasonably restrictive given patrons would be congregating in and around the winery building at the southern end of the property.

Enabling a reasonable number of functions to be undertaken in a year will make good use of a substantial building. The location of the winery is also ideal to take advantage of views across the Mitchell River flats to the south. Operating functions in and around the winery will not transform the primary and dominant use of the premises as an operating winery.

In order to provide certainty surrounding the size and scale of private functions, it is proposed to include an additional condition on the permit relating to managing patron numbers for private functions.

Currently the premises has sufficient amenities (toilets) to cater for up to 75 people, however functions such as weddings can involve a larger number of patrons. The application seeks approval to provide a general limit of 100 patrons for private functions, and also provide for more than 100 patrons where the prior written consent of the responsible authority has been obtained.

A general limit of 100 patrons is considered sufficient to accommodate the bulk of enquiries that are regularly received by the proprietors of the winery. Functions for 100 patrons are also considered by the proprietors to be a manageable number given additional amenities will need to be provided.

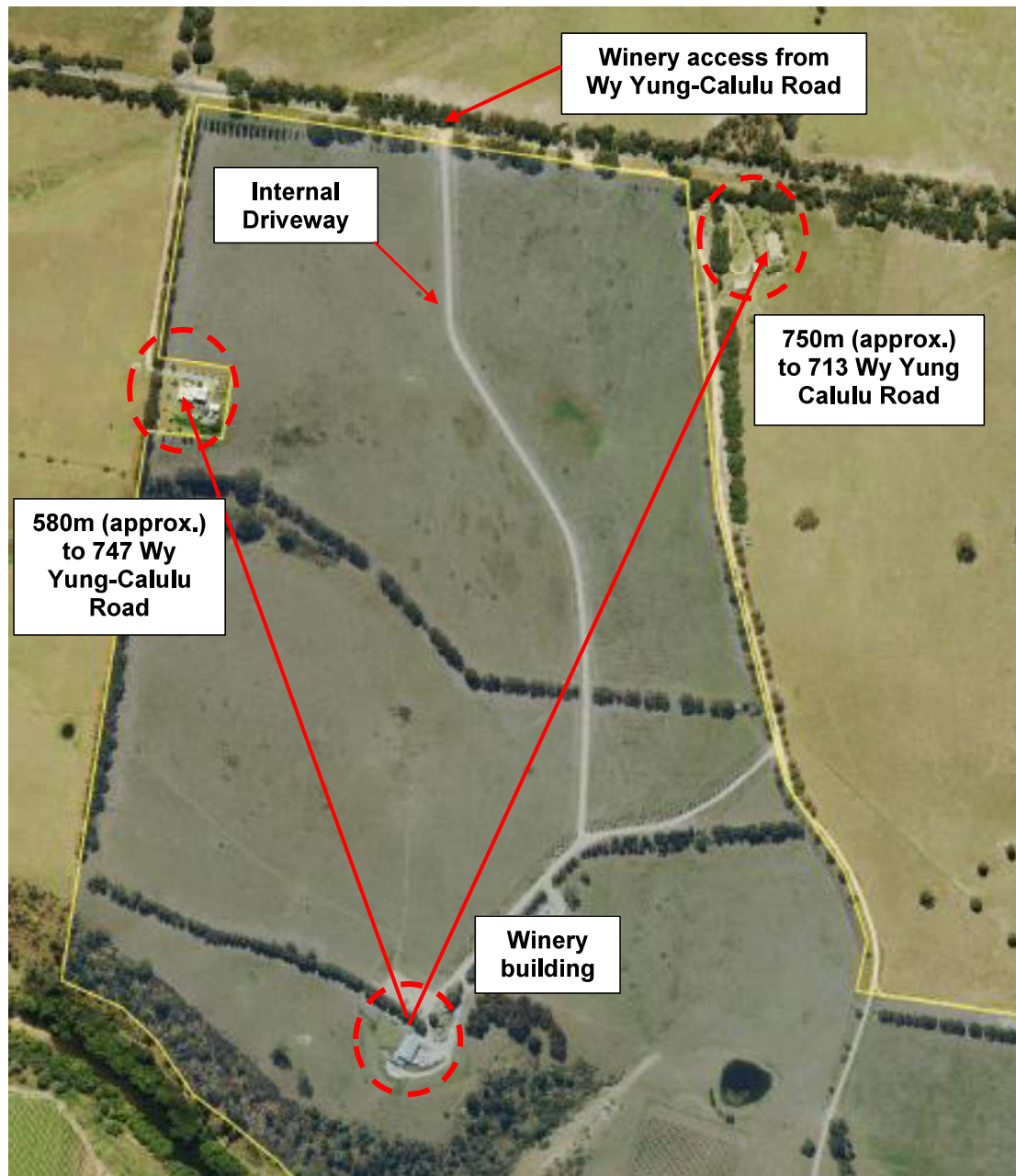
Private functions will be generally contained to the licensed area as prescribed by the Redline Plan forming part of the liquor licence. The winery building is located some 560 metres from the nearest dwelling at 747 Wy Yung-Calulu Road and approximately 760 metres from the dwelling at 713 Wy Yung Calulu Road. These separations are considered to be quite generous.

The need for the condition to provide the Responsible Authority with discretion for functions with more than 100 guests is considered appropriate given private functions may need to accommodate a slightly higher number of patrons. The inclusion of discretion within the condition provides Council a means by which to monitor the frequency and size of private functions with more than 100 patrons, to ensure a function would not unreasonably impact the occupants of nearby dwellings.

Traffic safety and amenity

It is understood objections received to previous planning applications for the subject land have strongly opposed the use and development of the winery and conducting private functions due to concerns with traffic safety at the entrance to the site from Wy Yung-Calulu Road and noise generated by private functions and patron vehicles.

The winery is no longer dependent on the road/carriageway easement that the subject land lawfully benefits from and shares with the owner of 713 Wy Yung-Calulu Road. Access to the winery is now provided from a driveway with separate access from Wy Yung-Calulu Road, located more than 270 metres from the dwelling at 713 Wy Yung Calulu Road.



Aerial image of northern portion of subject land

Given previous objections have included concerns relating to traffic safety and noise, the proponent has commissioned an assessment noise emissions and traffic safety from suitably qualified and experienced consultants.

C.G Consulting Pty Ltd has prepared a report assessing compliance EPA noise regulations and guidelines and is included with the application. The report provides an assessment of likely noise emissions from private functions and noise from vehicles utilising the internal driveway. The report has concluded that noise emissions generated by private functions can comply with the requirements of *State Environment Protection Policy (Control of Noise from Public Premises) No. N-2 (SEPP N-2)* being the relevant control for the assessment of noise generated from amplified live music or amplified recorded music and noise levels generated from patrons voices.

Vehicle noise is excluded from SEPP N-2. The acoustic assessment has relied on *EPA Publication 1411 - Noise from Industry in Regional Victoria (NIRV)* as the appropriate standard for assessing vehicle noise. The acoustic assessment has determined noise levels from patrons arriving and departing the premises can comply with NIRV.

SALT³ has also been commissioned to prepare a Traffic Impact Assessment Report (TIAR) that provides an assessment of car parking, a review of the suitability of the internal driveway and traffic safety at the property entrance at Wy Yung-Calulu Road associated with the proposed amendments to permit conditions.

The TIAR has determined adequate car parking is available within the site in proximity to the winery building to cater for expected demand for private functions while also accommodating visitor vehicles during peak periods for the cellar door. The traffic assessment has also determined the internal driveway and can also accommodate traffic movements for the anticipated number of vehicles generated by the cellar door and private functions. Importantly the TIAR has determined access and egress from Wy Yung -Calulu Road is appropriate without the need for any upgrade.

Conclusion

The proposed amendment to conditions within the Planning Permit is considered to be appropriate and will avoid impacting the amenity of neighbouring properties and traffic safety.

As always, please do not hesitate to contact our office should we be able to assist further.

Yours faithfully,



RICHARD HOXLEY
Senior Planner

Encl. *Application to amend Planning Permit form*
Traffic Impact Assessment (prepared by SALT³)
Report on compliance with EPA Noise Regulations and Guidelines (prepared by C.G. Consulting Pty Ltd)
Copy of Liquor Licence No. 32806177 with Redline Plan

Note: *Application fee of \$1,286.10 payable – please contact us for payment*

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 1 of 1

VOLUME 11154 FOLIO 846

Security no : 124078082120J
Produced 25/06/2019 11:59 AM

LAND DESCRIPTION

Lot 2 on Plan of Subdivision 628940X.

PARENT TITLES :

Volume 11101 Folio 630 to Volume 11101 Folio 631

Created by instrument PS628940X 28/08/2009

REGISTERED PROPRIETOR

Estate Fee Simple

Joint Proprietors

BRIAN GEORGE LIGHTFOOT

HELEN BEATRICE LIGHTFOOT both of "MYRTLE POINT" 717 WY YUNG / CALULU ROAD

BAIRNSDALE VIC 3875

PS628940X 28/08/2009

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AL091514M 19/05/2014

RABOBANK AUSTRALIA LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987

AG632819U 16/07/2009

DIAGRAM LOCATION

SEE PS628940X FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 717 WY YUNG-CALULU ROAD CALULU VIC 3875

See MI309662W for WATER FRONTAGE LICENCE details

DOCUMENT END

PS628940X



IX

PLAN OF SUBDIVISION

STAGE No.

LTO USE ONLY

EDITION 1

LOCATION OF LAND

PARISH: WY YUNG
 TOWNSHIP: —
 SECTION: —
 CROWN ALLOTMENT: 4^A, 4^C & 4^B (PART)
 CROWN PORTION: —

TITLE REFERENCES: VOL 11101 FOL 630
 VOL 11101 FOL 631

LAST PLAN REFERENCE: LOTS 1 & 2 ON PS6201280

POSTAL ADDRESS: 717 WY YUNG-CALULU ROAD,
 (At time of subdivision) CALULU, 3875

MGA 94 CO-ORDINATES: E 546 530
 (Of approx. centre of land in plan) N 5816 460 ZONE: 55

COUNCIL CERTIFICATION AND ENDORSEMENT

COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 71/2009/CRT

1. This plan is certified under Section 6 of the Subdivision Act 1988.
2. ~~This plan is certified under Section 11(7) of the Subdivision Act 1988.~~
~~Date of original certification under Section 6~~ / /
3. ~~This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.~~

OPEN SPACE

- (i) A requirement for public open space under Section 18 Subdivision Act 1988 ~~has~~ / has not been made.
- (ii) ~~The requirement has been satisfied.~~
- (iii) ~~The requirement is to be satisfied in stage~~
 Council Delegate *[Signature]*
 Council seal
 Date 5/6/2009
~~Re-certified under Section 11(7) of the Subdivision Act 1988~~
 Council Delegate
 Council seal
 Date / /

VESTING OF ROADS AND/OR RESERVES

IDENTIFIER

COUNCIL/BODY/PERSON

NIL

NIL

NOTATIONS

STAGING This ~~is~~ / is not a staged subdivision
 Planning Permit No 662/2008/P

DEPTH LIMITATION DOES NOT APPLY

UNDERLINED DIMENSIONS ARE NOT THE RESULT OF THIS SURVEY
 AREA OF LOT 2 IS DERIVED BY DEDUCTION FROM TITLE

WATERWAY NOTATION:
 LOT 2 IN THIS PLAN MAY ABUT CROWN LAND THAT MAY BE SUBJECT TO A
 CROWN LICENCE TO USE

SURVEY: THIS PLAN IS ~~NOT~~ BASED ON SURVEY

THIS SURVEY IS CONNECTED TO PERMANENT MARK No(s) 40

EASEMENT INFORMATION

LEGEND A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)

Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
A-1	CARRIAGEWAY	SEE DIAG.	L956152S	LAND IN LP70219
E-1	POWERLINE	16	PS6201280 - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	SPI ELECTRICITY PTY LTD

LR USE ONLY

STATEMENT OF COMPLIANCE
 / EXEMPTION STATEMENT

RECEIVED



DATE 19/08/09

LR USE ONLY

PLAN REGISTERED

TIME 3.39PM

DATE 28/08/2009

GARY M ROBERTSON
 Assistant Registrar of Titles

SHEET 1 OF 2 SHEETS

Crowther & Sadler Pty. Ltd.
 LICENSED SURVEYORS & TOWN PLANNERS
 162 MACLEOD STREET, BAIRNSDALE, VIC., 3875
 TELEPHONE (03) 6162 6011

LICENSED SURVEYOR

MICHAEL JOSEPH SADLER

SIGNATURE

DATE 4/5/2009

REF 13349

VERSION 1

DATE 05/06/2009

COUNCIL DELEGATE SIGNATURE

ORIGINAL SHEET SIZE A3

PLAN OF SUBDIVISION

STAGE No.

PLAN NUMBER

PS 628940X

ENLARGEMENT SCALE
1 : 1000

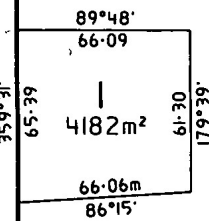
ENLARGEMENT SCALE
1 : 1000

WY YUNG - CALULU ROAD

WY YUNG - CALULU ROAD

GOVERNMENT ROAD

SEE ENLARGEMENT



ENLARGEMENT SCALE
1 : 2000

2
104.45ha

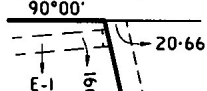
MITCHELL
RIVER

RIVER

SEE ENLARGEMENT

SEE ENLARGEMENT

WY YUNG - CALULU ROAD



ENLARGEMENT SCALE
1 : 5000

APPROX. TRUE NORTH

Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
182 MACLEOD STREET, BAIRNSDALE, VIC., 3875

TELEPHONE (03) 6162 6011

ORIGINAL

SCALE

SHEET SCALE 100 0 100 200 300 400

A3 1:10,000

LENGTHS ARE IN METRES

LICENSED SURVEYOR

MICHAEL JOSEPH SADLER

SIGNATURE

DATE

REF 13349

VERSION

SHEET 2 OF 2 SHEETS

DATE 05/06/2009

COUNCIL DELEGATE SIGNATURE



AG632819U



Section 181

**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING
OF A RECORDING OF AN AGREEMENT**

Planning & Environment Act 1987

Privacy Collection Statement

The information from this form is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

Lodged by:

Name: Warren Graham & Murphy
Phone: (03) 5152-2661
Address: 119 Main Street, Bairnsdale
Ref: ACT:ks:063609
Customer Code: 1716W

The Authority having made an agreement referred to in Section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.


Land: Certificates of Title Volume 11101 Folio 630 and Volume 11101 Folio 631

Authority: East Gippsland Shire Council, Corporate Centre, 273 Main Street, Bairnsdale, 3875

Section and Act under which agreement made: Section 173 of the Planning & Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority:


.....

Name of Officer:

AARON HOLLOW - MANAGER DEVELOPMENT
.....
(full name)

Date:

2 JULY 2009
.....

AG632819U

16/07/2009 \$102.90 173



Date 03 / 07 / 2009

Agreement under Section 173 of the Planning and Environment Act 1987

**Subject Land: 717 Wy Yung-Calulu Road, Calulu (Lots 1 & 2 of Plan of Subdivision
620128Q, Certificates of Title Volume 11101 Folio 630 and Volume 11101 Folio 631)**

East Gippsland Shire Council
and

Brian George Lightfoot and Helen Beatrice Lightfoot

AG632819U

16/07/2009 \$102.90

173



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Agreement under Section 173 of the Planning and Environment Act 1987

DATE 03/07/2009

AG632819U



BETWEEN

EAST GIPPSLAND SHIRE COUNCIL

of Corporate Centre, 273 Main Street, Bairnsdale in the State of Victoria

(Council)

AND

BRIAN GEORGE LIGHTFOOT and HELEN BEATRICE LIGHTFOOT

Both of 717 Wy Yung-Calulu Road, Calulu in the said State

(Owner)

RECITALS

- A. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. On the 23rd of March, 2009 Council issued Planning Permit No. 662/2008/P (**Planning Permit**) allowing the Subject Land to be subdivided into two lots in accordance with the Endorsed Plan. Condition 4 of the Planning Permit requires the Owner to enter into this Agreement to provide for the matters set out in that condition. A copy of the Planning Permit is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

- D. Condition 4 of the Planning Permit provides that:

Before the issue of a Statement of Compliance, the owner of the land must enter into an agreement with the responsible authority in accordance with Section 173 of the Planning and Environment Act 1987, which will covenant that:

- (a) *The land may not be further subdivided in any way so as to create an additional lot.*
- (b) *No boundary fencing of lot 1 may be constructed within the gully system.*

The agreement will bind the applicant as the owner and shall run with the land so that all successors in title are bound by the agreement. This agreement will be prepared by the applicant, at the applicants cost and to the satisfaction of the responsible authority, and shall be registered on the title in accordance with Section 181 of the Planning and Environment Act 1987.

- E. As at the date of this Agreement the Subject Land is encumbered by Mortgage No. AB801191U in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.



F. The parties enter into this Agreement:

F.1 to give effect to the requirements of the Planning Permit; and

F.2 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

THE PARTIES AGREE

1. DEFINITIONS

In this Agreement the words and expressions set out in this clause have the following meanings unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit. A copy of the Endorsed Plan is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

lot means a lot on the Endorsed Plan.

Mortgagee means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it.

Owner means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes a Mortgagee-in-possession.

party or parties means the Owner and Council under this Agreement as appropriate.

Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Subject Land means the land situated at 717 Wy Yung-Calulu Road, Calulu being the land referred to in (Lots 1 & 2 of Plan of Subdivision 620128Q, Certificates of Title Volume 11101 Folio 630 and Volume 11101 Folio 631) and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

2. INTERPRETATION

In this Agreement unless the context admits otherwise:

2.1 The singular includes the plural and vice versa.

2.2 A reference to a gender includes a reference to each other gender.

2.3 A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.

- 2.4 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5 A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act it has the meaning as defined in the Act.
- 2.6 A reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.
- 2.7 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.8 The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner agrees that once the subdivision authorised by the Planning Permit is registered, the Subject Land may not be further subdivided in any way so as to create an additional lot and no boundary fencing of Lot 1 will be constructed within the gully system.

4. FURTHER OBLIGATIONS OF THE OWNER

4.1 Notice and Registration

The Owner further covenants and agrees that the Owner will bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

4.2 Further actions

The Owner further covenants and agrees that:

- 4.2.1 the Owner will do all things necessary to give effect to this Agreement;
- 4.2.2 the Owner will make application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title of the Subject Land in accordance with Section 181 of the Act and do all things necessary to this to be done including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that section.

4.3 Council's Costs to be Paid

The Owner further covenants and agrees that the Owner will immediately pay to Council, Council's reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to Council by the Owner.





5. AGREEMENT UNDER SECTION 173 OF THE ACT

Council and the Owner agree that without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a Deed pursuant to Section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Subject Land may be used and developed pursuant to the Planning Permit.

6. OWNER'S WARRANTIES

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall be required to:

- 7.1 give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 7.2 execute a deed agreeing to be bound by the terms of this Agreement.

8. GENERAL MATTERS

8.1 Notices

A notice or other communication required or permitted to be served by a party on another party must be in writing and may be served:

- 8.1.1 by delivering it personally to that party;
- 8.1.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or
- 8.1.3 by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

8.2 Service of Notice

A notice or other communication is deemed served:

- 8.2.1 if delivered, on the next following business day;
- 8.2.2 if posted, on the expiration of 7 business days after the date of posting; or
- 8.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.



8.3 No Waiver

Any time or other indulgence granted by Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.

8.4 Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

8.5 No Fettering of Council's Powers

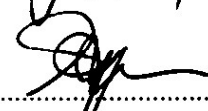
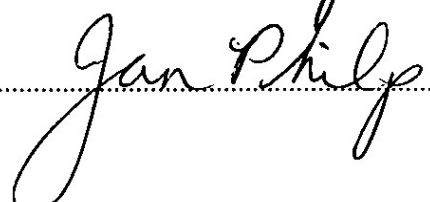
It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land or relating to any use or development of the Subject Land.

9. COMMENCEMENT OF AGREEMENT

Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

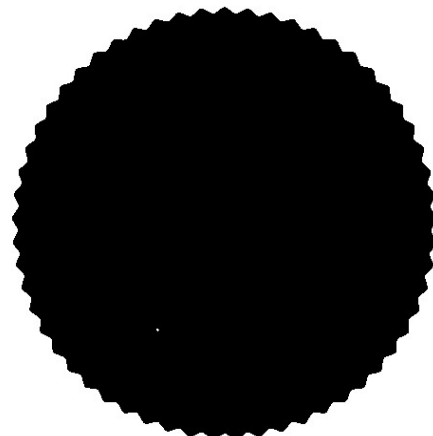
SIGNED, SEALED AND DELIVERED as a Deed by the parties on the date set out at the commencement of this Agreement.

The Common Seal of the East Gippsland Shire Council was hereunto affixed on the 3rd day of July 2009 in the presence of:

.....

.....

.....

Chief Executive

Witness



AG632819U

16/07/2009 \$102.90 173



SIGNED by the Owner the said
BRIAN GEORGE LIGHTFOOT
In the presence of:

x

x

Witness

SIGNED by the Owner the said
HELEN BEATRICE LIGHTFOOT
In the presence of:

x

x

Witness

AG632819U



CONSENT OF MORTGAGEE

GIPPSLAND SECURED INVESTMENTS LIMITED (ACN 004 860 057), the Mortgagee under registered Mortgage AB801191U, being land comprised in Certificates of Title Volume 11101 Folio 630 and Volume 11101 Folio 631 HEREBY CONSENTS to the Owner entering into the within Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

DATED this 23 day of June 2009

EXECUTION OF MORTGAGEE

THE COMMON SEAL OF GIPPSLAND SECURED INVESTMENTS LIMITED
was affixed in the presence of authorised persons



Director

~~Peter Milton-Murphy~~ Ian Robert Campbell
(full name)
119 Main Street Bairnsdale
(usual address)

Director

Glenn Andrew Sanford
(full name)
119 Main Street Bairnsdale
(usual address)

Please register and issue titles to Warren Graham & Murphy, 119 Main Street, Bairnsdale 3875

Signed: _____ Customer Code 1716W



LIGHTFOOT & SONS WINERY

717 WY YUNG-CALULU ROAD, CALULU

TRAFFIC IMPACT ASSESSMENT REPORT

SALT³

LIGHTFOOT & SONS WINERY 717 WY YUNG-CALULU ROAD, CALULU

Client: Crowther & Sadler

Report Reference: 19149TREP03D01

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Wednesday, June 12, 2019

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MELBOURNE Level 3/51 Queen Street, Melbourne VIC 3000
+61 3 9020 4225

SYDNEY Level 17/40 Mount Street, North Sydney NSW 2060
+61 2 8415 9781

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1 INTRODUCTION

SALT has been requested by Crowther & Sadler on behalf of Lightfoot & Sons Winery to undertake an assessment of the traffic and transport impacts associated with a proposed planning permit amendment. The purpose of the amendment is allow an increase in the frequency and size of private functions taking place at the winery.

In the course of preparing this report, the following tasks have been undertaken:

- The subject site and its environs have been inspected;
- The current planning permit and relevant conditions have been reviewed; and
- The parking and traffic implications of the proposal have been assessed.

The following sets out SALT's findings.

2 BACKGROUND

2.1 LOCALITY AND EXISTING CONDITIONS

The subject site is located on the southern side of Wy Yung-Calulu Road, approximately 7.5km west of Bullumwaal Road, Calulu.

The subject site forms the southwestern section of a larger parcel of land that was previously subdivided. As part of the subdivision an unnamed road reserve was constructed generally within the centre of the overall site to provide access to what would have otherwise been a land locked parcel of land. The carriageway easement provides a constructed 3.5m wide gravel roadway, with a carriageway easement applying to the unnamed road reserve.

Further to the above access arrangement, a new access driveway has been approved and constructed at 717 Wy Yung-Calulu Road providing direct access to the Lightfoot & Sons Winery, with the aforementioned roadway remaining in place. The new access point is located approximately 120 metres west of the existing carriageway easement and leads to a constructed gravel, unsealed accessway as illustrated in **Figure 1**.

The subject site and adjacent lots are shown in **Figure 2**.

Land uses within the vicinity of the site are predominantly rural in nature.



Figure 1 Existing access onto Calulu Road

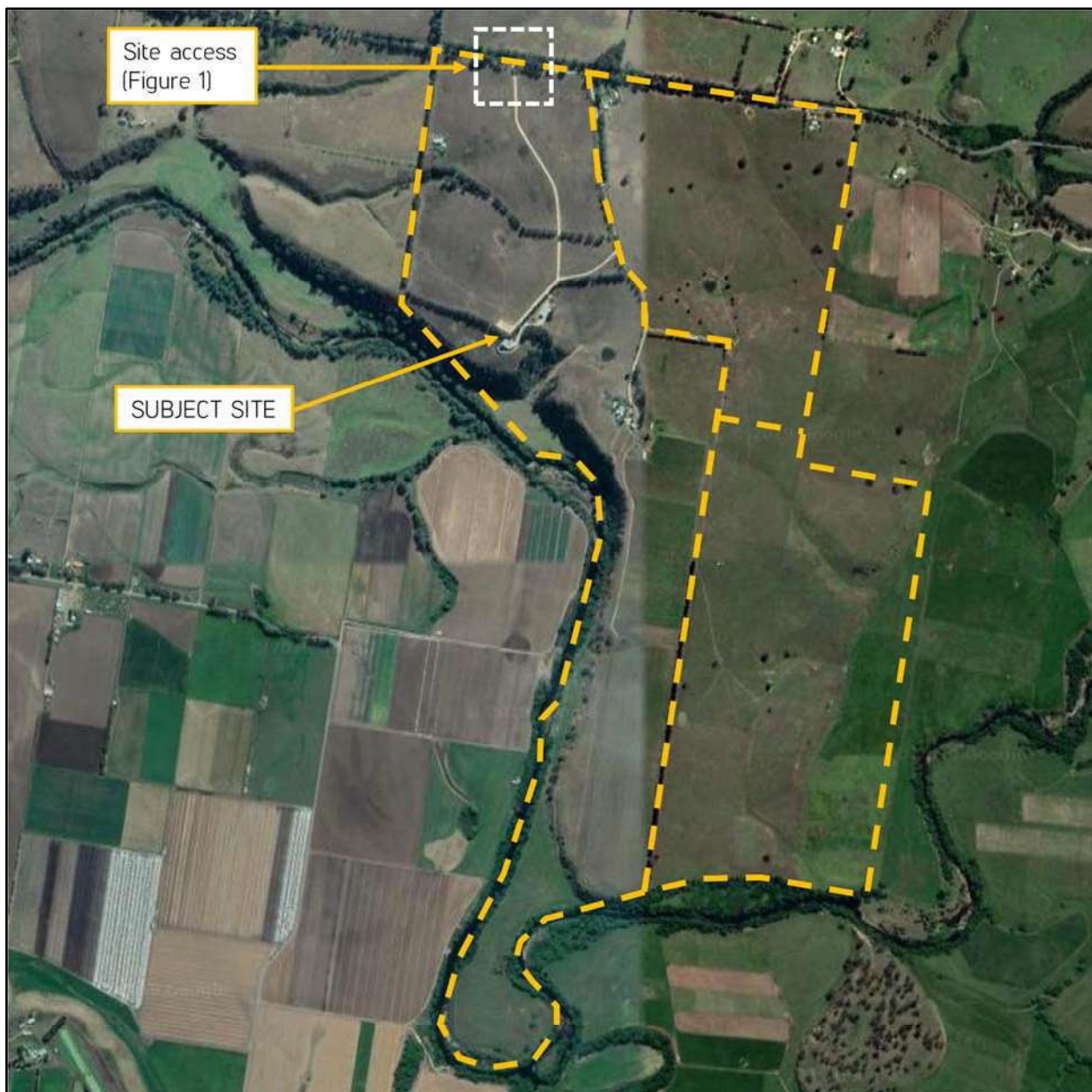


Figure 2 Aerial view of the subject site & surrounding land parcels (not to scale)

2.2 ROAD NETWORK

Wy Yung-Calulu Road is classified as a Rural Collector road and is under the care and management of East Gippsland Shire Council. Calulu Road is a typical rural roadway providing access from Bullumwaal Road in the east through to Rodericks Road in the west.

Due to the topography of the land, Calulu Road provides an undulating carriageway with the roadway adjacent the site being downhill at a grade of approximately 1 in 11.4 (8.8%) in the westbound direction. Approaching the crest further to the east, Calulu Road has an uphill gradient of approximately 1 in 10 (10%).

The recently constructed access point to the subject site is located a further distance from the crest in the road on Wy Yung-Calulu Road, providing significantly improved sight lines than the former arrangement.

Within the vicinity of the subject site Calulu Road provides one trafficable lane in each direction. East of the unnamed road reserve at the sites centre the road lanes are separated by double-solid lines, whereas west of the crossover dashed line-marking is provided, permitting overtaking and crossing manoeuvres.

Views of Wy Yung-Calulu Road are provided in **Figure 3** and **Figure 4**.



Figure 3 Wy Yung-Calulu Road facing east



Figure 4 Wy Yung-Calulu Road facing west

2.3 TRAFFIC VOLUME DATA

Tube count surveys were taken on Wy Yung-Calulu Road. A “tube count” records traffic volume, vehicle classification and speed.

The tube count surveys were undertaken from Monday 29 April 2019 to Monday 6 May 2019. The tubes were located outside the subject site approximately midway between the long-standing access point and the new Lightfoot & Sons access point – Refer **Figure 5**.

The results are summarised in **Table 1**.



Figure 5 Tube count location

Table 1 Tube count data

Measure	Wy Yung-Calulu Road
Average weekday daily volume (two-way)	2,804 vpd
Average weekday AM peak hour volume (two-way)	254 vph (11:00am – 12:00pm)
Average weekday AM peak hour volume (by direction)	167 vph (eastbound, 8:00am – 9:00am) 130 vph (westbound, 11:00am – 12:00pm)
Average weekday PM peak hour volume (two-way)	262 vph (4:00pm – 5:00pm)
Average weekday PM peak hour volume (by direction)	124 vph (eastbound, 3:00pm – 4:00pm) 149 vph (westbound, 4:00pm – 5:00pm)

Measure	Wy Yung-Calulu Road
Average weekend daily volume (two-way)	1,759 vpd
Average weekend AM peak hour volume (two-way)	211 vph (11:00am – 12:00pm)
Average weekend AM peak hour volume (by direction)	115 vph (eastbound, 10:00am – 11:00am) 118 vph (westbound, 11:00am – 12:00pm)
Average weekend PM peak hour volume (two-way)	206 vph (12:00pm – 1:00pm)
Average weekend PM peak hour volume (by direction)	100 vph (eastbound, 12:00pm – 1:00pm) 107 vph (westbound, 12:00pm – 1:00pm)
85 th percentile speed ¹	76.9 km/h

¹ This represents the speed at which 85% of drivers are travelling equal to or less, and is the standard measure of determining the level of compliance with the speed limit

A two-lane major road has a capacity of 900 vehicles per hour (per lane) and hence the existing volumes on Wy Yung-Calulu Road are well under this figure. In terms of daily capacity, this is generally 20,000 vehicles per day for a two-lane major road, which Wy Yung-Calulu Road is also well under.

3 PROPOSAL

A Planning Permit (335/2012/P/B AMENDED) was issued by the East Gippsland Shire Council. The initial Planning Permit (335/20912/) was issued on 23 July 2013 for the use and development of the site as a winery. Since then, an amended permit has been issued, dated 15 March 2017, for the “*use and development of a winery, roadworks and removal of vegetation in accordance with the endorsed plans*”.

As part of the amended Planning Permit the following relevant conditions are applicable:

- *Condition 1) The plans must be generally in line with the plans submitted with the application but modified to show:*
 - *A disabled parking space adjacent to the building.*
- *Condition 3) Before the cellar door commences, the proposed internal access drive between Wy Yung-Calulu Road and the Winery must be constructed with a gravel surface to a minimum width of 3.5 metres to the satisfaction of the responsible authority. Unless with the written consent of the responsible authority, all cellar door patron traffic must use the new internal access drive for access and egress.*
- *Condition 4) Before the use commences, areas set aside for car parking and hard standing as shown on the approved plan(s) must be:*
 - *Constructed to the satisfaction of the responsible authority;*
 - *Properly formed to appropriate levels;*
 - *Surfaced with gravel to satisfaction of the responsible authority;*
 - *Drained and maintained to the satisfaction of the responsible authority;*
 - *Marked to indicate each car space to the satisfaction of the responsible authority, in line with requirements set out in AS2890.1 Parking Facilities Part 1: Off-street car parking.*
- ***Condition 10) No more than 30 patrons associated with the private functions are permitted on no more than two occasions in any one calendar year.***
- *Condition 11) The cellar door activities must only operate between the hours of:*
 - *11:00am and 5:00pm (May to September inclusive);*

- 11:00am and 7:00pm on Mondays, Tuesdays, Wednesdays and Thursdays during October to April (inclusive);
- 11:00am and 9:00pm on Fridays, Saturdays, Sundays and Public Holidays during October to April (inclusive)
- **Condition 12) Private functions must only operate between the hours of 11:00am and 5:00pm.**

It is proposed to apply for a planning permit amendment to alter Conditions 10 and 12 as follows:

- Condition 10) Allow for up to 12 private functions per year, catering for up to 100 guests.
- Condition 12) Allow for private functions to operate anytime between 7:00am – 11:00pm.

SALT is advised that functions would typically not coincide with cellar door activities but from time to time this may occur.

4 CAR PARKING CONSIDERATIONS

4.1 PLANNING SCHEME PARKING REQUIREMENTS

Clause 52.06 of the East Gippsland Planning Scheme outlines the parking requirements for proposed developments.

Table 1 to Clause 52.06-5 specifies the statutory car parking provisions, with the key on-site uses classified in **Table 1** below.

Use	Size / No.	Planning Scheme Car Parking Rate	No. Spaces Required
Place of Assembly	70 additional patrons	0.3 spaces to each patron permitted	21 spaces

It can be seen that the increase of 70 patrons triggers a requirement for 21 additional car spaces. No additional on-site car parking is proposed and hence approval is sought for a reduction of the requirement.

4.2 CAR PARKING DEMAND ASSESSMENT

Clause 52.06 of the East Gippsland Planning Scheme allows for the statutory car parking provision to be reduced (including to zero) subject to the provision of a Car Parking Demand Assessment.

The Car Parking Demand Assessment must assess the car parking demands likely to be generated by the proposal with regards to, amongst others:

- An empirical assessment or case study.

In order to determine the anticipated car parking demands associated with the proposal, case study data has been reviewed for the Gisborne Peak Winery, which is located at 69 Short Road, Gisborne.

Gisborne Peak Winery is located 45 minutes from Melbourne and currently operates as a winery, inclusive of cellar door sales and serving of food. The current liquor license authorizes the supply of beer and wine for consumption on the licensed premises on:

- Sunday, Good Friday and Anzac Day between 10:00am and 11:00pm; and
- Any other day between 7:00am and 11:00pm.

All car parking is informally provided, with angled car parking at the front of the property accommodating approximately 22 spaces.

The winery is open 7 days a week, though has minimal activity on weekdays. It is understood that Sunday is generally the busiest day for the winery. To this end, light entertainment is provided on most Sundays to compliment the selling of alcohol and the serving of light meals (wood fired pizza/tasting plates).

A site inspection and review of the existing operation was undertaken on Sunday 20 May 2012, between 12 noon and 2:30pm. During this time, the maximum number of people on-site was 87, inclusive of staff. 13 people, of the 87, arrived by bus, indicating that 73 people either drove to the site or were a passenger. At the peak time, there were 27 vehicles parked on-site, which equates to a car parking demand of 0.31 spaces per person. This applies only to typical cellar door activities.

4.3 ADEQUACY OF PARKING PROVISION

SALT has been advised that during 'typical' operation it would be anticipated that patron numbers can be anywhere between 0 – 100 people over the course of a day, but generally only 5 – 40 patrons in the cellar door area at any one time. Application of the empirical rate of 0.31 spaces per patron would result in a typical parking demand of up to 12 parking spaces. For private functions, adoption of the 'Place of Assembly' rate (0.30 spaces per patron) to the existing permitted no. of patrons (30) equates to a demand of 9 spaces. Therefore, the total peak parking demand under the approved Planning Permit is $12 + 9 = 21$ spaces.

With the proposed amendments to the Planning Permit, seeking approval for private functions catering to a maximum of 100 patrons, the parking requirement is 21 additional spaces. Therefore, the total amount of parking required is $21 + 21 = 42$ spaces. This conservatively assumes that private functions take place at the same time as cellar door activities.

A parking area catering to 30 car parking spaces is provided on-site, plus a disabled space adjacent the building (31 spaces in total). **Therefore, at the absolute peak time up to 11 additional cars would need to be accommodated.**

Overflow parking demands can be adequately accommodated within the grassed area adjacent the gravel car park (approx. 20 spaces) or along one side of the accessway leading up to the winery (approx. 20 spaces to the T-intersection, and significantly more spaces between this intersection and Wy Yung-Calulu Road).

Furthermore, it should be noted that the parking demands mentioned above assume both the winery cellar door and private functions occur at the same time. While this is a possibility, it largely depends on the type of function and the time at which it is booked. For the most part, it is considered unlikely that such events will occur concurrently and, as such, the current on-site provision of 31 formal parking spaces is considered appropriate for the expected parking demand.

5 TRAFFIC CONSIDERATIONS

5.1 TRAFFIC GENERATION

5.1.1 WINERY (CELLAR DOOR)

A review of case study data held by SALT and other traffic consultancies indicates that wineries typically generate low volumes of vehicle movements with peak activities occurring around 12:00 noon on Sunday and, to a lesser degree, Saturdays.

During the weekdays the traffic volumes associated with wineries are generally 60% or less than that experienced on a Sunday (this is a direct result of less people visiting wineries on weekdays).

In order to allow a conservative assessment on the "typical" peak vehicle movements associated with the proposal, it will be adopted that all patrons arrive and depart in the same peak hour. In practice this is very unlikely to occur.

Allowing for up to 40 people on site during 'typical' peak operation and allowing for an average vehicle occupancy of 2 people per vehicle, the cellar door could generate up to 20 trips inbound and 20 trips outbound during the peak period on a Sunday.

5.1.2 FUNCTIONS

During functions it is anticipated that events will generally be held for several or more hours and, as such, the absolute peak traffic volumes will be associated with people arriving over the course of one hour (or more) and departing after the function a number of hour/s later.

Allowing for up to 100 people on site during 'functions' and assuming an average vehicle occupancy of 3 people per vehicle, the proposal could generate up to 33 trips inbound in the first hour and 33 trips outbound after the functions.

For analysis purposes only, it will be adopted that the proposal generates 53 vehicle movements inbound at the start of the function and 53 movements outbound at the end of the function. This is *very conservative* as it assumes the function peak hours occur at exactly the same time as the cellar door peak hours.

5.2 TRAFFIC DISTRIBUTION

The distribution of traffic onto the road network from the winery will be dependent on a number of factors, including:

- The purpose of the trip;
- Access points available to the surrounding arterial network; and
- Likely trip destination.

In consideration of the existing road network and the location of the Bairnsdale township to the east, it is estimated that 90% of trips are to/from the east and 10% of trips are to/from the west.

Based on the preceding, the anticipated development traffic volumes have been distributed through the Wy Yung-Calulu Road/Site access intersection as shown in **Figure 6**.

It is noted this is a conservative assessment as no allowance has been made for diverted trips. Diverted trips are vehicles already travelling along Calulu Road that decide to divert into the winery rather than travel specifically to the site.

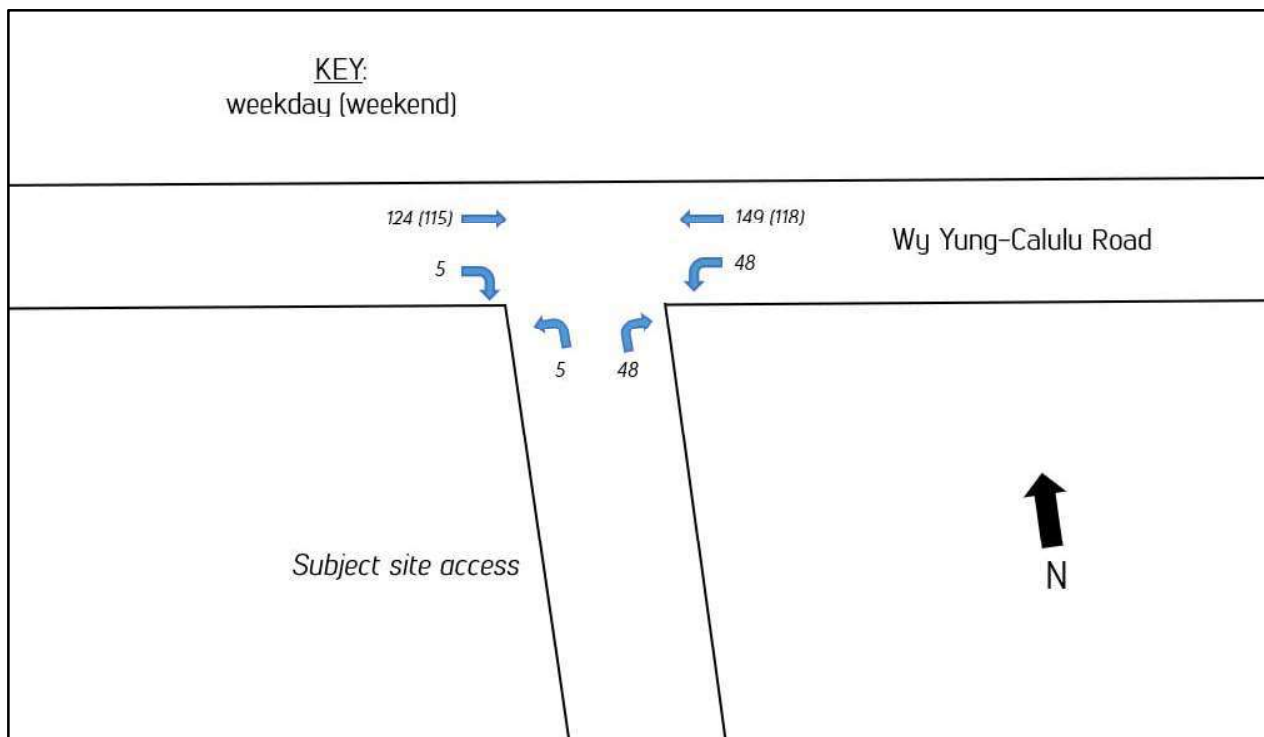


Figure 6 Post development traffic volumes

5.3 TRAFFIC IMPACTS

The above traffic distribution shows that the proposal will yield no more than approximately 1 vehicle every 1.3 minutes for the left turns into the site and right turns out of the site. Furthermore, it also depicts the existing through traffic on Wy Yung-Calulu Road during the weekday and weekend peak hours, equating to approximately 4.6 vehicles every minute over both directions.

This is very low in traffic engineering terms and indicates that delays will be minimal. The traffic generated by the proposed development would have negligible adverse impact on the safety and operation of Wy Yung-Calulu Road and the surrounding road network.

6 DESIGN CONSIDERATIONS

6.1 EXISTING 3.5M WIDE GRAVEL CARRIAGEWAY

The Australian Road Research Board (ARRB) published the Unsealed Roads Manual– Guidelines to Good Practice in March 2009 (to provide Local Government Agencies, State Road Authorities and other agencies responsible for the management of unsealed roads with guidelines on ways to better manage these roads, and to achieve cost-effective outcomes.

Conservatively assuming two functions per day each with 100 people, and a maximum of 100 patrons attending the cellar door on the same day, this equates to 232 daily vehicle trips (based on the traffic generation rates outlined in **Section 5.1**). Adding in staff and miscellaneous trips, the likely peak daily figure is less than 300 trips (two-way).

Significantly less traffic is expected on weekdays and typical weekends when functions are not held.

A review of the Unsealed Roads Manual indicates that a constructed gravel carriageway is adequate for roadways carrying up to 500 vehicle movements per day.

The provision of a 3.5m wide carriageway will adequately accommodate access to and from the proposal as well as the adjacent rural allotments.

Should vehicles need to pass, they can do so off to the side of the carriageway. However, passing events are expected to be infrequent given that traffic attending a function will all be travelling in one direction at the start and finish of the event.

6.2 AUXILIARY LANES

The warrants for intersection turn treatments on major roads at unsignalized intersections are detailed within the Austroads Guide to Road Design Part 4A: Unsignalised and Signalised Intersections.

Given that Wy Yung-Calulu Road has an 85th percentile speed of 76.9km/h within the vicinity of the subject site, the warrants and anticipated traffic volumes are illustrated in **Figure 7**.

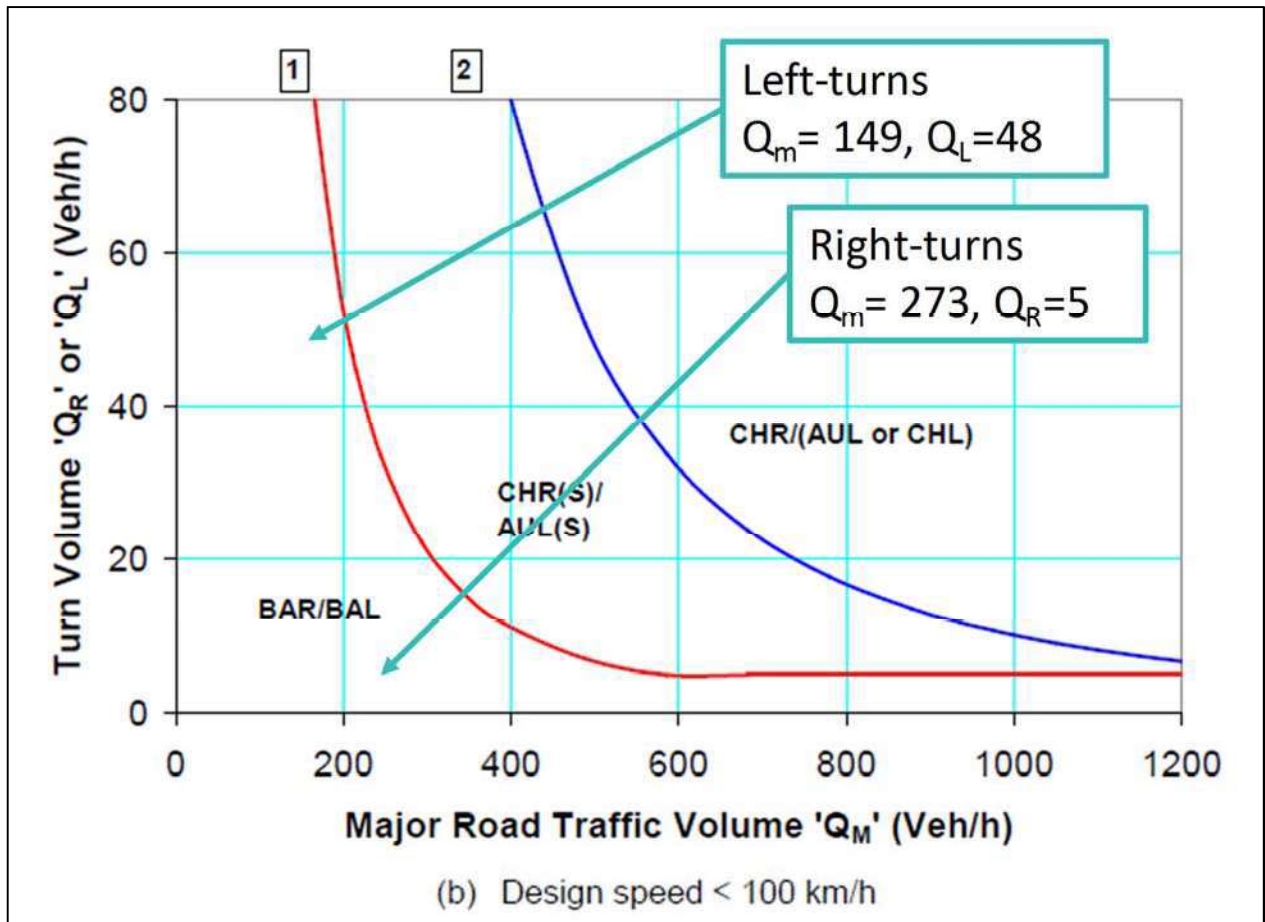


Figure 7 Turn Lane Warrants

A BAR treatment is defined as a widened shoulder on the major road that allows through vehicles, having slowed, to pass to the left of right-turning vehicles. Similarly, a BAL treatment is defined as a widened shoulder, which assists turning vehicles to move further off the through carriageway, making it easier for through vehicles to pass.

It is noted that the Austroads Guide stipulates a minimum requirement of a widened shoulder, irrespective of how low traffic volumes may be. In practice, there are many intersections where a widened shoulder is neither provided nor warranted.

While not required as a result of this proposal, the existing accessway incorporates a gravel shoulder to assist vehicles turning left from Calulu Road. There is no treatment provided for right-turning vehicles. However, it should be noted that a peak of only 5 right-turning vehicles is anticipated (i.e. negligible), and the assessment conservatively assumes **maximum road volumes** concurrent with the winery operating at **peak capacity**. The probability of the winery operating at maximum capacity (inclusive of functions) is minimal, with the probability of this occurring during the absolute peak hour road volumes being even less. This is largely attributed to the maximum road volumes occurring midweek, with the maximum winery related traffic volumes most likely occurring over the end of the week/weekend.

As such, the current access arrangements are considered satisfactory for the proposed use.

7 CONCLUSION

Based on the preceding assessment to amend the planning permit conditions associated with the existing Lightfoot & Sons Winery at 717 Wy Yung-Calulu Road, Calulu, it is concluded the proposal is appropriate from a traffic engineering perspective.

The analysis of the proposal is summarised as follows:

- The Planning Permit amendment will alter the conditions as follows:
 - Condition 10) Allow for up to 12 private functions per year, catering for up to 100 guests; and
 - Condition 12) Allow for private functions to operate anytime between 7:00am – 11:00pm
- The proposal will result in a **maximum** on-site parking demand for 42 parking spaces, assuming a private function of 100 patrons occurs simultaneously with the 'typical' peak cellar door patronage. While the on-site carpark currently provided 31 formal parking bays, there is approximately 40 available 'overflow' parking opportunities on-site;
- The proposal will result in a **maximum** traffic generation of 53 inbound and 53 outbound movements during the peak hours, however, this is quite a conservative assumption as it assumes the cellar door activities and function centre activities peak at exactly the same time. While patrons attending the site for private functions (33 *movements in or out*) may arrive within an hour, departure of the site may be somewhat 'staggered', with the 33 outbound movements occurring over the course of several hours, leading to a reduced outbound 'peak'; and
- The existing intersection with Wy Yung-Calulu Road will adequately accommodate the additional traffic volumes and no upgrade of this intersection is necessary.

Subsequently, it is considered there is no parking or traffic reason to inhibit the granting of an amended planning permit.

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MELBOURNE Level 3/51 Queen Street, Melbourne VIC 3000
+61 3 9020 4225

SYDNEY Level 17/40 Mount Street, North Sydney NSW 2060
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Lightfoot & Sons Wines.

A report on compliance with
EPA Noise Regulations and Guidelines of
functions proposed to be held at the Lightfoot & Sons Winery,
717 Wy Yung-Calulu Rd, Calulu VIC 3875
June, 2019.

Report Number CGC1901.

Prepared by C. G. Consulting Pty. Ltd.,
10 Tambo Bvd. Metung, Vic., 3904.
Mob. 0419-875-588
E-mail: cgconsulting@bigpond.com

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**** The conclusions and recommendations contained in this report are made subject to the limitations expressed in the Discussion section.

The accuracy and validity of the measurements taken by C. G. Consulting Pty. Ltd. for this report are certified by:

John Mayman. M. I. E. (Aust.)
Director.

Introduction.

Lightfoot & Sons Wines, 717 Wy Yung-Calulu Rd, Calulu propose to use their existing premises as a venue for functions.

It is envisaged that the functions will mainly be wedding receptions, expected to be on Saturdays, any time from around midday until 11:00pm. It is highly unlikely that more than one event will be held in any given week.

In support of their proposal, C. G. Consulting was engaged to provide a report on the compliance of these functions with applicable EPA noise Regulations and Guidelines.

Because amplified music, either recorded or live, will be produced in conjunction with the functions, an assessment according to State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 is required. Compliance with SEPP N-2 is a statutory requirement throughout Victoria.

The music will be produced inside the “Barrel Room”, so the assessment is of an ‘Indoor Venue’.

In the case of one event per week, SEPP N-2 defines the “Night” period as commencing at midnight on Friday and Saturday, 2200 on Sunday and 2300 on other nights.

In the case of two or three events per week, the ‘Night’ period commences at 2300 on Thursday, Friday and Saturday and 2200 on Sunday and other nights.

SEPP N-2 may be used for the assessment of “...noise from human voices...that are associated with the music sources.” However SEPP N-2 explicitly “...does not prescribe noise limits for noise associated with the arrival and departure of people attending the premises.”

Noise associated with the arrival and departure of people attending the premises will be assessed under Publication 1411 – Noise from Industry in Regional Victoria (NIRV). It should be noted that this is a Guideline and compliance with it is enforceable only if it is specified by some statutory instrument, such as a Planning Permit.

EPA 1411 imposes the ‘Evening’ noise limit from 1:00pm and the ‘Night’ noise limit from 6:00pm on Saturday. The ‘Evening’ limit is imposed all day Sunday, until the ‘Night’ limit comes into force at 6:00pm.

The assessment procedure specified for the ‘Night’ period by SEPP N-2 uses measurement of noise in individual octave bands, which can take account of the frequency dependant nature of hearing sensitivity. Although the proposed functions will take place in the “Day/Evening” period, background noise after 2200 was recorded in octave bands and this assessment procedure is also used in the unlikely event that a function is held on a Sunday, or in the highly unlikely event that more than one function ever occurs in one week and on other than Thursday, Friday or Saturday nights.

Objectives.

The objectives of this assessment are as follows:

- To establish the 'Zone levels' – the maximum noise level permitted by NIRV.
- To measure the background L_{A90} levels in order to determine whether the 'Zone levels' are applicable. Note that under NIRV a high background noise level will increase the Noise Limit, but a low background does not lower it. That is, the 'Zone levels' are the lowest Noise Limit applicable under NIRV. The background L_{A90} levels are also used to establish the Music Noise Limit for the 'Day/Evening' period of SEPP N-2.
- To measure the background L_{oct90} levels to establish the octave band limits for the 'Night' period of SEPP N-2.
- To establish a reasonable maximum music noise level at the function site.
- To calculate the noise reduction due to the considerable distance to the noise sensitive site and due to the barrier caused by the intervening topography (hill) and compare the resulting music noise arriving at the dwelling with the Evening and Night Noise Limits applicable under NIRV and with the Day/Evening Limits of SEPP N-2.
- To establish reasonable levels of drive-by noise of vehicles using the Lightfoot & Sons Wines drive.
- To calculate the noise reduction due to the distance from the drive to the noise sensitive site and compare the resulting noise arriving at the dwelling with the Evening and Night Noise Limits applicable under NIRV and determine what additional measures, if any, need to be taken to reduce it.
- To determine the SEPP N-2 Night octave-band Noise Limits from the background octave-band levels. From these Limits, to calculate the maximum noise leaving the function centre and determine what additional measures, if any, need to be taken to reduce it.

Conclusion.

The music noise produced by functions at the Lightfoot and Sons Winery will comply with the requirements of State Environment Protection Policy No. N-2 and EPA Publication 1411 (NIRV) by such significant margins that the music noise can be regarded as inaudible at the Noise Sensitive Site.

The noise caused by patrons arriving and departing the venue will comply with EPA Publication 1411 (NIRV) by a comfortable margin.

The details of assessments according to Publication 1411 (NIRV) and SEPP N-1 are presented below.

Assessment to NIRV.

Both the location of the proposed functions and the Noise Sensitive Site are zoned 'Farming Zone', with no intervening zone. The Zone Levels specified by NIRV are therefore:

Day, 46 dB(A), Evening, 41 dB(A), Night, 36 dB(A).

The background noise was measured on six evenings over an eleven day period. None of these measurements, when increased by the 5 dB specified by NIRV, were above the Zone Levels, so the Zone Levels apply.

The '**Evening**' Noise Limit remains in accordance with NIRV at the Zone Level, **41 dB(A)**.

The '**Night**' Noise Limit remains in accordance with NIRV at the Zone Level, **36 dB(A)**.

The nearest the Lightfoot drive comes to the Noise Sensitive Site is 285 metres, providing an attenuation due to distance of 35.1 dB.

The drive-by noise of a Nissan X-Trail AWD wagon was measured at a distance of 5 metres and at a range of speeds up to 50 kph. A maximum noise level of 67.4 dB(A) was measured at both 40 and 50 kph. The drive-by noise of a patron's vehicle was also measured, at 57.2 dB(A).

From the simulation, the maximum drive-by noise reaching the dwelling will be **32.3 dB(A)**, which is **3.7 dB below the NIRV Noise Limit for the 'Night' period**.

Perhaps a more realistic indication would be that of the actual patron's vehicle, which would produce a noise at the dwelling of **22.1 dB(A)**, **13.9 dB below the NIRV Noise Limit for the 'Night' period**.

Compliance with the requirements of EPA Publication 1411, Noise from Industry in Regional Victoria is assured

Assessment to SEPP N-2.

For the purpose of this assessment the maximum music noise level at the doors of the barrel room is taken to be: **90 dB(A)**.

The distance of 775 metres to the Noise Sensitive Site provides noise attenuation of **57.8 dB**.

The topographical shielding provided by the intervening hill increases with frequency, but at the lowest octave band controlled by SEPP N-2 it is **11.1 dB**.

The Day/Evening Noise Limit under SEPP N-2 varies according to the Background level at that time and is defined as (Background $L_{A90} + 5$ dB), down to a minimum of **32 dB(A)**, which is the Day/Evening Base Noise Limit. For all measurements the Background $L_{A90} + 5$ dB was less than the base noise limit, so, **the SEPP N-2 Day/Evening Noise Limit is 32 dB(A)**.

Due to the attenuations cited above, the music noise reaching the Noise Sensitive Site will be somewhat **less than 21.2 dB(A)**, which is at least **10.8 dB below the SEPP N-2 Base Noise Limit**.

It is also 3.6 dB below the notional level of the actual Background $L_{A90} + 5$ dB.

During the ‘Night’ period the octave band noise limits are as given in the table below:

Octave Band (Hz)	63	125	250	500	1k	2k	4k
SEPP N-2 Limit (dB)	40	32	20	22	20	16	17

Note that the octave band levels are linear, that is without A-weighting.

From these Limits, applying A-weighting and a 6 dB margin to ensure compliance in operation, the maximum music noise level at the doors of the barrel room could be as high as **102 dB(A)** **and still comply with the SEPP N-2 ‘Night’ Noise Limits with a 6 dB margin.**

Compliance with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 is assured.

A summary of results from the assessments appears in Appendix A.

Summary of Recommendations.

The separation and topography ensure that the music noise produced by functions at the Lightfoot and Sons Winery will not be intrusive at the Noise Sensitive Site. No additional precautions are necessary.

The vehicle noise produced by patrons arriving and departing will comply with the only guidelines available for assessment. It is highly unlikely that, on the gravel driveway and particularly at night, patrons will exceed the speeds used to measure pass-by noise in the assessment. In fact the one patron vehicle measured produced substantially less noise than the test vehicle. However it may be beneficial to install speed restriction signs advising a maximum speed of, say, 40 kph. This will also help reduce dust.

Management policies and practices should be put in place to monitor and control the behaviour and noise of patrons in the carpark, particularly during the ‘Night’ period, although such behaviour would have to be raucous in the extreme to add significantly to the venue noise level taken for this assessment.

Discussion.

Noise attenuation and directivity of the source away from the Noise Sensitive Site due to the construction of the barrel room has not been taken into account, but will undoubtedly be of significant benefit in reducing music noise at the Noise Sensitive Site even further.

The assessment according to SEPP N-2 assumes a maximum music noise level of 90 dB(A).

It should be noted that this level of music noise would be judged uncomfortably loud by the majority of guests at a wedding reception and is unlikely to be experienced, much less exceeded.

Any plant and equipment, such as refrigeration and air conditioning or ventilation plant that may be operating will produce noise levels well below this and will have no influence on the noise level reaching the Noise Sensitive Site.

The drive-by noise measurements suggest that the noise does not increase markedly with vehicle speed – same maximum level at both 40 and 50 kph.

NIRV explicitly does not prescribe noise limits for “... noise from non-commercial vehicles...”, but the noise made by patrons’ motor vehicles arriving and departing has been assessed using the NIRV limits on the basis that a noise level that is compliant on a continuing basis should also be acceptable for briefer periods.

Limitations.

The assessments were made under excellent weather conditions, with very little breeze (less than 5 kph), fine and dry. The data taken is representative of normal calm conditions. There may be rare occasions when the background noise could be lower. However not only is it impractical to delay the assessment indefinitely, waiting for such weather conditions to occur, it is unreasonable to require compliance with conditions that may be experienced as infrequently as once a month, or less.

As with any activity that has the potential to generate intrusive noise, willingness on the part of the Operator to implement and police these recommendations is essential if compliance is to be achieved and maintained.

Testing.

Noise measurements were taken on the evenings of 12th, 17th, 18th, 19th, 22nd and 23rd of May 2019.

The microphone was located at a height of 1.5 metres. In all cases the microphone was mounted in the open with no sound-reflecting objects nearby and with nothing other than the topography and the vegetation screening the noise from the surroundings.

Measurements were taken between 1800 and 2300, in fine, dry weather conditions with a breeze of less than 5kph.

Selection of Measurement Points.

The 'Noise Sensitive Site' is at 713 Wy Yung-Calulu Rd, Calulu. It is a distance of 775 metres from the site where the proposed functions will be held.

In accordance with NIRV and SEPP N-2, measurements were taken at a 'Derived Point' selected to best represent the background noise arriving at the dwelling. The Derived Point was on the Lightfoot & Sons Wines property, set back from the Wy Yung-Calulu Rd. the same distance as the noise sensitive dwelling.

Procedure.

Measurements were made in accordance with: Australian Standard AS 1055 – Description and Measurement of Environmental Noise; and State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 and EPA Publication 1411, Noise from Industry in Regional Victoria.

The sound level meter was calibrated immediately before and after all measurements.

The measurements of all statistical levels were obtained directly from the B&K Type 2260 sound analyser.

Equipment.

Bruel & Kjaer Modular Precision Sound Analyser Type 2260.

Serial No. 2320959. Last calibration December 2017. Laboratory.

Bruel & Kjaer Sound Calibrator Type 4231.

Serial No. 3007645. Last calibration December 2017. Laboratory.

Appendix A.

Average of the half-hourly L_{A90} measurements, 1800 to 2300.

Date	12-May	17-May	18-May	19-May	22-May	23-May
Avg L_{A90}	18.0	20.6	20.4	18.6	19.4	21.5
$L_{A90} +5$	23.0	25.6	25.4	23.6	24.4	26.5

All the background-based noise limits are below the SEPP N-2 base noise limit, so the **Day/Evening Noise Limit is the SEPP N-2 Base Noise Limit of 32 dB(A).**

Average of the half-hourly L_{Loc90} measurements, 2200 to 2300.

Date	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz
12-May	25.0	20.0	8.5	10.0	8.5	8.5	9.0
17-May	33.5	25.5	13.0	13.5	13.0	8.5	9.0
18-May	34.5	27.5	13.0	14.5	13.0	8.0	9.0
19-May	30.0	26.0	19.5	9.0	12.5	10.5	8.0
22-May	33.0	25.5	12.5	13.5	13.0	8.0	9.0
23-May	32.5	26.5	18.5	18.5	14.0	9.0	10.0

Octave Noise Limits.

	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz
Average octave level	30.8	24.1	12.4	13.8	12.0	8.3	9.2
SEPP N-2 octave limit	38.8	32.1	20.4	21.8	20.0	16.3	17.2
SEPP N-2 base limit	40	30	20	20	15	10	10
Applicable limit	40	32	20	22	20	16	17



Brian Lightfoot
Wy Yung Calulu Rd.
Calulu
VIC 3875

21st March 2016.

Dear Brian,

**RE: Calculation of Maximum Patron Numbers – Liquor Licence Application for
Lightfoot Winery Wyung-Calulu Rd. Calulu.**

I refer to your request for a calculation of the maximum patron number for the internal & external areas of these premises.

Based on the plan provided by Lightfoot Winery, and using the Department of Justice-Liquor Licensing ratio of (1) patron per 0.75 squares metres for the area available to the public, the following calculation is now provided.

Internal Area Ground Floor & Cellar (within red line)	462sqm.
<u>Internal area, less kitchen, toilet, and circulation space is,</u>	<u>82sqm.</u>
Area total available for patrons,	380sqm.

Therefore 380sq m. @Liquor Licensing ratio of .75 square metres per person

Total Internal Patrons = 506 Patrons.

External areas both levels (within red line) equals	195 sq. metres
<u>Less Circulation space</u>	<u>30sq. metres</u>
Area available to patrons	165 sq metres

Therefore 165sq. m @ liquor licensing ratio of .75 sq. m per person.

Total Exterior Patrons = 220 Patrons.

Occupancy Numbers.

Occupancy permit has not been issued at this stage so numbers based upon the provisions of the National Construction Code of Australia 2016 Vol.1,D 1.13 and the building Act 1993 cannot be provided.

Sanitary Facilities.

Refer to Table F 2.2 and F2.3 of the National Construction Code.

One Unisex toilet can be counted once for each sex, therefore
for males allows a maximum of 50
and for females allows for a maximum of 25

A separate toilet has been designated for Female use therefore 25 females

Therefore the total toilet provisions caters for a maximum of 100 persons.

We hope that this report satisfies the requests of the Victorian Commission for Gambling and Liquor Regulation.

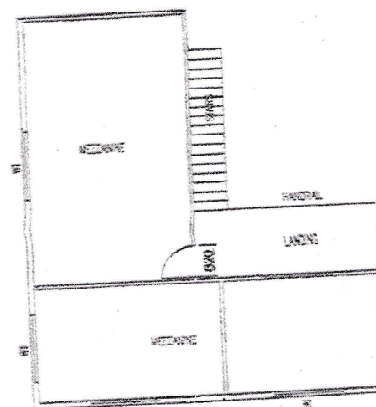
Yours sincerely

A handwritten signature in black ink, appearing to read 'Malcolm Findlay', with a stylized, cursive script.

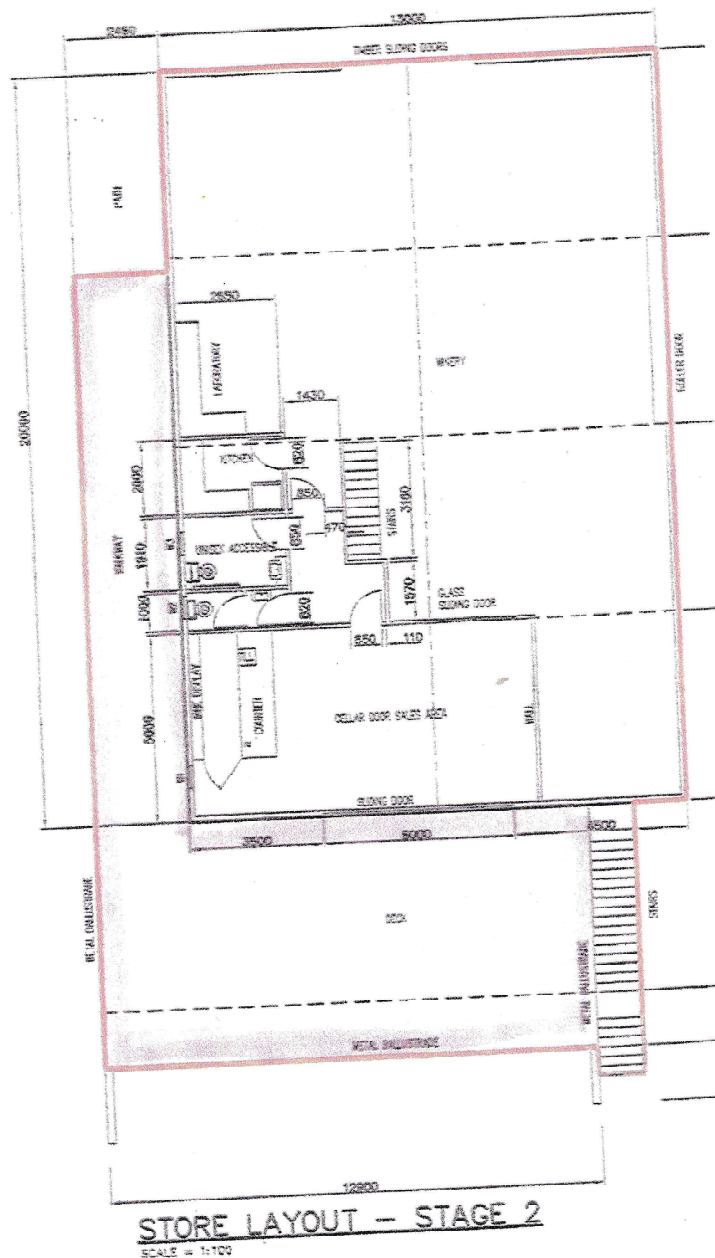
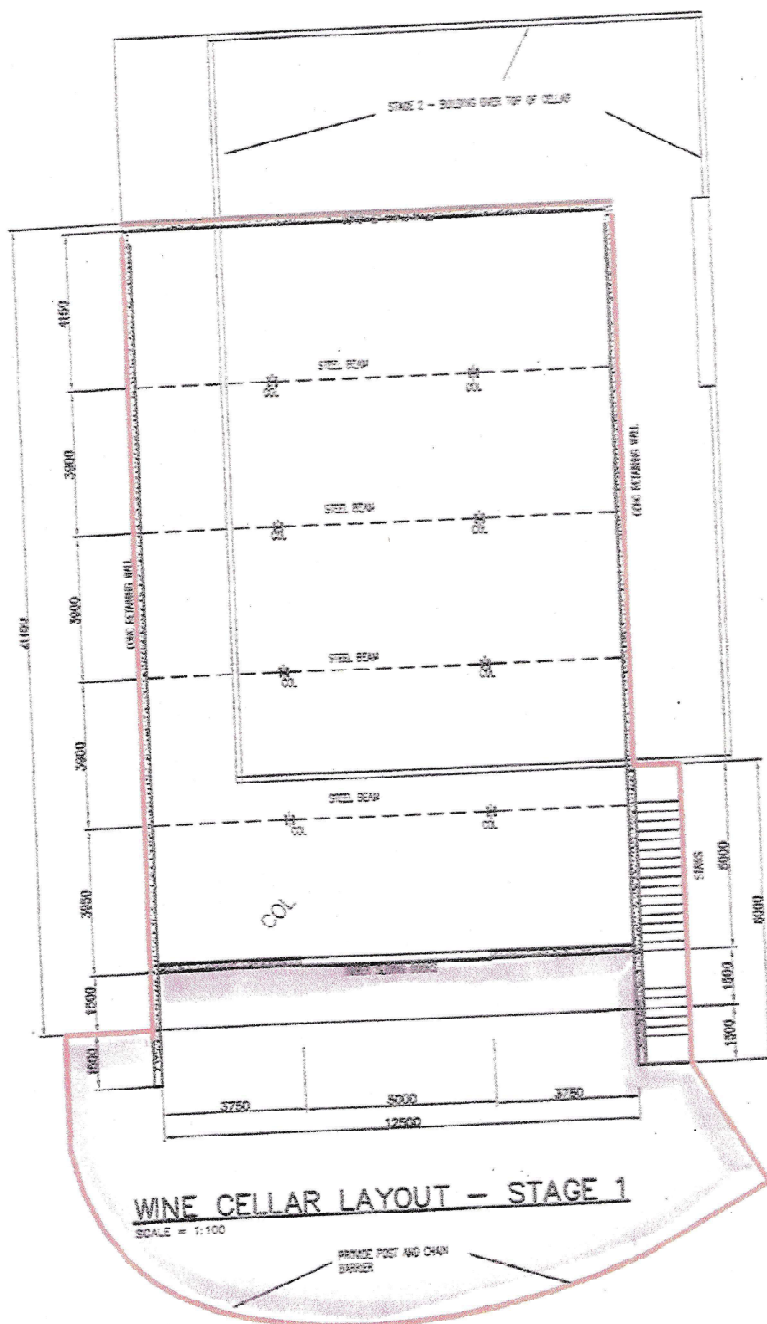
Malcolm Findlay
BS-L 33560
IN -U 1605

NOT TO BE USED FOR CONSTRUCTION PURPOSES

STAGE 2
TIME SALES / STORE FLOOR
AREA = 250 SQ



SCALE = 1:700



= EXTERNAL AREAS.

PTY. LTD. Civil Engineers Telephone: 03 51632833 Facsimile: 03 51632848 E-mail: gah@netpac.com.net.au	Designed by	GAH	Client LIGHTFOOT & SONS G.A. Hutchison Draftsperson: DP-AD 1246 Civil Engineer: EC1114	Project PROPOSED WINE CELLAR LOT 2 WY YUNG CALULU RD CALULU	AS NOTED			
	Drawn by	GAH			Job No.	1063420		
	Checked by				Drawing No.	A2	Rev.	D
	Date	7/1/15						

Our ref: 18400

7 October 2019

152 Macleod St.
PO Box 722,
Bairnsdale, VIC 3875P: 5152 5011
F: 5152 5705

E: contact@crowthersadler.com.au

Senior Land Use Planner
East Gippsland Shire Council
Via email: planning@egipps.vic.gov.au

Attention: Mr. Martin Ireland

Dear Martin,

**Re: Application to Amend a Planning Permit
Planning Permit 335/2012/P/B
717 Wy Yung-Calulu Road, Calulu**

Further to the Planning Consultation Meeting of 16 September 2019, we are pleased to provide further information in response to queries raised with respect to the ability to hold private functions as an ancillary activity associated with the use of the land as a Winery.

Planning Permit 335/2012/P always allowed private functions as a component of the overall use of the site as a Winery which, at the time the Permit was originally issued, was a Permit required use. The subsequent amendment of the Planning Permit (335/2012/P/A) did not dilute this ancillary activity in any way.

The existing Planning Permit allows for two private function to be held per year. By virtue of this provision, Council is acknowledging that private functions are indeed ancillary to the dominant use of Winery. Had Council held the view that holding private functions may only occur within a Function Centre, then they would have required the description of what the permit allows to specifically include Function Centre. The fact the original Planning Permit, inclusive of provision for private functions, was upheld by VCAT¹ supports the consideration of private functions as ancillary activities, with (now Senior) Member Martin acknowledging the benefits associated with an additional tourist offering, consistent with State Policy objectives.

The use of the Winery facilities for private functions is an ancillary activity grown out of and developed as an offshoot of the primary use, intended to enhance it as established by (then) Member Gibson in *Pacific Seven Pty Ltd v Knox CC*²:

"It has always been recognised that land may be used for more than one use. Land can also be used for more than one activity. However, not all activities constitute separate uses in their own right. Sometimes activities will be ancillary or incidental to the primary use of the property, in which case they will not constitute a separate use but are considered to be part and parcel of the primary use. Whilst these are commonly termed "ancillary uses", the word "use" in this context is a misnomer. They are really activities which are an ancillary part of the primary use."

¹ Clancy v East Gippsland SC & Anor [2013] VCAT 1221

² Pacific Seven Pty Ltd v Knox CC (1993) 11 AATR 325, p.329.



This 'test' of ancillary uses was relied upon by Members Cook and Glynn in *Gjergja v Mornington Peninsula SC*³ in determining associations between a primary Winery use and other ancillary activities, where such activities were found to be inextricably linked to the primary use.

Parallels between the *Gjergja* decision and the subject Application are numerous, given any private functions held onsite are entirely dependent upon the facilities at the Winery. There are no separate rooms, bathrooms, kitchen, pavilions or decks available that do not form part of the day to day operation of the Winery. No separate office or management is required for private functions, with bookings to be made directly through the Winery. Activities are limited to a single building (excluding machinery shed and storage), reliant upon a single amenities area, accessed by a single driveway and have one car parking area.

In the event the Winery did not exist, there would be no basis upon which to hold any private functions on the site. The hosting of private functions is undoubtedly secondary to the real and substantive purpose of the use, being Winery.

In *Cascone v Whittlesea*⁴, Ashley J establishes a set of six tests to assist with the characterisation of use, with the fifth test considered to provide guidance in the assessment of a Planning Application:

"The ascertainment of a purpose of a proposed use may yield the result that more than one separate and distinct purpose is revealed. In that even the question initially arises whether one is dominant. The further question that may arise is whether the lesser purpose or purposes are ancillary to the dominant purpose. If the answer to both questions is 'yes', and the dominant purpose is available as or right or is permitted, the lesser purpose or purposes are legitimised" (p.190).

The *Cascone* decision is relied upon by Deputy President Gibson in *Azzure v Mornington Peninsula SC*⁵, emphasising the importance of acknowledging the real and substantive purpose of a use.

We dispute suggestions made by a number of Objectors that the holding of private functions constitutes a Function Centre. Private functions are able to be deemed ancillary for a Winery, as established by Member Nelthorpe in *Morphett v Baw Baw SC*⁶:

"I understand the respondent hopes to attract private functions, yet I perceive this as an ancillary, rather than primary, activity. This does not make it a Function Centre because many hospitality businesses run private functions if and when sought."

Our position remains that the real and substantive purpose of the use of the subject land is a Winery, and that holding up to twelve private functions per year is ancillary to the dominant purpose.

³ *Gjergja v Mornington Peninsula SC* [2010] VCAT 298

⁴ *Cascone & Anor v City of Whittlesea* (1993) 11 AATR 175

⁵ *Azzure Investment Group Pty Ltd v Mornington Peninsula SC* [2010] VCAT 860

⁶ *Morphett v Baw SC* [2016] VCAT 2158, para. 31.

This is well supported by the findings of Glass J.A. in the landmark case of *Foodbarn v Solicitor General*⁷:

“It may be deduced that where a part of the premises is used for a purpose which is subordinate to the purpose which inspires the use of another part, it is legitimate to disregard the former and to treat the dominant purpose as that for which the whole is being used..... both relate to the whole and not to separate parts” (p.161).

“...where premises are used for two purposes, that which is not dominant is for planning purposes to be disregarded” (p.160).

We believe there is sound legal precedent supporting our position that the private function activity is ancillary to the approved Winery use.

Information available to Council in considering the proposed amendment is far greater than that provided with the previous request to amend the Planning Permit, subsequently reviewed by VCAT in 2016⁸. In forming her decision, Senior Member Rickards commented on the “*very scant information regarding the proposed operation of the private functions*” (p.7). The current proposal has evolved substantially since this earlier review, now some three years ago.

It is our position that the subject Application represents a quantum leap in terms of the information available to Council in determining this matter, by way of the following:

- The operation of the Winery is now a known quantity, with established expectations with respect to the number of persons, the times such persons are likely to visit the site, and how the facility is used and enjoyed;
- Our written submission to Council dated 25 June 2019 provided information on the proposal operation of the private functions, including the proposed location of any functions, and patron capacity informed by a Maximum Patron Capacity Report;
- The Acoustic Report prepared by CG Consulting Pty. Ltd. confirms there will be no detrimental impacts on adjoining properties arising from the proposal with respect to noise;
- The Traffic Impact Assessment Report prepared by SALT³ has reviewed internal and external traffic movements for existing and proposed conditions and concluded the proposal is appropriate from a traffic engineering perspective; and
- Our Client’s substantial investment in an internal accessway provides for safe and functional access to the Winery without relying upon the existing carriageway easement which benefits the subject land.

⁷ *Foodbarn Pty Ltd and others v Solicitor-General* (1975) Supreme Court of New South Wales (Court of Appeal) 32 L.G.R.A. 157

⁸ *Clancy v East Gippsland SC* [2016] VCAT 880

As mentioned at the Planning Consultation Meeting by both our Client and I, we would be pleased to accept the following limitations regarding the use of the facility through Conditions on Permit with respect to the following:

- Prohibiting any future fireworks or pyrotechnic displays on the subject land; and
- Placing a cap on the number of discretionary patrons able to be accommodated on site with the prior written consent of Council. We had previously proposed a Condition that would allow more than 100 guests with the prior written consent of Council, however we would now accept a Condition that would provide for *“more than 100 guests but no more than 150 guests with the prior written consent of Council”*.

This offer is made in response to the issues raised by Objectors, and we hope goes some way towards demonstrating our Client's commitment to being good neighbours and professional operators.

We trust this information is of assistance to Council Officers in finalising their Report for Council and look forward to the matter being listed on the earliest possible Council Agenda for determination.

As always, please do not hesitate to contact our office should you have any further queries in relation to this matter.

Regards,



KATE YOUNG

335/2012/P/C – Assessment of the proposal against the East Gippsland Planning Scheme

Consideration of ‘Ancillary Use’

In April 2016, an application for review was heard by the Tribunal (P2358/2015, Senior Member Rickards). The application for review determined that an amendment should not be granted. In summary, the application for review considered the following request:

The amendments sought relate to alteration to road access; removal of vegetation in relation to road works; deleting the restriction on the number of patrons visiting the winery; change the patron number to 75 for private functions; increase the number of private functions to 24 in any one calendar year; extend the hours of cellar door trading to 8pm October – March; and increase private functions to 11pm.

At paragraphs 25 & 26, the Tribunal provides the following commentary:

- 25 *Apart from this very scant information regarding the proposed operation of the private functions there is nothing that indicates how the functions are proposed to operate; whether there are any facilities on site for food preparation, and where this might occur; whether there is proposed to be live music at any of the functions or piped music; where there is to be the potential for microphones to be used and whether this will be broadcast to various locations. No plans are provided that show that 75 patrons could be accommodated in the areas proposed.*
- 26 *The reference to the nearest dwelling is to the existing dwelling on the subject site. There is no information as to how potential noise from the functions will be prevented from impacting on Mr Clancy’s dwelling at 713 Wy Yung-Calulu Road, particularly when considered with the proposed amendments to hours of operation.*

At paragraphs 29 through 32, the Tribunal turned its mind to whether the private functions alter the use of the land.

- 29 *I was advised that the Council did not consider that the increase in patron numbers and the increase in the number of permitted private functions in any way changed the permitted use of the subject land as a winery.*
- 30 *In my view the increase in patron numbers and in particular the increase in the number of private functions from 2 per year to 24 per year changes the use from not only a winery with cellar door sales but also a Function centre/Place of assembly for which no permission for such use has been sought.*
- 31 *Under the provisions of the Farming Zone in the East Gippsland Planning Scheme a ‘Place of assembly’ is a section 2 permit required use. A ‘Place of assembly’ is defined in clause 74 of the planning scheme as ‘Land where people congregate for religious or cultural activities, entertainment, or meetings’.*
- 32 *A ‘Place of assembly’ also includes a ‘Function centre’ defined in clause 74 as ‘Land used, by arrangement, to cater for private functions, and in which food and drink may be served. It may include entertainment and dancing’.*

At paragraph 33, the Tribunal raised concerns about the lack of details and stated:

33 *The permit holder indicated they could accommodate once built at least 75 people for a function within the cellar area or on the outdoor deck area. As no plans were provided it is also possible that functions could be conducted anywhere on the subject land.'*

At paragraph 34, the Tribunal concluded its consideration of this aspect of the proposed amendment by stating:

34 *Whilst the original proposal to allow for two private functions twice a year for no more than 30 people may not have fallen within the consideration of a 'place of assembly' which does not seem to have been previously addressed in the original decision. The proposed increase in patrons from 30 to 75 with 24 private functions per calendar year, that is potentially two private functions every month, or a private function every two weeks to me falls within the planning scheme definition of a Function centre.*

Current Amendments Sought

This application seeks to make the following amendments:

- To allow up to 12 private functions per year (in lieu of the currently approved 2).
- To allow up to 100 patrons (and up to 150 with prior consent of Council) in lieu of the currently approved 30.
- To allow trading through to 11pm every day, all year (as opposed to for example 5pm between May and September as currently approved).

The application does **not** seek to amend the pre-amble, for example, to seek consent for the use of the land as a Place of assembly.

Should Officers Recommend Approving the Amendment?

The opinions expressed within a previous VCAT decision are not generally legally binding on consideration of future applications (as each decision is based on its individual merits and context). However, officers must afford significant weight to decisions where the matters being considered, and the context, are highly comparable.

In this instance, a decision, of a Senior Member, exists which not only pertains to the subject site, but also has previously considered the very matters at contest with this application – principally, do the requested amendments create an additional use on the land?

In this circumstance, the application must differ sufficiently so as to render the previous decision irrelevant, or to a point where the conclusions reached within the previous decision would no longer be reached on the facts of the current application.

The Tribunal, at paragraph 33 (quoted earlier) raised concerns at the lack of detail provided, including that the proposal did not demonstrate where the proposed private functions could be hosted. The current proposal includes detailed layout plans of the premises, including an approved red-line plan.

The Tribunal, at paragraph 34 (quoted earlier) found that 24 private functions per year, at up to 75 patrons, represented a separate use of the land as a Function centre.

The current proposal seeks 12 private functions per year, at up to 100 patrons (or 150 with consent). The current proposal seeks to increase hours, similar to the previously refused matter.

Is this a fundamental change from the circumstances considered within P2358/2015 which would render the use 'ancillary' rather than a separate use as determined by the Tribunal?

Legal Advice

The applicant sought legal advice from an experienced barrister specialising in planning law. That advice sets out relevant case law pertaining to 'ancillary uses' and why the current proposal is deemed to be consistent with those decisions. The advice details the differences between the previous proposal and how these differences have addressed the matters which resulted in a refusal being issued at the last VCAT hearing.

This advice was peer-reviewed by Council's Lawyer who, in the context of limited guidance on what constitutes 'ancillary', formed the view that between 6 and 8 events per year, at no more than 1 per month and with no more than 100 patrons per event, would most likely represent an ancillary use.

Taking into account Council's legal advice and the additional documentation supporting the proposal, the proposal is considered to be sufficiently different to that which was previously determined by the Tribunal to reasonably determine to support, subject to:

- The inclusion of conditions to limit the total number of private functions per calendar year, patron numbers per private function and private function frequency;
- The functions will be constrained within the approved red-line plan area, with live or recorded music and/or public address systems to be only used within the Wine Cellar and
- A separate road access has been constructed, along with additional vehicle parking.

On this basis, it is considered that the application can be considered.

Planning Policy Framework

Clause 13.02-1S Bushfire planning

Objective

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

Strategies

Give priority to the protection of human life by:

- *Prioritising the protection of human life over all other policy considerations.*
- *Directing population growth and development to low risk locations and ensuring the availability of, and safe access to, areas where human life can be better protected from the effects of bushfire.*

Bushfire hazard identification and assessment

Identify bushfire hazard and undertake appropriate risk assessment by:

- *Applying the best available science to identify vegetation, topographic and climatic conditions that create a bushfire hazard.*
- *Considering the best available information about bushfire hazard including the map of designated bushfire prone areas prepared under the Building Act 1993 or regulation made under that Act.*

- *Applying the Bushfire Management Overlay to areas where the extent of vegetation can create an extreme bushfire hazard.*

Use and development control in a Bushfire Prone Area

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

- *Place of assembly.*
- *Any application for development that will result in people congregating in large numbers.*

Assessment:

The site, whilst located within a Bushfire Prone Area (as defined under the Building Act 1993), is not considered high risk. The cellar door building benefits from substantial areas of defensible space, good visibility to approaching threats, a large water supply and multiple exit paths.

Clause 13.05-1S Noise abatement

Objective

To assist the control of noise effects on sensitive land uses.

Strategies

Ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area. Consider as relevant:

- *Statement Environment Protection Policy (Control of Music Noise) No. N-2.*
- *Interim Guidelines for Control of Noise from Industry in Country Victoria (EPA, 1989).*
- *A Guide to the Reduction of Traffic Noise (VicRoads 2003).*

Assessment:

A detailed Acoustic Report has been prepared which assesses expected noise generated by the proposal, and what these levels may be from nearby lots. The report confirms compliance from both venue noise (due mainly to the building within which the use is proposed and the associated topography) – based on the closest dwelling (at 713 Wy Yung-Calulu Road) and from vehicles entering and exiting (due mainly to the separation distance between the driveway and nearest dwellings). The other objectors' properties (at 815 Wy Yung-Calulu Road and 575 Wy Yung-Calulu Road) would experience even lower noise levels.

Clause 13.07-1S Land use compatibility

Objective

To safeguard community amenity whilst facilitating appropriate commercial, industrial or other uses with potential off-site effects.

Strategies

Ensure the compatibility of a use or development as appropriate to the land use functions and character of the area by:

- *Directing land uses to appropriate locations.*

- *Using a range of building design, urban design, operational and land use separation measures.*

Assessment:

The proposed private functions are intended to provide a venue which capitalises on its association with the winery and the expansive rural views. The Municipality prides itself on the natural beauty of the area, and on providing a range of experiences to residents and tourists alike.

However, commercial uses must have regard to their sensitive neighbours. In this circumstance, as touched on earlier, the combination of building siting, design and presence of topography between it and the most sensitive land users, results in a use which is unlikely, when assessed against relevant amenity guidelines, to unreasonably impact neighbours. The subject land, and all adjoining land, is zoned Farming Zone.

Clause 14.01-1R Protection of agricultural land – Gippsland

Strategy

Protect productive land and irrigation assets, including the Macalister Irrigation District, that help grow the state as an important food bowl for Australia and Asia.

Assessment:

The proposal, to increase the number and scale of private functions, and increase to trading hours of the existing cellar door, does not impact the ability of the land to continue to accommodate agriculture (winery). A key threat to the farming area includes the ongoing intrusion of dwellings not associated with farming, leading to the loss of valuable farming land, and curtailing operations due to amenity impacts.

Clause 14.01-2S Sustainable agricultural land use

Objective

To encourage sustainable agricultural land use.

Strategies

Ensure agricultural and productive rural land use activities are managed to maintain the long-term sustainable use and management of existing natural resources.

Support the development of innovative and sustainable approaches to agricultural and associated rural land use practices.

Encourage diversification and value-adding of agriculture through effective agricultural production and process, rural industry and farm-related retailing.

Assist genuine farming enterprises to embrace opportunities and adjust flexibly to market changes.

Assessment:

The proposal, to increase the number and scale of private functions, and increase to trading hours of the existing cellar door, does not impact the ability of the land to continue to accommodate agriculture (winery). The proposal diversifies the income stream to assist the on-going viability of the operation.

Clause 17.01-1R Diversified economy – Gippsland

Strategies

Support production and processing facilities that add value to local agricultural, forestry and fisheries products.

Clause 17.02-1S Business

Objective

To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.

Strategies

Plan for an adequate supply of commercial land in appropriate locations.

Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

Locate commercial facilities in existing or planned activity centres.

Assessment:

The proposal provides a commercial service, being organised functions at an existing venue within a reasonable distance of Bairnsdale. The proposal leverages off existing investments in infrastructure and facilities on the land. The proposal adds to the ongoing viability of the agricultural use being a winery.

Clause 18.02-4S Car parking

Objective

To ensure an adequate supply of car parking that is appropriately design and located.

Strategies

Allocate or require land to be set aside for car parking subject to the existing and potential modes of access including public transport, the demand for off-street car parking, road capacity and the potential for demand management of car parking.

Encourage the efficient provision of car parking by consolidating car parking facilities.

Assessment:

The subject site provides approximately 32 parking spaces in a formed parking area adjacent to the entry to the cellar door building (where both the cellar door and private functions operate). Whilst not part of this application, it is noted that due to the layout of the building, and

accessways associated with the use of the land as a winery, numerous opportunities exist for overflow parking should higher than expected parking demand occur.

A comprehensive traffic report has been included with the application, confirming that the activity is unlikely to create any off-site impacts from a car parking or traffic volume perspective. Whilst the traffic report contemplates both the cellar door and private function operating concurrently, there is no maximum patron numbers associated with the cellar door. For this reason it is considered necessary and appropriate to include a condition on any amended permit which may issue to require the cellar door to be closed whilst a private function is occurring.

Council officers have reviewed the proposal, and concur, although it is recommended that a condition be included on any amended permit which may issue requiring the first 5 metres of the crossover from Wy Yung-Calulu Road to be sealed to reduce gravel spill onto the road, and provide traction for vehicles leaving the site and turning onto the road.

Local Planning Policy Framework

Clause 21.09-3 Tourism

To development and promote East Gippsland as a major tourist destination.

Strategy 1.7

Encourage development of year-round attractions.

Strategy 1.9

Encourage tourist facilities to be designed in keeping with the quality of the landscape and environment and the character of the particular locality.

Assessment:

The proposal does not seek to undertake any new buildings or works, simply increasing the intensity of the use of the existing facilities on the land. Accordingly, the proposal is considered to be consistent with this policy, providing a destination and service attractive to locals or tourists.

Clause 21.12 Strategies for sub-regions, towns & localities

Calulu is nested under 'Agricultural Hinterland'.

Opportunities for the Agricultural Hinterland include:

- *high value of agriculture land*
- *vegetable growing*
- *dairy farming*
- *timber industry*
- *tourism.*

Constraints include:

- *high unemployment*
- *demand for rural residential development outside zoned areas.*

Strategies for the Agricultural Hinterland sub-region are:

- *protecting high quality agricultural land*

Assessment:

The proposal is not inconsistent with this policy in that it does not unreasonably impact high quality agricultural land whilst providing for increased tourism, economic opportunities, facilities for customers and on-going employment.

Planning zone

Clause 35.07 Farming Zone (schedule 2)

Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To provide for the use of land for agriculture.

To encourage the retention of productive agricultural land.

To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.

To encourage the retention of employment and population to support rural communities.

Decision guidelines

General issues

The Municipal Planning Strategy and the Planning Policy Framework.

Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.

How the use and development makes use of existing infrastructure and services.

Agricultural issues and the impacts from non-agricultural uses

Whether the use or development will support and enhance agricultural production.

Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.

The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.

Environmental issues

The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.

The impact of the use or development on the flora and fauna on the site and its surrounds.

Design and siting issues

The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.

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.

Whether the use and development will require traffic management measures.

Assessment:

The proposal is not inconsistent with the purposes of the zone which aim to ensure that farming land is retained for that purpose, any associated uses are compatible and associated with rural land uses and opportunities are introduced to support employment in the community.

The proposal makes efficient use of existing infrastructure and will not unreasonably impact the agricultural use of the land, or adjoining lots (subject to conditions prohibiting fireworks).

This policy not only requires consideration of how a use may impact other nearby lots, but also how the proposal, if approved, may affect future development of nearby lots. For example, when small lots and dwellings (not associated with farming uses) are introduced into rural areas, conflict can occur when expansions of the rural uses affect the amenity of occupiers of dwellings. It is for this reason that policy generally discourages such outcomes. In this case, the cellar door and function venue are unlikely to prejudice the ability of nearby lots to be expanded and used more intensively for agricultural uses (as envisaged by the zoning).

It is considered necessary and appropriate to include a number of conditions on any permit which may issue, including:

- Restricting music/public address associated with the private functions to within the Wine Cellar so as to minimise the transmission of noise to nearby sensitive land uses (in line with the assumptions within the Acoustic Assessment).
- A condition prohibiting the use of fireworks on the site, as these have the potential to create significant off-site impacts.
- A requirement to seal the first 5 metres of the vehicle crossover so as to reduce gravel spill and increase safety for vehicles departing the site.

Issues of building design and traffic impacts have been discussed previously.

Planning Overlays

Environmental Significance Overlay (ESO1-38)

Protects the banks of the Mitchell River and projects approximately 100m into the subject site along the south boundary, approximately 115m from the subject cellar door building. The ESO1-38 is not triggered as works are not proposed.

Environmental Significance Overlay (ESO2)

Covers a small portion in the south-west corner of the lot, 255m from the subject cellar door building. The ESO2 is not triggered as works are not proposed.

Vegetation Protection Overlay (VPO1)

VPO1 provides protection to road side vegetation and projects approximately 80m into the subject site along the north boundary, approximately 650m from the subject cellar door building. The VPO1 is not triggered as works are not proposed.

Land Subject to Inundation Overlay (LSIO)

The LSIO identifies land subject to flooding. It affects a small portion of the site, generally along the riverbank, approximately 130m from the subject cellar door building. The LSIO is not triggered as works are not proposed.

Erosion Management Overlay (EMO)

The EMO manages erosion of soil and requires consideration where cutting or filling is proposed on land. The EMO is not triggered as works are not proposed.

Particular Provisions

Car Parking Clause 52.06-2

A detailed traffic report was provided with the application, detailing likely car parking demand and associated traffic impacts on Wy Yung-Calulu Road. Officers have reviewed this document and are generally satisfied that the proposal is unlikely to create unreasonable offsite impacts. All parking can be contained on-site, and traffic counts suggest that Wy Yung-Calulu Road will remain well within its design capacity.

Officers recommend the inclusion of a condition requiring the first 5 metres of the crossover (from the paved road surface of Wy Yung-Calulu Road towards the subject site) to be sealed to minimise gravel spill onto the road, and to provide a high traction surface for vehicles departing the site onto Wy Yung-Calulu Road.

As noted earlier in this report, it is considered necessary and appropriate to include a condition on any amended permit which may issue to require the cellar door to be closed whilst a private function is operating to ensure that parking / traffic issues do not arise as a result of the intensity of the private function occurring in addition to the usual cellar door operations.

Conclusion

On balance, the application to amend the planning permit pursuant to section 72 of the Act is considered to be consistent with the objectives, policies and decision guidelines of the relevant clauses of the East Gippsland Planning Scheme and should be supported.

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION**

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2358/2015
PERMIT APPLICATION NO. 335/2012/PA

CATCHWORDS

Section 82 *Planning and Environment Act 1987* – Winery – Farming Zone - amendment to existing permit –
- change of hours of operation – change of patron numbers – change of number of functions per year –
permit required use Function Centre/Place of assembly

APPLICANT	John William Clancy
RESPONSIBLE AUTHORITY	East Gippsland Shire Council
RESPONDENT	B G Lightfoot
SUBJECT LAND	717 Wy Yung- Calulu Road, CALULU VIC 3875
WHERE HELD	Melbourne
BEFORE	Jeanette G Rickards, Senior Member
HEARING TYPE	Hearing
DATE OF HEARING	29 April 2016
DATE OF ORDER	27 May 2016
CITATION	Clancy v East Gippsland SC [2016] VCAT 880

ORDER

- 1 The decision of the responsible authority in relation to permit application no. 335/2012/PA is set aside. No amendment to the permit is granted.

**Jeanette G Rickards,
Senior Member**

APPEARANCES

For Applicant	Mr J Clancy
For Responsible Authority	Ms K Kennedy, Solicitor, Maddocks Lawyers
For Respondent	Mr B Lightfoot

INFORMATION

Description of Proposal	<p>Amendments to Permit No 335/2012/P which allows for the 'use and development of a winery, road works and removal of vegetation in accordance with endorsed plans'</p> <p>The amendments sought relate to alteration to road access; removal of vegetation in relation to road works; deleting the restriction on the number of patrons visiting the winery; change the patron number to 75 for private functions; increase the number of private functions to 24 in any one calendar year; extend the hours of cellar door trading to 8 pm October – March; and increase private functions to 11pm.</p>
Nature of Proceeding	Application under Section 82 of the <i>Planning and Environment Act</i> 1987.
Zone and Overlays	<p>Farming Zone Schedule 2 and Schedule 4</p> <p>Erosion Management Overlay</p> <p>Environmental Significance Overlay Schedules 38 and 95</p> <p>Vegetation Protection Overlay Schedule 1</p> <p>Land Subject to Inundation Overlay</p>

Permit Requirements

Clause 35.07-4 – to construct or carry out buildings and works associated with a winery a section 2 use.

Clause 42.02-2 – remove, destroy or lop any vegetation.

Clause 44.01-1 – carry out works including road works and to remove, destroy or lop vegetation.

Clause 52.06 – car parking.

Relevant Scheme policies and provisions.

Clauses 12, 14, 17, 21.02, 21.04, 21.05-2, 21.06-1, 21.09-3, 52.06, 52.17 and 65.

Land Description

The subject site has a total area of 104 hectares and contains a dwelling and outbuilding. The land is used for viticulture and is currently being developed with a winery with cellar door. Access to the subject land is via a 750 metre long carriageway easement which has an interface with 713 Wy Yung-Calulu Road.

Cases Referred To

Clancy v East Gippsland SC & Anor [2013] VCAT 1221

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Permit No 335/2012/P for use and development of the land at 717 Wy Yung-Calulu Road, Calulu was issued following a direction by the Tribunal on 23 July 2013². The permit allows for :

Use and development of a winery in accordance with endorsed plans.

- 2 The subject site is located north west of Bairnsdale and has a total area of 104 hectares. A dwelling and outbuilding are located centrally on the site. A single point of access to the subject land is via a 750 metre long carriageway easement. The easement consists of a 3.5 – 4.5 metre wide gravel track with grassed shoulders. Post and wire fencing delineates its boundary with the subject land and a solid metal fence exists along the interface with 713 Wy Yung-Calulu Road. The land is used for viticulture and is currently being developed with a winery with cellar door. The winery building is located approximately 560 metres from the closest dwelling not in the same ownership (713 Wy Yung Calulu Road).

- 3 The current application seeks to amend the permit as follows:

- Altering the access to Wy Yung-Calulu Road;
- Allowing removal of vegetation and road works;
- Deleting the restriction on the number of patrons visiting the winery at condition 9;
- Amending condition 10 to change the patron numbers from 30 to 75 and increase the number of private functions from 2 to 24 in any one calendar year;
- Amending condition 11 to allow cellar door trading hours to be extended from 11am – 5pm to 11am - 8 pm October – March; and
- Amending condition 12 to allow private functions to operate from between 11am - 5pm to 11am - 11pm.

- 4 Mr Clancy the owner of the adjoining property at 713 Wy Yung-Calulu Road and the owner of that part of the land upon which the carriageway easement is located, which provides access to the subject land, has objected to the proposed amendments to the permit and seeks a review of the decision of the East Gippsland Shire Council (the Council) to issue a Notice of Decision to Amend the Permit.

¹ I have considered all submissions and Statements of Grounds lodged with the Tribunal although I do not recite all of the contents in these reasons.

² *Clancy v East Gippsland SC & Anor* [2013] VCAT 1221

- 5 Mr Clancy submits the proposed increased hours, increase in the number of functions, and the increase in the number of patrons will lead to an increase in traffic, particularly along the carriageway easement. This in turn is said to be an unreasonable use of the carriageway easement.
- 6 The Council submits *'the proposed amendments are appropriate in the context of this relatively modest winery operation and will assist the Permit Applicant to consolidate operations and strengthen its business'*.
- 7 The permit applicant submits the increase in private functions will not have a detrimental impact on the amenity of the neighbouring and nearby properties. The increased traffic volumes due to increased trading hours and private functions will remain relatively low, in number of vehicles and frequency of vehicle movements. The increase in hours, and number of functions will not result in excessive noise that would be detrimental to the adjoining or nearby properties and in relation to the use of the carriageway easement the subject land has a right to use the carriageway for access to the property.
- 8 The Tribunal must decide whether an amendment to the permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the East Gippsland Planning Scheme, I have decided to set aside the decision of the Council and direct there be no amendments to the permit. My reasons follow.

WHAT ARE THE PLANNING SCHEME PROVISIONS?

- 9 The subject land is located within the Farming Zone. A 'Winery' is a section 2 permit required use. The land is also subject to several overlays. Of relevance to the current application is the Erosion Management Overlay for which a permit is required to carry out road works as well as to remove, destroy or lop vegetation. The Vegetation Protection Overlay also requires a permit to remove native vegetation along the Wy Yung- Calulu Road to enable the proposed road works.
- 10 As there is a proposed increase in the number of patrons the provisions of car parking under clause 52.06 are of relevance. Under clause 52.06 parking for a Winery is calculated at 0.4 spaces to each patron. The proposed change in patron numbers means an additional 16 car spaces would be required being a total of 30 parking spaces.
- 11 The Council submitted that as the vegetation proposed to be removed is native, clause 52.17 becomes relevant and accordingly additional conditions have been proposed which require a native vegetation offset to be provided.

WHAT ARE THE CONDITIONS TO BE AMENDED?

- 12 Condition 9 provides:

Unless with the written consent of the responsible authority the maximum number of patrons must be no more than 6 at any one time.

- 13 It is understood that the maximum number of 6 patrons was proposed at the previous hearing. There does not seem to have been a great deal of discussion regarding this number. The Tribunal Member refers to this cap on visitors as being referred to in the draft permit conditions which were not contested by the Permit applicant.

- 14 The permit holder now indicates they did not realise the significance of this imposition and limiting the number of persons that could visit the premises for cellar door sales to 6 would be difficult.

- 15 It does seem to be an unusually restrictive number but as the Winery has not yet been completed, and it was not clear as to whether cellar door sales had commenced, there was no information provided as to the likely number of patrons the permit holder could expect to visit.

- 16 In the information provided with the application for amendment it states:

This condition is understood to have been included to address concerns raised by the Objector in regard to the perceived impact to their amenity however we do not believe any consideration was given to how the restriction would be managed by the operators of the winery.

We do not believe the number of patrons visiting the cellar door would be so high and so frequent as to detrimentally impact the amenity of adjoining properties.

- 17 As stated above, it appears the winery has not commenced operating there is no real indication of the likely numbers of persons and the times such persons would visit the site.

- 18 Although it could be said that the condition is limiting in relation to numbers and is likely to be particularly difficult in being managed the proposed deletion of this condition raises implications in relation to the proposed amendments to conditions 10 and 11.

- 19 Condition 10 currently provides that:

Notwithstanding condition 9, no more than 30 patrons associated with the private functions are permitted on no more than two occasions in any one calendar year.

- 20 The permit holder now seeks to amend this condition to read as follows:

Unless with the written consent of the responsible authority the maximum number of patrons must be no more than 75 at any one time.

- 21 A new Condition 11 is now proposed to read:

Unless with the written consent of the responsible authority no more than 75 patrons associated with the private functions are permitted on no more than twenty four occasions in any one calendar year.

- 22 In the amendment application it was stated:
This condition is considered to be unreasonably restrictive. The premises has sufficient facilities to cater for up to 75 people. Limiting the number of patrons to 30 is again unreasonable and underutilises the facilities available on the site.
- 23 It appears from the reading of the proposed amended conditions 10 and 11 that the expectation is that 75 patrons could attend the premises as any time and that the number of persons now permitted to attend private functions is being increased from 30 to 75 with an increase in permitted private functions from twice a year to 24 times a year.
- 24 The request for the amendment stated:
Private functions will utilise the cellar door and balcony on the first floor level and the barrel cellar on the lower ground floor and adjacent terrace on the south west side of the building. The building is located some 560 metres from the nearest dwelling at 717 Wy Yung-Calulu Road and approximately 760 metres from the dwelling at 713 Wy Yung-Calulu Road.
- 25 Apart from this very scant information regarding the proposed operation of the private functions there is nothing that indicates how the functions are proposed to operate; whether there are any facilities on site for food preparation, and where this might occur; whether there is proposed to be live music at any of the functions or piped music; whether there is to be the potential for microphones to be used and whether this will be broadcast to various locations. No plans are provided that show that 75 patrons could be accommodated in the areas proposed.
- 26 The reference to the nearest dwelling is to the existing dwelling on the subject site. There is no information as to how potential noise from the functions will be prevented from impacting on Mr Clancy's dwelling at 713 Wy Yung-Calulu Road, particularly when considered with the proposed amendments to hours of operation.
- 27 In this respect it is sought to amend condition 11 and condition 12 which currently provide:
11. *The cellar door activities must only operate between the hours of 11am – 5pm.*
 12. *The private functions must only operate between the hours of 11am – 5pm.*
- 28 The amendments sought seek to increase the operation of the cellar door activities until 8pm October – March, that is during daylight saving and the private functions until 11pm.

DO THE REQUESTED AMENDMENTS ALTER THE USE?

- 29 I was advised that the Council did not consider that the increase in patron numbers and the increase in the number of permitted private functions in any way changed the permitted use on the subject land as a winery.
- 30 In my view the increase in patron numbers and in particular the increase in the number of private functions from 2 per year to 24 per year changes the use from not only a winery with cellar door sales but also a Function centre/Place of assembly for which no permission for such use has been sought.
- 31 Under the provisions of the Farming Zone in the East Gippsland Planning Scheme a 'Place of assembly' is a section 2 permit required use. A 'Place of assembly' is defined in clause 74 of the planning scheme as *'Land where people congregate for religious or cultural activities, entertainment, or meetings'*.
- 32 A 'Place of assembly' also includes a 'Function centre' defined in clause 74 as *'Land used, by arrangement, to cater for private functions, and in which food and drink may be served. It may include entertainment and dancing'*.
- 33 The permit holder indicated they could accommodate once built at least 75 people for a function within the cellar area or on the outdoor deck area. As no plans were provided it is also possible that functions could be conducted anywhere on the subject land.
- 34 Whilst the original proposal to allow for two private functions twice a year for no more than 30 people may not have fallen within the consideration of a 'place of assembly' which does not seem to have been previously addressed in the original decision. The proposed increase in patrons from 30 to 75 with 24 private functions per calendar year, that is potentially two private functions every month, or a private function every two weeks to me falls within the planning scheme definition of a Function centre.

ARE TRAFFIC IMPACTS ACCEPTABLE?

- 35 This change in the use also raises particular concerns regarding the impact that traffic generated by the activities on the site may have on the Clancy's dwelling.
- 36 Access to the winery is via an existing carriageway easement located on Mr Clancy's land. Mr Clancy expressed particular concern regarding the use of this carriageway easement by an increased number of vehicles. Mr Clancy indicated a gate is placed at the roadway entrance to the carriageway easement and is often closed to allow him to move his stock along the carriageway easement from one section of his property to another.
- 37 A traffic assessment by Salt was provided with the amendment application. The person or persons who prepared this report were not called to give evidence at the hearing. I therefore did not have the benefit of being able to

test the information provided, or seek further information in relation to the potential impacts of traffic generated as a result of the proposed activities on the site.

38 The report states:

A review of case study data held by SALT and other traffic consultancies indicates that wineries typically generate low volumes of vehicle movements with peak activities occurring around 12.00noon on Sundays and to a lesser degree on Saturdays.

During weekdays the traffic volumes associated with wineries are generally 60% or less than that experienced on a Sunday [This is a direct result of less people visiting wineries on weekdays].

Allowing for up to 30 people on site during 'typical' peak operation and allowing for an occupancy of only 2 people per vehicle the proposal could generate up to 15 trips inbound and 15 trips out bound during the peak period on a Sunday.

39 This assessment appears to confuse the number of persons that can currently visit the cellar door (6), which may on this information occur on a Sunday around 12 noon, and 30 patrons that could attend a function, twice a year, which could be on any day between 11am -5pm and not restricted to a Sunday.

40 In relation to the proposed amendment to increase the number of patrons to 75 it was stated:

Allowing for up to 75 people on site during 'functions' and allowing for an occupancy of 3 people per vehicle the proposal could generate up to 25 trips inbound in the first hour and 25 trips outbound after the functions.

41 There is no acknowledgment in the assessment that the attendance of this number of people generating this number of vehicle trips one hour before a function and one hour after a function could occur at any time between 11am – 11pm, 24 times per year.

42 The amount of traffic generated by the amendment proposal indicates to me that the nature of the use of a winery with cellar door sales and two private functions a year with no more than 30 people is significantly changing. This also indicates to me that there is likely to be a significant impact on the amenity of Mr Clancy's dwelling that is located next to the only access road into and out of the site.

CONCLUSION

43 Whilst the deletion of the number of persons in condition 9 that can attend the cellar door may not be unreasonable, the proposed other changes lead, in my view, to a proposed change in the use currently permitted under the

permit. As there has been no application for a change of use I do not consider it is appropriate to allow any amendments to the permit.

- 44 For the above reasons the decision of the responsible authority will be set aside.

**Jeanette G Rickards,
Senior Member**