



AGENDA  
of the  
SPECIAL MEETING OF COUNCIL  
WEDNESDAY 4 DECEMBER 2019  
at  
Yea Shire Hall  
6.00 pm

\*\* Audio recordings of all Council meetings are taken by Council's Governance Officers and published on Council's website. (Resolution of Council 23 January 2019)

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**1. PLEDGE AND RECONCILIATION STATEMENT****2. APOLOGIES AND REQUESTS FOR LEAVE OF ABSENCE****3. DISCLOSURES OF INTEREST OR CONFLICT OF INTEREST****4. PUBLIC PARTICIPATION TIME****4.1 OPEN FORUM****5. OFFICER REPORTS****5.1 USE AND DEVELOP THE LAND FOR THE PURPOSE OF A RESIDENTIAL HOTEL AND RESTAURANT INCLUDING THE SALE AND CONSUMPTION OF LIQUOR AND A REDUCTION IN CAR PARKING REQUIREMENTS, 707 MURRINDINDI ROAD, MURRINDINDI**

Attachment(s): Planning Report (refer Attachment 5.1a)  
Plans (refer Attachment 5.1b)

Land: 707 Murrindindi Road, Murrindindi

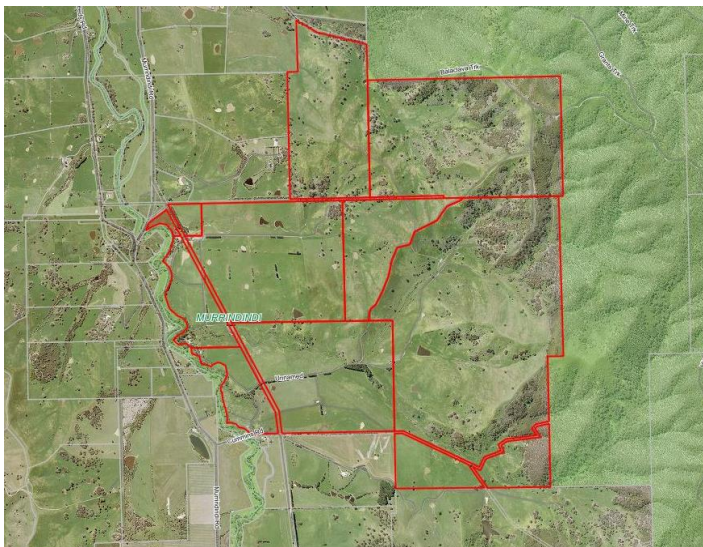
Proposal: Use and develop the land for the purpose of a residential hotel and restaurant including the sale and consumption of liquor and a reduction in car parking requirements.

Applicant: Alta Architecture Pty Ltd

Zoning: Farming

Overlays: Bushfire Management Overlay (Part)  
Erosion Management Overlay (Part)

Other: Area of Cultural Heritage Sensitivity (Part)  
Designated Bushfire Prone Area

**Locality Plan****Purpose**

This report recommends that Council issue a Notice of Decision to refuse to Grant a Planning Permit for the use and development of the land located at 707 Murrindindi Road for the purpose

of a residential hotel and restaurant including the sale and consumption of liquor and a reduction in car parking requirements.

### **Officer Recommendation**

**That Council issue a refusal to grant a permit for use and develop the land for the purpose of a residential hotel and restaurant including the sale and consumption of liquor and a reduction in car parking requirements. Grounds of refusal:**

1. **The proposal does not comply with the requirements of Clause 02.03 Strategic Directions:**
  - a. **'Protecting rural land for productive agricultural uses and compatible rural uses'**
  - b. **'Ensuring that the use and development of rural land protects and enhances agricultural potential and the productive capacity of the land and surrounding land'.**
2. **The proposal does not comply with the requirements of Clause 13.02 Bushfire in that it has not addressed the potential for bushfire risk.**
3. **The proposal does not comply with the requirements of Clause 14.01 *Agriculture*, given that it creates predominantly tourism use in a farming environment that has the potential to limit the operation and expansion of adjacent and nearby agricultural uses in high quality agricultural land**
4. **The proposal does not comply with the requirements of Clause 35.07 *Farming Zone* as the proposed use and development of the land for has the potential to limit agricultural uses on the subject site and surrounding land and has not justified the need for the proposed use.**
5. **The social and economic benefits of the proposal are unsubstantiated and cannot be relied upon to balance other competing objectives contained within Clause 35.07 *Farming Zone*.**
6. **The current planning proposal and plans do not provide sufficient detail to demonstrate that the risk to human health and the environment associated with on-site wastewater management will be acceptable.**
7. **The proposal provides insufficient detail with respect to infrastructure servicing.**
8. **The proposed access arrangements are unsatisfactory having regard to the site's location and the nature of the proposed land use.**
9. **The proposal will lead to adverse amenity impacts on surrounding residents due to noise, and light spill.**

### **Background**

#### Land and surroundings

The subject land consists of 13 separate parcels totalling 842 hectares in area and is located in Murrindindi, approximately 15km south of Yea.

The site is known as 707 Murrindindi Road, Murrindindi. This proposal is focused on Lot 2, Plan of Subdivision 603436 and Crown Allotment 12 which are accessed via Cummins Road. Cummins Road is an unsealed rural road. Access to the site is required to be made over a single carriageway bridge.

The subject land adjoins the Murrindindi River to the west. The Murrindindi River is located approximately 530 metres to the west of the proposed hotel site. Balaclava Creek and a network of tributaries, unnamed waterways and drainage lines flow through the property. Land within the vicinity of the Murrindindi River is well vegetated and provides visual separation between Murrindindi Road and the subject land.

Surrounding land is primarily used for farming purposes. The planning report submitted with the proposal identifies the nearest dwellings as located approximately 85m from the site's north-western boundary, and 80m from the site's southern boundary. Council mapping shows a dwelling located 35 metres from the southern boundary of the property and 70 metres to the east of the proposed access point into the property.

#### Permit History

PP 2006/186 Boundary Realignment PS 603440K  
Application was withdrawn by the applicant

PP 2006/185 Two (2) Lot Re-subdivision PS 603436A  
Delegate Permit issued 18/12/2006

PP 2006/164 Two (2) Lot Subdivision  
Application was withdrawn by the applicant

Sub 3/2006/30 Certification of PS 603436A  
Statement of Compliance issued 20/12/2007

#### Application History

9 October 2017	Original planning application lodged
27 October 2017	RFI issued by Council
4 January 2018	Community information session held by applicant
22 May 2019	CHMP approved
31 May 2019	RFI response submitted with S50 Request to amend application.
30 September 2019	Additional further information submitted to Council (Amended Planning Report)
2 October 2019	Revised application advertised
30 October 2019	Extended advertising period concludes

#### Proposal

The applicant seeks approval for use and development of the land for the purpose of a residential hotel and restaurant including the sale and consumption of liquor and a reduction in car parking requirements.

The proposal would involve the construction of a 46-room residential hotel with associated dining rooms and bar for use by hotel patrons. The hotel is supported by a 60-person restaurant, a function room suitable to accommodate 160 people and a bar that will accommodate 80 people. The proposal envisages that the function room will be utilised for events such as conferences and weddings and that users of the facility would likely utilise the hotel. The restaurant would be open to both hotel guests and the general public.

Proposed hours of operation vary depending on day of the week, but would be up to 11.30pm on weekends. Management arrangements are proposed.

The application documents relied upon include:

- amended architectural drawings prepared by Alta Architecture
- amended town planning report prepared by Urbis
- Cultural Heritage Management Plan prepared by AKWP Heritage Advisors
- letter and Notice of Cultural Heritage Management Plan approval
- site feature and contour plan prepared by Land Dimensions
- Land Capability Assessment prepared by Ground Science
- Traffic Engineering Assessment prepared by Traffix Group

- Planning Stage Acoustic Report prepared by Octave Acoustics
- Waste Management Plan prepared by Leigh Design.

### Public Notification

The application was advertised by giving notice to adjoining and nearby landowners and displaying a notice on the land. It is noted that Council received a number of submissions regarding the proposal prior to the statutory notice period. Given the level of public interest in the application, the notification period was extended until 30 October 2019.

Advertisements were also taken out in the local paper. Council has provided media releases on its website and within local publications as to the status of the application.

In response, 133 submissions were received, 131 objecting and 2 supporting. A summary and response to submissions is provided later in this report.

### Referral Authority Advice

The application was referred externally to:

- the Country Fire Authority (CFA) who provided a request for further information dated 22 October 2019. The CFA's response was provided to the applicant for a response
- the Department of Environment Land Water and Planning (DELWP) who recommended that any impacts on biodiversity or native vegetation be assessed as part of the development proposal at this stage. DELWP also sought clarification of a number of aspects of the proposal. DELWP's response was provided to the applicant for a response
- the Environment Protection Authority (EPA) who offered no objection, subject to conditions
- Goulburn Broken Catchment Management Authority (GBCMA) offered no objection subject to conditions
- Goulburn Murray Water (GMW) offered no objection, subject to conditions
- VicRoads – offered no objection.

## **Issues**

### Overview

This is a significant planning application for the Shire of Murrindindi. The application has been assessed having regard to its consistency with the purpose, objectives, and requirements of the zones and overlays contained within the Murrindindi Planning Scheme. The application is also required to address the State, Regional and Local Policy and provide a response to the relevant Particular Provisions.

In this regard, officers have undertaken a detailed assessment of proposal. The assessment is structured to address the following themes:

- a. location for the proposed use and development
- b. impacts on surrounding land
- c. social and economic impact
- d. response to environmental values and risks:
  - bushfire
  - land capability
  - flora and fauna

- landscape
- e. cultural heritage
- f. access
- g. infrastructure servicing
- h. management arrangements
  - hours of operation
  - venue management
  - liquor licence
- i. response to planning policy, zones, overlays and provisions.

These issues are discussed in further detail below.

#### A. Location for the Proposed Use and Development

Is this an appropriate location for the proposed use and development?

The subject land and surrounding land have traditionally been used for farming purposes and have been zoned accordingly. The application mistakenly identifies the land as a “greenfield” location, and “low density” in character. It should however clearly be established that:

- The subject land has never been identified for future growth and cannot be considered “greenfield” in this context.
- The proposed location has a “rural context” and is used for “farming” purposes.
- There is no established pattern of density that can be relied upon.
- The subject land is in an isolated location approximately 15km from town services and amenities.

The proposal seeks to introduce new buildings and uses in an isolated, rural setting. Whilst the isolated setting is likely to be attractive for tourism purposes (offering strong visual amenity and access to the natural environment), it is unclear as to why else the use needs to be located on the subject land. There are no discernible strategic reasons as to why the subject land should be considered appropriate to support the proposed use. The location of the proposed use and development is problematic and not supported by the Zone, Local Policy, and other tourism strategies.

#### B. Impacts on Surrounding Land

How will the proposal manage impacts on surrounding land?

The application seeks to address the potential for impacts on surrounding land, per land use proposed. It should also be noted that through the course of the application, the proposal was amended to remove some aspects which may have led to adverse impacts on surrounding land. The removal of the shooting range and helipad have reduced the potential for adverse amenity impact on surrounding land.

The proposal has not demonstrated that the potential for adverse amenity impact on surrounding land has been satisfactorily addressed. It is unclear as to how the proposed hours of operation been arrived and as to how other management arrangements would be considered reasonable.

The subject land and surrounding land are used and zoned for farming purposes. The application has not satisfactorily addressed the impact on productive agricultural land, nor has it demonstrated as to how it will not compromise farming activities on surrounding land. The proposal relies upon balancing tourism and economic benefit.

Concerns remain that the proposal will reduce the quantum of productive agricultural land within the Shire and has the potential to adversely impact agricultural activities on surrounding land.

### C. Social and Economic Impact

What are social and economic drivers that can be relied upon to underpin and sustain the proposed use and development?

The subject land is accessed via Cummins Road. Cummins Road intersects with Murrindindi Road. The subject land is approximately 15kms from Yea to the North-West where town amenities and services are available.

The subject land is approximately 100km from Melbourne accessed via the Melba Highway/Murrindindi Road. There are few other uses within the immediate vicinity which the proposed use and development would relate to or derive benefit from. There is no identifiable strategy or policy directing tourism to this location. The proposal therefore needs to be considered as a market-led response to the re-purposing of part of an agricultural lot for tourism purposes.

It is noted that the application originally included a shooting range and helipad. The application was amended under Section 50 to remove these parts of the proposal. An approved and properly managed shooting range would have provided a form of recreation-based tourism. Access via the helipad would have provided alternative access to the site, improving accessibility from Melbourne land other locations. Whilst the removal of each of these elements has simplified the application by removing some activities which could lead to potential adverse amenity impacts, it has also changed the type of tourist destination and the way in which the site may be accessed. It places a greater emphasis on access by road (100km from Melbourne), and removes a recreational aspect of the proposal which may have been used to attract visitors.

By nature of the application and its location, Council is being asked to balance rural / farming / agricultural objectives in favour of potential tourism and economic benefits. This is a critically important consideration.

The applicant has sought to rely heavily on the tourism benefits of the proposal, however the proposal does not provide any economic analysis or justification for the proposal. Whilst Council seeks to encourage tourism-based uses to its municipality (as referenced in its Council Plan and Planning Scheme) it is unclear in this instance as to the economic grounds relied upon by the applicant to support this proposal.

The application does not provide any market evidence, research or analysis to support a tourism use of this nature and size in this location. Council officers are of the view that the social and economic benefits of the proposal are unsubstantiated.

### D. How does the proposal address environmental values and risks?

#### Bushfire

The property as a whole is partly located within the Bushfire Management Overlay (BMO). The property is of significant size. The overlay applies to the eastern extent of the property which is adjacent to public land. The application does not provide a bushfire assessment stating that proposed buildings are located outside of the overlay area. There is still however a need to consider possible threat of bushfire under Clause 13.02. The policy tests are clear and prioritise the protection of human life. Given the nature of the proposed land use whereby a large number of occupants are to be accommodated at any one time, the various tests under the planning scheme with respect to bushfire are increased.

The application was referred to the Country Fire Authority. The CFA requested an assessment against Clause 13.02 on 22 October 2019. The applicant has been requested to provide this information. A response has been received that states that 'the proposed use and development



appropriately considers the requirements of Clause 12.02 Bushfire (this is an error as applicant was referring to clause 13.02)'.

Given the nature of the use, remoteness of location, difficult access arrangements, presence of BMO on part of the site, and recent fire history within the municipal district, Council could not approve the proposal without a comprehensive and satisfactory response to Clause 13.02 – Bushfire.

#### Land Capability

The proposal includes a Land Capability Statement prepared by *Ground Science 2018*. The report considers the ability of the land to accommodate and treat wastewater associated with the proposed use and development. The report was prepared to support the original proposal, prior to amendment under Section 50 to remove the shooting range. The report identifies a number of limitations of the land to treat wastewater and proposes the need for both infrastructure solutions, technologies, more detailed design.

The Ground Science report (given its age) cites now superseded regulatory guidance. We note that SEPP (Waters of Victoria) was superseded by SEPP (Waters) in October 2018. SEPP (WoV) only looks at surface waters, SEPP (Waters) also includes groundwater.

The Ground Science report makes a series of recommendations including the need for a commercial scale treatment system. With anticipated wastewater loads in excess of 5000L, the report acknowledges the requirement to obtain an EPA Works Approval.

The application does not:

- a. identify where on the site the plant will be placed
- b. include measures to be implemented to protect the groundwater
- c. contain a risk assessment to evaluate risks to potential beneficial uses.

The current planning proposal and plans do not provide sufficient detail to demonstrate that the risk to human health and the environment associated with on-site wastewater management will be acceptable.

#### Flora and Fauna

No on-site vegetation is proposed to be removed as part of this proposal. Referral responses have requested further information regarding potential vegetation removal within the road reserve nearest the Murrindindi Creek associated with the widening of Cummins Road. The applicant has been requested to provide this information. A response has been received that states that 'No native vegetation is proposed to be removed as part of the planning permit application.'

#### Landscape

The subject land forms part of a consistent rural landscape. Plans and elevation drawings have been provided with the proposal. Attempts have been made to integrate the proposed development within the landscape through the design and siting of buildings, adoption of a building height (2 storeys), and minimisation of ground disturbance. The proposed buildings will be well setback from Murrindindi Road and generally well screened by vegetation along the Murrindindi Creek. The rural landscape is not considered to be adversely impacted by the proposal.

#### E. Cultural Heritage

The application was originally submitted in 2017 without an approved Cultural Heritage Management Plan (CHMP). Council requested an approved CHMP to enable the application to be assessed. An approved CHMP was provided to Council via a response to Council's request for further information. It is considered that the requirements relating to cultural heritage have

been met. Conditions and recommendations specified within the CHMP will be required to be addressed.

#### F. Access

How is the subject land proposed to be accessed?

The application is supported by a traffic report supplied by Traffix Group. The report identifies:

- proposed access via Cummins Road which intersects with Murrindindi Road
- a requirement for 154 car parking space plus overflow parking
- the need to seal Cummins Road from Murrindindi Road to the access point of the site
- the requirement for a waste management plan and other conditions to enable the use and development of the site.

As a result of the proposal, vehicle numbers on Cummins Road are projected to increase. The Traffix Report has identified measures to widen and seal Cummins Road within the vicinity of the Murrindindi Creek Bridge. The bridge is of single carriageway and with some vegetation in the vicinity. Any widening of Murrindindi Road could result in the need to remove native vegetation within the road reserve. A referral response from DEWLP has identified this issue. The applicant has responded by stating that no vegetation is proposed to be removed.

Council's Engineering Department have reviewed the proposal and have recommended upgrades to Cummins Road from Murrindindi Road to the entrance to the property and intersection upgrades at Murrindindi Road. Again, these works would likely require vegetation removal within the vicinity of the Murrindindi Creek.

The proposed use and development of land relies on the upgrade of a rural road, intersection upgrades, and access across a single carriageway bridge. Whilst this is not insurmountable, the location for the proposal is not an obvious location for a tourism facility. The Traffix Report supplied with the planning application asserts that the proposal will not have a detrimental impact on the operation of Murrindindi Road or Cummins Road. The report also concludes that there are no traffic engineering grounds by which the proposal should not be supported.

The report makes recommendations to Cummins Road but does not offer comment on visitor familiarity with the proposed access arrangements. The subject land is located well off the Melba Highway. It is not an easy navigable location, particularly at night.

Whilst there are traffic engineering solutions available to improve surrounding roads, the proposed location's isolation is not ideal from an access perspective. There are significant questions regarding the appropriateness of navigating additional traffic (most of whom are unfamiliar with the proposed access arrangements) to this location. On balance, there is insufficient justification of the proposal. The remoteness of the location and reliance on a single carriageway bridge are not conjunctive to provide access to a tourist destination, particularly at night where visibility is limited. The current and proposed access arrangements to the site are limiting for a use and development of this nature.

#### G. Infrastructure Servicing

The proposal does not provide sufficient detail with regards to infrastructure servicing or water storage. It is unclear as to how the proposal is intended to be serviced.

#### H. Management Arrangements

How will the proposed use and development be managed with respect to:

- hours of operation
- venue management

- liquor licence.

#### Hours of Operation

Hours of operation are proposed and are typical of a facility looking to host conferences, weddings and the like. Hours proposed are reasonable for such uses and would be conditional on any planning permit.

#### Venue Management

Management arrangements are specified within the planning report and would become the responsibility of the future operator of the site. This includes the enforcement of operating hours, the serving of alcohol, the management of guests, and the management of outdoor areas after hours. The proposed building is to include acoustic mitigation measures. An acoustic report has been supplied in support of the application.

The preparation of a venue management plan could form a condition of permit. Other commitments made through the planning report would need to be included within permit conditions. If approved, the onus would be on the venue manager to follow through. The EPA and Council would be responsible for the enforcement of conditions in the event that breaches of the planning permit or environmental regulations occur.

The proposed hours of operation in combination with the reliance on the future operator to manage impacts (particularly the impact of noise on surrounding land during evening hours) are not satisfactory, and do not provide sufficient confidence that the potential for adverse impact can be managed.

#### Liquor Licence

The proposal includes an application for a liquor licence. A General Liquor Licence is sought for the site. A liquor licence would be typical for this form of land use. If a planning permit were to be granted, the applicant would need to seek a separate liquor licence application from Liquor Licencing Victoria. Council officers do not oppose the liquor licence component of this application, subject to other management arrangements, hours of operation, and red line plan showing where alcohol can be consumed on the property being clearly defined and adhered too.

#### I. How does the proposal respond to relevant State, Regional, and Local Policy?

Relevant Clauses	Comment
<u>02.02 Vision</u> <ul style="list-style-type: none"> <li>• Council seeks to enhance the liveability, amenity and quality of life in the municipality.</li> <li>• Council will facilitate sustainable population and economic growth.</li> <li>• Increased economic growth and investment will enhance population growth, employment and social and cultural benefits for the municipality.</li> </ul>	<u>Complies</u> The proposal is for a tourist attraction that will encourage people to visit Murrindindi Shire.
<u>02.03 Strategic Directions</u> Environmental and landscape values: <ul style="list-style-type: none"> <li>• protecting environmental values, including native vegetation, roadside vegetation, and scattered paddock trees</li> <li>• protecting biodiversity and environmental values of local, state, national and international significance</li> <li>• protecting and enhancing habitat and wildlife corridors across the landscape.</li> </ul>	<u>Not shown to comply</u> The applicant has responded advising that no vegetation is proposed to be removed. Given the proximity of vegetation to the existing pavement on the western side of the bridge it has not been proven that this would be the case.

Relevant Clauses	Comment
<p><u>02.03 Strategic Directions</u> Natural resource management:</p> <ul style="list-style-type: none"> <li>• protecting high quality agricultural land for ongoing agricultural use</li> <li>• ensuring that the use and development of rural land protects and enhances agricultural potential and the productive capacity of the land and surrounding land</li> <li>• supporting existing agricultural production activities.</li> </ul>	<p><u>Does not comply</u> The application would result in the repurposing of agricultural land for tourism. The application has not demonstrated how it would overcome the potential for adverse impact on surrounding agricultural land use.</p>
<p><u>02.03 Strategic Directions</u> Economic Development:</p> <ul style="list-style-type: none"> <li>• facilitating the growth of home-based business, small business, niche industries and rural based industries</li> <li>• supporting new and emerging industries</li> <li>• encouraging sustainable growth in tourism, leveraging Murrindindi Shire's natural assets, proximity to Melbourne and links with neighbouring regions.</li> </ul>	<p><u>Does not comply</u> The applicant has sought to rely heavily on the tourism benefits of the proposal, however the proposal does not provide any economic analysis or justification for the proposal. Whilst Council seeks to encourage tourism-based uses to its municipality it is unclear in this instance as to the economic grounds relied upon by the applicant to support this proposal.</p> <p>The application is deficient in providing any credible market evidence, research or analysis to support a tourism use of this nature and size in this location. Council officers are of the view that the social and economic benefits of the proposal are unsubstantiated.</p>
<p><u>11.03-5S Distinctive Areas and Landscapes</u></p> <ul style="list-style-type: none"> <li>• to protect and enhance the valued attributes of identified distinctive areas and landscapes</li> <li>• recognise the important role these areas play in the state as tourist destinations</li> <li>• support use and development where it enhances the valued characteristics of these areas</li> <li>• protect areas that are important for food production.</li> </ul>	<p><u>Complies</u> The subject land forms part of a consistent rural landscape. The rural landscape is not considered to be adversely impacted by the proposal.</p>
<p><u>12.01-1S Protection of Biodiversity</u></p> <ul style="list-style-type: none"> <li>• to assist the protection and conservation of Victoria's biodiversity</li> <li>• ensure that decision making takes into account the impacts of land use and development on Victoria's biodiversity, including consideration of: <ul style="list-style-type: none"> <li>○ cumulative impacts</li> <li>○ fragmentation of habitat</li> <li>○ the spread of pet plants, animals and pathogens into natural ecosystems.</li> </ul> </li> </ul>	<p><u>Not shown to comply</u> The applicant has responded advising that no vegetation is proposed to be removed. Given the proximity of vegetation to the existing pavement on the western side of the bridge it has not been proven that this would be the case.</p>

Relevant Clauses	Comment
<p><u>12.01-2S Native Vegetation Management</u> Objective: to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.</p> <ul style="list-style-type: none"> <li>• avoid the removal, destruction or lopping of native vegetation.</li> <li>• minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.</li> <li>• provide an offset to compensate for the biodiversity impact from the removal, destruction or lopping of native.</li> </ul>	<p><u>Not shown to comply</u> The applicant has responded advising that no vegetation is proposed to be removed. Given the proximity of vegetation to the existing pavement on the western side of the bridge it has not been proven that this would be the case.</p>
<p><u>13.02-1L Bushfire Planning</u> Locate, design and manage use and development to reduce the risk to human life, property and community infrastructure from bushfire to an acceptable level.</p>	<p><u>Not shown to comply</u> The subject site has been identified as being in a 'bushfire prone area' (part of the land is subject to the Bushfire Management Overlay). The application is not supported by a Bushfire Management Statement or Emergency Management Plan. No measures are proposed to manage the facility on days forecast to be classified as having Code Red and Extreme Fire Danger Ratings. The applicant has advised that the Bushfire requirements have been appropriately considered.</p>
<p><u>14.01-1S Protection of Agricultural Land</u> Objective: to protect the state's agricultural base by preserving productive farmland.</p> <ul style="list-style-type: none"> <li>• protect productive farmland that is of strategic significance in the local or regional context</li> <li>• consider the compatibility between the proposed or likely development and the existing use of the surrounding land</li> <li>• consider the potential impacts of land use and development on the spread of plant and animal pests from areas of known infestation into agricultural areas</li> <li>• balance the potential off-site effects of a use or development proposal against the benefits of the proposal.</li> </ul>	<p><u>Does not comply</u> The application would result in the repurposing of agricultural land for tourism. The application has not demonstrated how it would overcome the potential for adverse impact on surrounding agricultural land use and is considered incompatible</p>
<p><u>15.01-6S Design for Rural Areas</u> Objective: to ensure development respects valued areas of rural character.</p> <ul style="list-style-type: none"> <li>• ensure that the siting, scale and appearance of development protects and enhances rural character</li> <li>• site and design development to minimise visual impacts on surrounding natural scenery and landscape featured including ridgelines, hill tops, waterways, lakes and wetlands.</li> </ul>	<p><u>Complies</u> The proposed development will be designed and cited to minimise impact on surrounding land. Visual impacts can be mitigated.</p>

Relevant Clauses	Comment
<p><u>14.04-1S Facilitating Tourism</u> Objective: to encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.</p> <ul style="list-style-type: none"> <li>• encourage the development of a range of well-designed and sited tourist facilities.</li> <li>• create innovative tourism experiences.</li> <li>• encourage investment that meets demand and supports growth in tourism.</li> </ul>	<p><u>Complies</u> The proposal would facilitate the creation of a new tourism opportunity within Murrindindi Shire.</p>

## Zones

### Farming Zone (Clause 35.07)

The purpose of the zone includes:

- 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
- to encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision
- to provide for the use and development of land for the specific purposes identified in a schedule to this zone.

Officers have assessed the application and determined that the purpose of the Farming Zone has not been met.

Clause 35.07-6 – Decision guidelines requires that “Before deciding on an application to use or subdivide land, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, (a number of factors) as appropriate”. Again, officers have assessed the proposal against these decision guidelines and have determined that the application does not satisfactorily address a number of the following:

- the Municipal Planning Strategy and the Planning Policy Framework
- the capability of the land to accommodate the proposed use or development, including the disposal of effluent
- whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land 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
- the agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure
- the impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality

- the location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.

### **Overlays**

#### **Bushfire Management Overlay (Clause 44.06)**

The application was referred to the CFA for comment due to the nature of the proposal and the location in the general vicinity of high fire danger areas. The CFA requested further information on 22 October 2019. The applicant has responded advising that bushfire has been appropriately considered.

#### **Erosion Management Overlay (Clause 44.01)**

Seeks to protect areas prone to erosion. Although the area of the property to be developed is not directly within the overlay through the course of the application, the area of land subject to ground disturbance was reduced. The application has sought to undertake works outside of areas mapped. Should a planning permit be granted, earthworks will need to be managed via planning permit conditions to ensure that impacts of erosion are considered and addressed through design and construction.

### **Particular Provisions**

#### **Car Parking (Clause 52.06)**

The purpose of the provision is to ensure an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality. The proposal is supported by a Traffic Report prepared by Traffix Group. The proposal seeks a reduction in the overall supply of car parking. Officers are satisfied that the proposed amount of car parking is appropriate for the proposed number of patrons using the facility. Should a planning permit be granted, the design and construction of car parking areas will be the subject of planning permit conditions.

### **Issues Raised by Objectors**

The application has received 131 objections. Issues raised by objectors are summarised under common themes below. A response to issues raised under each theme is provided.

#### **Access, Movement, Traffic:**

- existing roads are not suitable to accommodate proposed traffic numbers
- Murrindindi Road will be unable to cope with increased traffic
- existing roads do not have the infrastructure required including line marking to service the increased traffic
- the increased traffic numbers are not inclusive of delivery vehicles and staff traffic movements
- increased traffic on Cummins Road during construction would be unsafe
- the increased traffic will have detrimental impacts on local roads, in particular Cummins and Murrindindi Road
- the proposal will lead to unsafe driving conditions along Cummins Lane and other roads in the area
- the main entry is proposed from Cummins Lane is not large or durable enough to handle the increase in traffic and will increase accident risk
- traffic over the bridge is likely to result in queuing and traffic jams to cross the bridge at peak times
- dust is already an existing issue with the current traffic flow
- airborne dust particles will exponentially increase with the proposed traffic number, and directly affect surrounding properties

- increase in dust from construction
- inadequate means of access to site. Access to site made via dead-end road. Traffic must enter and exit same way
- entrance location is inappropriate
- Cummins Road is a cul-de-sac with inadequate width for trucks to perform 3-point turns.

**Response:**

A number of concerns regarding access, movement, traffic, and dust from traffic were identified by submitters.

The applicant has supplied a traffic report which indicates that road improvements are required within the vicinity of the Murrindindi Creek and bridge. The applicant's traffic report identifies that there would be no traffic engineering grounds to refuse the proposal, should the road upgrade proposed be adopted. The application was referred to VicRoads and has been assessed by Council's Engineering Department. Should a planning permit be issued, Council could employ permit conditions to manage access from Murrindindi Road, improvements to Cummins Road, and access to the site.

The issue of dust from traffic on rural roads is common throughout the Shire. If a permit were to be granted, conditions would also be required with respect to road design and construction, sealing of roads to manage dust to an appropriate level.

Council's referral to DELWP has resulted in questions regarding bridge load limit and the potential for impacts on roadside vegetation associated with road widening on Cummins Road. The applicant has advised that no roadside vegetation would be removed. The bridge load limit is adequate for the proposed use.

Council officers have concerns regarding access, movement, and traffic impacts associated with the proposal. While some of these issues may be addressed via conditions, on balance, there is insufficient justification of the proposal. The remoteness of the location and reliance on a single carriageway bridge are not conducive to provide access to a tourist destination, particularly at night where visibility is limited. The current and proposed access arrangements to the site are limiting for a use and development of this nature.

External Amenity Impacts:

- there will be noise impacts on adjoining properties from construction and functions and operations of the hotel and restaurant
- although doors and windows will be closed after 10pm, music noise from venue is likely to continue to travel downhill
- noise impacts from increased traffic
- light spillage from 24-hour lighting from operations, weddings, functions etc. and associated cars and buses would intrude into neighbouring properties
- proposed lighting would mean the hotel would stand out like a beacon. Affecting the quiet character of the area, surrounding properties and wildfire
- reflection off windows shining into adjacent properties
- the proposed hotel will have direct views to private space and into dwellings
- potential for impact of existing airport. Development 900m from airstrip and situated on the hilltop
- there will be a loss of quality of life – Residents moved to the area for tranquilly



- Murrindindi is a community of farmers, some of whom have retired and want peace and quiet
- residents purchased and invested in the area for quiet living.

Response:

Submissions raised a number of issues with regard to amenity impacts on surrounding land. The planning report submitted with the application provides an assessment of impacts on surrounding land and properties.

Firstly, it should be said that when locating a new tourism use in a rural area it is acknowledged that there is always going to be some form of impact on surrounding land. It will not be possible to hide or conceal impacts to a point where there will be zero impact. In a rural environment that currently experiences little noise, the introduction of function, accommodation and dining facilities are going to lead to noise impacts. This, in itself is not a failing of the application.

The various tests applied through planning policy, the Farming Zone, and environmental standards provide guidance for planners as to whether the impacts are reasonable and can be appropriately managed.

In this regard, it is expected that the major impact on surrounding land will be with regard to noise. Other impacts may include light-spill. A noise report has been submitted. The application proposes to address the impact of noise through:

- the siting of buildings
- construction, design and materiality
- management arrangements
- hours of operation.

Officers remain concerned however as to the potential for unreasonable noise impacts and light spill on surrounding land. The operation of the use (particularly evening use) has the potential to adversely impact both agricultural use and those residing in the surrounding area.

The proposal will attract additional vehicles to the area. Conditions relating to the sealing of roads, intersection improvements and other road improvements will be required to mitigate the impacts of dust on surrounding land.

Officers are generally satisfied that visual impacts on surrounding land can be mitigated through appropriate siting, design, materials, finishes and reliance on existing landscaping. This can be addressed through the plans presented with the application and appropriate planning conditions.

Rural/Farming Issues:

- loss of prime agricultural land
- the proposal would detrimentally impact the surrounding farming land uses
- the proposal detrimentally impacts on the Murrindindi River including water flows to the Yea River
- increase in traffic is likely to hinder the movement of livestock from paddocks ultimately resulting in a detrimental impact on the existing farming uses
- excessive consumption of water from the Murrindindi River would impact on the operation of surrounding farms, which rely on the river for irrigation and to feed stocks
- the development could bring in weeds through the construction process and ongoing operations, which would have devastating potential on agricultural land

- the emissions created by the facility are non-agricultural and will generate off-site amenity issues to adjoining and nearby farms
- the land is not suitable for the proposal having regard to its incompatibility with nearby agricultural uses
- the hotel operator may seek to restrict existing farming operations due to noise, odour and dust. Restrictions on farmers could quickly lead to loss of productivity.

Response:

Submissions have raised a number of issues with respect to the impact of the proposal on agricultural land. A number of submissions expressed concerns that the proposed use and development was incompatible with surrounding farming land. Submissions also raised concerns with the potential water consumption from Murrindindi Creek and its potential adverse impact on surrounding farmland. Officers have undertaken a detailed review of the proposal with respect to these issues and have formed the view that the proposal is deficient in a number of areas, including its potential for adverse impact on surrounding farms and lack of detail regarding water storage and supply.

Infrastructure Servicing and Waste:

- Murrindindi is not serviced by water or power
- potential impacts of waste and contamination of the Murrindindi River
- the report does not mention electricity source. Will they be running generators?
- Murrindindi River would not have the capacity to service the resort's requirements
- increase demand on inadequate infrastructure
- will there be any other water source? E.g. rainwater tanks?
- no proposed water storage
- failure to contain the proposed wastewater levels would be a major disaster to the natural environment, river health and surrounding farming land.

Response:

Submissions raised a number of issues with regard to the servicing of the site, including water supply, electricity supply, waste management, and potential for contamination. Officers note that the subject land is not connected to reticulated services. It is unclear as to what water supply the proposal will rely upon to sustain the operation of the proposed use, or as to whether sufficient water storage can be provided for fire-fighting purposes. With respect to waste management and effluent disposal, officers have identified a number of shortcomings with the proposal and formed the view that it would be inappropriate to defer many of these considerations via a planning permit condition to a subsequent EPA Works approval process. The lack of information regarding waste and effluent disposal means that concerns remain as to how the site is to be serviced. The Murrindindi Planning Scheme provides detailed policy and decision guidance with respect to these issues. Officers have formed the view that that proposal does not meet these various tests.

Flora and Fauna

- the proposal will adversely impact local flora and fauna
- the development will significantly erode the natural environment
- the increase in traffic will be detrimental to wildlife
- the development of a residential hotel would severely impact of the natural habitat of birds, and surrounding wildlife

- the operation of the hotel including noise will impact on the wildlife and potentially push them away
- the application has provided little insight into any environmental care of the development on the natural environment
- the negative environmental impact from the extent of earthmoving and vegetation removal (including tree removal along Cummins Road) would be significant; soil quality/degradation are of great concern
- potential for spreading of phylloxera a microorganism that spreads with soil and kills vines. Phylloxera can for example, easily spread through soil on tyres or on shoe soles. The concern for local vignerons is the spread of phylloxera by hotel guests who may visit phylloxera-infested vineyards in the nearby Yarra Valley during their vacation in Murrindindi.

**Response:**

Submitters have raised concerns regarding the potential impact on flora and fauna and environmental impacts of the proposal. The location of the proposed use and development has traditionally been used for farming purposes and would not require the removal of native vegetation. The Murrindindi Planning Scheme does not apply any site-specific vegetation protection measure to the site.

The application was referred to DELWP to consider the potential for environmental impact. DELWP have not identified the need for the protection of habitat within the site. DELWP have though sought clarification from the applicant as to whether roadworks within the vicinity of the Murrindindi Creek would be require native vegetation removal, and therefore inclusion within this application. The applicant has advised that no vegetation removal is proposed.

Should a planning permit be granted, conditions requiring the preparation of Construction Environmental Management Plan (CEMP) and an Environmental Management Plan (post construction) would be required to address many of the issues raised in submissions to ensure that the potential for environmental impact is appropriately mitigated and managed.

**Economic/Tourism:**

- impact of the development on winery and recreational businesses in the Yarra Valley, and subsequent loss of revenue for those businesses
- no benefit to local business
- the proposed hotel is self-contained. There is no need for hotel guests to leave the premises and venture into the local town for goods and services
- four small hotels/motels currently existing in Yea Township 13km north of the subject site
- 20 small hotels/motels currently exist within a 30km radius of the subject site
- a larger 5 star Cottage exists, 30km south-west of the subject site and offers a "rainforest retreat" accommodation. However, the accommodation is offered in cabins nested in the rainforest with no visual impact and is situated in close proximity to ski trails
- Murrindindi is not a tourist destination, there is therefore limited evidence support the development of a large hotel
- no economic justification for the hotel location
- hotel location is secluded
- the proposal does not specify how it intends to bring tourism to Yea and surrounding area and how it will contribute to the local economy

- there is the potential for surrounding vineyard to close down if infected by Phylloxera, which can be transmitted by trespassers.

Response:

A number of submissions were received which questioned the economic justification and tourism benefits of the proposal. The seclusion of the location and lack of connectivity with other infrastructure which may support the proposed use was also identified. These issues are acknowledged by Council officers. Issue raised by submitters reflect issues identified by officers with the proposal. Officers have identified a number of issues with the justification of the proposed use and development. The social and economic benefits of the proposal are unsubstantiated and cannot be relied upon to balance other competing objectives contained within Clause 35.07 Farming Zone.

Bushfire:

- bushfire implications not considered within application
- design and siting of accommodation and site topography – bushfire to run up the hill to dwelling regardless of direction and wind speed
- emergency services within the area do not have the capacity to handle such a large development
- the scale of the proposed development amplifies the risk of bushfire surrounding properties
- the development has not considered bushfire suppression within its development including water storage
- the proposed use is likely to increase the risk of bushfire.

Response:

Submitters have raised concerns regarding bushfire risk. Concerns were also raised regarding the ability of emergency services to manage in the event of an emergency. Some concerns were raised that the proposal may indeed amplify bushfire risk to the surrounding area.

The application does not provide a bushfire assessment, stating that proposed buildings are located outside of the overlay area. There is still however a need to consider possible threat of bushfire under Clause 13.02. Given the nature of the use, remoteness of location, difficult access arrangements, presence of BMO on part of the site, and recent fire history within the municipal district, Council could not approve the proposal without a comprehensive and satisfactory response to Clause 13.02 – Bushfire.

Landscape and Character

- landscape and views for surrounding properties ruined by development
- proposed hotel development incompatible with local character and surrounding land uses
- contemporary nature of hotel does not respect the surrounding natural environment
- visual bulk - contemporary style not sympathetic to existing character
- scale of development does not suit the rural context
- inappropriate built form and siting
- small bridge on Cummins Road also known as Pulford Bridge is part of the heritage of the area
- loss of rural character of the area

- the development will have an adverse visual impact on the landscape and negatively affect, view lines and vistas – particularly given the siting on a hilltop.

Response:

Concerns were raised in submissions regarding a perceived impact on rural landscape, viewlines and loss of rural character. The subject land forms part of a consistent rural landscape. Plans and elevation drawings have been provided with the proposal. Attempts have been made to integrate the proposed development within the landscape through the design and siting of buildings, adoption of a building height (2 storeys), and minimisation of ground disturbance. The proposed buildings will be well setback from Murrindindi Road and generally well screened by vegetation along the Murrindindi Creek. The rural landscape is not considered to be adversely impacted by the proposal.

Other Issues Raised by Submitters

Originally submitted in 2017, the application has attracted much public and media interest. Many submissions were highly emotive in nature. Some submissions included issues not necessarily specific to the planning application in question. The Victorian Planning system is limited in the manner in which it can deal with many of these matters. To assist Council, non-planning related issues have been summarised here. The summary of community sentiment reflected below is included to demonstrate that all submissions have been received, reviewed, and assessed by Council.

These matters though should not impact Council's decision on this planning permit application:

- non-locals don't understand how to drive in farming areas (not slowing down when "Stock on Road" signs are displayed)
- the proposal will attract guests who do not appreciate the wilderness
- there is the potential for illegal gambling or future potential for gambling license application
- question the integrity of the landowner
- significant concern regarding illegal hunting and cruelty to animals on this land
- use of land for wildlife recreational shooting is not supported by local policy and is not sympathetic to surrounding land uses
- powerful rifles are stored on premises. Potential for stray bullets
- risk of visitor trespassing on neighbouring properties/farms
- the site is not currently maintained
- concerns for potential amendment to the application to include rifle range, golf course, neon signage, gaming and helipad in future.

Response:

The Victorian Planning system is limited in the manner in which it can deal with many of these matters. As stated above, these matters should not impact Council's decision on this planning permit application.

Through the course of this application, Council has heard from community members who continue to be concerned about ongoing reports of shooting on the property. Council has been in discussion with the Department of Environment, Land, Water and Planning (DELWP) about this for some time. Council condemns any illegal shooting of animals. DELWP and the Police are the agencies empowered to investigate and intervene on any allegations of illegal hunting and firearms matters.

Through an amendment to the application, the applicant removed a proposed shooting range and helipad from the proposal. Council cannot speculate as to what future applications may occur on the land. In the event that future applications came before Council, they would be considered on their merits.

**Conclusion**

Council Officers are not satisfied that this application meets the requirements of the Murrindindi Planning Scheme. In this instance there is a balance between retaining the site for agricultural purposes and the social and economic benefit of a new tourism business. An appropriate balance has not been achieved in this instance.

**Council Plan/Strategies/Policies**

This report is consistent with the *Council Plan 2017-2021 Our Place and Our Prosperity* strategic objectives:

- 'we will maintain and enhance places to be attractive and liveable, in balance with our natural environment' and 'through good land use planning enhance the liveability, prosperity and rural character of our Shire'.
- 'work with our businesses, regional partners and communities to support a diverse visitor experience that promotes our natural assets, and a vibrant range of events'.

**Relevant Legislation**

The proposal is being considered under the provisions of the Murrindindi Planning Scheme and the *Planning and Environment Act 1987*.

**Financial Implications and Risk**

There are no financial implications or risks associated with the consideration of this application for planning permit.

**Conflict of Interest**

There are no declared conflicts of interest in relation to this report.