

South Gippsland Shire Council**Planning Delegation Report**

2022/269 - 570 Soldiers Road Fish Creek VIC 3959

Application Details	
Application No	2022/269
Proposal	Use and development of the land for winery and use and development of the land for a dwelling
Property Details	
Property Address	570 Soldiers Road Fish Creek VIC 3959
Land Description	L3 LP125572 Parish of Waratah North
Land Area	20.48 hectares
Restrictions on title	None
Existing Use	Vacant land with partially constructed buildings (no existing permits for the buildings).
Planning Provisions	
Zone	Farming Zone
Overlays	Significant Landscape Overlay - Schedule 3 Bushfire Management Overlay Environmental Significance Overlay - Schedule 5
Particular Provisions	Clause 52.06 Car Parking
General Provisions	Clause 65 - Decision Guidelines
CHMP	Not within Cultural sensitivity area
Permit Triggers	
Zone?	35.07 Farming Zone: To use and develop land for the purpose of Rural industry (winery) with a gross floor area exceeding 200sqm and within 100 metres of a dwelling in separate ownership; and To use and develop land for the purpose of a Dwelling on a lot of less than 40 hectares;
Overlay?	No permit triggers.
Provisions?	Clause 14.01 Agriculture Clause 52.06 Car parking Clause 13.02 Bushfire Planning
Notifications	
Advertising	Yes
Number Objections	Six (6) objections received
Recommendation	
	Notice of Refusal

THE PROPOSAL

This application seeks permission to use and develop the land for the purposes of winery and a dwelling. It provides for the repurposing of the two (2) existing partially constructed buildings in the north-eastern portion of the property.

It is proposed to relocate the existing hay shed for the purposes of a winery. The proposed plans show the winery would:

- be positioned parallel to the rear boundary (along its long axis);
- have minimum setbacks of approximately 7 metres from the northern boundary;
- 38.184 metres from the eastern boundary; and

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- 55.157 metres from the neighbouring dwelling at 550 Soldiers Road;
- be setback more than 500 metres from Soldiers Road;
- have a maximum floor to ceiling height of approximately 6.49 metres;
- be partially benched into the ground with the assistance of modest earthworks;
- have a maximum building height of 7.29 metres above NGL;
- maintain the same rectangular footprint of 214sqm (20m x 10.7m) as the existing structure, but modified to include hard-stand flooring; fully lined and insulated corrugated iron walls, two (2) roller shutter doors and separate pedestrian access (on its southern side) and a functional and accessible internal layout both fit for purpose and relevant accessibility requirements;
- the winery is described as comprising a workshop area, wine production and processing area with associated equipment, barrel and wine storage and plant and equipment storage.

It is proposed to construct a new single storey dwelling by converting the existing partially constructed building in the northeast corner of the property. The proposed dwelling would:

- be retained in the same location as the existing structure;
- maintain the existing building footprint of approximately 228.35sqm (22.3m x 10.24m);
- have minimum setbacks of 41.996 metres from the rear northern boundary, 34.792 metres from the eastern boundary and 49.190 metres from the neighbouring dwelling at 550 Soldiers Road;
- reducing the overall building height, including a maximum ridge level height of 56.74m AHD and:
- a maximum building height of 6.7 metres above NGL;
- include a new external timber deck, ramp for safe and functional accessibility;
- The materials and colours are the walls of recycled galvanised corrugated iron walls and a Colorbond "Pale Eucalypt" roof;
- be setback more than 500 metres from Soldiers Road.
- The proposed dwelling consists of two (2) bedrooms and a study with open plan kitchen, living and dining area, as well as an ensuite and main bathroom.

The application is accompanied with an agricultural land management plan, Viticulture Assessment, staging plan, Land Capability Assessment and associated plans to support the application. The total land area to be utilised for vineyards is 4.3ha, which would equate to approximately 17,200 vines in total (around 4,000 vines p/ha).

In addition to the winery, the proposal seeks to use the land for grazing animal production of biodiversity regeneration on the parts of the land not identified for use as part of the winery/vineyards. Livestock numbers would vary due to the land sharing arrangement with a neighbouring farm, with a total of 78 head of cattle (48 dairy heifer replacements plus 30 beef steers). Occasionally, in winter there would be up to 55 dry dairy cows placed on the land (owned by a neighbour) where there are no other stock on the land at that time. It is intended that at the end of the staging plan for the vineyard establishment that there would be no more than 16 Angus beef steers or heifer weaners on the land at any given time. The abovementioned stocking details are not currently provided in the agricultural land management plan and were supplied separately following the Submissions Hearing on 5 April 2023.

The proposed revegetation and biodiversity management would cover up to 6.4ha on the subject land. This would include revegetation and erosion management within the waterways/creek beds, the provision of stock proof fencing, and provision of revegetation areas separate to the waterways where appropriate.

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SUBJECT SITE AND SURROUNDING AREA

The land is located on the corner of Soldiers Road and Waratah Road Fish Creek. It is an 'L' shaped land parcel of 20.48 hectares that is currently divided in to 3 paddocks, plus a small paddock set up for weaning of calves.

The land is undulating, with the northern end of the property higher than that road frontages. There are three functioning dams and a natural creek running through the property. There is existing access from Soldiers Road.

There is a partially constructed hay shed and agricultural shed located in the northern eastern corner of the site that was approved under a previous planning permit.

There is some native vegetation along the creek however there has been significant loss of live vegetation, including many dead trees leading to significant soil erosion along the creek bed.

The owners have started planting native vegetation along the North East boundary using trees, and the applicant is proposing further planting along that boundary as a buffer between the subject site and neighbouring property.

In addition, the creek has been fenced off and replaced vegetation along the creek bed to prevent further erosion using trees. The owners are proposing to revegetate the land in a north/south axis towards two of the dams.



The area surrounding the subject land is used for a mixture of farming and rural living. The site abuts Waratah Road to the south-west and Soldiers Road to the south-east and neighbouring properties to the north and north-east. Waratah Road and Soldiers Road are sealed roads with grass shoulders and open drains, and there is some vegetation within the road reserves.

North

The property to the north is 132 hectares used for farming and cattle grazing, there is no dwelling or any buildings on the property.

East

The property is 20 ha and has the accessway and frontage to Soldiers Road. There is a dwelling and outbuilding located in the north western corner (at the rear of the site) close to the western boundary (subject site's boundary). The accessway is along the western boundary and previously it was a shared driveway with the subject site.

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South

Across the road is a large farming property of 1200 ha with multiple titles in the same ownership. The property runs to the Shallow Inlet on eastern side and all the way to Waratah Bay coastline. The site is used as a dairy farm with multiple buildings and generally open farmland.

West

The western boundary is made up of two properties that have a frontage to Waratah Road. The furthest property is a 4 ha site that contains a dwelling, five accommodation cabins, a lodge, a shed and a swimming pool. The site is used for accommodation known as 'Prom Coast Holiday Lodge'. The majority of the buildings are located towards the front facing Waratah Road. To the rear a portion of the land (along the boundary of the subject site) is vegetation with mature large trees in excess of 8 metres and part of the BMO overlay.

The other adjoining property has a frontage to Waratah Road and is 4.05 ha. There is an existing dwelling and outbuildings located close to the road. The site is also used for caravan and boat storage, with an approved permit for this use. The majority of the buildings and commercial use is located along Waratah Road. The rear of the property is highly vegetated with scattered and damaged trees along the creek line.

EASEMENTS

Not Applicable for this application.

RESTRICTIVE COVENANTS, CAVEATS AND SECTION 173 AGREEMENTS

There are no restrictions on the title or land.

BACKGROUND / PLANNING PERMIT HISTORY

2014/341: Development of the land for two agricultural buildings and associated works issued on 11 February 2015.

- The application approved a large agricultural shed 7.5 metres in height and located 74 metres from the rear northern boundary (forward of the neighbouring dwelling not in the same ownership).
- A secondary consent application was approved on 17 March 2017, which subsequently changed the location of the proposed sheds moving them 34 metres from the rear (northern boundary); this change aligned the proposed structures with the neighbouring dwelling not in the same ownership.
- An 18 month extension of time was granted on 17 March 2017, allowing for the development to start by 11 August 2018.
- The development commenced prior to this date, however was not completed by 11 February 2020 therefore the planning permit is expired and not valid.
- The two existing buildings on the land that are partially constructed are deemed to be illegal buildings, since both the planning permit and building permits have expired. Further, the buildings were not constructed in accordance with the approved plans.

2020/95: Use and development of the land for a dwelling, domestic outbuilding, rural industry (wine manufacture) winery (cellar door) and liquor licence to sell and consume liquor on site and business identification signage.

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- Planning application lodged in early 2020 with Council.
- A Failure to Determine was lodged with VCAT; Council advised that Tribunal that it would have refused the application (but for the failure appeal) and that decision was upheld at VCAT, with no permit granted.
- The application proposed herein is similar to the previous application, however, there are differences with both applications which will be discussed later in this report.

PLANNING SCHEME CONTROLS & PERMIT TRIGGERS

Zone/Overlays/Particular Provisions		
Provision	Trigger?	Rationale
Clause 35.07 Farming Zone (FZ)	Yes	A permit is required: Use of the land for dwelling, winery and rural industry (as the Section 1 conditions is not met). 35.07-4 Buildings and works associated with a use in Section 2 (Winery and Dwelling). 35.07-4 Buildings and works less than 100 metres from a dwelling not in the same ownership.
Clause 42.03 Significant Landscape Overlay (Schedule 3)	No	A permit is not required to construct a building or carry out works Schedule 3 because: - The proposed dwelling is less than 7.5 metres in height; - Total area is less than 250 sqm; - Is constructed in muted tones.
Clause 44.06 Bushfire Management Overlay	No	The proposed use and development is not located within the BMO overlay area.
Clause 42.01 Environmental Significance Overlay (Schedule 5)	No	The proposed use and development is not located within the ESO overlay area.
Clause 13.02 Bushfire Planning	Yes	Bushfire risk should be considered when assessing planning applications for the following use and development: - Accommodation

SPECIAL WATER SUPPLY CATCHMENT AREA

The site is not within a catchment area.

ABORIGINAL CULTURAL HERITAGE MANAGEMENT PLAN (CHMP)

The site is not within a cultural sensitivity area.

FURTHER INFORMATION

Additional information was requested as part of the planning application with subsequent meetings with the permit applicant to discuss the issues and concerns with the application. As part of the ongoing conversations and emails over the course of the assessment, additional information and an amended application was submitted to address concerns regarding the dwelling design. These concerns revolved around the proposed dwelling's built form in terms of visual bulk and impacts to the rural landscape character.

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There were also discussions around ensuring that the agricultural land use was sufficiently established prior to the residential land use commencing. The applicant has supplied an action plan that seeks to commence the use of the land for the dwelling once the vines have been planted at the end of year 1.

NOTIFICATION OF THE PROPOSAL

The application was placed on notice in accordance with Section 52 of the *Planning and Environment Act 1987* by:

- Notice on site
- Letters to adjoining owners and occupiers

Six (6) objections were received without repeating each of these objections here, the key concerns raised in the submissions related to:

- concerns regarding the illegal buildings existing on site;
- the previous VCAT decision and its relevance to the current planning application;
- the proposal not being consistent with the provisions of the Farming Zone;
- there being limited justification for a dwelling on the land;
- whether the proposal still requires planning approval under the Significant Landscape Overlay – Schedule 3; and
- that the existing buildings on site should be demolished.

The amended application was circulated to the objectors in February 2023.

REFERRALS UNDER SECTION 55 OR 57C AND INTERNAL REFERRALS

Authority	Rationale	Date received and response
Country Fire Authority (CFA)	Section 52 – comment only site is partially within BMO and within Bushfire Prone Area any strategic comments would be appreciated.	Relevant comments regarding construction BAL rating and defensible space recommendations.
West Gippsland Catchment Authority (WGCMA)	Section 52 – comment only Vineyards and works within 30 metres of a waterway.	No objection to granting of a permit.
Agriculture Victoria	Section 52 – comment only Comments/advice on FMP and use in association with a dwelling.	Noted that there appeared little strategic justification for a dwelling in association with the proposed land use, and suggested recommendations/conditions to be applied should a permit be issued.
SGSC Engineering	Comments on driveway, drainage and car parking requirements.	No response received within the allocated timeframe.
SGSC Environmental Health	Comments on rural industry use and wastewater systems proposed.	Standard conditions on any permit issued.

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SGSC Environmental Planning	Comments regarding landscaping plan proposal	No response received within the allocated timeframe.
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ASSESSMENT**Proposed dwelling and winery in the Farming Zone***Key differences between the application herein and 2020/95*

There are a number of differences between the current application and 2020/95, including the removal of the cellar door and orchard portions of the proposal. The application herein has provided additional actions as part of the agricultural land management plan, such as additional information surrounding the feasibility of using the site for a vineyard, cattle stocking rates and biodiversity management outcomes. Further, the land management plan has been supplied with a staging plan that seeks to only commence the use of the dwelling after the establishment of the vineyards.

Other differences include the dwelling design and relocation of the second agricultural structure to be located behind the proposed dwelling. Following consultation with Council officers regarding concerns of visual bulk and obstruction of site lines within a rural area, the application was amended to reduce the overall height of the proposed dwelling to follow the maximum building heights of the structures on the adjoining land to the east of the subject land. This will provide for a more consistent development outcome, with proposal landscaping to the rear of the proposed structures to create a natural buffer atop the structures over time, which would assist in limiting visual impact of the structures across the ridgeline. The proposed dwelling will still be visible from Soldiers Road, although the new design is considered to be more acceptable within the landscape, and provides for more visual interest through the roof design.

It is noted that the VCAT matter for 2020/95 discussed concerns regarding the dwelling design in detail, with commentary around the decision guidelines under the Significant Landscape Overlay. The proposal herein has been amended so as to not require any planning approval under that overlay.

Is the proposal appropriate within the Farming Zone and against the provisions of the South Gippsland Rural Land Use Strategy and Planning Policy Framework?

The Farming Zone includes objectives for ensuring that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture whilst encouraging the use and development of land based on comprehensive and sustainable land management practices. The Farming Zone also requires Council to consider whether use and development will support and enhance agricultural production or whether there is potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.

The proposal seeks to establish a winery, with a mix of vineyards, grazing animal production and biodiversity management to support the requirement for a dwelling on the land. The dwelling is proposed to be located close to the dwelling on neighbouring land, which will assist in co-locating the two domestic zones to limit any offsite impacts to existing agricultural activities and ensure that the all structures are contained within the north-eastern corner of the land to ensure the land available for agriculture or

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biodiversity management is maximised. There are also no intensive agricultural activities occurring on adjoining or neighbouring land that the proposed dwelling would detrimentally impact or limit.

In terms of the proposal agricultural justification, the submitted agricultural land management plan has identified a number of different farming and biodiversity management actions to be implemented across the site due to the different topographical features on the land. The subject land contains a number of waterways and dams, with an unnamed waterway transecting the land in both a north-south and east-west axis. These areas are identified for the purpose of biodiversity management including revegetation, erosion mitigation and the provision of stockproof fencing. The areas identified for agricultural purposes include 4.3ha of vineyards (horticulture) and the remaining land for low scale cattle grazing (grazing animal production). The application has identified that the 4.3ha on vineyards would be able to support approximately 17,200 vines, with the areas identified for the purpose of horticulture being those with the most suitable soil types, slope/drainage and other features. The cattle grazing is supplementary to the main purpose of the land for a winery/vineyard and biodiversity management. Therefore, the main consideration should be based around whether the proposed winery and vineyard functions and biodiversity management warrant the necessity of a dwelling on the land, which is consistent with the assessment of the previous VCAT determination that found that the grazing portion of the farming activities could occur without a dwelling on the land.

The previous VCAT determination for 2020/95 discussed that the use and development of dwellings where not genuinely required for the ongoing operation of a commercial agricultural activity can have adverse implications on agricultural output through the conversion of land to residential or hobby-farm use. Policy requires substantial justification for a new dwelling on a lot over 4.1ha for the enhancement and ongoing growth of agricultural production in the Shire. The VCAT decision mentions that there is policy support for a small winery within the Farming Zone, with Member Baird at the time stating that the proposal would support and enhance agricultural production without any "contended impacts on the operation and expansion of adjoining and nearby agricultural uses or environmental risks". Further, the location of the proposed dwelling was not considered to demonstrate a proliferation or concentration of dwellings that would warrant refusal of a permit.

Although, whilst there is policy support for some boutique agricultural activities, the nature of that activity must be considered in regard to the need for a dwelling on the land. Wineries are not typically considered to be activities that require onsite managers given the amount of time between establishment of the vines and when the winery would actually be productive. If the vines had already been established and were at the point where there was a nexus for an onsite manager for the production of wine, there would be a different assessment. The establishment of the vines is considered to be horticulture which is an as of right activity under the Farming Zone and could have feasibly been established prior to seeking approval for a dwelling if the proposed agricultural activity was genuine.

The objectives of the Farming Zone seek to support sustainable farming practices. It is unclear whether the application has satisfactorily optimised the subject land in such a way that is suitable to the context of the land. Whilst part of the proposal also seeks to use part of the land for biodiversity management which would have benefit to the subject land, the winery is essentially only proposed to occupy 1/5 of the land. This is considered to be very small scale and could feasibly be managed offsite without a permanent resident on the land.

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Another concern has arisen out of the conflicting information between the early versions of the Agricultural Land Management Plan as to the soil types/capacity for the vineyard itself and for the water supply to support the proposed agricultural activities which highlights concerns over the viability of the proposal. This raises doubt as to the scale and intensity of the proposal and whether it will be able to continue into the future.

Whilst it is a positive step that the proposal was amended to stage the dwelling use to only commence once the vineyard had been established, as discussed, there is actually no need for the dwelling to be there at the end of year 1 due to the essentially zero production capacity of the winery at that time. This is a key issue for the proposal against the relevant policies of the South Gippsland Planning Scheme. A Section 173 Agreement could be used to enforce the actions set out in the Agricultural Land Management Plan, although state guidance around the use of Section 173 Agreements advises that an agreement is not a substitute for planning provisions and should not be used if an objective is unable to be met. Whilst Section 173 Agreements are used for the prohibition of certain activities (such as additional dwellings and further subdivision) in the Farming Zone, simply staging the development via a Section 173 Agreement is not considered to be sufficient to satisfy the application's inability to meet state and local planning policy objectives.

It is acknowledged that there would be financial investment for establishment of the vineyard prior to occupying the dwelling. Although, as discussed above, this could have been done prior to lodgement of the application given that the land has been in continuous ownership for over half a decade. Further, given the discrepancies in the detailed documents, it is unclear whether the proposed vineyard and grazing activities would be sustainable or sufficiently productive over the long term.

Chapman v South Gippsland SC [2019] VCAT 1831

The previous VCAT matter for 2020/95 referred to *Chapman v South Gippsland SC [2019] VCAT 1831* which sought approval for the use and development of the land for a dwelling and winery. The vineyard included in that proposed covered a total area of 3ha, but included details of wine production (1,000 cases per year). The landowner/occupier was proposed to be the one full time vigneron with casual labour during peak times. This proposal was also staged, although the dwelling was proposed in stage 3 after the establishment of all of the winery infrastructure (except landscaping, fitting out of the cellar door and planting of the third and last vineyard set out for stage 4). The VCAT determination took a number of matters into consideration including expert advice from a qualified and experienced viticulturist and advice obtained from two industry and government agriculture and viticulture advisory bodies as part of the proposal. This expert advice stated that a permanent manager would be required on the land in order to ensure the commercial success of the enterprise, not only for the management of the vineyard alone, but for other activities and works associated with the winery. Other considerations included ensuring that the proposed dwelling is secondary to the use of the land for agriculture and whether the proposed agricultural activity can be managed from an off-site location.

The relevance to the proposal herein is that it is considered that the current proposal has not supplied sufficient information, that was supplied in *Chapmans*, to show significant financial investment (with evidence of productivity and return), consistent information regarding the appropriateness of the land for the purpose of a winery (i.e. ensuring success of the agricultural activity and that the property will not fall into a hobby farm / lifestyle property), actions that demonstrate a daily presence on the land and that the property cannot feasibly be managed from an off-site location. The key difference between the two

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applications is context of the proponents and the expert evidence provided. The proponent herein is not an experienced vigneron, nor did they seek out the advice of one for the selection of a property primarily for the purpose of a winery. The proponent has not sought to maximise opportunities for productivity by establishing the vineyards in advance of a dwelling application, which indicates that the proposed dwelling will not be secondary to the winery.

Therefore, whilst there are some similarities between the applications, *Chapmans* is not considered to represent a precedent that can be relied upon for the support of the proposal herein.

Responses to grounds of objection***Illegal buildings and enforcement action taken (including whether the buildings should have been demolished)***

The existing structures on the land are considered to be illegal buildings as they were not constructed in accordance with planning permit 2014/341. Further, as the buildings were not completed prior to the expiry of that permit and the relevant building permit, the structures cannot be further developed until additional approval is obtained.

Council's Planning Enforcement Unit attended the subject land with Statutory Planning Officers in early 2023 and determined that they would undertake enforcement action pending the outcome of the application herein.

As there is a current planning application under assessment, enforcement action to force demolition of the existing buildings has not been deemed necessary at this point in time.

Previous VCAT decision and relevance to this application

As discussed above, the VCAT determination for 2020/95 included commentary around justifying the need for a dwelling on the land and ensuring that the proposal does not ultimately result in a rural lifestyle or hobby farm property. In relation to this point, the application herein is not considered to address all of the concerns raised in the VCAT matter.

The proposal not being consistent with the Farming Zone and limited justification for a dwelling on the land

This ground of objection is discussed above.

Whether the Significant Landscape Overlay – Schedule 3 still triggers planning approval for the amended proposal

The proposal is not considered to trigger the need for a planning permit as each proposed building has a floor area less than 250sqm, each building is single storey with a maximum building height less than 7.5m and are constructed in muted, non-reflective tones as per Schedule 3 to the Significant Landscape Overlay. The objection states that the effluent system would need to be included as part of the 'dwelling' or 'building' floor area calculation as it is ancillary to the development of that structure as set out in *Roussac-Hoyne v South Gippsland SC [2022] VCAT 577* as it is a service installation or appurtenance not stand alone from the dwelling. The officer's interpretation of the intent of the permit 'trigger' at Schedule 3 to the

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Significant Landscape Overlay is to apply to above ground structures that would have impact to the visual landscape. It is agreed that for the purpose of the dwelling definition, it includes outbuildings and associated works at Clause 73 of the Scheme. Although, the wording of the permit trigger refers specifically to a “building or extension to an existing building” where the development is exempt if it meets certain height and floor area, and external materials requirements. The effluent system will be located entirely under the ground, which considered to be outside of the parameters of what the permit trigger is intended to capture. Therefore, the proposal is not considered to require a planning permit under this Overlay.

Although, for thoroughness, the design of the structure may still be considered under the Farming Zone and relevant rural policies of the Scheme. These are still able to capture considerations around whether the design of the dwelling is appropriate against the rural and coastal setting of the subject land. As discussed above, the dwelling has been amended to reduce the height to a single-storey built form, which, whilst parts of the roof structure are still relatively tall, provides a high level of roof articulation to reduce the visual bulk of the structure and ensure that the development is no taller than the existing structures on the land immediately east of the subject land. Further, landscaping around the domestic zone and elsewhere on the subject land, will assist in softening the appearance of the structure against the ridgeline when viewed from Soldiers Road and adjoining properties.

The dwelling design in its own right is considered to be acceptable based on the context of the site and surrounds. Although, this does not include whether the use of the land for a dwelling is acceptable.

Other issues

The application has not sought permission for the use of the land for a Producer’s Licence, which requires planning approval under Clause 52.27 of the Planning Scheme for the sale and consumption of liquor. Whilst no cellar is proposed, a producer’s licence provides scope for one. Whilst no permission is required for the manufacture of liquor under Clause 52.27, if the proposal sought to sell liquor from the subject land, planning permission for that purpose should have been sought. As this was not included as part of the application, the matter has not been fully considered.

PLANNING POLICY FRAMEWORK (PPF)

The following policies of the Planning Policy Framework are relevant to this application:

POLICY:	OBJECTIVE/STRATEGY:
Clause 12.05-2S (Landscapes)	To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments. Strategies of this policy include: • Ensure significant landscape areas such as forests, the bays and coastlines are protected. • Ensure development does not detract from the natural qualities of significant landscape areas.

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	• Ensure important natural features are protected and enhanced.
Clause 12.05-2L-01 (Coastal and hinterland landscapes)	Ensure that development is subordinate to the natural, visual and environmental landscape character and significance. Discourage development on prominent ridgelines, particularly those close to the coast. Where development cannot be avoided in steep locations or prominent hill faces: • Site development in the lowest third of the visible slope wherever possible. • Set buildings and structures among existing vegetation or establish gardens with locally indigenous species. • Design buildings to follow the contours or step down the site to minimise earthworks. • Articulate buildings into separate elements and avoid visually dominant elevations. Encourage the planting of indigenous vegetation for rehabilitation works and landscaping around development.
Clause 13.07-1S (Land use compatibility)	To protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential for adverse off-site impacts. Strategies of this policy include: • Ensure that use or development of land is compatible with adjoining and nearby land uses. • Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.
Clause 14.01-1S (Protection of agricultural land)	To protect the state's agricultural base by preserving productive farmland. Strategies of this policy include:

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	• Protect productive agricultural land from unplanned loss due to permanent changes in land use.
Clause 14.01-1L-01 (Rural dwellings)	Strategies of this policy include: • Avoid dwellings that are for rural residential or lifestyle purposes and may conflict with the rural use of the land unless the dwelling is on an existing small lot. • Avoid dwellings unless: ○ The dwelling is proposed in association with agriculture, is genuinely required to carry out a long-term agricultural activity on the land and will provide a net benefit to agricultural productivity. ○ The dwelling is proposed on a lot that is predominantly occupied by remnant native vegetation. ○ The agricultural activity requires the presence of a resident land manager. • Avoid dwellings that adversely impact: ○ Any existing agricultural uses or activities on surrounding land. ○ Environmental characteristics of the surrounding area. ○ Rural character and landscape values of the area, including visual impact. ○ Natural systems, water quality or water quantity in the locality. • Avoid dwellings in association with Grazing animal production or calf rearing. • Avoid dwellings in association with agricultural uses (other than Grazing animal production or calf rearing) unless: ○ The dwelling is necessary for the operation of and secondary to the use of the land for agriculture. ○ Any proposed agricultural use does not compromise the operation of adjacent or nearby agricultural activities. ○ The agricultural use cannot be reasonably managed from an off-

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	site location.
Clause 14.01-2S (Sustainable agricultural land use)	To encourage sustainable agricultural land use. Strategies of this policy include: • Encourage diversification and value-adding of agriculture through effective agricultural production and processing, rural industry and farm-related retailing.
Clause 15.01-6S (Design for rural areas)	To ensure development respects valued areas of rural character. Strategies of this policy include: • Ensure that the siting, scale and appearance of development protects and enhances rural character. • Protect the visual amenity of valued rural landscapes and character areas along township approaches and sensitive tourist routes by ensuring new development is sympathetically located. • Site and design development to minimise visual impacts on surrounding natural scenery and landscape features including ridgelines, hill tops, waterways, lakes and wetlands.

Declaration of Conflict of Interest:

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

Conclusion and Recommendation:

Council has considered the matters under Section 60 of the *Planning and Environment Act 1987*. It considers that the proposed **use and development is not** appropriate having regard to the relevant matters and **cannot** be managed through appropriate conditions.

It is recommended that **a report be written to Council not supporting** the Use and development of the land for winery and use and development of the land for a dwelling at 570 Soldiers Road Fish Creek.