

South Gippsland Shire Council

Officers Report

2024/82 - 252 Soldiers Road Fish Creek VIC 3959

Being Lot 3 PS525687G

Application Details	
Application No	2024/82
Proposal	Use and development of land for group accommodation (staged)
Applicant	Council Approval Group
Application lodged	28 April 2024 <i>Application amended 18 February 2025</i>
Plan Details	As attached to the Council Report
Officer:	Robyn Begg, Senior Statutory Planning Officer
Property Details	
Property Address	252 Soldiers Road Fish Creek VIC 3959
Land Description	Being Lot 3 PS525687G
Land Area	3.253 ha
Restrictions on title	AD277853X
Existing Use	Dwelling
Planning Provisions	
Zone	Farming Zone
Overlays	Significant Landscape Overlay - Schedule 3 Bushfire Management Overlay Erosion Management Overlay – Schedule 1
Particular Provisions	Clause 53.02 Bushfire Planning
General Provisions	Clause 65 - Decision Guidelines
CHMP	No
Permit Triggers	
Zone?	Farming Zone Use and Development of the land for Group Accommodation
Overlay?	Bushfire Management Overlay - Development associated with accommodation Significant Landscape Overlay - Development of land
Provisions?	Clause 53.02 Bushfire Planning
Notifications	
Advertising	Notice on site and letters to adjoining landowners and occupiers
Number Objections	Five (5) to current plans

THE PROPOSAL

The application seeks to change the use of the land, currently being used for a dwelling, to group accommodation. The proposal also seeks the development of five (5) additional dwellings on the land all to be used for group accommodation.

Group accommodation is defined as:

Land, in one ownership, containing a number of dwellings used to accommodate persons away from their normal place of residence.

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The application seeks to use the existing dwelling which has five bedrooms (total of 10 people being accommodated) for short term accommodation in addition to the development of five (5) additional dwellings (the cabins).

The proposed development is restricted to a small area of the property due to a Section 173 Agreement on the land that imposes a Building Envelope to the western side of the property.

Each proposed cabin will contain two bedrooms with maximum occupation of four guests per cabin. Each of the proposed Cabins are single story with a maximum height of 4.34m. The area of each cabin is 13.325m x 6.518m (area 86.85m²). Internally each cabin will have a storage area, bathroom, two bedrooms, and an open living/kitchen/dining area with a laundry being established in the cupboard. Each cabin will have a secluded verandah with walls on north and southern sides to ensure minimal overlooking for each cabin.

The development and use are proposed to be serviced from the existing driveway. A new wastewater system is required to accommodate the whole of the development.

The proposal seeks a total of 30 potential occupants at any one time.

SUBJECT SITE AND SURROUNDING AREA

Subject land

The land is located 12 minutes south of Fish Creek and 42 minutes from Wilsons Promontory (via the Meeniyan Promontory Road). The 3.253ha site has been developed with a dwelling and associated shedding. A tiny home has been established to the north of the driveway and is to be removed from the land and will not be used for group accommodation (addressed further in the report).

There are two dams on the property and some vegetation. Largely the site is cleared and used as a hobby farm with a few animals on site.

The site is serviced with electricity only. Water is provided by water tanks and wastewater is treated in an onsite wastewater management system that currently only services the dwelling.

Access is from Soldiers Road which is a sealed road. The driveway into the property is formed with crushed rock and extends to the north to service the shed to the rear of the property. There are other hard standing areas on the site but not for vehicle movements.

Surrounding area

The land is located in a pocket of rural lifestyle properties all established with a dwelling. This pocket is between Meikle Road and Soldiers Road with 17 lifestyle blocks in the immediate area, see aerial below. Note there are a further nine lifestyle allotments further along Meikle Road.

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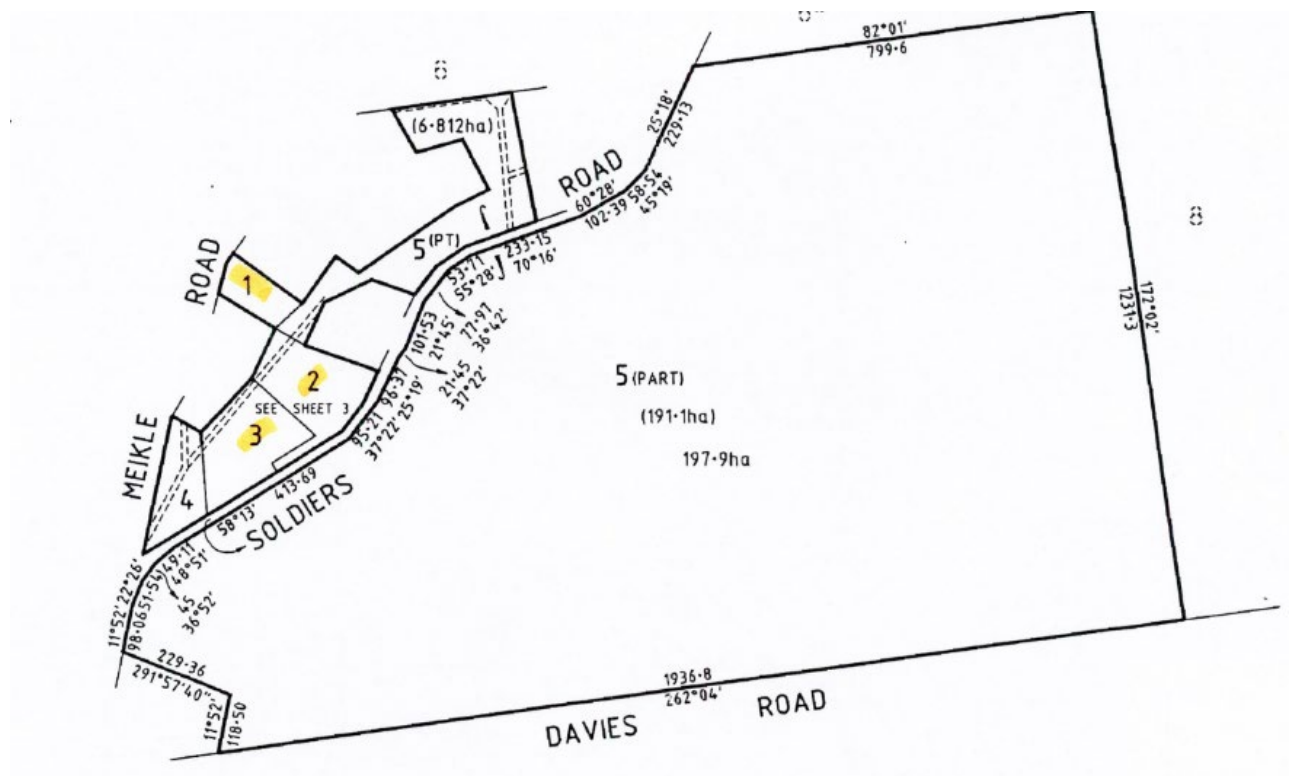
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The land to the north, west and east of the subject site have all been established with dwellings. There is an established farm to the south being Lot 5 on the plan of subdivision below. The plan of subdivision shows part of Lot 5 on the north of Soldiers Road. The land within this subdivision is subject to the same Section 173 Agreement as the subject site.



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EASEMENTS

A power line easement runs through the rear of the site along the northern boundary. There is no development proposed near the easement.

RESTRICTIVE COVENANTS, CAVEATS AND SECTION 173 AGREEMENTS

AD277853X - The agreement was imposed via Planning Permit 2003/331 as part of a 5 lot subdivision.

The agreement states the owner must -

- Ensure that the lots created by the Plan cannot be further subdivided so as to increase the number of lots;
- Restrict any building construction on the Lots created by the Plan within the envelopes specified in the Endorsed Plans;
- Restrict the height of the vegetation planted on Lots 1, 2 and 3 on the Plan to a maximum mature height of three (3) metres;
- Ensure that the five (5) metre vegetation buffer as shown on the Endorsed Plan is planted within two (2) years of the date that these lots are transferred from the Owner to a new owner;
- Restrict the height of any dwelling on lot 1 of the Plan to a maximum envelope described by a vertical line setback twenty (20) metres from the northern boundary and a horizontal line five (5) metres above natural ground level at the twenty (20) metre setback;
- Ensure that the building envelope of any of the Lots on the Plan starts no closer than twenty (20) metres from Meikle Road.

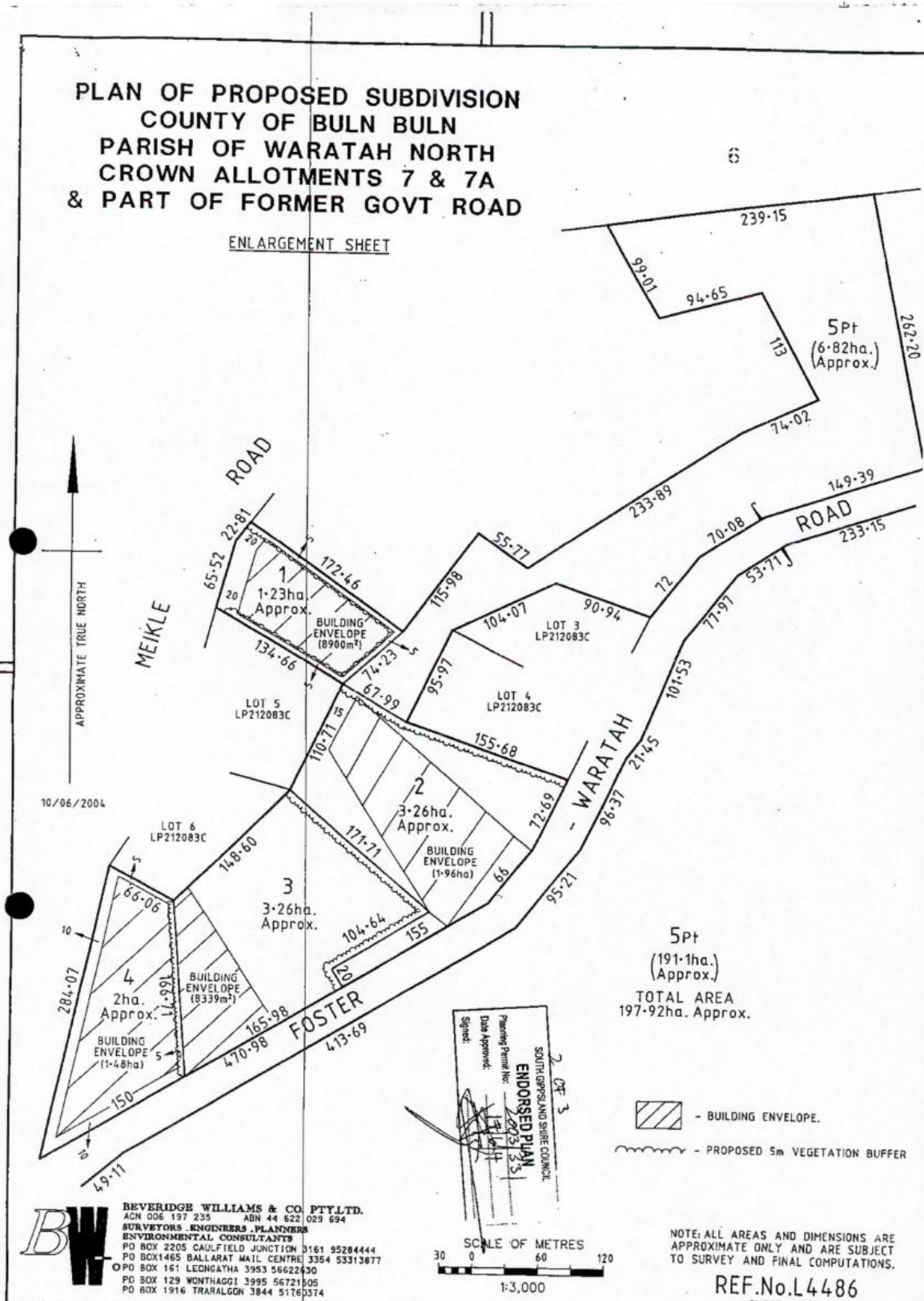
The layout of the building envelopes is shown below. The proposed development is located within the 8339m² area. Neither Lot 4 or Lot 3 have maintained the vegetation buffer required at dot point 4. It's noted that the agreement does not require the maintenance of the planting.

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BACKGROUND / PLANNING PERMIT HISTORY

2003/331 – 5 Lot subdivision

2005/354 – Use and development of a dwelling

2007/245 – Development of a shed associated with the dwelling

The subject site is also subject to an enforcement matter which covers Building, Planning and Health violations. The landowner has been working closely with Council to stop activity on the land and rectify the breaches. The recent activity on the land has informed the objectors concerns. The activities and development that has occurred on the site as part of this matter are being rectified. The subject application must be determined on its merits not on these activities. As the submissions have raised these issues a brief outline has been provided below:

- The existing dwelling has been used to accommodate people in excess to its capacity.
The dwelling which can be rented out independently has been occupied in excess where there has been a failure in the existing onsite wastewater management system. Council has been working with the applicant, landowner and plumber on a solution.
Regardless of the outcome of the subject planning application, the solution is still required to address the wastewater requirements of the dwelling.
- Use of the existing shed for accommodation.
The shed has been vacated and will remain on site as a shed not to be used for Accommodation.
- Establishment of Glamping tents, bubble tents and other temporary accommodation buildings.
The structures have been removed and the associated shower and toilet facilities removed from the site.

Overall, the enforcement concerns have been addressed and resolved.

There is also a tiny home on the property. In respect to the subject application the landowner will be removing it from site as it cannot be used for group accommodation as it:

- Does not meet the BAL construction requirements of the Bushfire Management Plan submitted with the application;
- Cannot be modified to meet the requirements of the Building Act 1993;
- The location of the tiny home is within the Powerline easement and if to be permanent, permission from AusNet would be required.

PLANNING SCHEME CONTROLS & PERMIT TRIGGERS

A permit is required under the following clauses of the planning scheme:

Planning Scheme Clause	Matter for which a permit is required
Clause 35.07-1	Use of land for Group Accommodation
Clause 35.07-4	Development of land <ul style="list-style-type: none">• Associated with a Section 2 Use• Within 100m of a Waterway

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	<ul style="list-style-type: none">• Within 100m of a dwelling not in the same ownership
Schedule 3 to Clause 42.01-2	Development of land
Clause 44.06-2	Development associated with Accommodation

SPECIAL WATER SUPPLY CATCHMENT AREA

The land is not located within a Special Water Supply Catchment Area.

ABORIGINAL CULTURAL HERITAGE MANAGEMENT PLAN (CHMP)

The subject land is not located within a mapped Area of Aboriginal Cultural Heritage Sensitivity. The proposed activity is considered as a high impact activity (establishment of 3 or more dwellings).

As the land is not located within an area of mapped Aboriginal Cultural Heritage Sensitivity, a Cultural Heritage Management Plan is not required.

FURTHER INFORMATION

Extensive further information has been requested throughout the life of the application. The applicant has addressed the issues raised within each further information letter. Over the course of the application the applicant has sought to amend what was applied for to best meet the requirements of the subject zone and overlay requirements pertaining to the site.

Initially, the landowner and the applicant were unaware of the building envelope and have since reduced the proposed development substantially.

Following enforcement issues further changes were made to address wastewater management and the inclusion of the existing dwelling to be used for group accommodation rather than for permanent residents.

The application was further amended to remove the tiny home from the site as it could not be used for group accommodation as previously stated.

NOTIFICATION OF THE PROPOSAL

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

- Notice on site
- Letters to adjoining owners and occupiers

Upon the initial notice of the application Council received three (3) submissions. Following the notice of the amended application there were a total of five (5) submissions. The original three submitters provided supplementary submissions to the application.

Submissions to Amended Application

10-Apr-2025 Objection

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Submission Summary Inadequate water supply and management arrangements; Unsatisfactory effluent treatment arrangements; Impacts on local traffic; Impacts on noise amenity
03-Apr-2025 Objection
Submission Summary This development not in keeping with objectives of the zone; No controls around the length of tenancy or number of occupants; Potential contamination of neighbouring land and waterways from unknown volume of wastewater produced; Increased traffic from proposed development; S173 agreement registered on title and applicant had not originally considered the building envelope on title - leaves doubt that applicant will abide by permit conditions if approved.
02-Apr-2025 Objection
Submission Summary The application does not specify the maximum number of guests per night leading to potential amenity impacts; Property is low lying with questionable drainage. The application does not refer to how effluent is affectively disposed of; Concerns with proposal leading to further overdevelopment of the area.
02-Apr-2025 Objection
Submission Summary Application is inappropriate, contains errors of fact and will negatively impact on objectors property
22-Mar-2025 Objection
Submission Summary Concerns about onsite effluent disposal for the proposed development; Domestic animal husbandry - property appears to exceed that currently allowed; Amenity impacts on neighbouring properties;

Submissions to the Original application
09-Dec-2024 Objection
Submission Summary At 134 pages, it's a significant read. A considered response from us is not possible at this stage. Further, the applicant's details have been redacted so we have no idea whether this is a private or commercial development. The Shire has seen fit to subdivide this beautiful area and placing an industry or commercial entity in the middle of many permanent, private residences does not sit well with us. We are also concerned that already there is an increase of buildings and occupancy on the said

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property, and question if existing permits allow this? Does the shire check or monitor to see if this type of commercial enterprise is complying to council regulations? Given our own strict adherence to council regulations concerning issues such as septic, drainage and building compliance we hope this will be applied to quite a large scale proposal. In viewing this proposal the council also needs to consider the impact on nearby residents.

We hope that Council works towards the best interests of it's community and that the outcome does not impact on the quality of life of its Fish Creek residents on Soldiers and Meikle Road.

09-Dec-2024 Objection

Submission Summary

I have concerns about the size of the development and the way they are going to cater for the increase of people staying at the property - in particular the waste disposal, sewerage.

I believe the property has been used as a rental since purchased by the current owner, and as I have been in the residence I am aware there is only an ensuite and a bathroom in the main building. I believe hardly sufficient to cater for the number advertised (accommodates 16), on places such as booking.com.

With the increase of accommodation facilities - 5 two bedroom "cabins" has the Council approved the increased septic system. How is the property going to cater for the increase.

28-Nov-2024 Objection

Submission Summary

The subject land is zoned Farming and this type of development is not in keeping with the objectives of the zoning.

The development appears to be a medium sized residential development, where there are no controls around the length of tenancy or number of occupants.

This then leads to the volume of wastewater produced and the ability to treat the refuse.

The site is level and subject to extended periods of waterlogging.

This biohazard could lead to potential contamination of neighbouring land and waterways.

Increasing the number of dwellings on the property, will lead to a significant increase in the volume of vehicle interactions, with one of the major tourist roads in the shire.

It is concerning that initially the applicant did not consider the building envelope despite there being a Section 173 registered on title.

I understand that the proposed buildings are now within the building envelope but it leaves some doubt if the applicant will abide by the conditions if an approval is granted.

I do not object to a landowner providing short term holiday let type accommodation via a 2' dwelling in a Farming zoned area but this proposed development goes far beyond that and is in contrary to the zoning and its objectives.

RESPONSE TO OBJECTIONS

The submissions have been broken down into the following themes.

- Inadequate water supply

The submission states that there is insufficient water supply for the proposed development when only considering stormwater catchment. The requirements of the Farming Zone stipulate that access to water be via reticulated water and, if no

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connection available, water tanks. It is the responsibility of the landowner to ensure there is sufficient water supply, either carted in or captured from the roof of all the structures.

The site plans include the CFA tank that is required for firefighting. This is static supply and is only for the use of CFA vehicles. Any planning permit issued for the site will require additional water tanks to be connected to each proposed building (dwelling has an established domestic water supply). This is to serve stormwater management as well as the domestic supply of water required for each of the proposed buildings.

- **Unsatisfactory effluent treatment**
Management of effluent on the site currently has seen the failure in the system for the existing dwelling as previously discussed. As discussed in the background of this report there has been an overuse of the dwelling which led to the failure of the system and the incorrect handling of the wastewater from the bubble tents and tiny home has impacted the site. As part of the enforcement these issues have been addressed. The most recent Land Capability Assessment submitted has concluded that an Onsite Wastewater Management System can be accommodated on site subject to conditions both on a planning permit and part of any licence issued by the Environmental Health Department.
- **Traffic Management and the use of busses to the site**
The submissions have raised that the use of the land for private rental in the dwelling has seen the use of buses. The current access (crossover) is wide enough to accommodate a bus. The driveway within the proposed development narrows. There is sufficient area within the property to accommodate a turning area for a bus (and emergency vehicles). The Engineering Department have considered there are no issues with the site being able to receive busses.
It's noted that the use of a bus would only be required if the whole site is rented out by one party. Any approval should include the requirement for the widening of the internal driveway and the development of a turning area large enough to accommodate a turning circle.
- **Noise Pollution**
Noise pollution can be addressed via planning permit conditions if the application is supported. Conditions relating to amplified music and standard amenity conditions can be placed onto a permit if supported.
- **Not in keeping with the Farming Zone**
The application will be assessed against the decision guidelines of the Farming Zone in addition to the decision guidelines of the applicable overlays.
- **Development appears to be a Residential development no controls of length of tenancy and number of occupants**

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There are standard planning permit conditions that are placed onto any planning permit for group accommodation within South Gippsland Shire Council. These conditions have been utilised on all permits for group accommodation and would be applicable for the subject application if supported. These conditions cover such things as the number of people to be accommodated on site, the maximum length of stay, record keeping etc.

- **Refuse disposal**
Conditions can be considered relating to waste management on the site if a planning permit is issued for the site.
- **Impacts on the Section 173 Agreement**
The objection states *the agreement registered on title and applicant had not originally considered the building envelope on title - leaves doubt that applicant will abide by permit conditions if approved.*
Upon the initial application for the permit the applicant and landowner were made aware of the building envelope that applied to the land. The envelope did not form part of the Section 173 Agreement which referred to another document which led to the misunderstanding by the applicant (who is a town planner). Once the building envelope was brought to the applicant and landowners' attention the application was amended to ensure the development was wholly contained in the envelope. Note it is now Council's practice to ensure building envelopes are registered with the agreement to ensure people are made aware of these types of restrictions.
- **Questions raised regarding the development that has occurred on the land**
This matter has been addressed as part of the background section of the report.
- **Drainage issues**
The objection states that the property is low lying with questionable drainage. The detail of the objection relates to the wastewater (previously discussed) rather than the stormwater drainage.
To specifically address stormwater it must be directed to a water tank with overflow into a dam or soakage pit. This is a standard requirement for all development in the Farming Zone.
- **The impact of a commercial business in a Rural Residential area**
The existing rural lifestyle properties have been developed over a significant period of dwelling excisions, restructures of existing titles and the subdivision of land. A de facto area of dwelling development for lifestyle purposes have followed this subdivision pattern. However, it is not a residential area where commercial style premises would be prohibited.
The subject land is within the Farming Zone; the proposed use and development are not prohibited and must be considered under its merits. The impact on surrounding land uses must be considered under the Farming Zone and the applicable Overlays that apply to the land. A full assessment against the Planning Scheme provisions are addressed in the Assessment section of this report.

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REFERRALS UNDER SECTION 55 OR 57C AND INTERNAL REFERRALS

Referral Authority	Referral Trigger	Decision	Decision Comment
SGSC Building Department	General Building Query	Comment Only	Confirmation that the tiny home must meet the Building Act to be used as part of the group accommodation and would be unlikely to meet these requirements.
Referral Authority	Referral Trigger	Decision	Decision Comment
SGSC Engineering	Traffic Management	Conditions Required	conditions have been supplied for any permit granted for the site
Referral Authority	Referral Trigger	Decision	Decision Comment
Country Fire Authority	44.06-6 BMO - Recommending	Conditions Required	conditions have been supplied for any permit granted for the site
Referral Authority	Referral Trigger	Decision	Decision Comment
SGSC Environmental Health	Wastewater and Accommodation	Conditions Required	conditions have been supplied for any permit granted for the site

ASSESSMENT

PLANNING POLICY FRAMEWORK (PPF)

The following Victorian Planning Policies and Local Planning Policies are relevant to this proposal:

PPF	12.05-2L-01 Coastal and hinterland landscapes 12.05-2L-02 Significant landscape character areas 13.02-1S Bushfire planning 13.02-1L Bushfire planning – South Gippsland 13.07-1S Land use compatibility 14.01-1L-01 Rural dwellings 15.01-6S Design for rural areas 17.04-1S Facilitating tourism 17.04-1L Tourism – South Gippsland
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Landscape

The subject site is located in Landscape area 1.5, as identified in the Landscape Character Area map shown below from Clause 12.05-2L-02. This area being the Waratah Bay/Corner

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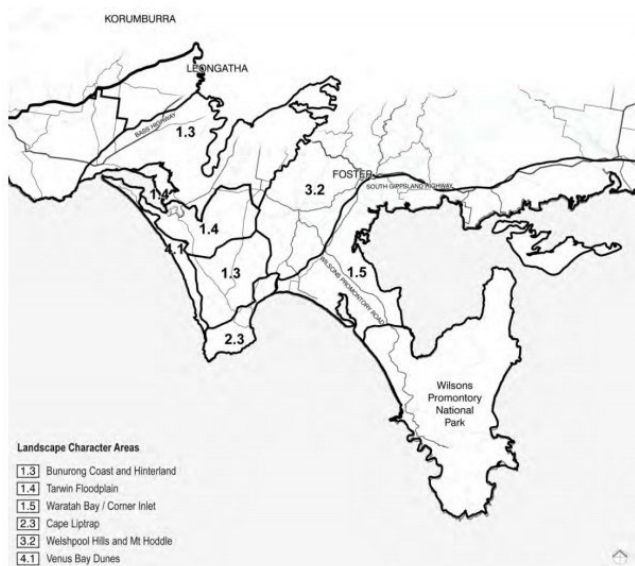
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Inlet Character Area. Strategies for this area include the protection of the rural character and views that create a scenic 'gateway' to Wilsons Promontory, especially along Foster – Promontory Road, by restricting linear urban sprawl or the cluttering of built development; Reduce the visibility of buildings or structures, within the coastal strip, outside settlements; Manage development at the Corner Inlet coastal edge to retain intact natural coastal character by:

- Restricting heights of dwellings.
- Using colours that blend with the natural environment.

The proposed development has been restricted to single storey and has a mixture of wood finishing (to a BAL 12.5 level as per the Bushfire requirements) and in a dark muted tone. The specific colour has not been finalised; the submitted report states a dark grey or similar to be determined by the client. The policy also requires the minimising of clutter of built elements throughout hinterland areas to protect the rural character. The restriction of the building envelope restricts the opportunity to spread the development. From the public realm, being Soldiers Road, the development will be visible traveling east along Soldiers Road. Due to the area being low lying additional landscaping along the western boundary of the site would be recommended (and in line with the section 173 agreement). Any conditions would require the ongoing maintenance of said landscaping and replacement when required as the Section 173 agreement has not achieved the desired outcome. With additional landscaping, without impacting on the Bushfire Management Plan, the proposed development meets the strategies sought by the policy.



Risk

The land is located within the Bushfire Management Overlay which must consider the requirements of Clause 13.02 and the associated state and local policies. This site is positioned in grazing land with forest to the south-west and grassland in the broader landscape to the south. The submitted Bushfire Planning Report states:

The site will experience landscape fire scenarios that are within the assumptions of the Bushfire Management Overlay. The design of the group accommodation, the defensible space and consideration of egress is

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necessary to develop an appropriate site-responsive design. The site will experience ember attack, radiant heat and localised ignitions associated with the landscape fire.

The application has appropriately addressed the requirements of Clause 13.02. The report recommends people to leave early in the event of a fire, specifically to the north where the impact of fire is likely to occur. Bushfire risk can be mitigated through controls on the land such as the endorsement of the Bushfire Management Plan and the inclusion of an emergency management plan that details the roles and responsibilities of the landowners during extreme weather events (this can include flooding and other natural disasters).

Rural Dwellings

The policy for second and subsequent dwellings at Clause 14.01-1L-02 relates to the development of dwellings for permanent occupation. Group accommodation, as previously stipulated, is for short term accommodation for people away from their normal place of residence. There is no local policy direction provided for the consideration for this type of use within the Farming Zone.

Clause 15.01-6S stipulates that development is to respect the valued areas of rural character. The subject land being within the Significant Landscape Overlay ensures that the character of the area is being considered. The policy requires the development being minimal in area minimises the visual impacts on the landscape. The low scale nature and the topography of the site ensures it can blend into the environment with the assistance of additional landscaping.

Tourism

The proposal supports the tourism policies and objective at Clause 17.04-1S which is to encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.

The proposal is further supported at Clause 17.04-1R for Tourism policy for the Gippsland region being to support nature-based tourism proposals that complement and are compatible with the region's environment and landscape attractions or are close to identified strategic tourism investment areas. In the subject case being Wilsons Promontory (the Prom). The site is well suited to provide convenient access to the Prom.

Clause 17.04-1L Tourism – South Gippsland provide local policy support by:

- Supporting the development of larger scale tourism infrastructure capable of attracting year-round visitation, such as conference centres and major accommodation venues, in appropriate locations, including within settlement boundaries and at locations that are close to Wilsons Promontory.
- Encourage small-scale tourism within the Township Zones in the villages and hamlets that complement the natural environment, agricultural and landscape values of the region and takes advantage of proximity to tourist routes and access to the Great Southern Rail Trail.
- Support improved visitor accommodation that encourages tourists to visit and remain longer in the region.

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Overall the proposal is consistent with the relevant objectives and strategies of the Planning Policy Framework clauses listed above.

ZONE

Farming Zone

The land has been lost to farming production since the subdivision of the land in 2003. The application is not a consideration of loss of viable agricultural as the land has been lost when subdivided and developed with a dwelling. The purpose of the zone is to ensure that development of non-agricultural uses does not adversely affect the use of land for agriculture.

The land is located within an area that is largely rural residential development with a large farm located on the opposing side of Soldiers Road.

The following Decision Guidelines of the Farming Zone are applicable to the subject application:

- The capability of the land to accommodate the proposed use or development, including the disposal of effluent.
There is sufficient area on the land to accommodate the proposed development. Confirmation from the Environmental Health Department has been sought to ensure the proposed development and the use of the existing development can accommodate wastewater on site.
- How the use or development relates to sustainable land management.
The land has been lost to agricultural production since the subdivision of the land in 2003. The use of land for group accommodation is maximising the use of land for a financial return. Commercial uses are allowed to be considered in the Farming Zone, but must be compatible with the farming uses and have minimal impact.
It is considered that with suitable planning permit conditions the impact on surrounding farm uses can be mitigated such as:
 - The submission and endorsement of an Operational Management Plan. This plan can cover matters such as emergency management, refuse, animal management (pets) and parking. These plans specifically detail how the management of the property is to be handled and would be endorsed to form part of the permit and can be enforced.
 - Noise controls such as no amplified music or load speakers etc.
- Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.
The other land uses that need to be considered are the rural lifestyle allotments that surround the property to the west, north and east. The proposed use for accommodation is compatible as it is located amongst existing accommodation (dwelling is nested under accommodation). The issues raised from the residents in the area can be mitigated with appropriate conditions such as the Operational Management Plan previously suggested in addition to:
 - Additional landscaping, landscaping currently is proposed along the boundaries identified within the section 173 agreement that applies to the

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land. Additional landscaping along the western interface will also mitigate visual impacts from the western boundary and from Soldiers Road.

- How the use and development makes use of existing infrastructure and services.
The proposed development is utilising the existing electricity and road connection to the property. A new wastewater system is required which will accommodate the whole of the development within the one system. This avoids multiple systems on the land and will require only one system to be maintained.
The Engineering Department are requiring an upgrade to the existing crossover to the current standards. There is no requirement for the relocation of the driveway as sight distances were assessed as part of the Road Opening Permit for the dwelling. Engineering have confirmed the location of the driveway is still appropriate despite the change of use to the land.
- Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production.
With correct management of wastewater on site and the implementation of an Operational Management Plan the land is being utilised to its capability. Management of the wastewater system will be managed through a separate licence issued by the Environmental Health Department.
As noted previously the land has been lost to long term agricultural production. The location of the property within a de-facto Rural Residential area limits the types of uses that could generate an income to occur on the land (i.e. intensive animal industries).
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.
The closest operational farm is located to the south, on the opposing side of Soldiers Road. Concerns from the operator has raised existing issues with dogs on the site. While not a direct planning implication as there are no restrictions on the keeping of domestic pets on any of the allotments that contain a dwelling, the management of pets as part of the Operational Management Plan is highly recommended.
The other issue raised relates to wastewater management on the land. The Environmental Health Department have confirmed that, subject to conditions, the management of wastewater on the land is viable. Any permit issued for the land must include the conditions stipulated by the Environmental Health Department which requires all wastewater to be treated and retained on site in accordance with the requirements of the Environment Protection Regulations under the Environment Protection Act 2017.
The infrastructure associated with the farm is located further to the east of the subject site. The proposal will not impact or limit the operations and expansion of the neighbouring farm any more than the existing dwellings fronting onto Soldiers Road.
- Whether the dwelling will result in the loss or fragmentation of productive agricultural land.

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The additional development of the cabins will not further remove land from agriculture due to the land being deemed lost already.

- Whether the dwelling will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation.

The proposed development could be impacted by adjoining farming operations. This needs to be made clear to people who are accommodated either through the advertising or signage (ie located with the emergency management plan that will be required to be displayed within each building). A condition such as:

- Guests are to be made aware they may be impacted by surrounding agricultural activities which are as of right in the area. This information must be clearly displayed within each accommodation building to the satisfaction of the Responsible Authority.
- The potential for the proposal to lead to a concentration or proliferation of dwellings in the area and the impact of this on the use of the land for agriculture.
The land is currently developed with a dwelling. Applicant is seeking a permit to use the land as a business that is compatible with the surrounding area. The additional dwellings are set back away from the agricultural activity that is being conducted on the land to the south. There is little scope on the property to locate the dwellings due to the existing building envelope on the site which the application is conforming with. This still maintains a reasonable distance from the neighbouring dwellings.
Due to the restrictions on the property and its ability to treat and retain wastewater it is unlikely that any further accommodation buildings could be considered on the property.
- The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.
With appropriate conditions pertaining to the collection of storm water and the treating and handling of wastewater onsite with the addition of an Operational Management Plan and additional landscaping it is unlikely that the proposal will impact the natural physical features of the property.
- The impact of the use or development on the flora and fauna on the site and its surrounds.
No vegetation removal is required as part of the subject application.
- The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.
As mentioned above no vegetation removal is required. Additional re vegetation of the land through landscaping requirements is recommended.

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- The location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.
The Environmental Health Department have assessed the ability to treat and retain wastewater on site and have determined that the site can accommodate the proposed development.
- The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.
The proposed buildings are located within the existing building envelope that was a requirement of the subdivision that occurred in 2003. The buildings have been located well within the property to minimise the impact onto the existing agricultural activities to the south.
- The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.
The new buildings have been designed to ensure minimal height and bulk as per the requirements of the Significant Landscape Overlay that also applies to the land. The colour and materials used meet the requirements of the Significant Landscape Overlay, and with the addition of landscaping the buildings are not considered dominant on the landscape.
- Whether the use and development will require traffic management measures.
The Engineering Department have assessed that the crossover leading onto Soldiers Road requires upgrading. However, they have confirmed the location of the crossover is appropriate for sight distances. The Engineering Department required no further traffic assessment in relation to the increase of traffic onto Soldiers Road as the impact is considered negligible.

Overall, the application meets the decision guidelines, subject to conditions on any permit issued for the land. The proposed use is deemed compatible with the existing uses in the area. The development is minimal and is in conformity with the building envelope located on the title.

OVERLAYS

Erosion Management Overlay

Since lodgement of the application the erosion management overlay has been introduced replacing the schedule 5 to the environmental significance overlay. A planning permit is not required under the overlay as there are no earthworks that exceed 1 metre in depth being undertaken, nor any vegetation removal.

Significant Landscape Overlay

The land is located within Schedule 3 of the Significant Landscape Overlay. The schedule exempts a building which is:

- single storey

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- no more than 7.5 metres in height
- has a total area of less than 250 square metres and
- is constructed in muted and non-reflective tones.

There are two interpretations by VCAT that contradict each other in the interpretation of the exemption relating to the total area, being *Roussac-Hoyne v South Gippsland SC* [2022] VCAT 577 (**Roussac-Hoyne**) and *Thompson v South Gippsland SC* [2024] VCAT 225 (**Thompson**).

As part of the subject application officers have advertised the application as if it is triggered under the schedule as the total floor area of all the proposed buildings will exceed the 250m². This interpretation is supported by **Roussac-Hoyne**.

The application only therefore triggers due to the total proposed development area. The following Decision Guidelines of Schedule 3 to the Significant Landscape Overlay apply:

- Whether buildings are sited and designed to maximise retention of existing vegetation throughout the landscape, and whether the proposal provides for the planting of new indigenous coastal vegetation wherever possible.
The proposal does not include any requirement for the removal of vegetation on the site. The applicant has suggested additional landscaping along the existing buffer area as required in the section 173 Agreement. Additional landscaping would be recommended along the western interface with the neighbouring property.
Overall, the sighting of the buildings does not impact any environmental qualities of the site.
- Whether landscaping around buildings uses indigenous species (e.g. Eucalyptus or Melaleuca spp.) or non-invasive exotic / native feature planting that is already a feature of the character (e.g. existing shelterbelts).
There are landscaping opportunities on the property which will increase the amount of indigenous vegetation on the land without impacting the bushfire provisions on the site.
- In landscapes visible within 500 metres of Foster – Wilsons Promontory Road, whether the proposed development is sited to retain the open rural character and views to coastal landscape features.
Not applicable
- Whether ridgetops and visually prominent hill faces are largely kept free from development, particularly slopes visible from the coast and coastal hinterland such as between Mount Hoddle and Yarram
The property is not located on a ridgetop or a hill that will have high visibility from surrounding land.
- Along the South Gippsland Highway, whether buildings are sufficiently set back to avoid intrusion into views to Corner Inlet, Wilsons Promontory and the Welshpool Hills.
Not applicable
- Whether the proposed development is kept below the dominant tree canopy height.

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The section 173 agreement on the property requires that the landscaping within the buffer area not to be higher than three metres in height the proposed development will remain under this height. Additional landscaping of the site must meet the height requirements of the Section 173 Agreement.

- Whether the proposed development reduces visual intrusion by utilising low scale building forms, tucked into the landscape, with the use of materials and colours that occur in the local area.
The additional landscaping requirements along the western boundary will reduce further the visual intrusion of buildings. The buildings are low scale and moderate when considered individually.
- In coastal locations, whether the proposed development utilises materials and colours that minimise contrast with the surrounding landscape and whether the visibility of buildings and structures is minimised when viewed from a distance, including from offshore.
Soldiers Road is not visible from the coast.
- In flatter locations (e.g. adjoining Shallow Inlet) whether the proposed development is substantially set back to minimise visual intrusion and to retain a dominant natural character within 500 metres of the edge of the coast.
Soldiers Road is not located within 500 metres of the edge of the coast.
- In steep or hilly locations, whether the proposed development is designed to follow the contours or step down the site, to minimise need for earthworks on the site and whether buildings are articulated into separate elements to avoid visually dominant elevations.
The property is significantly flat, and with the additional landscaping requirements and the location of the proposed buildings, it's unlikely that view lines from Soldiers Road will be impacted.
- Whether the proposal includes the use of permeable surfacing for all unbuilt areas to minimise surface run-off and to support vegetation.
Only the crossover from Soldiers Road into the property is to be sealed. This is to minimise the impact of stone runoff onto the main road; all other surfaces are to be permeable. Storm water is to be captured from the built areas to provide water to the development.
- Whether the proposal includes the use of vegetation for screening and to delineate property boundaries, instead of fencing. If fencing is necessary, the proposal should include open style fencing of a type traditionally used in rural areas i.e. post and wire.
Three property interfaces will utilise vegetation for screening. No changes to the existing fencing is proposed.

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- Whether the proposal contributes to the retention of the character of large open rural areas offering scenic views by siting developments back from roads, amongst vegetation and low in the topography.
The site is quite well screened from Soldiers Road when directly viewed from the front of the property. The view from the eastern side is also obscured. It is the western interface and view from Soldiers Road that would require additional landscaping.

Overall, the application meets the decision guidelines of the Significant Landscape Overlay.

Bushfire Management Overlay

The land is appropriately located within the bushfire management overlay which covers the entire site. A planning permit is triggered for the development of land associated with accommodation. Applications for group accommodation are considered slightly different than to a single dwelling. Patron management is different when considered as part of a group accommodation business as management plans or operational plans can be imposed to ensure that the property is evacuated during high danger alert and bush fire in the local vicinity. Control of landowners in a fire event on single dwelling properties cannot be managed through a planning permit condition. However, group accommodation can be. The submitted bushfire management report has been assessed and approved by CFA. Assessment under Clause 53.02 Bushfire Planning has been undertaken below.

PARTICULAR PROVISIONS

Clause 53.02 Bushfire Planning

As per the diagram below there are several patches of vegetation predominantly to the north-west and north-east of the site. Fire activity is likely and is supported by this admitted bushfire management report to come from the north. Adequate egress from the site along Soldiers Road can ensure the hazard is avoided during a catastrophic event. The CFA have provided conditional consent to the application. CFA have raised in their response the following comment

- It is suggested that applicants consider the cabin separation and layout in the context of individual asset protection and the impact of one dwelling fire to another for this location. Whilst proposed as a three-metre separation, and achieving compliance for building code separation, an asset protection separation of a minimum six metre or greater would further limit this risk.

It is noted that by increasing the distances between the cabins the defensible space around the dwellings will be compromised. It is recommended that maintenance of the defensible space is required, the separation distances between the dwellings meets the requirements of the Building Regulations.

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Figure Four – Neighbourhood conditions, within 400m of the property

The following assessment has been undertaken against the relevant provisions of Clause 53.02-4.1, 4.2 and 4.3.

AM2.1 - The bushfire risk to the development from the landscape beyond the site can be mitigated to an acceptable level.

The proposal can mitigate the risks through a Bushfire Management Plan applied to the site.

AM2.2 - A building is sited to ensure the site best achieves the following:

- The maximum separation distance between the building and the bushfire hazard. The location of the group accommodation can provide for the separation requirements.
- The building is in close proximity to a public road. The proposal has direct access to Soldiers Road.
- Access can be provided to the building for emergency service vehicles. The existing access is to be upgraded but currently meets this requirement for the existing dwelling.

AM2.3 - A building is designed to be responsive to the landscape risk and reduce the impact of bushfire on the building.

The buildings will be constructed to a BAL 12.5 as recommended in the Bushfire Report and supported by the CFA.

AM3.1 – Not applicable

AM3.2 - A building used for accommodation (other than a dwelling or small second dwelling), a child care centre, an education centre, a hospital, leisure and recreation or a place of assembly is:

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- Provided with defensible space in accordance with Table 3 and Table 6 to Clause 53.02-5 wholly within the title boundaries of the land.
Cabin 1 falls short by 10m, this would be further compromised if the 6m separating of the buildings as recommended by the CFA were adopted. All other cabins meet the defensible space requirements. No additional landscaping to the northern boundary is recommended both from a landscape perspective as well as bushfire management.
- Constructed to a bushfire attack level of BAL12.5.
All buildings are to be developed to the BAL12.5 requirement.

AM3.3 – 3.5 Not applicable

AM3.6 - A building used for accommodation (other than a dwelling or small second dwelling), child care centre, education centre, hospital, leisure and recreation or place of assembly may provide defensible space in accordance with Table 2 Columns A, B or C and Table 6 to Clause 53.02-5 where it can be demonstrated that:

- An integrated approach to risk management has been adopted that considers:
 - The characteristics of the likely future occupants including their age, mobility and capacity to evacuate during a bushfire emergency.
 - The intended frequency and nature of occupation.
 - The effectiveness of proposed emergency management arrangements, including a mechanism to secure implementation.
 - Less defensible space and a higher construction standard is appropriate having regard to the bushfire hazard landscape assessment.

This can be mitigated through the Emergency Management Plan as part of the Operational Management Plan for the site.

AM3.2 requires a separation of 60 metres from the forest in the north. Whilst the majority meets this, Cabin 1 is 52.7 metres from the forest. Thus one development doesn't comply with Table 3. The Bushfire Hazard Assessment indicates that a 48-metre separation from the forest is required for the radiant heat threshold of 12.5kW/m² in lieu of 10kW/m² (Table 3). The development has been designed to ensure that this is met.

The travellers using the development are expected to be independent, active and with their own vehicle. If a planning permit is granted a bushfire emergency plan will be required as part of the Operational Management Plan to ensure all cabin occupants have their own vehicle.

AM4.2 - A building used for accommodation (other than a dwelling or dependent person's unit), childcare centre, education centre, hospital, leisure and recreation or place of assembly is provided with:

- A static water supply for fire fighting and property protection purposes of 10,000 litres per 1,500 square metres of floor space up to 40,000 litres.
- Vehicle access that is designed and constructed as specified in Table 5 to Clause 53.02-5.
- An integrated approach to risk management that ensures the water supply and access arrangements will be effective based on the characteristics of the likely future

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occupants including their age, mobility and capacity to evacuate during a bushfire emergency.

- The water supply may be in the same tank as other water supplies provided that a separate outlet is reserved for fire fighting water supplies.

The proposed group accommodation will be served with one separate new static water supply of 10,000 litres for firefighting by a tank constructed of non-combustible material located within four metres of access from the driveway. The location of the tank will provide coverage of maximum 60 metres ensuring the individual group accommodation can be serviced by this tank. Driveway upgrades will ensure turning is available near the group accommodation and water supplies.

Overall, the application meets the decision guidelines of the Bushfire Management Overlay and the Bushfire Planning requirements of Clause 53.02.

GENERAL PROVISIONS

Clause 65.01 – Approval of an application or plan

The application has considered the matters set out in Section 60 of the Planning and Environment Act 1987. The views of the submitters to the application have been discussed and addressed as appropriate.

The considerations of the Planning Policy Framework that are applicable to the subject development have been discussed.

The environmental considerations of the land have been undertaken, in particular wastewater and stormwater control.

The provisions of the zoning and overlay controls to the site have been individually assessed. The impact of the proposal on the surrounding development and uses have been considered and assessed.

The proposed development has been assessed to ensure compliance with the s173 agreement registered on title. This agreement was applied to the land via a previous planning permit.

Overall the application has been assessed in accordance with the requirements of Clause 65.01.