



20 March 2018

As addressed

Dear Submitter,

**Colac Otway Planning Scheme: Apollo Bay Tourism Resort Call In Panel
Planning Permit Application No 169/2017-1, 275 Barham River Road**

A Directions Hearing was held on 14 March 2018 at Apollo Bay in relation to the above matter. A copy of the Panel's Directions is attached. The following key dates are relevant:

- The Hearing scheduled for the week commencing 16 April 2018 is deferred until further information is provided by the applicant and parties to the Hearing have adequate time to consider the new material.
- DELWP (on behalf of the Minister for Planning as responsible authority) and Colac Otway Shire Council to advise Planning Panels Victoria of any further information requests by **2.00pm on Tuesday 27 March 2018** (Refer Direction 2). The Panel will consider DELWP's and Colac Otway Shire Council's requests for further information. The Panel will then finalise the list of information requirements and make a direction accordingly.
- The applicant is to advise Planning Panels Victoria by **2.00pm on Friday 6 April 2018** of when it anticipates the further information requested (refer attached Direction 1) will be supplied for distribution to parties for their review.
- DELWP as responsible authority to advise the Panel by **2pm on Friday 6 April 2018** if it is satisfied with the suggested re-notification process as discussed at the Directions Hearing (as summarised below) or if it requires additional or modified actions:
 - Upon receipt of the requested information from the applicant, the Panel will notify parties to the Hearing (e.g. those persons or organisations that have lodged a request to be heard form) of the additional information received, and will allow a period of 21 days for all parties to consider the new information. A complete set of revised application material must be displayed on the Council web-site for review. The Panel will circulate with the new information and additional request to be heard form to enable parties to amend their original request if required, based on the new information provided.

Following receipt of the above information a further Directions Letter will be distributed by the Panel.

At the Directions Hearing the following declaration was made and procedural matters discussed:

- The Panel advised that due to the number and technical nature of many of the issues raised by the proposal it is proposed to appoint a third Panel member, Mr Michael Malouf. Mr Malouf has held numerous Chief Executive Officer positions including with Barwon Water, Greater Geelong City Council, and Melbourne City Council. Mr Malouf has advised that he sat on the World Master Games Board with the Mr Graham Duff approximately 20 years ago. Mr Malouf

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has had little contact with him since that time, and has had no discussions with him in relation to this proposal. The Panel noted that Mr Malouf has declared no conflict in the matter.

- Mr Lachlan Forsyth and Mr Kim McGough on behalf of DELWP confirmed that the Minister is referring to the Panel all late submissions and objections as provided for by Section 97E(b) of the *Planning and Environment Act 1987*.
- The Panel determined that the Hearing could proceed in the absence of an approved Cultural Heritage Management Plan (CHMP) as the Panel is not the determining authority. The Panel noted that no permit may be granted until such time as a Cultural Heritage Management Plan has been approved.
- The Panel determined that it would be appropriate for a set of draft planning permit conditions to be prepared by Colac Otway Shire Council and circulated on a “without prejudice” basis, following receipt of updated information from the applicant so that submitters can comment on the draft permit conditions during the Hearing.
- The applicant submitted a folder titled ‘*Supporting Information*’. This folder was assigned Direction Hearing Document No. 1. Included in the folder was a cover letter that states:
*“Pursuant to Section 57A of the Planning and Environment Act 1987, we request that the Minister for Planning amend the planning permit application as follows:
Amend the submitted masterplan and architectural drawings as follows:*
 - *Delete Stage 2*
 - *Retain 180 Room 5 Star Hotel and 22 Hotel Villas, 60 Resort Villas and Staff Accommodation*
 - *Include detailed plans for the 60 Resort Villas (noting that the Resort Villas are already incorporated in the original application)*
 - *Additional road access to the 60 Resort Villas identified*
 - *Include detailed plans for maintenance facilities*
 - *Include rendering of Hotel Entry”*

The folder also contained further information under tab headings titled:

1. *Extent of Approval Sought by the Applicant*
 2. *Detailed Development Plans*
 3. *Geo Technical Report*
 4. *Flood Study for Barham River Valley and Site Access*
 5. *Vegetation Removal*
 6. *Bushfire Management Plan*
 7. *Visual Impact Analysis*
 8. *Cultural Heritage Management Plan*
 9. *Hotel Operation*
 10. *Medical and Clinical Services*
 11. *Local Economy Benefits*
- Colac Otway Shire Council agreed to upload the further information provided by the applicant to their website.
 - Colac Otway Shire Council submitted a letter from Maddocks Lawyers on behalf of Council dated 2 March 2018 addressed to Spowers Architects requesting further information be circulated prior to the Direction Hearing. This letter was assigned Directions Hearing Document No. 2.
 - Council submitted a letter dated 9 February 2018 addressed to the Minister for Planning noting Council’s resolutions of its Special Meeting held on 7 February 2018 and in particular Council’s request for the provision of further information from the applicant to enable Council to undertake its merits consideration of the application. This letter was assigned Direction Hearing Document No. 3.
 - DELWP submitted a letter dated 5 March 2018 addressed to Mr Graham Duff AM of Ocean United Investments Group Pty Ltd. The letter contains a list of matters that DELWP sought to

be addressed before the commencement of the Panel Hearing. The letter noted that DELWP considers the matters listed need to be addressed to enable the full merits of the proposal to be properly assessed and that *"the information needs to be provided in a timely manner to ensure all parties to the proceedings have adequate time to properly consider the information"*. This letter was assigned Direction Hearing Document No. 4.

- In response to its preliminary consideration of the content of Direction Hearing Documents 1-4, the Panel made a number of Directions regarding: the circulation of information contained within Direction Hearing Document 1; the need for further additional information to be provided by the applicant to enable an adequate assessment of the application; and timelines regarding consideration of the material by all parties to ensure procedural fairness.
- Having briefly reviewed the letters contained in the folder of 'Supporting Information' under the heading of Geo Technical Report, and noting the concerns expressed by DELWP and Council, the Panel determined to require the applicant to undertake and circulate the findings of the further geotechnical investigations and assessment works required to inform the updating of the Landslide Risk Assessment and to enable Golder Associates Pty Ltd to provide technical verification that the total development site disturbance proposed can meet the tolerable risk criteria specified in the schedule to Clause 44.01 of the Colac Otway Planning Scheme.
- In response to request by submitters, the Panel will direct that the applicant make the site available for inspection by all experts and other submitters prior to the Hearing.
- The following parties have advised that they request to be heard:
 - Department of Environment Land Water and Planning (representing the Minister for Planning as the responsible authority), represented by Lachlan Forsyth and Kim McGough (2 hours, no expert evidence)
 - Oceans United Investments Group Pty Ltd (the applicant), verbally advised that they will be represented by Mr Chris Taylor of Planning & Property Partners requiring 1.5 days. They request to reserve their position regarding the calling of witnesses pending Council advising of their position. *(Note – a written request to be heard form has not yet been lodged by the applicant)*
 - Colac Otway Shire Council (as the planning authority and referring responsible authority), represented by Maddocks Lawyers, (2 days, calling Geotechnical, Landscape and Traffic expert evidence)
 - Country Fire Authority, represented by James Haley, Adam Rogers and Kevin Hazell (30 minutes, no experts)
 - Great Ocean Road Regional Tourism, represented by Wayne Kayler-Thompson (Chairperson), (1 hour, no expert evidence)
 - Southern Otway Landcare Network, represented by Libby Riches and Kevin O'Connell, (30 minutes)
 - Objectors to 275 Barham River Road Developments Inc., represented by Warrick Ballinger and Shelley Fanning of Coastal Planning, (1.5 days, calling expert evidence in the following disciplines:
 - Geotechnical / Engineering
 - Sustainable Landscape Design and Architecture
 - Traffic
 - Social Planning
 - Economics
 - 22 individual submitters including:
 - Glenda Whelan (20 mins)
 - Susan Graham (10 mins)
 - Andrew Buchanan (30 mins)
 - John Riches and others (15 mins)

- Han Fankhanel (45 mins)
 - Phillip Lawson (20 mins)
 - Richard and Sally Stone (30 mins)
 - Dr Simon Pockley (20 mins)
 - Pete Fillmore (30 mins)
 - Johnathon Upson (30 mins)
 - Carol and Frits Wilmink (20 mins)
 - David Rushford (10 mins)
 - Chris Dance (30 mins)
 - Patricia Farley (10 mins)
 - Pauline Roberts (15 mins)
 - David and Robyn Ritchie (30 mins)
 - John Charles Schencking (20 mins)
 - Bill Gross (10 mins)
 - Annette Telfors (10 mins)
 - Andrew Strang (15 mins)
 - Tony Weber (10mins)
 - Mick Heland (10mins)
- In addition to the above parties to the Hearing, the Panel advised that it will forward request to be heard forms to Barwon Water, VicRoads, the Corangamite Catchment Management Authority and relevant servicing authorities together with advice regarding the submission of new information from the applicant.

Proposed Next Steps Following Receipt of Requested Further Information

- Following receipt of the further information requested from the applicant (Refer Direction 1), the information will be uploaded to the Colac Otway Shire Council website.
- All parties which have requested to be heard will be advised by email of how to access the new information.
- Subject to confirmation by DELWP, as the responsible authority, that it is satisfied with the following re-notification process, the following is proposed:
 - A period of 21 days will be provided for parties to review the new information.
 - After a period of 21 days, parties will be requested to re-submit a request to be heard form.
 - Based on the new request to be heard forms, a timetable will be set with Directions stipulating timelines for the circulation of a Part A submission by Council and exchange of expert witness reports.

The following information is enclosed for your information:

- Panel Directions
- Distribution List

If you have any queries, please contact Greta Grivas, Senior Project Officer, Planning Panels Victoria on (03) 8392 5121 or planning.panels@delwp.vic.gov.au.

Yours sincerely,



William O'Neil

Panel Chair

Panel Directions

Colac Otway Planning Scheme: Apollo Bay Tourism Resort Call In Panel
Planning Permit Application No 169/2017-1, 275 Barham River Road

New and updated information to be supplied by the applicant

1. The applicant is to provide the following information in support of its amended proposal:
 - a. An amended permit application form pursuant to Section 57A of the Planning and Environment Act 1987 and associated fee (if applicable) to Colac Otway Shire Council that clarifies the scope of use and development sought by the application.
 - b. An updated geotechnical assessment report that documents the findings of the further geotechnical investigations and assessment that has been undertaken that are required to inform the updating of the Landslide Risk Assessment and to enable Golder Associates Pty Ltd to provide technical verification that the total development site disturbance proposed can meet the tolerable risk criteria specified in the schedule to Clause 44.01 of the Colac Otway Planning Scheme.
 - c. Updated technical reports and information that the applicant seeks to rely upon to inform the assessment of the revised application. Each report must be updated to include, and refer to, the revised plans and revised proposal. The front covers of the revised reports must also clearly identify them as Revised and Updated with an accompanying new date. (NOTE: Please note, unless a previously submitted report is resubmitted with revised and updated plans and accompanying text, it will not be considered in the assessment of the amended application).
 - d. An assessment in response to Amendment VC140 that has introduced changes to the State Planning Policy Framework at Clause 13.05 that seek to strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life. (Note: the updated assessment must include a Bushfire Management Plan and confirmation that all buildings can achieve required Bushfire Attack Level (BAL) ratings under AS 3959-2009).
 - e. A social and economic impact assessment that considers the impacts of the proposal on the existing township including retail, employment and accommodation impacts.
 - f. An Emergency Management Plan that among other issues, addresses risk of access to and egress from the subject site in circumstance of both flood and fire, and that includes a response to the concerns of the Corangamite Catchment Management Authority regarding flood impact.
 - g. A response to correspondence received from the Office of Victorian Government Architect.
 - h. An updated visual impact analysis that considers all aspects of the proposed development.
 - i. Updated Plans and drawings, including plans that clearly show what is included in the application, with appropriate detail to enable assessment including:
 - i. Dimensions, including length, width and heights of all parts of each building (including RL's to top of buildings). These dimensions need to be taken from natural ground level.
 - ii. Setbacks between buildings.
 - iii. The extent of cut and fill required (through sections) for buildings and associated infrastructure, with the plans clearly marked to show where the sections are taken from.

- iv. More detailed information on materials, finishes and colours proposed, including images or samples.
 - v. Location and extent of vegetation removal required, including for associated infrastructure provision.
2. DELWP and Colac Otway Shire Council are to review the new information provided by the applicant at the Directions Hearing, as well as the list of additional information requested of the applicant by the Panel as outlined in Direction 1 above. Following such review, DELWP and Colac Otway Shire Council are to advise Planning Panels Victoria of any further information requests they consider necessary by **2.00pm on Tuesday 27 March 2018**. The Panel will consider DELWP's and Colac Otway Shire Council's requests for further information. The Panel will then finalise the list of information requirements and make a direction accordingly.
 3. The Applicant is to advise Planning Panels Victoria by **2pm on Friday 6 April 2018** of when it anticipates the further information requested (Refer Attached Direction 1) will be supplied for distribution to parties for their review.

Re-notification

4. DELWP as Responsible Authority to advise the Panel by **2pm on Friday 6 April 2018** if it is satisfied with the suggested re-notification process as discussed at the Directions Hearing (as summarised below) or if it requires additional or modified actions:
 - Upon receipt of the requested information from the applicant, the Panel to notify parties to the hearing (e.g. those persons or organisations that have lodged a request to be heard form) of the additional information received, and allow a period of 21 days for all parties to consider the new information. A complete set of revised application material must be displayed on the Council web-site for review. The Panel will circulate with the new information an additional request to be heard form to enable parties to amend their original request if required, based on the new information provided.

Hearing

5. The Hearing will be held in Apollo Bay as long as a suitable hearing venue can be secured at the time the Hearing is to be convened.
6. A draft Hearing timetable will be prepared by Planning Panels Victoria, once revised request to be heard forms are received following the re-notification process.
7. Additional Directions regarding the conduct of the Hearing will be provided with the circulation of the Hearing timetable.

Other Directions

8. Following its consideration of further information and by a date to be further advised, Council will be required to prepare a set of draft planning permit conditions which are to be circulated to all parties on the updated distribution list.
9. Colac Otway Shire Council to re-submit submissions, with submission number identifier and accompanying index. Late submissions are to be identified as such.
10. Following its consideration further information and by a date to be further advised, Council will be required to prepare a 'Part A Submission'. The Part A submission should include Council's response to:
 - a. Background to the application
 - b. Chronology of events

- c. Strategic context and assessment including details of any other current permit applications (as applicable)
- d. Identification of the issues raised in submissions and its response to them
- e. Recommended changes to the application, application plans or draft permit conditions proposed.

Note: At the Hearing, Council's 'Part A Submission' will be taken as read by all parties. Council will allow time on Day 1 for questions of clarification from the Panel.

- 11. At the Hearing, Council must address the following issues through its 'Part B Submission':
 - a. A summary of the key issues raised in submissions
 - b. Response to evidence tabled
 - c. Its final position on the application.
- 12. At the Hearing, Council should arrange for:
 - a. A map showing the location of submitters by submitter number. This map:
 - i. must not show submitter names
 - ii. does not need to show the location of pro-forma submitters
 - iii. must not be placed on the internet or replicated in any report.
 - b. Appropriate aerials and plans at large scale
 - c. Access to Council's GIS maps/system.
- 13. Following lodgement of revised and updated information (Refer Direction 1), and at least 2 weeks prior to the scheduled hearing, the applicant is to liaise with Council's Planning Staff to arrange a suitable time for a structured accompanied site inspection for submitters and their expert witnesses. All experts must be provided the opportunity to inspect the site, and submitters should provide representatives where possible to limit numbers.
- 14. The applicant is to provide a visible height pole at the location of the proposed buildings, showing the maximum height of buildings, at the time of the scheduled site inspection.