

DELEGATED REPORT:

REPORTING OFFICER: Philip Rosevear

PLANNING REFERENCE: OA2552

DATE OF APPLICATION: OA2552

APPLICANT: Newcomb Sand and Soil Supplies

SUBJECT LAND: 330 GROSSMANS ROAD, BELLBRAE. (LOT: 1 PT: Y
PS: 614103S)

PROPOSAL: Amend Planning Permit 94/5796

OFFICER'S REPORT – OA2552 – 330 Grossmans Road.

Proposal

The application seeks approval to amend Planning Permit 94/5796 which allowed the use and development of the land for the purpose of a plant nursery and garden supplies in accordance with attached plans. The use was originally allowed within an area of 100 metres by 100 metres fronting Grossmans Road and Ghazeepore Road with access from both frontages. A shed and specific areas for storage were designated on the approved plans.

The use appears to have expanded over the years to occupy an area comprising 205m by 80m which is larger than originally approved. Recently a new tenant, Newcomb Sand and Soils, commenced operating on the site and lodged the current application to amend the permit, to expand the area approved for use to reflect the extent of the current activity, to change the layout, to accommodate the needs of the new tenant and to reduce adverse impacts to adjoining properties.

The application to amend the permit also includes the following:

- A new 30m by 14 m sales/office shed;
- A bulk storage area to the north west boundary and adjoining the new shed;
- Retail storage areas to the east;
- A new sprinkler system on the northern boundary;
- New landscaping on the Ghazeepore Road frontage;
- Site operations including opening hours and site management.

Site and Surrounding Area



The 1.7 ha site which is the subject of this application is part of a sub-lease agreement from a larger allotment. The site is currently accessed from both Grossmans Road and Ghazeeopore Road.

The site is fenced and contains some mature landscaping on the western boundary as well as to a lesser extent on the Ghazeeopore Road frontage. The site is otherwise generally cleared of vegetation.

The land is generally flat with slightly more elevated areas to the east. The legal point of discharge is to the north-east corner of the site into Ghazeeopore Road.

The land opposite Ghazeeopore Road is zoned Low Density Residential and consists of large residential blocks of land generally developed with single dwellings with some vegetation cover and large setbacks. On the opposite side of Grossmans Road, the land is covered by the Farming Zone and consists of larger allotments. Immediately to the north and to the west, Kithbrooke Park retirement village is being developed. The site directly abuts Water Gum Drive to the north where villas associated with the retirement village have been constructed. A distance of approximately 10 metres separates the closest villa from the north east boundary of the site.

The area abutting the western side of the site has approval for the extension of the retirement village but is currently vacant. Council is assessing an application for development of an aged care facility on this part of the land.

Relevant History and Background

Past permits:

Applic'n No.	Proposal	Decision	Date
94/5796	Plant Nursery and Garden Supplies	Approved	05/12/1994
OA2516	Repositioning of Garden Supply	Refused	10/09/10
06/0204	2 Lot subdivision , use & development for retirement village and removal of native vegetation	Approved	30/8/07
15/0093	2 Lot subdivision	Approved	23/6/15
15/0261	Age Care Facility	Pending	

The garden supply and plant nursery has been in operation since the time of approval in 1994, which pre-dates the Approval for the construction of the retirement village.

There was an application to amend Planning Permit 94/5796 to reposition the current garden supply business 800m to the west along Grossmans Road on the site known as 460 Grossmans Road. The amendment was refused on the following grounds:

- The process under Section 72 of the Planning and Environment Act did not allow for the amendment of a permit for a new, prohibited use.
- The proposed relocation of the use contradicted the objectives of the Farming zone.
- The proposed relocation conflicted with current and future land use in the area.

The Kithbrooke Retirement Village was approved under Planning Permit 06/0204 and is now substantially developed and occupied. The original Development Plan for the estate sets out how the total site was to be developed including the subject land which was also to be used for residential accommodation.

Recently a two Lot Subdivision was approved (PP15/0093) to create a separate lot for an Age Care Facility which is the subject of an application currently being assessed by Council..

A complaint was lodged with Council's compliance staff (E15/0012) in January 2015 in relation to the clearing of vegetation and earthworks on the subject site. An inspection of the site found that works were being undertaken to re-configure the site to suit the needs of the new tenant and that the area being occupied by the use exceeded the 100 metre by 100 metre area approved by the planning permit. Further investigation established that the encroachment beyond the approved 100 metre x 100 metre area had been occurred, to a point similar to the area occupied today, since at least 2003.

It is generally accepted that although existing use rights apply, the use is limited by the plans endorsed under the 1994 planning permit and anything beyond this will require further approval. As a result the new tenant has lodged the current application which seeks to update the planning permit to reflect the current level of use.

A meeting was held with the Kithbrooke Park Residents Committee on 23rd of January 2015 to discuss issues associated with the Landscape Garden Supplies. The committee was informed that the use was lawfully established by the 1994 Planning Permit and that the only way to remove the use would be if it were to be given up voluntarily by the owner or if the use were to cease for a period of two years or more.

Registered Restrictions

Under Section 61(4) of the *Planning & Environment Act 1987* the Responsible Authority must not issue a planning permit that would result in a breach of a registered restriction. The subject land is affected by registered restrictions as follows:

Section 173 Agreements

The land is subject to two Section 173 Agreements. The first Section 173 Agreement, AL005171D, was registered on the site on 28th of November 2013 between Surf Coast Shire Council, Vicroads and the owner of the land. The Agreement relates to Infrastructure Charges to be paid for the Development of the Land in accordance with Planning Permit 06/0204. This Section 173 Agreement has no bearings on the present application.

The second Section 173 Agreement, AF647713M is dated 27th of February 2008 and was made between the Surf Coast Shire Council and the owner of the land. This Agreement establishes:

- That the owner will not make an application for planning permit to use, develop or subdivide the land other than for the purposes approved by the planning permit (06/0204)
- the use of proposed bedsitter units for disadvantaged older persons,
- requires the development to proceed in accordance with the staged development plans to ensure delivery of community and recreational facilities,
- The provision and management of open space.

The 173 Agreement does not prevent an amendment to the existing permit for the garden supplies or prevent the use and development from occurring on the site. The Section 173 agreement does not require the owner to consult Council or the residents of Kithbrook Park prior to entering into a commercial lease agreement.

The proposed development would therefore not cause a breach of the Section 173 Agreements.

Aboriginal Cultural Heritage

Pursuant to Section 52(1) of the *Aboriginal Heritage Act 2006* if a Cultural Heritage Management Plan (CHMP) is required a planning permit cannot be granted until a copy of the approved CHMP is provided and cannot grant a permit for an activity that is inconsistent with the approved CHMP [s. 52(3)].

The subject site isn't within an area of cultural heritage sensitivity therefore a CHMP isn't required.

Referral

The application was not required to be formally referred in accordance with the Section 55 of the *Planning and Environment Act 1987* or Clause 66 of the *Surf Coast Planning Scheme*.

Public Notice

In accordance with Section 52 of the *Planning and Environment Act 1987*, public notice of the application was carried out in the following manner:

1. notice was sent by ordinary mail to nearby owners, who were given a period of 14 days to comment on the application.
2. a sign was erected on the land for a period of 14 days.

In response to public notice of the application a total of sixty six objections and one submission in favour of the proposal were received. The majority of the objections seek to have the use re-located elsewhere and all but two submissions came from residents of Kithbrooke Park.

Summary of Submissions

Air Quality/Dust/Airborne Pollutants

The vast majority of submissions identified this issue as a concern, in particular, the unacceptable level of dust coming from stockpiles, unloading/loading activities and trucks carrying materials that are not covered. Many submitters complain that they need to constantly clean their houses and have found this issue affects enjoyment of their private open space. The issue was also raised in terms of health and wellbeing and it was identified that many residents already have respiratory conditions such as asthma, allergies or limited lung functions which they believe is worsened by the constant presence of dust. Concerns were also raised that the presence of stockpiled wood/bark on the site increases the risk of contracting legionnaire disease. The issue of air quality is worsened during high winds, particularly southerlies, which blow dust directly towards Kithbrooke Park. Questions were also raised in relation to the unknown use of chemicals that may be carried by the wind from the site. This has been exacerbated by the removal of trees, which many submitters believe was illegal.

Noise

Noise was also identified as an issue by the majority of submitters. The offending noise results from the various activities being undertaken on the site such as stockpiling, loading and unloading and truck manoeuvring, in particular reversing of trucks. The noise is continuous as the machinery on the site operates on a daily basis and the number of truck per day is high.

Traffic/safety

Most submitters consider the high number and large size of the trucks attending the site to be inappropriate for a residential area. It is considered that these trucks create a traffic hazard in the area with the intersection of Grossmans Rd. and Ghazeepore Rd being identified as a particular concern.

Objectors consider that the Ghazeepore Rd. entrance is located too close to the Grossmans Road intersection and is inadequate to cater for the large trucks attending the site as they are forced to use both traffic lanes when turning. This reduces sight lines and leaves little distance for vehicles to stop given the 80km speed limit which applies in this area.

It was also raised that large vehicles entering and exiting the site, make the road unsafe by depositing clay and dirt onto the road surface, could potentially delay emergency service vehicles attending the retirement village, and are a threat to pedestrians and cyclists, particularly schoolchildren waiting for the bus.

Scale of the use

Many submitters consider that the use has increased in intensity when compared with the activities of the last tenant and is now more akin to an industrial use. Stockpiles are larger/higher than what was previously on the site and the operation is considered to be more intense. The present tenant services large developments requiring large stockpiles and intensive use of trucks.

Inconsistency with the residential area

The majority of the submitters consider this type of activity to be inconsistent with the area as a result of its scale and the resulting impact on residential amenity. The use is considered to be incompatible with the 'tranquillity' expected for a retirement village and the Low Density Residential Zone which applies to the land.

Many submitters suggest the Environmental Protection Authority (EPA) separation distance of 100m should be required between the subject use and the nearest residential land site.

NOTE: Buffer distances to Uses with the potential to cause offence or unacceptable risk to residential land if not appropriately designed and located are prescribed at Clause 52.10 of the planning scheme. Landscape garden supplies is not listed as a prescribed use under these provisions.

Expectations

The majority of submitters advised that they had expectations that once the subject land ceased being used by the previous tenant, the site would be developed as part of the retirement village. Many residents have purchased property within Kithbrooke Park on this basis.

The master plan for the retirement village which was approved by Council as part of Planning Approval 06/0204 shows the subject land as being developed for residential/bedsitters. The submitters consider that the Section 173 Agreement which regulates the use of the land pursuant to the Retirement Village Act required that the use of the subject land as garden supply would not to be continued once the previous tenant departed. There was also an expectation that the residents and or Council, would be consulted prior to any new lease being signed. This issue has been discussed previously in this report.

Concerns were also raised that there would be a decrease in property value and a rise of monthly service fees resulting from the reduced number of units being constructed.

Expectations were widely held that the Permit for the retirement village should have superseded the previous uses and that a Condition should have been added to Retirement Village Permit for the use to cease.

As discussed previously Council has obtained legal advice in relation to the application of the Section 173 Agreement which finds as follows:

Clearly, having regard to the Tribunal decision in Deckert there is discretion and power available to the Council (and Tribunal on review) to issue a planning permit or amend a planning permit which would contravene the terms of any Section 173 Agreement. In our opinion, the planning permit or amendment to the planning permit should include a condition that the planning permit could not be acted upon until the Section 173 Agreement was amended or removed.

Each submission is individually summarised below:

HJ & E LEIJER
36 BLUE GUM DRIVE, TORQUAY

- Air quality, dust, pollutant and noise (this will also affect the future age care building)

WILLIAM POTTER
38 BLUE GUM DRIVE, BELLBRAE

- Air Pollution aggravates medical condition in elderly people
- Expectation that land was going to revert to be part of the Retirement Village Development
- 173 agreement requires Council Approval for a new lease to be signed

- Traffic
- Access on Ghazeepore rd. is dangerous and can potentially delay emergency service attending the retirement village
- Vegetation removal and adverse effect on fauna
- Contravene the objectives of the Low Density Zone

R C BROWN

30 BLUE GUM DRIVE, TORQUAY

- Noise from the trucks (day and night)
- Air Quality
- Not consistent with the adjoining residential development or zoning
- Proposed extension of the area will increase the impacts on adjoining areas

D & J HUGHES

11 PEPPERMINT GUM WAY, BELLBRAE

- Traffic and noise from heavy trucks
- Quality of air
- Expectation that land was going to revert to be part of the Retirement Village Development
- Incompatible uses. The use should be relocated elsewhere

E J BINGHAM

28 WATER GUM DRIVE, BELLBRAE

- Not consistent with the adjoining residential development or zoning
- Traffic safety (trucks)
- Dust not acceptable for people with asthma and elderly people
- Expectation that land was going to revert to be part of the Retirement Village Development

A & M GRINTER

22 WATER GUM DRIVE, BELLBRAE

- Not consistent with the adjoining residential development or zoning
- Dust not acceptable for elderly people
- Noise of truck and machinery
- Traffic
- Expectation that land was going to revert to be part of the Retirement Village Development

WJ & VM HARRIS

8 SNOW GUM AVENUE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Not consistent with the adjoining residential development or zoning
- Noise
- Dust
- Traffic

JM MENZEL

22 BLUE GUM DRIVE, TORQUAY

- Not consistent with the adjoining residential development or zoning
- Noise from truck and machinery
- Vegetation removal
- Expectation that land was going to revert to be part of the Retirement Village Development
- Traffic hazard

J & B MILTON

40 BLUE GUM DRIVE, TORQUAY

- Not consistent with the adjoining residential development or zoning
- Noise
- Traffic safety
- Dust not acceptable for elderly people

- 173 states that residents should have been consulted before new lease was granted

KC & L MUNRO

27 WATER GUM DRIVE, BELLBRAE

- Not consistent with the adjoining residential development or zoning
- Dust not acceptable for elderly people
- Noise
- Traffic
- Expectation that land was going to revert to be part of the Retirement Village Development
- Loss of tranquillity
- Increase monthly service fee to villa owners to offset reduced villa numbers
- Constant cleaning due to dust

T & C MOORE

9 BLUE GUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Air quality and dust which affects the villa and will affect the age care facility
- Not consistent with the adjoining residential development or zoning
- Affects the price of the villas
- The use is more akin to industry than garden supply

SJ & DR O'REGAN

34 WATER GUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Not consistent with the adjoining residential development or zoning
- Section 173 states that residents should have been consulted before new lease was granted
- Surf Coast Shire not enforcing planning law by allowing the illegal extension of the industrial use
- The Planning Permit for the retirement village should have included condition for the removal of the use
- The health of the resident is compromised by dust and pollutant
- Noise

GEOFF DRURY

PO BOX 454, TORQUAY

- Incompatibility of uses
- Noise
- Traffic safety
- Dust and pollutants in the air
- Expectation that land was going to revert to be part of the Retirement Village Development
- Incompatibility with the zoning

J HERRMANN

7 BLUE GUM DRIVE, TORQUAY

- Should have been relocated to an industrial area
- Not consistent with the adjoining residential development or zoning
- Expectation that land was going to revert to be part of the Retirement Village Development

NOEL ANDERSON

PO BOX 667, TORQUAY

- Expectation that land was going to revert to be part of the Retirement Village Development
- Air quality affects lung disease sufferer residing at this address
- Removal of vegetation which makes dust even more open to the wind

J WRIGHT

31 BLUE GUM DRIVE, TORQUAY

- Expectation that land was going to revert to be part of the Retirement Village Development
- Incompatibility of uses
- Dust, trucks

F E DELL

28 BLUE GUM DRV, TORQUAY

- Expectation that land was going to revert to be part of the Retirement Village Development
- Not consistent with the adjoining residential development or zoning
- Amenity issues
- Decrease of property value

DE & MA SCHNEEBERGER

26 WATER GUM DRIVE, BELLBRAE

- At Council meeting, in June 2012 it was resolved that the Sand and soil business was to be re-located.
- Expectation that land was going to revert to be part of the Retirement Village Development
- Noise and dust from trucks
- Traffic Safety
- The wind carry dust
- Inconsistent with the character of the area

J & RJ BURLEY

20 PEPPERMINT GUM WAY, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Not consistent with the adjoining residential development or zoning

M HOPKINS

15 SNOW GUM AVENUE, BELLBRAE

- Dust And pollutants levels not acceptable for elderly people
- Not consistent with the adjoining residential development or zoning
- Expectation that land was going to revert to be part of the Retirement Village Development
- Should be relocated in an industrial area

P J CHRISTIE

13 SNOW GUM DRIVE, BELLBRAE

- Lack of enforcement for failure to comply with 1994 permit
- Takes away land set aside for residential development
- Noise from truck
- Incompatibility of uses
- Residents should have been consulted prior to a new lease being signed
- Violation of 1994 permit
- Failure from Surf Coast Shire to enforce permit
- Airborne pollutants and dust affects the residents
- Noise from trucks is not acceptable
- Traffic hazard

GR BLIGHT

20 WATER GUM DRIVE, TORQUAY

-
- Not consistent with the adjoining residential development or zoning
- Should not reinforce inappropriate use
- Airborne pollutants and dust affects the residents many of which suffer from respiratory conditions
- Traffic hazard
- Incompatibility of uses
- The Shire has erred in granting a permit for the Kihbrooke part Country Club without including a condition to remove the industrial tenant

- The 173 agreement requires the residents to be consulted prior to the a new lease being signed
- Vulnerable purchaser should be able to rely upon the Shire to protect their interest

**G R KITCHENMASTER
4 BLUE GUM DRIVE, TORQUAY**

- Airborne pollutants and dust affects the residents many of which suffer from respiratory conditions
- The previous garden supply had small stockpiles, the present tenants have larger piles which is more akin to an industrial use
- Incompatibility of uses

**I GAMBETTA
29 WATER GUM DRIVE, BELLBRAE**

- Airborne pollutants and dust affects the residents many of which suffer from respiratory conditions
- Prevailing southerlies
- Noise from the trucks
- Unattractive site for the retirement village

**M & D BOURKE
23 BLUE GUM DRIVE, TORQUAY**

- Not consistent with the adjoining residential development or zoning
- Noise from the site and trucks
- Pollutants not consistent with environmental regulations, insufficient buffer
- Dust, especially on windy days
- Airborne pollutants and dust affects the residents many of which suffer from respiratory conditions

**B WHITMORE
25 WATER GUM DRIVE, BELLBRAE**

- Not consistent with the adjoining residential development or zoning
- Noise of trucks
- Traffic hazard
- Failure to comply with the 1994 permit should not be a reason for them to continue tur use the site

**HJ & RM DAVIS
2 PEPPERMINT GUM WAY, BELLBRAE**

- Expectation that land was going to revert to be part of the Retirement Village Development
- Trucks noise
- Air quality and dust
- Traffic Hazards
- Not consistent with the adjoining residential development or zoning
- Lack of orderly planning
- Lack of adequate enforcement

**TW & VJ DAVIS
12 SNOW GUM AVENUE, BELLBRAE**

- Not consistent with the adjoining residential development or zoning
- Lack of adequate enforcement
- Any new conditions will not improve the site conditions
- Use should be relocated

**DJ & DL THOMAS
9 SNOW GUM AVENUE, BELLBRAE**

- Noise from trucks

- Traffic
- Dust
- Poor air quality, bad for allergy sufferers
- Not consistent with the adjoining residential development or zoning

Betty Kitchenmaster

2 BLUE GUM DRIVE, BELLBRAE

- Dust, especially when high winds
- Airborne pollutants and dust affects the resident of this address lung condition
- NSS is a bigger operation than previously

IJ & MJ MEADE

6 SNOW GUM AVENUE, BELLBRAE

- Not consistent with the adjoining residential development or zoning
- Airborne pollutants and dust affects the residents many of which suffer from respiratory conditions
- Lack of buffer
- Should be relocated

KEN MERRY

37 BLUE GUM DRIVE, BELLBRAE

- Noise from vehicles
- Traffic
- Dust, especially during southerly winds
- The effect of dust and pollutants affects the health and wellbeing of residents

JAN EMMETT

7 WATER GUM DRIVE, BELLBRAE

- Health issues due to pollutants
- Noise
- Dust
- Impact on house value and re-sale
- No amount of screening will be adequate
- Expectation that land was going to revert to be part of the Retirement Village Development

J & MA CAIRNS

8 PEPPERMINT GUM WAY, BELLBRAE

- Not consistent with the adjoining residential development or zoning
- Expectation that land was going to revert to be part of the Retirement Village Development
- Noise
- Dust
- Traffic hazard

HELEN WEBSTER

17 PEPPERMINT GUM WAY, BELLBRAE

- Traffic hazard
- Dust
- Expectation that land was going to revert to be part of the Retirement Village Development
- No consultation prior to the lease being signed

JP ETHERTON

9 PEPPERMINT GUM WAY, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- If the additional residences are not built there will be an increase of the monthly fee
- Traffic
- Noise
- Not consistent with the adjoining residential development or zoning

BH & HT BURNS

1 PEPPERMINT GUM WAY, BELLBRAE

- Dust
- Noise
- Expectation that land was going to revert to be part of the Retirement Village Development
- Increase in monthly fees
- Lower the value of houses
- Not consistent with the adjoining residential development or zoning
- No consultation before the lease
- The Shire has erred in granting a permit for the Kihbrooke part Country Club without including a condition to remove the industrial tenant
- The 173 agreement requires the residents to be consulted prior to the a new lease being signed
- Vulnerable purchaser should be able to rely upon the Shire to protect their interest

CA RIPPON

265 GROSSMANS ROAD, TORQUAY

- Scale has increased to industrial activity
- Stockpiling flammable materials
- Establishment of flammable landscaping near large flammable stockpiles
- Piles are too high/large – issues when wind blows
- Insufficient buffer between uses
- Noise
- Traffic hazard – conflict between pedestrians, particularly schoolchildren waiting for schoolbus and cyclists
- Council has previously refused an application to relocate the business to a site at the western end of Grossmans Rd in 2010 on the grounds that noise and dust problems, traffic, other location would be preferred.

R C DIEHM

12 BLUE GUM DRIVE, TORQUAY

- Expectation that land was going to revert to be part of the Retirement Village Development
- Airborne pollutants and dust affects the residents many of which suffer from respiratory conditions
- Risk of legionnaire disease from the piles of bark
- Traffic hazard
- Trucks Dropping clay on the road

J & J SUTTON

17 BLUE GUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Not consistent with the adjoining residential development or zoning
- Insufficient buffer
- Airborne pollutants and dust affects the residents many of which suffer from respiratory conditions

L ADAMS

16 KITHBROOKE PARK BLVD, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Noise
- Dust
- Clearing of vegetation
- Insufficient buffer between uses, should be 100 m not 7 m
- Create health issues

LG HOCKING

35 BLUE GUM DRIVE, TORQUAY

- Noise of trucks all day
- Dust
- Not consistent with the adjoining residential development or zoning

COLIN SEWELL

41 BLUE GUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Should be re-located in a more appropriate place
- Traffic hazard (trucks cannot turn appropriately)
- Fee increase for the residents as some villas will not be built

JE PLATE

30 WATER GUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Dust from uncovered b-double and wind, create health issues
- Not consistent with the adjoining residential development or zoning

G STURROCK

17 SNOW GUM AVENUE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Not consistent with the adjoining residential development or zoning
- Noise
- Fumes
- Dust

FG & NM VEALE

1 SNOW GUM AVENUE, BELLBRAE

- Noise from trucks will also affect the future of the nursing home
- Dust
- Expectation that land was going to revert to be part of the Retirement Village Development

IA & MR SWEET

20 SNOW GUM AVENUE, BELLBRAE

- Should be located in an industrial estate
- Dust
- Noise
- Expectation that land was going to revert to be part of the Retirement Village Development
- Not consistent with the adjoining residential development or zoning

M R FRANKE

18 WATER GUM DRIVE, BELLBRAE

- Not consistent with the adjoining residential development or zoning
- Noise from trucks
- Air quality
- Should be relocated to an industrial area
- Traffic hazard

G & J WHEATLEY

16 PEPPERMINT GUM WAY, BELLBRAE

- Dust
- Noise from trucks and loading/unloading
- Traffic hazards

FC & HI BARTLETT

14 PEPPERMINT GUM WAY, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development

- Development of respiratory condition since moving into the development due to the quality of the air
- Impact on sales value
- Not consistent with the adjoining residential development or zoning

PG & JR GORDON

10 SNOW GUM AVENUE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- The Shire has erred in granting a permit for the Kithbrooke part Country Club without including a condition to remove the industrial tenant
- The 173 agreement requires the residents to be consulted prior to the a new lease being signed
- Vulnerable purchaser should be able to rely upon the Shire to protect their interest
- Insufficient Buffer area
- Dust
- Noise

IC & MC GRIBBLE

16 SNOW GUM AVENUE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Dust
- Noise
- Not consistent with the adjoining residential development or zoning
- Industrial use scale

DG MORGAN

5 SNOW GUM AVENUE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Noise 7 days a week
- Dust
- Insufficient buffer
- Not consistent with the adjoining residential development or zoning

IR & N DONALD

3 SNOW GUM AVENUE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Rise in monthly cost
- Airborne pollutants and dust affects the residents many of which suffer from health conditions
- Section 173 should be enforced
- Insufficient buffer

EM & HD DOLE

18 SNOW GUM AVENUE, BELLBRAE

- Not consistent with the adjoining residential development or zoning
- Expectation that land was going to revert to be part of the Retirement Village Development
- Not orderly planning
- Significant impacts on adjoining properties
- Lack of enforcement with 1994 permit
- Noise
- Health concerns
- Should be considered industrial use instead of garden supply

KM DUNN

3 BLUE GUM DRIVE, BELLBRAE

- Source of dust and airborne pollutants
- Source of noise
- Traffic

- The 1994 permit was superseded by 06/0204
- It is not the owner of the land that has made the application
- Will result in higher on-going service cost for the residents
- Devaluation of houses
- 173 agreement should be enforced
- The design response provided by Fadgyas is flawed in that it does not improve the amenities for the residents, the site has not been operating in this way for 15 years, the intend of permit 06/0204 is to use the land for an other purpose.
- The improvements to amenities mentioned in the report are a mean of reducing unacceptable impacts
- It seems that the 1994 permit is enforceable but not the 2006 one.
- The land is covered by the Retirement Village Act which this application disregards,

LES CROFT

32 WATER GUM DRIVE, BELLBRAE

- Traffic
- Health issues from chemicals on site
- Not consistent with the adjoining residential development or zoning
- Insufficient buffer

WENDY DONALD

9 WATER GUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Increase of service cost due to additional villa not be constructed
- Airborne pollutants and chemicals, dust impacting on elderly people
- Noise from trucks
- Not consistent with the adjoining residential development or zoning
- No consultation prior to the lease being signed

H & J FRAME

3 WATER GUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Noise
- Dust and pollution
- Understands that the use cannot be extinguished but would like appropriately enforceable condition
- Council should limit the use to the original permit
- Limit opening hours and implement dust and noise mitigation measures

P & J LUND

13 WATER GUM DRIVE, BELLBRAE

- No notice prior the change of use
- Devaluation of investment
- Pollution
- Traffic safety and amenity issues
- Alternative site should be chosen

A & D NEWTON

16 WATER GUM DRIVE, BELLBRAE

- Air quality
- Noise
- Wrong location
- Not consistent with the adjoining residential development or zoning
- No net benefit to the community
- Vegetation clearing
- Lack of enforcement for failure to comply with the permit

JAN VOSS

5 WATER GUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Issues with airborne pollutants as an asthmatic
- Should be on an industrial site
- Noise from trucks
- Not consistent with the adjoining residential development or zoning

B & K WHITE

PO BOX 523, TORQUAY

- Expectation that land was going to revert to be part of the Retirement Village Development
- The use is not garden supply but rather industrial
- Noise
- Air quality
- Not consistent with the adjoining residential development or zoning

N & A DELL

1 WATER GUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Not a suitable location
- Dust is detrimental to people with respiratory conditions
- Noise
- Insufficient buffer

BRIAN WALSH

25 BLUEGUM DRIVE, BELLBRAE

- Expectation that land was going to revert to be part of the Retirement Village Development
- Should be for age care purpose

WR MCLELLAND

18 PEPPERMINT GUM WAY, BELLBRAE

- Not consistent with the adjoining residential development or zoning
- Insufficient buffer between the area
- Dust
- Traffic hazard
- Non compliance with Section 173 agreement

A & C CASCONE

39 BLUE GUM DRIVE, TORQUAY

- Dust
- Noise
- Traffic hazard
- Not consistent with the adjoining residential development or zoning
- Expectation that land was going to revert to be part of the Retirement Village Development

C K GROSSMAN

375 GROSSMANS ROAD, TORQUAY

- In support

Planning Scheme Considerations

The following clauses of the SPPF are relevant to the current application and have been considered:

11 Settlement

11.05 Regional development

11.05-1 Regional settlement networks

11.05-4 Regional planning strategies and principles

11.05-5 Coastal Settlement

12 Environmental and landscape values

- 12.01-1 Protection of habitat
- 12.01-2 Native vegetation management
- 12.02-6 The Great Ocean Road region

15 Built Environment and Heritage

- 15.01 Urban environment
- 15.02 Sustainable development

16 Housing

- 16.01 Residential development
- 16.01-1 Integrated housing

19 Infrastructure

- 19.03 Development infrastructure

Local Planning Policy Framework

Municipal Strategic Statement

The MSS is a statement of the key strategic planning, land use and development objectives for the municipality and the strategies and actions for achieving those objectives. The key provisions of the MSS as it relates to this application include:

- Clause 21.01 Profile and Visions
 - 21.01-4 Municipal Framework Plan
- Clause 21.02 Settlement, Built Environment and Heritage
 - 21.02-2: Settlement Patterns
 - 21.02-3 Neighbourhood Character
- Clause 21.07 Rural Residential Living
- Clause 21.08 Torquay Jan Juc Strategy

These clauses outline that the Surf Coast Shire has some of the most attractive coastline in Australia, much of which is protected within coastal reserves and state parks. Spread along its coastline and the Great Ocean Road are the towns of Torquay, Anglesea, Aireys Inlet, Fairhaven, Moggs Creek and Lorne. Each of these towns has its own distinct character and identity and potential for development.

A recurring theme of the Surf Coast Shire's MSS is balancing development against the environmental qualities of the Shire which provide the foundation of its attractiveness as a place to live, to work and to visit. To achieve this, the Shire has adopted detailed policies for the coastal townships and their hinterland which direct new development into existing town areas and limit development in areas of high scenic, environmental and agricultural value.

The following key strategic directions for sustainable land use and development in terms of settlement are considered of relevance to the proposal:

“To concentrate urban growth predominantly in the towns of Torquay-Jan Juc and Winchelsea.”

“To protect the fragile coast environments and scenic landscapes that separates the coast townships from urban sprawl and inappropriate development.”

“To limit the provision of rural residential/rural living lots outside settlement boundaries to prevent adverse impacts on agricultural, environmental and landscape values”

Expanding upon this, *Settlement, Built Environment and Heritage* at Clause 21.02 notes Torquay is the only coastal town in the Shire with capacity to accommodate substantial growth and that development pressure and insensitive suburban style development are threatening the character of coastal towns.

In terms of Settlement Patterns (Clause 21.02-2) the objective is to minimize urban development's impact on the town's environmental values but also to make efficient use of land and resources and to concentrate development in accessible locations.

Clause 21.02-4 Neighbourhood Character, identifies the following strategies to protect the low urban density, the vegetated coastal landscapes and ecological values of the natural environment:

- *Ensure residential development densities are compatible to the protection of the indigenous vegetation and the historic neighbourhood character of the Surf Coast Shire*
- *Recognise the key role vegetation plays in defining township character and in softening urban development.*

Clause 21.07 Rural Residential Living policy of the MSS outlines the following key issues and influences, as relevant:

- *Rural residential living is a highly sought after lifestyle in Surf Coast Shire, especially in attractive locations along the coast and within commuting distance of Geelong and Melbourne.*
- *Rural residential development is not generally the most sustainable or efficient use of land as it leads to urban sprawl and requires the provision of services in more remote areas to benefit relatively few households.*
- *Many areas where people seek to develop land for rural residential development is of high landscape or environmental significance or agriculturally valuable and therefore unsuited to such development.*
- *Four areas have been identified as having potential for future rural residential and rural living development. These are Torquay/Jan Juc, Winchelsea, Moriac and Bellbrae. The four areas provide a variety of location choices and are well served with physical and community infrastructure. The identification of these areas will provide land use stability and certainty that will minimise the effects of increased land values on the agricultural economy and facilitate efficient infrastructure planning acknowledges this housing type is a popular and attractive alternative The Torquay – Jan Juc Strategy (Clause 21.08) reinforces these broader strategies and objectives, establishing the objective:*

In the Low Density Residential zone, lot sizes in the range of 0.4ha to 1ha are encouraged to achieve the more efficient use of land excepting where:

- *a larger lot is required for the on-site treatment of wastes,*
- *a larger lot is needed to protect pockets of significant remnant vegetation, or*
- *the land has a high landscape value.*

To ensure rural residential development does not result in the loss of productive agricultural land or detract from the landscape, cultural heritage or environmental values of adjoining land, it is policy to direct new rural living subdivision and development away from – high value agricultural land, land with high biological significance and land with high risk factors including from wildfire, flooding, salinity and contamination.

Policy also seeks that rural residential development be appropriately located to avoid loss of agricultural productivity including from potential land use conflict.

Objective 4 of the policy is:

- *To allow for rural residential development in Torquay/Jan Juc, Winchelsea, Moriac and potentially Bellbrae, to satisfy demand for this style of living in areas where it can be efficiently serviced and does not encroach on future urban growth areas.*

Among the strategies suggested as a means of implementing the above

- Consider requests for additional rural residential development around Torquay Jan Juc on the basis of the following analysis of existing and potential rural residential development sites:

Clause 21.08 Torquay Jan Juc Strategy identifies the township will continue to experience growth and that “while much of Torquay Jan Juc is highly modified, as a result of its former agricultural use, there still exist pockets of significant remnant vegetation, particularly along creeks (Spring and Deep Creek) and foreshore areas and within the low density residential area between Coombes and Grossmans Roads and to the east of Jan Juc.”

In relation to Settlement and Housing the objective is:

To accommodate and manage the projected population growth and demographic change of Torquay-Jan Juc in an environmentally sustainable manner that respects and celebrates the distinct surfing identity and coastal character of the town.

Relevant Strategies include:

- *Contain and consolidate urban development within the defined settlement boundary as indicated on Map 1 of Clause 21.08 – Torquay-Jan Juc Framework Map. Preserve the clear delineation between the urban township and the rural landscape of the Thompson Creek valley, afforded by the northern ridgeline.*
- *Retain limited provision of low density residential development, contained within the settlement boundary. These areas should serve to protect areas of remnant vegetation and provide a zone of urban / rural transition to the north and south-west.*
- *Encourage the subdivision of key low density residential sites (e.g. Briody Drive Estate, Torquay Heights etc.) at densities appropriate to their location and physical characteristics.*
- *Ensure that residential development is guided by the coastal character of Torquay-Jan Juc and assists in the protection or re-establishment of indigenous vegetation and vegetation that filters the appearance of development from public spaces.*

Local Planning Policies

- *Streetscape and Landscaping Policy (Clause 22.02 Surf Coast Planning Scheme)*

The *Streetscape and Landscaping Policy* applies to all developments throughout the Shire and notes the importance of the visual quality and appearance of streetscapes in creating and enhancing the character and attractiveness of towns for both residents and visitors. The objectives of the policy are:

- *To protect and enhance the individual landscape character of each town.*
- *To promote the development of co-ordinated and visually pleasing streetscapes in residential, commercial and industrial areas.*
- *To encourage ecologically and economically sustainable streetscapes and landscapes.*

Particular Provisions

Clause 63 EXISTING USE RIGHTS

Clause 63.05 Section 2 and 3 uses:

A use in Section 2 or 3 of a zone for which an existing use right is established may continue provided;

- *No buildings or works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other buildings or works requirements in this scheme.*
- *Any condition or restriction to which the use was subject continues to be met. This includes any implied restriction on the extent of the land subject to the existing use right or the extent of activities within the use.*
- *The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right*

Clause 63.06 Expiration of existing use rights

An existing use right expires if either:

- *The use has stopped for a continuous period of 2 years, or has stopped for two or more periods which together total 2 years in any period of 3 years.*
- *In the case of a use which is seasonal in nature, the use does not take place for 2 years in succession*

Planning Scheme Amendments

Nil

Discussion of Key Issues

The approved master plan for the Kithbrooke Park clearly shows the subject land as being developed as part of the adjoining retirement village however for some reason this has not occurred. It is not Council's role to speculate on the reasons for this and this assessment will be limited to the requirements of the relevant legislation only.

The use of the subject land for a Landscape Garden Supplies was established by Planning Permit 94/5796 which was considered against the provisions of the Rural General Farming Zone which applied to the land at the time. Subsequent to the issue of this permit the Planning Scheme was amended and the subject land was re-zoned to Low Density Residential along with the adjoining land which is now being developed as the Kithbrooke Park Retirement Village.

The current planning scheme most correctly defines the use being conducted on the subject land as Landscape Garden Supplies which is nested under Retail Premises at Clause 75. The Low Density Residential Zone which applies to the land does not specifically nominate Landscape Garden Supplies in the table of uses at Clause 32.03-1 but does nominate Retail Premises (other than Community Market, Convenience Shop, Food and Drink Premises and Plant Nursery) as a Section 3 – prohibited use. Therefore if an application was made under the current provisions of the planning scheme, the use would be prohibited and Council would be unable to grant approval. In this case however the use continues to enjoy the benefit of the approval granted under the original permit.

Given the changes which have occurred in the planning provisions applying to the subject land, the complexity of the matters under consideration and the expectations of submitters; it is worth examining in some detail the process by which Council may or may not consider the amendments proposed.

The first matter for consideration is whether Council has the authority to amend the permit as the use is now prohibited under the Low Density Residential Zone, which currently applies to the land.

Clause 63.05 of the Planning Scheme allows that:

A use in Section 2 or 3 of a zone for which an existing use right is established may continue provided;

- *No buildings or works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other buildings or works requirements in this scheme.*
- *Any condition or restriction to which the use was subject continues to be met. This includes any implied restriction on the extent of the land subject to the existing use right or the extent of activities within the use.*
- *The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right*

On face value the second and third dot points seems to limit Council's capacity to amend the permit, however consideration must be given to previous determinations by VCAT and The Supreme Court which have considered this issue in detail.

In *Fosters Group Pty Ltd v Mornington Peninsula Shire Council*, The Tribunal acknowledges that there is a difference between the grant of a new permit and the amendment of an existing permit.

Once a planning permit has been granted in accordance with a planning scheme, it establishes certain rights. First, a permit creates an accrued right within the meaning of section 28(2) of the Interpretation of Legislation Act 1984. Stripped of unnecessary verbiage, the effect of section 28(2) is as follows:

Where a planning scheme is amended, the amendment shall not, unless the contrary intention expressly appears, affect any right accrued under that planning scheme.

In the decision of Lakkis v Wyndham CC, Deputy President Macnamara observed:

Permits create substantive rights, Changes to the substantive law are assumed not to operate retrospectively. Where a subordinate instrument such as a planning scheme expires, lapses or ceases to have effect, the expiry, lapsing or ceasing to have effect does not affect any right, privilege, obligation or liability acquired, accrued or incurred under that subordinate instrument or provision. In my view these principles preserve the operation of [the permit under consideration in that case] and it is not dependant at all for its preservation on Clause 63 of the current Scheme or Section 6(3) of the planning and Environment Act.

Additionally *Fosters* goes on to consider whether the conditions in a permit that establish an existing use right can be amended as follows:

It is not contested that a planning permit can be amended in accordance with existing planning scheme provisions. The issue is whether it can be amended in a way that is not in accordance with existing planning scheme provisions either because:

- *The use is now prohibited; and/or*
- *The conditions are contrary to the planning scheme.*

Based on Seventh Columbo, the clear answer is that as a question of law, a permit can be amended in either of these circumstances.

The Supreme Court in Seventh Columbo held that section 87(1) of the Planning and Environment Act 1987 vests in the Tribunal a discretionary power to “amend any permit” by which a permit holder enjoys the right to use the land for a prohibited use, including the power to amend the permit by directing that conditions be deleted or varied.

Based on these findings it is clear that the Tribunal has the power to amend any permit, including one allowing a use which is prohibited under a current planning scheme, however it must now be established whether Council also has this authority. Thankfully *Fosters* also resolves this matter starting at clause 78 where it again references the Supreme Court’s findings in *Seventh Columbo* as follows:

The Court also held that the conditions of the permit that are required to be met by the equivalent of what is now clause 63.05 of the scheme, were those existing and affected by the amendment. This in the event of the power under section 87(1) of the Act being exercised to delete or add a condition to the permit, the amended conditions will need to be read along with other conditions.

We consider that because there is no difference in the type of amendment that may be made under any of the mechanisms available under the Act (sections 72, 87 or 87A), the principles established by Seventh Columbo mean that conditions of a permit can be amended after the use has become prohibited and the power to amend a permit under the Planning and Environment Act 1987 cannot be restricted by reference to the current provisions of the planning scheme.

In concluding their findings in *Fosters* the members advised:

There is no difference in the way that a permit can be amended lawfully under either sections 72, 87 or 87A of the Planning and Environment Act 1987 in terms of the type of amendments that may be made.

Section 72 of the Planning and Environment Act allows that:

- (1) *A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*
- (2) *This section does not apply to—*
 - (a) *a permit issued at the direction of the Tribunal; or*
 - (b) *a permit issued under Division 6.*
- (3) *In this section a reference to a permit includes any plans, drawings or other documents approved under a permit.*

It is therefore considered that as Council is the responsible authority in this case and the original permit was not issued at the direction of the Tribunal or under Division 6 (of the Planning & Environment Act), that Council does have the authority to lawfully amend the permit.

The Section 173 Agreement that runs with the land does not contain an explicit clause ending the use of the land under planning permit 94/5796. It does prevent the granting of a permit on the land for any use that is not part of the Retirement Village, however Council is not prevented from approving an amendment to the existing permit by the agreement.

Consideration has been given to limiting the life of the permit. However, if Council were to include an expiry condition it would be considered to be "ultra vires" and contested at VCAT. Previous decisions by the Tribunal have provided case law on this point. In *Scott V. Maroondah CC (2007) VCAT 1474*, the Tribunal endorsed the following summary in respect to the validity of Conditions:

- The condition must fairly and reasonably relate to the permitted development
- The condition must be in the aid of a planning purpose
- The condition must not be imposed for an ulterior purpose and
- The condition must not be vague and uncertain

The permit and continued occupation of the site means there are existing use rights applicable to the land. The long term lease of this site and its continued use as a Garden Supplies will restrict the development of Kithbrooke Park.

The planning permit which originally allowed the use of the land for Garden Supplies continues to have force and effect regardless of any expectation, whether implied or specifically stated, in relation to the development of the Kithbrooke Park Retirement Village.

The appropriate question in this case is whether an increased scale of use on the subject land is acceptable and if determined in the affirmative is it necessary to include additional conditions on the permit to mitigate the impact of the increased use on adjoining and nearby land.

In this case it is indicated that the use has been operating in some capacity on the area currently occupied since 2003 and it is only since the development of Kithbrooke Park that this has become an issue. Existing use rights are notoriously difficult to prove either way however in essence Clause 63 of the Planning Scheme establishes that an existing use right is established with proof of continuous use for a period of 15 years. Whether or not existing use rights apply to the extended footprint is a matter of conjecture and would require further investigation.

Options for consideration

Council can decide to approve the application, refuse the application or approve the application with conditions.

Approve the application:

If Council were to approve the application, the original conditions of the permit would apply to the new endorsed plan.

Refuse the application:

If Council refuses the application, the existing permit and approved footprint area (100m x 100m) would apply. This option reinforces the strategic intent of the land as identified by C33 with the proposed extension of the retirement village. However, the existing permit does not provide for amenity protection and allows the use to operate 24 hours per day, 7 days a week.

A draft refusal is included below if this option is considered:

That Council, having considered all the matters required under section 60 of the Planning and Environment Act 1987, issue a Notice of Refusal to amend Planning Permit 94/5796 which allows the Use and Development of land at 460 Grossmans Road for the purpose of Plant Nursery and Garden Supplies on the following grounds:

1. *The expansion of the site area occupied for the non-conforming use is contrary to the orderly planning of the area.*

2. *The expansion of the site will have an unacceptable environmental impact on the surrounding residential area*
3. *The expansion of the site will contribute to a social impact on the community by further delaying the development of the land as a retirement village as required under the section 173 agreement.*
4. *The Section 173 agreement over the site prevents the owner from applying for the amendment to the permit and the intent of the agreement is being circumvented by the occupier applying for the consent.*
5. *The proposed plan has less landscaping and buffer distances to adjoining land and frontages than the current endorsed plan for the site*

Approve the application with revised conditions:

Council could approve the application for an amended plan and place further conditions on the permit on the basis that increasing the area of operation on the site increases the offsite impacts. Additional environmental conditions, beyond the conditions foreseen necessary in the original permit, would mitigate against the off-site impacts that are currently occurring.

The current planning permit 94/5796 does not include conditions limiting the hours of operation or offsite amenity impacts and it is considered that if the tenant was forced to operate within the 100 metre x 100 metre area nominated on the endorsed plans the amenity impacts on surrounding residents could be greater as a result of increased truck deliveries and higher stock piles resulting from the reduced storage capacity of the site.

A draft set of conditions are included below if this option is considered.

Council approve the amendments to the plans endorsed under planning permit 94/5796 subject to the following amended conditions.

1. *The layout of the site and size and design of the proposed buildings or works as indicated on the endorsed plan shall not be altered or modified without the approval of the responsible authority.*
2. *Deleted:*
3. *Deleted:*
4. *No advertising signs shall be erected without the written consent of the responsible authority.*
5. *Within two months of the date of this permit;*
 - a. *a landscape plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The landscaping plan must be generally in accordance with the landscape concept plan submitted with the application except that the plan must show:*
 - i. *details of surface finishes of pathways and driveways;*
 - ii. *a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;*
 - iii. *A planted landscape buffer planted along the north and west boundaries of the site, of sufficient size and density to limit the transmission of dust and to provide a visual screen ;*

All species selected must be to the satisfaction of the responsible authority. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the responsible authority, including that any dead, diseased or damaged plants are to be replaced.

- b. *a stormwater management plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must ensure that stormwater and drainage discharge from the development site meets current best practice performance objectives for stormwater (Urban Stormwater Best Practice Environmental Management Guidelines (CSIRO 1999)) and must include:*
 - i. *a construction site plan that incorporates the stormwater management measures to be implemented for the use and development and outlines in detail how stormwater is managed, including sediment controls. The plan should have regard to the Construction Techniques for Sediment Pollution Control (EPA 1991) and Environmental Guidelines for Major Construction Sites (EPA 1995). The management controls are to be regularly monitored and maintained;*
 - ii. *The incorporation of on-site retention/infiltration, storage and re-use stormwater management techniques where practicable to reduce pollutant export and peak discharge from the site;*
 - iii. *Connection to council infrastructure.*
 - c. *an operational management plan (three copies) to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must address the following matters:*
 - i. *Driver restrictions for speeds and behaviour on abutting roads especially Ghazeepore Road.*
 - ii. *Loading and unloading instructions for trucks bringing and removing bulk supplies to and from the site to minimise noise.*
 - iii. *Installation of low frequency beepers on machinery operating at the site or visiting the site.*
 - iv. *The use of dust suppression methods, including water carts as required, based on temperature and weather conditions (particularly wind direction).*
6. *The use must be conducted to the satisfaction of the responsible authority so that the amenity of the area is not detrimentally affected by the use or development, through the:*
 - a. *Transport of materials, goods or commodities to or from the land;*
 - b. *Appearance of any buildings, works or materials;*
 - c. *Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;*
 - d. *Presence of vermin.*
 7. *External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the responsible authority.*
 8. *Odours offensive to the senses of human beings must not be discharged beyond the boundaries of the premises to the satisfaction of the responsible authority.*
 9. *The surface of the car park area must be treated to the satisfaction of the responsible authority to prevent dust causing loss of amenity to the neighbourhood.*
 10. *Except with the written consent of the responsible authority the use, including deliveries and waste collection may operate only between the following hours:*
 - a. *7:30 am and 5:30 pm Monday to Friday*
 - b. *8:00 am and 5:30 pm Saturday*
 - c. *9:00 am and 4:00 pm Sunday*
 11. *The following requirements shall apply to vehicle crossings and driveways that must be constructed to the satisfaction of the responsible authority:*
 - a. *A225 x 375mm RC Box culvert with driveable end walls and suitable pavement material must be constructed to suit the driveway off Grossmans Road*

- b. A "Non-Utility - Minor Works" permit shall be obtained from the Coordinating Road Authority defined in the Roads Management Act 2004 prior to any works being undertaken in road reserves.*
- 12. Within six months of the date of this permit:*
 - a. the site whether occupied or not, must be landscaped in accordance with the endorsed landscape plan. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the responsible authority, including that any dead, diseased or damaged plants are to be replaced.*
 - b. An acoustic assessment report undertaken by a suitably qualified professional must be provided to the satisfaction of the responsible authority. The report must assess the impact of the use and provide recommendations as to the modifications required to ensure compliance with the requirements of the Environment Protection Authority's publication 1411 Noise from Industry in Regional Victoria. Once approved the site must, at all times, be managed in accordance with the recommendations of this report.*
- 13. Noise levels emanating from the premises must comply with the requirements of the Environment Protection Authority's publication 1411 Noise from Industry in Regional Victoria.*