

OFFICER'S REPORT - 15/0408 - 48 THE ESPLANADE, TORQUAY.

Proposal

The application seeks approval for the following:

- The temporary use of the land for a Tavern (Pop-up Bar) from 31st October 2015 to 3rd April 2016
- Construction of temporary buildings including the bar servery in a converted shipping container and portable disabled access toilet
- The reduction of the car parking requirement for 60 spaces to 0.

The restaurant originally approved by the previous permit was not constructed and the plans endorsed under the permit were amended and endorsed in June of 2011 replacing the restaurant with a viewing deck. Part of the viewing deck is proposed to be used for the Pop-up Bar. The details of the Pop-up Bar are:

- Operating hours of:
 - Between 31 October and 25 December Thursday to Sunday 1pm to 9:30pm
 - Between 26 December and 26 January seven days per week 1pm to 9:30pm
 - Between 28 January and 3 April Thursday to Sunday 1pm to 9:30pm
- A maximum of 150 patrons
- Pre-recorded background music during opening hours
- Live acoustic musical performances of no longer than 3 hours and no later than 8pm
- Venue to be glass free and non-smoking

This proposal commenced as an application to amend planning permit 07/0736. The assessment of that proposal has determined that a separate approval was required rather than requesting an amendment to the previous permit as that permit has expired. A new application form has now been completed and lodged by the applicant and is a fresh application for the same proposal being this application (15/0408).

Site and Surrounding Area

The subject site is part of the Torquay foreshore at Fisherman's Beach on the eastern side of The Esplanade between Beach Road and Zeally Bay Road opposite Taylor Park and within proximity to the Torquay Bowls Club within Taylor Park.

The site is currently development by a single storey building occupied by the Torquay Angling Club and a kiosk (operating as Bomboras) selling food and drink predominantly for take-away consumption but with a few outdoor tables and chairs. This building also contains public toilets. The roof of the building is trafficable, level with The Esplanade, providing a public viewing deck.

A two storey building is developed adjacent which is a facility for Torquay Marine Rescue. Around the two buildings is an area of car parking, including for oversized vehicles to accommodate cars with boat trailers. This area is slightly above beach level and a storey below the level of The Esplanade.

Approximately 100m north of the site is the nearest residential land which extends west around Taylor Park and north along The Esplanade. The Torquay Bowling Club building is approximately 140m southwest of the site and Torquay Town Centre is about 340m southwest.



Relevant History and Background

Past permits:

Applic'n No.	Proposal	Decision	Date
07/0576	Development of a Boat Ramp	Approved	21/11/2007
07/0736	Development of Buildings & works; Use of land for a Restaurant; and Waiver of Standard Car Parking Requirement	Approved	08/09/2008

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 not affected by registered restrictions.

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 can not be granted until a copy of the approved CHMP is provided and can not grant a permit for an activity that is inconsistent with the approved CHMP [s. 52(3)].

The subject site is within an area of cultural heritage sensitivity but the whole of the site (the area where the use is proposed) has been subject to past significant ground disturbance with the development of the building therefore a CHMP isn't required.

Referral

Internal Council Referrals	Advice/Response
Environmental Health Department	Consent with conditions

Public Notice

The proposal was first subject to public notice as an application to amend the permit 07/0736 (the original permit for the site). A fresh application for the proposal (this application 15/0408) was also advertised 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. Notice was sent by mail to Victoria Police
3. A sign was erected on the land for a period of 14 days.

24 objections were received to the first application for the Pop-Bar. The change to a fresh application was conveyed in writing to all objectors with the public notice of the fresh application. Objectors have been advised that their objection will stand as an objection to the fresh application unless they advise otherwise. All objections to the first application are therefore being considered as objections to the fresh application. This action has been taken so as to not prejudice the applicant or objectors. Copies of the objections are attached to the file, and are summarised as follows:

Summary of Submissions

Drinking in a Public Place

The area that has been applied for can be considered a "site" would not be considered to be drinking within a public place. If approved, conditions are to be included on the permit that no alcohol may be consumed outside of the site and no patron is allowed to leave the site whilst carrying alcohol.

It is also noted that it is not unusual for there to be licenced premises on Crown land and other public land with a number of examples across the Shire and State wide, such as the Torquay Angling Club on the same site, Torquay Life Saving Club and Lorne Pavillion.

Contrary to Land Use and Zoning

This will be addressed in further detail below, but it has been assessed that the proposed use is not inconsistent with the zoning which includes the purpose of providing for appropriate commercial uses.

Potential for Broken Glass and/or Litter into the Foreshore

With respect to broken glass, the applicants have advised they will not be using glass cups or bottles rather plastic cups to ensure there is no broken glass caused by the use and this will be reinforced by condition of the permit.

Also, if approved, a condition ensuring waste management will be included that requires the operators to ensure bins are emptied regularly as well as inspecting the foreshore area directly near the site and ensure waste has not extended into the foreshore reserve.

Noise/Disruptive Behaviour

Several submissions received related to Noise and/or Disruptive Behaviour, which is a relevant consideration, issues relating to this were music noise, patron noise and anti-social behaviour of intoxicated patrons.

With respect to Music Noise, Councils Environmental Health Unit have assessed the application and recommend that a condition be included relating to Noise Compliance with SEPP-N2, it should be noted this is currently a condition of the existing permit.

The applicants were referred these comments, as well as some concerns relating to music noise and they have provided the following:

"Controlling / Monitoring noise emissions from the premises

Pre-recorded background music will be played during hours of operation with occasional live acoustic music (solo / duet, guitarists / singer), playing no later than 8pm, for no more than 3 hours at any one time. Withstanding this, the following measures will be taken to further control overall noise emissions from the premises;

- A noise level meter will be kept permanently on the premises and constantly monitored with the volume not to exceed an agreed decibel level with the council eg 80db
- Music volume will remain of a background nature and volume controlled to ensure overall noise from the venue does not exceed the agreed level.

- Measurements will be taken from 5m outside the venue in the direction of the closest resident.
- Speakers will be placed at ground level to retain noise within the red line area as much as possible"

Based on this, the measures of containing noise are considered acceptable and provisions to ensure this could be granted onto the amended permit, if approved.

With respect to disruptive behaviours the applicants have also provided the following, in terms of management of these issues;

"Patron behaviour management

All staff will be trained and accredited with Responsible Service of Alcohol certificates (RSA) and will enforce a zero tolerance to alcohol related issues, including:

- o Checking of ID to ensure patrons consuming alcohol are of legal age
- o Monitoring patron consumption and resulting behaviour
- o Monitoring patron numbers
- Professional Security will be provided in accordance with liquor license regulations
- Enclosed venue with one entry and exit point (see red line area plan)"

Whilst this will provide mitigation for some of the issues raised; as a condition of the approval, it is recommended that CCTV be installed from 30 minutes before and 30 minutes after trading to ensure, if any issues occurred on site, Council, VCGLR and Victoria Police can access and review to determine any further actions that may be required.

Lack of Demonstrated Need

Lack of need will rarely, if ever, be basis for refusing a proposal; whereas a demonstrated need for community facilities may outweigh adverse amenity impacts. It is considered in this matter that the need or otherwise for a tavern (or other food and drink premises) should not be weighed in the decision making.

Loss of Amenity

The issues relating to loss of amenity to residence has been assessed in greater detail within the report. The broader issues relating to loss of amenity within the submissions mainly relate to noise, use and liquor licensing however this is assessed in greater detail below.

Lack of Community Benefit

The Victorian Coastal Strategy (considered in greater detail below) requires consideration to be given to the matter of community benefit before determining the use of coastal crown land for uses which are not coastal dependent. In brief it is considered that there is a community benefit that derives from the proposed use in providing another option for social recreation; increased use of an underutilised public space and the financial benefit to GORCC improving their capacity to manage the coast.

Application Lacking in Detail

Several submissions received, stated the application is lacking in detail to provide a detailed assessment, in terms of being able assess the application, additional documentation was required, however, Council is of the opinion that sufficient information has been provided to determine the application.

Traffic Management

The issues relating to traffic management have been assessed in greater detail within the report, however in brief, the issues relating to traffic management raised included further waiver of car parking, foot traffic and general parking related issues.

Loss in Visual Amenity

Within the submissions, loss in visual amenity has been raised, whilst this is a relevant consideration, the pergola structure is consistent with the buildings approved under the permit. It is proposed to be modified from the approved plans and will be a lighter weight structure which will have less impact on views over the

site. The other structures to be provided to support the use are temporary and will be removed on the cessation of the use.

Lack of Consultation

Several submissions received related to lack of community consultation in relation to the application, the application has received consent from GORCC and DEWLP for the use and the application was also subject to the public notice provisions in accordance with Clause 52 of the Planning & Environment Act 1987.

This involved sending out letter to approximately 146 properties and a sign on site providing a formal 14 day period for submissions to be received.

It is considered that this provides sufficient opportunity for community input on the proposal. Submitters will also have a right to appeal, if approval is granted, to the Tribunal.

Enough Licenced Premises within Torquay

The proposed application is seeking to operate under a Limited Licence which is exempt from requiring a Planning Permit, therefore the full assessment criteria as required to be assessed under Clause 52.27 has not been completed.

The implication of the proposition that there are "Enough Licenced Premises" is that an additional licenced premises will result in too many. Practice Note 61 – Licenced premises: Assessing cumulative impact provides guidance as to what is a cluster of licenced premises (3 Premises within 100m radius or 15 within 500m radius). The proposed site does not meet the requirements of a cluster which significantly reduces the potential of a cumulative impact from licensed premises.

This issue is aligned with that of a lack of need which has been addressed previously.

Potential for Underage Drinking

Several submissions raised the issue of the potential for underage drinking or promotion of underage drinking in association with the application, this issue is considered a low risk as any staff member working must have undertaken a Responsible Serving of Alcohol training program and the site will be subject to inspections/audits by the VCGLR and Victorian Police to ensure that amongst other requirements, this is not occurring.

Victoria Police Liquor Licence Unit - Concerns

Victoria Police raised the following as issues that require due consideration in terms of the assessment of the application, restricting access for patrons from either going onto the foreshore or into the street also the interaction of patrons with the general public when exiting the site.

It is proposed to place temporary fencing across the front of the site to contain the Tavern area to limit the access point to the site which would facilitate management by staff and limit the potential for patrons to freely wander from the premises onto the surrounding public land. It is recommended that this be reinforced by suitable conditions.

The limited trading hours of the use also reduce the likelihood of patrons becoming excessively intoxicated and leading to antisocial behaviour.

The submissions received were from the following residential properties;

- 25 The Esplanade, Torquay
- 47 The Esplanade, Torquay
- 71 The Esplanade, Torquay
- 72 The Esplanade, Torquay
- 72A The Esplanade, Torquay
- 78 The Esplanade, Torquay
- 42 Felix Crescent, Torquay
- 12 Glaneuse Avenue, Torquay
- 14 Joanna Court, Torquay
- 2 Marine Drive, Torquay

- 30 Onshore Drive, Torquay
- 7 Rayville Court, Torquay
- 42 Seahaze Drive, Torquay
- 10 Seamist Way, Torquay
- 16 Snow Gum Avenue, Torquay
- 28 Spring Valley Drive, Torquay
- 52 Spring Valley Drive, Torquay
- 17 Tasman Court, Torquay
- 15 Troon Avenue, Jan Juc

Planning Scheme Considerations

State Planning Policy Framework

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

11.00 Settlement

- 11.05 Regional development
- 11.05-1 – Regional settlement networks
- 11.05-4 – Regional planning strategies and principles
- 11.05-5 – Coastal Settlement
- 11.07 – Geelong (G21) regional growth

12 Environmental and landscape values

- 12.02 – Coastal areas
- 12.04 – Significant environments and landscapes

13 Environmental risks

- 13.01 – Climate change impacts
- 13.04-1 – Noise abatement

15 Built Environment and Heritage

- 15.01-1 – Urban design
- 15.01-2 Urban design principles

17 Economic development

- 17.01-1 – Business
- 17.03-1 – Facilitating tourism

18 Transport

- 18.02-5 – Car parking

Local Planning Policy Framework

Local Planning Policies

Clause 21.03 – Environmental Management

This clause identifies a range of key issues and influences and relevant to this application is that of “*Social and recreational use of the coast threatening the inherent values of the coastal and marine environment.*” An objective of the Clause is “*To protect and enhance the Shire’s diverse natural resources in an ecologically sustainable manner for present and future generations.*”

Applicable strategies to achieve this objective include:

- *Ensure that development on and near the coast is compatible with and enhance the environmental values, visual character and amenity of the coastal environment.*
- *Support a limited range of sustainable and socially equitable, coastal dependent recreational and tourism activities that complement and promote the coast’s natural and cultural values.*

Clause 21.04 – Tourism

The objective of this clause is *“To enhance and expand the tourism industry, whilst protecting the environmental, landscape and cultural values of the Shire and the lifestyle of its residents.”*

Clause 21.08 – Torquay-Jan Juc Strategy

A number of key issues and influences which are relevant to the application are identified by this clause, including:

- *The need to promote visitor activities along key boulevards (Bell Street and The Esplanade) but in condensed locations to ensure the visitor experience is engaging and continuous and can be experienced on foot.*
- *The continued growth of Torquay as a tourist/holiday destination, but also as a weekend and night-time shopping and entertainment attraction for the new Armstrong Creek population.*
- *Busy roads such as the Surf Coast Highway and The Esplanade creating barriers to local access, including access to the beach.*
- *Strengthen the role of the Surfing and tourist activity precincts at Surf City, Bell Street and The Esplanade.*
- *To increase the provision and quality of all forms of open space to meet the broad range of needs of the Torquay-Jan Juc community, and to site new open space to ensure its accessibility to all members of the community.*

A pertinent objective arising from these influences is *“To grow a vibrant and sustainable local tourism industry while marrying with the Torquay-Jan Juc lifestyle and promoting/showcasing the community’s values.”*

Zone

The land is zoned Public Park and Recreation (PPRZ) which has the following purposes:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To recognise areas for public recreation and open space.

To protect and conserve areas of significance where appropriate.

To provide for commercial uses where appropriate.

The use of *tavern* is nested in accordance with Clause 75 under the broader use of *food and drink premises* which in turn is nested under Retail premises. In the PPRZ, a Retail premise is a section 1 (permit not required) use subject to the conditions that:

“Must be either of the following:

A use conducted by or on behalf of a public land manager or Parks Victoria under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958, of the Crown Land (Reserves) Act 1978.

A use specified in an Incorporated plan in a schedule to this zone.”

The proposed use is neither being conducted by or on behalf of the public land manager or specified in an Incorporated plan.

Retail premises, if the Section 1 condition is not met, is a section 2 (permit required) use subject to the condition that the use:

“Must be associated with the public land use.”

If this condition is not met, the use is prohibited.

Particular Provisions

Clause 52.05 – Advertising signs

The application does not include the display of advertising signs but it is pertinent to note that land in PPRZ is Category 4 for the purposes of Clause 52.05. Under Category 4 a planning permit is required for a Business identification sign and the total advertisement area to each premises must not exceed 3m².

Clause 52.06 – Car parking

Clause 52.06-2 provides that before a new use commences the parking required under Clause 52.06-5 must be provided on the land or a permit granted to reduce the requirement (including to zero).

Tavern has a parking requirement of 0.4 spaces per patron permitted, therefore with a proposed maximum of 150 patrons, 60 car parking spaces are required. No new parking is proposed to be provided on the site; therefore a permit is required to reduce this requirement.

Clause 52.07 – Loading and unloading of vehicles

This clause specifies requirements for loading bays for buildings and works associated with, amongst other things, the sale of goods. A permit may be granted to reduce or waive the requirements.

Clause 52.27 – Licenced premises

This clause provides that a permit is required to use land to sell or consume liquor; however there is an exemption for a limited licence (amongst others). The application submits that a renewable limited licence will be obtained and on this basis a permit would not be required under this clause.

Clause 52.34 – Bicycle facilities

Bicycle parking requirements are specified by Clause 52.34, though a requirement is not stipulated for a *tavern*. For *retail premises* that aren't separately listed the requirement is 1 employee space to each 300m² of leasable floor area and 1 visitor space to each 500m². At about 350m² of leasable floor area proposed to be occupied by the Tavern, 1 employee bicycle parking space should be provided.

The application does not identify that bicycle parking will be provided but it may be possible to achieve. An employee space must be in either a bicycle locker or lockable compound. A permit may be granted to vary the requirements of the clause.

Clause 52.43 – Live Music and Entertainment Noise

The provisions of this clause apply to an application to use land for a live music entertainment venue. The key requirement of the clause is that:

“A live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.”

The nearest residential premises is 100m from the site double the threshold of 50m, therefore the requirement is satisfied by default. It should be noted that this does not obviate the need for the use to comply with the requirements of State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N-2); nor the requirement for Council to consider the amenity impact of noise (music, patron and mechanical) arising from the proposed use.

Planning Scheme Amendments

None applicable

Discussion of Key Issues

Use of the Land as a Tavern

The applicant has applied for a permit to allow a "Pop-up Bar" however neither this term or "Bar" are defined terms in the planning scheme at Clause 74. Clause 74 provides that "a term describing a use or activity in relation to land which is not listed in the table must not be characterised as a separate use of land if the term is obviously or commonly included within one or more of the terms listed in the table." It is considered that the proposed use is most appropriately defined as a tavern which is nested under food and drink premises, and is defined as:

Land used to sell liquor for consumption on the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling.

Whilst the use may include other activities such as accommodation and gambling it does not mean that these activities form part of the application or would be approved by virtue of the permit to allow a tavern.

In order to be able to use the land as a tavern (under retail premises) it is required to be associated with the public land use, failure to meet this requirement results in the use being prohibited. In considering the original permit application 07/0736 for a restaurant, Council obtained legal advice on the matter of a use being "associated with the public land use" with that advice commenting:

"The key issue, in our view, would be to demonstrate a genuine and substantial link between the use of the foreshore and use of the restaurant. Public access and operating hours correlating with the use of the foreshore would be expected."

"Showing an intended operation with clear links to the public land use of the foreshore may be sufficient to demonstrate the required "association with the public land use".

It is considered that factors in favour of the use being associated with the public land use are:

- The use will operate generally during daylight hours (summer daylight saving)
- The premises is to be designed to orientate primarily towards the beach and ocean
- The temporary nature of the use and development does not permanently remove public access from the area being occupied
- Users of the beach and foreshore will be the primary customers

It is further supportive that the Great Ocean Road Coastal Committee as coastal land manager are managing the licence for the use and the Department of Environment, Land, Water and Planning (DELWP) have provided consent under the *Coastal Management Act 1995*.

Section 61(3) of the *Planning and Environment Act 1987* provides that:

"The responsible authority—

- (a) must not decide to grant a permit to use or develop coastal Crown land within the meaning of the **Coastal Management Act 1995** unless the Minister administering that Act has consented under that Act to the use and development;"*

As that consent has been granted Council may decide to grant a permit.

Assessment against Victorian Coastal Strategy

The Victorian Coast Strategy 2014 (VCS) must be considered.

The VCS identifies a hierarchy of principles for coastal land which are:

VALUE & PROTECT	1 ENSURE THE PROTECTION OF SIGNIFICANT ENVIRONMENTAL AND CULTURAL VALUES
	The starting point is recognising and protecting what we value on the coast, based on identification and sound understanding of coastal and marine features and processes, vulnerabilities and risks
PLAN & ACT	2 UNDERTAKE INTEGRATED PLANNING AND PROVIDE CLEAR DIRECTION FOR THE FUTURE
	This highlights the importance of having integrated policies, plans and strategies that respond to the major issues affecting coastal and marine environments, provide clear direction for protection, management and sustainable development, and involve coastal stakeholders and the broader community
USE & ENJOY	3 ENSURE THE SUSTAINABLE USE OF NATURAL COASTAL RESOURCES
	This emphasises that natural coastal resources are a limited and valuable public resource, and if developed or used, this should be done wisely and deliver proven net community and public benefit for current and future generations
	Only when the above principles have been considered and addressed:
	4 ENSURE DEVELOPMENT ON THE COAST IS LOCATED WITHIN EXISTING, MODIFIED AND RESILIENT ENVIRONMENTS WHERE THE DEMAND FOR DEVELOPMENT IS EVIDENT AND ANY IMPACTS CAN BE MANAGED SUSTAINABLY
	This aims to ensure that development on and adjacent to the coast is of high quality design, sensitively sited, suitable and sustainable over the longer term. Development on coastal Crown land must have a demonstrated need to be located on the coast and a demonstrated public benefit.

Section 3.1 Coastal Buildings, Infrastructure and Management of the Strategy lists 3 key desirable outcomes for Coastal Crown Land which are;

1. New buildings and infrastructure exhibit excellence in siting and design that integrates with the coastal landscape and setting, while also avoiding environmental impacts
2. Planning for new buildings and infrastructure is managed across regional and local land administration boundaries
3. Coastal Crown land is not used for structures unless they provide significant community benefit, and their functionality depends on them being near the water

The VCS states that only buildings and infrastructure (temporary or permanent) that functionally need to be located near the water, or which significantly contribute to the social values of the area, such as the public enjoyment and appreciation of the coast, should be located on coastal crown land. For example:

Usually located on coastal crown land because of direct support of coastal activities	Jetty, pier, dock, marina, mooring, boat ramp, boathouse, harbour, navigation aids, lookout towers of Life Saving Clubs, marine rescue facility, museums
Not necessary to be on coastal crown land but provide some support to the functioning of coastal activities and may be appropriate	Toilet block, pathways and boardwalks, car parking, equipment storage facilities, lookouts, BBQ and play equipment, and (in urban settings) kiosk/café/restaurant
Coastal crown land location not necessary and no provision of support to coastal activity, to be relocated as the opportunity arises	Function centre, community hall, non-maritime industrial plant and storage, non-waterbased sporting facility

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A *tavern* is similar to café and restaurant in being another form of *food and drink premises* and in this sense may be an appropriate use of coastal crown land. The VCS provides a range of criteria which should be considered in assessing proposals, and it notes that “*These criteria should be considered as a ‘package’ rather than each being considered in isolation with a ‘pass’ or ‘fail’ outcome.*”. Relevant to use of land are:

Demonstrates need to be sited on the coast, based on support for, and direct linkage to, coastal activities	Whilst the <i>tavern</i> does not need to be sited on the coast it supports the functioning of coastal activities
Demonstrates that the use and development cannot be feasibly located elsewhere	The use could be feasible located elsewhere
Demonstrates responsiveness to the site values	The proposed use is responsive to the site values by minimising the built form required to undertake the use and the temporary nature of the use
Facilitates improvement of sites or developments which have poor environmental performance and/or which have limited benefit for the community	The use increases use of an underutilised public facility which offers a high quality experience of the coast due to its position in the landscape
Recognises nature conservation and biodiversity as primary values for use and management of coastal crown land	The use will not impact on nature conservation or biodiversity
Is responsive to environmental, social, cultural and economic values of the location	It is considered that the use is responsive to the values of the location as outlined within this report
Enables equitable public access to the coast	The use does not remove or inhibit access to the coast and only temporarily removes open public access to a small area above existing buildings
Is located in an Activity or Recreation node – Refer to Figure 7	The site is located in an existing Recreation Node within a growing urban area
Involves consultation with the local and broader community	The application process provides an opportunity for community consultation and whilst this has raised some opposition it is satisfied that the concerns raised can be appropriately managed
Generates public benefits such as the avoidance of public outlays on otherwise desirable facilities and/or infrastructure.	The <i>tavern</i> provides public benefits in creating new social activities and the return from leasing the land for this use facilitates the management of the coast by GORCC

Based on all of the above, Council is of the opinion that there is net community benefit to reutilise an area identified and approved as a restaurant to be another form of premises that invites people to use the space and take in the coastal foreshore reserve.

Car Parking/Traffic Management

The application has been made to allow 150 patrons at any one time, which equates to a parking requirement of 60 spaces. As no additional spaces are proposed to be provided on site a permit is required to reduce the parking requirement. The original permit granted for a restaurant on the site with a maximum of 96 patrons. At the time of the permit being granted the parking requirement for a restaurant was 0.6 spaces per seat, however the officer's report on the application adopted a rate of 0.33 spaces per patron, or 32 spaces, as a more realistic measure of demand for that use. The report noted that the redevelopment of the site would deliver an additional 15 spaces in the area and on this basis there was a shortfall of 17 spaces (assuming that other parking demand would not increase), which were waived by the granting of the permit.

On this basis it could be said that there is a 'credit' of 32 spaces for the restaurant which are available given the restaurant has not proceeded. The requirement for 60 spaces for the Tavern can therefore be considered as a further waiver of 28 spaces.

The applicant has not submitted any supporting information to justify the additional waiver. It is considered relevant that:

- The *tavern* will be operating over November through to April which coincides with peak beach visitation months
- Significant pools of public parking are available in the vicinity of the site, but these primarily service the beach
- Many patrons of the *tavern* will be people already attending the beach or foreshore; however the *tavern* is also likely to draw a significant proportion of customers which wouldn't otherwise be visiting the coast in this location
- The operating hours of the *tavern* will overlap the peak hours of use of the beach
- Avoiding drink driving may encourage patrons to use other forms of transport to get to and from the site (walking, taxi, public transport), but given the venue will not be open late the impact on parking demand may not be as significant as for a late night venue.

There can be significant parking shortages along The Esplanade from visitation to the coast and not just over the peak Christmas/New Year holiday period. A shortfall of parking will either prevent visitors accessing the coast in this location or push parking back into the nearby residential streets which can have impacts on residential amenity.

It is considered that it would be inappropriate to reduce the parking requirement further without greater justification in the form of a parking impact assessment. The proposed temporary use is for the purpose of trialling the appropriateness of a *tavern* on the site; for this temporary period it is considered that the patron numbers should be limited to that approved previously for the restaurant (96 patrons).

Live Music

The application also seeks approval for live music and pre-recorded background music in association with the use of the land for a *tavern*. Clause 52.43 of the Surf Coast Planning Scheme (Live Music and Entertainment Noise) contains the relevant provisions applying to venues providing for live music entertainment. As there is no sensitive residential use within 50m of the site, the requirements as specified under Clause 52.43.3 are considered to be met.

Whilst the requirement of Clause 52.43.3 is met, the use must still comply with the State Environmental Protection Policy (Control of music noise from public premises) No. N-2 (SEPP N-2). The applicant has submitted that they will implement measures to control noise emissions such as installing and monitoring a noise level meter, keeping noise levels at a 'background' level and placing speakers at ground level to contain noise. However there is a lack of evidence to support that these measures will achieve compliance with SEPP N-2. It is recommended that before music is provided that an appropriate professional should assess the potential noise impacts and provide recommendations to ensure compliance with SEPP N-2.

Liquor Consumption

It is proposed that the use will operate under a Limited Licence under the *Liquor Control Reform Act 1998*. Clause 52.27 (Licensed premises) of the Surf Coast Planning Scheme contains the relevant provisions applying to premises licensed or to be licensed under the *Liquor Control Reform Act 1998*. Of relevance to this application these provisions set out that a permit is required to use land to sell or consume liquor if any of the following apply:

- A licence is required under the Liquor Control Reform Act 1998.
- A different licence, or class of licence is required from that which is in force.
- The hours of trading allowed under any licence.
- The number of patrons allowed under a licence is to be increased.
- The area that liquor is allowed to be consumed or supplied under a licence is to be increased.

This does not apply if any of the following apply:

- To a limited licence.
- To a licence to manufacture liquor.
- If the schedule to this clause specifies that a permit is not required to use land to sell or consume liquor under a particular type of licence.
- To a variation that reduces the hours of trading allowed under a licence.
- To a variation that reduces the number of patrons allowed under a licence.
- To a variation that reduces the area within which liquor is allowed to be consumed or supplied under a licence.
- To a variation of licence at the initiative of the Victorian Commission for Gambling and Liquor Regulation, pursuant to Section 58 of the Liquor Control Reform Act 1998.
- To a variation of licence for a variation prescribed in Part 6, Regulation 31 of the Liquor Control Reform Regulations 2009.
- If a different licence or category of licence is required solely as a result of changes to licence categories.
- To a licence to sell only packaged liquor for consumption elsewhere issued before 8 April 2011.

As it is proposed to operate under a limited licence a planning permit is not required under this clause, albeit that the sale and consumption of liquor is integral to the use of land as a *tavern*. Whilst a permit is not required under this clause, it is considered that the sale and consumption of liquor on the premises is appropriate for the following reasons:

- The limited evening and night time trading hours reduces the likelihood of excessive liquor consumption and resultant antisocial behaviour.

- A single constrained access point is to be provided to the licensed area making it relatively easy for staff to monitor and control patrons trying to leave the premises with liquor.
- Live musical entertainment, when provided, will cease by 8pm, providing time for patrons to disperse over an extended period rather than concentrated crowd spilling into public space.
- The site is removed from other licensed premises, with the nearest being the Torquay Bowls Club within Taylor Park. Given the nature of this premises there is unlikely to be substantive cumulative impacts.

Hours of Operation

The application seeks approval to operate;

Thursday to Sunday from 31 October 2015 until 25 December 2015 - 1pm to 9:30pm

Monday to Sunday from 26 December 2015 until 26 January 2016 - 1pm to 9:30pm

Thursday to Sunday from 27 January 2016 until 3 April 2016 - 1pm to 9:30pm

It is considered the hours of operation are reasonable as they generally align with summer daylight hours. The provision of live musical entertainment is to be further restricted to no later than 8pm and a maximum of 3 hours in a day.

Amenity Impacts

Several submissions received for the application have raised different amenity impacts anticipated to result from the proposal. In terms of assessing amenity impacts, the key themes for amenity as submitted related to Noise into Sleeping Areas, Connection to Public Uses such as Taylor Park, Disabled Access and Drinking in Public Places.

Issues relating to Noise have previously been assessed within the report and are not require to be recovered in this section.

Connections to Public Uses: given the way the use is proposed to operate, the area is contained so that, where practical the proposed use will not impact upon the other surrounding public uses such as Taylor Park or the Boat Ramp as the area defined will be limited via temporary fencing and adequate security provisions.

Disabled Access: several objectors raised the issue of disability access, on the plans submitted and advertised a dedicated disabled toilet is proposed to be in place at any time the use is operating, as well as the site being directly off the existing foot path and on a single level it is generally assumed the site is catering for disability access.

Drinking in Public Places was raised within several of the objections, given the part of the site being use it is considered a 'Site' therefore, if approved, would be a licensed site and not a public area, but open to the public (provided over 18), also, this like many other uses within the shire, such as Night Jar Markets, which is public land also serve alcohol and is considered a site area for the purposes of the use. Council is not of the opinion that this use will create a drinking in public issue also through the use of security personal as identified below.

Management and Security Requirements

As part of the application, one of the key requirements that is required to be ensured is the management of the use does not cause detrimental effects onto the surrounding areas and the broader community.

Given the sensitive location of the use, it is recommended detailed management conditions be included in the permit, beyond standard requirements of the planning scheme.

It is recommended that video surveillance be required to be in operation from 30 minutes before opening until 30 minutes after closing to ensure in the event of any issues or potential breaches of the planning permit conditions, the footage is able to be viewed upon request from Council, Victoria Police or VCGLR. Signage advising patrons of these cameras is also required.

Further conditions relating to the exiting of patrons from the site will include a recommendation for appropriate signage to be displayed that patrons leaving the premises leave in a respectful and courteous manner with security personal ensuring loud patrons are required to be mindful of the surrounding residential allotments.

Also, it is recommended that as conditions of the approval, no glass bottles or cups may be used at any time. The operator each day within 40m of the premises must inspect the foreshore reserve to collect litter. Whilst this may go beyond litter generated by the use, the proposed premises will be the most likely litter generator in the vicinity. Waste must be regularly collected and managed to ensure odours and visual amenity is not occurring.

Conclusion

Overall it is recommended that a notice of decision to grant a permit be issued for Temporary use and development of the land for a tavern; waiver of the standard car parking requirement; waiver of the requirement for a loading bay and construction of buildings (pergola and seating) subject to the conditions set out in the Council Minutes on 27 October 2015.