



# Minutes

Hearing of Submissions Committee  
Tuesday, 4 July 2017

Held in the  
Council Chambers  
1 Merrijig Drive, Torquay  
Commencing at 5.00pm

**Council:**

Cr Brian McKiterick (Mayor)  
Cr David Bell  
Cr Libby Coker  
Cr Martin Duke  
Cr Clive Goldsworthy  
Cr Rose Hodge  
Cr Carol McGregor  
Cr Margot Smith  
Cr Heather Wellington

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MINUTES FOR THE HEARING OF SUBMISSIONS MEETING OF SURF COAST SHIRE COUNCIL  
HELD IN THE COUNCIL CHAMBERS, 1 MERRIJIG DRIVE, TORQUAY  
ON TUESDAY 4 JULY 2017 COMMENCING AT 5.00PM

**PRESENT:**

Cr Brian McKitterick (Mayor)  
Cr Martin Duke  
Cr Clive Goldsworthy  
Cr Rose Hodge  
Cr Carol McGregor  
Cr Margot Smith

**In Attendance:**

Chief Executive Officer – Keith Baillie  
General Manager Governance & Infrastructure – Anne Howard  
Manager Planning – Bill Cathcart  
Coordinator Statutory Planning – Michelle Watt

5 members of the public

**APOLOGIES:**

Cr David Bell  
Cr Libby Coker  
Cr Heather Wellington

**Committee Resolution**

**MOVED Cr Margot Smith, Seconded Cr Rose Hodge**

That an apology be received from Cr David Bell, Cr Libby Coker and Cr Heather Wellington.

CARRIED 6:0

**CONFLICTS OF INTEREST:**

Nil.

**SUBMITTERS HEARD:**

**1.1 Sale of Council Land - Winchelsea**

1. John Knuckey

**2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation**

1. Anne Waterhouse

2. Tony Hobba (on behalf of the applicant)

**BUSINESS:**

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## 1. GOVERNANCE & INFRASTRUCTURE

### 1.1 Sale of Council Land - Winchelsea

**Author's Title:** Property & Legal Services Officer

**General Manager:** Anne Howard

**Department:** Governance & Risk

**File No:** F17/597

**Division:** Governance & Infrastructure

**Trim No:** IC17/719

#### Appendix:

1. Order of Speakers - Sale of Council Land - Winchelsea (D17/76881)
2. List of Other Submitters - Sale of Council Land - Winchelsea (D17/76878)

#### Officer Direct or Indirect Conflict of Interest:

#### Status:

In accordance with Local Government Act 1989 –  
Section 80C:

Information classified confidential in accordance with  
Local Government Act 1989 – Section 77(2)(c):

Yes

No

Yes

No

**Reason:** Nil

**Reason:** Nil

#### Purpose

The purpose of this report is to enable consideration of submissions received and to hear submitters who have requested to appear in person.

#### Summary

At Council's Meeting of 23 May 2017 Council resolved to:

1. Affirm its willingness to sell 42 Harding Street, Winchelsea, Certificate of Title Volume 9828 Folio 343 to Ambulance Victoria for the purpose of establishing an ambulance station for Winchelsea and district.
2. Agree that the price for sale of the land should be based on current valuations.
3. Note the requirement of the Local Government Act 1989 that at the time of sale Council will hold a valuation shall not be more than six months old.
4. Issue a public notice of intention to sell the land and invite and consider public submissions in accordance with Section 189 and Section 223 of the Local Government Act 1989.
5. Agree that the net revenue from the sale will be transferred to the Accumulated Unallocated Cash Reserve to replenish funds contributing to the acquisition of land for the Eastern Reserve Masterplan, consistent with previous resolutions of Council that sale of excess land in Winchelsea should fund the Eastern Reserve extension acquisition.
6. Agree that a condition of the Contract of Sale will be that if the land is subdivided within five years of Council selling the land, then Council is to be given the first right to buy back the land at the sale price plus indexation reflecting market changes, without creating any obligation on Council to do so.
7. Authorise the Chief executive Officer to execute the contract and associated sale documents on Council's behalf.

A public notice was published in the Surf Coast Times on 1 June 2017 and the Winchelsea Star on 6 June 2017 with submissions closing at 4pm Thursday 29 June 2017. Further to the public notice Council wrote to 38 neighbouring properties regarding the proposal.

Council received two submissions and one submitter requested to be heard. A summary of the submissions is as follows:

- support Ambulance station coming to Winchelsea
- oppose the site proposed
- preferred location – Shire owned land on the highway (325 Mousley Road, Winchelsea), or vacant land for sale next to doctor's surgery
- preference for the Harding Street property to be utilised for future community use with the growth of Winchelsea or something along the lines of elderly living units

Note that Council received a joint letter from Growing Winchelsea Incorporated supporting the sale of the land, however requesting the revenue from the sale be utilised in Winchelsea in accordance with the Growing Winchelsea Plan.

## **1.1 Sale of Council Land - Winchelsea**

### **Recommendation**

That Council receive and note the submissions for the proposed Sale of Council Land in Winchelsea.

### **Committee Resolution**

#### **MOVED Cr Martin Duke, Seconded Cr Clive Goldsworthy**

That Council receive and note the submissions for the proposed Sale of Council Land in Winchelsea.

CARRIED 6:0

## 1.1 Sale of Council Land - Winchelsea

### Report

#### **Background**

At its 23 May 2017 Ordinary meeting, Council resolved to:

#### **Council Resolution**

##### **MOVED Cr Heather Wellington, Seconded Cr Carol McGregor**

That Council:

1. Affirm its willingness to sell 42 Harding Street, Winchelsea, Certificate of Title Volume 9828 Folio 343 to Ambulance Victoria for the purpose of establishing an ambulance station for Winchelsea and district.
2. Agree that the price for sale of the land should be based on current valuations.
3. Note the requirement of the Local Government Act 1989, that at the time of sale Council will hold a valuation shall not be more than six months old.
4. Issue a public notice of intention to sell the land and invite and consider public submissions in accordance with Section 189 and Section 223 of the *Local Government Act 1989*.
5. Agree that the net revenue from the sale will be transferred to the Accumulated Unallocated Cash Reserve to replenish funds contributing to the acquisition of land for the Eastern Reserve Masterplan, consistent with previous resolutions of Council that sale of excess land in Winchelsea should fund the Eastern Reserve extension acquisition.
6. Agree that a condition of the Contract of Sale will be that if the land is subdivided within five years of Council selling the land, then Council is to be given the first right to buy back the land at the sale price plus indexation reflecting market changes, without creating any obligation on Council to do so.
7. Authorise the Chief executive Officer to execute the contract and associated sale documents on Council's behalf.

CARRIED 8:0

#### **Discussion**

A notice was published in the Surf Coast Times on 1 June 2017 and the Winchelsea Star on 6 June 2017 with the submission period closing at 4pm Thursday 29 June 2017. Further to the public notice Council wrote to 38 neighbouring properties regarding the proposal.

Council received two submissions and one submitter requested to be heard. A summary of the submissions is as follows:

- support Ambulance station coming to Winchelsea
- oppose the site proposed
- preferred location – Shire owned land on the highway (325 Mousley Road, Winchelsea), or vacant land for sale next to doctor's surgery
- preference for the Harding Street property to be utilised for future community use with the growth of Winchelsea or something along the lines of elderly living units .

Note that Council received a joint letter from Growing Winchelsea Incorporated supporting the sale of the land, however requesting the revenue from the sale be utilised in Winchelsea in accordance with the Growing Winchelsea Plan.

#### **Financial Implications**

Costs associated with selling the land include Valuation of land, Land Registry and Legal. If the sale proceeds it will provide a net revenue to Council.

The proceeds from the sale will be transferred to the Accumulated Unallocated Cash Reserve to replenish funds contributing to the acquisition of land for the Eastern Reserve Masterplan, consistent with previous resolutions of Council that sale of excess land in Winchelsea should fund the Eastern Reserve extension acquisition.

#### **Council Plan**

Theme 2 Governance  
Objective 2.4 Transparency in decision making and access to information  
Strategy 2.4.3 Ensure decision-making is as transparent as possible.

#### **Policy/Legal Implications**

- Local Government Act 1989 – Section 189, 191 and 223
- Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land.

## **1.1 Sale of Council Land - Winchelsea**

### ***Officer Direct or Indirect Interest***

No officer involved in the preparation of this report has any conflicts of interest.

### ***Risk Assessment***

Risks to the process may include if ambulance Victoria request unreasonable conditions on the sale or through submissions from the community. The financial proceeds from the sale will assist with the acquisition of land for the second oval in Winchelsea. If the sale is not supported there may be a shortfall in funding compared to Council's previous intention and resolution.

### ***Social Considerations***

The recommendation to make this land available to facilitate the establishment of an Ambulance Branch in Winchelsea is expected to deliver a net benefit to the community.

### ***Community Engagement***

A public notice was published in the Surf Coast Times on 1 June 2017 and the Winchelsea Star on 6 June 2017 with submissions closing at 4pm Thursday 29 June 2017. Further to the public notice Council wrote to 38 neighbouring properties regarding the proposal.

### ***Environmental Implications***

Nil impacts identified.

### ***Communication***

As detailed under 'Community Engagement'.

### ***Conclusion***

Receive the submissions to the proposed sale of Council Land prior to consideration of the matter by Council at its Ordinary Meeting on 25 July 2017.

**1.1 Sale of Council Land - Winchelsea**

**APPENDIX 1 ORDER OF SPEAKERS - SALE OF COUNCIL LAND - WINCHELSEA**



**Hearing of Submissions - Tuesday 4 July 2017**

**5pm**

**Council Chambers**

**1 Merrijig Drive, Torquay**

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**ORDER OF SPEAKERS**

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**GOVERNANCE AND RISK**

**Sale of Council Land - Winchelsea**

<b>Item</b>	<b>Time</b>	<b>Submitter</b>
1.	5.10pm	John Knuckey

**1.1 Sale of Council Land - Winchelsea**

**APPENDIX 2 LIST OF OTHER SUBMITTERS - SALE OF COUNCIL LAND - WINCHELSEA**

## **Hearing of Submissions – Tuesday 4 July 2017**

### Sale of Council Land - Winchelsea

#### List of All Other Submitters

- Ken McDonald

## 2. ENVIRONMENT & DEVELOPMENT

### 2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation

**Author's Title:** Coordinator Statutory Planning

**General Manager:** Ransce Salan

**Department:** Planning & Development

**File No:** 15/0434

**Division:** Environment & Development

**Trim No:** IC17/635

**Appendix:**

1. 15/0434 - Order of Speakers (D17/71889)
2. 15/0434 - List of Other Submitters (D17/71897)

**Officer Direct or Indirect Conflict of Interest:**

**Status:**

In accordance with Local Government Act 1989 – Section 80C:

Information classified confidential in accordance with Local Government Act 1989 – Section 77(2)(c):

Yes

No

Yes

No

**Reason:** Nil

**Reason:** Nil

#### Purpose

The purpose of this report is to hear submitters following invitation of submissions in accordance with Section 223 of the Local Government Act 1989 in relation to planning permit application 15/0434 for the use and development of a dwelling, construction of a tennis court and associated removal of native vegetation at 210 Jarosite Road, Bells Beach.

#### Summary

The site is located at 210 Jarosite Road, Bells Beach and is zoned Rural Conservation Zone. It is subject to a Bushfire Management Overlay and Vegetation Protection Overlay – Schedule 1. Council is currently in the process of exhibiting an Amendment which seeks to apply a Significant Landscape Overlay to the land (Amendment C121).

The 1.6 ha site is heavily vegetated and is accessed through a meandering path from Jarosite Road and contains a shed and a cleared area.

It is proposed to develop a double storey dwelling on the land. The dwelling is contemporary in design and has a maximum height of 7.55 metres, with a chimney element protruding 1.6 metres above this height. A tennis court is located to the north of the dwelling.

Public notification of the application has been undertaken and two objections have been lodged with Council. The objections are from the adjoining property owners and the following concerns have been raised:

- visibility/prominence from adjoining properties and the public realm
- height (protrudes above the tree canopy)
- character (in the context of the scale of the development)
- visual impact on the coastal landscape
- impacts on flora and fauna (esp. given the proximity to the Iron Bark Basin)
- misleading schematics (trees are shown on the plans but there are few scattered trees greater than 3m in height)
- the proposal is an over development of the site
- the proposal is unnecessarily high
- the proposal is insufficiently set back on the land
- the proposal is inconsistent with planning overlays particularly with respect to construction above the tree line canopy
- the proposal is inconsistent with the original purpose of the subdivision of the land along the west side of Jarosite Road, namely to protect the public reserve, now National Park, along the rear boundaries of the allotments.

The applicant has erected some poles on site to indicate the location of the development and to show its height.

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**2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation**

The application has been referred to the Department of Environment, Land, Water and Planning (DELWP) for comment on the vegetation removal. The Department has consented to the application subject to conditions.

The application was also referred to the Country Fire Authority (CFA) for advice. The CFA have consented to the application, subject to conditions.

Internal referrals to Council's Infrastructure and Environmental Health departments have been undertaken and neither department has objected to the application.

It is understood that an appeal has been lodged against Council's failure to decide on this application within 60 statutory days however Council is yet to receive notice of the appeal from the Victorian Civil and Administrative Tribunal. Council will need to decide on the position it takes at the upcoming VCAT hearing.

**Recommendation**

That Council receives and notes the submissions to Planning Permit 15/0434 for Construction of a Dwelling, Tennis Court and Associated Removal of Native Vegetation at 210 Jarosite Road, Bells Beach.

**Committee Resolution**

**MOVED Cr Carol McGregor, Seconded Cr Margot Smith**

That Council receives and notes the submissions to Planning Permit 15/0434 for Construction of a Dwelling, Tennis Court and Associated Removal of Native Vegetation at 210 Jarosite Road, Bells Beach.

CARRIED 6:0

## 2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation

### Report

#### Background

The 1.6 ha site is heavily vegetated and is accessed through a meandering path from Jarosite Road and contains a shed and a cleared area.

The site is located on the southern side of Jarosite Road. The surrounding area is predominantly similar sized allotments developed with dwellings and associated outbuildings. Most dwellings are setback to the rear of the lots to take advantage of views and include cleared areas around the dwellings.

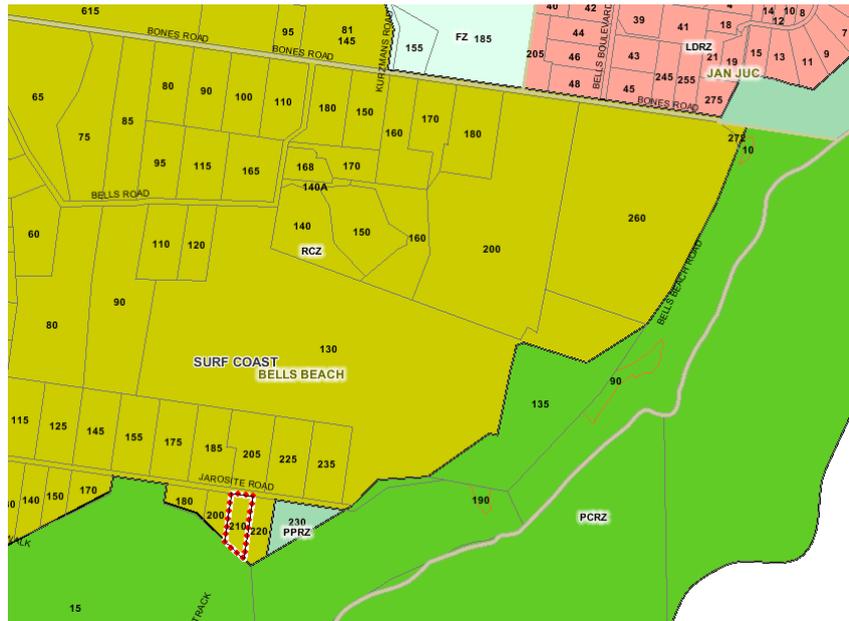


Figure 1– Locality Plan (Site Highlighted in Red)

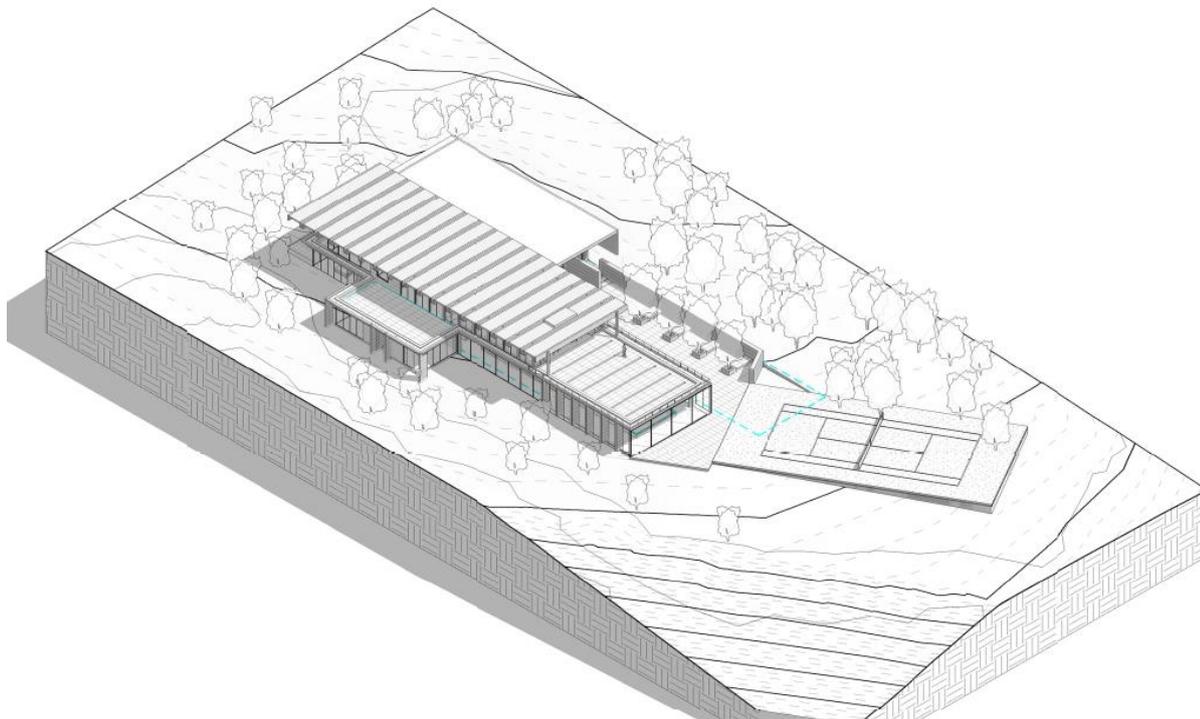
The area is well vegetated with remnant vegetation. The site to the rear of the subject site is part of the Great Otway National Park.

Approval is sought to develop the land with a double storey dwelling and a tennis court, along with removal of native vegetation. The siting of the dwelling can be seen in the image below.



Figure 2 – Site Plan

## 2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation



**Figure 3 – Proposal**

The proposed dwelling includes:

### Ground floor

- two garages for five car parking spaces
- service areas including a plant, mud room, service court, lift
- a guest area including a bedroom, robe, lounge, bathroom and kitchen
- a music room
- a theatre room
- an entertainment area
- a gym
- entry/lobby
- an indoor pool which opens onto a terrace and a tennis court.

### Upper Storey

- a master bedroom with dressing room, ensuite and private balcony
- two bedrooms and lounge area
- a second kitchen with store, scullery, butler's pantry and servery
- a dining and lounge, opening onto a terrace
- a second terrace is located on the south east side of the dwelling.

## 2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation

The maximum roof height is 7.55m; the chimney protrudes 1.6 m above this.

The external building materials and colours include:

- Walls: precast concrete with timber formwork, timber battens, cement stabilised rammed earth– Jarosite Clay.
- Roof: metal (colour/finish not known).

The dwelling is contemporary in design, as can be seen in the images below.



Figure 4 – 3D view North East

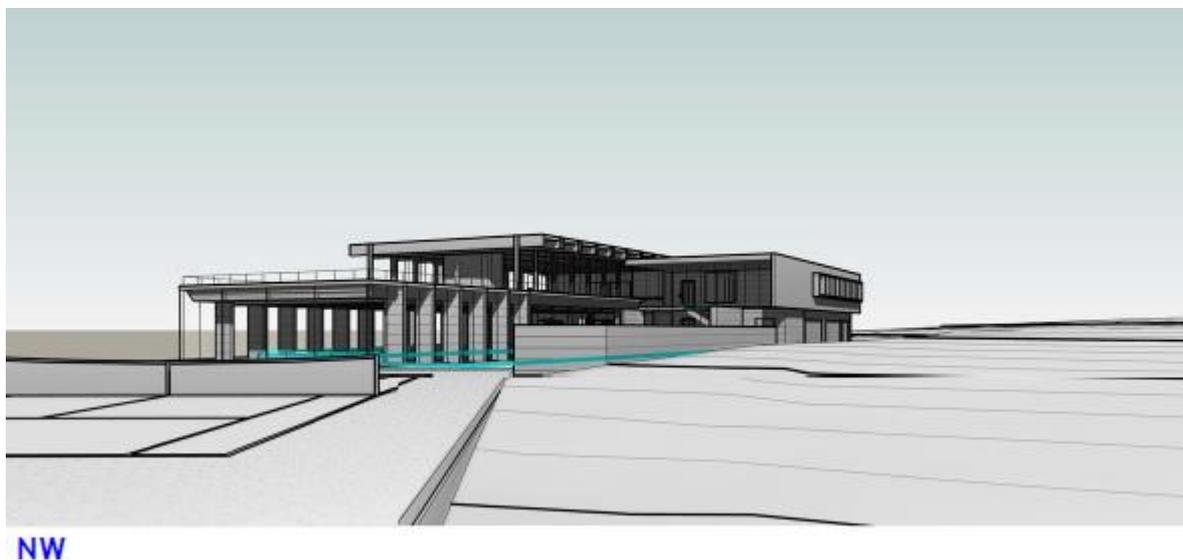


Figure 4 – 3D view North West

A Planning Permit is triggered by the following clauses of the Surf Coast Shire Planning Scheme:

- Clause 35.06-1 – Use the land for a dwelling in the Rural Conservation Zone
- Clause 35.06-5 – Buildings and works in the Rural Conservation Zone
- Clause 44.06-1 – Buildings and works in a Bushfire Management Overlay
- Clause 42.02-2 – Native vegetation removal.

The application has been referred to the Department of Environment, Land, Water and Planning (DELWP) for comment on the vegetation removal. The Department has consented to the application subject to conditions.

## **2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation**

The application was also referred to the Country Fire Authority (CFA) for advice. The CFA have consented to the application, subject to conditions.

Internal referrals to Council's Infrastructure and Environmental Health departments have been undertaken and neither department has objected to the application.

The application was subject to public notification and two objections were lodged. The objectors have raised the following concerns:

### **A. Owner of 200 Jarosite Road, Bells Beach**

A number of submissions have been made by submitter 'A' to provide clarity around the outstanding concerns as the application has progressed through the process. The list of concerns has considered each of the iterations.

- Visibility/prominence from adjoining properties and the public realm
- Height (protrudes above the tree canopy)
- Character (in the context of the scale of the development)
- Visual impact on the coastal landscape
- Impacts on flora and fauna (esp. given the proximity to the Iron Bark Basin)
- Misleading schematics (trees are shown on the plans but there are few scattered trees greater than 3m in height).

The above matters are considered to be relevant planning considerations.

### **B. Owner of 180 Jarosite Road, Bells Beach**

- The proposal is an over development of the site
- The proposal is unnecessarily high
- The proposal is insufficiently set back on the land
- The proposal is inconsistent with planning overlays particularly with respect to construction above the tree line canopy
- The proposal is inconsistent with the original purpose of the subdivision of the land along the west side of jarosite Road, namely to protect the public reserve, now National Park, along the rear boundaries of the allotments.

The above matters are considered to be relevant planning considerations.

The applicant has erected some poles on site to indicate the location of the development and to show its height. These height poles are still located on the land.

### ***State Planning Policy Framework***

The following State policies are relevant to the proposal:

- Clause 11.05-4 Regional planning strategies and principles
- Clause 11.05-5 Coastal settlement
- Clause 12.01 Biodiversity
- Clause 12.02 Coastal areas
- Clause 12.04 Significant environments and landscapes
- Clause 13.05 Wildfire

### ***Local Planning Policy Framework***

The following local policies are relevant to the proposal:

- Rural Tenement Policy.

## **2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation**

### ***Particular Provisions***

- Clause 52.17 (Native Vegetation)
- Clause 52.47 (Planning for Bushfire)
- Clause 52.48 (Bushfire Protection: Exemptions)

### ***Planning Scheme Amendments***

#### **Amendment C121 – Bells Beach Hinterland Review**

The Amendment proposes to modify planning policy, zone and overlays provisions that apply to the Bells Beach hinterland. The purpose of the amendment is to better recognise the importance of the local landscape and the environmental and cultural role of Bells Beach.

The Amendment also makes changes to broader policy and controls relating to land impacted by the Coastal Development Policy and the Significant Landscape Overlay Schedule 1 in proximity to the Great Ocean Road.

At the time of writing this report, the public exhibition phase of the Amendment has just been completed. A number of submissions have been received. The Amendment is currently not considered to be a seriously entertained planning document, as it has not been adopted by Council and submitted to the Minister for Planning for approval.

### ***Discussion***

As relevant to this application, the purpose of the Rural Conservation Zone and schedule can be summarised as, “to conserve the natural features, biodiversity and scenic landscape values of the area and to encourage development and use of land which is consistent with sustainable land management practices, taking into account the conservation values and environmental sensitivity of the locality”.

The Vegetation Protection Overlay and schedule seeks to protect and enhance significant vegetation and associated habitat corridors and biodiversity links. The Bushfire Management Overlay seeks to ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire and is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

The emphasis, as it relates to this application, is therefore on the siting of the building and the built form in the context of its impact on the broader landscape and on the direct and indirect environmental impacts resulting from the use and development. Although it is acknowledged that a high bar has been set by the Bushfire Management Overlay which requires that the protection of human life is prioritised, this should be considered in the context of an appropriate use and development; it should not be the starting point.

Another relevant consideration in the assessment of the application, and one that should be determined at an early stage, is whether or not the lot is recognised as a Tenement pursuant to clause 22.01.

### **Tenement Status**

The purpose of the Rural Tenement Policy is to provide a framework to guide decisions relating to the use and development of land in the Farming and Rural Conservation Zones where the land is less than the minimum land area.

In essence, the tenement provisions seek to limit the number of houses not required to support agricultural production that are constructed in rural areas. Through this mechanism, the retention of rural land holdings and their continued use for rural production is encouraged.

Without limiting the definition of a tenement in Clause 72 (General Terms), a tenement is a single lot or group of lots held in the same ownership; and ‘tenement provisions’ are used to limit the number of dwellings that will be approved on a tenement rather than on individual allotments which may or may not comprise separate titles.

## 2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation

The objectives of the policy are:

- to help effect the long term protection of the Surf Coast Shire's rural land for agricultural purposes and for the rural landscape qualities it provides.
- to provide a consistent and equitable basis for considering permit applications for dwellings and subdivision in the rural zones.

Clause 22.01-3 of the Policy states that "where a permit is required to use land for the purpose of a dwelling on a lot below the minimum lot size specified in the Schedule to the Farming Zone or Rural Conservation Zone, it is policy to not grant approval unless all of the following requirements are met:

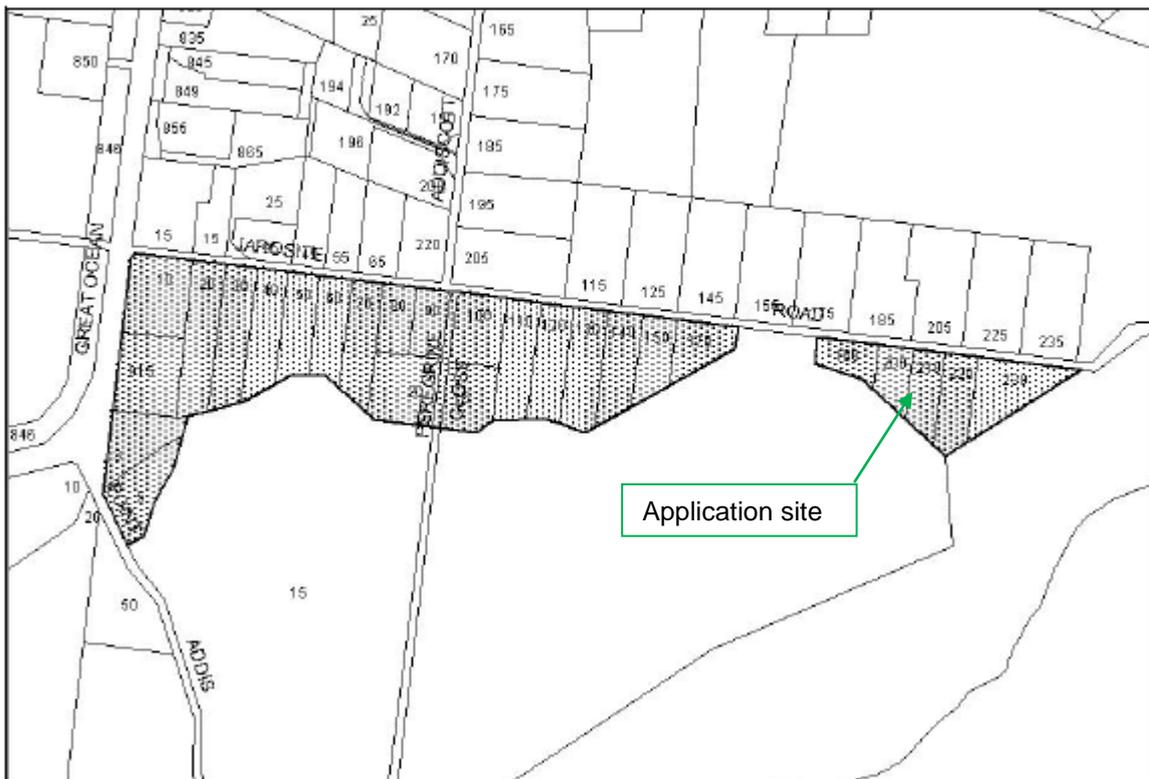
- the lot comprises and remains a tenement or part of a tenement falling within a category listed in Part A below; and
- the maximum number of dwellings on the said tenement does not exceed the relevant number listed in Part B below; and
- any conditions listed in Part C are met".

The policy goes on to list 5 Tenement Categories and in this instance, the application site falls within at least one of these categories with the most obvious being Category 2. Category 2 is, "A lot listed in Table 1 to this Clause".

In Table 1, the lot falls within the identified "Jarosite Road, Bells Beach" locality as shown on Map no. 2 (see below).

While the application site is recognised as a Tenement under clause 22.01, it is important to recognise that the policy is intended to supplement the assessment of an application under the zone provisions; it does not replace such an assessment and compliance with the policy requirements does not imply that the responsible authority will grant a permit in every case. This is iterated in the policy at clause 22.01-3.

**Map 2 to Clause 22.01 – Jarosite Road, Bells Beach**



## 2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation

Having established that the lot is recognised as a tenement under clause 22.01, the application must then be measured against the Rural Conservation Zone provisions as follows and under the relevant overlays.

### Environment

An assessment of the biodiversity values of the site was undertaken by Ecology & Heritage Partners (Assessment dated October 2016) with the related survey undertaken on 8 September 2015. The assessment identified 28 indigenous and 1 non-indigenous plant species.

As shown in figure 2 below, the land retains a high cover of native vegetation which is typical of the Coastal Headland Scrub Ecological Vegetation Class (EVC 161); this is a Depleted<sup>1</sup> EVC. The biodiversity assessment describes the Coastal headland Scrub EVC as a scrub or low shrubland to two metres tall on rocky coastal headlands often associated with cliffs exposed to the stresses of extreme salt-laden winds and salt spray from the south-west. The assessment goes on to state that, "*within the study area, very dense Coastal Headland Scrub vegetation was present throughout the southern half of the site... Very few weeds were observed within this vegetation*".

The assessment also identified a small area adjacent to the existing shed in the south-west corner as being largely cleared of vegetation. The assessment then goes on to state that, "*the groundcover was still dominated by indigenous species and this area was considered a remnant patch under the Guidelines<sup>2</sup> definition. If left unmanaged, it is likely that this area would regenerate to dense scrub similar to the surrounding area*".

The front (northern) third of the site contains vegetation that is typical of the Shrubby Dry Forest EVC (EVC 21); this EVC is also present in a small isolated pocket in the south-west corner of the site. EVC 21 has a conservation status of Least Concern<sup>3</sup> and is described as, "*a low, open forest to 20 metres tall characterised by the diversity and variability of the eucalypts. The understorey contains a well-developed medium to low shrub layer and sparse ground layer with tussock forming grasses dominant*".

The assessment describes this area of the site as being dominated by a, sparse Red Ironbark overstorey with Prickly Teatree, Coast Pomaderris and Golden Wattle dominating the understorey; sedges dominate the ground layer. Very few weeds were present within this vegetation.

The biodiversity assessment goes on to note that there were large areas of Shrubby Dry Forest adjacent to the driveway that had been largely cleared. These areas dominated by indigenous species and therefore, like the Coastal Headland Scrub were considered to be a patch under the Guidelines definition. The assessment states that, "*if left unmanaged, it is likely that these areas would regenerate to dense scrub similar to the surrounding area*".

The site, including the areas containing the Coastal Headland Scrub and the Shrubby Dry Forest have been identified as likely to provide suitable habitat for a range of common native fauna species and has the potential to support the State-significant Rufous Bristlebird and White-footed Dunnart.

The biodiversity assessment identifies that 0.259 hectares of native vegetation will be removed due to direct impacts (ie. from the dwelling footprint) with a further 0.173 hectares removed or partially removed through management actions for the creation of defensible space.

The application falls within the High Risk-based Pathway under the "Permitted Clearing Assessment (Guidelines)". Although the study area is known to support flora species listed as 'protected' under the FFG Act, as the land is privately owned a permit under the FFG Act is not required.

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<sup>1</sup> Greater than 30% and up to 50% pre-European extent remains; OR Combination of depletion, degradation and current threats is comparable overall to the above and greater than 50% pre-European extent remains and moderately degraded over a majority of this area.

<sup>2</sup> Permitted Clearing Assessment (Guidelines)

<sup>3</sup> Greater than 50% pre-European extent remains and subject to little to no degradation over a majority of this area.

## 2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation

The Biodiversity Assessment by Ecology & Heritage summarises the potential impacts, stating that the proposed action is likely to directly impact on several indigenous flora and fauna species, and communities recorded within the study area. These impacts may include:

- loss of potential habitat for State significant fauna species (Rufous Bristlebird [Otways subsp.] and White-footed Dunnart)
- removal of the Coastal Headland Scrub (Direct loss – 0.246ha; Partial Loss – 0.173ha) and Shrubby Dry Forest (Direct loss – 0.013ha) EVCs
- loss of habitat and potential mortality for locally common fauna species inhabiting Coastal headland Scrub and Shrubby Dry Forest within the study area
- potential for further habitat fragmentation in a fragmented landscape and the associated creation of barriers to the movement and migration of indigenous fauna
- potential for the spread of weeds and soil pathogens due to on-site activities
- disturbance to wildlife from increased human activity and noise during construction; and
- indirect impacts on adjacent areas If construction activities and drainage are not appropriately managed.

The application was originally referred to the Department of Environment, Land, Water and Planning (DELWP) on 25-November-2015 with the ensuing response (dated 16-December-2015) requesting more information. The response also identified that the siting of the proposal meant that offsets for *Nodding Baeckea* would be triggered; it is understood that a specific offset for this species would be difficult to source.

The DELWP response then goes on to state that, “*the application does adequately address how the proposal has been designed to minimise the impact of the removal of native vegetation on Victoria’s biodiversity and does not demonstrate that the extent of removal of native vegetation has been reduced as much as is reasonable and practicable*”.

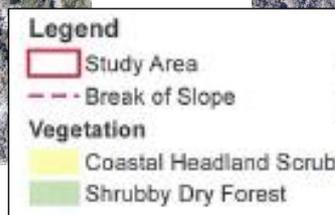
The applicant was urged to consider reducing vegetation impacts by further considering the scale of the development and the proposed BAL and associated defensible space requirements. Further information was also requested including information relating to the steps taken to minimise vegetation losses, details of proposed offsets and wastewater disposal.

*These are requirements of Clause 52.17 and VPO1. Further, the property is in the Rural Conservation Zone; this also recognises conservation values. In responding to the objectives of these controls, the application may want to consider aspects of the proposal including: the scale of the development in an area of high environmental significance; the opportunity that Clause 52.47 provides to weigh the BAL specification of the proposed building, the extent of defensible space, and resulting native vegetation losses.*

**Figure 5 and 6 – Existing Vegetation**  
*Original Proposal*



*Amended Proposal*



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On 6 June 2017, the plans were amended to remove the tennis court with the covering letter from the permit applicant stating:

*"We are writing to confirm that the documentation required to satisfy the offset provisions and LCA have been lodged with the various agencies, with copies to the Shire. During discussions with our consultants and the referral authorities, the tennis court was removed. We therefore submit 3 copies of the amended plans, deleting the court, our reference, ISSUE 4, to assist the Shire in understanding the revised application".*

On the 8 September 2016, the tennis court was reinstated on the plans. It is not clear why the decision to once again include the tennis court was made.

On 23 September 2016 the plans were again amended to move the dwelling 27.163m to the north thereby avoiding the *Nodding Baeckea*.

On 30 December 2016, DELWP responded by not objecting to the proposal subject to conditions although it is noted that the response erroneously refers to the BAL being increased to 40 thereby reducing vegetation loss. This is not correct and the BAL remains at 29 as previously proposed and there has been no noticeable change to the proposal to reduce the extent of vegetation loss.

The decision guidelines of the Rural Conservation decision require decision makers to consider impacts on biodiversity (including flora and fauna habitat and remnant vegetation on private and public land and the coastal reserve) and the scenic landscape.

### **Land Management Plan**

The decision guidelines of the zone require decision makers to consider how the use and development relates to sustainable land management and the need to prepare an integrated land management plan which addresses the protection and enhancement of native vegetation and waterways, stabilisation of soil and pest plant and animal control. This is a noticeable absence in this application.

It is acknowledged that the biodiversity assessment by Ecology & Heritage Partners provides a helpful assessment of the quality and importance of the vegetation including that a list of expected impacts has been provided.

### **Bushfire management Overlay and Defendable Space**

An assessment of the proposal against the Bushfire Management Overlay and clause 52.47 has been undertaken with defendable space nominated for each orientation as set out in the table.

### **BAL Calculations for the proposed dwelling**

(Table 4 – Bushfire Management Statement by South Coast Bushfire Consultants).

Orientation	Highest threat vegetation	Slope under classifiable vegetation	Defendable Space Requirement	Bushfire Attack Level (BAL)
North	Scrub	0-5° Downslope	15m	29
East	Scrub	Flat	13m	29
South	Scrub	5-10° Downslope	17m	29
West	Scrub	Upslope	13m	29

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Figure 1 - Defendable space area shown in blue



As shown in Figure 4, a portion of the defendable space (highlighted in blue) overlaps with the tennis court although it is noted that the tennis court is not entirely within the defendable space area. That is; the tennis court will result in the removal of vegetation that is not required for the creation of defendable space.

Given the landscape risk, a BAL greater than 29 may not be supported and therefore, without reducing the dwelling footprint there is no opportunity to reduce the area required for the creation of defendable space.

Figure 7– Defendable Space

### Design and Siting

The zone provisions require decision makers to consider the “need to minimise any adverse impacts of siting, design, height, bulk, and colours and materials to be used, on landscape features, major roads and vistas”. The decision guidelines also include the “need to minimise adverse impacts on the character and appearance of the area or features of archaeological, historic or scientific significance or of natural scenic beauty or importance”.

The “Bells Beach Surfing Recreation reserve Coastal management Plan 2015-25” (The Plan) describes the Bells Beach Surfing Recreation Reserve as being, located within a two kilometre stretch of coastline south-west of Torquay-Jan Juc I Victoria, Australia. The Reserve comprises 48 hectares of coastal heathland, limestone cliffs and sandy beaches and borders the eastern edge of the Great Otway National Park.

The Plan goes on to state that “the Reserve has been visited by the Wadawurrung people for thousands of years and their connection with the reserve continues to this day. The surf breaks offshore are renowned for their quality, as evidenced by an association with the Rip Curl Pro Easter surf contest spanning more than 50 years. The reserve’s car parks and walking tracks provide access to a number of high quality and consistent surf breaks while also serving as important meeting places for surfers whenever conditions are favourable. The reserve is also valued for its walking paths, hang gliding launch site, viewing platforms and access to adjoining national parks. The Bells Beach area has become an internationally renowned surfing and tourist destination. It is fiercely loved, by its regular local users and is a destination of choice for visitors with an interest in surfing or those seeking spectacular ocean views”.

As a Coastal Management Plan, decision making must have regard to the Plan and it provides useful context for the cultural and landscape values of this area.

As indicated in the photograph below, the application site is visible in distant views from key viewing points and being located on/below a ridgeline, careful siting and massing of the building is required if landscape impacts are to be avoided or minimised. Prior to the most recent public notification process, the permit applicant erected height poles to indicate the front NE corner of the roof and the NE corner of the deck. The existing viewing platform can also be seen in the photograph; this is located in the approximate location of the proposed eastern deck and provides useful context.

The photograph demonstrates the dwelling will be visible in the landscape. It is important to remember that vegetation will be removed to accommodate the dwelling.

## 2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation



**Photo 1– Application site in a landscape context – height poles and viewing platform circled in red and green respectively. The photograph was taken from Bones Road near the Wave Car Park**

### **Land Capability Assessment/Waster Water Disposal**

The decision guidelines also require decision makers to consider the location of on-site effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.

The application includes a Land Capability Assessment (LCA) written by Structerre Pty Ltd, report number 94914, dated 2 May 2016; the LCA was referred to the Shire's Environmental Health unit for comment and the following feedback was provided.

*The LCA recommended a Land Application Area (LAA) for a 4 bedroom dwelling on this site to be 500sqm in size. It provides a number of different options for the property but the most visually pleasing option is for the property to have a secondary treatment system or similar with pressure compensating sub surface irrigation.*

*The LCA identified that the irrigation would be best placed to the north of the dwelling for the aspect but more irrigation could be placed to the south of the dwelling. The LAA in the LCA Appendix B site plan shows an area 700sqm in size. This plan does not show the tennis courts or the location of the water tanks under the tennis court. Underground water tanks require a setback distance of 7.5m as stated in the Environment Protection Authority's Code Of Practice – onsite wastewater management 2016. Therefore the irrigation area would be required to comply with that prerequisite.*

Given the inclusion of the proposed tennis court (with underground water tanks), it is not readily apparent how the recommendations of the LCA can be met. The Shire's Environmental Health unit has further suggested that locating the irrigation field to the south is not desirable due to the southerly aspect.

### **Amendment C121 – Bells Beach Hinterland Review**

As relevant to this application, amendment C121 proposes to modify planning policy and introduce a Significant Landscape Overlay-Schedule 1 (SLO1). Broadly, the purpose of the amendment is to better recognise the importance of the local landscape and the environmental and cultural role of Bells Beach.

At the time of writing this report, the public notification phase of the Amendment has been completed and a number of submissions lodged with Council. The Amendment cannot be considered to be a seriously entertained planning document given its early stage, but it is relevant information. With an appeal lodged, the Amendment may become a seriously entertained planning document prior to the VCAT hearing.

## **2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation**

The proposed SLO1 recognises the significant of the Bells Beach scenic landscape stating that:

*The scenic landscape value of the Bells Beach Surfing Recreation Reserve and surrounds derives from the coming together of the pastoral landscape and the seascape and from the relative absence of built structures visible within viewsheds. For many, the connection with Bells Beach extends beyond the surf break and includes the environmental, landscape, social and cultural values of the reserve and its hinterland. The landscape creates a sense of space around the reserve observed from the reserve itself, Surf Coast Walk and the approaches to the reserve from Bones Road, Bells Boulevard and Jarosite Road. This internationally significant area must be treated with considerable sensitivity.*

*The special qualities of the area result in constant pressure for subdivision and tourist related uses and development, which conflicts with the preservation of the environmental, cultural and scenic attributes of the area and with the ambiance and amenity enjoyed by residents and visitors.*

*The preservation of remnant native vegetation is crucial to the protection of scenic vistas and the maintenance of biodiversity links. Much of the land covered by this schedule contains vegetation of high conservation significance, containing diverse, and in some cases threatened, flora and fauna.*

*The purpose of this overlay is to ensure that future development does not compromise the quality of these assets and to maintain and protect significant viewsheds.*

As relevant to this application, the objectives of the SLO1 include:

*To encourage the discreet placement of simple, unobtrusive structures within the hinterland landscape, particularly when viewed from the Great Ocean Road and on the approach to Bells Beach (Jarosite, Addiscot, Bones Road and Bells Boulevard).*

*Recreation Reserve by protecting the approaches to Bells Beach through the open rural and bushland landscape of the Bells Beach hinterland.*

*To minimise the visual impact of development having regard to building size, height, bulk, siting and external materials and colours.*

The SLO1 under the heading, "decision guidelines" requires decision makers to consider:

### **Visual prominence**

*If the proposed development is 'visually recessive', 'visually apparent' or visually dominant' within the landscape.*

- a development is 'visually recessive' when the following siting and design principles are followed; sits below the existing tree canopy, is modest in size and height (predominantly single storey) so that the surrounding landscape dominates the structure, is tucked into a hill side or utilises a stand of trees as a backdrop, maximises landscaping and has minimal hard surface areas, constructed in natural materials and colours (stone and/or timber), is located below a ridge line and is setback far enough from the street or public vantage point so that it is hardly visible from beyond the site.*
- a development that is 'visually apparent' is sited and designed similar to a 'visually recessive' building but potentially doesn't apply one of the above mentioned principle making it visually more apparent when viewed from beyond the site.*
- a visually dominant development will include opposing attributes to a 'visually recessive' building and will be highly visible within the landscape.*

*All development must be 'visually recessive' within the Bells Beach hinterland.*

*Whether the visibility of a buildings or works can be reduced by screening vegetation and/or the topography.*

## **2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation**

### ***Building height, design and siting***

- whether the proposed building height is single storey on sites visible from the Bells Beach Surfing Recreation Reserve
- whether a lower building height (in areas other than the Bells Beach view shed) is required in order to ensure development is visually recessive or apparent as appropriate
- whether a greater building height on steeply sloping land is reasonable and will not add to the prominence and visibility of the building from beyond the site
- whether ridge tops are kept free of bulky development to prevent silhouettes against the sky
- whether buildings follow the contours of the land and are stepped down the site to reduce the visual prominence
- whether buildings are separated into different elements, retaining maximum space between buildings for vegetation in visually prominent sites to minimise their visual impact
- whether the scale, setbacks, design, siting and overall form of the development does not visually contrast with the surrounding landscape features, and interrupt or block key views from significant public observation points
- whether the design and siting of proposed buildings and works would retain existing vegetation and provide adequate space on site for the planting of new vegetation
- whether all materials and colours blend with the natural bush environment and minimise the visual impact and glare of the roof when viewed from beyond the site.

### ***Recreational structures***

- whether private recreational structures such as tennis courts and swimming pools have been sited in cleared areas to ensure minimal or no losses of screening vegetation or vegetation of environmental significance.

### ***Vegetation Removal***

- whether the vegetation removal proposed has taken into consideration
- the need to avoid and minimise losses to locally significant native vegetation shown in maps 1 - 5
- the need to protect vegetation located on ridgelines, along water courses, in areas of environmental or habitat significance, and on land subject to landslip or erosion
- the need to protect vegetation that is in a prominent location and which makes an important contribution to the landscape character
- the need to protect vegetation that will screen or soften the appearance of existing or proposed buildings when viewed from the Great Ocean Road, Bells Beach hinterland or other significant public viewing points
- the need to provide sufficient open space for the viable preservation of existing trees and the establishment of replacement trees.

### ***Financial Implications***

There are no financial implications for Council associated with this decision.

### ***Council Plan***

Theme 1 Environment  
Objective 1.1 Preserve and enhance the natural environment  
Strategy Nil

Theme 3 Communities  
Objective 3.3 Preservation of peaceful, safe and healthy environments  
Strategy Nil

### ***Policy/Legal Implications***

There are no legal implications for Council in making this decision. The application will be considered against the provisions of the Surf Coast Shire Planning Scheme and the requirements of the *Planning and Environment Act 1987*.

### ***Officer Direct or Indirect Interest***

No officer involved in the preparation of this report has any conflicts of interest.

## **2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation**

### ***Risk Assessment***

There are no notable risks associated with making a decision on this application.

### ***Social Considerations***

The concerns of objectors are relevant, as is the impact of the development on the experience within the Bells Beach Recreation Reserve.

### ***Community Engagement***

Public notification of the application was undertaken in accordance with the requirements of the *Planning and Environment Act 1987*.

### ***Environmental Implications***

The impact on the environment will be an important consideration for Council when making a decision on this application.

### ***Communication***

All parties will be advised of Council's decision.

### ***Conclusion***

It is recommended that Council receives and notes the submissions to Planning Permit 15/0434 for Construction of a Dwelling, Tennis Court and Associated Removal of Native Vegetation at 210 Jarosite Road, Bells Beach.

A report will be put to Council at the 25 July 2017 meeting, providing Council with the opportunity to make a decision on this application.

**2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation**

**APPENDIX 1 15/0434 - ORDER OF SPEAKERS**



**Hearing of Submissions - Tuesday 4 July 2017  
5pm  
Council Chambers**

**1 Merrijig Drive, Torquay**

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**ORDER OF SPEAKERS**

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**ENVIRONMENT AND DEVELOPMENT**

**1.1 Planning Permit Application 15/0434 – 210 Jarosite Road,  
Bells Beach**

Item	Time	Submitter
1.	5.00pm	Anne Waterhouse
2.	5.05pm	Anthony Gardiakos (for applicant)

**2.1 Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation**

**APPENDIX 2 15/0434 - LIST OF OTHER SUBMITTERS**

### **Hearing of Submissions – Tuesday 4 July 2017**

Planning Permit Application 15/0434 - 210 Jarosite Road, Bells Beach - Use and Development of a Dwelling, construction of a Tennis Court and associated removal of Native Vegetation

#### List of All Other Submitters

- M Heeley & ML Warren
- William Johnson

**Close:** There being no further items of business the meeting closed at 5.32pm.