

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1779/2019  
PERMIT APPLICATION NO. 304/2009/11AP/D

### CATCHWORDS

Section 82 of the *Planning and Environment Act 1987*; Nillumbik Planning Scheme; Rural Conservation Zone; Metropolitan Green Wedge; restaurant ancillary to a winery; whether function events ancillary to a winery; amenity, parking, noise.

<b>APPLICANT</b>	John & Laraine Rowe
<b>RESPONSIBLE AUTHORITY</b>	Nillumbik Shire Council
<b>RESPONDENT</b>	John Tregambe & Chanmali Tregambe
<b>SUBJECT LAND</b>	195 Clintons Road SMITHS GULLY VIC 3760
<b>HEARING TYPE</b>	Online hearing
<b>DATE OF HEARING</b>	10 September 2020
<b>DATE OF ORDER</b>	19 February 2021
<b>CITATION</b>	Rowe v Nillumbik SC [2021] VCAT 148

### ORDER

#### Permit granted

- 1 In application P1779/2019 the decision of the responsible authority is varied.
- 2 In planning permit application 304/2009/11AP/D an amended permit is granted and directed to be issued for the land at 195 Clintons Road, Smiths Gully in accordance with the amended endorsed plans and the conditions set out in Appendix A. The permit allows the use and development of the land for a winery, cellar door sales, restaurant and the sale and consumption of liquor.

**Frank Dawson**  
**Member**



## APPEARANCES

For applicant	Mr John Rowe and Ms Laraine Rowe in person.
For responsible authority	Mr Esmond Angeles, town planner.
For respondent	Ms Sarah Thomas, town planner of SJB Planning.

## INFORMATION

Description of proposal	<p>Amend existing planning permit No. 304/2009/06P for <i>the use and development of the land for a winery, including cellar door sales, in accordance with the endorsed plans</i> to include a restaurant and the sale and consumption of liquor.</p> <p>The restaurant is proposed to operate from Monday to Wednesday between the hours of 10.00 am and 6.00 pm and from Thursday to Sunday between the hours of 10.00 am to 8.00 pm. The maximum number of patrons must not exceed 140 persons per day. The maximum number of patrons at any one time is 100, reflecting the seating capacity of the restaurant.</p> <p>The proposal includes ancillary functions for up to 18 days per calendar year with the maximum number of patrons limited to 100 persons at any one time. Ancillary functions may operate until 11.00 pm.</p>
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Nillumbik Planning Scheme
Zone and overlays	Rural Conservation Zone – Schedule 3 (RCZ3) Bushfire Management Overlay (BMO) Environmental Significance Overlay – Schedule 1 (ESO1)



Permit requirements	<p>C.35.06-1 Table of Uses (a permit is required to use the land for a Restaurant).</p> <p>C.52.06-3 (a permit is required to reduce the number of car parking spaces).</p> <p>C.52.27 (a permit is required to use land to sell or consume liquor).</p>
Land description	<p>The land is located on a sloping site on the north-eastern side of Clintons Road, approximately 2 kilometres south-east of Smiths Gully and 5 kilometres north-east of Panton Hill. The total area is approximately 9 hectares with a frontage to Clintons Road of 150 metres. The land is elongated on a north-east/south-west axis with most of the north-eastern half occupied by bushland, the central part occupied by a north-facing vineyard of approximately 1.2 hectares and the southern part occupied by a dwelling, two dams and a contemporary metal clad winery/restaurant building.</p> <p>The subject land and the surrounding area is mostly within the Rural Conservation Zone. Clintons Road has a rural living and small farming character on lots generally 6-10 hectares, with some larger farming properties evident.</p> <p>Current aerial photography (November 2020) indicates there are three dwellings within 400 metres of the existing winery building (excluding the dwelling on the subject land), the closest being approximately 220 metres to the south.</p>
Tribunal inspection	<p>The Tribunal inspected the subject site and the surrounding area.</p>

### Permit Notes

Although my order does not include the ‘Notes’ suggested by the Council, such advisory information may be included in the permit that the Council is directed to issue.



## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 In August 2019, the Nillumbik Shire Council decided to issue a notice of decision to amend a planning permit (Permit No. 304/2009/06P) allowing the use and development of the land at 195 Clintons Road, Smiths Gully for a winery, cellar door sales, restaurant and the sale and consumption of liquor in accordance with amended endorsed plans. The Tribunal has been requested to review the Council's decision by objectors to the proposed amendment, John and Laraine Rowe.
- 2 The objectors are concerned that the amendments to the existing use and development will be detrimental to the residential environment of Clintons Road. In particular, the objectors submit:
  - Traffic congestion on Clintons Road will be exacerbated by the increase in patronage at the proposed development. The objectors submit that Clintons Road does not have the capacity for increased traffic and the proposed development will reduce the safety of the road.
  - Noise from patrons and music will not be adequately mitigated and the movement of vehicles to and from the venue along Clintons Road will increase light and dust.
  - Biosecurity is diminished by the movement of vehicles between venues. The objectors also question the adequacy of the waste treatment system, expressing concern that waste products will enter the waterways.
  - There will be an increased fire risk from the increase in visitor numbers.
- 3 The permit applicants, John and Chanmali Tregambe, who are respondents in this matter, consider the proposed changes to allow the operation of a restaurant and up to 18 'ancillary' functions per year are a reflection of the growth of their business and provide positive support for local tourism. The submission from SJB Planning on behalf of the respondents submits at paragraph 83:

Given the physical separation from the review site to neighbouring dwellings, both the hours and number of patrons sought are appropriate in this context and having regard to the purpose of the RCZ.

At paragraph 85, the SJB submission states:

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<sup>1</sup> The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.



The licenced restaurant use compliments both the physical and policy context of the site, supporting the environmental values and established agricultural use of the land, with the application and conditions imposed throughout Council's NOD ensuring the layout and management of the licenced restaurant will not unreasonably impact the dwellings in the area.

- 4 In terms of economic benefit, the SJB submission concludes at paragraph 96:

The proposed licenced restaurant compliments the existing agricultural focus of the land, further encouraging the complimentary business activities which are supported at both a state and local policy level for the obvious employment and economic benefits.

- 5 The Council considers the proposed amendments to the existing permit are acceptable, taking into consideration the reduction in the number of 'ancillary functions' from 24 to 18, the permit conditions concerning noise attenuation, hours of operation and the requirement for a *Premises and Amenity Management Plan*.

#### **WHAT ARE THE KEY ISSUES?**

- 6 I accept that there is strong local planning policy support for developments that support tourism in the Nillumbik Shire. For example, C.21.03-4 of the *Municipal profile* states:

Tourism is a growing and vibrant sector in Nillumbik and offers destinations and visitor experiences based on the area's natural environment, rural landscapes, agricultural production including viticulture, heritage places and the arts. Hundreds of businesses in the Shire benefit, to varying degrees, on tourism for their trade. These range from wineries to motels, nurseries, cafes and antique shops.

- 7 The *Planning Policy Framework*, which contains state-wide policy objectives and strategies, facilitates tourism at C.17.04-1S with the objective:

To encourage tourism development to maximise the economic, social and cultural benefits of developing the state as a competitive domestic and international tourist destination.

- 8 Two of the strategies to be 'balanced' in achieving the above objective are;

Encourage the development of a range of well-designed and sited tourist facilities, including integrated resorts, accommodation, host farm, bed and breakfast and retail opportunities.

Promote tourism facilities that preserve, are compatible with and build on the assets and qualities of surrounding activities and attractions.

- 9 With the acknowledgement of the above policies in place, I consider the two key issues for determination in this matter are:



- Do the proposed amendments to the existing permit and in particular, the restaurant component, accord with the Rural Conservation Zone?
- Will the proposed amendments result in unreasonable detriment to the amenity of surrounding residents?

10 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions presented with regard to the applicable policies and provisions of the Nillumbik Planning Scheme, I have decided to vary the Council decision and grant a permit. My reasons follow.

**DO THE PROPOSED AMENDMENTS TO THE EXISTING PERMIT AND IN PARTICULAR, THE RESTAURANT COMPONENT, ACCORD WITH THE RURAL CONSERVATION ZONE?**

**Purpose of the Rural Conservation Zone (RCZ)**

- 11 The purpose of the RCZ is directed to the protection and enhancement of the natural environment and resources within the zone, accompanied by encouragement for use and development, including agriculture, that is consistent with the environmental value of the land.
- 12 In Schedule 3 to the zone, the conservation value is:
- To ensure land use changes do not have an adverse impact on the landscape or strategic environmental values of the land.
- 13 In this case, the Nillumbik Estate is a vineyard and winery, which is the type of agricultural pursuit commonly seen within the Shire and the wider Yarra Valley district, including the RCZ. During my inspection I observed the property is broadly divided into three sections; the dwelling near the frontage, the vineyard, winery, cellar door and water storage in the centre and bushland (approximately half of the property) at the rear. The dwelling, winery and vineyard sit comfortably within the landscape, with elevated and attractive views to the north and east.
- 14 The environmental value of the land appears to be as part of the Smiths Gully to St Andrews Nature Reserve, which is part of a native vegetation catchment area of the Smiths Gully and Salters Rush Creek. My observation is that the use of development of the subject land strikes a balance between agriculture and retained bushland consistent with the purpose of the RCZ.

**Ancillary use**

- 15 The proposal put forward by the permit applicant and supported by the Council is that the existing permit, which allows the land to be used and developed for a winery and cellar door sales, be amended to include a restaurant and the sale and consumption of liquor. The restaurant use is



listed in the RCZ as a permit required use in Section 2 to the table of uses at C.35.06-1. Licensed premises require a planning permit in accordance with the requirements at C.52.27 of the planning scheme.

- 16 The restaurant proposal includes functions that Council supports on the basis of eighteen occasions each year for a maximum of one hundred patrons. It is proposed that on the days that functions occur, the restaurant closing time will be extended from 8 pm to 11 pm. As described in the Council's submission, the proposed functions are proposed;
- as an ancillary component to the primary use.
- 17 In my assessment, the questions that arise from this proposal are:
- Is the proposed restaurant a use ancillary to the winery?
  - If the restaurant is ancillary to the winery, is the proposal to conduct functions also an ancillary use, or a function centre as defined in the planning scheme?
- 18 In conjunction with a winery, a restaurant is commonly accepted as a use ancillary to a winery. Mr Angeles drew my attention to the Tribunal decision in *Hao Yang Australia Pty Ltd v Mornington Peninsula SC* [2018] VCAT 1028 (3 July 2018) where the Tribunal considered a proposal in the Green Wedge Zone on the Mornington Peninsula for:
- Use and development of a recreation and leisure facility (hot springs) with ancillary restaurant, day spa facility and associated car parking
- 19 In the *Hao Yang* case, the Tribunal found that a restaurant and wellness centre is ancillary to the hot springs leisure and recreation facility. At paragraph 32, the Tribunal states:
- We are also satisfied that the restaurant use meets the tests of being ancillary to the hot springs. It is common for leisure, recreation and tourism facilities to include some form of café or restaurant for patron use and including one in this proposal is not surprising. Those who frequent a hot spring facility will often do so for extended periods and the offer of food and drink is an ancillary service for patrons. Relevantly, access to the 84-seat restaurant will only be available to patrons of the hot springs, the entry of which is to be controlled through the entry foyer arrangements. The permit applicant did not contest conditions proposed by the Council requiring that the restaurant is not to be used separately and only operated in the same hours as the hot springs.
- 20 In finding the restaurant “meets the tests of being ancillary to the hot springs”, the Tribunal at paragraph 33 in *Hao Yang* found the ancillary uses (restaurant, day spa and wellness centre):
- .. do not displace, dominate over or seek to operate independently of the primary use being proposed which is the operation of a hot springs spa facility.



- 21 Mr Angeles submits the key issue relevant to the matter in this proceeding is the acceptance by the Tribunal in *Hao Yang* that the restaurant and wellness centre are ancillary to the use of the land for recreation and leisure facility (hot springs).
- 22 In the matter before me, I find the proposed restaurant is a use ancillary to the existing winery and cellar door sales. The consumption of wine with food is an integral part of wine appreciation and the association between wine production and food consumption is well established. To that end, I note the hours of operation for the restaurant (excluding the proposed function events) are reasonably aligned with the operation of the winery and cellar door. From my observation of the operation of the winery and cellar door, I consider the proposed restaurant will complement rather than *displace, dominate over or seek to operate independently of the primary use*.
- 23 I turn now to consideration of the function component of the proposal. The Council's assessment of the function component at point 9.12.3 of Mr Angeles' submission states that;
- .. any ancillary function that was to be conducted on site would result in the closure of the restaurant and winery, being the primary uses on site.
- 24 Council concludes that restricting the number of functions to 18 per year constitutes an ancillary use, *viz*:
- It is considered that until such time as the zoning permits the use of the land as a function centre, this component of the business must be restricted to an ancillary use that does not displace, dominate over or seek to operate independently of the primary use.
- 25 A Function Centre is defined in the land use terms of the planning scheme in the Table to C.73.03 as:
- Land used, by arrangement, to cater for conferences, private functions, and in which food and drink may be served. It may include entertainment and dancing.
- 26 Based on the information before me, I cannot agree with the Council's reasoning that a restriction on the number of functions establishes a basis for considering the proposed function component as 'ancillary to the winery and cellar door. Reducing the number of functions does not alter the intent to use the land to conduct functions separate from the winery and cellar door. It is explicit in the Councils' submission that the winery and restaurant will be closed when functions occur.
- 27 As a separate activity, the use of the land by arrangement for private functions constitutes a Place of Assembly (which includes a Function Centre) and is therefore prohibited in the Rural Conservation Zone in accordance with Section 3 of the Table of Uses at C.35.06-1.





28 The Tribunal recently addressed a similar issue in *Clancy v East Gippsland SC* [2020] VCAT 1134. In the *Clancy* decision the proposal before Member Blackburn was to amend an existing permit for a winery in the Farming Zone that allows private functions of up to 30 persons to occur twice per year. Quoting from the information section of the *Clancy* decision:

The proposal seeks to amend this to allow twelve private functions per year of up to 100 persons (or more with the consent of the responsible authority). The proposal also seeks to increase the hours of operation.

29 In the *Clancy* decision the Council held the view that the functions conducted under the existing permit are ancillary to the winery. In considering the proposed increase in the number of functions, the Council decided to restrict the number of functions to eight per year, limited to one function per month.

30 Member Blackburn summarises her overall findings in paragraphs 10 to 13 as follows:

10 The permit authorises the use of the land for a winery. The application to amend the permit does not ask for the permit to authorise any additional land uses. Given this, the permit applicant and council agree that only private functions which are ancillary to the use of the land as a winery are able to occur under the permit – both in its current form and in the form it is proposed to be amended.

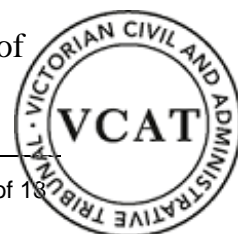
11 The question of the extent to which the proposed private functions are part of/ancillary to the winery is a key matter in dispute between the parties.

12 For the reasons I explain below, I have concluded that the private functions which are proposed to be facilitated by the application (both as applied for and as sought to be modified by the permit conditions imposed by council) will be a separate and distinct use of the site which is not ancillary to the use of the site for a winery.

13 As the permit only authorises the use of the land for a winery, it follows from my above conclusion that I am not able to amend the permit either as sought by the applicant or as suggested by council in its permit conditions. For this reason, I have refused the application.

31 In the Farming Zone, the use of land for a Place of Assembly is a Section 2 use (permit required) in the Table of uses to C.35.07-1. It is therefore open to the applicant in *Clancy* to apply for a planning permit for a Function Centre as a separate land use. As explained earlier in my reasons, this option is not available in the Rural Conservation Zone, which is the applicable zone in this proceeding.

32 The finding in the *Clancy* decision is not directly comparable with the matter in this proceeding because the zones are different, however, the decision does clearly separate the use of land for a winery from the use of



land for a function centre. Unlike the restaurant, which is intended to operate in conjunction with the winery, the proposed functions are discrete events arranged for a particular purpose or event, using the winery/restaurant as a venue. They are not ancillary to the winery.

- 33 In support of the contention that the proposed functions are ancillary to the operation of the winery, the submission for the permit applicant draws on the provisions of C.51.02 *Metropolitan Green Wedge Land: Core Planning Provisions* in the Nillumbik Planning Scheme. This provision has the purpose:

To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values.

To protect productive agricultural land from incompatible uses and development.

To ensure that the scale of use is compatible with the non-urban character of metropolitan green wedge land.

To encourage the location of urban activities in urban areas.

- 34 The provisions contain numerous exclusions, particularly ‘urban’ zones, however, the subject land is in the Rural Conservation Zone, is within the area of metropolitan green wedge land, and is outside the Melbourne urban growth boundary. The provisions prohibit the use of land for a Function centre unless the following conditions are met:

Must be used in conjunction with Agriculture, Natural systems, Outdoor recreation facility, Rural industry or Winery.

No more than 150 patrons may be present at any time. If used in conjunction with Restaurant, the total number of patrons present at any time must not exceed 150.

- 35 The same conditional provision applies to the use of land for a Restaurant if used in conjunction with a Function centre.

- 36 The permit applicant submits at paragraph 83(k) of the SJB submission:

..the proposal complies with Clause 51.02-2 of the Scheme that anticipates ancillary functions to restaurants with no more than 150 patrons at any one time (noting the NOD allows a maximum 100 patrons at any one time in association with ancillary functions).

- 37 I note that the provisions refer to “in conjunction with” as distinct from “ancillary to”, however, putting aside that distinction, there are provisions for both a Restaurant and a Function centre in conjunction with the use of land for a Winery in applicable areas of the Metropolitan Green Wedge Land.

- 38 These provisions are in addition to any other provisions of the planning scheme therefore the provisions of the Rural Conservation Zone remain applicable.



- 39 My decision in relation to the function component of the proposal therefore centres on whether the proposed functions are ancillary to the winery, or constitute a separate use. I have found that the functions as proposed fall within the definition of a Function centre and are therefore prohibited in the Rural Conservation Zone.

**WILL THE PROPOSED AMENDMENTS RESULT IN UNREASONABLE DETRIMENT TO THE AMENITY OF SURROUNDING RESIDENTS?**

- 40 The subject land is part of an undulating rural area with a mix of farming and ‘rural living’ properties supporting grazing, horticulture and horses. There is an equestrian facility on public land opposite the subject land in Clintons Road. As described in my preliminary information, there are three dwellings within 400 metres of the winery on the subject land, the closest being approximately 220 metres to the south.
- 41 Clintons Road is a sealed local access road that connects with the higher order Kangaroo Grounds - St Andrews Road approximately 2 kilometres north-west from the subject land. The road reflects the terrain, undulating across a series of small valleys.
- 42 The objectors to the proposal reside on the second property south of the subject land on Clintons Road. The dwelling on the objector’s property is approximately 250 metres from the existing winery. The objector’s primary concerns relate to noise, hours of operation and the unsuitability of Clintons Road to accommodate increased traffic, particularly traffic generated by function events that may not conclude until 11.00 pm.

**Hours of operation**

- 43 As described in my preliminary information, the proposed hours of operation for the proposed restaurant are:
- Monday to Wednesday between the hours of 10.00 am and 6.00 pm.  
Thursday to Sunday between the hours of 10.00 am to 8.00 pm.
- The proposed ‘ancillary’ functions for up to 18 days per year may operate until 11.00 pm.
- Patron numbers are limited to a maximum of 100 persons within the restaurant at any one time (reflecting the capacity of the restaurant) and the maximum number of patrons must not exceed 140 persons per day.
- 44 I consider the proposed restaurant hours are acceptable and commensurate with a restaurant operating in conjunction with a winery located in what I observe to be a mixed rural living and farming area.
- 45 I have formed a different view with regard to the proposed operation of functions. I find the proposed extension of hours to 11.00 pm on up to eighteen occasions during a calendar year will cause unreasonable detriment to the amenity of surrounding residents and for residents along Clintons Road.



46 Accordingly, I have amended the permit conditions to restrict the hours to the restaurant operating in conjunction with the winery; that is, Monday to Wednesday 10.00 am to 6.00 pm and Thursday to Sunday 10.00 am to 8.00 pm.

### **Noise**

- 47 The operation of the restaurant includes music both amplified and unamplified. All amplified music is confined to recorded music of acoustic instruments and must be contained within the restaurant building.
- 48 The permit applicant commissioned a noise management plan for the winery and restaurant. Having considered the acoustic report recommendations, and viewed the physical relationship between the winery building and the surrounding properties, I find the permit conditions, which are a modified version of the conditions in Council's notice of decision to grant a permit and contain recommendations derived for the noise management plan assessment, are an acceptable basis for noise management from the premises.
- 49 I also note that removing the function component from the proposal will truncate the hours of operation and reduce noise generation after 8.00 pm.

### **Reduction in parking**

- 50 The total number of parking spaces generated by the maximum capacity of 100 patrons in the restaurant at any one time is assessed, pursuant to C.52.06, to be 40 spaces.
- 51 On-site parking is provided in parking areas to the east and west of the winery building. The capacity of these two areas has been calculated by Council as 23 car spaces. Additional areas available for 'overflow' parking are located further west of the winery building or an area adjacent to the vineyard (presumably with appropriate bio-security measures in place). Council considers that the above areas have sufficient capacity for the required 40 car parking spaces.
- 52 During the discussion at the conclusion of the hearing concerning the permit conditions should a permit be granted, it was agreed between Council and the permit applicant that there is sufficient space to meet the full planning scheme parking requirement. I was able to confirm this view on my inspection. On this basis, I decline to grant a reduction in the required number of parking spaces required for the restaurant.

### **Traffic on Clintons Road**

- 53 Clintons Road is a two way sealed road providing access for local residents and a connection between the Kangaroo Ground-St Andrews Road and the Eltham-Yarra Glen Road. In the vicinity of the subject land, some sections of the road shoulder are narrow and native vegetation is retained close to the sealed alignment. The road carries tourism traffic and provides access to



the equestrian facility opposite the subject land. This facility attracts riders for equestrian events and training, presumably involving the movement of horse floats and the like.

- 54 Visitation to the winery can occur throughout the week, but is biased toward the latter part of the week, weekends and public holidays. It is expected that visitation to the restaurant will be ‘steady’ during the day as tourists and visitors travel between wineries throughout the district. Peaks can be expected over the lunch period.
- 55 Council has not expressed concern at the capacity of Clintons Road to handle the level of visitation associated with the winery and restaurant. I concur that the road has a tourism function and the capacity to accommodate traffic generated by the winery during the operating hours permitted in the permit conditions.
- 56 I have some reservation regarding the proposed functions, particularly the prospect of cars leaving the premises late at night over a short time period. It is reasonable to expect that there will be some amenity considerations associated with late night traffic on Clintons Road, however, having determined the function component is prohibited in the Rural Conservation Zone, I do not need to give further consideration to this matter.

### **Waste management**

- 57 Council’s assessment is that the original waste treatment system for the winery and cellar door has proven to be inadequate with increased visitation to the winery. Over a lengthy process, the permit applicant provided an updated land capability assessment that was approved by Council’s Environmental Health Department in January 2020. I note that these works have been completed and certified by Council’s Environmental Health Officer in March 2020..

### **LIQUOR LICENCE**

- 58 The proposed restaurant and cellar door will require an amended liquor licence commensurate with other winery outlets in the district. The permit conditions require the delineation of a ‘red line’ liquor licence area and the preparation of a detailed Premises and Amenity Management Plan. I find the issue of an Liquor Licence based on the approved operating hours and the requirements of the Premises and Amenity Management Plan at Condition 5 of the permit conditions is acceptable.

### **WHAT CONDITIONS ARE APPROPRIATE?**

- 59 In deciding the conditions to be included on the permit the Tribunal has had regard to the draft conditions provided to the Tribunal by the responsible authority and the submissions of the parties in addition to the matters which arise from these reasons.



- 60 The permit conditions have been varied in accordance with my reasons and renumbered to reflect the changes arising from the submissions and the removal of the functions component of the proposal.

### **CONCLUSION**

- 61 For the reasons given above, the decision of the responsible authority is varied. An amended permit is granted subject to conditions

**Frank Dawson**  
**Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO:</b>	304/2009/11AP/D
<b>LAND:</b>	195 Clintons Road, Smiths Gully

### WHAT THE PERMIT ALLOWS

The use and development of the land for a winery, cellar door sales, restaurant and the sale and consumption of liquor in accordance with the amended endorsed plans.

### CONDITIONS:

1. Within 60 days of the issue date of this amended permit, three copies of amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be generally in accordance with the plans received on 26th February 2019 and prepared by *Nillumbik Estate* but modified to show:
  - a) Amended Land Capability Assessment (LCA) which must include the following alterations:
    - i. The LCA must assess the restaurant use and delete reference to wine tasting/making.
    - ii. The LCA must be completed, using the maximum number of patrons per day as per condition 4 of this permit.
  - b) Amended site plan which is generally in accordance with the plan previously endorsed as Sheet 1 of 3 (dated 31/10/16) which shows the following:
    - i. Amendments to the layout of car parking to provide for a total of 40 car spaces comprising 23 spaces to the west and east of the restaurant building and the remainder as overflow spaces on land further west of the winery or adjacent to the vineyard;
    - ii. Location of the existing septic tank and effluent field;
    - iii. Location of any proposed alterations and/or upgrades to the system as determined by the amended LCA.
    - iv. Location of a reserve area which must be in accordance with the *Code of Practice* (Publication 891.4 July 2016).
  - c) Amended ground floor/mezzanine/elevation plan which is generally in accordance with the plan previously endorsed as Sheet 2 of 3 (dated 31/10/16) which shows the following:



- i. Red line to be clearly delineated.
  - ii. Internal layout of the building to be updated to reflect the current conditions.
- d) A Premises and Amenity Management Plan in accordance with Condition 5 of this permit.
2. Unless with the prior written consent of the Responsible Authority, liquor may only be sold and/or consumed between the following hours:
  - Monday to Wednesday: 10am – 6 pm
  - Thursday to Sunday: 10am – 8 pm
3. The use hereby permitted must not operate on days of declared Total Fire Ban.
4. Unless with the prior written consent of the Responsible Authority, the maximum number of patrons must not exceed 140 persons per day, to the satisfaction of the Responsible Authority.
5. Before the restaurant use permitted by the amendment hereby approved commences, a Premises and Amenity Management Plan must be submitted to and approved by the Responsible Authority. All activities forming part of the permitted use must comply with the endorsed plan. The plan must include details on:
  - a) Premise details (site location, operating days/hours);
  - b) Venue capacity in line with the conditions of the permit;
  - c) Type and details of the approved liquor license for the premises;
  - d) The responsible service of alcohol;
  - e) The training of staff in the management of patron behaviour;
  - f) Security, staffing, and other measures which are designed to ensure the orderly arrival and departure of patrons;
  - g) Noise mitigation strategies with respect to noise associated with access points to and from the venue (i.e. departure of customers to ensure that the egress of vehicles is staggered to reduce noise).
  - h) Details of music/entertainment at the venue and associated noise mitigating strategies such as volume levels, type of music (live or amplified).
  - i) Noise mitigation strategies with respect to noise generated from music/entertainment at the premises;
  - j) Complaint procedures;
  - k) Details of waste collection from the premises;
  - l) Housekeeping details with regards to the disposal of waste by staff;
  - m) Closure of the premises on declared Total Fire Ban days.





6. Unless with the prior written consent of the Responsible Authority, the restaurant use and ancillary functions must not commence until any required alterations or upgrades to the wastewater system as detailed by the endorsed by the Land Capability Assessment are installed, to the satisfaction of the Responsible Authority.
7. In the event that the approved and installed septic system fails, the approved uses must cease operation until wastewater can be adequately treated on site in accordance with the Code of Practice – Onsite wastewater management and in consultation with the EPA, to the satisfaction of the Responsible Authority.
8. The layout and construction of the premises, must comply with the Food Safety Standard 3.2.3 Food Premises and Equipment to the satisfaction of Council’s Environmental Health Unit.
9. Air-conditioning and other plant and equipment installed on the subject building(s) shall be so positioned and baffled so that noise disturbance is minimised, to the satisfaction of the Responsible Authority.
10. Noise emissions from the premises must comply with the requirements of the State Environment Protection Policies (Control of music noise from public premises), to the satisfaction of the Responsible Authority.
11. Unless with the prior written consent of the Responsible Authority, there shall be no live entertainment (including music) provided on the land other than inside the restaurant, to the satisfaction of the Responsible Authority.
12. Unless with the prior written consent of the Responsible Authority, no external sound amplification equipment or loud speakers are to be used for the purpose of playing of music to the satisfaction of the Responsible Authority.
13. Unless with the prior written consent of the Responsible Authority, all amplified music must be either by acoustic instrument or recorded. During times of amplified music, all external doors (in particular those accessing the outdoor decking area) must be closed, to the satisfaction of the Responsible Authority.
14. Rubbish such as glass, bottles, etc, must not be placed in external bins between the hours of 8pm and 8am, to the satisfaction of the Responsible Authority.
15. Unless with the prior written consent of the Responsible Authority, all areas set aside for the purposes of car parking in accordance with the endorsed plan, must be used for the purposes of car parking and maintained to the satisfaction of the Responsible Authority.
16. Vehicular access and egress to the development site from the roadway must be by way of a vehicle crossing constructed / upgraded to the requirements of the Nillumbik Shire Council, to suit the proposed driveway and the vehicles that will use the crossing. The Responsible Authority must



approve the location, design and construction of the crossing. Any existing unused crossing must be removed and the disturbed area reinstated to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under an Infrastructure Works permit. The width of the driveway at property boundary must match the width of the vehicle crossing.

17. The vehicle crossing must comply to “Vehicle Crossing Policy” Version 1.0 January 2013 and to Standard Drawing (NS3000, NS3010, NS3020, NS3021 or NS3030) unless written approval has been granted from Council’s Infrastructure.
18. In the event that the winery use is no longer carried out on the subject land, the restaurant use must cease operation, to the satisfaction of the Responsible Authority.
19. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within two years of the date of this permit.
  - b) The development is not completed within four years of the date of this permit.
  - c) The use is not commenced within two years of the completion of the development.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

**- End of conditions -**

