

5 EXTENSION OF TIME FOR PLANNING PERMIT T090457 ALLOWING A HOTEL AND GAMING VENUE AT 13 MAY ROAD BEACONSFIELD

FILE REFERENCE INT1726571

RESPONSIBLE GENERAL MANAGER Andrew Paxton

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RECOMMENDATION

That a Refusal to Grant Planning Permit T090457 be issued for the extension of time for Planning Permit T090457 which allows for the use and development of the land for a hotel, sixty (60) gaming machines, the sale and consumption of liquor, vegetation removal and a reduction of the car parking requirements at 13 May Road, Beaconsfield for reasons outlined in this report.

Attachments

- 1 Locality plan 1 Page
- 2 Planning permit 2 Pages

EXECUTIVE SUMMARY:

APPLICATION NO.:	T090457
APPLICANT:	TM Design Group (Aust) Pty Ltd
LAND:	13 May Road, Beaconsfield Victoria 3807
PROPOSAL:	The fourth extension of time for Planning Permit T090457
PLANNING CONTROLS:	General Residential Zone (GRZ1) Development Plan Overlay (DPO4)
NOTIFICATION AND OBJECTIONS:	Extension of time - no notification required
KEY PLANNING CONSIDERATIONS:	Changes in Planning Scheme and Warehousing of the Planning Permit
RECOMMENDATION:	Refusal

BACKGROUND:

The site has been subject to a number of planning applications which are summarised as:

- Planning Permit T090457 was issued on 11 October 2011 at the direction of VCAT after Council's decision to refuse the application was set aside. This permit allows for the use and development of the land for a hotel, sixty (60) gaming machines, the sale and consumption of liquor, vegetation removal and a reduction of the car parking requirements. The Planning Permit T090457 has been extended on 10 October 2013, 30 July 2015 and 29 September 2016. The

current permit requires the commencement of works by 11 April 2017 and completion of works by 11 April 2019 with an additional request to extend the permit on 10 March 2017. At the time of writing this report there are no endorsed plans for this application with a number of conditions on the permit outstanding.

- An application to Amend Planning Permit T090457 was lodged on 13 August 2015 which sought to amend a number of features of the development including the deletion of conditions 1(j) and 1 (l). Council's position on this application was detailed in a letter to the applicant 25 November 2015. This indicated that a number of the changes would be acceptable although would not support the removal of the conditions relating to exit point and deceleration lane and Council would not support the proposed amendments until the amendment removes the request to delete the conditions. This application has not progressed by time of finalising this report, depending on the decision on the request to extend the permit the amendment will be either refused or considered for approval
- Planning Permit T100453 was issued on 18 April 2012 for the subdivision of the land into five (5) lots. Plans to comply with the subdivision permit were issued on 26 November 2014.
- Planning Permit T110443 was issued on 18/04/2012 for the Multi-lot residential subdivision (28 lots), generally in accordance with the approved plan/s.

SUBJECT SITE

The permit applies to substantial parcel of land situated on the north-west corner of May Road and Princes Highway in Beaconsfield. The land was an irregular allotment with an area of 7.47 hectares, original title details were Lot 1 PS 503575S, 13 May Road Beaconsfield, the site has been subsequently subdivided and the site is now known as Lot 3 PS701135, 20 Pink Hill Boulevard Beaconsfield.

The land is vacant, rises to a high point proximate to its south-east corner (referred to as 'Pink Hill'), and has a substantial fall from east to west. While the property is largely cleared, the site supports a number of established trees in the south and east sections of the site.

The surrounding development includes:

- North: Residential subdivision known as the Beaconhill Grange Estate. It comprises of conventional residential allotments exceeding 1000 square metres in area. These lots have been developed in the form of detached dwellings. The Beaconsfield Community Centre accommodates a community hall, kindergarten, maternal & child health centre and a toy library to the north west of the site. As part of the subdivision provides a dead-end road along the north boundary of the hotel site.
- South: Princes Highway, beyond which is further residential development comprised of both conventional lots and low-density properties
- East: On the opposite of May Road, are larger residential land holdings and a place of worship (Beacon Gospel Trust).
- West: The land abutting to the west side of the lot is a recent residential development with a number of dwellings established on the 28 lot subdivision, some lots are currently vacant. Further west on the opposite of O'Neill Road, is public open space (sporting oval and associated car parking), the lot that has been created to contain the hotel abuts new residential development to the west which was part of the overall parent lot.

PROPOSAL

The applicant has requested a fourth extension of time for the planning permit that allows for the use and development of the land for a hotel, sixty (60) gaming machines, the sale and consumption of liquor, vegetation removal and a reduction of the car parking requirements. The request is for an extension of 6 months with the justification noted as:

- The project has been fully documented tender and in the process of signing contracts to appoint a builder however still working through issues with endorsement of plans which has taken longer than expected.

PLANNING SCHEME PROVISIONS

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 15.01-1 Urban Design
- Clause 15.01-4 Design for Safety
- Clause 15.01-5 Cultural Identity and Neighbourhood Character
- Clause 17 Economic Development
- Clause 18.01-1 Land use and transport planning
- Clause 19.03-2 Water supply, sewerage and drainage
- Clause 19.03-3 Stormwater

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.06-1 Design and built form
- Clause 22.03 Gaming
- Clause 22.04 Highway development

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.06 Car Parking
- Clause 52.07 Loading and Unloading of Vehicles
- Clause 52.27 Licensed Premises
- Clause 52.28 Gaming
- Clause 52.29 Land Adjacent to a Road Zone, Category 1
- Clause 52.34 Bicycle Facilities
- Clause 66.04 Referrals and Notice Provisions
- Clause 65 Decision Guidelines

Zone

The land is subject to the General Residential Zone (GRZ1)

Overlays

The land is subject to the following overlays:

- Development Plan Overlay DPO4

PLANNING PERMIT TRIGGERS

Pursuant with Section 69 of the Planning and Environment Act 1987 the applicant has requested an extension of time to Planning Permit T090457.

PUBLIC NOTIFICATION

The application not been notified given the application is for the extension of time for a current permit.

DISCUSSION

History of Extensions of Time for Planning Permit T090457

Planning permit T090457 was issued on 11 October 2011 with an initial commencement expiry 11 October 2013 with an initial completion expiry 11 October 2015.

First extension - An application for an extension to the permit was submitted 'to allow for the subdivision of the land and compliance with the permit conditions of the subdivision could be completed prior to the Hotel permit conditions be addressed'. An extension was issued on 10 October 2013 for a two year period with the altered commencement expiry 11 October 2015 and completion expiry 11 October 2017.

Second extension - An additional extension of time was requested with the justification that details 'the delay in commencement are due to the applicant developing the surrounding residential estate and associated civil works (e.g. construction of Pink Hill Boulevard); "planning differences" between the residential lot development and the older hotel site an amended permit application is required to be submitted for T090457 in order to rectify some issues regarding levels and access and; Finance from the residential lot development will assist with the hotel site funding'.

This justification was accepted and planning permit was extended on 30 July 2015 for a one year period with the altered commencement expiry 11 October 2016 and completion expiry 11 October 2018.

Subsequently an application to amend Planning Permit T090457, as detailed previous in this report, was lodged on 13 August 2015 and remains outstanding.

Third extension - A third extension of time was requested on 28 July 2016 for an additional six (6) month period. The justification was that 'the construction project is currently out to tender and additional time is required to complete relevant negotiations. And that amended plans (relating to access and road levels) are currently with Council for consideration'. As such it was considered reasonable to have a minor extension to the permit to allow for the amended permit to be resolved as such was extended on 4 October 2016 for a six (6) month period with the altered commencement expiry 11 April 2017 and completion expiry 11 April 2019.

In the intervening time of the extension being issued and this extension of time being lodged the applicant has not resolved numerous issues or requirements of the permit.

The first three conditions require amended plans, landscaping plans and access and disability audit report before the development starts. Each of these conditions were not satisfied at the time of requesting the extension of time. Additionally, conditions that are required to be satisfied before development or works start include condition 17 requiring a Traffic Management Plan; Condition 28 requiring a storm management plan; condition 35 requiring an offset plan for vegetation to be removed. None of which had been satisfied at time of requesting the extension. Officers met with the owner of the land and spoke to the consultant. A list of outstanding conditions was sent to both parties; it was highlight to Council it is the intention of the applicant to have these conditions met prior to the Council meeting on 1 May 2017.

The Victorian Civil and Administrative Tribunal (VCAT) has established a series of tests to determine whether an extension of time should be granted for a permit. The leading case for this type of “request for extension of life of permit”, is *Kantor v Murrindindi Shire Council (1997)*. In this case Justice Ashley set out various criteria to be considered in a request to extend the life of a permit, these are commonly known as the ‘Kantor factors’ and include:

- a) Whether there has been a change of planning policy;
- b) Whether the land owner is seeking to “warehouse” the permit;
- c) Intervening circumstances bearing on the grant or refusal of the extension;
- d) The total elapse of time;
- e) Whether the time limit originally imposed was adequate;
- f) The economic burden imposed on the land owner by the permit; and
- g) The probability of a permit being issuing should a fresh application be made.

A number of VCAT decisions have noted that the onus is on the applicant to justify the reason for the extension and consideration is not restricted to the above points, although the following is a review of each of these tests which are the general guidance for decisions. It is important to note that the Tribunal stated that the “Weight to be given to each of these criteria must vary with each circumstance of the particular case.” (*Licciardi v Yarra Ranges SC [2002] VCAT 336*). The following is a review of the application in accordance with these tests:

Whether there has been a change of planning policy

The Cardinia Planning Scheme has undergone changes in terms of Planning Policy specifically with regard to Gaming Venues between the issue of the original permit to the current circumstance. Amendment C207 sought to implement the Cardinia Shire Gaming Policy Review September 2015 by introducing a Gaming Local Planning Policy and amending Clause 52.28 schedules to prohibit gaming machines in all strip shopping centres and a number of shopping complexes. During the amendment process the owners of the land were notified of the amendment being introduced as part of the advertising process. The amendment was adopted by Council and was included as part of the Cardinia Planning Scheme on 3 March 2016.

The Local Policy Clause 22.03 Gaming applies to all applications which require a permit to install or use a gaming machine or use the land for the purpose of gaming. The objectives of the policy are:

- *To discourage new gaming machines in vulnerable or disadvantaged areas.*
- *To achieve positive social, economic and environmental outcomes in the location and relocation of gaming machines and avoid exacerbating the risk of problem gambling.*
- *To minimise opportunities for convenience gaming.*
- *To locate gaming machines where the community has a choice of non-gambling entertainment or recreation activities within the gaming venue and the local area.*
- *To protect the amenity of areas surrounding gaming venue*

The policy includes a number of criteria including:

- *Appropriate Areas; The policy includes a number of details where the gaming machines should and should not be located.*
- *Appropriate Sites: Are noted as sites that minimise the likelihood of impulse gaming by people passing the venue in the course of their usual business or every day activities and are at the periphery of activity centres and removed from land zoned for a commercial purpose, or at a sports or recreation club.*
- *Appropriate Venues: the appropriate venues are noted as venues that offer other forms of recreation and entertainment, venues that have existing gaming machines, promotion of non-gaming activities and responsible gaming practices and design to comply with best practice of the VCGLR Venue Manual.*

The following areas of non-compliance are highlighted:

- *The site is isolated surrounded by residential properties with a community centre & kindergarten is located within close proximity of the site and the site will result in detrimental impacts to the surrounds inconsistent with this policy.*
- *The venue is likely to increase the social disadvantage or vulnerability of the local community and location of gaming premises will facilitate convenience gaming contrary to policy directions.*
- *The site is a new gaming venue with no established gaming machines and the venue will not improve the choice between entertainment and recreation venues with and without gambling in the local area.*
- *The proposed use and development will not result in a net community benefit.*
- *The venue is not accessible by a variety of transport modes.*
- *The site is located within a residential area and is easily accessed by the community undertaking day to day convenience activities.*

As such it is considered that the use and development is inconsistent with this policy direction and a further extension of time does not meet this test.

It is noted that one minor extension of time has been granted since the introduction of this policy, this was decided on the basis that the amendment to the permit had been lodged with applicant indicating that would be progressed within the 6 months, the applicant has not shown that this has progressed any further as such it is considered a further extension to a use and development that is contrary to current policy settings is unreasonable.

Whether the land owner is seeking to “warehouse” the permit

The warehousing of a permit relates to store the permit without intending to act upon it. It is considered that the applicant is seeking to warehouse the permit. This is evidenced by the lack of progress by the applicant satisfying a number of permit conditions before the development can start, even with a number of extensions of time being granted.

The extent of the conditions that were still required to be satisfied the time of the extension request included satisfactory amended plans in accordance with condition 1, shows that the applicant has not sufficient progressed the application that Council would be satisfied that the permit is not being warehoused. It is noted that the amendments that have been made to the development plans (Drawing PHB-1122-TP-01) coincide with the request for an extension to the time of the permit (i.e. Plan Revisions in July 2015, June 2016 and most recently 10 April 2017) which indicates a token redesigning suggesting that the development will be progressed, although each of these revisions have still yet to satisfy the permit requirements.

These features provide characteristics of an attempt to warehouse this permit as such it is considered that this test has not been satisfied.

Intervening circumstances bearing on the grant or refusal of the extension

The general tests could be considered;

- *action taken by the applicant in the context of any legislative and policy uncertainties, including under other jurisdictions*
- *whether conditions on adjoining land may have changed in a way that would affect the proposal*

The applicant has been aware of the policy changes in the Cardinia Planning Scheme and has not provided any clear indication of the urgency to progress the development of the site, rather relying on the extension of time for the permit.

The total elapse of time

This is a critical factor on the recommendation to refuse to the extension of time. The initial approval of the permit was on 11 October 2011 as such the applicant has been afforded the opportunity to commence the development with an additional three and half years, on top of the permitted 2 years, to commence the development. Given the total elapse of time from the original granting of the permit is five and half years from the initial approval it is considered that the applicant has been given ample opportunity to act on the permit.

Even with the extensions already granted, at the time of this last request, there were still an extensive number of unsatisfied permit conditions to allow for the commencement of the development. This provides a clear indication on the lack of intent by the applicant to progress the development. As such the total time elapsed for the permit has been more than enough time to progress the development. It is considered an additional extension of time is unreasonable and does not satisfy the tests to determine the appropriateness of a extending.

Whether the time limit originally imposed was adequate

The time limit originally imposed was reasonable given the subdivision of the land was also provided on the same date, and all those permit conditions (on the subdivision) including road construction was undertaken to enable lots to be sold. Additionally, Council has provided reasonable flexibility to the applicant to allow for a number of circumstances detailed in the first three extensions of time.

The economic burden imposed on the land owner by the permit

This test generally relates to the economic burden imposed on the landowner by the permit, including whether the cost of having to comply with the permit conditions was so onerous that the time available for compliance was inadequate. The permit conditions were applied by VCAT and Council has granted three (3) extensions of time to allow for compliance with the conditions and there were still extensive conditions that the applicant has not satisfied five and a half years after the initial approval of the use and development, as such this test does not provide any justification for the extension of the permit.

The probability of a permit being issuing should a fresh application be made.

Given the policy changes in the Cardinia Planning Scheme, the surrounding development of residential properties it is unlikely that a permit would be granted if a new application was made as such the application does not meet this test.

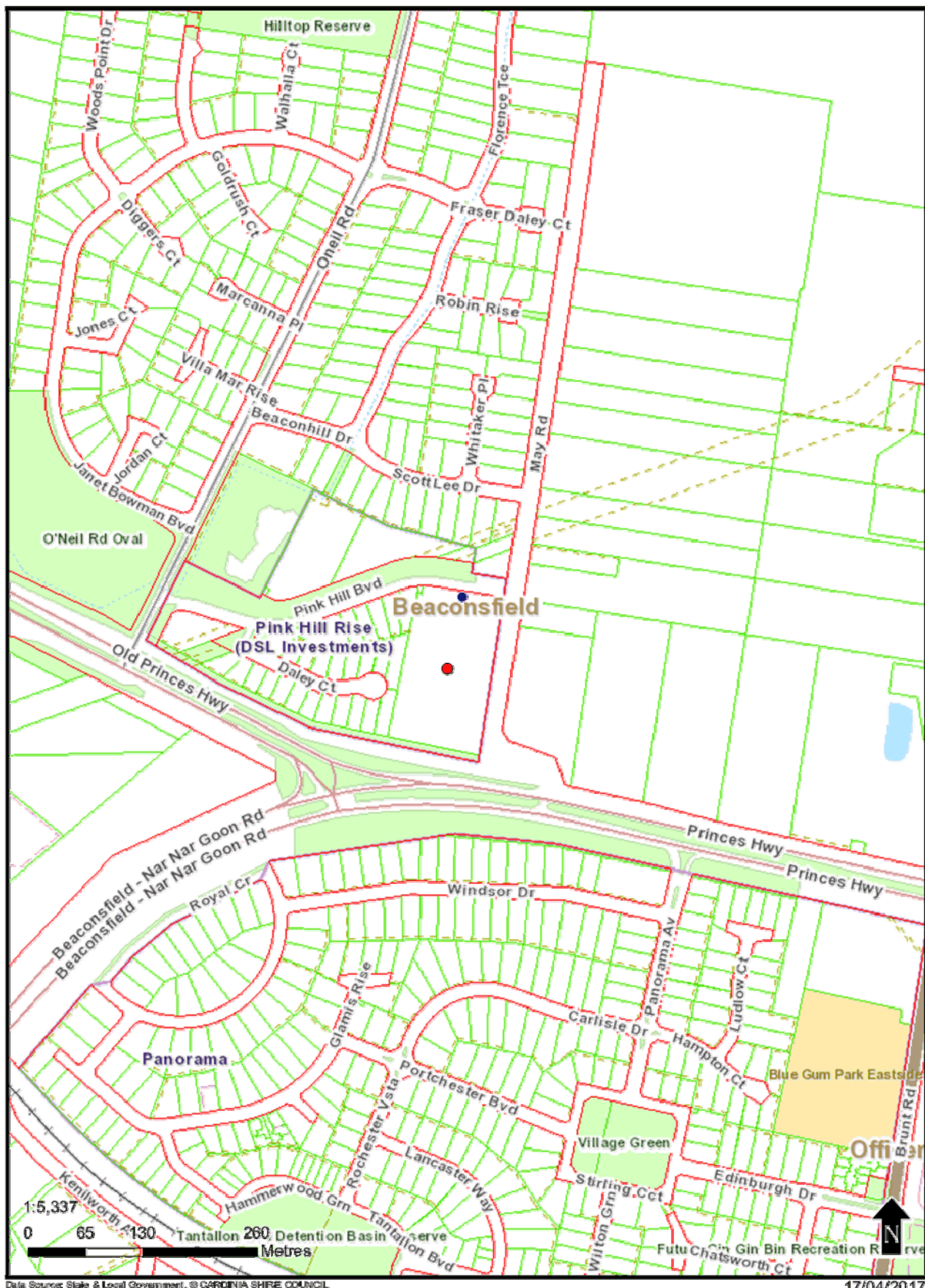
CONCLUSION

The proposal for a fourth extension of time for Planning Permit T090457 is unreasonable and will result in the warehousing of a permit that is inconsistent with current Local Planning Policy of the Cardinia Planning Scheme

It is recommended that a Refusal to Grant Planning Permit T090457 be issued for the extension of time for Planning Permit T090457 which allows for the use and development of the land for a hotel, sixty (60) gaming machines, the sale and consumption of liquor, vegetation removal and a reduction of the car parking requirements at 13 May Road Beaconsfield be issued subject to the following:

1. The applicant has not provided sufficient justification for the extension of time for the planning permit.
2. There has been a significant change policy direction of the Cardinia Planning Scheme Local Planning Policy Framework, particularly Clause 22.03 Gaming with the use and development approved by the Planning Permit is contrary to the objectives of this policy.
3. The lack of progress of the development combined with the time elapsed from the initial approval indicates that the applicant is “warehousing” the permit.

13 May Road Beaconsfield



Data Source: State & Local Government. © CARDINIA SHIRE COUNCIL

17/04/2017

1. Before the development starts, 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 the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans identified as 01 Proposed Site Plan/Floor Plan; PHB-1122-TP-02 Proposed Elevations; and PHB-1122-TP-03 Proposed Elevations & Section, all Revision A, prepared by T M Design Group (Aust) Pty Ltd, dated 17 June '11 but modified to show:
 - (a) A plan of the proposed vehicle access, circulation and car parking layout that is fully dimensioned.
 - (b) A pedestrian pathway connecting the premises to the proposed connector road.
 - (c) The floor plan amended to comply with the floor levels required by Melbourne Water (refer to Condition No. 51 of this Permit).
 - (d) The floor plan amended to detail the maximum patron numbers per room/area.
 - (e) Minimum 1.8 metre high glazed screens to the perimeter of all external areas/terraces.
 - (f) The provision of absorptive surfaces to all outdoor terraces.
 - (g) A minimum 1.8 metre high acoustic fence adjacent to the western edge of the car parking spaces in the western car park.
 - (h) The site plan amended to detail the location for the storage and collection of garbage and other solid waste;
 - (i) The provision of a minimum of 325 car spaces on the land. This must include the provision of car spaces on that part of the review site labelled as "Grassed Area (Future Development)";
 - (j) A left-hand turn deceleration lane in association with the western access into the car park, and a consequential relocation of the eastern car park access point to accommodate this lane.
 - (k) Separate left and right turn lanes within the site at the western car park access.
 - (l) The eastern car park access point to be left turn exit only.
 - (m) The provision of a minimum of 38 bicycle parking spaces.
 - (n) A comprehensive schedule of construction materials, external finishes and colours (including colour samples). All external cladding and trim of the building, including the roof, must be of a non-reflective nature.
2. Before the development starts, a landscape plan prepared by a person suitably qualified and experienced in landscape design to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must show:
 - (a) A survey (including botanical names) of all existing vegetation to be retained and/or removed.
 - (b) Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary.
 - (c) Details of surface finishes of pathways, driveways and car parking spaces.
 - (d) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
 - (e) Landscaping and planting within all open areas of the subject land.
 - (f) Landscaping of the May Road nature strip.
 - (g) Tree Protection Zones for all trees identified for retention.
 - (h) Details of the proposed gabion retaining wall along the western edge of the western car park.

All species selected must be to the satisfaction of the Responsible Authority.

3. Before the development starts, an Access and Disability Audit Report for the development must be submitted to, and approved in writing by, the Responsible Authority. The Access and Disability Audit Report must be prepared by a suitably qualified person and must include details of pedestrian access to the site from the proposed east-west connector road.
All work must be in accordance with the approved report, to the satisfaction of the Responsible Authority.
4. The use and development as shown on the endorsed plan/s must not be altered without the written consent of the Responsible Authority.
5. Once the development has commenced, it must be continued and completed to the satisfaction of the Responsible Authority.
6. Before the use starts, a Management Plan must be submitted to, and approved by, the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. All activities forming part of the use must comply with the approved Management Plan.
The plan must be consistent with the endorsed plans and must include, but is not limited to:
 - (a) Staffing and other measures which are designed to ensure the orderly arrival and departure of patrons.
 - (b) Signage to be used to encourage responsible off-site patron behaviour.
 - (c) The training of staff in the management of patron behaviour.
 - (d) Staff communication arrangements.
 - (e) Hours of operation for each area of the hotel.
 - (f) Patron numbers, and how this number of patrons will be controlled by staff.
 - (g) Measures to control noise emissions from the premises.
 - (h) Compliance with the Liquor Control Reform Act 1998, including confirmation that all persons engaged in the serving of liquor must undertake Responsible Service of Alcohol Training provided by, or approved by, Liquor Licensing Victoria within one (1) month of employment.
 - (i) The management and responsibility of crowd controllers including confirmation that security staff employed at the premises must have undertaken a recognised course in crowd control and be licensed under the Private Agents Act 1966.
 - (j) Liaison with the Victoria Police in relation to the operation of the premises, where required.
 - (k) The keeping of a complaints register and procedure for dealing with complaints.
 - (l) Confirmation that all persons engaged for employment in the gaming lounge must undertake Responsible Service of Gaming Training by, or approved by, the Victorian Commission for Gambling Regulation.
 - (m) The emergency procedures to apply to the premises in the case of an emergency.
 - (n) The employment of a manager over the age of 21 years who is responsible for ensuring that the activities on the premises and the conduct of persons attending the premises do not have a detrimental impact on the amenity of the locality. The manager must be authorised by the operator to make statements at any time on his/her behalf to any officer of the Responsible Authority, the Victoria Police and/or of Liquor Licensing Victoria authorised under section 129 of the Liquor Control Reform Act 1998 and/or to take action on his/her behalf in accordance with a direction by such officer.
 - (o) The installation and maintenance, during all hours of operation and for 30 minutes after the close of the premises each day, of an electronic surveillance system to monitor and record continuous images of all entrances and exits and bar areas. These records must be retained for a period of one (1) month and made available for viewing and/or

removal at all times by an authorised police officer or authorised officer of the Council or an authorised officer of Liquor Licensing Victoria.

When approved, the plan must be implemented to the satisfaction of the Responsible Authority.

7. Before the use starts, a Noise Management Plan prepared by a suitably qualified acoustic consultant must be submitted to, and approved in writing by, the Responsible Authority. The Noise Management Plan must address but is not limited to:

- (a) the applicable SEPP N-2 music limits for the day, evening and night time period;
- (b) details of allowable internal and external music noise levels in each of the venue areas;
- (c) measures to meet the applicable music limits and allowable noise levels;
- (d) management of patron noise in accordance with the methodology and criteria as set out in the report prepared by Marshall Day Acoustics dated 15 July 2011. This may include restrictions on the times the outdoor areas may be used, the use of the outdoor areas and the number of patrons that may be present in each of the outdoor areas at any one time.

Any measures identified in the approved Noise Management Plan must be implemented within three months of the commencement of the use to the satisfaction of the Responsible Authority. The approved Noise Management Plan must be complied with at all times to the satisfaction of the Responsible Authority.

Unless otherwise agreed to in writing by the Responsible Authority, updated Noise Management Plans prepared by suitably qualified acoustic consultant must be submitted to the Responsible Authority, to its satisfaction, at the following times:

- (e) within six (6) months of the commencement of the use;
- (f) if the land directly opposite to the hotel (ie to the north, on the opposite side of the road) is developed and occupied later than 6 months of the commencement of the hotel use, then within 3 months of the occupation of that land;
- (g) if the land that adjoins the hotel to the west is developed and occupied later than 6 months after the commencement of the hotel use, then within 3 months of the occupation of that land.

The updated Noise Management Plans must address but are not limited to:

- (h) the applicable SEPP N-2 music limits for the day, evening and night time period;
- (i) details of allowable internal and external music noise levels in each of the venue areas;
- (j) measures to meet the applicable music limits and allowable noise levels;
- (k) management of patron noise in accordance with the methodology and criteria as set out in the report prepared by Marshall Day Acoustics dated 15 July 2011. This may include restrictions on the times the outdoor areas may be used, the use of the outdoor areas and the number of patrons that may be present in each of the outdoor areas at any one time.

Any further measures identified in the approved updated Noise Management Plans must be implemented within three months of the date of approval of the updated Noise Management Plan, to the satisfaction of the Responsible Authority.

The approved updated Noise Management Plans must be complied with at all times to the satisfaction of the Responsible Authority.

8. Before the use starts, an acoustic fence must be erected along the western edge of the western car park to a minimum height of 1.8 metres.

The design of the fence must be prepared in consultation with an acoustic engineer qualified to the satisfaction of the Responsible Authority.

Before the fence is constructed, details of the design and acoustic qualities of the fence must be submitted to, and approved in writing by, the Responsible Authority.

9. The use (excluding the use of the electronic gaming machines) must operate only between the hours of:
 - Sunday to Thursday 8.00am to midnight
 - Friday and Saturday 8.00am to 1.00am the following day
10. The electronic gaming machines must operate only between the hours of:
 - Monday to Sunday 10.00am to 1.00am the following day
11. Deliveries to the land must only be undertaken during the following hours:
 - Monday to Saturday 7.00am to 10.00pm
 - Sundays and Public Holidays 9.00am to 10.00pm
12. Waste collection from the land must only be undertaken during the following hours:
 - Monday to Saturday: 7.00am – 8.00pm
 - Sundays and Public Holidays 9.00am to 8.00pm
13. Not more than 650 patrons may be present on the premises at any one time. The patron numbers on the external terraces must not exceed the following:
 - (a) Sports bar/lounge bar terrace: 75 patrons
 - (b) Bistro 1 al fresco dining: 113 patrons
 - (c) Functions terrace: 93 patrons
 - (d) Function Room 4 terrace: 42 patrons
 - (e) Bistro 2 al fresco dining: 37 patrons
 - (f) Gaming lounge terrace: 23 patrons
14. All mechanical services noise must comply with the limits established by using the methodology set under State Environmental Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1.
15. Any music noise emissions must comply with the limits set under State Environmental Protection Policy (Control of Music Noise from Public Premises) No. N-2.
16. The use and development must not detrimentally affect the amenity of the area, through the:
 - (a) transport of materials, goods or commodities to or from the land;
 - (b) appearance of any building, works or materials;
 - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
 - (d) patron noise and vehicle movements;
 - (e) presence of vermin

or in any other way, to the satisfaction of the Responsible Authority.

17. Before the development starts, a Traffic Management Plan (TMP) prepared by suitably qualified person must be submitted to, and approved in writing by, the Responsible Authority. The TMP must address, but is not limited to:
 - (a) Directional arrangements for access to and from the connector road.
 - (b) Any necessary measures to, accommodate any changes to the directional arrangements as a result of:
 - (i) access requirements during construction of roadworks; and
 - (ii) access requirements as a result of the final construction of the connector road to link it with the existing road network, including May Road.

The TMP must be complied with to the satisfaction of the Responsible Authority.
18. External lighting must be designed, baffled and located so as not to detrimentally affect the amenity of adjoining land to the satisfaction of the Responsible Authority.
19. Provision must be made on the site for the storage and collection of garbage and other solid waste. This area must be graded, drained and screened from public view to the satisfaction of the Responsible Authority.
20. No direct pedestrian or vehicular access must be provided to the site from May Road.
21. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building/s without the written consent of the Responsible Authority.
22. The dimensions and layout of the proposed access, parking areas and loading bays must be in accordance with the requirements of Clauses 52.06 and 52.07 of the Cardinia Planning scheme.
23. Before the use starts, all areas set aside on the approved plans for access, circulation and car parking must be constructed with concrete, asphalt or other approved hard surfacing material, drained and delineated to the satisfaction of the Responsible Authority. Once constructed, these areas must be maintained to the satisfaction of the Responsible Authority.
24. Before the use starts, direction signs and direction pavement markings must be installed as shown on the approved plans. Once works are completed, the area must be maintained to the satisfaction of the Responsible Authority.
25. Before the use starts, commercial standard concrete vehicle crossings must be constructed in the locations shown on the approved plans to the approval and satisfaction of the Responsible Authority. All proposed crossings must have a minimum width of 6.0 metres.
26. Before any works start, the contractor and Responsible Authority representatives must carry out an existing condition inspection of roads and land near the subject land. Council roads must be maintained during the construction period in accordance with the agreed maintenance cycle and intervention levels. Any damage caused by these works to Council assets must be reinstated to the satisfaction of the Responsible Authority prior to the completion of works.
27. Stormwater must not be discharged from the subject land other than by means of an underground pipe drain discharging to an outlet in the street or to an underground pipe drain to the satisfaction of the Responsible Authority.

28. Before the development starts, a stormwater management plan showing the stormwater works to the nominated point of discharge must be prepared to the satisfaction and approval of the Responsible Authority. The stormwater management plan must be prepared by a suitably qualified person and show details of the proposed stormwater works including all existing and proposed features that may have impact (e.g. Trees to be retained, crossings, services, fences, abutting buildings, existing boundary levels etc). The stormwater works must incorporate the use of water sensitive design principles to improve stormwater runoff quality. All works must be undertaken in accordance with the approved stormwater management plan.
29. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.
30. The slope of batters, both cut and fill, must not exceed 2:1 (horizontal: vertical) or, where this is not practicable, batters must be stabilised by other means to the satisfaction of the Responsible Authority.
31. All roads used for the purpose of haulage of imported or exported materials for construction must be:
 - (a) approved in writing by the Responsible Authority for the submitted haulage strategy, at least seven days prior to the commencement of use;
 - (b) maintained in accordance with the Responsible Authority's maintenance intervention levels, or as requested by the Responsible Authority if the road deteriorates during the haulage period; and
 - (c) reinstated to the satisfaction of the Responsible Authority.
32. Before the development starts, the permit holder must design and construct road and drainage works, in accordance with plans and specifications approved by the Responsible Authority, that comply with the standards nominated in the Cardinia Shire Council "Guidelines for the Development & Subdivision of Land" and the "Development Construction Specification" that include:
 - (a) Earthworks in their entirety for the full 33 metre road reservation of the proposed east-west road bisecting the site to the satisfaction of the Responsible Authority;
 - (b) A fully constructed single lane road (one lane each way) within the road reserve of the proposed east-west road bisecting the site to the satisfaction of the Responsible Authority;
 - (c) Intersectional works to the satisfaction of the Responsible Authority at the intersections of the internal road with O'Neill Road.
33. Before the use starts, outfall drainage works must be designed and constructed to the approval of both the Responsible Authority and Melbourne Water.
34. At least 14 days before any works (including tree removal) start, a site specific Construction Environmental Management Plan (CEMP) to the satisfaction of the Responsible Authority must be submitted to, and approved by, the Responsible Authority. When approved the CEMP will be endorsed and will then form part of the permit. All works must be undertaken in accordance with the approved CEMP, to the satisfaction of the Responsible Authority.

The CEMP must address all environmental risks and must include, but is not limited to:

- (a) Hours of construction, which must be restricted to 7am to 6pm Monday to Friday, and 8am to 1pm on Saturday.
 - (b) No access must be provided from May Road.
 - (c) Temporary stormwater management including sedimentation control.
 - (d) Provision of pollution and contamination controls including noise and dust.
 - (e) Location of stockpiles and stockpile management.
 - (f) Location of site office and facilities.
 - (g) Equipment, materials and goods management.
 - (h) Installation of temporary signage along May Road stating: "This is a significant bushland reserve. No machinery, works, storage of material or rubbish dumping is permitted". Signs must be no smaller than 600mm x 600mm, and must be placed along the reserve and site's boundary for every 50 metres.
 - (i) Installation of temporary fencing to protect all vegetation that is to be retained.
 - (j) The significance of roadside vegetation and vegetation to be retained on site.
 - (k) Actions in accordance with EPA Victorian Guidelines to manage erosion and sediment run off, vehicle access, disposal of surplus and unsuitable excavated material and control of noxious weeds.
 - (l) Method of communication to all contractors of the Construction Environmental Management Plan.
 - (m) All rubbish must be contained on the site. An appropriate sized container must be situated on the property to properly dispose of waste.
 - (n) Tree protection zones, trees to be retained and trees to be removed. All vegetation that is removed and disposed must not damage vegetation to be retained.
 - (o) Any other recommendations listed in Section 7.3 of the Brett Lane & Associates Report No 5162 (3.2), July 2011, that are not listed above.
35. Before any works start, an offset plan for the loss of vegetation must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will form a part of the permit.
- The offset plan must include the following:
- (a) means of calculating the offsets in accordance with the Port Phillip and Western Port Native Vegetation Plan; and
 - (b) type of offset works to standard Department of Sustainability and Environment (DSE) methodology (including location, action, quantities, timing of works, unit/resource allocation, details of who will be undertaking the works and standards to be achieved) must be provided for all tree offsets which must be implemented over a ten year period. Revegetation must be to the DSE standard methodology.
The required offsets must be provided in accordance with the approved offset plan to the satisfaction of the Responsible Authority.
36. Before any works start a Tree Management Plan that shows protection measures for all retained trees (including Tree Protection Zones) must be submitted to, and approved in writing by, the Responsible Authority.
37. Before the development (including tree removal) starts, a tree protection fence must be erected around the trees identified on the endorsed plans to define a "Tree Protection Zone" in accordance with the approved Tree Management Plan, to the satisfaction of the Responsible Authority. The fence must be constructed of star pickets and chain mesh or similar, to the satisfaction of the Responsible Authority. The tree protection fence must remain in place until construction is completed. The ground surface of the Tree Protection Zone must be covered

by a 100mm deep layer of mulch and be watered regularly to the satisfaction of the Responsible Authority.

38. All offset and landscape works must have regard to the retention and improvement of the roadside vegetation strips that act as wildlife corridors.
39. The landscaping shown on the approved plan/s must be carried out within six (6) months of the commencement of the use (spring or autumn).
40. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority and used for no other purpose. Any dead, diseased or damaged plants must be replaced.
41. Before the landscape works commence, a bond to the satisfaction of the Responsible Authority must be provided for a twenty four (24) month maintenance period. During that time, the landscape must be kept to Council's 'Parkland' standard and rectification of all non-complying works must be undertaken during this time.
42. All vegetation removal works must be supervised by a person who is suitably qualified to the satisfaction of the Responsible Authority.
43. No vehicular or pedestrian access, trenching or soil excavation is to occur within the Tree Protection Zones without the written consent of the Responsible Authority. No storage or dumping of tools, equipment or waste must occur within the Tree Protection Zones.
44. Any pruning that is required to be done to the canopy of any tree to be retained must be done by a qualified arborist to Australian Standard – Pruning of Amenity Trees AS4373-2007. Any pruning of the root system of any tree to be retained must be done by hand by a qualified arborist.
45. The exterior colour and cladding of the development must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the building, including the roof, must be of a non-reflective nature.
46. Before the installation and use of the gaming machines start, the owner must enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987, and make application to the Registrar of Title to have the agreement registered on Title to the land under section 181 of the Act, which provides for an annual payment of \$100,000.00 per annum (indexed to CPI) in cash donations to local community groups, charities and sporting clubs, to the satisfaction of the Responsible Authority.

The owner must pay the reasonable costs of preparation, execution and registration of the agreement.

Melbourne Water Conditions

47. Pollution and sediment laden runoff must not be discharged directly or indirectly into Melbourne Water's drains or waterways.
48. Before a Certificate of Occupancy is issued, the owner must enter into, and comply with, an agreement with Melbourne Water for the acceptance of surface and stormwater from the subject land directly or indirectly into Melbourne Water's drainage systems and waterways, the

provision of drainage works and other matters in accordance with the statutory powers of Melbourne Water.

49. Engineering plans of the development (in electronic format) must be forwarded to Melbourne Water for comment/approval.
50. Before a Certificate of Occupancy is issued, a detailed drainage and stormwater management strategy must be submitted to Melbourne Water, to its satisfaction.
51. Finished floor levels must be a minimum of 300mm above the applicable flood level associated with the existing Melbourne Water asset.
52. Before works start, a separate application, direct to Melbourne Water, must be made for any new or modified stormwater connection to Melbourne Water's drains or watercourses. Prior to accepting and application, evidence must be provided demonstrating that Council considers it is not feasible to connect to the local drainage system.

Permit Expiry

In accordance with Section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- (a) The development does not start within **two (2) years** of the date of this permit;
- (b) The development is not completed, or the use does not start, within **four (4) years** of the date of this permit.
- (c) The use is discontinued for a period of **two (2) years**.

In accordance with Section 69 of the *Planning and Environment Act 1987*, the Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within three (3) months afterwards.