



AIREYS INLET AND DISTRICT ASSOCIATION INC

PO BOX 359 AIREYS INLET VICTORIA 3231

<http://www.aireys-inlet.org>

(Reg. No. A000710V)

AIDA objection to application 19/0409 for a bridge and corridor to move stock

1 Introduction

The Aireys Inlet and District Association (AIDA) submits this submission objecting to planning application 19/0409.

Following a brief description of AIDA, the document sets out a series of detailed objections. These cover, in order, objections to the alienation of public lands and a waterway in the interests of a sole private beneficiary, compromising the Council's responsibilities as a manager of public and Crown property; and evidence demonstrating that the application contravenes Council and State planning and environmental policies, including water catchment obligations and Council's own structure plan for the locality. Finally, not only is the proposed bridge inimical to visual amenity, but it is demonstrably unnecessary to the successful operation of the applicants' business.

The Aireys Inlet and District Association (AIDA) was established over 50 years ago in response to a proposal for a caravan park on land at the mouth of the Inlet. Since then its many thousands of members have worked to ensure that, as the area between Urquhart Bluff and Eastern View develops and changes, its environment and public lands are protected and it retains its non-suburban seaside village character.

There have been many challenging issues related to the use and development of the Painkalac River flats. These have ranged from proposals for extensive subdivision, a caravan park and camping ground and a football oval. A VCAT hearing in 1999 over a subdivision proposal resulted in a Section 173 agreement and Conservation Management Plan being placed over the three permitted valley lots.

AIDA has almost 500 members and works with the community and Surf Coast Shire on policy and neighbourhood character issues to preserve and enhance local character. AIDA routinely reviews all planning applications for its area of interest and submits objections where it believes there will be adverse impacts on our townships and communities.

Our detailed submission follows.

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2 Alienation of public land and waterway for the applicant's sole use

Use of public land for private profit

The proposed bridge would alienate public conservation and recreation land and access to the Painkalac Creek, all of which is highly valued and enjoyed by the local community. Exclusive private use of and building a bridge on the public land would provide no community benefit and would detract from community enjoyment and environment values of the Painkalac Creek and valley.

Loss of Community Asset

The Section 173 agreement designates the creek banks for 10 metres as public open space. Clause 4.3 concerning specific obligations of the owner requires that *"an area of the land with a minimum width of 10 metres along the Painkalac Creek shall be noted on any plan of subdivision as public open space to vest upon registration of any plan of subdivision of the land in the council."*

The Council /Crown owned land reserve affected by this application is marked on the title 'for municipal purposes'. However, the proposed bridge is for exclusive use of a single business, not for a municipal or public purpose. The planning application for the bridge states that the land is not used. This is not correct, however, it is land set aside for conservation purposes and local residents and visitors use the public land to walk along the creek bank and use the creek to canoe and paddle board to a turning pool that lies just upstream of the proposed bridge.

Benefit to One Business at the Expense of Other Businesses

The very popular water activities are largely supported by several local businesses, such as Great Ocean Road Adventure Tours (GORATS), Ecologic and others, which would be adversely affected because of the loss of access, visual amenity and landscape values in the stretch of water leading to the current turning pool. In the case of the increasingly popular paddle boards, there would not be sufficient clearance under the bridge to enable people standing on the boards to get under the bridge, and kayakers would also be prevented from entering the turning pool (see also below under tourism).

Planned pathway and kayaking and paddle board access would be undermined

There has been a longstanding plan to create a walking path along the Painkalac Creek and this path is included in Council's Pathways Strategy. If the proposed bridge is permitted this walk, which would be of great public and tourism benefit, will not be able to proceed as currently envisaged. Construction of the bridge and the horse corridor will interfere with public access and will require walkers to take a 60 metre detour to access the gates (30 metre in each direction from the creek bank). In the same way as for those using the waterway, there would be significant loss of visual amenity and landscape values in the area surrounding the bridge.

The Aireys Inlet and Eastern View Strategy in The Surf Coast Planning Scheme Clause 21.12 and Aireys Inlet and Eastern View Structure Plan notes the importance of walking trails in the area and along the Painkalac Creek – see section 16

3 Lack of clear information on height– blocking kayaks and stand-up paddle boards

The clearance of the bridge above the water is listed at 1.3m but with a note that its not to scale and only approximate. When will a more accurate plan be prepared to show how people with kayaks and paddle boards can continue to enjoy the creek?

What is the clearance height under the bridge? How often will kayakers and paddle boarders (including from recreation and tourism businesses) be able to reach the beautiful turning basin in the creek?

In the application documentation, the bridge height is variously given as 1.3m and 1.63m but both are shown as indicative based on 1 day in July. The clearance of the bridge above the creek water is stated as 1.3 metres on page 105 but the same diagram on page 122 has it as 1.6. This is extremely confusing. Approval of approximations would represent a very unhealthy precedent as well as an injustice to the local community.

Regardless of which figure is correct for the single measurement made by the consultant on 30/7/19, the clearance will be considerably less when the water level in the creek is higher than the moderate level shown on the diagrams. According to the data points reported at the creek surface and the edge of the bank, the water level would be 0.7m higher. Stand-up paddle boards need over 2m clearance and are increasingly popular on the Painkalac Creek.

4 Crown Lands Reserve Act

The proposal is inconsistent with the *Crown Lands Reserves Act* and Council's duties as a Crown Lands manager to protect the Painkalac Creek and valley environment and provide for community use. Planning Scheme provisions cannot override the purpose of Crown Land Reservation unless revoked by parliament.

The Council /Crown owned land reserve affected by this application is marked on the title 'for municipal purposes'. The proposed bridge is for the exclusive use of a horse riding and agistment business and is not for a municipal or public purpose and is therefore inconsistent with the purpose of the reservation.

According to the Supreme Court decision by Justice Eames in the case of *Royal Park Protection Group v Urban Camp Melbourne* 1998 101GLGERA 381, "a planning scheme cannot authorise a use inconsistent with a reservation under the *Crown Lands Reserves Act*".

http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/1998/161.html?context=1;query=Royal%20Park%20Protection%20Group%20v%20Urban%20Camp%20%20%20;mask_path=

The Planning and Environment Act Division 4 Special Provisions Clause 46 also makes clear that planning must be consistent with the purpose of Crown Land reservations:

"(2) If a provision of a planning scheme is expressed or purports to deal with land that has been permanently reserved for any purpose under the Crown Land (Reserves) Act 1978 or any part of that land in a manner which is inconsistent with the purpose of the reservation, the provision does not take effect until the reservation of that land or part is revoked by or pursuant to an Act of Parliament."

The Crown Lands Reserves Act provides for the lease of reserved land for "providing facilities and services for the public" with the consent of the Governor in Council and limits the term of leases (8 Reserved lands not to be sold, leased or licensed: clause 14D).

The exclusive private use of the bridge is inconsistent with the purposes of the crown land reservation, the 173 agreement reserving it for public open space, its reservation for municipal purposes and the *Crown Land Act* providing for leases for facilities and services for the public.

5 Open space – Planning Policy Framework

The proposal is inconsistent with the Planning Policy Framework for Open Space in the Surf Coast Planning Scheme, Clause 19.02:

“Objective: to establish, manage and improve a diverse and integrated network of public open space that meets the needs of the community.

Strategies

- *Plan for regional and local open space networks for both recreation and conservation of natural and cultural environments.*
- *Ensure that open space networks: are linked, including through the provision of walking and cycling trails.*
- *Incorporate, where possible, links between major parks and activity areas, along waterways and natural drainage corridors, connecting places of natural and cultural interest.*
- *Maintain public accessibility on public land immediately adjoining waterways and coasts.*
- *Ensure that land use and development adjoining regional open space networks, national parks and conservation reserves complements the open space in terms of visual and noise impacts, preservation of vegetation and treatment of waste water to reduce turbidity and pollution*
- *Improve the quality and distribution of open space and ensure long-term protection.*
- *Ensure that where there is a reduction of open space due to a change in land use or occupation, additional or replacement parkland of equal or greater size and quality is provided.*
- *Ensure the provision of buildings and infrastructure is consistent with the management objectives of the park.*
- *Ensure public access is not prevented by developments along stream banks and foreshores.*
- *Ensure public land immediately adjoining waterways and coastlines remains in public ownership.”*

The proposal is inconsistent with these provisions by

- Blocking the link of parkland and planned walking and cycling trails between the coast and Otway National Park
- Limiting public accessibility on land immediately adjoining a waterway
- Allowing a development that will prevent public access along the stream bank
- Removing from public use land adjoining the waterway through an exclusive lease

6 Environmental Impacts

The proposal will have significant impacts on the flora, fauna and water quality of the Painkalac Creek and valley by:

- Severing the wildlife corridor along the Painkalac Creek
- Building directly on the creek bank and over the creek disturbing soils including acid sulfate, and harming water quality. No buffer from the creek is proposed when 30 to 60 metres is suggested in the Environmental Significance Overlay (see 6 below)..
- Contaminating the creek and its banks with horse manure, spreading weed seed in the dung and affecting the chemistry and microbiome of the creek water, with consequences for downstream parts of the creek and estuary.
- Trampling and damaging sensitive creekside vegetation with the bridge and access ramps and horse tracks, risking erosion and altering the natural water movements of the creek and wetlands
- Heavier trampling and disturbance of this area of the valley and wetlands at the horse marshalling yard
- Building a bridge which is likely to disturb acid sulfate soils in the valley which should be extremely carefully managed to maintain a healthy creek and valley environment.
- Damaging the creek banks, native vegetation and wetlands, contrary to the Conservation Management Plan under valley subdivision permit and the 173 Agreement which requires the landowners to *“Protect and maintain existing remnant trees and ephemeral wetland along the western boundary of the site as well as fauna habitats associated with these areas, particularly in the older Eucalypts on the property enhances the conservation values of the site and adjoining Painkalac Creek.”* p. 44.

The Painkalac Creek is such an important environment that it was recently listed by the Federal Environment Minister as one of twenty-five ‘salt wedge’ sites around the Australian coast worthy of special protection.

7 Environmental Significance Overlays

The Painkalac Creek and valley wetlands are recognised by Environmental Significance Overlays 1 and 5. The statement of significance ESO 1 at clause 42.01.1 recognises the area as a wetland of regional or international significance protected under international agreements, supporting nationally or state listed rare or threatened flora and fauna species, a significant biodiversity link and the importance of its water quality and catchment. The proposal is starkly inconsistent with these environmental objectives.

“: To maintain the physical and biological integrity and functioning of aquatic systems and to enhance river health and biodiversity, including:

- *Protection of terrestrial land aquatic habitat for native flora and fauna protection of water quality (including downstream water quality)*
- *Protection and enhancement of native vegetation within riparian zones (including ecological restoration, regeneration and revegetation)*
- *Prevention of water pollution, accelerated erosion and siltation or sedimentation facilitation of weed eradication*
- *Avoidance of excessive earthwork (particularly in areas known to contain acid sulphate soils) maintenance of natural flows, flooding regimes, recharge and discharge of ground waters filtration of nutrients and other pollutants the natural opening and closing of coastal wetlands and estuaries*
- *Protection and restoration of the natural hydrological (wetting and drying) cycle of waterways and wetlands.*

Decision Guidelines in Clause 41.01.5 cover:

- *“The purpose of the buildings or works and whether all reasonable effort to avoid impacts on the aquatic system has been explored with consideration given to:*
 - *alternative options for carrying out the buildings or works on the site,*
 - *and the availability of alternative land suitable for the proposed buildings and works outside the overlay area.*
- *Whether adequate buffers can be retained around an aquatic system to reduce potential threats to the quality, lifecycle processes or functioning of aquatic and terrestrial habitats such as 30 metre buffer between works causing soil disturbance and the need to increase this buffer to 60 metres where sites are prone to salinity or erosion*
- *Any impacts that buildings or works may have on the hydrological regime, water quality, or scenic, cultural heritage or recreational values of a waterway or wetland.*
- *Whether an agreement under section 173 of the Act, providing for ongoing enhancement and/or management on the land, is required.*
- *Potential threats to the quality, lifecycle processes or functioning of aquatic and terrestrial habitats.*
- *The Painkalac Estuary Management Plan (2005)*
http://www.estuarywatch.org.au/documents/ccma_document_12831.pdf

The proposal is inconsistent with the following decision guidelines for Council

- The purpose of the works proposed don't include environmental or community benefit
- All reasonable effort to avoid impacts on the creek and wetlands have not been explored
- Alternative locations including the use of Old Coach and Bambra Roads have not been adequately considered
- This proposal will harm the creek and its habitat values
- This proposal will harm the recreational values of the Painkalac Creek and public reserve by limiting kayaking, paddle boards and walking and cycling.
- The Painkalac Estuary Plan goals are not met for environment, habitat, vegetation and water quality protection and enhancement, community access, education and participation.

8 Environmental Significance Overlay 5 ESO 5 Clause 42.01

The habitat values of the area for threatened species including the Powerful Owl, Grey Goshawk, Rufous Bristlebird, and Swamp Antechinus are recognised in the overlay 5 ESO 5 Aireys Inlet to Eastern View

Major environmental issues in the settlements and surrounds include:

1. *Loss of habitat through degradation and fragmentation*
2. *Tourism development in ecologically sensitive areas*
3. *Degradation of waterways*
4. *Invasion of native vegetation by environmental weeds*
5. *Lack of regeneration*

The proposal represents all these issues and does not support the environment objectives or adequately address the decision guidelines

Objective to *“To protect, enhance and restore the native vegetation cover, with emphasis on retaining intact remnant vegetation patches that provides a buffer to the National Park and to preserve and enhance vegetation corridors....”*

Decision Guidelines

- *Whether site disturbance resulting from excavation and/or fill would pose a risk to the health of existing vegetation being retained, or reduces the potential for future planting of vegetation.*
- *The means of protecting vegetation during the construction of buildings and works and the on-going management of vegetation post construction.”*

9 Surf Coast Shire Policy on Environmental Management Clause 21.03-1

The proposal is starkly inconsistent with the Shire’s Planning Policy Objective (21.03-2) *to protect and enhance the Shire’s diverse natural resources in an ecologically sustainable manner for present and future generations. This policy recognises as issues: declining linear bio-links, such as ... streams and drainage lines, which connect pockets of remnant vegetation, larger reserves and water bodies that help maintain diversity and connect isolated habitats.*

- *Threats to the health of waterways and wetlands, estuaries and marine ecosystems.*
- *Flood management in urban and rural areas.*
- *Impacts of salinity hotspots on biodiversity, water quality, agricultural production, buildings and infrastructure.*
- *Impact of development on naturally occurring saline areas, such as lakes, estuaries, coastal wetlands and saltmarshes, through changes to hydrological processes.*

The proposal is contrary to the Surf Coast Shire’s own strategies for environmental assets because it would breach important vegetation buffers, fragment habitats and spread weeds on public land.

Key strategies are to:

- *“Retain and enhance adequate and appropriately vegetated riparian and wetland buffer zones and retention of natural drainage and waterway corridors with vegetation buffer zones to prevent nutrients and sediments entering waterways, lakes, wetlands and estuaries, and to slow the rate of runoff.*
- *Promote environmental buffers adjacent to the Great Otway National Park...*
- *Improve ecological connectivity across the landscape to link fragmented habitats and strengthen ecosystem resilience to climate change.*
- *Encourage the effective management of pest plants and animals including the removal of environmental weeds ... “*

The proposal is contrary to environmental risks strategies to

- *“Discourage buildings, works, land use and subdivision that would be detrimental to the maintenance of the natural systems of land affected by flooding and inundation.*
- *Minimise development on land within or adjacent to naturally saline waterways including wetlands to prevent their degradation.*
- *Support a limited range of sustainable and socially equitable, coastal dependent, recreational and tourism activities in appropriate locations that complement and promote the coast’s natural and cultural values.”*

The proposal is contrary to Objective 21.03-4 to use policy and exercise discretion including

- *“Requiring the integration and connection of areas of natural value and habitat, including creeks and areas of remnant vegetation, within the open space network, where appropriate.*
- *Requiring the preparation of an Environmental Management Plan by a suitably qualified professional as part of any application for a major development ...within close proximity to environmentally sensitive areas.*
- *Requiring non habitable buildings in flood prone areas to be aligned so that their longitudinal axis is parallel to the predicted direction of the flood flow.”*

The bridge would cross the creek flood flow contrary to this provision.

10 Waterways and Wetlands Planning Policy Framework

The proposed bridge is inconsistent with protecting and enhancing the creek corridor and wetlands under the Planning Policy Framework in Clause 12.03.

“Objective To protect and enhance river corridors, waterways, lakes and wetlands.

Strategies

- *Protect the environmental, cultural and landscape values of all water bodies and wetlands.*
- *Ensure development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of water bodies and wetlands.*
- *Ensure development does not compromise bank stability, increase erosion or impact on a water body or wetland’s natural capacity to manage flood flow”*

11 Catchment Planning and Management Clause 14.02-1S

The proposal is contrary to the Planning Policy Framework objective *“To assist the protection and restoration of catchments, water bodies, groundwater, and the marine environment.”*

It conflicts with strategies to *Retain natural drainage corridors with vegetated buffer zones at least 30 metres wide a long each side of a waterway to:*

- *Maintain the natural drainage function, stream habitat and wild life corridors and landscape values,*
- *Minimise erosion of stream banks and verges, and*
- *Reduce polluted surface run off from adjacent land uses.”*

The proposal has zero buffer rather than 30 metres, and would allow run off with horse manure into the creek.

12 Floodplain Management

The proposal is inconsistent with the management of the of the Painkalac floodplain in the Planning Policy Framework in Clause 13.03 with the objective to assist protection of:

- *“The natural flood carrying capacity of rivers, streams and floodways.*
- *The flood storage function of floodplains and waterways.*
- *Flood plain areas of environmental significance or of importance to river health.”*

Overlays for Flood and Land Subject to Inundation apply to the Painkalac Creek, valley and proposed bridge location. The application does not demonstrate that the bridge and ramped horse track will not adversely affect the flood plain and creek health.

13 Public Conservation and Resource Zone – Land-use contrary

The proposal is contrary to the objectives of the Public Conservation and Resource Zone for public benefits and its purposes (Clause 36.3):

- *“To protect and conserve the natural environment and natural processes for their historic, scientific, landscape, habitat or cultural values.*
- *To provide facilities which assist in public education and interpretation of the natural environment with minimal degradation of the natural environment or natural processes.*
- *To provide for appropriate resource based uses”*

The proposal conflicts with all these purposes. All the land uses listed in the table for section 1 and 2 are public land–uses for public facilities for the community enjoyment and environmental benefit of public land and infrastructure to meet community needs.

A road is only envisioned in a Public Conservation and Resource Zone as a public facility for public benefit conducted by a public land manager. The application incorrectly characterises the building of a bridge and the use of the land for stock movements for horse riding and agistment as a “road”, but is for the use of land for a horse riding business and agistment. The bridge is not a road. The so called “road” does not connect to any other road.

Horse riding business and agistment are prohibited in the zone because they do not meet the requirement of *“being a use conducted by or on behalf of a public land manager or Parks Victoria”*.

Decision Guidelines 36.03-3 require council to consider

- *The comments of any public land manager or other relevant land manager having responsibility for the care or management of the land or adjacent land.*
- *Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.”*

14 Aireys Inlet to Eastern View Strategy, Clause 21.12-3

The proposal is contrary to the Aireys Inlet to Eastern View Strategy, Clause 21.12-3

The strategy recognises under Key Issues and Influences that *“the open valley landscape of the Painkalac Creek, separating the timbered hillsides of Aireys Inlet and Fairhaven, has high environmental, geomorphological, scenic and cultural values and contains flora and fauna of high State ecological significance.”*

Objectives in 21.12-2 include:

- *“Environment and Landscape: to protect and enhance State and Nationally significant biodiversity and habitat and areas of landscape significance within the townships and surrounding land and the vistas of natural landscape features viewed from public places.*
- *Economic Activity: to improve the pedestrian and public environment”*

Strategy 21.12-3 includes:

- *“Settlement, Built Environment and Heritage - ...Ensure new development provides good pedestrian connectivity both within the development and to the surrounding areas, including the beaches, forest and local commercial centres*
- Environment and Landscape
 - *Discourage the removal of native vegetation, require the planting of locally indigenous vegetation species to compensate for the removal of native vegetation ...and encourage the removal of environmental weeds.*
 - *Discourage landuse and development, including tourist development and accommodation, that is likely to have an adverse impact on the environmental and scenic values of the settlements, surrounding hinterland and the abutting Great Otway National Park.*
 - *Protect the scenic open landscape character and environmental values of the Painkalac Creek valley by restricting development and earthworks and avoiding vegetation removal close to the creek and wetlands.”*
- Economic activity
 - *Promote opportunities for appropriately scaled and located tourist accommodation and activities, in particular nature and adventure based tourism*
 - *Protect the environmental qualities of the Painkalac Creek reserve.*
 - *Ensure that opportunities are provided for pedestrian permeability from the Great Ocean Road through to Painkalac Creek.*

15 Aireys Inlet to Eastern View Structure Plan (2015)

The proposal is contrary to the environmental protection, walking paths, community recreation, and sustainable eco-tourism objectives and strategies of the plan referenced in the Planning Scheme.

The strategy states that *“The natural environment of Aireys Inlet to Eastern View is widely recognised as its most significant asset. The open valley landscape of the Painkalac Creek is celebrated and treasured.”* And *“ residents and visitors have opportunities to access, appreciate and interact with the natural environment and its scenic open spaces without compromising it.”*

“The Painkalac Creek Valley, separating Aireys Inlet from Fairhaven, is of high environmental, landscape and cultural significance. The valley and its creek are a dominant feature in the district, with much of the creek and valley visible from private land and public spaces, including the Great Ocean Road and lighthouse. The valley acts as a green wedge between the two towns and is an integral part of the natural and rural atmosphere of the area. The valley also has high regional geomorphological significance, being one of only a few well developed floodplains and estuaries in the Otway Ranges. The Painkalac Creek Wetlands and Floodplain Environmental Study (1990) effectively called for the severe restriction of development and activity in the valley as almost any development or increase in activity would have serious detrimental effect upon the environmental sensitivity and scenic landscape values of the valley. It stated that it is important that the valley is retained in its present rural character and the creek environs remain generally in their present form. This view is consistent with community sentiment today and the Structure Plan seeks to protect the open landscape character and natural values of the Painkalac Creek Valley”.

Key directions of the plan include:

“2 Protect and enhance the environmental assets within and surrounding the towns to maintain the area’s natural beauty and attractive setting.

7. Support a sustainable local tourism industry, while managing the pressure of large visitor numbers to minimise any detrimental environmental and amenity impacts.....

8. Maintain a variety of accessible community, recreation and open space facilities which meet community needs.

9. Maintain and build an integrated network of safe, connected and accessible pedestrian and cycle pathways throughout and between the townships, linking the commercial centres, community facilities, recreation and open space areas, and coastal and hinterland walking trails.

Objectives - Hinterland – (tourism development) discouraging uses and developments that are likely to have an adverse impact on the environmental values of the hinterland areas and abutting National Park.”

Actions in the Structure plan include building new walking trails are shown on the map in purple dotted lines

- Painkalac Creek Trail East (River Reserve Rd to Old Coach Rd) – medium term c 2020
- Painkalac Creek Trail West (Narani Way to creek, including new pedestrian crossing to connect with east trail) longer term after 2020

AIREYS INLET TO EASTERN VIEW STRUCTURE PLAN



16 Visual amenity of the Painkalac Creek and surroundings

The building of a large structure of steel, wire and wood in the beautiful, natural environment will undermine its natural scenic values. From the information provided by the applicant it is impossible to fully understand the potential visual impact of the proposed bridge. It is inappropriate for Council to consider the proposal before the community and council can assess the visual impact fully through a series of photo montage images of the proposal from key viewing points showing how the proposed bridge would sit in the landscape.

What will the bridge look like from the water, a kayak, walking paths, Great Ocean Road, Bambra, Old Coach and Bimbadeen Drive, vantage points on Aireys Inlet hillsides, from Bambra Road, Bimbadeen Drive, Fairhaven and Aireys Inlet Hillsides, Great Ocean Road? The application insists that the proposed bridge will have no effect on the visual amenity of the surrounding area, being *“of low impact and not significant in environmental terms”, “would not appear bulky or inappropriate in its setting”, and “intended to have minimal impact on the environment and locality”*. However, the bridge and its fenced horse ‘corridors’ and gates would form a large structure 60 metres long over Council/Crown land.

It is the visual amenity, landscape value and natural environment of the creek and its surroundings that is of utmost importance to the enjoyment of local residents and to the attractiveness of the valley to tourists, and particularly for the nature-based tourism opportunities that are widely agreed to be the major attraction and future focus for tourism in our area

17 Tourism

The proposal whilst convenient for one existing tourism business is inconsistent with planning scheme provisions which seek to promote tourism that protects natural values, avoids environmental damage and loss of local amenity (see Planning Policy Framework 17.04-1S Local Planning Policy Framework Clause 21.04-1) Valley.

The proposal would undermine desired tourism opportunities and other existing tourism businesses offering sustainable nature-based tourism, Aireys Inlet as a walking destination and enjoying the creek. The bridge would interfere with paddle boarders, kayakers, creek nature study and walking tours along the Painkalac Creek between the coast and National Park.

Tourism proposals should achieve both environmental and tourism objectives.

The proposal is contrary to Surf Coast Local policy for Tourism 21.04 strategies to *“Ensure new tourism development uses high quality, low intensity, unobtrusive, site responsive buildings and works based on ecologically sustainable design principles.”*

It is also contrary to:

“Implementation –

- *Tourism development should enhance the environmental condition of the land through protection and re-establishment of native vegetation and control of pest plants and animals, erosion, salinity, stormwater and nutrient run off. This should be demonstrated through the development and implementation of a management plan.*

- *Discourage the intensification of tourism development where: – significant losses to biodiversity assets cannot be avoided.”*

The Aireys Inlet to Eastern View Strategy tourism strategies are to *“facilitate responsible visitor enjoyment and appreciation of the area’s natural and cultural values and Encourage tourism developments, products and experiences that ... are sympathetic with the natural environment and character of the towns (e.g. small scale tourist offerings, eco-tourism, nature and adventure based recreational activities).”*

18 Alternative Solutions

The horse riding business currently uses roads for tours and can use Old Coach and Bambra Roads to reach paddocks in the valley without needing a bridge over public land.

Nowhere in the application is it suggested that the proposed bridge will expand the Blazing Saddles trail riding business and promote tourism. Rather the purpose of the application is to solve the self-imposed problem of continuing their business on opposite sides of Painkalac Creek. How they move stock between the two parcels is a management decision that is the owners’ responsibility to solve without affecting the environment, amenity of the community or the tourism potential of the Painkalac Creek and the public land along its banks.

Safety purpose? The applicant claims repeatedly that the main object of the proposed bridge is to ameliorate safety concerns about moving horses on the roadway. This claim is curious, given that Blazing Saddle runs a trail riding business, often with inexperienced riders and staff. All trail rides leaving the Blazing Saddles property on Bimbadeen Drive use the public road system, some rides using public roads extensively (including crossing the Great Ocean Road) for example to access the beach for beach rides. Given this use of the public road system it is disingenuous to suggest that moving the horses between the two properties by road is not safe.

This is a management issue for Blazing Saddles, not a planning issue. Every day in Australia thousands of horses are moved either by truck, by float or walked. Although Blazing Saddles choose to walk their horses, there is absolutely no reason why they could not be transported either by truck or by float. Also, local residents report that horses are walked around to Bambra Road infrequently, not daily as the planning permit states. Horses that are in work are kept on the Blazing Saddles property and spelled on the Lot 3 leasehold.

Given the clear statement noted above that *“staff are the only ones to access the bridge area”*, it is also curious that the consultant planner notes in the *“Merits of the Proposal”* section that *“a driving force behind the proposal is the ensure the ongoing safety of patrons and other parties using the local area and environs”* (point 6.5) and *“It would be far preferable for horse riders to be safe and “off road” when on tours etc rather than accessing tour routes via the road network”* (point 6.6) is the planner confused about the aims of the proposal, or are more future uses for the bridge intended?

That the bridge is not needed for the successful ongoing operation of Blazing Saddles was confirmed in an email from the owner to the President of AIDA on 6 June 2019. This email included the following statement - *“Please don't get it into your heads that not having a bridge will, I will adjust my business to cope and will continue as usual. The bridge is an added bonus, not having it won't destroy our future, in fact, when faced with change, I'm very good at adapting.”*

19 Application not for claimed “Simple replacement of an existing bridge”

The application represents the proposed bridge as simply ‘a functional replacement of the existing bridge’ that would ‘represent a slight change to business activity conducted by the proponents, but only to the extent of relocating a facility’. Nowhere does the application mention that the ‘existing bridge’ or ‘facility’ has always been an unauthorized, illegal structure that crosses the creek and Council/Crown land, for which no planning permission was ever sought or granted. Furthermore, no mention is made that the applicant chose to take out a very long lease on the Lot 3 land for the purpose of continuing their business on the opposite side of Painkalac Creek to their Blazing Saddles site in full knowledge that the intervening land was not available to enable physical linkage of these parcels of land for passage of livestock between them.

20 Care of the valley environment and creek reserve and compliance

The operation of the proposed gates would be unreliable in guaranteeing public access along the walking trail especially given the poor compliance record of the applicant with previous approval conditions and illegal buildings and works and drainage channels and lack of environmental protection.

21 Conclusion

The proposal is not in the interests of the community or the environment. It is inconsistent with the Municipal Planning Strategy, Planning Policy Framework and is inappropriately located and designed for protecting the environmental values and public access of the Painkalac Creek and Valley.

All of the planning provisions listed earlier emphasise the importance of protecting the environmental and landscape values and scenic qualities of the Painkalac Valley and specifically the Painkalac Creek and its environs. Although the Planning Report included in the application lists all of these various planning policies, they do not (and cannot) claim that the proposed bridge development will do anything to further the policy objectives. Rather they simply state that the development will not have any deleterious effects. They provide no response at all to the Water Bodies and Wetlands Policy (Clause 12.03). In response to the Tourism policies, they merely state that Blazing Saddles fits the criteria for a tourist business, but, as noted above, do not claim that the proposed bridge will expand their business or promote tourism. Rather they state that their core business ‘capitalises on the high environmental and scenic values of the local landscape’

Above all, it is unacceptable that public land be alienated for a single private business to the detriment of the rest of the community.